

# **Conceptualising Common Commercial Policy Treaty revision: explaining dynamics and inertia from the Amsterdam IGC to the Constitutional Treaty**

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*Comments welcome!*

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## **ABSTRACT**

This paper seeks to explain the varying, and sometimes intriguing, outcomes of the past three revisions of the Treaty concerning the Community's Common Commercial Policy. How can the failure to extend Community competencies at the Amsterdam IGC be explained in one of the most integrated fields despite substantial pressures stemming from the changing international trade agenda? Why has the last Treaty revision managed to achieve considerable progress concerning the extension of Community competence in contested areas, which the previous three IGCs failed to bring about? The paper argues that six explanatory factors can account for these outcomes: (1) functional pressures; (2) the role of supranational institutions; (3) socialisation, deliberation and learning processes; (4) exogenous pressures; (5) the role of organised interests; and (6) countervailing forces. The framework, especially through its dialectical nature (combining both dynamics and countervailing factors), also enables us to account for more specific aspects of decision outcomes. In addition, I suggest that for dynamics to have an impact structural and more agency-based pressures have to occur concurrently.

## **INTRODUCTION**

During the last three revisions of the Treaty, we could witness rather differing, and to some extent, puzzling decision outcomes concerning the Common Commercial Policy (CCP). For example, how can the failure to extend (or perhaps even the roll back<sup>1</sup>) of Community competencies at the IGC 1996-97 in one of the Community's oldest and most integrated areas be explained? Given the changes of the world economy and certain linkages to the internal market, it appeared – at least from some distance – that considerable exogenous as well as functional pressures could instigate a reform of the CCP. The latest Treaty revision exercise is equally interesting and intriguing. Why has the 2002-2004 Treaty revision managed to achieve something like a break-through concerning the extension of competence to the Community in contested areas, such as services, intellectual property and investment, which the Maastricht, Amsterdam and (to a lesser degree) Nice IGCs failed to bring about?

In order to answer these questions and to account for the outcomes of the last three Treaty revisions more generally I have developed a framework which draws on functional-endogenous pressures; the role of supranational institutions; socialisation, deliberation and learning processes; exogenous pressures; the role of organised interests; and countervailing

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<sup>1</sup> The roll-back view has, to a certain extent, been advocated by Meunier and Nicolaïdis (1999).

forces. These pressures are interconnected in several ways and cannot always be clearly separated from each other.

I thus focus on a traditional research question in the area of EU integration studies, i.e. explaining outcomes of EU decision-making. In the last decade many researchers have shifted their attention to questions such as the nature of the EU political system, the social and political consequences of the integration process and the normative dimension of European integration. However, the issue of explaining outcomes of EU decision-making, which has occupied scholars since the 1950s, is still a very important one. The ongoing salience of this question partly stems from the continuing disagreement among analysts as regards the most relevant factors accounting for the dynamics and standstills of the European integration process and certain segments of it.

The paper proceeds as follows: First, my theoretical framework is specified, including its underlying assumptions and explanatory factors. The subsequent section contains my case analysis of the 1996-97, 2000 and 2002-04 Intergovernmental Conferences. Finally, I draw some conclusions from my findings.

## **THEORETICAL FRAMEWORK**

### **Underlying assumptions**

While (strongly) drawing on neofunctionalist theory (e.g. Haas 1958; Lindberg, 1963), my theoretical framework departs from, and further develops, this theoretical strand in several ways.<sup>2</sup> This section focuses on specifying my core assumptions and explanatory factors. I have discussed the development and modification of neofunctionalist theory at length elsewhere (cf. e.g. Niemann, 1998, 2004, 2005 forthcoming).

My approach does not strive for ontological purity. While eschewing arch-rationalist and hardcore reflectivist ontological extremes, my account takes on board the (empirical) insight that agents tend to be subject to different social logics and rationalities and that they

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<sup>2</sup> For example, as partly pointed out below, a self-understanding as a grand theory is rejected; an emphasis mainly on agents is replaced by a more equal ontological status between structure and agency; integration is not seen as a dynamic process but as a dialectical process; the automaticity of spillover maxim is discarded; assumptions concerning the end of ideology, unabated growth in Europe, and a political community as the end-state of the integration process have been discarded. Also, neofunctionalists did not systematically formulate a basic ontology (but cf. Haas, 2001). Their mainly 'soft' rational-choice ontology with some reflexive elements has been complemented by a more explicitly 'soft' constructivist ontology (see below). For a more detailed account of the issues mentioned in this footnote, see Niemann (2004, 2005 forthcoming).

combine several modes of action in their behaviour. The recent literature suggests that the rational choice logic of consequentialism and the more constructivist logics of appropriateness and arguing coexist in the real world (cf. e.g. March and Olsen, 1998, pp. 952-953; Checkel, 1999, p. 546; Risse, 2000: esp. pp. 1-9). There are different interpretations concerning the relationships between these logics. My ontological position is that these logics are activated under different conditions and in different environments, but that the relationship between the rational-choice logic and the two more constructivist ones tends to be a developmental one: agents are more likely to enter into new relationships following an instrumental rationale, but tend to develop certain norms and identities and may change their preferences as a result of their experience and interaction.

However, my ontology can be further specified by delimiting the frame within which these logics take place. Some of the hardcore rational-choice<sup>3</sup> maxims are loosened in my framework, while two core rational-choice assumptions are recognised: firstly, agents are rational, i.e. they choose that option which they believe best fulfils their purposes. Preferences do not result from random choice but reflect deliberate behaviour. Secondly, actors are basically egoistic. They base their behaviour on consequential calculations of self-interests and try to enhance their utility through strategic exchanges. However, some other rational-choice tenets cannot be taken on board. Assumptions of preferences as consistent, stable and exogenously-given are relaxed. Moreover, rational-choice presumptions of intentions as causes determining outcomes and suppositions of formally predictable outcome patterns are dropped. In addition and partly following from the above, the unequivocally materialist philosophy of science – according to which behaviour is the simple response to the forces of physics that act on material objects from the outside – that characterises many rational-choice accounts is not shared. On the other hand, the reflectivist or postmodernist extreme (e.g. Rosenau, 1992; Alexander, 1995) is also dismissed. According to this ontological stance, it makes no sense to assume the independent existence of an external reality, as reality cannot be known outside human language. There is no way of deciding whether statements correspond to reality except by means of other statements. Hence, reality, under such ontology, is turned into linguistic conventions.

In contrast, my ontological position is situated in between these two poles. While acknowledging that there is a real (material) world out there, which offers resistance when we act upon it, behaviour is only to some extent shaped by physical reality. Instead, agents'

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<sup>3</sup> On rational-choice theory and its various assumptions, see for example: Brennan (1997: esp. 91-104); and Green and Shapiro (1994: 14-17).

capacity for learning and reflection has an impact on the way in which they attach meaning to the material world. Agents cognitively frame or construct the world according to their knowledge, norms, experience and understandings. Hence, actors' interests and identities are moulded and constituted by both cognitive and material structures. Their preferences are shaped by social interaction and the evolving structures, norms and rules of the domestic and the EU polity (i.e. membership matters) rather than exogenously given. Collective actions are not merely the aggregation of individual preferences, but individual actors' objectives are influenced by and derivative from the social group with which an agent interacts and identifies. And because agents are assumed to have the capacity to learn, their preferences are subject to change rather than stable, given evolving social structures and varying actor constellations in the real world. The nature of being is thus viewed as transformative.

As for the ontological status of structure and agency, my framework regards the properties of both structure and agency as very significant to explaining social and political processes and, for that matter, European integration. It dismisses both structural determinism and agency-centred voluntarism. Instead, my framework embraces the concept of structuration which emphasises the interdependence of structures and agents (cf. Giddens 1984). Structure and agency mutually constitute each other. Structure has a dual nature. It enters simultaneously into the constitution of the agent and social practices, and exists in the generating moments of this constitution. Agency, however, is not reduced into servants of structure. They have created structural properties in the first place and can potentially change any aspect of structure. Agents act upon both structures and their own preconceived interests. Hence, this framework assigns agency and structure an equal ontological status.

Additional underlying – and partly overlapping – basic assumptions can be specified: firstly, as conceptualised by most EU integration scholars these days, integration is understood here as a process. This differs from intergovernmentalist accounts that tend to look at isolated events. Secondly, this process is influenced by multiple and diverse actors (and structures). States are not unified actors and certainly not the only actors that matter in EU decision-making processes. Thirdly, once established institutions can take on a life of their own and are difficult to control by those who created them. Fourthly and closely related, there is considerable scope for unintended consequences, as decisions taken by national politicians are often taken under circumstances of uncertainty, imperfect knowledge or under time pressure which restricts the possibility of long-term purposive behaviour (cf. e.g. Pierson, 1996). Fifthly, not all games played between actors are zero-sum games. Interaction is often better characterised by positive sum-games and a 'supranational' style of decision-

making in which actors attain agreement by means of upgrading common interests or by arriving at mutual understandings. Sixthly, functional interdependencies between issues and sectors spur the propensity for further or more intensified cooperation/integration (cf. Haas 1958). Finally, as will be further elaborated below, integration is assumed to be *dialectical* process, both subject to dynamics *and* countervailing forces.

### **Explanatory factors**

Based on the above assumptions and my prior research findings (e.g. Niemann, 1998, 2000), a number of explanatory variables have been derived, which are hypothesised to explain change in decision outcomes (dependent variable). The subsequent pressures are intertwined in several ways and cannot always be neatly separated from each other. The first five factors (functional-endogenous pressures, exogenous pressures, the role of organised interests, socialisation, deliberation and learning and the role of supranational institutions are hypothesised as dynamics, while the sixth factor (countervailing forces) goes against these integrational logics.<sup>4</sup>

#### *Functional-endogenous pressures*

Functional-endogenous pressures come about when an original goal can be assured only by taking further integrative actions (cf. Lindberg, 1963, p. 10). The basis for the development of these pressures is the interdependence of policy sectors and issue areas. Individual sectors and issues tend to be so interdependent in modern politics and economies that it is likely to be difficult to isolate them from the rest (cf. Haas, 1958, pp. 297, 383). Endogenous-functional pressures, thus encompass the tensions, contradictions and interdependencies arising from within (or which are closely related to) the European integration project, and its policies, politics and polity, which induce policy-makers to take additional integrative steps in order to achieve their original objectives.

Functional pressures constitute a structural component in my explanatory framework. These pressures have a propensity for causing further integration, as intentional actors tend to be persuaded by the functional tensions and contradictions. However, functional structures do

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<sup>4</sup> However, the separation between dynamics and countervailing forces reflects tendencies. Factors that are held to be dynamics may, on occasion, turn into countervailing forces, and vice versa, as my empirical analysis will indicate.

not ‘determine’ actors’ behaviour in any mechanical or predictable fashion. Endogenous-functional structures contain an important element of human agreement. Agents have to perceive functional structures as plausible and somewhat compelling. They need to conceive of them as (strong) pressures in order to act upon them. (Functional) structures and (national, supranational and other) actors are interdependent. These structures enter into the constitution of actors (i.e. influence their preferences) and also, to some extent, exist from the generating moments of this constitution, as actors tend to reproduce structures under the impact of their interests that have been moulded by structures. However, actors are not structural idiots. They have created structures in the first place and can potentially change them at any time. And, in doing so, there is a (considerable) degree of non-structural autonomy.

### *Exogenous pressures*

Exogenous pressures encompass those factors that originate outside the integration process itself, i.e. that are exogenous to it. It is an attempt to take account of the fact that changes in, and pressures from, the external political and economic environment affect the behaviour of national and supranational actors and also influence EU and domestic structures. This is to recognise that the Community and its development need to be viewed in the global context. It is argued here that exogenous factors – although they can constitute an obstacle to further integration – generally encourage or provoke further integrative steps.<sup>5</sup>

There are several logics behind hypothesising exogenous factors as primarily a *dynamic* of integration. Firstly, some exogenous events and developments are viewed as threats or shocks. It has been pointed out in the literature that perceived threats are conducive to the integration of regional blocks. This has been illustrated, for example, concerning the Cold War origins of the European Communities (cf. e.g. Milward and Sørensen, 1993; Neuss, 2000). The rationale behind the integrative impact of external shocks and threats is that in such instances close cooperation partners (or Member States of an integration project) tend to rally together and find common solutions. One particular but frequent type of threat is competition between states and/or regions. Perceived competition with other international players tends to foster EU Member States to pool their strengths and resources through further cooperation/integration with the intention of advancing the Union’s competitive position. Examples of the integrative impact of external (mainly US and Japanese economic) competition in the history of European

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<sup>5</sup> While Hill (1993), for instance, has emphasised the integrative dimension of external factors, George (1991) has underlined, for example, that external factors can have both disintegrative and integrative effects.

integration include agreement on the 1992 programme (Sandholtz and Zysman, 1989) or the development of industrial and high technology policies (Peterson, 1991, 1992).

A second logic of external dynamics is grounded in the nature of many international problems and their perception. Regional integration is often viewed as a more effective buffer against disadvantageous or uncertain external developments. This is related to the perception that many problems go beyond the governance potential of individual Member States. Phenomena and processes such as globalisation, migration, environmental destruction or international terrorism require a common approach (e.g. of integration partners) in order to tackle them with some success (cf. George and Bache, 2000, p. 39). This exogenous aspect is linked to, and further explained by, an endogenous one. European democratic nation-states depend on the delivery of economic, social and other well-being to their people. Increasingly, due to regional interdependencies and more global problems, they lose their power to deliver these goods. To circumvent the decrease in influence over their territory, national governments tend to cooperate more closely on the European level (cf. Wessels, 1997, pp. 286ff).

Thirdly, Schmitter has pointed out that once a regional integration project has got under way and developed common policies 'participants will find themselves compelled - regardless of their original intentions - to adopt common policies *vis-à-vis* nonparticipant third parties. Members will be forced to hammer out a collective external position (and in the process are likely to rely increasingly on the new central institutions to do it)' (Schmitter, 1969, p. 165). Schmitter points to the incentive of forging common positions and policies to increase the collective bargaining power of the Community *vis-à-vis* the outside world as well as involuntary motives such as the demands of the extra-Community environment reacting to (successful) developments within the regional integration project. Hence, there is an endogenous logic linking internal and external events.

Exogenous factors are often closely linked to, and not always separable from, endogenous ones. Like functional pressures, they are conceptualised here as essentially structural in nature. However, as all structural pressures exogenous ones are also closely intertwined with the property of agents. This implies that actors' preferences cannot be treated as given. The external environment/system, just like EU membership, to some extent, constitutes decision-makers' preferences. This is difficult to trace in empirical analysis. One indicator for the significance of such, often 'invisible', influences of the wider international context is the impact of internationally prevailing policy paradigms and discourses.<sup>6</sup>

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<sup>6</sup> For example, the gradual acceptance of (originally Anglo-Saxon) neo-liberal economic ideas by West European elites has certainly facilitated agreement on the Single European Market and the liberalisation of many policy sectors (cf. e.g. Green Cowles, 1995, p. 521).

### *The role of organised interests*

Organised interests are hypothesised as a dynamic because in many policy areas they tend to perceive that their substantial interests are better served at the European level, through EU solutions and EU institutional involvement. Two sub-hypotheses are inherent in this factor. Firstly, that groups gradually focus more of their attention, lobbying and organisation onto the European level with the growing competence of supranational institutions and the increased number of policy sectors governed (at least partially) by the European level (e.g. Mazey and Richardson, 1993; Bindi Calussi, 1992).

Secondly, interest groups tend to gradually promote further integration, as they become aware of the benefits of European level cooperation in their policy area. Such interest-based learning is fostered, for example, because societal (especially business) groups benefit from one set rather than fifteen or twenty-five sets of rules and the advantages of larger markets and economies of scale, more generally (Stone Sweet and Sandholtz, 1997). Moreover, in external trade policy, enhanced competencies of supranational institutions, for instance concerning trade in services, (would) allow the EU to negotiate more effectively on the international level – i.e. arrive at its internal positions and speak with one voice more easily – and thus benefit European service industries more extensively from external trade liberalisation, an area where many European firms are rather competitive. In addition, interest groups tend to be inclined to support further integration due to functional logics pointed out above, which induce them to seek European solutions in order to solve contradictions and tensions from prior integrational steps (Haas 1958).

While functional spillover pressures, pull-factors from European integration and the EU institutional development are regarded as significant factors influencing interest group behaviour, other structures such as exogenous pressures and domestic constraints also influence the organised interests. The role of organised interests mainly concerns non-governmental elites, but may include governmental elites (which are primarily hypothesised in the next section) for example when forming part of advocacy coalitions to which the above integrative rationales may also apply (cf. Niemann 2004, 2005).

*Socialisation, deliberation and learning processes among (mainly governmental) elites*

The general hypothesis of this section is that socialisation, deliberation and learning processes do take place in the Community environment and that these processes tend to facilitate cooperative decision-making as well as consensus formation and thus contribute to more progressive and integrative decision outcomes. The first point worth noting in that respect is that the gradual increase of working groups and sub-committees on the European level has led to a complex system of (bureaucratic) interpenetration that brings thousands of national civil servants in frequent contact with each other and with Commission officials on a recurrent basis. This provides an important foundation for such processes, not least due to the development of mutual trust and a certain esprit de corps among officials in Community forums (cf. Lindberg, 1963; Lewis, 1998). The underlying assumption is that the duration and intensity of interaction have a (positive) bearing on socialisation and learning processes.

It is maintained here that not only the quantity, but also the *quality* of interaction constitutes a significant factor in terms of inducing socialisation and learning processes. Deeply-rooted genuine learning cannot be sufficiently explained through incentives/interests of egoistic actors (cf. Checkel in Checkel and Moravcsik, 2001, p. 225, 242). More ‘complex’ learning goes beyond interest-based learning (cf. previous section), i.e. the adaptation or redefinition of means or strategies to reach basically unaltered and unquestioned goals. Instead, it constitutes changed behaviour as a result of challenged and scrutinised assumptions, values and objectives.<sup>7</sup> Furthermore, if we want to understand and explain social behaviour and learning, we need to take communication and language into greater consideration. It is through speech that actors make sense of the world and attribute meaning to their actions. In order to account for the *quality* of interaction, to provide a more fundamental basis for *reflexive* learning and to integrate the role of *communication* more thoroughly, I will draw on the notions of communicative action and deliberation.

The concept of communicative action, as devised by Habermas (1981a, b, 1986), refers to the interaction of people whose actions are coordinated not via egocentric calculations of success but through acts of reaching understanding (*Verständigung*). In communicative action, participants are not primarily oriented to achieving their own individual success; they pursue their individual objectives under the condition that they can coordinate or harmonise their plans of action on the basis of shared definitions of the

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<sup>7</sup> I have based my distinction between deeply-rooted, reflexive or complex learning, on the one hand, and adaptation or incentive-based learning, on the other hand, on Nye (1987: 380) who used the terms ‘complex’ and ‘simple’ learning.

situation. Agents engaging in communicative action seek to reach understanding about valid behaviour. Habermas distinguishes between three validity claims that can be challenged in discourse: first, that a statement is true, i.e. conforms to the facts; second, that a speech act is right with respect to the existing normative context; and third, that the manifest intention of the speaker is truthful, i.e. that s/he means what s/he says. Communicative behaviour, which aims at reasoned understanding, counterfactually assumes the existence of an “ideal speech situation”, in which nothing but the better argument counts and actors attempt to convince each other (and are open to persuasion) with regard to the three types of validity claims. By arguing in relation to standards of truth, rightness and sincerity, agents have a basis for judging what constitutes reasonable choices of action, through which they can reach agreement (Habermas, 1981a., p. 149). Where communicative rationality prevails, actors’ pursuit of their interests is conditioned by their perception of valid behaviour according to these three standards. When engaging in communicative action, agents do not seek to maximise their interests, but to challenge and substantiate the validity claims that are inherent in their interest. Interests may also change in the process of communicative interaction, as actors challenge each others’ causal and principled beliefs.

While agents bargain in strategic interaction, they *discuss, deliberate, reason, argue* and *persuade* in communicative interaction. Actors engaging in communicative behaviour have the potential to undergo more profound learning processes. Rather than merely adapting the means to achieve basically unchanged goals, as in strategic interaction, they redefine their very priorities and preferences in validity-seeking processes aimed at reaching mutual understanding. Somewhere between hard bargaining and communicative action lies what has been referred to as ‘rhetorical action’, the strategic use of norm-based arguments (Schimmelfennig, 2001, pp. 62ff). Actors whose self-interested preferences are in line with certain prevailing norms or values can use these argumentatively to add cheap legitimacy to their position and delegitimise the position of their opponents. Whereas communicative actors attempt to reach reasoned understanding, rhetorical actors seek to strengthen their own position strategically and are not prepared to be persuaded by the better argument.

Once Community/collaborative norms<sup>8</sup> have become internalised by actors, another mode of action becomes increasingly relevant: normatively-regulated action. This type of behaviour refers to members of a social group who orient their action towards common values or norms which they have thoroughly internalised (Habermas, 1981a, p. 127). The individual

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<sup>8</sup> Norms are defined here as ‘collective expectations for the proper behaviour of actors with a given identity’. See Katzenstein (1996, p. 5).

actor complies with a norm when, in a given situation, the conditions are present to which the norm has application. All members of a group for whom a given norm has validity may expect of one another that, in a certain situation, they will carry out the actions proscribed. Norms are taken for granted. They are not enacted out of choice, but out of habit. Collective understandings about appropriate behaviour (i.e. norms) make an impact because ‘the individual intentionality that each person has is derived from the collective intentionality that they share’.<sup>9</sup>

Communicative action is granted greater potential for deep-rooted learning than rhetorical action, and especially hard-bargaining. And socialised actors are more likely to engage in norm-regulated and communicative action than agents who have not undergone these common processes. However, consistent with my ontological position, agents combine all these (complementary) modes of action in their behaviour. Hence, we cannot expect constant learning. Nor can we expect unidirectional learning, as the EU level is not the single source of learning, with the domestic and international realms also constituting (important) socialisation sources.

While socialisation, deliberation and learning processes are mainly about the social interaction of agents, this pressure also links actors to broader structures. For example, endogenous-functional, exogenous, domestic and EU institutional structures become part of decision-makers’ norms and values throughout processes of socialisation and learning. In addition, actors who engage in communicative action, in their quest to arrive at the most ‘valid’ solution to the problems at hand, tend to be more open-minded, i.e. beyond the narrow confines of their preconceived interests, and are thus more inclined to also consider arguments derived from the (wider) structural environment. Put differently, during communicative interaction agents are likely to uncover structural factors, which are subsequently incorporated in their deliberations. Socialisation, deliberation and learning thus (also) works as an interface between structure and agency.

### *The role of supranational institutions*

The final dynamic specified here is the integrative role played by supranational institutions. Several underlying factors point to the plausibility of hypothesising supranational institutions as promoters of intensified cooperation and integration. Firstly, there is the likelihood of

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<sup>9</sup> See Searle (1995: 25). Concepts like bargaining, communicative action and normatively-regulated action should be seen as ideal types which do not often appear in their pure form.

unintended consequences, as decisions taken by domestic politicians are often taken under circumstances of uncertainty, imperfect knowledge or under time pressure which restricts the possibility of long-term purposive behaviour. The implications of delegating tasks to supranational institutions are thus often not taken into considerations at the time when decisions are made. Secondly, and mainly following from this, institutions, once established, tend to take on a life of their own and are difficult to control by those who created them (e.g. Pierson, 1996). Thirdly, concerned with increasing their own powers, supranational institutions become agents of integration, because they are likely to benefit from the progression of this process. Finally, institutional structures (of which supranational institutions are part) have an impact on how actors perceive their interests and identities.

The *Commission* as the most prominent agent of integration facilitates and pushes agreement on integrative outcomes in several manners. For example, it can act a promotional broker by upgrading common interests (e.g. through facilitating logrolling or package deals) (cf. Haas, 1961, pp. 369ff). It may also cultivate relations with interest groups and national civil servants to gain support for realising its objectives. It has been pointed out that that the Commission is centrally located within a web of policy networks and relationships, which often results in the Commission functioning as a bourse where problems and interests are traded and through which support for its policies is secured (cf. Mazey and Richardson, 1997). The Commission may also exert itself through its (often superior) expertise and act effectively due to its substantial propensity for forging institutional cohesion (Nugent, 1995).

Over the years, the *Council Presidency* has developed into an alternative architect of compromise. Governments taking on the six-month role face a number of pressures, such as increased media attention as well as peer group evaluation, to abstain from pursuing their national interest and to assume the role of a neutral mediator (e.g. Wallace, 1985b). During their Presidency, national officials also tend to undergo a sometimes rapid learning process about the various national dimensions which induces a more 'European thinking' and often results in 'European compromises' (Wurzel, 1996, pp. 272, 288). A number of case studies confirm Presidencies' inclination to take on the role of an honest and promotional broker (e.g. Elgström, 2003; Tallberg, 2004).

The *European Parliament* (EP) has fought, and in many respects won, a battle to become, from being an unelected institution with minor powers under the Treaty of Rome, an institution which since the Treaty of Amsterdam is on an equal footing with the Council in the larger part of normal secondary legislation (Maurer, 2004, p. 230). It has very clearly become another centre of close interest group attention (Bouwen, 2004) and plays a critical, even if not

wholly successful, role in the legitimisation of the European Union. Even at the IGC level its role has significantly increased. It has traditionally pushed for further integration, partly in order to expand its own powers (Westlake, 1994).

The *European Court of Justice* (ECJ) has been able to assert the primacy of Community law and transform the Treaty of Rome into something like a constitution, a process described as ‘normative supranationalism’ (Weiler, 1981, 1991). The Court has raised the awareness of subnational actors concerning the opportunities offered to them by the Community legal system. It helped create these opportunities by giving pro-Community constituencies a direct stake in Community law through the doctrine of direct effect. The European Court of Justice also has a self-interested stake in the process: it seeks to promote its own prestige and power by raising the visibility, effectiveness and scope of EC law (e.g. Burley and Mattli, 1993). In addition, the (ECJ) has been singled out as an important agent of recognising and giving way to functional pressures. Moreover, the Court tends to upgrade common interest. While the Commission is doing so by acting as an institutionalised mediator, the ECJ is justifying its decisions in light of the common interests of members as enshrined in the general objectives of the original EEC Treaty. The *modus operandi* is the ‘teleological’ method of interpretation, by which the Court managed to rationalise many important decisions, such as those on direct effect (on the above see Burley and Mattli, 1993; Mattli and Slaughter, 1998).

### *Countervailing forces*

As integration cannot solely be conceptualised as a dynamic process, countervailing, inertia or spillback forces need to be accounted for. One can only ascertain the relative strength of the dynamics of integration if one also accounts for inertia forces. In the absence of strong countervailing pressures even weak integrative forces may drive the integration process forward. In such a case the strength of the dynamics may easily be overestimated. When demonstrating that outcomes, which went beyond the lowest common denominator, came about even despite strong countervailing forces, the case for the causal relevance of the hypothesised dynamics is considerably strengthened. In addition, it is maintained that informed guesses about the integration process cannot be made without taking countervailing pressures on board. For reasons of simplicity and methodology<sup>10</sup> ‘inertia forces’ are grouped

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<sup>10</sup> Lijphart (1971, p. 678) has pointed out that limiting the number of variables is advisable in comparative research which looks at only a few cases, as otherwise the researcher would not have enough observations per variable and the outcome would be indeterminate.

together here and conceptualised as one single hypothesis. The following main countervailing forces – which partly overlap – can be hypothesised:

*Sovereignty-consciousness* – which in its most extreme form can be described as nationalism – encapsulates actors’ lacking disposition to delegate sovereignty to the supranational level, or more specifically to yield competences to EU institutions. Sovereignty-consciousness tends to be linked to (national) traditions, identities and ideologies and may be cultivated through political culture and symbolisms (cf. Callovi, 1992; Meunier and Nicolaïdis, 1999). Sovereignty-consciousness has repeatedly impeded the development of the Community, as, for example, during de Gaulle’s and Thatcher’s terms of office. Other less prominent actors such as bureaucrats, especially when working in ministries or policy areas belonging to the last bastions of the nation-state, can be sovereignty-conscious agents. Sovereignty-consciousness tends to rise with waning trust in the objects of delegation, i.e. EU institutions.

*Domestic constraints and diversities* may significantly circumscribe governments’ autonomy to act (cf. e.g. Hoffmann, 1964, pp. 89, 93; Moravcsik, 1993, pp. 483-94). Governments may be constrained directly by agents, such as by lobby groups, opposition parties, the media/public pressure, or more indirectly by structural limitations, like a country’s economy, its demography, its legal tradition or its administrative structure. Governments’ restricted autonomy to act may prove disintegrative, especially when countries face very diverging domestic constraints. This may disrupt emerging integrative outcomes, as domestic constraints of governments may lead to national vetoes or prevent policies to move beyond the lowest common denominator. In the case of strong domestic constraints in different Member States, considerable overlap in the (domestic constraint-based) positions might be necessary in order to arrive at substantial common accords due to the restricted scope for changing positions on the part of governments. Bureaucratic politics also partly comes under this rubric, when constraints created at this level are not so much ideological in nature (cf. sovereignty consciousness), but when bureaucrats limit governmental autonomy of action in order to protect their personal interests or to channel the interests of their ‘constituencies’.

*Diversity* can either be viewed as a sub-issue, or the structural component of, domestic constraints or as a countervailing pressure on its own.<sup>11</sup> The economic, political, legal,

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<sup>11</sup> On the issue of diversity in the integration literature, see for example Wallace (1985a) and Héri-tier (1999, esp. pp. 4-8).

demographic, sociological, administrative or cultural diversity of Member States may counter common integrative endeavours. The sheer differences between Member States can prove to be a disintegrative force because common positions or policies may require some Member States to disembark substantially from existing structures, customs and policies which tend to have evolved over substantial periods of time and are linked to certain grown traditions. Hence, diversity may potentially entail considerable costs of adjustment for some actors. Diversity may also develop and have conflictual implications (among member governments) as a result of material benefits/costs and prospects of gaining or losing decision-making power through particular policy decisions. Diversity among Member States is reinforced through the gradual enlargement of the European Union. Domestic constraints and diversities help explaining variation in national choices for integration.

*Negative integrative climate:* integrative climate is a broad variable that depicts general attitudes towards European integration and the EU. Since the early 1990s, national governments and the sub-national actors have increasingly stressed the importance of subsidiarity, public appeal for the Community has decreased and the Brussels bureaucracy is seen more and more as high-handed and aloof (cf. Papademetriou, 1996, p. 63). Although it can barely be traced, and may overall be of less relevance than the other two countervailing forces, an unfavourable integrative climate is believed to have a diffuse detrimental impact on decision-makers. It is also often related to economic recession (cf. Holland, 1980).

### **Interconnections between explanatory factors**

As already alluded to earlier, the various pressures formulated above are interlinked in many ways and cannot always completely be separated from each other. Especially the dynamics are intertwined in multiple and complex ways. For example, the two structural dynamics (functional and exogenous) require agency – particularly but not exclusively supranational actors and interest groups – to make an impact. Conversely, pro-integrative preference formation and learning processes implying European solutions – of national, supranational or transnational agents spelled out in the role of organised interests and supranational institutions – call for some (endogenous-functional or exogenous) structural input and medium to develop. In addition, the two structural dynamics are interconnected, as exogenous pressures (such as international competition) can give rise to or help create functional-endogenous logics (e.g. those stemming from the single market). The more actor-centred dynamics are

also interwoven. For instance, supranational actors often cultivate relations with interest groups and thus foster integrative pressures. Hence, the presence of a certain dynamics may activate other integrative pressures, as a result of which the dynamics can be seen as mutually reinforcing. The linkages among countervailing forces are also significant as the above account of domestic constraints and diversity suggests.

Particularly interesting is the relationship between the two key types of pressures. By hypothesising for countervailing forces in addition to dynamics it follows, almost logically, to view or hypothesise integration to be a *dialectical* process. The strength, variation and interplay of pressures on both sides of the equation thus determine the outcome of a particular decision-making issue or process. More specific insights about the relationship between dynamics and countervailing pressures are expected from the subsequent empirical analysis.

## **Methodology**

My epistemological position can be located somewhere between the positivist and post-positivist extremes, acknowledging the importance of interpretative and contextual features in establishing causal inferences and middle-range generalisations. My dependent variable is the outcome of instances of decision-making/negotiations, and my key causal (independent) variables are the various pressures mentioned above. I start off from a multiple causality assumption, arguing that the same outcome can be caused by different combinations of factors. My analysis can be described as qualitative. In order to arrive at valid causal inferences, allowing for some degree of positive causality, a number of methods are employed, including comparative analysis, tracing of causal mechanisms and processes, as well as triangulation across multiple data sources (including documentation, participant observation, and about 70 interviews for the subsequent cases). The danger of case selection bias has been minimised by choosing cases according to a range of values concerning the dependent variable, without paying attention to the values of the key causal variables (the identification of which was subject to my inquiry). Outcomes range from very modest (1996-97 IGC) to far-reaching/progressive (Convention / last IGC), with the IGC 2000 somewhere between these two poles. More can be learned about the causal relevance of explanatory factors when we examine cases with varying outcomes (cf. King *et al.*, 1994)

## NEGOTIATIONS ON THE REFORM OF THE COMMON COMMERCIAL POLICY

### **The Common Commercial Policy and Article 113/133<sup>12</sup>**

The Common Commercial Policy (CCP) is one of the oldest and most integrated policy areas of the European integration project. It was named in Article 3 of the Treaty of Rome as one of the main policies of the European Economic Community. As Member States were linked in a customs union, it was essential for them to draw up common policies regarding their commercial relations with the rest of the world (Devuyst, 1992; Eeckhout, 1991). The Treaty of Rome was revolutionary in the sense that it granted the new supranational entity an external personality with the authority to set out, negotiate and enforce all aspects of trade relations with the rest of the world. This was to be achieved through a common trade policy based on the principles of a common external tariff, common trade agreements with the rest of the world and the uniform application of trade instruments across the Member States. Although the Treaties of Maastricht, Amsterdam and Nice as well as the Constitutional Treaty made some amendments, the main principles of the CCP have largely remained the same.

Article 133 (ex 113), the centrepiece of the external trade policy, provides that the Council will give a mandate to the Commission to open negotiations with third countries, in which the Commission acts as the sole negotiator. This mandate may include directives the Commission must respect in fulfilling its task. The Commission is 'assisted' during negotiations by the Article 113 Committee which is not largely 'consultative', as the Treaty provisions suggest, but also watches over the Commission's shoulder during negotiations (Meunier and Nicolaïdis, 1999). Once negotiated, the Commission will initiate an agreement with third countries on behalf of the Community if it regards the outcome of negotiations satisfactory, but the right to conclude the agreement rests with the Council acting in principle by qualified majority but in practice usually on a consensual basis (Westlake, 1995). The role of the European Parliament (pre Constitution) is very modest in this field. It is merely informed by the Commission and the Council of the conduct of external trade negotiations and may be voluntarily asked for its opinion before the formal ratification of an international agreement.

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<sup>12</sup> Article 113, the centrepiece of the Common Commercial Policy, after the renumbering of the Treaty of Amsterdam, became Article 133. I will therefore refer to Article 113 during my analysis of the negotiations of the 1996-97 IGC and to Article 133 when I talk about the outcome of those negotiations (i.e. the Amsterdam Treaty provisions). I also refer to Article 133 in my analysis of the IGC 2000 and the Convention/IGC 2003-04.

### **The controversy over the scope of Article 113/133**

Many authors have pointed out that the Community's Common Commercial Policy was rather poorly drafted, especially with regard to definition and scope (Bourgeois, 1995; Ehlermann, 1984, pp. 767-68). They deplore the fact that the Treaty of Rome only included a non-exhaustive list of examples of subjects belonging to the CCP but contained no clear definition of the boundaries of this policy. As a consequence of this lack of a precise definition, the external trade policy has been subject to recurrent disputes between the Commission, the Council, Member States and the Parliament.

In its case law, the European Court of Justice has been rather progressive, especially until the mid-1980s. It has generally interpreted the Community's external trade powers widely.<sup>13</sup> However, the Court failed to settle the institutional controversies between the Commission and the Council in the 1980s, so that the Commission attempted to put an end to the permanent debate surrounding the scope of Article 113 during the Maastricht IGC. In its proposal, the Commission ambitiously, but unsuccessfully, aimed at an exclusive common policy in the field of external economic relations which, in addition to trade in goods, also sought to include trade measures related to services, intellectual property, investment, establishment and competition (cf. Devuyst, 1992).

The Commission's quest to expand its powers under Article 113 was largely motivated by the changing multilateral trade agenda, which since the Uruguay Round (UR) included issues such as services, intellectual property rights and investment. The Commission and some Member States disagreed on who was competent on these 'new' trade issues, as a result of which the Commission requested a ruling by the Court of Justice. In its Opinion 1/94, the ECJ ruled that both the Community and its Member States are jointly competent to conclude international agreements of the type (and scope) of the General Agreement on Trade in Services (GATS) and Trade-Related Intellectual Property Rights (TRIPS).<sup>14</sup> It did not rule on investment. The Court also left a number of other questions unsolved, for example by highlighting (again) the open nature of the Common Commercial Policy. Moreover, the Court demanded a duty of co-operation and unity of representation in matters where the Community and Member States are jointly competent, without however specifying how such unity of representation was to be achieved. In the aftermath of the Court's ruling in 1994, negotiations

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<sup>13</sup> See, for example, the Court's ruling in the ERTA case (22/70) and its Opinion 1/78. Cf. Gilsdorf (1996).

between the Commission and Member States on a code of conduct also came to nothing.<sup>15</sup> Against this background, the Commission decided to submit a proposal for an extension of Article 113 within the framework of the Amsterdam IGC.

### **The Intergovernmental Conference 1996/97 and the Treaty of Amsterdam**

After the Commission had put forward an ambitious proposal in July 1996 asking for an external economic policy competence going beyond services, intellectual property rights and investment (Commission 1996f)<sup>16</sup>, the eventual outcome at Amsterdam was very modest. The result of the IGC negotiations was a new paragraph (5) in Article 133, according to which ‘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’. The most significant difference compared to pre-Amsterdam provisions was that the new paragraph enabled the Council to extend the application of Article 133 to services and intellectual property rights by unanimity without having to go through another IGC (cf. e.g. Sutherland, 1997). There has been disagreement amongst legal observers as to whether competence could be extended permanently and generally, in relation to a named international body, or on a case-by-case basis (cf. Krenzler and da Fonseca-Wollheim, 1998, p. 239; European Policy Centre, 1997b). Overall, observers commonly agreed that the progress made during the IGC 1996-97 negotiations was minimal, regardless of whether the benchmark used for assessment was the *status-quo ante* practice, the different options on the table, or the requirements of a changing world economy and multilateral trade agenda (cf. e.g. Patijn, 1997; Ludlow, 1997, p. 39; Brok, 1997, p. 45).

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<sup>14</sup> However, the Court found that the Community has exclusive competence in the areas of cross-frontier services and measures prohibiting the release for free circulation of counterfeit goods - goods imitating a genuine article that is usually sold under a trade mark. On this point see: Bourgeois (1994, pp. 770-71).

<sup>15</sup> In the meantime, multilateral negotiations on ‘unsolved business’ (of the Uruguay Round) in the area of services was conducted under unanimity, with the Commission as the exclusive negotiator.

<sup>16</sup> The ambition of the proposal is best viewed as bargaining strategy. What the Commission really aimed for was an extension of Article 113 to services, intellectual property and investment, which also became the toned down official Commission position from October 1996 (interview, 1999).

## **The Intergovernmental Conference 2000 and the Treaty of Nice**

At the Nice IGC external trade policy formed part of the broader issue of the extension of qualified majority voting, which was added to the IGC agenda at first hesitantly and later more decisively. The Common Commercial Policy first appeared on the list of items discussed under QMV in February 2000 and was formally included on the IGC agenda at the Feira European Council of 19-20 June 2000. During the negotiations Article 133 turned out to be one of six controversial QMV issues and stayed a contentious item until about halfway through the summit of Nice.

The Nice provisions have brought some integrative progress in terms of the scope and depth of the Common Commercial Policy. Most importantly, the Community has gained 'explicit'<sup>17</sup> competence for the negotiation and conclusion of agreements relating to trade in services and commercial aspects of intellectual property.<sup>18</sup> Qualified majority voting applies to these areas. However, several important exceptions also have been introduced where unanimity is still applicable: (1) areas in which unanimity is required for the adoption of internal rules or where the Community has yet to exercise its competence; (2) where an agreement would go beyond the Community's internal powers, notably by leading to harmonisation in areas for which the Treaty rules out such harmonisation. Agreements which relate to trade in cultural and audiovisual services, educational services, human health services have been explicitly excluded; (3) the negotiation and conclusion of international agreements in the field of transport.

In addition, the Nice provisions contain some further important drawbacks: (1) foreign direct investment was not included within the scope of Article 133; (2) unanimity is still required for the negotiation and conclusion of horizontal agreements, if one of the above derogation areas forms part of the negotiations. Furthermore, ratification by the Member States is needed in such cases; (3) the European Parliament remains excluded from decision-making in the CCP and has not even obtained a formal right of consultation; (4) Member States are still allowed to maintain and conclude agreements with third countries or

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<sup>17</sup> The Treaty of Nice had made the competence on services and intellectual property 'explicit'. However, legal scholars seem to agree that competences in these areas were still shared between the Community and Member States. Cf., for example, Krenzler and Pitschas (2001: 302); Herrmann (2002: 13, 19).

<sup>18</sup> New competences are conferred on the Community, (only) insofar as these topics were not previously covered by Article 133 EC or an implied power. Hence, cross-frontier services and the protection against counterfeit goods at the Community's external border – which were found by the Court in 1/94 to fall under the scope of the CCP – are not affected by the new provisions (and therefore also not by the QMV derogations below).

international organisations in the fields of trade in services and commercial aspects of intellectual property.

Given these derogations and drawbacks, commentators both in the legal community and in the policy-making community have generally viewed the progress made as more substantial than the one achieved at Amsterdam, but still as rather modest, as regards the Community's capacity to act on the international scene (Duff, 2001, p. 14; Brok, 2001, p. 88; Krenzler and Pitschas, 2001, p. 312). In addition, many authors have lamented the complexity of the Treaty text which does not meet the growing demands for greater simplicity and transparency (e.g. Pescatore, 2001, p. 265; Hermann, 2002: p. 16; Leal-Arcas, 2004, p. 13).

### **The Convention, the IGC 2003-04 and the Constitutional Treaty**

The Laeken European Council decided to depart from the more standard methods of preparing EU Treaty reforms and thus opted against the establishment of a group of government representatives or a group of wise men and women. Instead, it was decided to convene a Convention on the Future of Europe (cf. Presidency conclusions, December 2001). The idea of a Convention was first suggested by the European Parliament and later supported, above all, by the EP, the Belgian Presidency and the Commission. The Common Commercial Policy was identified by members of the Convention early on as one of the issues that required further discussion. Within the Convention Working Group on External Action, the CCP was of secondary importance in comparison with the Common Foreign and Security Policy. The Draft Treaty that came out of the Convention was very close to the Constitution text.. The CCP only played a subordinate role at the IGC 2003-04 where the provisions of the Draft Constitutional Treaty were watered down only insubstantially.<sup>19</sup>

The Treaty provisions on the Common Commercial Policy have substantially progressed in terms of scope and depth. The following are the most important advances: (1) foreign direct investment is now included under the scope of the CCP in addition to services and intellectual property; (2) services and intellectual property (and also investment) now fall within the exclusive competence of the Community; (3) the European Parliament has obtained co-decision on legislative acts, i.e. for measures implementing the CCP. In addition, consent by the EP is required for most types of international agreements; (4) mainly following from

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<sup>19</sup> A rather narrow derogation on social, education and health services was (re)introduced during the IGC. Also investment belongs to those policies (alongside with services and intellectual property) for which unanimity applies externally where this is required for the adoption of internal rules.

the second point, *horizontal agreements* involving services, intellectual property and investment may now be decided by QMV<sup>20</sup>; (5) exceptions for unanimity have been further narrowed. Unanimity in the external realm is still required on services, intellectual property and investment, where unanimity is required for the adoption of internal rules. However, the derogation regarding cultural and audiovisual services has become narrower and the burden of proof to invoke these exceptions lies with those Member States that want to apply them (interviews, June/July 2004; cf. Article III-314, paragraph 4); (6); following from the second point, national parliaments are no longer needed for the ratification of future WTO agreements (involving the new issues). The new Article III-314 provides a substantial degree of further integration. Interviewees have, unlike regarding the provisions of Amsterdam and Nice, consistently agreed on the progressiveness of this latest CCP Treaty revision (cf. also Antoniadis, 2004).

After having looked at the outcomes of the last three Treaty revisions, the subsequent analysis will examine the strength and relevance of the six hypothesised pressures concerning the extension of Article 113. We analyse in turn (1) exogenous pressures; (2) functional-endogenous pressures; (3) socialisation, deliberation and learning; (4) the role of organised interests; (5) the role of supranational institutions; and (6) countervailing forces.

### **Exogenous pressures**

Overall exogenous pressures constituted the most important dynamic for reforming the CCP. The factors at play here were globalisation and, closely related, changes in the world economy, as well as subsequent developments in the multilateral trade regime and the international trade agenda. Globalisation has fostered changes in the world economy, such as the increasing importance of trade in services, in intellectual property rights and foreign direct investment, issues which have begun to feature much more prominently on the multilateral trade agenda since the Uruguay Round (UR). The Commission has traditionally argued that the scope of Article 113/133 needs to be interpreted in a dynamic way. As trade policy

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<sup>20</sup> When those areas that are specifically excepted (see next point) are included in horizontal agreements, unanimity still applies. Antoniadis (2004) has suggested that horizontal agreements are likely to be concluded by unanimity in the future because of the derogation on cultural diversity (see below) can be easily invoked. My interviews suggest, however, that as this derogation has been narrowed and the burden of prove been shifted towards those Member States seeking to apply it, qualified majority voting may not be unlikely for concluding future horizontal agreements.

changes and trade in goods loses in importance, the Community powers under the Common Commercial Policy become gradually eroded.

During the IGC 1996-97 negotiations exogenous pressures were already rather strong. *Services* in the early to mid-1990s – the period most relevant for decision-makers' perceptions concerning the Amsterdam negotiations – accounted for 20 per cent of all world trade, and for 26 per cent of EU external trade (Krenzler, 1996). The growing importance of services in the world economy was apparent by the conclusion of a General Agreement on Trade in Services (GATS) during the Uruguay Round. While the UR achieved historic results in terms of market access liberalisation in important services areas, services liberalisation was by no means completed. The GATS created a framework of continuing negotiations on the liberalisation of the supply of services which meant that the question of external competence for the conclusion of international services agreements continued to be a very important issue also after the UR. Liberalisation of Uruguay Round commitments in some major sectors including audio-visual services, financial services, maritime transport and telecommunications were very limited or non-existent (cf. Dyer *et al.*, 1997, p. 217). These issues became subject to specialised sectoral negotiations as 'outstanding business' of the UR.

As trade in intellectual property rights (IPRs) substantially increased in previous decades, incentives to breaches IPRs also rose. It was estimated in the mid-1990s that the EU lost at least 10 per cent of the value of its exports to copyright piracy (Adamantopoulos, 1997). As a result of these trends, IPRs were included in the UR negotiations. The TRIPS agreement attempts to regulate and standardise international property rights in order to prevent the above mentioned abuses and so create a fairer trade market. With the agreement on TRIPS and the establishment of the WTO, trade remedies (sanctions) can be made available to enforce the protection of intellectual property rights. Thus, IPRs became a frequent item in WTO dispute settlement.

*Foreign direct investment* (FDI) has become a significant area of growth in the global economy and one of particular importance to the EU. Figures from the early to mid-1990s indicated that 36 percent of world-wide FDI inflow originated from the EU and that the EU received about 19 percent of world inflow (United Nations 1995). As a result of the global increase in FDI, Trade-Related Investment Measures (TRIMS) were included for the first time in the UR. The Community has a vital interest in trade and investment, as restrictive national measures (e.g. rules on the share of goods to be produced at home) have a direct negative impact on trade. The agreement on TRIMS obligates members to scrap their trade-related investment standards, but it leaves important practices untouched. Trade and investment was

likely to reappear on the WTO negotiating agenda in the future, not least because it was agreed at Marrakesh in 1994 to review the issue within five years.

As pointed out above shared competence applied to services and IPRs (while the Court had remained silent on investment). What were the perceived implications of mixed competence for the Community in international negotiations? Most importantly, unanimity applies to the conduct and conclusion of negotiations. In the case of horizontal agreements like a comprehensive multilateral trade round, which the EU was advocating at the time of the Amsterdam IGC (and also later on) discussion of any one mixed competence item would expand this legal basis to the whole agreement (Krenzler and da Fonseca-Wollheim, 1998, p. 229). Mixed competence and unanimity have, among other factors, been associated with lowest common denominator agreements and the potential abuse of the veto option. It also increases the potential for third parties to play 'divide-and-rule' games, e.g. through influencing certain Member States by offering them bi-lateral concessions in order to prevent or hinder the formation of an EU position (cf. Brittan, 1996; Petite, 1997).

The second major implication of mixed competence is that, legally speaking, the Commission is not the sole negotiator for the Community and Member States. In theory, the latter can intervene throughout negotiations, either individually or as represented by the Presidency. In practice the Commission and Member States have sought to avoid this. The problem of the representation of the Community and Member States in external trade negotiations was around since the beginning of the Uruguay Round. It was not solved by the Court in 1/94. Although the ECJ demanded that there was a duty of co-operation to ensure the Community's unity of action and efficient external representation it did not state how this was to be achieved. After the conclusion of the UR negotiations, a code of conduct was reached on the post-Uruguay Round negotiations on services, according to which the Commission should continue to negotiate (under unanimity) on behalf of the Community and the Member States (see Council, 1994). Negotiations on a general code of conduct for participation in the WTO had, however, failed on several occasions. However, the Spanish Presidency proposal of December 1995 (according to which the Commission acts as the sole negotiator)<sup>21</sup> has been taken as a basis for negotiations. Some Member States have claimed that the Commission's role as the sole negotiator is undisputed, thus rendering an extension of Article 113 unnecessary (interview, 1999). The Commission, in contrast, has emphasised that the situation had become worse since the UR. Member States threatened to act independently in the WTO,

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<sup>21</sup> According to the final text which did not pass COREPER in December 1995, Member States can be present at meetings but only speak when a Member State considers that the Commission has presented the situation in a confusing manner or where the Commission renounces to express itself (Spanish Presidency, 1995).

if their positions are not fully covered by the Community. A decision by the French National Assembly indicates that this was not only considered, but actually aimed at (Krenzler and da Fonseca-Wollheim, 1998, p. 231). In the negotiations on maritime transport, Denmark and Greece expressed themselves independently, in addition to the Commission and the Presidency. The implications can vary. As one Commission official pointed out: 'it is enough when Member States just highlight a certain aspect more than the Commission, without saying anything substantially different. Still, the character of the Community position will be influenced, and a delicate balance envisaged by the Commission in its position may be upset' (interview, 1997). Outside the WTO framework, negotiations on intellectual property rights, for instance in WIPO, and on investment issues, as in the OECD, are conducted by Member States themselves. In such cases, Member States often negotiate against each other, which makes it easy for Japan and the United States to play one Member State off against another. As an official put it: 'In the WTO such a dissonant choir of 15 voices would be a catastrophe'.<sup>22</sup> According to one Commission interviewee, 'it is quite clear that as far as the WTO is concerned, legal confirmation of what is today only a *de facto* situation, subject to be questioned at any time, would significantly improve the standing of the Commission as a sole negotiator' (interview, 1998).

There has been another implication of mixed competence. It was anticipated that the Community would experience great difficulties in dispute settlement cases in the areas of GATS and TRIPS. For example, in TRIPS cases Member States cannot cross-retaliate by taking sanctions in the goods sector, as the Community has competence in that area. Often, however, third countries (especially Lesser Developed Countries) can be hurt most in the area of goods. Hence, it has been argued that it does not make sense for Member States to enter into dispute settlement cases in the new trade areas on their own. Their purposes would be better served if competence for the disputed areas was transferred to the Community (cf. Kuyper, 1995, p. 114).

The Commission and a few other Member States perceived the situation as described above and argued that the difficulties associated with mixed competence would be solved if the issue areas in question would pass to an exclusive community competence. A number of Member States did not view the probable consequences of mixed competence as severely limiting the coherence, effectiveness and proactiveness of EU trade policy. They argued that the Community managed to negotiate successfully in the WTO in areas where powers are

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<sup>22</sup> Quoted from an internal Commission paper: Commission, DG I, 'Anmerkungen zur Stellungnahme des BMWi zum dem Kommissionsvorschlag über die Anpassung des Artikels 113', Brussels, 16.10.96.

shared, thus denying the rationale for a change of the *status quo* because of transformations in the world economy. They also qualified the impact of unanimity by suggesting that if the Commission stuck to its negotiating mandate it did not have to fear unanimity for the conclusion of an agreement. Following this logic, the problems for the Commission during trade negotiations would be outweighed by an uncomplicated conclusion of the agreement (interview, Brussels 1999). Moreover, some reluctant Member States argued that despite the generous competencies of the Commission on issues governed under the scope of the CCP, it did not (always) represent the interests of the Community convincingly and that often it gave in too easily to the US, thus requiring Member States to ‘keep the Commission on a short leash’.<sup>23</sup>

Overall, exogenous pressures and the problems frequently associated with it were regarded as the most compelling logic for reforming the CCP during the IGC 1996-97. This applies equally to the Community institutions (e.g. Commission, 1996c; EP, 1994), to opinion leaders and think tanks (e.g. Sutherland, 1997; European Policy Centre, 1997a), as well as to Member governments (e.g. Belgian government, 1995).

After the Amsterdam IGC, exogenous pressures grew slightly further and continued to be the most important dynamics behind the extension of Article 133 during the Nice Intergovernmental Conference. Services, intellectual property rights and investment remained important features of the international and especially the EU trade agenda. With the ‘GATS 2000’ negotiations that started in January 2000 and important unfinished business from the Uruguay Round, including maritime and air transport as well as the impact of electronic commerce on the sector, services stayed particularly prominent in the WTO framework. The EU also pushed for the inclusion of intellectual property rights and investment, and a host of other issues, to become part of a more comprehensive multilateral trade round. The inclusion of investment on this agenda, or the WTO agenda more generally, was particularly pressing, given the failure to reach an agreement on investment in the framework of the OECD in 1998. Intellectual property also remained an important topic in the WTO, not least because many of the Dispute Settlement cases were (and still are) related to this issue.<sup>24</sup>

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<sup>23</sup> It was felt, for example, that the Commission lacked forcefulness, on the question of the Community joining the Japanese-American semi-conductor agreement. Although the Commission had exclusive competencies and the 15 behind it, it could not match the US in the negotiations in Lyon (interview, Brussels, 1998).

<sup>24</sup> Further pressure for an extension of Article 133 was manifested as additional issues (such as trade and competition, trade and environment, trade and labour) gradually entered the international trade agenda. Cf., for example, Meunier and Nicolaidis (2000: 342).

Hence the problems associated with unanimity and the somewhat unresolved issue of representation at international negotiations remained, and were by many participants perceived as even more pressing (interviews, 2003, 2004). Changes in the international trade agenda and the implications associated with shared competence in services, intellectual property and investment, was the rationale most frequently stated by actors in their plead to extend the scope of Article 133 or QMV during the Nice IGC. The importance of this reasoning has also been recognised, to some extent, in the academic discourse (cf. Meunier and Nicolaidis, 2000, pp. 341-343; to a lesser extent: van Dijck and Faber, 2000: esp. pp. 321-322, 330-331).

At the Convention and the last Intergovernmental Conference, exogenous pressures continued to be as strong as during the Nice Treaty revision. The mismatch between international economic/trade policy realities and the internal provisions under Article 133 was growing. The inclusion of services and intellectual property as well as issues such as ‘trade and environment’ on the comprehensive agenda of WTO negotiations under the Doha Round, which got underway in early 2002, further exacerbated this disparity.<sup>25</sup> However, with the entering into force of the Treaty of Nice in February 2003 part of this gap has been closed due to the Community’s somewhat increased competences on services and intellectual property. On the other hand, horizontal agreements, like the Doha Round, were still to be negotiated and concluded under unanimity if one of the many derogation areas was to be included which was looming (large) at the time of the Convention and the IGC 2003/04. That exogenous pressure played an important role at the last Treaty revision is further substantiated by the frequent and prominent usage of this rationale in the argumentations in favour of a (further) extension of Article 133, especially by the Commission.<sup>26</sup>

### **Functional pressures**

During the IGC 1996-97 functional pressures – both those stemming from the internal market and those stemming from the internal policy goal of enlargement – were rather insubstantial.

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<sup>25</sup> Issues such as ‘investment’ and ‘trade and competition’ also, for a long time, seemed to form part of this agenda and were strongly advocated by the EU. Only by July 2004, it became certain/clear that these issues would not be negotiated within the Doha Round. Hence, during the Convention and the IGC 2003/04 the mismatch rationale also applied to these two issues, also because these issues are likely to reappear in the WTO (or another) trade context. On the EU pushing these issues, see for example: Commission (2003).

<sup>26</sup> See, for example, Lamy (2002, 2003). This general trend has been confirmed by interviews (2004).

As for the internal market as a source of pressure, the doctrine of implied powers, as interpreted by the Court of Justice, did provide such pressure in the past.<sup>27</sup> According to this doctrine, also referred to as ‘parallelism’, common rules laid down internally could be (adversely) affected, if Member States act individually to undertake international obligations. However, at the Amsterdam IGC the internal, functional pressure stemming from the doctrine of implied powers was rather negligible. In its Opinion 1/94, the ECJ had rather comprehensively rejected its logic. The Court held that an exclusive competence in the area of services was not necessary for achieving the objective of realising the freedom to provide services by nationals of the Member States within the common market (see para. 86). Nor did the internal harmonisation of IPRs have to be accompanied by agreements with third countries to be effective. Moreover, the Court held that there was little danger of internal rules being affected, if Member States remained free to negotiate agreements with third countries, as internal harmonisation in the fields of services and IPRs was only (very) partial at the time (cf. O’Keeffe, 1999; Arnall, 1996, p. 356; Monti, 1996). Given this (rather persuasive) reasoning by the Court only a few years prior to the IGC, neither the Commission, nor any other negotiating party, attempted to argue along the lines of the internal powers doctrine. In addition, potential functional logics related to the internal market and trade deflection did not create any substantial pressures.<sup>28</sup>

A moderate functional logic was at work through pressures stemming from the decision on future enlargement, taken at various European Councils since Edinburgh in 1992. Although an exogenous event, enlargement after those internal commitments largely became an endogenous source of pressure for reform of EU decision-making procedures. It was the internal EU agenda and the way this was marketed within and outside the Union rather than demands from applicant countries which put the Union under pressure to reform its institutions and decision rules. Once enlargement became an internal goal problems/tensions were created (anticipated) in terms of decision-making and co-ordination among the Member States under unanimity (exerting pressure for an extension of QMV in trade matters). Unanimity was already regarded as problematic with 15 delegations by some players. This logic of anticipated problems was argued in various Commission papers on the modernisation of Article 113 (cf. Commission 1996a; Krenzler, 1996, p. 6). However, eventually, this functional argument never gained much strength. It was pointed out: ‘in the end it was the

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<sup>27</sup> Cf. *ERTA* case (case 22/70), ECR 263, [1971]; and Opinion 1/76, ECR 741, [1977].

<sup>28</sup> Given space limitations this point cannot be elaborated here. For a more detailed account see Niemann (2005 forthcoming).

lack of urgency that made the Conference decide on only partial reform. No enlargement is foreseen before 2003-2005' (Patijn, 1997, p. 38). This indeed seems to have been the prevailing mood among decision-makers at the Amsterdam IGC, also regarding the CCP issue (interview, 1997).

One important argument used by the more reluctant Member States was that there may be a transfer of internal competencies from the Member States to the Community in some fields coming under exclusive Community competence externally. Hence, they were afraid that external liberalisation could foster a process of internal liberalisation (also cf. Hanson, 1998), and that the Commission could use the backdoor of Article 113 to regulate in areas which fall under Member States' competence. As one official maintained, 'it was conceivable that the Commission could have gained the power to sell Member States restrictions [laid down in the GATS schedule of concessions] in multilateral trade negotiations in exchange for market access for some third countries. With an extension of Article 113 to services, such a decision could theoretically be taken by QMV' (interview, 1999). The Commission acknowledged that the external realm can influence the internal, but that such overlaps and the potential repercussion were exaggerated by some Member States. My interviewing with (Commission) officials and review of (formerly confidential) internal documents suggest that the Commission was genuine about its concern of enhancing its external competencies only, and that the 'risks' of prejudging internal competencies were viewed as insubstantial. Nevertheless, the perception/anticipation of potential adverse implications of functional interdependencies between the internal and external dimensions on the part of some Member States had a slightly detrimental bearing on extension of the CCP.

As for the IGC 2000, overall functional pressure had increased since the Amsterdam IGC. Most importantly in that respect, the pressure of enlargement had grown substantially. While there was still considerable lack of urgency in terms of forthcoming enlargement in the minds of negotiators during the 1996-97 IGC, enlargement had become more concrete with the launch and confirmation of the enlargement process at the Luxemburg European Council of 1997 and the Helsinki European Council of 1999 respectively, and with the aim to welcome new Member States from the end of 2002 onward. The pressure on the CCP in terms of services, intellectual property and investment, as on other policies partially or wholly governed by unanimity, is obvious: with 25 Member States and the corresponding diversification of interests and increased heterogeneity of political cultures, decision-making is (significantly) more prone to paralysis. During the Nice IGC there was indeed an increased

(but not extraordinarily strong) sense of urgency as regards looming enlargement (Commission 1999; French Presidency, 2000; interviews, 2003, 2004).

Functional pressures stemming from the internal market had also grown since the 1996-97 IGC. The doctrine of implied powers to some extent increased the rationale for an exclusive Community competence for external trade policy. Internal legislation in services and IPRs had continued to increase. The internal market in telecommunications, for example, was almost complete at the time of the IGC negotiation. However, in most other areas internal legislation was either still incomplete or lacking effective transposition and implementation (cf. Commission, 2000c). Hence, from an implied powers perspective, an exclusive external trade competence across *all* services and intellectual property and investment did *not* follow. However, implied powers in a broader sense did, to some extent, inform policy-makers and legal drafters during the IGC. The Commission services of DG Trade have referred to the doctrine of parallelism as ‘the guiding principle of the new Article 133’, the purpose of which is ‘to align the decision-making mechanism for trade negotiations on internal decision-making rules’ (Commission, 2000d). Therefore, QMV was codified for services and intellectual property except where internal Community rules require unanimity or where no harmonisation has taken place at Community level.<sup>29</sup>

The anticipation of functional pressure, which acted as a moderate obstacle to CCP reform during the Amsterdam IGC (due to fears that the Commission could use the backdoor of Article 133 to ‘regulate’ areas Member State internal competence), still played a role albeit a diminished one. Their reservations were further reduced due to the progression of the internal market, which provided less scope for the prejudgement of internal competences.

Functional pressures further increased after the IGC 2000 and also correspondingly influenced the Convention and last IGC. For example, the pressure of enlargement became even stronger and also more urgent as the accession of new Member States was supposed to take place from the end of 2002. Moreover, the Seville European Council of June 2002 expected the Accession Treaty to be signed in spring 2003 and anticipated the participation of new Member States in the 2004 EP elections. Therefore, decision-making in the Council with 25 Member States was now an imminent reality, which put substantial pressure on those trade policy issues subject to unanimity. Enlargement became a frequent rationale used to substantiate the need for further CCP reform (e.g. Lamy, 2002).

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<sup>29</sup> The explicit derogation areas (education, human health, culture and transport) also very largely followed this rationale.

Moderate additional functional pressures were created by the Laeken European Council Declaration on the Future of Europe. Herein, the Heads of State and Government restated and reinforced a number of aims. In order to achieve these goals, a deepening of certain policies, such as the CCP, was necessary (or at least the most logical solution), hence creating pressures for further communitarisation. The first objective stated in the Laeken Declaration was the strengthening of the Union's role in the world. In order to achieve this collective goal, improvements in the decision rules of the CCP was 'at least a logical corollary, if not a necessity' (interview, 2004). The second set of aims of Laeken was greater simplification and efficiency. Given the complexity of the Nice provisions on Article 133, the CCP was an obvious candidate for improvements along these lines. Streamlining and rationalisation of external trade policy provisions can, of course, go both ways: re-nationalisation or supranationalisation. However, given the various other pressures, the bias was clearly in favour of the Community method. Finally, Heads of State and Government called for greater democracy and transparency. In terms of the CCP this aim could, again, have repercussions in two different directions: either greater involvement of national parliaments or a more substantial role for the EP. And again the bias was in the latter direction, given the overall tendency towards more Commission competence and more QMV which is well complimented by stronger EP involvement under the tried and tested Community method. The functional tensions created by these aims should not be exaggerated, as they had been formulated at various European Councils before without having much impact. The difference this time was two-fold. These objectives were arguably emphasised more strongly than in previous Presidency conclusions<sup>30</sup> and the members of the Convention took them more seriously than officials preparing previous IGCs (interview, 2004).

Pressure from the international market, which played a moderate level during the IGC 2000, was diminished. At Nice, the doctrine of implied powers had provided a rationale for establishing QMV for trade in services except for those areas where internal Community rules require unanimity or where no harmonisation has taken place at Community level (or where derogation areas formed part of horizontal agreements). One remaining anomaly was transport services<sup>31</sup>. As a result, it was argued to drop the explicit derogation on transport

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<sup>30</sup> Cf. Presidency Conclusions of the following European Councils: Cannes (point IV), Madrid (pp. 1, 3), Helsinki (point I), Feira (point I) and Laeken.

<sup>31</sup> Transport is governed by QMV and there is considerable internal harmonisation. Another, less clear cut, anomaly is the audiovisual sector. Although there is a prohibition for harmonisation in this sector and though it is governed by unanimity, some harmonisation has taken place through the Television without Frontiers Directive (89/552/EEC). Moreover, in the Constitution, culture has been transferred to QMV internally, suggesting a departure from the doctrine of parallelism (cf. Antoniadis, 2004).

during the Convention. This reasoning, together with other pressures for further communitarisation, was initially followed in early Convention drafts which excluded the Nice exception on transport, but could not be maintained later on. Finally, the anticipation of further functional spillover played no substantial detrimental role this time, since the Nice provisions – prohibiting the conclusion of an external agreement if it includes provisions which would go beyond the Community’s internal powers – provided a sound safeguard for the concerns that some Member States had had during the Nice and Amsterdam IGCs.

### **Socialisation, deliberation and learning processes**

My analysis of this factor has focuses on governmental elites (mainly on the official level) involved in Treaty revision preparations and negotiations (in a broad sense). As for the IGC 1996-97, an investigation into (the lack of) socialisation, deliberation and learning processes further contributes to the explanation of the minimalist outcome at Amsterdam. My analysis has identified five reasons which help explain why socialisation and learning processes did not unfold. The first factor detrimental is the nature of the subject area combined with the background of negotiators. The negotiations on the extension of Article 113/133 were rather technical in nature, but there was little opportunity for specialists to come in for individual topics during the actual debates. While negotiators were at ease with institutional and CFSP questions, they usually found the issue of Article 113 ‘complex’ or ‘tricky’, and ‘requiring some pertinent legal and trade-political background’ which most of them did not have.<sup>32</sup> As a result, there was not much real debate going on. The IGC representatives usually presented the positions which they were instructed to present and then reported back home about the reactions of others. In terms of communicative action there was little scope for argumentative processes in which actors could persuade each other because truth- or validity-seeking is very difficult when actors lack the requisite expertise to evaluate each other’s validity claims. Thus, progress was more dependent on bargaining or compromising Member States’ strategic positions.

Secondly, too little time was devoted to the CCP reform, which was not, in any case, regarded as a high priority issue, certainly in comparison with institutional questions, or dossiers such as JHA or CFSP. As one official has noted, ‘when we discussed external policy for an hour, we spent 55 minutes on CFSP and five minutes on Article 113’ (interview, 1999). There

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<sup>32</sup> Substantial expertise on trade was attested only to the Swedish (Gunner Lund), Finnish (Antti Satuli) and Belgian (de Schoutheete) representatives (interviews, Brussels, 1997, 1999).

was neither enough time to get to know in depth each other's problems on the issue, nor for engaging in an extensive argumentative debate about the pros and cons and thus obstructed deliberative and (more deeply-rooted) learning processes.

The third explanation is related to the negotiating group. The IGC Representatives Group took up its work in January 1996 and worked together only for one year and a half, which does not compare with the life span of other Council committees and working groups. Although nine out of the fifteen Member States' representatives to the IGC had already participated in the Reflection Group, there was some disruption in terms of socialisation, as 'new members had to be "incorporated" into the group' (interview, 1997). Although, there is some evidence for the development of a certain *esprit de corps* in the IGC Representatives Group (interviews, 1997, 1999), on balance it does not seem comparable to that in other (more permanent) Council forums.

Fourthly, 'underlying the debate about thin dividing lines between Community and national competencies [on the CCP issue] was a basic distrust by some Member States of the role of the Commission in representing the Community in international negotiations and keeping the Member States abreast of what is going on' (Patijn, 1997, p. 39, also Ludlow, 1997, p. 52). The reason for this basic distrust of the Commission can be found in a number of events in the past when the Commission negotiated without the necessary transparency vis-à-vis Member States, as happened, for example, in the negotiations leading to the 'Blair House Agreement'<sup>33</sup>. Much of the distrust *vis-à-vis* the Commission was focused on Sir Leon Brittan, with some governments holding him personally accountable for 'being left in the dark about strategic decisions' (Financial Times, 9/3/99). IGC representatives, although generally acknowledging the development of a certain club atmosphere in the negotiating group, stated that reports from their trade policy colleagues from capitals rubbed off on their own attitude vis-à-vis the Commission on this issue and also restricted IGC representatives' room for manoeuvre. It is also said to have harmed open deliberation on this issue (interview, 1999). This suggests that a lack of trust concerning one of the parties may off-set socialisation processes and may develop into a countervailing pressure.

Finally, there is the wider issue of bureaucratic politics. A serious problem throughout the negotiations was the adverse influences of ministries in Member States, including some lead departments on trade issues, coming out against an extension of the CCP. There were two main reasons for this: firstly, distrust of the Commission, as described above; and secondly,

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<sup>33</sup> In November 1992 the Commission made a pre-agreement on agriculture with the US. The Commission was accused by France of having been too accommodating at Blair House, especially on the issue of oil seeds. A year later the deal was re-opened due to French pressure.

the phenomenon that civil servants tend to try to hold on to their powers or have a substantial claim on expertise on the subject area (cf. e.g. Taylor, 1983). The Full Members of the Article 113 Committee of Germany, the Netherlands and Portugal are said to have held status quo views for the above reasons and to have influenced their national positions accordingly. Adverse bureaucratic politics have acted as strong countervailing pressures to socialisation processes. They made a genuine debate on the benefits of reform difficult due to tight instructions given to some IGC Representatives. They are also partly responsible for the introduction of the 'shopping list' approach by the Dutch Presidency which enormously complicated the negotiations and invited further bureaucratic politics (see below). Under such circumstances, feelings of responsibility towards achieving progress in the negotiations that appeared to become somewhat ingrained in the IGC Representatives Group had no chance to unfold and drive the negotiations towards a more integrationist outcome.

At the IGC 2000 socialisation processes could not unfold in the area of external trade policy, largely for the same reasons as a few years prior: (1) The nature of the subject area, along with the background of negotiators, was detrimental for making progress through argumentative debate. Neither the IGC Representatives, nor Foreign Ministers, nor Heads of State and Government, who dealt with the CCP issue at Nice, had the requisite knowledge and expertise to fully engage in a sensible discussion on this fairly complex subject. (2) Even though the issue of QMV was perhaps the most discussed topic in the Representatives Group, and despite the fact that the CCP was one of six rather prominent issues on the QMV agenda, there was simply not enough time available in order to engage in an extensive reasoned debate on the perceived opportunities and risks of extending QMV in external trade policy (interview, 2004). Moreover, the agenda at the Nice summit was very full with many unresolved issues (Gray and Stubb, 2001, p.13; cf. Economist, 16/12/00, p. 26). (3) The fact that the Representatives Group, which constituted the main negotiating arena of the Nice IGC, only met about 30 times and had a life span of less than a year did not allow for the development of very intense socialisation processes, certainly not comparable with committees or working groups in the Council framework.

(4) Tight, inflexible and sometimes competing or contradictory instructions resulting from the demands of various national ministries hampered genuine exchange on the pros and cons of QMV in trade policy. As one official put it, 'any emerging consensus achieved on the merits of the problem of unanimity in services was to be destroyed by yet another 'input' of some national ministry' (interview, 2004). Hence, bureaucratic politics, aggravated by some

prevailing distrust of the Commission in several national ministries, impaired processes of socialisation and learning. (5) Institutional topics and the issue of the balance of power between small and big Member States, although largely left to the Nice summit, rubbed off on the discussions in the Representatives Group and damaged the atmosphere among delegations. Observers stated that they had never witnessed ‘such basic distrust’ among Ministers and Heads of State and Government as during the last part of the Nice IGC (e.g. Duff, 2001: 19). Against this background socialisation processes and reasoned debates had little chance to unfold.

One of the more substantial changes from the previous two Treaty revisions was the greater favourable impact of socialisation, deliberation and learning processes in the Convention which also influence the Constitutional Treaty outcome. Such developments and processes were facilitated by several favourable conditions during the Convention: (1) the Convention started off with an initial listening and reflection phase during which expectations and visions could be freely stated. It generated a deeper understanding of other ideas and perceptions and softened pre-conceived opinions. (2) The Convention negotiating infrastructure – with more than 50 sessions that both the Plenary and the Praesidium held over a period of 18 months – also induced the development of an ‘esprit de corps’ and a strong sense of responsibility for a successful outcome in both forums of the Convention (Göler, 2003, p. 9). (3) Members of the Convention were in a position to act freely and were largely unbound by governmental briefs (Maurer, 2003, p. 134; but also cf. Magnette and Nicolaïdis, 2004, p. 393). Close related, one important source of countervailing pressures was largely shut out: bureaucratic resistances were in a much less favourable position to counter the deliberation process in the Convention because governments’ representatives did generally not have to go through the process of inter-ministerial coordination for the formation of national positions (Maurer, 2003: 136). (4) The atmosphere, spirit and negotiating structure in the Convention made it very difficult for members of the Convention to reject something without explanation, or without entering into a reasoned discussion were his or her arguments would become subject to scrutiny.

Following from the previous points, the strength of the argument considerably mattered, while the hierarchy, status, affiliation, i.e. power of the negotiator was less relevant. As the might of the better argument increased in importance, the many convincing, especially exogenous rationales for modernising Article 133, which did not succeed to unfold during previous IGCs, now managed to make an impact. As one official put it, ‘we had had good arguments for the extension of Article 133 all along. However, for the first time, we had the

feeling that people were really considering these points and their implications' (interview, 2004).<sup>34</sup>

Moreover, in a deliberative process, negotiators tend to concur (more) fully in the common results achieved. A (reasoned) consensus rather than compromise is reached. My interviewing suggests that the CCP Convention outcome was, on the whole, perceived as such. This also, albeit to a lesser extent, applies to the Draft Constitutional Treaty which increased the weight and impact of the Convention text and made it difficult for negotiators at the IGC to (considerably) depart from this consensus.<sup>35</sup> Indeed, the concurrence in, and the satisfaction with, the Convention consensus, including the one on external trade policy, made an impact on the IGC in three interrelated ways: firstly, Member States were very much part of this consensus. The IGC 2003-04 was negotiated on the level of Ministers and Heads of State and Government only. And these two levels had, either directly or indirectly (represented), participated in the Convention process. Secondly, there was a general feeling that the Convention had done a good job and the dominant policy discourse suggested that the Convention text should be kept as much as possible (see e.g. *Frankfurter Allgemeine Zeitung*, 16/6 and 18/6 2003; *The Guardian*, 14/3/03). Thirdly, and closely related, due to the substantial bonding strength of the CCP provisions and the Draft Constitutional Treaty more generally, the Convention text on most (non-institutional) issues, including external trade policy, became the basis for further negotiations at the IGC. In a way, it turned into the default setting, which is difficult to change at an IGC. As a result, the IGC 2003-04 hardly reopened debate on the CCP.

What has been presented above as socialisation, deliberation and learning is difficult to further substantiate within given space limitations. Suffice to state that unstructured interviews (in which interviewees were *not* prodded) structured interviews (in which different characterisations of the Convention process were presented to interviewees), scrutiny of argumentations in different contexts to assess the truthfulness of speech acts, analyses concerning the acceptance of 'bad' arguments by supposedly powerful actors compared with the impact of 'good' arguments and investigation regarding the degree of hierarchy used to

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<sup>34</sup> 'Hard' evidence concerning this type of learning is sparse. One strand of evidence points to the altered attitudes of some French nationals in the Convention regarding the value of having an exclusive Community competence on external trade. Some individuals, for example, began to increasingly argue the rationales which they had earlier contested, which is one indicator for more reflexive learning processes (interviews, June 2004).

<sup>35</sup> Interestingly in this respect, on the issue of institutions quite a number of important decisions were taken in the Praesidium, while many papers of the Convention Secretariat were not distributed and while there was less debate in the Plenary. At the end, representatives of some of the smaller Member States who had also not been represented in the Praesidium did not really concur in the decision, also because they did not entirely feel part of

make an argument have so far broadly underlined the considerable relevance of deliberative processes concerning the Convention negotiations on external trade (for a fuller account: Niemann, 2005 forthcoming).<sup>36</sup>

### **The role of organised interests**

Although most interest groups which took up the CCP issue during the IGC 1996-97 came out in favour of extending the scope of Article 113 (European Roundtable of Industrialists, 1997; UNICE, 1996; Eurochambres, 1996) on the whole there was little effective pressure exerted by organised interest. Incentive-based pro-integrative learning processes and adaptation on the part of interest groups have been limited. Despite the fact that external trade policy is one of the most integrated of EU policies, services, IPRs and investment have not been fully integrated, be it internally or externally. As one official pointed out, 'it should not be forgotten that services, etc. are relatively new commercial issues. Many companies have not fully realised the enormous potential benefits from external trade liberalisation in those areas and the necessity for Europe to speak with one voice' (interview, 1997). That there was a lack of awareness on the part of organised interests has also been suggested by Krenzler (1996, pp. 5-6).

There is another related explanation for the lack of attention and involvement on the part of interest groups in the new trade issues. As Ipsen (1994, p. 722) has pointed out, the lack of transparency and complexity of the GATT system goes some way to explain why producers, consumers, exporters and importers did not know the GATT rules, even those which favoured them, and also explains why there was no effective pressure group formation. This is all the more true in terms of the new multilateral trade regime, set up after the Uruguay Round with the adoption of the GATS and the TRIPS, which are both subject to complex rules, as well as the establishment of the WTO, which has brought services and IPRs under the complicated rules and procedures governing the settlement of disputes. Finally, groups such as the European Roundtable of Industrialists (ERT) do not invest as much energy in issues which are rather sectoral and fragmented. As one observer pointed out, 'although trade

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the decision. As a result, these smaller Member States were also the first to demand a reopening of the institutional package during the IGC.

<sup>36</sup> For accounts of potential indicators capturing such processes, see for example Checkel (2001), Risse (2000), Niemann (2004).

in services and the commercial aspects of intellectual property rights are by no means peanuts, this does not compare in importance and scale, to the 1992 project' (interview, 1999).

It is also worth pointing out that European umbrella organisations came out more in favour of extending the Community's competence than most of their constituent members (Brussels, 1999). Moreover, some interest groups on the national level, such as the *Bund Deutscher Industrie* and the *Deutscher Industrie- und Handelstag* were divided in terms of their support for a modernisation of Article 113. While the European departments were clearly in favour, as they saw the benefits of speaking with a single voice, the departments for general external trade questions were more cautious (interview, 1997). As pointed out earlier, greater 'proximity' and involvement with the Brussels arena seems to induce pro-European learning processes.

At the Intergovernmental Conference 2000, the impact of organised interests remained modest, perhaps even slightly below the level of the Amsterdam IGC. Although there was support for the extension of external trade policy among some segments of organised business interests (American Chamber of Commerce, 2000; UNICE, 2000), some important players remained rather uninvolved. The ERT, though generally in favour of extending Community competencies in the Common Commercial Policy, invested little political energy in the issue (Corporate Europe Observer, 2000). This lack of involvement has been explained by the fact that the CCP was fairly hidden within the broader QMV agenda. Moreover, there is still a certain lack of knowledge and awareness surrounding the CCP competence issue on the part of organised interest. One official has pointed out that 'industry is not bothered so much, if the Commission negotiates under shared competence or exclusive competence, as long as the deals are struck. So far things have worked fairly well under shared competence. Perhaps some major failure is needed to wake up industry' (interview, 2000).

The integrative role played by interest groups augmented during the Convention, but did not exceed a (moderate to) medium level of pressure, although the involvement of organised interests and civil society as a whole has never been greater during any Treaty revision exercise. This was achieved through several means: a forum, which allowed non-governmental organisations and interests to provide written contributions to the Convention; the establishment of eight contact groups to allow for an exchange of views with specific sectors of society; finally, public hearings, which gave civil society and organised interests a chance to address the Convention Plenary directly. Moreover, the European Social Partners

had one observer each in the Convention. Some members of the Convention also seem to have been rather positive concerning the chances of organised interests and civil society to influence the discussions in the Convention (cf. Maurer, 2003, p. 133). Eventually, UNICE (2002), the ERT (2002) and few national associations, such as the *Bundesverband der Deutschen Industrie* and the *Bundesverband der Deutschen Arbeitgeberverbände* (cf. BDI and BDA, 2001), submitted written contributions to the Convention in which they expressed their support for a further extension of Article 133. Overall, there seems to have been a slight increase in their activity from previous Treaty revisions. However, the level of organised industry's activism was not enormous and their role was not viewed as decisive on external trade policy by anyone involved in the Convention or subsequent IGC. Their contributions had the most impact during the first months of the Convention when members were still in the process of making up their minds. However, papers and statements of organised interests 'were merely few out of many different inputs' (interview, 2002). Some Commission officials have interpreted this overall trend as the results of certain learning processes on the part of industry concerning the benefits of greater integration of non-goods trade issues into the CCP, with yet further scope for increasing their awareness (interview, 2004).

Counter to the positions taken by business interest groups, the post-Nice process saw, for the first time, a noticeable input from anti-globalisation movements and NGOs, opposing the extension of Community competence in external trade policy. They spoke out against further Community competencies because of the lack of democratic legitimacy in this area and the danger of creating a "bosses' Europe". However, they generally supported an increased role of the European Parliament (cf. Libertarians Against Nice, 2002; Article 133 Information Group, 2002). The intensity and impact of their campaign should not be exaggerated (interview, 2004). By generally supporting the Draft Constitutional Treaty, both business groups (e.g. Eurochambres, 2003) and civil society (e.g. Act4Europe, 2003) contributed to reinforcing the bonding strength of the Convention text and thus also to a far reaching overall outcome, including external trade policy results.

### **The role of supranational institutions**

During the 1996-97 IGC the role of supranational institutions provided little integrative impetus. The Commission, to begin with, did not manage to assert itself on the Article 113/133 question during the IGC. This was due to several factors. Firstly, once a number of

Member States had become generally suspicious of the Commission, the latter's possibility of influencing the important debate on the scope of the CCP had greatly diminished. By having overplayed its hand prior to the IGC, the Commission faced an uphill struggle during the Conference. Secondly, one of the general strengths of the Commission – its ability to forge internal cohesion (cf. Nugent, 1995) – could not be played out. DG I, the Commission IGC Task Force, Commissioner Brittan and his cabinet, and the Commission's legal service failed to unite their energies in pursuit of achieving an extension of external trade competences. Apart from DG I, the other Commission fractions did not whole-heartedly push the issue in the IGC process (interviews, 1997, 1999; also cf. Niemann, 1995 forthcoming). Thirdly, the Commission held on to its demands for too long, and thus did not manage to avoid the 'shopping list' approach of the Dutch Presidency. Several interviewees have argued that the Commission could have avoided this by tabling its own compromise proposal (also cf. Commission, 1997). Fourthly, the Commission negotiator, Marcelino Oreja, had only minimal interest in, and little understanding of, the issue and his performance on the Article 113 dossier was judged as rather poor (interview, 1999). The Commission's quest was not made easier by the fact that there was no support on the question by one of the big Member States, while the backing by the EP and the Brussels interest group community was limited.

The role played by the European Court of Justice in the run-up to the IGC was detrimental to the course of extending Article 113 at the Intergovernmental Conference 1996-97. In its ruling 1/94 the Court showed that it had not endorsed the position of bringing services and IPRs within the scope of the Common Commercial Policy. It could be argued that due to the 1/94 ruling the Commission's wish for an extension of Article 113 lacked critical legal endorsement by the very institution that had supported a dynamic-integrationist interpretation of Article 113 and EC law in general (cf. Pescatore, 1979; Emiliou, 1996). If even a generally activist ECJ did not want to extend the Community's competencies to include all modes of services and IPRs, why would the Member States take this decision? This, at least, was the reasoning of some national officials. The Court's ruling in 1/94 provided the more reluctant Member States with a strong argument, 'a good shield behind which they could hide'. France, for example, repeatedly said that it wished to stress the importance it attached to the 1/94 ruling (interview, 1998).

The role of Presidency is particularly important in the IGC context. The various Presidencies did not help much in the Commission's quest for an extension of the CCP. Discussions on the topic started under the Italian Presidency. Italy wasted little political energy on the issue and was also not particularly progressive in terms of its substantive

approach (cf. Council, 1996b; Italian Presidency, 1996). Although the Irish did not devote significantly greater attention to the issue than the Italians, they were generally supportive of extending Article 113 which was reflected in several Presidency notes and in its draft Treaty (Irish Presidency, 1996d; Council, 1996c). The Dutch Presidency was less supportive than the Irish. In its April 1997 text, it proposed QMV and external representation by the Commission acting as the sole negotiator, but it also drew up a protocol of exceptions and then wrote ‘...’ which was regarded by delegations (and functional ministries) as an invitation for tabling further derogations and eventually turned the protocol into a ‘shopping list’ (interview, 1999; cf. Dutch Presidency, 1997f). Although there had been underlying ‘protectionist’ tendencies by ministries in most Member States throughout the IGC, these were now presented with a concrete outlet. Hence, the Dutch Presidency made a considerable misjudgement by introducing the ‘shopping-list’ approach, as other options seem to have been available. This approach eventually led to the abandoning of discussions on a permanent extension of Article 113 because the proposed text on Article 113 that was ‘too laborious and draught with exceptions [and] a number of participants thought that the value added [...] was doubtful’ (European Policy Centre, 1997b).

The European Parliament was lukewarm concerning the Commission’s quest for an extension of its competencies under Article 113. It was somewhat critical because the Commission proposals at the time did not (explicitly) foresee greater EP involvement. Parliamentary resolutions on the IGC were almost silent on the topic.<sup>37</sup> In its most important contribution, the Dury/Maji-Weggen IGC Resolution (EP, 1996a), the EP did not mention the extension of Article 113 as an explicit aim. The fact that the EP was not outrightly supportive may have taken some legitimacy away from the Commission proposal. On the other hand, Parliament was very explicit about its own institutional ambitions. It sought the introduction of co-decision for Article 113 and to extend assent to all international agreements (EP, 1996a) and pursued a *quid pro quo* strategy, making its support for the Commission conditional on having its own demands supported by the Commission. The result was that both institutions did not end up fully supporting each other (interview, 1999).

As for the IGC 2000, overall the role played by supranational institutions was slightly augmented. The Commission’s assertion and impact on the CCP debate was mixed, although it was (somewhat) more effective on this issue than at Amsterdam. The Commission’s ability to influence the debate was hampered by the prevailing lack of trust by Member States,

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<sup>37</sup> With the exception of one line in the Martin-Bourlanges Resolution (EP, 1995b, p.7.)

stemming from the UR. Although overall this lack of trust had diminished with the departure of Sir Leon Brittan as Trade Commissioner, some delegations remained suspicious of the Commission in terms of a strict abidance of its mandate and a fair representation of Member States' views at international trade negotiations. New Trade Commissioner Lamy's (alleged) exceedance of his mandate at the Seattle Ministerial Conference by accepting the setting up of a biotechnology working group was, therefore, gist on some Member States' mill (interview, 2004). However, the Commission managed to establish more cohesion on trade policy as compared to the Amsterdam IGC. Lamy and his cabinet, DG Trade, the Legal Service and the IGC Task Force all pulled in the same direction and managed to speak with one voice. In addition, at the Nice summit the Finnish delegation and the Commission made sure that QMV in external trade policy was not completely scrapped. According to some observers, without their interventions at the summit, the outcome 'would have probably been still worse, or even remained at the Amsterdam provision.' Eventually, it was Commissioner Lamy, Finnish Permanent Representative Satuli and the Director-General of the Council Legal Service, Piris, who worked out the final text at Nice (interview, 2004, also cf. Gray and Stubb, 2001p. 21).

While the Portuguese Presidency fulfilled its role as an honest broker and furtherer of common interests, the French Presidency failed in that respect. The latter can be criticised on several accounts. Unlike the Presidency's expected role, the French did not take an ambitious (or at least neutral) approach on the issue and failed to modify its own national interest in the search for a far-reaching solution in the 'European interest' (or at least for the sake of a mutually acceptable compromise). Instead, in the last stages of the IGC, the French Presidency insisted on the preservation of unanimity in several sectors, above all cultural services. This was, of course, rather inviting for other delegations to oppose the extension of QMV in other aspects and areas of the CCP (cf. Lequesne, 2001). The French Presidency can also be criticised for a lack of leadership on external trade policy. It failed to gradually narrow down the debate towards one option that can be decided upon (see Maurer 2001b, p. 138). During the Nice summit there were still at least three different options on the table, which substantially inhibited agreement.

The European Parliament was more supportive of the extension of Article 133 than in the Amsterdam IGC. The EP's stance basically mirrored that of the Commission on the CCP and augmenting its role in trade policy became one of its more important objectives. The role of Parliament had further augmented from the last IGC. This time the two EP Representatives, Brok and Tsatsos, were not only allowed to exchange views with IGC Representatives before official meetings, but were allowed to attend the Representatives Group as observers. It has

been pointed out that the presence at the Representatives' negotiating table provided more ample opportunity to 'remind Member States that trade is the only policy area where Parliament was not even required to be consulted', but overall Parliament's impact on the debate has been judged as limited (interviews, 2003, 2004).

During the Convention the role of supranational institutions was further enhanced. As far as the Commission is concerned, its influence on external trade policy matters was greater than during the Amsterdam and Nice Treaty revisions. Despite the fact that it was represented only by two Commissioners – though both were also part of the Praesidium – the Commission played a leading role during the Convention (Goulard, 2003, p. 381). This is certainly the case for the CCP. Perhaps, most importantly, as pointed out above, the deliberative decision style in the Convention meant that the well-founded arguments of the Commission – for example on the changing trade agenda – were, in contrast to most IGC negotiations, listened to and reflected upon, and that they finally largely prevailed. As one Commission official put it, 'as opposed to the last IGCs, people at the Convention were eager to really discuss the pros and cons of more Community competence. [In this kind of environment,] we could finally influence the debate because the best arguments made the biggest impact' (interview, 2004). Other factors further contributed to the Commission's augmented role in the last Treaty revision. As during the Nice IGC, cohesion within the Commission was very considerable, with the two Commissioners and their cabinets, DG Trade and the Task Force all pulling into the same direction. Furthermore, the Commission had invested a lot of attention and political capital in the IGC and especially in the Convention. The Commission Task Force was stocked up to twelve officials. Contacts were made and cultivated with important, often like-minded, actors. During the Convention these included particularly MEPs (leading to mutual support on the issue) and Jean-Luc Dehaene who chaired the Working Group on External Action and also external relations issues in the Praesidium, and the German and Dutch delegations during the IGC. It also helped that the Commission had greater expertise in, and better overview of, the subject matter.

The European Parliament, and particularly its delegation to the Convention, managed to assert itself to a much greater extent than during previous Treaty revision negotiations. This way, the EP also contributed to the more ambitious outcome on the CCP. At the Convention, Parliament was influential for a number of reasons. Firstly, apart from the small Commission delegation, the 16 representatives from the EP formed the most coherent and the best

organised fraction of the Convention.<sup>38</sup> This is largely due to the fact that EP Convention members already possessed institutionalised and functioning working structures to prepare for meetings in the framework of the Convention (Maurer 2003b, p. 137). As a result, amendments by one EP member were often backed by more than ten MEPs. Secondly, representatives of the EP were, apart from the Commission representatives (on some issues), the most active fraction in the Convention in terms of making proposals, participating in the debate and liaising with other Convention members (Duff 2003, p. 3). The mainstream of the EP delegation supported a far-reaching extension of Community competences accompanied by a substantial augmentation of Parliament's involvement. On the latter issue the EP was successful for several reasons: in an open and reasoned debate, Parliaments' arguments were bound to make an impact. External trade was the only policy area in which the European Parliament had hardly any role. Given the Laeken declaration's emphasis on legitimacy, the EP's claim became even more convincing. Moreover, in view of the fact that public health and consumer issues were increasingly discussed at WTO level, a role for the EP was all the more important. Also, despite its virtual exclusion from the making of the CCP, Parliament had shown an active interest in trade policy over many years and generally taken a constructive approach (Bender, 2002).

The role played by the various Presidencies had a moderate impact on the CCP outcome. The Belgian Presidency in the second half of 2001 was, along with the EP, the Commission and some Member States, a strong supporter of convening a Convention for the preparation of the IGC. The Belgian Presidency has particularly been credited for reaching agreement, despite considerable reservations, on a very broad mandate for the Convention (see Göler, 2002, p. 4). External trade policy as well as many other policy areas would have probably fallen prey to a more restricted mandate. The Italian and Dutch Presidencies that were held during the IGC 2003-04 had little impact on the external trade dossier that was hardly touched during the negotiations.

Due to the bonding strength of the Convention provision (and the dynamics behind the extension of Article 133), the IGC negotiating infrastructure which facilitates defending the status quo and hampers enforcing change, for once, worked in the Commission's (and EP's) favour. Any changes to the provisions on the table had to be supported by very substantial political impetus. This was successfully obstructed by the Commission which particularly cultivated relations with the governments of Germany and the Netherlands who became allies

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<sup>38</sup> However, two of its members, Bonde and Muscardini, did not effectively form part of this group, due to their rather 'eurosceptic' views.

in preventing the CCP from being watered down during the IGC. The EP – now endowed with speaking rights at all sessions – actively contributed to the Commission-led endeavour to prevent a thinning out of the CCP provisions (interview, 2004).

### **Countervailing forces**

So far we have looked at the potential dynamics of integration. On the other side of the equation we have countervailing pressures impacting on the decision-making process. Firstly, domestic constraints provide some useful insights for explaining the restrictive outcome of Amsterdam. The new trade issues do not stop at the borders, such as issues of tariffs and quotas, but extend behind borders into the state and thus concern national laws and domestic regulation (e.g. Smith and Woolcock, 1999, pp. 440-41). Hence, these issues also tend to be more politicised. To shed competences to the Community under these circumstances is more difficult. For example, during the IGC negotiation France asked for a derogation on cultural services in order to safeguard its cultural diversity policy behind which there is strong public support and strong lobbies. Domestic constraints in some goods issues also affected the debate on the extension of competence concerning the new trade issues. One way of avoiding QMV on agriculture or textiles – which are substantially politicised issues in France and Portugal respectively – in horizontal trade negotiations was to keep unanimity for the new trade issues, as one aspect decided by unanimity in horizontal trade negotiations leads to unanimity on the whole package.

Secondly, there is the more diffuse issue of sovereignty-consciousness which constituted another strong countervailing pressure during the IGC 1996-97. The intrusion of the new trade issues into domestic spheres close to the heart of national sovereignty had increased the sensitivity in terms of delegating powers to the Community on these issues. Meunier and Nicolaïdis (1999, pp. 485-87) have shown that several countries, including France and the UK, came out against an extension of Community competence, contrary to their national interest, and joined the ‘sovereignty camp’, largely on ideological grounds. Both France and the UK are very competitive internationally in terms of trade in commercial services and have a positive trade balance in this sector. Their interest would have been 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. Also in the case of Denmark, the traditional ideological bias against an expansion of Community competence outweighed its traditional liberal stance (cf. Meunier

and Nicolaïdis, 1999). The phenomenon of bureaucratic politics is also relevant here as officials in national ministries became agents of sovereignty-consciousness. This ideological basis for opposing a progressive reform of Article 113 have been strongly spurred by the distrust *vis-à-vis* the Commission. Moreover, sovereignty-consciousness has been further legitimated and reinforced by the ECJ opinion in 1/94 and the introduction of the shopping-list approach which provided an outlet for bureaucratic pressures.

Finally, there is the diffuse pressure of the general anti-integrationist climate<sup>39</sup> which arose in the early to mid-1990s and is reflected in less pro-European popular opinions and more sceptical media coverage of the EU in some countries. Part of this anti-integrationist climate has been a closer scrutiny of the competencies of the Commission, which for many had become an aloof, high-handed, and politically unaccountable institution (Papademetriou, 1996, p. 63). In view of this predominant climate, it was always going to be difficult for the Commission to upgrade its competencies on external trade during the IGC 1996-97. All in all, countervailing pressures manifested as (very) substantial during the Amsterdam IGC.

Inertia forces remained at a similarly high level during the IGC 2000. Sovereignty-consciousness continued to feature importantly: France, the UK and Denmark were little inclined to delegate competence to the Commission for ideological reasons. Sovereignty-consciousness was partly, but to a lesser extent than during the previous IGC, reinforced by some remaining lack of trust in the Commission, which also raised further doubts concerning delegating powers to the Commission in France but also in countries like Portugal and Greece. Sovereignty-consciousness sparked by some Commission distrust can, to a large extent, explain provisions on unanimity for areas where this decision-mode is required internally (to prevent potential Commission attempts to introduce liberalisation through the back door) and also partly the unanimity requirement for horizontal agreements with which some governments felt more 'at ease' (interviews, 2004). The insistence of France on the 'cultural exception' is partly illuminated by the specificity of French national identity, the perceived threat to this identity and the importance of culture therein. In terms of French perceptions of national identity, no loss of sovereignty in such sensitive areas as culture could be accepted (cf. e.g. *Le Monde*, 31/10/2000, p. 31).

On specific trade policy issues, bureaucratic politics played an important role. For example, it has been reported that officials at the French Ministry of Economy, Finance and

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<sup>39</sup> It is striking for example that the support of EU/EC membership after 1994 has on average been about 15% lower than from the mid 1980s until the early 1990s. Compare Eurobarometer No. 25-35 (spring 1986 until spring 1991) with Eurobarometers No. 41-61 (spring 1994 until spring 2004).

Industry blocked the issue of investment to come under the scope of Article 133. Moreover, officials from Dutch, UK, Danish, Greek, German and Austrian national transport ministries are said to have been very reluctant to introduce QMV for trade in transport services, mainly in order to avoid having to cede competence to their respective economic ministries. As for the Netherlands and the UK, the perceived competitive advantages of these countries in air transport services under the current regime played an even bigger role, prompting a defence of their constituents' interests (interview, 2004).

This brings us to the role of domestic constraints. These have played an important role here as trade negotiations were increasingly coming to concern matters traditionally seen as part of domestic policy (Rollo and Holmes, 2001). For example, the unfortunate, cautious as well as defensive role by the French Presidency on the CCP, particularly on cultural services can be further explicated by domestic constraints. Within the context of cohabitation and looming elections in 2002, neither Chirac, nor Jospin could allow to be viewed as giving in on such an important issue as cultural diversity (interview, 2004; cf Lequesne, 2001). Hence, their 'competition' significantly contributed to such minimalist French/Presidency position, especially on trade in cultural services. Domestic constraints further mattered on the latter issue, as many of the about 4.5 million jobs in the French cultural sectors would be endangered through WTO level liberalisation. The issue of culture also became such a strong countervailing pressure because of diversity, or more precisely due to French distinctness. Distinct French national identity and particular structures of its economy did not allow France to give up its veto in this domain. In addition, the importance of the agricultural sector in France, backed by strong lobbies, adds to the sovereignty-consciousness explanation on the unanimity requirement for horizontal agreements (see above). Finally, the integrationist climate remained at a similarly low level as during the previous Treaty revision.

During the Convention phase countervailing pressures were much weaker than during an IGC. There are several reasons for this: firstly, due to the absence of inter-departmental coordination, representatives of national governments were not curbed by the influence of various functional ministries. Bureaucrats, who have been identified as important agents of sovereignty consciousness and also constitute a principal source of domestic constraints, were thus largely shut out from the process. Secondly, although the members arrived at the Convention with certain domestic or institutional socialisations and frames guiding their behaviour, all in all, they were able to negotiate freely without significant restrictions (cf. Maurer, 2003, pp. 134-37). As a result, domestic factors – while constituting important

sources of information and feedback mechanisms – were far less constraining for members of the Convention than for negotiators in an IGC. Regarding external trade policy, the strongest countervailing pressures during the Convention were domestic constraints faced by (and through) French members on the issue of cultural diversity. This pressure mounted when the draft texts of April, May and June 2003 did not provide for a French cultural exception (Le Monde, 16/05/2003). Largely as a result of this pressure, the Praesidium decided after the Thessaloniki European Council to include the cultural exception, as otherwise it would have been very difficult for the French government to support the Draft Constitutional Treaty.

The greatly reduced countervailing pressures also had an impact, beyond the Convention, on the entire Treaty revision exercise. Due to the considerable bonding strength of the Convention described above, the results of the Convention had a much greater significance than normal IGC pre-negotiations or preparation exercises. When the IGC formally began in October 2003, countervailing pressures, for example through national ministries, gathered greater strength. As far as the CCP is concerned, these had little chance to register as the Convention text on Article 133 was, by and large, the result of a strong and genuine consensus, of which either Foreign Ministers (themselves) or representatives of Heads of State and Government had been part. Given this situation, for countervailing forces to make an impact on the provisions, they had to be stronger than during ‘normal’ IGC negotiations. On the whole, the countervailing forces which impacted on the CCP were weaker than during former IGCs. Distrust of the Commission had further waned. This was partly because more than ten years had passed since the most controversial events during the UR which had given rise to this distrust. In addition, pressure from functional departments endangering the CCP compromise was less intense than during previous Treaty revisions. This is to a certain extent attributable to the fact that the IGC was largely conducted on the political level and partly because of its relative short duration, as a result of which it was more difficult for departments to have their voices heard in the formation of national positions.

The strongest countervailing pressure during the IGC on the CCP issue came from the Swedish and Finnish delegations. They sought (and obtained) a narrow exception to qualified QMV in the field of trade in social, education and health services. The two delegations argued that their domestic high-quality provisions concerning these services could be prejudiced by an international agreement in these areas. The Swedish and Finnish reservations to QMV in these domains can be explained by a mix of sovereignty consciousness and domestic constraints and diversities. The issue of trade in ‘public’ services was raised by various national Parliamentarians (from various parties) in the Finnish Parliament during the

Convention and IGC and thus effectively tied the hands of the government, which of course needs to go through Parliament to ratify the Treaty. The Swedish situation was similar. The issue of social, education and health services became part of the Swedish IGC paper and was approved by the Swedish Parliament. In addition, the (ideological and sovereignty conscious) maxim that public services should remain in state control was widely accepted in the Swedish government (less so by the Conservative opposition). In addition, the new Finnish government led by the Centre Party was perhaps less Europhile than the Lipponen government, certainly with regard to the issue of external trade competences, and thus took a more sovereignty conscious approach (interview, 2005). The countervailing forces that threatened the successful conclusion of the IGC as a whole during the autumn and winter 2003/2004 have been analysed and described elsewhere (Niemann, 2005 forthcoming).

## CONCLUSION

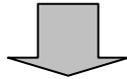
All in all, my framework has provided a robust account for an analysis of the past three Treaty revisions on the reform of the Common Commercial Policy. The hypothesised pressures can aptly explain variation in outcomes across cases, including why a genuine extension of competencies occurred at the last Treaty revision, after prior IGCs had largely been unsuccessful in that respect.

I argue that the failure to modernise Article 113 at the Amsterdam IGC can be explained here as the result of overall weak dynamics combined with strong countervailing pressures. Exogenous pressures, especially those stemming from the changing trade agenda that increasingly included the newer trade issues, constituted the strongest dynamic. However, these were not sufficiently convincing to a minority of reluctant Member States. Functional arguments stemming from the internal market were less pressing and had been rejected by the Court in its opinion 1/94. In addition, the role of organised interests never really caught on to the idea of widening the scope of external trade policy, while socialisation and learning processes were offset by several factors. Moreover, EU institutions barely fostered the issue, and at times even hindered an extension of the CCP. On the side of countervailing factors, there was above all the issue of sovereignty-consciousness, complemented by domestic constraints due to increasing politicisation of the new trade issues and a diffuse anti-integrationist climate.

The IGC 2000 negotiations were generally characterised by stronger dynamics. Exogenous pressures were as strong as at Amsterdam, if not stronger, due to the further development of the world trade agenda. Functional pressures stemming from the internal market, and from enlargement, had also become more substantial. The assertion of supranational institutions (e.g. through the Commission) had also grown slightly. On the other hand, organised interests as well as socialisation and learning processes among governmental elites remained at about the same low/modest level as during the IGC 1996-97. I argue that, in combination, these dynamics can explain the extension of QMV. These pressures were countered by a number of inertia forces that were of similar strength as during the Amsterdam IGC. While suspicion in the Commission – an important factor at the IGC 1996-97 – had decreased, the politicisation of some issues in the domestic context had somewhat grown.

During the last Treaty revision integrational dynamics were considerably stronger. Exogenous pressures from a changing world economy and an evolving world trade agenda, as well as functional rationales, particularly through enlargement, provided important structural pressures. These two structural pressures could register with actors, and unfold their strengths more easily because of stronger socialisation, deliberation and learning processes. Such processes, as a result of which actors concurred with the results, can also largely explain the bonding strength of the Convention text. These dynamics were further reinforced by the stronger role played by organised interests and, more importantly, supranational institutions. Largely due to the Convention framework, inertia forces were (substantially) weaker than at the Amsterdam and Nice IGCs. This facilitated the stronger ignition and dissemination of integrational dynamics.

**Table 1: Summary of hypothesised pressures and outcomes across (sub-)cases**

(Sub-)case	CCP 1996-97	CCP 2000	CCP 2002-04
<b>Pressures</b>			
<b>Functional pressures</b>	Low	Medium	Medium to High
<b>Exogenous pressures</b>	Medium to High	High	High
<b>Socialisation, deliberation and learning</b>	Low	Low	Medium to High
<b>The role of organised interests</b>	Low	Low	Low to Medium
<b>The role of supranational institutions</b>	Low	(Low to) Medium	(Medium to) High
<b>Dynamics (combined)</b>	Weak 	Medium 	Strong 
<b>Countervailing forces (combined)</b>	 Strong	 Strong	 Weak to Medium
<b>Outcome (in terms of level/scope)</b>	Low	Low to Medium	(Medium to) High

Arguably, the framework, especially through its dialectical nature (combining both dynamics and countervailing factors) enables us to account for more specific aspects of decision outcomes. For example, during the last Treaty revision, the strong overall dynamics combined with only moderate to medium countervailing forces, can explain the extension of Community competence. The most important of these countervailing forces were the relatively strong domestic constraints and elements of sovereignty consciousness in France (concerning cultural diversity) and in Sweden and Finland (regarding social, health and educational services), The Treaty thus contained only few exceptions, including the ‘derogations’ for France as well as Sweden and Finland.

My empirical analysis has indicated that dynamics and countervailing forces can not always be clearly separated from each other. They impact on one another during the (decision-making) interaction and thus already restrain each others' impact. For example, socialisation, deliberation and learning processes may be reduced by countervailing forces such as domestic constraints (and sovereignty-consciousness). On the other hand, socialisation and learning processes also, to some extent, soften up sovereignty-consciousness and also curtail domestic constraints and diversities, since national elites are increasingly Europeanised and the EU (as well as interaction on the European level) contributes to the construction of their preferences and identities. On a general level one can also say that different structural pressures inform and constitute decision-makers' interests and attitudes, such as endogenous-functional, exogenous and domestic structures, which suggests that dynamics and countervailing forces check and balance each other on many levels. However, these processes are notoriously difficult to capture empirically.

Closely related to the previous point, pressures that have been hypothesised as dynamics may (under certain conditions) turn into countervailing forces and vice versa. For example, during the IGC 1996-97 we have witnessed that the anticipation of functional pressures may be detrimental in the search for far-reaching solutions. In addition, during the same (sub)-case the roles of the Commission and the Council Presidency, which are usually viewed here as important driving forces, ended up nurturing bureaucratic countervailing pressures due to the distrust of the Commission and the clumsy (e.g. shopping-list) approach of the Dutch Presidency. Elsewhere, I have described how inertia forces can turn into dynamics, for example through the convergence of domestic preferences/constraints (cf. Niemann, 2005 forthcoming).

After having underlined the overall plausibility of the framework – while acknowledging certain conceptual simplifications – I will now briefly look at the causal relevance of individual hypothesised pressures by making use of a comparative analysis.<sup>40</sup> Firstly, we can identify and isolate the causal processes that lead to different outcomes (Ragin, 1987, p. 47). One way of advancing this method is to examine whether hypothesised pressures co-vary with outcomes. Changing levels of progressiveness in terms of outcome would corroborate those dynamics changing as hypothesised, and challenge those remaining constant or changing in the direction opposite to the one hypothesised. In other words, higher values on the decision outcome (or on the overall dynamics) would confirm those dynamics that also display higher scores, and challenge the causal relevance of those decreasing or remaining constant. By

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<sup>40</sup> A comparative analysis of six independent variables across three cases can of course under most circumstances generate only indeterminate results. While this is acknowledged here, it is also worth pointing out that a broader analysis with seven cases has brought about very similar results (Niemann, 2005 forthcoming).

including countervailing pressures in the revised neofunctionalist framework, an additional layer of complexity has been introduced: dynamics may not co-vary with outcomes in a linear fashion due to strong inertia forces. Hence, although the rule still applies, that increased measures of causally relevant dynamics should lead to higher scores on the dependent variable, countervailing forces may lessen or dilute dynamics. Therefore, as a first step, it was ascertained, if individual dynamics co-vary with the values of the combined dynamics (Table 1: third row from bottom). And as a second step, I investigated whether individual dynamics co-varied with the overall outcome of the sub-case in question, while taking the impact of countervailing forces into consideration. Through closer examination of Table 1 we can see that functional pressures and the role of supranational institutions, and to a somewhat lesser extent, socialisation, deliberation and learning processes as well as the role of organised interests, co-vary with the scores determined for the combined dynamics. When looking at final outcomes – while taking account of countervailing forces – this trend is also confirmed.

The causal significance of individual pressures can be ascertained particularly well in those cases where all but a few hypothesised causal variables are constant. Here, it can be seen whether the remaining pressures changed in the direction of the combined dynamics/overall outcome. Unfortunately, the distribution of variables across my cases does not give much scope for such an analysis. The first two CCP sub-cases (CCP 1996-97 and CCP 2000) allow for some limited use of this technique. In both units socialisation, deliberation and learning processes as well as the role of organised interests have been ranked as ‘low’. Hence, we have ‘isolated’ functional and exogenous pressures as well as the role of supranational institutions to account for the change from a ‘weak’ to a ‘medium’ score for the combined dynamics. The three pressures do, in fact, display higher measures on the second case, which substantiates their relevance.

Given my theoretical framework and the resulting isolation of countervailing forces as a variable, the most conclusive comparative analysis can be made in terms of these countervailing forces. Their causal significance can be measured directly when compared with outcomes in consideration of the values taken by the combined dynamics. In the cases CCP 1996-97 and CCP 2000, ‘strong’ countervailing forces led to ‘minimal’ or ‘minimal to medium’ decision outcomes, while ‘weak to medium’ countervailing forces are accompanied by a ‘medium to high’ decision outcome (CCP 2002-04). The analysis of these cases becomes even more conclusive when the combined dynamics are taken into account. It indicates that countervailing forces tend to tame dynamics, depending on the values taken by inertia forces (and dynamics) (cf. Table 1).

Exogenous pressure merits a brief discussion. In the CCP 1996-97 sub-case ‘medium to high’ scores only induced rather modest overall dynamics and the case is also characterised by a

minimal outcome, which may challenge the causal relevance of this pressure. Regarding the case in question, other more agency-related pressures were, however, rather weak. As mentioned earlier, structural pressures can only really make an impact in combination with (strong) agency. Hence, we can conclude that the integrational logic tends to increase most when structural *and* more actor-based dynamics pressures are (substantially) activated.

Instead of theorising about the integration project and process as a whole, this framework seeks to explain particular decision-making instances or processes. However, my findings may allow for some more general informed guesses, and suggest that the integration process will further continue, both in terms of level and scope of integration. Inertia forces are likely – at least from time to time – to be insufficiently strong to counterbalance the integrational dynamics. And the IGC 2000 case suggests that even strong countervailing forces may not completely tame the dynamics of integration.

The tentativeness of parts of the preceding analysis (e.g. on socialisation and learning processes or the specification of conditions for occurrence and impact of pressures), the possibility of greater specification regarding the causal relevance of hypothesised pressures (e.g. which ones are merely *conducive* and which ones *necessary*) and the existence of further potential shortcomings, suggest that there is substantial ground for further research emanating from this study.

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