

Recognising the inherent complexities in assimilating the policies and priorities of 15 diverse Member States, the Treaty conferred on the Commission an exclusive mandate to formulate policy and conduct negotiations on the Union's behalf. The mandate is to ensure a unified position, representative of the overall common interests of the Member States. It is presented throughout the formulation of common trade policy within these negotiating frameworks. The result is that in a growing number of areas falling within this sphere of external Community activity, the Commission – representing the Community – has displaced the Member States as the body responsible for negotiating commercial agreements with third countries.

Certain provisions of the Treaty address the conclusion of international agreements, primarily in the context of the common commercial policy framework. It is the Commission's responsibility to maintain appropriate relations with all international organisations, particularly the GATT/WTO, the UN and its specialised agencies, and NATO. The Community participates in discussions within the WTO (and previously in GATT), in UNCTAD, the FAO and in the OECD.

In practice, the Commission's task is to prepare and make recommendations on external trade policy matters to the Council. The Council may authorise the Commission to open necessary negotiations and to formulate directives for such negotiations. The Commission then negotiates international agreements in consultation with the special committee appointed by the Council to assist it in this task, the Article 113 Committee. On the conclusion of negotiations, the Commission's negotiating mandate does not extend to the right to formally conclude international agreements; this right resides with the Council, acting by qualified majority vote.

### **Article 113 - Common Commercial Policy**

Article 113 of the EC Treaty outlines the central provisions of the Common Commercial Policy toward third countries. It forms the primary basis for commercial activity outside the customs union of the single market, and is therefore central to maintaining the integrity of the internal market. The Common Commercial Policy is based on the rationale that, if external trade policies were left at the national level, the potential for competitiveness among Member States exists. This situation could lead to potential market distortion, vis-à-vis external partners, and perpetuation of an ad hoc system defined by the lowest common denominator supported by the market.

Article 113 then establishes a Committee to closely

monitor and guide the Commission's actions and conduct in policy formulation and negotiation in the field of trade. The 113 Committee acts as a liaison, communicating Council's positions, policies and priorities to the Commission thereby enabling the latter to make changes, where necessary, to maintain the Council support. At the same time, the Committee keeps the Council apprised of the Commission's progress in negotiations, allowing the Council to assess its own position on a continuous basis. While the 113 Committee consultation requires the Commission to take an additional step in the process of negotiating externally on trade policy, potentially causing it to lag behind its foreign counterparts, it can also endow the Commission's position with considerable influence in the negotiations.

There are inherent difficulties, however, in connection with Article 113. It provides neither a definition of the scope of "commercial policy", nor an exhaustive list of specific areas covered; silences attributed to a recognition of the impossibility of anticipating the future evolution and directions in Community trade policy and to a reluctance to establish unnecessarily restrictive parameters.

This absence of clarification has led to divergence among Member States, the Council and the Commission. The incidence of such divergence is likely to increase, as the importance of Community trade policy is growing in connection with the Union's internal enlargement; its existing external tariff, trade and international obligations (GATT/WTO, UN)<sup>14</sup>; and the numerous external trade initiatives proposed by the present Commission.

### **Operation of The 113 Committee**

The Council Presidency chairs the Committee meetings, which are attended by delegations from each Member State and the Commission, and sets the Committee's agenda – in agreement with the Commission – for the ensuing Presidential term. Committee membership most commonly consists of the highest-ranking civil servant responsible for trade in each of the Member States, and their suppliants – ordinarily

<sup>14</sup> 1994 ECJ Opinion on the question of competence to conclude the Uruguay Round Agreements. The Court considered there to be a shared competence between the Community and the Member States in connection with the parts of the agreement relating to trade in services and to the trade-related aspects of intellectual property rights. 1996 ECJ Opinion on the question of competence to vote on a UN (NAFO) fisheries conservation measure: the Court supported the Commission's position that it, and not the Council, was the competent body to vote on behalf of the Union.