

# One Year Later: The Changing Dynamics of EU Common Commercial Policy Making

## A Snapshot



David Kleimann  
European University Institute  
Department of Law

[David.kleimann@eui.eu](mailto:David.kleimann@eui.eu)

# Outline

- Question: What are the first year's indications for how the treaty changes have affected and will affect CCP formulation process?
- Pragmatic observations based on interviews with MEPs, EP and DG TRADE staff
- Strong focus on the involvement of the European Parliament
- Assumption: Constitutional reality much depends on the individual institutional capacity to adapt to the reform challenges posed by the treaty changes
- Institutional capacity: ability to translate political preferences into credible negotiation positions vis-à-vis institutional competitors
- Very broadly: What are the constitutional changes?
- What are the institutional capacities / constraints / challenges?
- What are the political preferences and how have they manifested?

# EU Trade Governance Post Lisbon

- Broad Consolidation of EU competences on Commercial Policy
  - Investment, services, and IPR negotiation and regulation now EU competence
  - Qualified majority voting in the Council
  - End of mixed agreements?
- Common Commercial Policy now formally subject to EU Principles of External Action
  - Has past CCP not been conducted in consistence with these principles?
  - EBA, EPAs, AAs, unilateral GSP preferences...
  - Maybe one repercussion: turf battles between Ashton and DeGucht
  - European Parliament as the 'guardian' of CCP consistence with external action principles???
- Empowerment of the European Parliament on CCP
  - Framework Legislation and Consent to Trade Agreements

# On Par with the Council? The Empowerment of the European Parliament

- All EU domestic implementing legislation EU trade policy now subject to co-decision procedure
  - Trade barrier regulations; trade defence instruments (e.g. AD and safeguards); EU unilateral trade preferences (GSP, GSP+, EBA); investment
  - INTA Committee responsibility
- Consent procedure applies to all external commercial agreements
- No formal role regarding negotiation mandates and conduct
- EP influence on objectives and scope of negotiations? Strong institutional competition with the Council
  - EP has many opportunities to inform Commission and Council of political preferences and 'red lines' (opinions, resolutions, hearings...)
  - Commission is required to report to INTA on progress in negotiations
  - Consent procedure and co-decision on implementing legislation: leverage of EP political preferences! EP cannot be ignored

# Institutional Capacities : European Parliament / INTA

INTA with the weakest starting point vis-à-vis its institutional competitors:

- a very junior and small (29 MEPs) committee (2004)
- lack of institutional memory of CCP formulation
- little established working relations (DG TRADE / Council)
- lack of MEP expertise on highly technical CCP dossiers
- little staff capacity
- political fragmentation (29 MEPs; 7 party groups; 14 countries; different constituencies)

INTA challenge: Workload! By October 2010, 5 consent procedures and 9 Co-decision procedures

Attitude: highly assertive (Interview with INTA chairman)

# Lisbon Era challenges due to EP Involvement

- In light of EP capacity constraints:
  - Vulnerability towards sirens calls of special interest lobbies?
  - Defensive EP attitude vis-à-vis Commission and Council? (SWIFT episode)
  - Commission and Council have to increase efforts to market their political preferences publicly and gain legitimacy vis-à-vis the EP
  - Hardest task for the Council
- Council has to adapt to reality of increasing institutional competition
  - Bad performance in SWIFT negotiations
- Cumbersome and lengthy Co-Decision Procedure may take up to one year or longer
- Predictability and continuity of EU CCP at odds?



# DG TRADE: Capacity and Response to Challenges

- DG TRADE with strongest institutional starting point
  - 600 expert staff
  - decades of institutional memory
  - uniform political preferences guided by the Commissioner
  - established working relations with MS and commercial partners
  - preparation for EP involvement since 2007
- Observation: DG TRADE proactively embraced the Lisbon reform of CCP with a view to appease the EP
  - 'Charm Offensive' vis-à-vis INTA Committee (expert briefings for INTA staff, high level appearance in INTA sessions, public statements, generous information policy)
  - Massive increase in public relations efforts (civil society consultations; stakeholder meetings; conferences; large scale surveys)
  - Mediation and leadership in 'trilogue' negotiations'

# INTA Committee Political Preferences

- Consolidation and Expansion of Responsibilities
  - Politically united INTA MEPs
  - Demand for 'equal treatment' by the Commission vis-à-vis the Council
  - Objective: Gain leverage on negotiation directives and conduct of negotiations
    - Information Policy, attendance of international negotiations, attendance of preparatory DG TRADE meetings
  - Example: Commission – EP Framework Agreement
    - 'new special relationship with the European Parliament'
    - Major concession by the Commission
    - Challenged by the Council



# European Parliament Political Preferences II

- Protection of immediate welfare concerns of MEP domestic constituencies
  - Job security; domestic production; consumer protection
  - Minimum condition for reelection
  - Political fragmentation by national constituencies
- Example: Korea FTA
  - Framework legislation for safeguard mechanism to protect German and Italian small-car makers from Hyundai and Kia import surge
  - Highly protectionist demands from Italian and German MEPs (regional application; initiation of investigations by EP and civil society; widen scope of 'serious prejudice')
  - Result: trade off → power consolidation (provisional application vs. safeguard)
  - EP will approve safeguard and consent to the entire agreement very soon

# European Parliament Political Preferences III

- Shared European values?
  - Political behavior in line with EP party group
  - Trade and...
    - Human Rights
    - Environmental protection
    - Sustainable development
  - Guardian of CCP Consistency with EU External Action Principles?
    - Commerce trumps values! → e.g. Pakistan flood assistance

# Conclusions

- EU CCP formulation has fared very well in the first year post Lisbon due to DG TRADE initiatives (which may violate treaty provisions)
- INTA has acted assertively but responsible and is on the steepest part of the learning curve
- EP has managed to achieve several deliverables
- Council in the defensive role (especially after comitology revision); seeking to defend its sphere of influence; suboptimal Council – EP relations
- Apart from the legal reform, the future of EU CCP will depend much on how the inter-institutional relations will develop in the future and how the EP will be able to translate its political preferences into credible negotiation positions vis-à-vis the Council and DG TRADE