

Trade Policy Under the Treaty of Lisbon

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Introduction

The aim of the Treaty of Lisbon is to democratise the European Union significantly. In particular, it provides for a strengthening of the powers of the European Parliament. The common commercial policy of the European Union is particularly affected by this.

Since the Treaty of Lisbon came into force on 1 December 2009, and even before that, we have found ourselves in a state of continuous crisis. At the beginning of 2010, the economic and financial crisis posed enormous challenges to the European Union. So far, thanks to a concerted effort on the part of the European Council—working in conjunction with the European Institutions—it has been possible to respond consistently and comprehensively to the crisis. Europe has been protected from the worst ravages.

However, the decisive action of the European Council led to a situation whereby the Council assumed a series of additional powers—contrary to the spirit of Lisbon. Council President Herman van Rompuy exploited the crisis to establish his authority in Brussels. It did not take long for the consequences to become clear: in Brussels, direct competition has arisen between the European Commission and the European Council, as evident in the disagreements between Mr van Rompuy and Mr Barroso. This runs contrary to the Treaty of Lisbon, which, like the previous treaties, is completely clear on this issue: the European Council has sole authority when it comes to issuing guidelines, while the Commission has the immediate right of initiative in all European affairs; the legislature consists of the European Parliament and the Council of the European Union, acting jointly, and no one else.

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The European Parliament

For the European Parliament, the innovations of the Treaty of Lisbon are the necessary adjustments for the progress of European integration. The democratisation of the European legislature was long overdue. The institutional innovations in the area of international trade policy are just one important aspect among many.

However, the democratic advances are particularly evident here: unlike in the US, foreign relations within Europe have always been the realm of the Executive. This will also have to remain the case. Nonetheless, the move to involve the European Parliament to the extent to which this has now been done was a necessary step. The European Parliament, acting together with the Council of the European Union, now adopts the ‘measures defining the framework for implementing the common commercial policy’ (Article 207(2) TFEU). In addition, Parliament must approve every agreement with third states. This places trade policy on a stable democratic footing, while at the same time retaining the freedom and flexibility it needs in order to negotiate with third parties. Democratic control and reliability are delicately balanced.

Primary Law and Practice

The precise forms in which the Lisbon Treaty provisions will be implemented in practice remain to be seen. The following questions arise: How likely is it that the European Parliament will say ‘no’ to a trade agreement? What impact will non-governmental organisations have on future trade policy? Will Parliament in future play a role even at the stage at which a negotiating mandate is issued? To what extent will the political differences and political majorities be manifest in the common commercial policy?

In fact, only two Articles in the TFEU (Articles 206 and 207) touch directly on the way in which the European Union deals with trade policy, in a text of just one A4 page in length. The European Parliament is mentioned precisely twice there. However, if one considers the questions just asked, as well as the broad range of the common commercial policy and its impact on the domestic economy and the entire foreign policy of the European Union, then it soon becomes clear that the Treaty provisions simply lay down the broad outlines on the basis of which trade policy then actually has to be implemented. This applies on both an institutional and a substantive level.

Legal provisions always need to have life breathed into them; i.e. they need to be interpreted. The less detailed the provisions are that the legislature and the parties to the Treaties have adopted, the truer this is. The interpretation of laws and treaties is not a one-off occurrence but rather a dynamic process that is constantly giving rise to new questions and changes of interpretation. In particular, the provisions need to be put into practice immediately after a new treaty or item of legislation comes into force. The various opposing groups lobby for the interpretation that best suits their interests. This is exactly what is happening in Brussels currently.

If one considers the case-law of the European Court of Justice in relation to the common commercial policy, it is evident that the interpretation and implementation of primary law in the area of European trade policy are nothing new. On a number of occasions in the past, the ECJ has been required to rule on what issues fall under the common commercial policy and are therefore the sole responsibility of the European Union. Although the Treaty of Lisbon clarified this specific question directly (see Article 207(1), which explicitly subordinates all areas of international trade to the common commercial policy), the ‘problems’ are now arising elsewhere, in particular as regards the ‘new’ interaction between the institutions.

However, one thing is clear: the more the Commission and Council involve the European Parliament in negotiations and proposed legislation from the outset, the more likely it is that swift progress will be made and the less likely it is that an agreement will be rejected by the European Parliament. An intelligent approach to the new institutional structures by all parties concerned will be of decisive importance for future EU action in the field of international trade. However, in negotiating the future rights of Parliament, what will ultimately matter most of all will be Parliament’s perseverance. The decisions now being made will decisively influence the interpretation of the Treaty for years, if not decades, to come.

The Treaty of Lisbon gives the European Parliament more power in relation to trade policy than the national parliaments of the Member States enjoy. However, the negative example of the US, where ‘parliament’ (Congress) can block any kind of progress, hangs over EU trade policy like a black cloud.

Transparency and Politicisation of Trade Policy

Requests are repeatedly made for negotiations on trade agreements to be more transparent. In an exception to the media penetration in all areas of life, international negotiations unusually take place behind closed doors. There is no alternative to this. The key principle behind all negotiations, whatever their level, is trust. Before the parties finally agree, their mutual demands must be dealt with in confidence. Any lapse in trust will necessarily slow down negotiations, if not derail them altogether.

The inclusion of interest groups of all kinds in the political decision-making structures is closely linked to the demand for greater transparency. Many people warn against the further politicisation of international trade policy in the context of the involvement of the European Parliament. The first point to be made here is that international trade policy has become increasingly politicised completely independently of internal European processes. Globalisation has made people extremely aware of trade and rightly so. The results are by no means all negative. Thus, proposals from the Interparliamentary Assembly of the WTO, which has no formal participatory rights, have provided an important impetus within the WTO and among its members. Aspects such as environmental and social standards play an increasingly important role in trade talks, benefiting all sides. Similarly positive effects can also result from the greater role of the European Parliament.

We are already witnessing a significant increase in the interest groups represented in the Committee on International Trade (INTA). The forceful intervention of trade unions in the discussion of free trade agreements with Peru and Columbia is just one example of this. Politicians and civil society need to act with care in their mutual relations. We should not allow the loudest argument and perhaps the one which makes the biggest public impact to prevail, but rather the best argument or the best compromise.

The European Parliament, in particular the Committee on International Trade, has unquestionably gained in importance. The Members of Parliament have suddenly become the focus of attention for foreign governments, industry and various non-governmental organisations. Even with the best will in the world, it is no longer possible to accede to all the requests for meetings. The profile of the European Parliament has risen immensely abroad in the wake of the first 'NO' to SWIFT. This focus entails an enormous challenge. Specific trade issues, foreign policy strategies and questions such as human rights and environmental, social and labour standards must be reconciled. It is important not to lose sight of the actual goal: to promote trade in the democratic spirit of the Treaty of Lisbon.

Separating the Executive and Legislature

With all this in mind, one might form the impression that the European Parliament needs to generate more power at any price. However, this is not the point. Legislative and executive tasks must continue to be kept strictly separate. In the case of negotiations on a free trade agreement, the aim cannot be to bring Parliament to the negotiating table and, in the case of implementation provisions, to put Parliament in charge of implementing regulations or directives. A strict separation is vital in this respect. Effective parliamentary control must be assured, and Parliament must exercise realistic and substantial final responsibility. This is precisely the spirit of the Treaty of Lisbon. Parliament must work and campaign to ensure it is put into practice.

Summary

- The democratic deficit in international trade policy has been overcome by the Treaty of Lisbon. The fundamental change in trade policy sought by the Treaty needs to be put into practice. This must be achieved, even if it proves difficult for the existing protagonists to abandon familiar paths and habits.
- In addition to the laying down of fundamental provisions in the form of primary law, the key lies in interpretation *in practice* and *through practice*.
- Strict separation of legislative and executive responsibilities must be assured into the future. The Lisbon Treaty has not changed this in any way. Far from it.

- A good balance must be found during debates in the European Parliament between higher social and environmental standards in trade policy and the interests of European industry. Trade policy should not be overwhelmed by extraneous issues.