

**Seminar on**

**“The EPs Role in Trade Policy-Making”**

**EUROPEAN PARLIAMENT**

**Committee on Industry, External Trade, Research and Energy**

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**“Role of the European Parliament in shaping trade policy”**

Ladies and Gentlemen,

When we consider the role of the European Parliament in trade policy, we immediately come up against a curious fact, namely that the EU treaty does only assign a limited role to the Parliament. According to article 133, the Council of Ministers takes decisions on the common commercial policy, on the basis of a Commission proposal. This applies both for European legislation and for international negotiations. The European Parliament is not even consulted, although practice in this area has changed considerably over the last ten years. On this point, the situation in Europe is clearly different from that in the USA, where competence for trade policy lies with Congress.

The draft European constitution only partially modifies this situation. The draft gives Parliament co-decision rights for all trade-policy measures which require implementation. In other words, if in future a legislative measure is proposed on the basis of article 217, Parliament will be co-legislator.

What the draft constitution does not change is the role of Parliament in bilateral or multilateral negotiations. Here, the Commission remains in the driver's seat; the Council of Ministers gives instructions, or rather the mandate. Nevertheless, the draft constitution obliges the Commission to report to the European Parliament on how negotiations are progressing. To the best of my knowledge, that is how the Commission already proceeds today.

In addition, Parliament already has the right to approve conclusion of some, though not all, international agreements. The draft constitution maintains this arrangement.

This means that we can distinguish between two situations: the role of the European Parliament in trade policy today, and its future role once the constitution comes into force.

### **Role of the European Parliament in trade policy today**

In purely legal terms, Parliament today plays a subsidiary role in trade policy, although this narrow, legalistic vision in no way reflects the political reality. Allow me to compare the role of the European Parliament today to that of a “privileged” lobbyist, whose objective is to influence Commission and Council of Ministers with a view to helping to shape the Union’s trade policy. Privileged insofar as the Parliament is informed about trade-policy developments by the Commission and therefore has a level of knowledge which others must acquire painstakingly. Hence, the Parliament can take political action in order to make its voice heard, and must fight out any difference of opinion with the other institutions in the political arena. Obviously, it will and must endeavour to win either the Commission or the Council of Ministers as an ally in order to make sure its views are heard. As someone standing outside this process, I believe that the European Parliament is a relatively successful lobbyist, and has found an ally in the Commission at least. If your experience is different, I hope that you will enlighten me.

### **Role of the European Parliament in trade policy after the constitution comes into force**

However, the really intriguing question at this seminar is not the EP’s role in trade policy today, but its future role. In the future, the EP will have co-decision competence for measures implementing the common commercial policy. But this competence will inevitably also have implications for the situation regarding negotiations, for which the draft constitution assigns no formal rights to the EP, because the EP will provide political input in this respect and will persuade the other institutions to involve it also on this point.

Against this background, the decision taken recently by the Parliament to reorganise the committees is significant. The new International Trade Committee, not yet in place, will soon start its work in the framework of the Nice Treaty. Since the Nice Treaty does not yet grant the EP any co-decision rights for trade-policy issues, I see the first few years of this committee as a pilot period. The Committee which is soon to be created will first establish its political validity, in order to be able to influence the other institutions. However, if the constitutional treaty then comes into force, the balance of power will shift: political influence will be superseded by co-decision.

The creation of a new International Trade Committee makes it clear that the European Parliament can already help shape the European Union’s trade policy and at the same time prepare itself for the time when co-decision comes into effect. After the constitutional treaty enters into force, the Parliament will not only take part in decisions on implementation of trade policy, it will also be able to play a decisive role in moulding the situation regarding negotiations. While the treaty does not give the Parliament any new rights, Council and Commission would be well advised to take account of the Parliament’s position, since they could have some nasty surprises when they want to implement the results of negotiations in European legislation. The Parliament will then have equal rights. Only in cases where the outcome of negotiations does not need to be implemented will the European Parliament still have no co-decision rights after the constitution comes into force.

I would like to clarify this strengthened role of the Parliament in the shaping of trade policy using three examples:

### **Example 1: Anti-dumping regulation**

On 8 March 2004 the Council of Ministers adopted the proposal for amendment of the EU anti-dumping and anti-subsidies regulation. In terms of decision-making, the amended regulation now provides that the Commission proposal to impose anti-dumping measures will be implemented unless the Council of Ministers votes against on a simple majority. Since the Council has hitherto needed a majority in favour in order to impose the measure, Member States were able to block this majority by abstaining, whereas abstention is now tantamount to supporting imposition of the measure. In future the European Parliament will co-decide on an amendment of the anti-dumping regulation.

The Parliament's co-decision competence for trade-policy legislation will solve a problem that the institutions have often quarrelled over in recent years, namely the legal basis. There are numerous examples of where the Commission has chosen an additional legal basis over and above article 133. In the famous - or infamous - case of the leghold trap regulation, the Commission based its proposal on both article 133 and article 175. I will not try to answer the question as to whether the choice of two legal bases was justified by the facts or whether another legal basis was chosen only to give the Parliament the possibility for co-decision. That battle belongs to the past.

### **Example 2: Sanctions regulation**

Another example is the sanctions regulation against the USA adopted on 8 December 2003. The reason for this regulation was WTO's decision in the FSC conflict with the USA. Since the USA has not met its WTO obligations, WTO has authorised the EU to impose sanctions on the USA. In future, whereas the Parliament will not be involved in decisions as to whether a dispute settlement procedure should be opened and against whom, it must nevertheless ultimately approve the outcome of the procedure, i.e. imposition of sanctions. Just bear in mind, Ladies and Gentlemen, that in such a case we in industry will be banging just as loudly on your door as we have so far banged on the Commission's door. I should add that the Commission has drawn up the list of sanctions in an extremely transparent procedure.

If we should manage to convince you that the EU should not impose sanctions on its most important trading partner, the Commission would have won a Pyrrhic victory in Geneva. Incidentally, I am not sure that such a move would be compatible with our position on WTO dispute settlement, since we too accept retaliation as a last resort for implementation of WTO dispute settlement decisions. I cite this example only to point out that in future the European Parliament will also be able to help shape dispute settlement and should not be ignored by the other institutions. In this connection, Mr Chairman, I would like to bring up another theme linked to dispute settlement and relates to the extent to which WTO obliges its members effectively to implement the outcome of the WTO dispute settlement procedure or whether members have the choice either to implement, or claim compensation, or suffer retaliation measures. Only recently Commissioner Lamy made it clear in a speech that, in his view, the European Union has a choice. European industry does not share this view. In our eyes, there is only one way for a state to react to WTO dispute settlement decisions, namely implementation in line with the WTO ruling. If WTO members genuinely have a choice, WTO dispute settlement would lead to a two-tier society: the tier of rich WTO members which can afford to suffer retaliation measures and do not therefore feel obliged to implement, and the tier of less rich WTO members which cannot afford to suffer relation measures and are therefore obliged to implement in line with WTO decisions. The rule of law associated with WTO, so highly praised on all sides, would be trampled into the ground. I expect the European Parliament, or rather the international trade committee, to take a stance on issues such as this.

### **Example 3: international negotiations**

My third example relates to negotiation of a treaty which does not really need to be implemented. Let us assume that the EU were to renegotiate the agreement on technical barriers to trade in the framework of WTO and has been given a negotiating mandate to that end by the Council. Let us also assume that the WTO negotiations are not concluded with a set of agreements in the form of a single undertaking, since in that case the approval of the European Parliament would usually be sought. Let us assume thirdly that the negotiations on the new TBT agreement lead to the outcome that technical rules have to be based on scientific justification and that they may only remain in place as long as scientific proof exists. In this highly artificial case, the European Parliament would have no co-decision rights since neither today's treaty nor the constitutional treaty assigns the Parliament any rights other than the right to information.

The last example in particular makes it clear that, while there are negotiating situations in which the European Parliament will have no co-decision rights, as a rule - and this is particularly true for WTO negotiations - the Parliament will still be able to exert influence during the negotiations because it will have to approve either the international agreement or the implementing measures once the negotiations are completed.

It seems to me axiomatic that the Commission would be well advised to keep the Parliament just as well informed as the Council, and that Council and Parliament should really approve its negotiating mandate. With regard to the actual procedure, the USA can serve as an example. For instance, the EU could also develop a fast track system in which the legislators, Council and Parliament, having issued a specific mandate, give an undertaking to the negotiator, the Commission, that they will either approve the results of the negotiations as a package or reject the result in its entirety. It is certain that issuing a mandate will be more difficult in future, since the European Parliament will discuss it in a completely transparent setting, whereas the Council currently, and probably also in the future, deliberates behind closed doors. It will also be more difficult because all stakeholders will then be involved in the debate and will bring in their interests, including industry.

Summarising, I observe that the constitutional treaty will considerably change the role of Parliament in the shaping of trade policy, even if it has assigned to the Parliament only new competences in one area, namely implementation of trade policy legislation. Practice will show the extent to which the European Parliament uses its possibilities to press its positions home. UNICE will work closely with the newly created parliamentary committee and will contribute to the debate as a stakeholder.

I would like to close by mentioning one more point which is closely linked with our theme, consistency between European and international law. The new international trade committee should ensure that European Union legislation is compatible with WTO obligations. It should therefore busy itself with legislative proposals in which WTO compatibility is at stake. Unfortunately, this point is not mentioned in the Committee's remit. Precisely against the background of the shaping of trade policy by the Parliament, it seems to me absolutely essential that the Parliament not only supports the WTO but also guards WTO obligations.

Thank you very much for your attention.

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