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Who Speaks for Europe? The Delegation of Trade Authority in the EU*

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Abstract

Although the Member States of the European Union (EU) have long since relinquished their power to act as autonomous actors in international trade negotiations, they have now chosen to regain some of their lost trade sovereignty. Neither the European Court of Justice's (ECJ's) 1994 opinion, nor the 1997 reform of the trade policy process at Amsterdam delegated full negotiating authority to the Commission over the 'new trade issues' of services and intellectual property. Instead, Member States settled on a hybrid form of decision-making to enable ad hoc rather than structural delegation of competence. Was this a rollback of EU competence? If so, why has it occurred in the EU's oldest and most successfully integrated, policy sector? A shift in the perceived trade-off between economic interests and ideological bias on the part of key Member States can explain such a change. This article also explores the consequences for the future conduct of the EU's trade policy and its influence in shaping the world political economy, as well as for the evolving pattern of federal allocation of jurisdiction in the EU.

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I. Introduction

Who speaks for Europe? The answer has always differed sharply between the political and the economic realms. On the international political scene, Member States speak for themselves. What since the Maastricht Treaty has come to be called the Common Foreign and Security Policy (CFSP) has consisted of little more than sporadic attempts to issue common declarations in response to external crises. In international trade, by contrast, the European Community (EC) was granted exclusive competence at the foundation. Whether in bilateral, regional or multilateral trade negotiations, Europe formally 'speaks with one voice' and negotiates through one agent, the European Commission. The very idea that nation-states could give up such a key area of their external affairs was, and continues to be, revolutionary.

The decision at the 1997 Amsterdam summit to turn the Secretary-General of the Council into a 'Monsieur CFSP' may be one more step towards Henry Kissinger's admonition for a single telephone number for Europe. At the same time, however, an intense battle has been waged in the last few years by Member States seeking to regain some of their lost sovereignty in the realm of trade. Technically, the battle has been over the scope of trade competence of the European Union (EU). Practically, the issue is whether Member States will be allowed to exercise their individual veto in future trade negotiations. The June 1997 settlement, which enshrines the partial competence of the Member States over key items of the global trade agenda (mainly services and intellectual property), can be interpreted as a temporary setback for the integrationist project.

Yet a single voice in trade seems more crucial for the European states today than ever. The end of the Cold War has accelerated the shift of the locus of competition from security to economics. Global economic competition is based not only on market dynamics, but also on the capacity of states to use access to their own markets as effective negotiating chips in global trade wars. At the same time, trade matters are becoming more 'political', with the blurring of foreign policy and commercial tools in the conduct of diplomacy. The so-called 'new trade agenda' touches upon areas that are arguably part of the domestic social fabric and therefore most sensitive to external interference.

Given its history as the longest and deepest integrated policy in the EU, external trade constitutes a critical test for the ongoing institutional debate over the distribution of power between the centre and the states. Notions of 'common voice', 'common interest' and 'common destiny' are intrinsically linked. Therefore, whether a political entity can project unity of purpose externally is a key test of the degree of integration between its constituent units. This article explains the rationale for the institutional shift towards greater national control in EU trade policy-making and explores its consequences. Why have Member States in-

creasingly questioned supranational authority over trade established in the Treaty of Rome? On what grounds have European judges and politicians interpreted the scope of Community competence over trade matters? Does the current institutional arrangement represent a roll-back or simply a temporary freeze of European integration? Finally, what are the likely consequences of the Amsterdam compromise on the future conduct of the EU's trade policy, its effectiveness as an international actor, and its influence in shaping the world political economy?

We argue that the debate over trade authority has been above all a reflection and a test of a larger ideological battle over European integration. Member States' positions over the issue have been a function of both their specific trade interests and their ideological preferences regarding sovereignty transfers. The relative weight between these two motivations has shifted in the past decade for reasons both structural – the increasing sensitivity of new trade issues – and conjunctural – a crisis of trust *vis-à-vis* the Commission. This article analyses this shift and reflects on whether the balance between economic and sovereignty concerns achieved in the Amsterdam solution to the delegation of trade authority is sustainable over the years to come.

II. The EU Trade Policy Authority in Historical Perspective

The history of European integration since the signing of the Treaty of Rome in 1957 is mainly one of progressive expansion of EC competence over an ever broader range of policy areas – from research and development in the 1970s, to the environment through the 1986 Single European Act, to regional development, social policy and finally monetary policy with the 1991 Maastricht Treaty. However, most of these areas have not been fully transferred to the EC level. In contrast, a few policies have been under Community competence from the very beginning. The common commercial policy is the most prominent, along with the internal market, competition policy and agriculture.

An Historical Trend towards Supranational Competence in Trade Policy

In the field of trade, the Treaty of Rome was a revolutionary document. Not only did it contain unusually broad injunctions for achieving free trade internally, it also granted the new supranational entity an external personality with the authority to elaborate, negotiate and enforce all aspects of trade relations with the rest of the world.[1] In practice, this was done through the establishment of a common commercial policy based on three principles: a common external tariff, common trade agreements with third countries, and the uniform application of trade instruments across Member States. Two central rationales prompted the

[1] The 1952 European Coal and Steel Community had no external powers.

founding Member States to delegate trade competence to the collective level (Meunier, 1998a). First, the history of trade policy in advanced industrial democracies, notably the United States, showed that such delegation helped insulate the policy-making process from domestic pressures, thus promoting a more liberal international trade order. Second, a single voice in trade policy was expected to facilitate the conclusion of trade agreements with third countries and increase external influence.

Until the Amsterdam summit, the Treaty of Rome's original wording of Art. 113, which grants the Community exclusive competence in trade policy remained almost unchanged.[2] Authority was delegated from the individual states and their parliaments to the assembly of European states, acting collectively through the Council of Ministers. This approach can be understood in classical principal–agent terms: the Member States (principals) have delegated their authority to conclude trade agreements to the European Community (agent), acting on their behalf (Pollack, 1997; Nicolaïdis, 1999). This contrasts with areas of 'mixed' competence (such as the negotiation of association agreements), where formal authority remains with the individual Member States, in particular through parliamentary ratification. In both cases, the Member States represent the ultimate authority, but in the former it is as voting parties in the EU structures, while in the latter it is through their sovereign parliament.

The conduct of trade policy in practice reveals a second level of delegation, this time from the Council of Ministers (principals) to the European Commission (agent). The Commission elaborates proposals for the initiation and content of international trade negotiations. The key policy discussions take place in the 'Committee 113',[3] which examines and amends Commission proposals on a consensual basis, before transmitting them to the Committee of Permanent Representatives (Coreper) and subsequently the General Affairs Council (GAC), which then hands out a negotiating mandate to the Commission. In theory the mandate is agreed upon by qualified majority.[4] Commission officials representing the Union under the authority of the Commissioner in charge of external economic affairs conduct international trade negotiations, within the limits set by the Council's mandate. At the conclusion of the negotiations, the Council approves or rejects the trade agreement, in principle by qualified majority but again in practice by consensus.[5]

[2] See Devuyst (1992) and Maresceau (1993) for a description and analysis of the changes to commercial policy brought about by the Maastricht Treaty.
[3] The 'Committee 113', named after Art. 113 §3, comprises senior civil servants and trade experts from the Member States, as well as Commission representatives.
[4] In practice, Member States have always managed to reach consensus on a common text at this stage of the process, as with most other areas of policy-making in the EU.
[5] The European Parliament has little say in this process; it is notified on an informal basis and consulted before ratification on an initiative of the Commission.

Two fundamental questions emerge from this two-tier delegation of authority: How much control does each individual state retain over trade policy, and how much control do the Member States as a collective retain over its conduct by the Commission?

The Meaning of 'Competence': Mandate, Representation and Ratification

When we ask, 'who speaks for Europe?' we need not assume that the answer is unequivocally linked to the technical issue of competence. We first need to distinguish between four stages in the negotiation of international agreements: (1) the design of a negotiation mandate; (2) the representation of the parties during the negotiations; (3) the ratification of the agreement once negotiated; and (4) the implementation and enforcement of the agreement once it is brought into force. Table 1 compares the procedures and the actors in charge at each of these stages in cases of 'exclusive' and 'mixed' competence.[6]

Both configurations can be analysed using the same framework: how power is delegated at each of these stages corresponds to different mechanisms by which the principals (the states, individually or collectively) may bind their agent (the Commission) and limit its margin of manœuvre throughout the negotiations. At the initial stage, the Member States may adopt a more or less flexible mandate, depending on the complexity and sensitivity of the issue. During the negotiations, they may grant more or less autonomy to the Commission through the input provided by the Committee 113, as well as informal pressures by some Member

Table 1: The Four Stages of Delegation in the European Union: Attributes of Delegation to the Commission

	Authorization (Flexibility of the Mandate)	*Representation (Autonomy)*	*Ratification (Authority)*	*Enforcement*
Exclusive competence (EC in the GATT Art. 113)	113 Committee – Council (qualified majority)	Commission unity of representation (ongoing informal consultation)	Council (qualified majority) but informal veto at least by big states	Commission (exclusive)
Mixed competence (EC Association Agreement Arts. 113 and 235)	113 Committee – Council (unanimity) and Member States	Commission unity of representation (ongoing informal consultation)	Council (unanimity) and Parliamentary ratification in each Member State	Commission with delegated authority (in consultation)

[6] We leave out the enforcement stage, which is of less importance to our discussion.

States. Finally, they may reduce the Commission's authority and thus credibility by insisting on retaining an individual veto over the ratification of the agreement. Thus flexibility (at the mandate stage), autonomy (during the negotiations) and authority (over ultimate ratification) can be seen as the three fundamental characteristics of the Commission's role as an agent of the Member States in the international arena (Nicolaïdis, 1999).

In theory, the core difference between exclusive and mixed competence comes at the ratification stage. Mixed competence in trade simply means that authority is delegated on an ad hoc basis for negotiation purposes rather than systematically. Individual Member States retain a veto both through unanimity voting in the Council and through ratification by their own national parliaments. In practice, the difference is more blurred. On the one hand, exclusive competence does not guarantee a single voice: Member States might fail to find a majority behind a given policy and, if so, their external front may crumble. Moreover, powerful Member States still exercise an informal veto both at the mandate and the ratification stages, to the extent that the Luxembourg Compromise extends to the trade area. On the other hand, Member States have managed to speak with one voice in areas of mixed competence or common foreign policy (as exemplified by 95 per cent of the decisions taken in common in the United Nations). The principle of unity of representation through the Commission is valid under both configurations, but the expression of dissent is dampened, the incentives for seeking compromise increased and the role of the Commission enhanced in areas of exclusive competence.

We can thus specify the two questions stated above in terms of formal 'competence' again for each tier of delegation: (1) for the first tier of delegation from Member States to the Union, formal competence does matter as it determines national veto power at a minimum in the Council and at a maximum through national parliamentary ratification; (2) for the second tier of delegation from the Council to the Commission, the core trade-off is between unity of representation during the negotiations and constraints imposed at the mandate and ratification stages. Conceptually, we need to think of flexibility, autonomy and authority as variables that can be traded off irrespective of the formal competence arrangement. For instance, mandates handed down by the Council have traditionally been very flexible, not least because the resort to consensus has forced states to agree on the smallest common denominator. Some insiders argue that this is in part the root of the problem: it is because the Commission is so 'free' at the outset that it must 'pay' in terms of authority later (Coglianese and Nicolaïdis, 1998).

The Uruguay Round Crisis and the Challenge to Community Trade Authority

During the two decades following the Treaty of Rome, the Commission successfully negotiated on behalf of its members two major trade rounds under the General Agreement on Tariffs and Trade (GATT), as well as a host of bilateral trade agreements. The emergence of so-called 'new issues' on to the international trade agenda in the mid-1980s, however, started to question the clear foundations of the Community's trade competence. Issues such as aviation and product standards had already been discussed at the close of the Tokyo Round in 1979, but most Member States considered these too domestically sensitive to leave entirely to the Commission.[7] The subsequent expansion of the world trade agenda into policies traditionally not 'at the border' (e.g. tariffs and quotas) but 'inside the state' (e.g. national laws and regulations) forced an explicit internal EU debate on the issue of competence.

In addition to dealing with unfinished business (including agriculture), the 1986 Uruguay Round was designed to negotiate on the 'new issues' such as intellectual property and trade-related investment measures and services.[8] The issue of trade delegation came to be framed as follows: who, out of the Commission or the Member States, was responsible for negotiating these 'new' issues depended on one's interpretation of the term 'trade policy' used in the Treaty of Rome. Several Member States, reluctant to give up forever entire new sectors of their trade policy, insisted on being granted their own competences with respect to the 'new issues', arguing that these were not covered under the original Treaty.

Blair House and anti-Commission revolt. Paradoxically, the dispute over competence crystallized during the Round over the EC–US 'Blair House Agreement' on agriculture, negotiated by an autonomous Commission in November 1992 after six years of deadlock – nothing to do with the 'new issues'! (Woolcock and Hodges, 1996; Meunier, 1998b). Once US negotiators leaked details of the agreement, France declared its absolute opposition and eventually rallied several Member States, including Germany, around its position. As Alain Juppé, the French Prime Minister, vowed to fight both the content of the agreement and the institutional conditions under which it had been reached, he told the EU Commissioner in September 1993: 'You want to know whether we trust you Mr Brittan? Well, we do not trust you; your role is to be the servant of the Council'.[9] After difficult exchanges with the US, the agreement was

[7] The compromise solution allowed the Community to sign all the agreements of the Round, while the ECSC Tariff Protocol, the Standards Code and the Civil Aircraft Code were concluded jointly by the Community and the Member States (Kuilwijk, 1996).

[8] Services in particular, ranging from telecommunications to professional accreditation, included areas that had traditionally fallen under domestic jurisdiction and where concerns about externalities and consumer protection were generally more acute than for trade in goods.

[9] Incident related, among others, in Buerkle (1993) and *International Trade Reporter* (1993).

eventually renegotiated partially, with symbolic concessions to France's position. Nevertheless, the Blair House crisis represented a turning point in the delegation of negotiating authority to the supranational representatives, seriously calling into question the informal flirtation with majority rule and increased autonomy of the negotiators that had started to prevail (Meunier, 1998a).

Addressing the ambiguities of the Uruguay Round. The issue of competence arose more formally during the round on two fronts. First, on the mandate and ratification front, who would be the signatories? After heated debates, the political compromise reached at the beginning of the Round, whereby both the Council and the member governments approved the Punta del Este declaration, was replicated at the end. Both the Council President and the External Trade Commissioner signed the Final Act of the Round on 15 April 1994 on behalf of the Community, while representatives of each Member State signed in the name of their respective governments. In a half-way house between mixed and exclusive competence, individual Member States asserted their competence symbolically, but without requiring parliamentary ratification (although some states chose to undergo such ratification) (Arnull, 1996). Unity of representation had been preserved during the Round, but it was unclear what would come next.

Second, the question of membership in the World Trade Organization (WTO), itself an outcome of the Uruguay Round, also contributed to this sense of uncertainty.[10] Again in a spirit of compromise, the Commission suggested that the Member States should become contracting parties in the WTO, provided that they accepted the principle of unitary EC representation and thus reaffirmed exclusive competence. To achieve this goal, the Commission linked the two controversies, going so far as to suggest that the WTO agreement be agreed to by a unanimous Council and approved by the European Parliament, when neither was required by law. In effect, it would be worth giving up some authority in order to preserve autonomy. The Member States all but agreed that they should be the members, but they were now weary of giving the Commission free reign during the negotiations.

The Commission decided to bring the issue to a head. If Member States were not going to compromise politically, their objection could be overruled legally. After all, in the words of one EU official, 'better to clarify the legal grounds, whatever the results: at worst, the Court would confirm existing practice; at best we would finally have gained ground. In all cases we would know what the rules

[10] This question constituted an unavoidable legal challenge for the EC, even though the rest of the world left it up to the Europeans to decide how this would be settled. The EC had never formally substituted the Member States in GATT, whose creation preceded that of the Community. Since the GATT was only an 'agreement' with signatories but no members, the question of Community membership never formally arose (Denza, 1996). For all practical purposes, therefore, the EC – represented by the Commission – had been accepted by the other GATT partners as one of them. Moreover, formally replacing the Member States by the EC could have a cost, since the individual voting rights of Member States in GATT would give way to a single vote. Since GATT operated by consensus, however, this had more symbolic than practical significance.

of the game were.'[11] In April 1994, the Commission asked the European Court of Justice (ECJ) for an 'advisory opinion' on the issue of competence, confident that the judges would back its stance and confirm that the scope of exclusive competence extended to new issues.[12] The Council and eight Member States opposed the Commission's reasoning.[13] They were supported by the European Parliament, which hoped to derive some form of consultative power on trade policy in the event that Art. 113 would be altered. This was going to be a test case of the Court's approach to European external relations and, more generally, European integration, in the post-Maastricht era.

National positions on the competence issue. How do we explain differences in national positions over exclusive competence? Our central hypothesis is that Member States picked their sides in the competence debate as a function of their preferences along two dimensions – economic interest and ideological bias. On the economic interest front, greater competitiveness in the 'new' sectors calls for liberal trade policies that in turn seem best served by a Community with exclusive trade competence, since its collective negotiating position cannot be held up by the Member State least ready to confront international competition (Meunier, 1998a). On the ideological front, a country's position is determined by a combination of its overall attitude towards delegation of sovereignty at the EU level and, more specifically, by its degree of trust in the Commission.

If a state's preferences are aligned similarly along both dimensions, it is easy to predict its side in the competence debate: a state that is both uncompetitive and sovereignty conscious will undoubtedly opt for a restriction of the Community's external trade competence, and *vice versa*. If a state's preferences contradict each other along the two dimensions, then its side in the competence debate will be determined by their relative weight.[14] We do not claim to present a full-blown analysis of the economic interests of Member States over trade liberalization in the new issues. We simply put forth the hypothesis that, contrary to rationalist assumptions about integration dynamics, an analysis based exclusively on economic interest (taking a country's trade balance in services and share of world exports of services as proxies for its competitiveness, as shown in Table 2) could not predict the positions taken by the Member States in the debate.

Member States opposed to exclusive competence fall into three broad categories. It seems fair to assume that France was at the helm of the 'sovereignty' camp for ideological reasons, given its high competitiveness in services and its strong support for aggressive liberalization during the Round (with audiovis-

[11] Personal interview with EU official, Cambridge, MA, November 1997.
[12] Only the most politically 'plugged-in' members of the Commission doubted the certainty of a favourable ruling.
[13] These countries were: Denmark, France, Germany, Greece, Netherlands, Portugal, Spain, UK.
[14] This relative weight is not necessarily a structural variable and may shift on a short-term basis following, for instance, an outside event around which a state's domestic debate crystallizes.

Table 2: International Competitiveness in Commercial Services 1990–96 ($m and %)

	1990				*1995*				*1996*			
	Exports	***Imports***	***Balance***	***World Exports Share***	***Exports***	***Imports***	***Balance***	***World Exports Share***	***Exports***	***Imports***	***Balance***	***World Exports Share***
World	793300	824200	–30900	100.00	1192400	1201300	–8900	100	1264700	1259300	5400	100.00
US	136750	98210	38540	17.24	197330	131160	66170	16.55	214030	139690	74340	16.92
Japan	41130	87420	–46290	5.18	63960	121550	–57590	5.36	66380	128670	–62290	5.25
EU (15)	373800	356200	17600	47.12	508500	503500	5000	42.65	533200	520800	12400	42.16
Austria	22754	14104	8650	2.87	33123	28551	4572	2.78	35146	30580	4566	2.78
Bel.-Lux.	24706	24296	410	3.11	34050	32984	1066	2.86	34575	33164	1411	2.73
Denmark	12731	10106	2625	1.60	14664	13979	685	1.23	16448	14972	1476	1.30
Finland	4562	7432	–2870	0.58	7473	9489	–2016	0.63	7237	8567	–1330	0.57
France	66274	50451	15824	8.35	83108	64523	18585	6.97	82585	65617	16968	6.53
Germany	54530	81990	–27460	6.87	74920	125400	–50480	6.28	78570	126310	–47740	6.21
Greece	6514	2756	3758	0.82	9528	4003	5525	0.80	9262	3830	5432	0.73
Ireland	3286	5145	–1859	0.41	4799	11252	–6453	0.40	5376	13228	–7852	0.43
Italy	48711	49860	–1149	6.14	65276	64670	606	5.47	69145	66870	2275	5.47
Neth.	30100	29476	624	3.79	46972	44827	2145	3.94	48605	44710	3895	3.84
Portugal	5054	3773	1281	0.64	8159	6386	1773	0.68	8066	6636	1430	0.64
Spain	27649	15196	12453	3.49	39641	21619	18022	3.32	43954	23894	20060	3.48
Sweden	13452	16959	–3507	1.70	15336	17112	–1776	1.29	16669	18651	–1982	1.32
UK	53510	44690	8820	6.75	71460	58730	12730	5.99	77550	63780	13770	6.13

Sources: Authors' calculations from IMF, Balance of Payments Statistics; national statistics and WTO (1998 Report of the International Relations and Services Section of the Statistics and Information Systems Division.)

ual services a notable exception). Its new concerns over national sovereignty emerged in the wake of the almost disastrous referendum on the ratification of the Maastricht Treaty. More specifically, since the Blair House agreement, successive French governments had displayed a growing mistrust *vis-à-vis* the Commission, a development exploited by a trade bureaucracy (Directoire des Rélations Economiques Extérieures or DREE) jealous of its prerogatives.

It is also hard to see why the United Kingdom joined the 'sovereignty' camp for reasons other than ideological. The UK had traditionally been one of the most pro-liberalization states in the EU, especially in financial and telecommunication services. Indeed, many in Britain expressed doubts that constraining the Commission was best serving its economic interest. Nevertheless, the traditional ideological bias against any expansion of supranational authority prevailed. Denmark's position can be similarly explained, with its traditionally liberal position being outweighed by its concerns for national sovereignty heightened by the two Maastricht referendums.

Germany fits a second category of states falling in the anti-'exclusive competence' camp for both economical and ideological reasons. For one, in the early 1990s, the trade ministry had not been converted to the free trade gospel in the area of telecommunications and banking, sectors which had not yet been liberalized internally. Nevertheless, Germany was fast adapting to changes in the world economy with increasingly competitive service industries. It is above all on ideological grounds that Germany was resisting transfers of sovereignty. More than in any other EU Member State, Germany's regulators were highly protective of their powers. As one negotiator commented, the closer one came to people who actually 'manage the files', the more resistance one got: 'bureaucrats needed to keep or even regain control'. Moreover, the difficulties faced by Germany as a result of reunification made its government a less fervent advocate of further European integration than in the past.

Finally, on the sovereignty front were countries motivated by sectoral concerns. Portugal opposed the Commission because of its handling of the textiles issue during the Uruguay Round. Greece is an interesting outlier because it mistrusted the Commission for not being a forceful enough advocate of liberalization in shipping during the Uruguay Round and for having preferred, instead, to cater to the needs of the larger Member States which pressed for freer trade in goods and services other than shipping.

On the other end of the spectrum, irrespective of their economic competitiveness in services, countries with traditionally pro-integrationist stances – e.g. Italy, Belgium and Ireland – strongly backed the Commission. These countries, especially the small ones, recognized that without the negotiating umbrella of the whole Community, they were always at the mercy of the EU's big trade partners.

They also hoped to derive some economic benefits from services liberalization – although not as much as some of the anti-exclusive competence states.

III. The European Court of Justice's 1994 Opinion on Trade Competence

The Court issued a judgment that shocked the Commission and its supporters, by first framing the debate over new trade issues as one of 'expanding', instead of 'updating', the scope of competence, and second by limiting such expansion. We argue that the judgment's weakness on legal grounds is partially compensated for by the practical and political concerns that it sought to address.

The Court's Opinion 1/94

While the Court's opinion confirmed that the Community had sole competence to conclude international agreements on trade in goods,[15] it held that the Member States and the Community shared competence in dealing with non-goods trade.[16]

With respect to services, the Court relied heavily on the definition of 'trade in services' given in Art. I(2) of GATS based on the distinction between four modes of services delivery.[17] The judges considered only the first mode (cross-frontier supplies, typically through communication networks) to be analogous to trade in goods and therefore concluded that only services traded in this way fell under exclusive competence. The other three modes of services delivery were to be excluded from the scope of Art. 113, since they involved the movement of persons across frontiers and were thus covered by provisions of the Treaty different from those relating to trade policy. On the same grounds, the Court ruled that international agreements on transport (maritime and aviation) did not fall under the Community's trade policy competence because they were 'the subject of a separate Title of the EC Treaty, Title IV' (Arnull, 1996).

With respect to intellectual property rights, the Court ruled that only the Trade-Related Aspects of Intellectual Property Rights (TRIPs) provisions pro-

[15] Including agricultural products and products covered by the European Coal and Steel Community and Euratom treaties.

[16] Court of Justice of the European Communities, Opinion 1/94, 15 November 1994, I-123.

(1) The Community has sole competence, pursuant to Article 113 of the EC Treaty, to conclude the multilateral agreements on trade in goods.

(2) The Community and its Member States are jointly competent to conclude GATS.

(3) The Community and its Member States are jointly competent to conclude TRIPs.

For a legal analysis of the Court's advisory opinion, see Bourgeois (1995) and Hilf (1995).

[17] The four modes are: '(1) cross-frontier supplies not involving any movement of persons; (2) consumption abroad, which entails the movement of the consumer into the territory of the WTO member country in which the supplier is established; (3) commercial presence, i.e. the presence of a subsidiary or branch in the territory of the WTO member country in which the service is to be rendered; (4) the presence of natural persons from a WTO member country, enabling a supplier from one member country to supply services within the territory of any other member country'.

hibiting the release for free circulation of counterfeit goods fell under Community authority. The judges argued that as long as other measures designed to protect intellectual property rights had not been harmonized at the EU level, the Community could not have exclusive competence in this realm at the international level (Arnull, 1996).

Legal Weaknesses of the Court's Opinion

The judicial literature had foreshadowed the Court's restrictive interpretation of the Community's trade competence, on the basis that Art. 113 did not contain a definition of trade policy. Nevertheless, several legal scholars suggested that the judges could plausibly have gone the other way, ruling instead in favour of exclusive Community competence (Bourgeois, 1995; Hilf, 1995). At least four arguments favour a more expansive reading of the Treaty of Rome – which suggests that the Court's pro-sovereignty judgment was influenced by extra-legal considerations.

The first argument is based on a requirement of consistency: external powers ought to be implied by internal powers. As early as 1970, the Court had 'rejected the principle of enumerated powers in favour of the doctrine that Community treaty power is co-extensive with its internal powers (*in foro interno, in foro externo*)'.[18] The Court went further in 1976 by stating the doctrine that 'the EC has powers to act in the international sphere on matters with respect to which the EC has powers to act in the internal EC sphere'.[19] With the application of the single market programme to the broadly uncharted field of services, the Single Act seemed to call for a similar scope expansion on the external front. The Commission hoped that this legal doctrine would suffice to confirm the exclusivity of its external trade competences, even with respect to the new issues – in spite of the contention by several Member States that some sectors (such as telecommunications and finance) were not yet fully under single market competence.

The second argument is based on a requirement of adaptability: given the rapidity of changes in the world economy, trade policy should retain a dynamic and evolutionary character. The Court itself had argued in 1978 that Art. 113 could not be interpreted so as 'to restrict the common commercial policy to the use of instruments intended to have an effect only on the traditional aspects of external trade to the exclusion of more highly developed mechanisms such as appear in the agreement envisaged'.[20] There is little doubt that trade in services, which represents more than a third of external Community trade, constitutes such

[18] *EC Commission* v. *Council* (ERTA), Case 22/70 [1971] (see Emiliou and O'Keefe, 1996, p.38).
[19] Opinion 1/76, Laying-Up Fund for the Rhine [1977] ECR 741 (see Bourgeois, 1995, p. 773).
[20] Opinion 1/78, Opinion on the International Agreement on Natural Rubber [1979] ECR 2871 (see also Bourgeois, 1996, pp. 87–8).

a new development. Rapid technological change in the fields of communication and information processing, evolution in firms' global strategies through the use of outsourcing, as well as the increasing blurring of the distinction between trade in goods and trade in services all point to developments that could not have been foreseen at the time of the Rome Treaty but have nevertheless become core features of international trade (Nicolaïdis, 1995). Similarly, in the near future, the domestic regulations applied to foreign firms, goods or people as byproducts of competition law, environmental policies and labour standards are all bound to fall progressively within the ambit of trade. The intertwining of trade and regulatory issues indeed calls for a boldly evolutionary understanding of traditional trade concepts.

The third argument deals with the actual nature of services and intellectual property issues. In the post-Uruguay Round era, it seems more than a little odd to deny the label of 'trade' to three of the four forms of services delivery across borders defined in the GATS as constituting 'trade in services'. Indeed, the first and most fundamental victory of the Europeans and Americans in the Uruguay Round had been to succeed in subsuming a wide array of disparate activities (e.g. banking, aviation, communication) under the label of 'trade in services' and therefore to make these international activities a legitimate topic for the Round to cover (Nicolaïdis, 1989; Drake and Nicolaïdis, 1992). By the end of the negotiations, a consensus emerged around the concept of 'modes of delivery', stemming from the obvious differences between goods and services: because of their non-storable nature, most services often require the movement of consumers (e.g. tourists, patients, students) or the partial movement of 'factors of production' (e.g. individual suppliers, outlets of firms) across national borders for actual provision. This in turn means that the boundary between people moving as service providers and as immigrants, as well as the boundary between commercial presence abroad as trade and as foreign direct investment are not easy to draw (Nicolaïdis, 1987, 1993; Kennett, 1996). The concept of 'modes of delivery' – used by the Court as the basis of its negative judgment – was precisely invented to reflect a converging perception that such alternative modes ought not to be treated as qualitatively different but rather as substitute or complementary ways of exchanging value for money across borders.

The fourth argument against the Court's judgment is a political one, appealing to the very nature of the European Union. By 1994, it could be argued, the Community had matured into acquiring a real external personality. On the internal front, the Maastricht Treaty had created general expectations about the establishment of an international identity for the Union and a deeper coherence between external economic policies and foreign policy. On the external front, exclusive competence was consistent with the expectations of Europe's trading partners regarding its role and standing in multilateral negotiations.

> The other contracting parties within GATT and now within the WTO, by accepting the EC as a contracting party in Article XI, seem to be more and more willing to accept unitary representation of European interests. They would even have accepted the EC taking over the unitary representation of all its Member States within the WTO on the basis of exclusive competences recognized by its Court … . In this context, it seems unusual that only the EC itself, i.e. through the Opinion of its Court, states a situation of mixity of competences and thus will have the Member States alongside the EC as contracting parties in the framework of the WTO. A missed opportunity? (Hilf, 1995, p. 258)

In short, the Court's opinion denied the EU a competence that the rest of the world already took for granted.

Explaining the Court's Judgment: Efficiency by Other Means and the Primacy of Politics

In light of these legitimate criticisms and inconsistencies, how can we explain the Court's judgment? First, the interpretation depends on what aspect of the judgment is highlighted. Some, like Commission officials, tend to use as their benchmark the *ex ante* practice and thus argue that the judgment was simply upholding the *status quo*: negotiations would continue as before, and so would the ongoing bickering with the Member States. Others, who use as their benchmark legal precedents, prevailing economic wisdom and the expectations of the outside world argue that the judgment constituted an institutional rollback: Member States' claims against supranational powers in trade had now been legitimized. Without taking sides on this issue of interpretation, we argue that the Court refrained from (re)establishing exclusive competence for new issues because of a change in its assessment of the weight given to sovereignty concerns by some Member States in this area.

Against the Commission's central claim, the Court felt that its restrictive interpretation would not significantly detract from the effectiveness of the EU as an international negotiator. By negotiating with a single voice, the Commission argued, European countries would have more clout in international bargaining. By contrast, exposing the internal divisions between Member States would become a bargaining handicap.[21] Although the judges rejected this efficiency argument by stating that the division of competence could not be determined by practical difficulties (Denza, 1996), they nevertheless directed the Commission and the Member States to co-operate closely for the negotiation of WTO agreements, even referring to the 'requirement of unity in the international representation of the Community' – crucial since in trade disputes third countries

[21] Meunier has argued that in certain circumstances, internal divisions can play to the bargaining advantage of the EU in international trade negotiations (Meunier, 1998a).

may use cross-retaliation against the Community or the Member States, even in cases when their proper competences are not involved.[22] The Court did not involve itself, however, in the details of how to work out an acceptable practical compromise (Arnull, 1996).[23]

We see in this judgment one more piece of evidence that the ECJ's rulings reflect calculations over political acceptability. In interpreting the law, the judges have traditionally trodden a fine line between a pro-integration bias based on the teleological nature of the Treaty and a respect for the Member States' legitimate claims of sovereign jurisdiction. Many scholars have convincingly demonstrated how the Court has chosen to strike the balance between these two factors in accordance with the prevailing political climate (Rasmussen, 1986; Weiler, 1991; Burley and Mattli, 1993; Alter 1998). In the case of trade competence, however, the rollback of supranational authority was all the more symbolic because the common trade policy was the earliest and most integrated policy in Europe. With this judgment, the Court signalled that the political climate had indeed changed.

The most immediate factor to explain this political shift was the apparent loss of trust in the Commission brought about by the Blair House crisis. While some of it may have been rhetoric to deflect criticism at home regarding liberalization, Commission negotiators had certainly lent credence to their critics. Even though agriculture is a notoriously sensitive area for national politicians, there is no denying the equally sensitive nature of the 'new issues'. If Member States did not trust the Commission to defend their farmers, why would they trust it in all these other areas?

The recapture of formal power by the Member States was also part of a more general trend in the EU. In the aftermath of the Maastricht ratification debates, it had become clear that the Member States were increasingly wary of further devolution of sovereignty to the supranational level. Why did the Luxembourg judges feel they had to condone such a trend? Indeed, while the ECJ has been politically cautious, it was not in its tradition to depart from previous case law, especially if it implied denying the Commission important means of action. The general consensus among legal scholars is that the Court's opinion on 'mixed competences' was not an easy decision.[24] We argue that it must be seen in the context of political uncertainty surrounding the future of the ECJ. Throughout the 1970s, the Court had enjoyed enormous judicial power, promoting integration when the politicians' will was stalled. It suffered from a political backlash

[22] Opinion 1/94, No. 108, cited in Hilf (1995, p. 255).

[23] Heeding the judges' advice, the Presidency drew up in the months that followed an informal 'code of conduct' spelling out the respective roles of the Commission and the Member States. This code was never formally adopted.

[24] The Court had to rule under pressure, since the Commission submitted its demand for an opinion on 6 April 1994, while the WTO agreement was to enter into force on 1 January 1995.

in the late 1980s, however, culminating in the debates over the Maastricht and Amsterdam Treaties when several Member States, led by Germany and Britain, questioned its credibility and attempted to clip its wings (Alter, 1998). By making a ruling which respects the national governments' sovereign powers instead of promoting further European integration, the Court acted to preserve its own role in the EU's institutional edifice. In this sense, the opinion on trade competence is representative of a broader trend of Court rulings[25] signalling a retreat from judicial activism and an attempt by the ECJ to recast itself as more even-handed in issues of distribution of competence between the different levels of the EU polity.

The extremely cautious wording of the decision leads us to believe that the Court was trying to suggest how Member States could live with the *de facto status quo* while politicians would sort out the issue themselves. In order to allow for the evolutionary nature of trade, the language of the Court was quite imprecise, leaving room for interpretation when future conflicts on 'new issues' arose. In effect, the Court sent the ball back to the politicians. To avoid future competence disputes, they would have to amend the Treaty either by following the Court's opinion to enshrine this new sharing of sovereignty in the text, or by explicitly 'expanding' Community trade competence to include new issues. The ECJ opinion thus played a crucial role in the resolution of the dispute over trade competence by changing the unclear *status quo* and allowing political negotiations to proceed with new rules of the game.

IV. Back to the Politicians: Redrafting Article 113 in the Run-up to Amsterdam

The 1996 Intergovernmental Conference (IGC) was originally called for in the Maastricht Treaty to amend its foreign policy provisions and revisit the 'third pillar' on Justice and Home Affairs. Subsequently the IGC took on board a host of new provisions on human rights and citizen-related issues, as well as the task of designing an institutional reform that would enable the Union to function with 25 members in the next millennium. The revision of Art. 113 was tacked on to this broad and ambitious agenda. The actual negotiations lasted more than a year with an acceleration in the Spring of 1997 in the run-up to the June Amsterdam summit.

The Commission's Brief

Given the unfavourable legal and political context, the Commission approached the trade competence battle very cautiously. It explicitly stated that it was not

[25] Starting with the 1993 *Keck and Mithouard* judgment.

necessary to extend Art. 113 to the new areas of 'trade and the environment' and 'trade and social standards'.[26] The Commission insisted, however, on being granted exclusive authority to negotiate trade agreements on all types of services and intellectual property on grounds of efficiency. With the growing complexity of trade negotiations, the Commission argued that it was becoming practically impossible to disentangle matters falling under Community competence from matters falling under shared competence since they may all be negotiated as part of the same 'package deal'. Having to move back and forth between two authority regimes could only hinder the EU's bargaining strength in international negotiations.[27]

Since the Commission had argued repeatedly that the institutional revisions would not be about expanding competences in any field but about consolidation, democratization and simplification, its stance on Art. 113 could therefore be easily attacked as inconsistent with this general line. In desperation, the Commission shifted its line by arguing that this was the 'only area' in the whole Amsterdam agenda where it was asking for greater competence. Now, whatever the merit of this 'mature' framing of the Art. 113 issue, the Commission was doomed to appear not only inconsistent but also irremediably expansionist.

The Aborted Amsterdam Compromise

The national positions taken in the run-up to Amsterdam evolved significantly in the two years following the Court's judgment. The 'sovereignty' camp shrunk from a majority to a minority, consisting of France, the UK, Denmark, Portugal and Spain. France remained staunchly opposed to any further transfer of competence to the Community. Perhaps the sharing of authority on services would compensate for the irremediable loss of sovereignty on agriculture. In the United Kingdom, the tension between ideologically-motivated interests and the underlying economic interest became increasingly apparent. The British position on the competence issue became less radical and more open to compromise, but the UK remained formally opposed to the expansion of Art. 113 throughout the negotiations.

By contrast, the 'expansionist' camp gained considerable support with the reversal of Germany's position, announced a few months before the summit. It seemed to have become clear to the trade authorities that Germany had more to lose in keeping future agreements captive to the protectionist demands of Portugal or Spain. Greece and the Netherlands had also changed sides, the former

[26] European Commission, DG I, Intergovernmental Conference Personnel Representatives, 'Adjustment of Article 113', 16 October 1996, I/330/96.

[27] In the words of External Trade Commissioner Sir Leon Brittan, wider powers for the Commission and an end to the unanimity rule in new issues would 'speed up negotiations, simplify decision-making and increase the EU's trade policy influence in relation to the US and Japan' (cited in Barber, 1997, p. 6).

as it switched strategies simply to obtain an exception for shipping, and the latter as it came closer to the Commission while taking over the Presidency. In addition, the three new Member States (Austria, Sweden and Finland) were all firmly with the expansionists. Despite their growing numbers, however, the expansionists failed to create any sort of operational alliance as they sought to retain power over other institutional issues during the Amsterdam conference and the revision of Art. 113 was not their top priority. Moreover, it appeared unrealistic to waste political capital on an issue where France and the UK were decidedly on the other side.

As the IGC negotiations were coming to a close, the sovereignty camp became willing to contemplate a compromise over the scope of competence in exchange for extensive exceptions and guarantees. Two weeks before the Amsterdam summit, the Dutch Presidency presented a new draft: the Commission's exclusive competence would be extended post-hoc to the areas of which it had been in charge during the Uruguay Round; further negotiations in the services sectors covered under the General Agreement on Trade in Services (GATS) and the Trade-Related Aspects of Intellectual Property Rights (TRIPs) code would also continue to be under exclusive community competence. In essence, the Community would have exactly the same powers in trade over existing services that it had over trade in goods, with both the mandate and the adoption of the agreement being agreed under qualified majority. At the same time, there would be no open-ended granting of authority for potentially new service sectors or new national measures that may become the object of external negotiations at a later stage. In addition, some Member States insisted on the explicit inclusion of a series of exceptions to the new scope extension. The protocol thus proceeded to exclude maritime and air transport services and to reproduce extensively the broad exceptions stated in the WTO charter.[28]

In addition, for those sectors and measures that actually fell under exclusive competence, the protocol introduced elements of a code of conduct that would guarantee fuller participation of the Member States in the negotiation process, including the right for the Presidency of the Council 'to accompany the Commission where appropriate'. Finally, the Commission was required to 'supply [the Council] with all possible information on the progress of negotiations' and 'to respect the directives which the Council may issue to it; such directives may be adopted, amended or repealed at any time by the Council'. This amounted in fact to a codification of existing practices, although the Commission would have preferred not to see the potential for restrictive interventions by states enshrined in such a way. With this set of *caveats*, the sovereignty camp

[28] Exceptions ranged from activities connected with the exercise of official authority or the participation of Member States in the International Monetary Fund to measures adopted to protect the stability of the financial system or regarding citizenship, residence or employment on a permanent basis of third country nationals.

could be reassured that any margin of interpretation that the Commission could potentially exploit in the future had definitely been eliminated.

The Final Amsterdam Compromise: Tomorrow is Another Day.

At the end of the day, the Commission itself persuaded the Presidency to withdraw its proposed compromise, which had become fraught with exceptions, *caveats*, and the introduction of cumbersome control procedures. Even though the proposal represented a limited success in expansion of scope, the Commission preferred the *status quo* – better to keep options open and gamble on a better future political climate in the Court as in the Council. The Member States eventually agreed to a simple and short amendment to Art. 113 (renumbered 133) allowing for future expansion of exclusive competence to the excluded sectors through a unanimous vote in the Council.[29]

The Amsterdam compromise can be interpreted as a victory for the sovereignty camp: a Belgian negotiator lamented that this had been a 'catastrophic outcome'. Legal scholars tend to view the result as anathema to the spirit of the Treaty since it allows for a broad-based expansion of competence without Treaty revision.[30] The Amsterdam outcome is, at a minimum, a statement that extension of Community competence should be the result of case-by-case political decisions rather than some uncontrollable spillover. It represents one among several examples of 'hybrid' decision-making procedures introduced at Amsterdam falling in between classical Community delegation and pure intergovernmental approaches (Moravcsik and Nicolaïdis, 1998).

Does this outcome represent a stable policy equilibrium or only a temporary setback for the expansionists? For one, the result of future battles over competence is in no way predetermined, since the application of Art. 113 can be extended permanently and generally, in relation to a named international institution or on a case-by-case basis (organizations that deal with services and intellectual property issues are thus also covered) (European Policy Centre, 1997). The Court could also review its opinion under better political auspices. Second, Community competence can now be extended to new issues (beyond those envisaged by the aborted compromise) without having to go through a formal revision of the Treaty. This is a significant gain for the parties concerned with efficiency, such as the Commission. Finally, in the most optimistic interpretation, this outcome could become an EU version of the American fast-

[29] The new Art. 113 (5) as finally adopted reads as follows: 'The Council, acting unanimously on a proposal from the Commission and after consulting the European Parliament, may extend the application of paragraphs 1 to 4 to international negotiations and agreements on services and intellectual property insofar as they are not covered by these paragraphs'.

[30] As if such expansion was 'merely' of the scale covered by Art. 235. See for instance Jacques Bourgeois, paper presented at the Fordham Conference, New York, 1998.

track whereby Member States decide at the beginning of a negotiation that the end result will be ratified on a qualified majority basis. Reasserting Member State control is quasi-impossible under permanent exclusive competence. This new provision may give greater flexibility to the Council, allowing it to revisit past decisions if necessary. Arguably, the very possibility of such flexibility – or the 'reversibility of delegation' – may make it more acceptable to delegate power to the Commission in the first place (Coglianese and Nicolaïdis, 1998).

V. Conclusion: Prospects for the Future

The recent institutional outcome in the delegation of trade competence in the EU is, to some extent, overdetermined. Among the explanations for the temporary victory of the 'sovereignty camp' at Amsterdam are a long-term trend towards reclaiming national sovereignty over increasingly sensitive trade issues, as well as a series of short-term factors such as: the acrimony leftover from the Uruguay Round and the ensuing lack of trust in the Commission; the changed political climate in the post-Maastricht era; the Court's worries about its own political future; and the inconsistencies of the Commission's declarations. On the grounds of national sovereignty, the Member States elected to reject further delegation of trade competence to the supranational level. At the same time, concerns for the efficiency of Community action on the international scene and an objective analysis of the new structure of the international political economy call for greater Community competence in trade relations in the future.

Our analysis has exposed the limitations of explanations based purely on national economic interests. Since the big EU countries are internationally competitive service providers, one would have expected them to support an institutional arrangement more likely to bring about international services liberalization. We argued, however, that ideological considerations prevailed over pure concern for national interests as countries potentially best served by Commission-led trade policy took position against it. This is also a battle of ideas.

Not least among the issues at stake in the debate over trade competence in the EU are democracy and accountability. How voices are channelled to the top and disparate interests aggregated to form a single policy defines the health of any democratic system. Trade policy is part of this equation. More than in any other policy in the EU, the resolution of the institutional crisis has a symbolic value because of the long history of successful integration in this field.

Procedures for granting trade authority will shape the expectations of Europe's partners and thus its role in the global trading system. Although the question of competence has been raised only with regard to new issues, the uncertainties created by mixed competence in these fields tend to spill over into

all other areas of trade negotiations since issues are increasingly negotiated as package deals. Above all, contested authority tends to render third countries more reticent to conduct negotiations with and make concessions to Community representatives. The Blair House renegotiation debate was followed by other deals negotiated with a single voice by the Commission on behalf of the whole Community, only to be reneged on later by the Member States.[31] Because negotiations are an iterated game, the growing uncertainty that the concluded deal will hold may weaken the long-term credibility of the Commission. Moreover, the EU might be hampered in its more frequent offensive endeavours by the constant threat of having one of its increasingly numerous Member States break ranks (Meunier, 1998a). Foreign negotiators will attempt the 'divide and rule' strategy of seeking bilateral deals with 'friendly' Member States when the supranational negotiating authority is contested. Indeed, US negotiators have already started to exploit these institutional uncertainties as bargaining leverage, for instance by contesting the legality of the negotiators' competence when the proposals are not in the US's favour (private interview with DG I official, April 1997).

Finally, it can be argued that the EU's approach to the negotiation of external trade deals will impact on the nature of the international political economy as a whole. How the EU negotiates affects the world system, directly as the largest trader, and indirectly as a potential model for other regional systems. Fragmented actors facing each other in complex multilateral negotiations are less likely to be able to come up with packages of linked deals and more likely to take heed of internal protectionist forces from within. Moreover, the EU can be expected to exert an increasingly protectionist pressure on the world political economy, because its collective position will be more easily captured by the most conservative Member State and because Commission negotiators, who have traditionally held a free-trade bias, will enjoy less negotiating autonomy (Meunier, 1998a). Since the EU has become the most consistent promoter of liberalization package deals in the wake of the Uruguay Round, such a shift would be bound to have profound repercussions on the dynamics of multilateral trade negotiations.

In the light of these broad implications, it is worth asking which institutional arrangement will be more likely to balance the twin requirements of state sovereignty and international efficiency. The policy equilibrium devised at Amsterdam is unlikely to be sustainable in the face of three approaching challenges: the prospect of relaunching WTO negotiations; the possible shift in the balance of power between the EU's institutional actors as a result of the enlargement of the Community to include its eastern neighbours; and the advent of monetary union and the need to address issues of external representation of the

[31] In 1997 the Council attacked trade deals with Mexico and Jordan (see *European Voice,* 1997).

euro. The Amsterdam dynamics illustrated the tension between two options: carving out exceptions to exclusive competence or adapting the initial 'pure' system with the *caveat* of a code of conduct that would give more say to Member States during the actual negotiations. If disgruntled states can neither easily question the autonomy of the Commission, nor easily assert the Luxembourg Compromise at the ratification stage in areas of exclusive competence, their only recourse is to take back competence altogether. In the last four years, the shared competence battle served as a proxy for a redefinition of the mechanisms of delegation to the Commission in all of the common commercial policy. If the Commission did not seem willing to give up much of its autonomy during international negotiations, Member States would seek to reduce the scope of its authority where they still could (e.g. new issues). This may imply that if the Commission is willing to negotiate under a higher degree of scrutiny on the part of the Member States, it may not have to leave ratification to the uncertainties of national parliamentary procedures. Conversely, the Commission could promote a US-like 'fast track' approach where the battle would be fought mostly ahead of, rather than during, the negotiations. This would still imply, however, the need for some kind of strengthened ratification procedure, be it by a unanimous Council or a European Parliament vote. As we have seen, there are pros and cons to each of these approaches. Both seem more effective, however, than the current situation, where not only trade authority but the procedures whereby it is granted constantly need to be renegotiated.

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References

Alter, K. (1998) 'Who are the "Masters of the Treaty"? European Governments and the European Court of Justice'. *International Organization*, Vol. 52, No. 1, pp. 121–47.

Arnull, A. (1996) 'The Scope of the Common Commercial Policy: A Coda on Opinion 1/94'. In Emiliou and O'Keeffe (eds), pp. 343–62.

Barber, L. (1997) 'Brussels Strives to Call the Tune on Trade'. *Financial Times*, 12 March, p. 6.

Bourgeois, J.H.J. (1995) 'The EC in the WTO and Advisory Opinion 1/94: An Echternach Procession'. *Common Market Law Review*, Vol. 32, pp. 763–87.

Bourgeois, J.H.J. (1996) 'The Uruguay Round of GATT: Some General Comments from an EC Standpoint'. In Emiliou and O'Keeffe (eds), pp. 81–90.

Buerkle, T. (1993) 'Rift Hits EC as Germany Backs France on Farm Pact'. *International Herald Tribune*, 21 September.

Burley, A-M. and Mattli, W. (1993) 'Europe Before the Court: A Political Theory of Legal Integration'. *International Organization*, Vol. 47, No. 1, Winter.

Coglianese, C. and Nicolaïdis, K. (1998) 'Securing Subsidiarity: Mechanisms for Allocating Authority in Tiered Regimes'. In Woolcock, S. (ed.) *Subsidiarity in the Governance of the Global Economy* (Cambridge: Cambridge University Press).

Drake, W. and Nicolaïdis, K. (1992) 'Ideas, Interests and Institutionalization: "Trade in Services" and the Uruguay Round'. *International Organization*, Vol. 46, No. 1, pp. 37–100, Winter.

Denza, E. (1996) 'The Community as a Member of International Organizations'. In Emiliou and O'Keeffe (eds), pp. 3–18.

Devuyst, Y. (1992) 'The EC's Common Commercial Policy and the Treaty on European Union: An Overview of the Negotiations'. *World Competition*, pp. 67–80.

Drake, W. and Nicolaïdis, K. (1992) 'Ideas, Interests and Institutionalization: "Trade in Services" and the Uruguay Round'. *International Organization*, Vol. 46, No. 1, pp. 37–100.

Emiliou, N. and O'Keeffe, D. (1996) *The European Union and World Trade Law* (Chichester: Wiley).

European Policy Centre (1997) *Making Sense of the Amsterdam Treaty* (Brussels: EPC) September, pp. 97–8.

European Voice (1997)'Trade Deal Débâcles Bring Criticism of Union Mandate'. 10–16 July.

Hilf, M. (1995) 'The ECJ's Opinion 1/94 on the WTO'. *European Journal of International Law*, Vol. 6, pp. 245–59.

International Trade Reporter (1993) 'EC Ministers Instruct Negotiators to Clarify Blair House Accord with US,' 22 September.

Kennett, W. (1996) 'The European Community and the General Agreement on Trade in Services'. In Emiliou and O'Keeffe (eds).

Kuilwijk, K. J. (1996) *The European Court of Justice and the GATT Dilemma: Public Interest vs. Individual Rights?* (Beuningen: Nexed Editions).

Maresceau, M. (ed.) (1993) *The European Community's Commercial Policy after 1992: The Legal Dimension* (Dordrecht: Martinus Nijhoff).

Meunier, S. (1998a) 'Europe Divided but United: Institutional Integration and EC–US Trade Negotiations since the 1960s'. PhD Dissertation, Department of Political Science, MIT.

Meunier, S. (1998b) 'Divided but United: European Trade Policy Integration and EC–US Agricultural Negotiations in the Uruguay Round'. In Rhodes, C. (ed.) *The European Union in the World Community* (Boulder, CO: Lynne Rienner).

Moravcsik, A. and Nicolaïdis, K. (1998) 'Federal Ideals and Constitutional Realities in the Treaty of Amsterdam'. *Journal of Common Market Studies, Annual Review*, pp. 13–38.

Nicolaïdis, K. (1987) 'Contactors vs. Contractors: Towards an Integrated Definition of Trade in Services'. Working Paper 39 (Paris: Prométhée Publications).
Nicolaïdis, K. (1989) 'Learning While Negotiating: How Services Got on the Uruguay Round Agenda'. In Nicolaïdis, K. and Bressand, A. (eds) *Strategic Trends in Services – An Inquiry into the Global Services Economy* (New York: Harper & Row).
Nicolaïdis, K. (1993) 'Mutual Recognition Among Nations: The European Community and Trade in Services'. PhD Dissertation, Harvard University.
Nicolaïdis, K. (1995) 'International Trade in Information-Based Services: Beyond the Uruguay Round'. In Drake, W. (ed.) *The Global Information Infrastructure* (New York: Twentieth Century Fund).
Nicolaïdis, K. (1999) 'Minimizing Agency Costs in Two-Level Games: The Controversies over Trade Authority in the United States and the European Union'. In Mnookin, R. and Susskind, L. (eds) *Negotiating on Behalf of Others* (Beverly Hill, CA: Sage).
Pollack, M. (1997) 'Delegation, Agency and Agenda Setting in the European Community'. *International Organization,* Vol. 51, No. 1, pp. 99–134.
Rasmussen, H. (1986) *On the Law and Policy in the European Court of Justice: A Comparative Study in Judicial Policy Making* (Dordrecht: Martinus Nijhoff).
Weiler, J. (1991) 'The Transformation of Europe'. *Yale Law Journal,* Vol. 100, pp. 2403–83.
Woolcock, S. and Hodges, M. (1996) 'EU Policy in the Uruguay Round'. In Wallace, H. and Wallace, W. (eds) *Policy-Making in the European Union,* 3rd edn (Oxford: Oxford University Press).