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**Conceptualising Common Commercial Policy Treaty revision:
explaining stagnancy and dynamics
from the Amsterdam IGC to the Treaty of Lisbon**

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Abstract: This article seeks to explain the varying, and sometimes intriguing, outcomes of the past three revisions of the Treaty concerning the Community’s Common Commercial Policy (CCP). The analysis particularly focuses on the development of competence and decision rules, i.e. the process of (further) supranationalisation, of the CCP. Subjecting the external trade policy outcomes of the Treaties of Amsterdam, Nice and Lisbon to causal analysis, the paper argues that stagnancy and change across cases can be explained by four factors: (i) functional pressures; (ii) the role of supranational institutions; (iii) socialisation, deliberation and learning processes; and (iv) countervailing forces.

Keywords: Amsterdam Treaty; competences; European Commission; European Court of Justice; European Parliament; institutions; integration theory; international trade; Lisbon Treaty; Nice Treaty; neo-functionalism; socialization; sovereignty; trade policy; Treaty reform

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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 back¹) 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 have the negotiations leading to the Lisbon Treaty managed to achieve something like a break-through concerning the extension of competence to the Community in contested areas, such as services, trade-related aspects of intellectual property and investment, which the Maastricht, Amsterdam and (to a lesser degree) Nice IGCs failed to bring about?

To account for these different outcomes and to attempt an explanation of change in EU external trade Treaty revision more generally, I use a framework that draws on (i) functional pressures; (ii) the role of supranational institutions; (iii) socialisation, deliberation and learning processes; and (iv) countervailing forces. While most (of the few) accounts that have subjected CCP Treaty revision to (causal) analysis have tended to point to *exogenous*² pressures (usually related to the changing international trade agenda) as the main dynamics for change (e.g. Meunier and Nicolaïdis 1999; Nicolaïdis and Meunier 2002; Billiet 2006), my analysis suggests that the variation across IGC outcomes, including the recent increased supranationalisation of EU trade policy, cannot be sufficiently explained by exogenous dynamics. Instead, my findings suggest that we need to focus particularly on *endogenous* factors in order to account for different outcomes in past Treaty revisions.

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 both the dynamics and standstills of the European integration process (here especially in terms of further supranationalisation/ communitarisation) and certain segments of it.

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

² 'Exogenous' pressures/dynamics are here defined as the (integrative) dynamics originating outside the European integration process itself, while 'endogenous' pressures describe the (integrative) dynamics arising from within, or are closely related to, the European integration project, and its policies, politics and polity.

The paper proceeds as follows: in section one my theoretical framework is specified. Part two summarises the outcomes of the negotiations leading to the Treaties of Amsterdam, Nice and Lisbon. The third and central part of this paper seeks to explain these outcomes and examines the strength and relevance of the hypothesised factors. Finally, I draw some conclusions from my findings.

1. Analytical Framework and Operationalisation

The subsequent framework is not meant to constitute a full-fledged theory. It rather comprises building blocks that may be used for more formal theorising. The explanatory factors of the framework have been derived inductively from prior research (Niemann 1998; 2000; 2006). The subsequent pressures are intertwined in several ways and cannot always be neatly separated from each other. The first three factors (functional pressures; the role of supranational institutions; socialisation, deliberation and learning) are hypothesised as (forward-)dynamics due to their propensity for further collective action and supranationalisation, while the fourth factor (countervailing forces) goes against these logics.³ Integration is thus considered a *dialectical* process, subject to both dynamics *and* countervailing forces.

1.1. Functional pressures

Functional pressures come about when an original objective can be assured only by taking further integrative actions (Lindberg 1963: 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 polities and economies that it is difficult to isolate them from the rest (Haas 1958: 297, 383). Functional pressures thus encompass the various endogenous interdependencies, i.e. the tensions and contradictions 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 goals. Functional pressures constitute a structural component in the analytical framework. These pressures have a propensity for causing further integration, as intentional actors tend to be persuaded by the endogenous-functional tensions and contradictions. However, they do not ‘determine’ actors’ behaviour in any mechanical or

³ Although my framework strongly draws on neofunctionalist theory (e.g. Haas 1958; Lindberg 1963), it departs from this theoretical strand in several ways. How the framework relates to the original neofunctionalist approach and its later developments, its underlying assumptions and inter-paradigm debating points is discussed elsewhere (Niemann 2006). Hence, this article focuses primarily on the empirical insights that the framework – and its analytical components – may provide.

predictable fashion. Functional structures contain an important element of human agreement. In order to act on such structures, agents have to perceive them as credible and, to a certain degree, compelling.

Indicators and mechanisms for functional dynamics, i.e. the pressures for further action in order to assure an original goal, include the following: firstly, the basis for functional pressure is that there is in fact an original goal. The salience (and urgency) of this goal also, to a large extent, determines the strength of the functional requirement. Secondly, another basis is the existence of a functional interdependence between issue A (original objective) and issue B (where further action may potentially be required). Further integration in the area of A must have negative/significant consequences for issue area B and thus induce (more) collective action there. Thirdly, is further action in a particular issue area necessary to achieve the initial objective, or are there alternative solutions (i.e. in other areas)? If the original goal cannot be (adequately) reached by other means, the functional connection is likely to be a strong one. Finally, functional dynamics can unfold (much) more easily, if they are openly discussed and considered during negotiations. If all these mechanisms and aspects are present in the process, there is a strong likelihood that (further) supranationalisation occurs in area B (here the Common Commercial Policy).

1.2. The role of supranational institutions

There are several factors that underpin the plausibility of hypothesising supranational institutions as promoters of intensified integration. Firstly, institutions, once established, tend to take on a life of their own and are difficult to control by those who created them (Pierson 1996). Agent autonomy has been considered particularly pronounced with regard to the Court of Justice (Mattli and Slaughter 1998), but has also been expressed in the context of the Commission (Nugent 2001), the EU Presidency (Elgström 2003), and the European Parliament (Westlake 1994). Secondly, concerned with increasing their own powers, supranational institutions become agents of integration, because they are likely to benefit from the progression of this process. This has been demonstrated, above all concerning the Commission and the European Parliament, but also with regard to the ECJ (Burley and Mattli 1993). And lastly, institutional structures (of which supranational structures are a part) have an effect on how actors understand and form their interests and identities (Haas 1958).

As the most visible agent of integration, the *Commission* facilitates and pushes agreements on integrative outcomes in a number of ways. For example, it can act as a promotional broker by upgrading common interests, e.g. through facilitating package deals. In addition, it 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 (Nugent 1995, 2001).

Over the years, the *Council Presidency*⁴ 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 and peer group evaluation, to assume the role of honest and promotional broker (Elgström 2003; Tallberg 2004). During their Presidency, national officials tend to undergo rapid learning processes about the various national dimensions which induces a more ‘European thinking’ and facilitates ‘European compromises’ (Wurzel 1996: 272, 288).

In addition, the *European Parliament* (EP) has fought, and in many respects won, a battle to become, from being an unelected body with minor powers, an institution on an equal footing with the Council in the larger part of normal secondary legislation (Maurer 2003). It has clearly become another centre of close interest group attention (Bouwen 2004) and plays a critical, even if not wholly successful, role in the Union’s legitimization. Even at the IGC level its role has (significantly) increased. The EP 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). It has raised the awareness of subnational actors concerning the opportunities offered to them through the Community legal system by them a direct stake in Community law through the doctrine of direct effect. It can be argued that the Court seeks to promote its own authority by raising the visibility, effectiveness and scope of EC law. In addition, the ECJ has been singled out as an important agent of recognising and giving way to functional pressures. Moreover, it tends to upgrade common interest by justifying its decisions in light of the common interests of members as enshrined in the general objectives of the 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 (Burley and Mattli 1993; Mattli and Slaughter 1998).

Indicators for the role played by supranational institutions include the following: (1) supranational institutions’ level of interest and energy devoted to an issue (here fostering CCP reform), including their cultivation of relations with (national and other) decision-makers to get support for their endeavours; (2) the level of their internal cohesion (Nugent 1995); (3) their choice of an appropriate negotiating strategy; (4) supranational institutions’ background position at the beginning of negotiations, including their standing and level or trust enjoyed by other delegations; (5) the extent to which the negotiating environment provides them with an adequate stage for getting their points across; and (6) in terms of the Presidency, the willingness and ability to play the role of honest and promotional broker (Elgström 2003). The final (and most important) indicator focuses on the output, rather than the input dimension of the role played by supranational institutions. What is important here is the extent to which attitudes, interests or

⁴ Several authors have argued that the Presidency can be regarded as an institution on its own (cf. e.g. Schout 1998).

positions on the part of decision-makers have changed towards the approach taken by supranational institutions. Having identified such change, it still has to be ascertained, if it was induced by supranational institutions. This brings us back to the first seven indicators, but the causal connection between indicators 1-7 with that of preference change on the part of national decision-makers has to be substantiated through process tracing (see end of the section). A referent combining elements of these indicators would be the admittance on the part of national decision-makers and, alternatively, independent insiders involved in the negotiations (such as Council Secretariat officials) that national preferences and positions changed towards those favoured by supranational institutions because of the involvement and reasoning of the latter.⁵ Hence, it is anticipated here that a strong display of the first seven indicators/mechanisms should lead to a successful assertion of supranational institutions in the negotiations and (quite likely) to a change in position and/or preferences by other actors.

1.3. Socialisation, deliberation and learning processes

Socialisation, deliberation and learning processes that take place in the Community environment are hypothesised to facilitate cooperative decision-making as well as consensus formation and thus contribute to more integrative results. The gradual increase of working groups and committees on the European level has led to a complex system of bureaucratic interpenetration that brings thousands of national and EU civil servants in frequent contact with each other on a recurrent basis. This provides an important basis for such processes, due to the development of mutual trust and a certain *esprit de corps* among officials in Community forums. The underlying assumption is that the duration and intensity of interaction have a positive bearing on socialisation and learning processes (Lindberg 1963; Lewis 1998).

It is held here that not only the quantity, but also the *quality* of interaction constitutes a major factor regarding cooperative norm socialization and learning processes. We can distinguish between (1) incentive-based learning – the adaptation of strategies to reach basically unaltered and unquestioned goals – and (2) more deeply-rooted reflexive learning, i.e. changed behaviour as a result of challenged and scrutinized assumptions, values and objectives (Nye 1987: 380). The latter cannot be sufficiently explained through incentives/interests of egoistic actors (Checkel 2001). Furthermore, if we want to understand social behaviour and learning, we need to take language into greater consideration. It is through speech that actors make sense of the world and attribute meaning to their actions.

⁵ Ideally, this would be corroborated across several, and different types of, sources. In addition to the above, one can resort to counterfactual reasoning (Fearon 1991: 171ff) and ask whether a certain progressive outcome would have occurred, even if the Commission (or EP/Presidency) had not been involved.

Drawing on the notion of communicative action allows us to attain a more fundamental basis for reflexive learning and to integrate the role of communication more thoroughly. The concept of communicative action, as devised by Habermas (1981a,b), refers to the interaction of people whose actions are coordinated not via egocentric calculations of success but through acts of reaching understanding about valid behaviour. Participants are not primarily oriented to achieving their own individual success; they pursue their individual objectives under the condition that they can coordinate or harmonize their plans of action on the basis of shared definitions of the situation. 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.

Under 'communicative' behaviour the force of the better argument counts and actors attempt to convince each other (and are open to persuasion) with regard to these 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: 149). While agents bargain in strategic interaction, they *deliberate, reason, argue* and *persuade* in communicative action and may also undergo more profound learning processes. Rather than merely adapting the means to achieve basically unchanged goals, as in strategic action, they redefine their very priorities and preferences in validity-seeking processes aimed at reaching mutual understanding. However, strategic action and communicative action are only ideal types, and agents combine different (complementary) modes of action in their behaviour (cf. Risse 2000; Schimmelfennig 2001). 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 triggering socialization processes.

Socialization, deliberation and learning processes work as an interface between structure and agency. Functional, exogenous and domestic structures become part of decision-makers' norms and values throughout processes of socialization and learning. In addition, actors in their quest to arrive at the most 'valid' solution, 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.

The operationalisation of socialisation, deliberation and learning processes may appear (particularly) problematic from an extreme positivist viewpoint, as observation and 'measurement' of this factor are exceptionally difficult. While we have to rely to a greater extent (compared with the other hypothesised pressures) on context, understanding and interpretation, we can still establish some signposts for empirical research. Firstly, the object of investigation has been narrowed down. While it is conceivable to investigate this factor broadly in terms of various interaction patterns and forums, this study has focused on 'negotiators' in a very limited number of forums, chiefly the IGC Representatives Group(s) and the Convention. Secondly, the level of enmeshment among national officials, for example, through their involvement in a certain negotiating group, or in the Brussels

framework more generally, can be ascertained. The frequency of formal and informal contact, as well as the duration of interaction can serve as pointers here. Thirdly, as far as the quality, as opposed to the quantity of interaction, is concerned, there are several indicators for deliberation as a policy style. For example, arguments in deliberation mode are not based on hierarchy or authority. Pointing to status or rank to make an argument, does not qualify as deliberative discourse. In addition, argumentative consistency is a good marker of deliberation. Actors that change their arguments depending on the audience probably engage in rhetorical behaviour. Moreover, characterisations of the interaction process in terms of reasoning and arguing by interviewees who have not been prodded along with structured interviews proposing different characterisations of the policy process can substantiate deliberative processes (cf. Risse 2000; Niemann 2004). Finally, there is the question of whether socialisation and deliberation induce changes in (national) positions and preferences. Here, it makes sense to focus on decisions where countries shifted their positions. There may be many different reasons why national positions change. For example, they may be bought off and be faced with the threat of exclusion. In order to establish a degree of positive causality of some certainty, one has to exhaust all other alternative explanations. Due to the limited scope of this study, I was not able to undertake a proper/thorough operationalisation of this latter aspect.

There are a number of conditions/mechanisms that are hypothesised to affect socialisation and deliberation processes. These have been derived from findings of related research (e.g. Checkel 2001; Risse 2000) and my own prior research (Niemann 2004, 2006b): (1) the nature of the issue area combined with the background of negotiators (common epistemic ground): there is not much scope for genuine discussion and deliberation, if technically complex issues are discussed by non-experts (cf. Haas 1992; Niemann 2006b); (2) the amount of time devoted to discussions: for an argumentative discussion to take place or a reasoned consensus to emerge, time is required, e.g. for laying down (and challenging) arguments and for reflection (Niemann 2004); (3) the life span of negotiating group and density of interaction: socialisation processes and the development of a certain *esprit de corps* is related to the quantity and duration of interaction (Trondal 2002); (4) the degree of trust among negotiators: socialisation and deliberation processes require a certain amount of mutual trust so that actors can lower their guards, and allow for genuine debate on the merit of the arguments as well as subsequent learning (Lewis 1998); (5) the level of (adverse) bureaucratic politics: if national ministries keep negotiators in Brussels on a very short leash or try to jealously guard their interests socialisation and deliberation processes cannot unfold (cf. Taylor 1983). If these conditions play out favourably, the likelihood of an integrative outcome (here in terms of further transfer of Community competence) is considerably enhanced, not least given the persuasive rationales for reforming the CCP.

1.4. Countervailing forces

As integration cannot solely be conceptualised as a dynamic or integrative process, countervailing forces need to be taken into consideration. Hence, integration is assumed here to be a *dialectical* process, both subject to dynamics *and* countervailing forces. The latter may either be stagnating (directed towards standstill) or opposing (directed towards spillback) in nature. One can better ascertain the relative strength of the (forward-) dynamics of integration if one also accounts for these forces.

Domestic constraints may substantially circumscribe governments' autonomy to act (Hoffmann 1964; Moravcsik 1993). Governments may be constrained directly by agents, such as lobby groups, opposition parties, the media/public pressure, or more indirectly by structural limitations, like a country's economy, its geography or its administrative structure, especially when distinct from that of the European mainstream due to adjustment costs of integration (Héritier 1999). 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 may lead to national vetoes or prevent policies above the lowest common denominator. Adverse bureaucratic pressures also partly come 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 preferences of their 'constituencies'.

Sovereignty-consciousness – which in its most extreme form can be thought of as nationalism – encompasses actors' lacking disposition to transfer sovereignty to the supranational level and 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. Less prominent actors such as bureaucrats, especially when working in ministries or policy areas belonging to the last bastions of the nation-state, may also represent sovereignty-conscious agents.

There are several noteworthy aspects regarding the operationalisation of these countervailing forces: firstly, sovereignty consciousness, of course, is a rather diffuse notion. However, structured and semi-structured interviews (and cross-interviews) can go some way to reveal the attitudes of decision-makers *vis-à-vis* issues such as delegation of powers to supranational institutions and deepening of the integration process. In addition, when member governments come out against further supranationalisation of a policy sector despite the fact that they would benefit materially from such a step, this most likely happens for ideological (sovereignty-related) reasons (cf. Meunier and Nicolaïdis 1999). Secondly, there are several indicators for domestic constraints, such as resistance from important fractions of government. Finally, in terms of (adverse) bureaucratic politics, one can ascertain for instance the extent to which national bureaucrats had access to agenda-setting and decision-making processes. It is expected that a significant manifestation of these countervailing forces will considerably obstruct a (further) supranationalisation of the EU external trade policy.

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 three (forward-)dynamics are intertwined in various ways. For example, functional pressure as a structural dynamic requires agency – particularly supranational institutions and socialized officials – to make an impact. Conversely, pro-integrative preference formation and learning processes implying European solutions – of national, supranational or transnational agents – call for some (e.g. functional) structural input and medium to develop. In short, the presence of certain integrative pressures may activate other dynamics. Hence, these dynamics can be seen as mutually reinforcing. Particularly revealing is the relationship between the two fundamental types of pressures. By bringing countervailing forces into the framework, integration is assumed to be a *dialectical* process, subject to both (forward-)dynamics *and* countervailing forces, which mutually affect one another.⁶ 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.

1.5. Methodology

My analysis starts off from an equifinality assumption, suggesting that the same outcome can be caused by different combinations of factors (George and Bennett 2005: 20, 157; cf. Ragin 1987: 20). In order to arrive at causal inferences, allowing for some degree of positive causality, a number of methods are employed; especially process tracing and triangulation across multiple data sources, including about forty-five interviews.⁷ The three Treaty revision processes are treated as ‘single outcome cases’, where a single outcome is investigated for each case (Gerring 2006: 710ff).⁸

Process tracing is usually understood as a method that attempts to identify ‘the causal process –the causal chain and causal mechanisms – between an independent variable (or variables)

⁶ Hence, dynamics and countervailing forces may not only coexist, but also oppose and balance one another, and thus mutually affect one another. For example, dynamics stemming from ‘socialisation, deliberation and learning’ may be reduced by countervailing forces for example in the form of adverse bureaucratic politics (cf. p. 21 of this article). 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 their construction of preferences and identities.

⁷ All the interviews on which this article is based took place ‘off the record’, hence they are cited simply as ‘interviews’ (together with the year in which they were recorded). An exception is the interview with Klaus Hänsch, former MEP, President of the EP (1994-1997) and Member of the Convention on the Future of Europe.

⁸ Although ‘single outcome studies’ examine a bounded unit in order to elucidate a single outcome within that unit and inferences may be limited to the case under study, this makes no a priori assumptions about the uniqueness of the case, nor about neighbouring phenomena; i.e. the investigated outcome(s) may be routine or idiosyncratic (cf. Gerring 2007: 188).

and the outcome of the dependent variable' (George and Bennett 2005: 206). On a more general level, it is viewed as a method that establishes a link between cause and effect beyond the level of correlation by appealing to knowledge of the real structures that produce observed phenomena (Dessler 1991). It is a method for ascertaining the observable implications of hypothesised causal processes. The objective is to document if the sequence of events or processes within an analysed case fits those predicted/anticipated by certain explanations (Bennett 2008: 705). It is important to examine the process-tracing evidence not only of the hypothesis of interest, but also on an alternative hypothesis (George and Bennett 2005: 217).

2. The Development of the Common Commercial Policy

2.1. The Common Commercial Policy and the controversy over the scope of Article 113/133/2079

The Common Commercial Policy (CCP) is one of the oldest and most integrated policy areas of the European integration project. The Rome Treaty 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 external trade relations. 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 (Devuyst 1992).

Article 133 (ex Art. 113, now Art. 207), the centrepiece of the CCP, 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 133 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). 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 has been very modest in this field. Until the Lisbon Treaty it was merely informed by the Commission and the Council of the conduct of external trade negotiations and could voluntarily be asked for its opinion before the formal ratification of an international agreement.

⁹ Article 113, after the renumbering of the Treaty of Amsterdam, became Article 133. With the Treaty of Lisbon this then became Article 207. I will refer to Article 113 for the time until the entering into force of the Treaty of Amsterdam, and to Article 133 for the period during which the Treaties of Amsterdam and Nice applied, and also when referring to this Article more generally (in a less time-specific manner).

Several 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). 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, 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.¹⁰ 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. Devuyt, 1992).

During the Uruguay Round (UR) the Commission and some Member States disagreed on who was competent on these 'new' trade issues, primarily services, intellectual property rights (IPRs) and investment. As a result, the Commission requested a ruling by the Court. In its Opinion 1/94, the ECJ ruled that both the Community and 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).¹¹ It did not rule on investment. The Court also left a number of other questions unsolved, for example by demanding 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 was to be achieved. In the aftermath of the Court's ruling, negotiations between the Commission and Member States on a code of conduct also came to nothing.¹² Against this background, the Commission decided to submit a proposal for an extension of Article 113 within the framework of the Amsterdam IGC.

2.2. 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 trade in services, intellectual property

¹⁰ See, for example, the Court's ruling in the ERTA case (22/70) and its Opinion 1/78. Cf. Gilsdorf (1996).

¹¹ 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 (cf. Bourgeois 1995: 770-71).

¹² In the meantime, multilateral negotiations on 'unsolved business' (of the Uruguay Round) in the area of services were conducted under unanimity, with the Commission as the exclusive negotiator.

rights and investment (Commission 1996b)¹³, the eventual outcome at Amsterdam was very modest. The result of the IGC negotiations was a new paragraph (5) in Article 133, which 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. Sutherland 1997). There has been disagreement among 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: 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 multilateral trade agenda (Patijn 1997; Ludlow 1997a: 39; Brok 1997: 45; Woolcock 2005a).

2.3. 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. 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 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 Treaty of Nice brought some integrative progress. The Community gained ‘explicit’¹⁴ competence for the negotiation and conclusion of agreements relating to trade in services and IPRs.¹⁵ Qualified majority has been applied to these areas. However, several important exceptions to QMV were also introduced: (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.

¹³ 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).

¹⁴ While competence in these areas was made ‘explicit’, legal scholars seem to agree that competences are still shared between the Community and Member States (Krenzler and Pitschas 2001: 302; Herrmann 2002: 13, 19).

¹⁵ 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 are not affected by the new provisions.

The Nice provisions contain some further important drawbacks: (1) Foreign direct investment (FDI) was not included within the scope of Article 133; (2) unanimity was still required for the negotiation and conclusion of horizontal agreements, if one of the above derogation areas formed part of broader negotiations. Furthermore, ratification by the Member States was needed in such cases; (3) the European Parliament remained excluded from decision-making in the CCP and not even obtained a formal right of consultation; (4) Member States were still allowed to maintain and conclude agreements in the fields of trade in services and commercial aspects of IPRs.

Overall, 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: 14; Brok 2001: 88; Krenzler and Pitschas 2001: 312; Leal-Arcas 2003: 13). In addition, many authors have lamented the complexity of the Treaty text which does not meet the growing demands for greater simplicity and transparency (Pescatore 2001: 265; Hermann 2002: 16; Leal-Arcas 2004: 13).

2.4. From the Convention to the Treaty of Lisbon

The Laeken European Council chose to depart from the more standard methods of preparing EU Treaty reforms and decided to convene a Convention on the Future of Europe. The CCP was identified in the Convention early on as an issue that required further discussion. Within the Convention Working Group on External Action, external trade was of secondary importance to 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.¹⁶ The CCP provisions of the Constitutional Treaty were left unchanged in the subsequent negotiations that led to the Treaty of Lisbon. Hence, the vast majority of the CCP provisions that went into the Lisbon Treaty were already settled during the Convention.

The Treaty provisions on the Common Commercial Policy have substantially progressed. The following are the most important advances: (1) the European Parliament's role has been enhanced in three ways: it has obtained co-decision on legislative acts, i.e. for measures implementing the CCP. Its consent is required for most types of international agreements, including all trade agreements. And the EP's role has been augmented with regard to the process of trade negotiations; (2) services, intellectual property and also investment (the latter had not even become an 'explicit' competence at Nice) now fall within the *exclusive*

¹⁶ Most substantially, a rather narrow derogation on social, education and health services was (re)introduced.

competence of the Community; (3) 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 been made subject to ‘where these risk prejudicing the Union’s cultural and linguistic diversity’ and social, education and health services now also come under unanimity only ‘where these risk seriously disturbing the national organisation of such services and prejudicing the responsibility of Member States to deliver them’ (Art. 207, 4b); (4) national parliaments are no longer needed for the ratification of future WTO agreements (involving the new issues); (5) The Common Commercial policy has been brought under the EU’s external action heading and shall thus to be ‘guided by the principles, pursue the objectives and be conducted in accordance with the general provisions laid down in Chapter 1 of Title V of the Treaty on European Union’ (Art. 205 TFEU), which include respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights.

Observers have in general concurred on the progressiveness of this latest CCP Treaty revision, certainly in comparison with earlier Treaty revisions (Antoniadis 2004; Commission 2004; Cremona 2006; Krenzler and Pitschas 2006; Dimopoulos 2010). The impact of the Lisbon provisions on the EU’s actorness¹⁷ in international trade are not yet entirely clear, but will be discussed with regard to two aspects: (1) the increase of Community competence; and (2) the enhanced role of the European Parliament.

(1) Moving services, intellectual property and also investment within the exclusive competence of the Community has reduced the need of mixed trade agreements (Pollet-Fort 2010: 15). Such agreements have created confusion both among the Community’s trading partners and also within the EU (Woolcock 2010: 9). In addition, horizontal agreements (such as the Doha Round), possibly involving services, intellectual property and investment may now also be more easily decided by QMV (Krenzler and Pitschas 2006: 40). More generally, the scope for unanimity has been further narrowed. The explicit derogations in the areas of cultural, social, education and health services have become narrower and the burden of proof to invoke these exceptions lies with those Member States that wish to apply them (Norman 2003: 314). As a result, intra-EU decision-making should become faster (Woolcock 2010: 15) and should be less characterized by lowest common denominator agreements, in which the least ambitious Member State can jeopardise far-reaching EU initiatives. Closely related, the scope for possible abuse of the veto option resulting in disproportionate demands by veto-countries will be reduced. In addition, the potential for third parties to play ‘divide-and-rule’ games will be limited (cf. p. 14). All in all, the move towards greater exclusive Community competence, along with its implications for trade policy decision-making, ‘contribute to the streamlining of the trade policy conduct and a coherence of the EU trade policy’ (Pollet-Fort 2010: 15).

¹⁷ On EU actorness, see e.g. Jupille and Caporaso (1998) as well as Bretherton and Vogler (2006).

(2) Through the introduction of co-decision on legislative acts, the requirement of EP consent for all trade agreements, and its greater involvement in the process of intra-EU negotiations, the role of the European Parliament has been substantially enhanced in the CCP. Parliament may use this power to demand a more prominent position in external trade policy-making. The EP's traditionally stronger concerns (relative to the Commission, and especially the Council) with regard to non-economic goals such as human rights or environmental and social standards, could contribute to a greater politicisation of EU external trade policy (Pollet-Fort 2010). It is difficult to foresee what impact this may have on EU actorness. On the one hand, such politicisation could lead to uncertainties and delays and more generally hamper policy-making processes within the EU. While withholding its consent for a large multilateral agreement, like that concluding the Doha Round, can be considered rather unlikely, the EP's willingness and ability to do so has been considered a realistic scenario for bilateral agreements (Woolcock 2008: 5-6). On the other hand, the European Parliament could be conveniently used as a bargaining chip in two- or three-level games (cf. Putnam 1988). The EU could strengthen its bargaining position in international negotiations by referring to the requirement of EP consent, as practised by US negotiators with regard to Congress.

Overall, it seems that the EU's role as an actor in trade policy-making will be enhanced through the new arrangements. However, a lot depends on the implementation of the Lisbon provisions, especially with regard to how the European Parliament will exercise the newly acquired powers.

2.5. Rejecting exogenous dynamics as a necessary explanatory factor

The few accounts in the literature that have addressed Treaty revision in the area of EU external trade policy have tended to point to *exogenous* dynamics as the main dynamics for change (cf. Billiet 2006; see also Meunier and Nicolaïdis 1999). 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 policy-making. This is to recognise that the Community and its development need to be viewed in the global context, especially when it comes to its external policies. Several aspects fall under 'exogenous dynamics', including the strengthened institutional framework of the WTO¹⁸, and above all, the changing multilateral

¹⁸ As for the strengthened WTO institutional framework, the introduction of the new sanctions mechanism of the WTO has been considered to provide a rationale for increasing Community competences. Most importantly in that respect: retaliation under the WTO dispute settlement system is more credible for member states when handled by the Community. For example, in TRIPS cases Member States can/could not cross-retaliate by taking sanctions in the goods sector, as the Community has competence in that area. Often, however, third countries can be hurt most in the area of goods. Hence, it has been held that it does not make sense for Member States to enter into dispute settlement cases in the new trade areas on their

trade agenda. However, as the latter aspect has been regarded by far the most relevant exogenous dynamic by observers, and since it has featured most prominently in the policy discourse (cf. Niemann 2006a), we will also focus on this point here.

Changes in the world economy, such as the increasing importance of trade in services, intellectual property rights and foreign direct investment, began to feature much more prominently on the multilateral trade agenda since the Uruguay Round (UR). A number of actors have argued that the scope of Article 113/133 needs to be interpreted in a dynamic way. As trade policy changes and trade in goods loses in importance, the Community powers under the CCP become gradually eroded: as the enlarged trade agenda increased the number of occasions that decisions had to be taken under mixed competences, which applied to the newer trade issues, decision rules and the mode of external representation seemed no longer appropriate and timely. Hence, it has been argued that the EU's external trade policy needed to be supranationalised (or 'modernised' as some put it) with regard to these newer trade issues, such as trade in services, intellectual property rights, and investment. The next few paragraphs will (further) unpack this exogenous logic and elaborate its limits for explaining the supranationalisation of the CCP. What were the perceived implications of mixed competence for the Community in international negotiations? Most importantly, unanimity applied 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: 229). Mixed competence and unanimity have, among other factors, been associated with lowest common denominator agreements and the potential abuse of the veto option. Cases in which the trade partner is closer to the status quo, the EU's bargaining power tends to be low and it is susceptible to 'divide-and-rule' games. However, in cases where the collective EU position is closer to the status quo than that of the negotiating partner, unanimity tends to increase the Community's negotiating power (cf. Meunier 2000, 2005).

The second main 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 issue has been around since the beginning of the Uruguay Round and was not solved by the Court in 1/94.

own. Their purposes would be better served if competence for the disputed areas was transferred to the Community (Billiet 2006). This issue received much less attention than the changing international trade agenda. In addition, the problem that cross-retaliation under the new dispute settlement system is more effective, when the Community has competence, had been very evident since before the Amsterdam IGC (Kuyper 1995: 100; Krenzler 1996). There is no evidence that the intra-EU problem perception on this point intensified. On the contrary, there was rather less talk on this issue after the 1996-97 IGC (interview 2000, 2004).

After the conclusion of the UR negotiations, a code of conduct was reached on the post-UR negotiations on services, according to which the Commission should continue to negotiate 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 failed on several occasions. However, the Spanish Presidency proposal of December 1995 (according to which the Commission acted as the sole negotiator)¹⁹ was 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, emphasised during the Amsterdam IGC that the situation had become worse since the UR. Member States threatened to act independently in the WTO, if their positions are not fully covered by the Community (cf. Krenzler and da Fonseca-Wollheim 1998: 231). 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; internal Commission document 1997)

It can and has been argued that the broadened international trade agenda increased the number of instances that shared competence applied to EU external trade negotiations. Explanations focusing on this exogenous factor place emphasis on the fact that important future trade negotiations thus exert pressure towards a reform of the CCP. It is acknowledged here that such exogenous dynamic constitutes a substantial dynamic for revision. However, I argue that variation on the strength of this pressure has been fairly minor since the mid-1990s, so that it cannot (in itself) convincingly explain change from the Amsterdam IGC to the Convention/Lisbon Treaty. Although trade in services, the importance of intellectual property rights (IPRs) and investment increased in economic terms after the 1996-97 IGC²⁰, all of these issues were squarely and prominently on the table since the UR and were also considered during the Amsterdam IGC talks (cf. Krenzler 1996; Young 2002: ch. 2; cf. Kuyper 1995). My series of interviews in Brussels and several national capitals suggests that the perception of the above-mentioned exogenous pressure did not increase over time. Interviewees mostly/predominantly emphasised with regard to the evolving multilateral trade agenda and the strengthening of the institutional framework of the WTO that 'this was clear since the Uruguay Round' (interview 2002), 'the nature and significance of these issue remained basically unaltered over time' (interview 2004), and that 'increases in services and investment had been expected and did not really push us more at a later stage [than during the 1996/1997 IGC]' (interview 2004). In addition, judged on the basis of official documents and media reports, the transformation of the multilateral trade agenda, if anything, featured more

¹⁹ According to this text, Member States could be present at meetings but only speak when a Member State considered that the Commission presented the situation in a confusing manner or where the Commission renounces to express itself (Spanish Presidency 1995).

²⁰ For example, the share of services as part of overall EU trade increased from approximately 26% in 1995 to 30% in 2002 (cf. Krenzler 1996, Lamy 2002).

highly in the discourse during the Amsterdam IGC than in the two subsequent Treaty revisions (cf. Niemann 2006a: ch. 3).²¹

Closely related, prior to the conclusion of the Amsterdam IGC the Commission and the Member States had already gained substantial experience with negotiating under mixed competence in the post-UR services negotiations on basic telecommunications services and the movement of natural persons. Important negotiations on financial services were to be advanced and concluded shortly after the 1996/97 IGC. It was also clear from the General Agreement of Trade in Services that the GATS agreement would be revised after five years at the beginning of 2000, eight months after the coming into effect of the Amsterdam Treaty. Also, from 1996 the EU took the lead within the WTO to argue for a comprehensive new (millennium) round of trade negotiations (Woolcock 2005a: 241). Hence, considerable experience with negotiating under mixed competence was present, and important additional trade negotiations under shared competence were already on the (immediate) agenda during the 1996/97 Intergovernmental Conference.

Third, the changing international trade agenda also cannot sufficiently explain the divergence in reform regarding different issues across the last few IGCs. For example at Nice, Community competence on services and IPRs was upgraded, as opposed to that on FDI. However, evidence suggests that exogenous dynamics were just as strong on the investment issue: annual FDI figures, both worldwide and in terms of EU flows, substantially increased after the UR and peaked in 2000²² (the year of the Nice IGC). In addition, it could be argued that the failed attempt to conclude a Multilateral Agreement on Investment (MAI) in the framework of the OECD in 1998 made a reappearance of investment on the international trade agenda pressing, and was in fact also pushed for by the Community at the time of the Nice IGC (cf. e.g. Financial Times 22/11/2000). And perhaps even more revealing, after that, reduced exogenous FDI pressures coincided with an increase of competence on investment during the Convention and 2003/2004 IGC (when the CCP provisions that appear in the Lisbon Treaty were settled). Before and during that period annual FDI decreased, both worldwide and also concerning EU FDI capital flows (Ibid). In addition, negotiation of investment during the Doha Round became increasingly questionable, if not unlikely, after considerable resistance to negotiate on this issue was encountered at the Doha Ministerial Conference of 2001, before the issue was formally abandoned by the EU at the Cancun Ministerial Conference in September 2003 (cf. Dür 2007). Thus, exogenous dynamics (based on the shifting international trade agenda) do not shed sufficient light on why investment was not included in the Nice reforms, but became one of the issues on which Community

²¹ During the IGC 1996-97 the exogenous rationale was furthered by Community institutions (e.g. Commission 1996c), opinion leaders and think tanks (e.g. Sutherland 1997; European Policy Centre 1997a), and a number Member governments (e.g. Belgian government 1995).

²² Cf. European Union Foreign Direct Investment Yearbook (2006); UNCTAD (2004).

competence was augmented during the Convention and subsequent IGC, as actual investment flows pointed in another direction than the policy reforms of the past two Treaty revisions.

Finally, the broadening of the international trade agenda as an external rationale for adjusting Community competences (accordingly) must also be viewed with caution because the only substantial broadening of the international trade agenda after the UR (and during the Amsterdam IGC) was through the so-called Singapore issues that were agreed at the WTO Ministerial Conference of December 1996. These as well as a comprehensive trade agenda for the Doha Round were most vigorously advocated by the EU²³ (and especially the Commission) – hardly an exogenous pressure. It has also been noted that the explicit inclusion of foreign direct investment in the Draft Constitutional Treaty came at a time when the Commission worked very hard on getting the issue onto the Doha agenda (Billiet 2006: 908). In addition, and more generally, it has been argued that the EU's trade policy is to a large degree driven by its own internal *aquis* and the single market project. The international trade and investment regime emerging in the WTO framework was sought to be compatible with common internal rules not least because these were difficult to agree upon in the complex EU decision-making system (Woolcock 2005b; Young and Peterson 2006). Hence, endogenous processes and rationales seem to better explain the comprehensive agenda promoted by the EU.

More generally speaking, the preceding analysis has suggested that exogenous dynamics cannot adequately explain the policy changes after the Amsterdam Treaty and thus do not constitute a necessary factor for explaining Treaty change in the area of EU external trade policy. As such we must look to endogenous factors to gain a fuller understanding of this development.

3. Explaining treaty revision outcomes

3.1. Functional pressures

My explanation of Treaty revision outcomes starts with an analysis of functional dynamics, i.e. pressures for further integrative action in the CCP to assure other related policy objectives, due to the interdependence of policy areas. During the *IGC 1996-97* functional pressures were perceived as rather insubstantial. We will first take a look at the internal market, which constitutes an endogenous source of functional impetus *par excellence* since the strong integrational commitment regarding the 1992 project has the potential to trigger integrative follow-up measures in related areas (e.g. Mutimer 1989; Tranholm-Mikkelsen 1991). Potentially relevant and exerting pressure could have been the doctrine of implied

²³ On this point see e.g. de Bievre (2006), Hay (2006: 28), Woolcock (2005b: 391).

powers. 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. In the past (especially the 1970s) the Court of Justice had interpreted this doctrine to provide such pressure.²⁴ Given the potential adverse impact of individual external action by Member States on common internal Community rules, this doctrine could conceivably translate into pressure towards an explicit extension or delegation of (further) Community competences in order to prevent such developments and/or clarify certain potential legal ambiguities. However, at the Amsterdam IGC pressure stemming from the implied powers rationale was rather negligible. In Opinion 1/94, the ECJ had rather comprehensively rejected this 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 (cf. para. 86). Nor did the internal harmonization 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 (O’Keeffe 1999; Arnall 1996: 356). 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.

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 originally spurred by exogenous events, enlargement after intra-EU commitments for enlargements soon became an internal policy goal and thus developed into an endogenous source of pressure for reform of EU decision-making rules. It was the internal EU agenda and the resulting commitments thereof (as well as the way these were marketed within and outside the Union) rather than the actual direct or indirect demands from applicant countries, which put the Union under pressure to reform its institutions and decision rules (interview 1997, 1999). Following Lindberg’s definition of endogenous-functional spillover, once enlargement became an internal objective (one integrational step), problems/tensions were created (anticipated) in terms of decision-making and co-ordination among the Member States under unanimity (here exerting pressure for an extension of QMV in trade matters). Hence, functional pressure stemming from the commitment on enlargement mostly impacted on the delegation/expansion of competences to the Community in terms of decision rules.²⁵ Unanimity was already regarded as problematic with 15 delegations by some players. This

²⁴ Cf. *ERTA case* (case 22/70), ECR 263, [1971]; and Opinion 1/76, ECR 741, [1977].

²⁵ However, this tendency towards more QMV also translated into pressure for greater involvement of the European Parliament (in terms of possible EP assent for international trade agreements and/or co-decision for legislative acts). In an era of an apparent democratic deficit, more QMV weakens the link of democratic control via the national arena (since ministers can be outvoted in the Council), as a result of which the democratic link has to be strengthened by other means, such as strengthening the EP. This argument was made by several delegations during the IGC, perhaps most convincingly by the Commission e.g. 1996c)

logic of anticipated problems was argued in various Commission papers on the modernisation of Article 113 (cf. Commission 1996a; Krenzler 1996: 6). However, eventually, this functional argument never gained much strength. It was pointed out: ‘in the end it was the lack of urgency that made the Conference decide on only partial reform. No enlargement is foreseen before 2003-2005’ (Patijn 1997: 38; also cf. Devuyst 1998: 626; Moravcsik and Nicolaïdis 1999: 78, 82). This indeed seems to have been the prevailing mood among decision-makers at the Amsterdam IGC, also regarding the CCP issue (interviews 1997, 1999).

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. They were afraid that external liberalisation could foster a process of internal liberalisation and that the Commission could use the backdoor of Article 113 to regulate in areas which fall under Member States’ competence (interview 1999; Elsig 2002: 40). 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 and review of (formerly confidential) internal documents suggest that the Commission was genuine about its concern of enhancing its external competencies only (internal Commission document 1997). Nevertheless, the perception 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 the extension of the CCP (interview 1997, 1998).

As for the *IGC 2000*, overall functional pressure had increased since Amsterdam. For example, the pressure of enlargement had grown stronger. 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 members from the end of 2002 onward. The pressure on the CCP in terms of services, IPRs and investment, as on other policies 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; interviews 2004; cf. Galloway 2001: 108; Nicolaïdis and Meunier 2002: 190-1).

Functional pressures stemming from the internal market had also grown since the IGC 1996-97. The implied powers doctrine 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 many other areas internal legislation was either still incomplete or lacking effective implementation (Commission 2000a). Hence, from an implied powers perspective, an exclusive external trade competence across *all* services, IPRs and investment did *not* follow. However, implied powers in a broader sense did inform policy-makers and legal drafters during the IGC. DG Trade of the

Commission has referred to the doctrine of parallelism as ‘the guiding principle of the new Article 133’, the purpose of which was ‘to align the decision-making mechanism for trade negotiations on internal decision-making rules’ (Commission 2000b; cf. Young 2002: 47). Therefore, QMV was codified for services and IPRs except where internal Community rules require unanimity or where no harmonisation has taken place at Community level.²⁶

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 of Member State internal competence), still played a role, albeit a diminished one. Reservations were further reduced due to the progression of the internal market (Commission 2000a), which provided less scope for the prejudgement of internal competences (interview 2004).

Functional pressures further increased after the IGC 2000 and also correspondingly influenced the *Convention and IGC 2003/04* (when the CCP provisions that appear in the Lisbon Treaty were settled). For example, the pressure of enlargement became even stronger and also more urgent as 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).

Relating this back to the indicators and mechanisms specified for this dynamic (cf. p. 3), what changed from the previous Treaty revisions were, above all, two things: the negative/significant consequences of the previous integrational step in issue area A (enlargement) became more pressing in issue area B (CCP). In addition, the functional dynamics stemming from enlargement could finally unfold because they were more openly discussed during the Convention (cf. section on socialization, deliberation and learning processes). Moderate additional functional pressures were created by the Laeken European Council Declaration on the Future of Europe. Herein, the Heads of State and Government reinforced a number of aims, which increased the rationale for a deepening of the external trade policy.

The first objective stated in the Laeken Declaration was the strengthening of the Union’s role in the world. Here the declarations had high expectations (cf. Norman 2003: 110). 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), and as such creating pressure for

²⁶ However, this logic was not applied entirely consistently. Trade agreements in the field of transport remained subject to unanimity, although this sector is governed by QMV internally and there is considerable internal harmonisation.

supranationalisation. Hence, there has been a clear endogenous-functional link here between one policy objective (strengthening the Union's role in the world) and further integration in the area of the CCP. The second set of aims concerned 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 dynamics, the bias was clearly in favour of the Community method. Finally, Laeken also called for greater democracy and transparency. The two most likely solutions – greater involvement of national parliaments or a more substantial role for the EP – were not equal competitors, 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 conclusions²⁷ and the members of the Convention took them more seriously than officials preparing previous IGCs (interview 2004), not least because they were largely unbound by (governmental) briefs (cf. Maurer 2003).

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 Amsterdam and Nice IGCs (cf. Article 133 (5); interview 2005).

3.2. Socialisation, deliberation and learning processes

The explanation of Treaty revision outcomes continues with an examination of socialization, deliberation and learning processes. The analysis here focuses on negotiators in the IGC Representative Group and the Convention. Attention is paid both to the quantity of interaction (level of enmeshment among negotiators) and the quality of interaction (e.g. the degree of argumentative consistency), and partly also to the impact of learning processes on positions. 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 such processes did not unfold. The first detrimental factor was the nature of the subject area combined with the background of negotiators. The negotiations on the extension of Article 113 were rather technical in nature, but there was little opportunity for specialists to come in on individual

²⁷ Cf. Presidency Conclusions of the following European Councils: Cannes (point IV), Madrid (pp. 1, 3), Helsinki (point I), Feira (point I) and Laeken.

topics during meetings. While negotiators were at ease with institutional and CFSP questions, they usually found the issue of Article 113 ‘tricky’ and to require ‘some pertinent trade policy background’ which most of them did not have.²⁸ As a result, there was not much real debate going on. The IGC representatives usually merely presented the positions which they were instructed to present (cf. Beach 2005: 132), a process that had already occurred during the Reflection Group that prepared the 1996-97 IGC (Devuyst 1998: 619). There was little scope for argumentative processes in which actors could persuade each other because 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 regarded as a high priority issue. 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 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 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, on balance it does not seem comparable to that in other (more permanent) Council forums (interviews 1997, 1999).

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: 39; also Ludlow 1997a: 52; Meunier and Nicolaïdis 1999). 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’²⁹. Much of the Commission distrust was related to the Commissioner in charge of trade policy, Sir Leon Brittan, with some governments holding him personally accountable for ‘being left in the dark about strategic decisions’ (Financial Times, 9/3/99). There were also a number of accusations of some Commission official from

²⁸ Substantial expertise on trade was attested only to the Swedish (Gunner Lund), Finnish (Antti Satuli) and Belgian (de Schoutheete) representatives (interviews Brussels, 1997, 1999).

²⁹ 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.

(former) DG I having treated officials from Member States delegations ‘in an aloof and arrogant manner’ (interview Brussels 1999). IGC representatives 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. This is said to have harmed open deliberation on this issue (interview 1999) and 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 during the negotiations was the adverse influence of certain national ministries, 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, the phenomenon that civil servants tend to hold on to their powers or have a substantial claim on expertise in a subject area (cf. Taylor 1983). The German, Dutch and Portuguese Members of the Article 113 Committee 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 forces to socialisation processes. They made a genuine debate on the benefits of reform difficult due to tight instructions given to some IGC Representatives (interview 1997). They are also partly responsible for the introduction of the ‘shopping list’ approach by the Dutch Presidency which complicated the negotiations and invited further bureaucratic counter pressure (see below).³⁰

At the *IGC 2000* socialisation processes could not unfold in the area of external trade policy, and negotiations were characterised as taking place with hardly any substantial debate (cf. Beach 2005: 164). This was 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 (cf. Beach 2003: 11). (2) Partly due to the large number of issues on the QMV agenda, there was simply not enough time available to engage in an extensive reasoned debate on external trade policy (cf. Gray and Stubb 2001: 20). (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 in the Council framework (interview 2004). (4) Tight, inflexible and sometimes competing instructions resulting from the demands of various national ministries hampered genuine exchange on the pros and cons of more QMV. 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

³⁰ This also indicated how dynamics and countervailing forces may affect each other. Here socialization processes were impaired by the countervailing impact of adverse bureaucratic politics.

remaining distrust of the Commission in several national ministries, impaired socialisation of socialisation and deliberation. (5) Some institutional topics, although largely left to the Nice summit, ‘rubbed off on the discussions in the Representatives Group and damaged the atmosphere among delegations’ (interview 2002). Observers also 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 (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 influenced the *IGC 2003-04* outcome.³¹ This was facilitated by several favourable conditions: (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 members’ ideas and softened pre-conceived opinions (cf. Kleine and Risse 2005, 2010). (2) In the plenary and especially in the Working Group on External Action there was, contrary to the IGC 1996-97 and 2000 IGC negotiations, actually sufficient time for substantial debate and a more thorough exchange of arguments and counterarguments concerning the merits of CCP reform (interview 2004). (3) The quantity of interaction – 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’ (Göler 2003: 9; also see Maurer 2005), where most participants ‘had or developed substantial responsibility for the success of the project’ (interview 2004; also interview with Klaus Hänsch, 2004). (4) Convention members were in a position to act freely and were largely unbound by governmental briefs (Maurer, 2003: 134; Karlsson 2008: 606). And in contrast to IGCs, bureaucratic resistances barely countered the deliberation process because government representatives did generally not have to go through the process of inter-ministerial coordination for the formation of national positions (Maurer 2003: 136; Closa 2004: 202). (5) The atmosphere, spirit, negotiating structure and decision rules³² made it very difficult for members of the Convention to reject something without explanation, or without entering into a reasoned discussion where ones arguments would become subject to scrutiny (Closa 2004: 201).

In such an environment good arguments, validated on the basis of accepted criteria, could register more easily, and were thus more likely to prevail in the discussion. Hence the strong functional and exogenous rationales for an extension of Community competence now had a better chance to be taken up by actors and unfold their logic. 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). In such deliberative process, negotiators tended to concur more fully in the

³¹ As mentioned earlier, the IGC 2004-04 outcome concerning the Common Commercial Policy – apart from cosmetic changes – also equaled the Lisbon CCP provisions.

³² In terms of procedural and decision rules a ‘broad consensus’ was envisaged, while voting was ruled out in the Convention (European Convention 2002).

common results. A reasoned consensus rather than compromise was reached. My interviewing suggests that the CCP Convention outcome was largely perceived as such (interviews, 2004, 2005). This also, albeit to a lesser extent, applies to the Draft Convention text as a whole. Here ‘conventioners’ decided to go beyond their original mandate to merely prepare the IGC agenda and instead opted to prepare a Draft Constitutional Treaty and stated that this should be adopted by the subsequent IGC ‘as is’ (Beach 2007: 1283). This increased the weight and impact of the Convention text and made it difficult for negotiators at the subsequent IGCs to considerably depart from this consensus (Closa 2004; Maurer 2005; Göler and Marhold 2005), not least because Member States were very much part of it. In addition, there was a general feeling that the Convention had done a good job. There was thus broad and substantial support for the Convention Text by EU institutions (e.g. Prodi 2003; European Parliament 2003), by the vast majority of national governments including key Member States such as Germany, France, the UK and Italy (Bundesregierung 2003; Lenoir 2004; UK Government 2003; BBC News 2003), and by organized interests (e.g. Eurochambres 2003). In addition, the dominant media discourse suggested that the Draft Constitutional Treaty should be kept as much as possible (Frankfurter Allgemeine Zeitung 16/6/2003; Guardian 14/3/2003; El País 4/10/2003). Due to the substantial bonding strength of the Convention text, it also became the basis for further negotiations on most issues (including external trade) at the subsequent IGCs. In a way, the text turned into the default setting (Beach 2005: 199). As a result, the 2003-04 and 2007 IGCs hardly reopened debate on the CCP.³³

What has been presented above as socialisation, deliberation and learning is difficult to further substantiate within given space limitations.³⁴ However, the following evidence is available: (I) Interviewees (conventioners, advisors to conventioners and officials on the Convention Secretariat) characterised the negotiations in terms of arguing and reasoning, both without prodding, and/or when offered different potential characterisations (esp. ‘truthful arguing/reasoning/deliberating’ and ‘bargaining/horse trading’) of the predominant policy style during different phases. In addition, when analysing the Plenary discussions and when reconstructing the debates in the External Action Working Group and in the Praesidium, it is striking that speakers were anxious to explicate their proposals, to consider the pros and cons and to reflect their proposals against the criteria set up in the run-up to the Convention at Laeken. The findings of Karlsson (2008: 618), who also interviewed conventioners along these lines, are very similar.

³³ The only issue cluster on which CCP discussions resumed during the 2003-04 IGC was social, education and health services. The 2007 IGC did not bring about any (further) changes. The acceptance of CCP provisions of the Constitution into the Lisbon Treaty without substantial discussions has also been attributed to the bonding strength of the CCP Convention text (interview, by telephone 2009).

³⁴ Also cf. (more general) accounts of deliberation and socialisation characterising the Convention (Göler 2003, 2006; Maurer 2003; Closa 2004; Kleine and Risse 2005, 2010; Karlsson 2008). For indicators of communicative action/deliberation see Risse (2000), Checkel (2001), Niemann (2004).

(II) Convention members generally avoided pointing to hierarchy, status, qualification or other sources of power when making their statements and thus did not add non-discursive authority to their arguments (interview with K. Hänsch 2004; interview 2005). (III) Speakers' utterances in the plenary (and working group sessions) seem to be very consistent with their statements in other forums, which reinforces the case for truthful arguing (cf. Risse 2000; Checkel 2001).³⁵ (IV) 'Powerful' actors did not usually prevail in the Convention when their arguments were not persuasive. For example, the French cultural exception, which was supported by the French government representative and others, was already catered for in a general passage about unanimity rule for external policy where unanimity was required internally. An explicit derogation was therefore not necessary and also not desirable in terms of simplification. As a result, during the Convention, this derogation was not accepted because it made no sense to the vast majority of members and was therefore kept out of the text (interview 2004). Only at the very end, after the Thessaloniki European Council the Praesidium took the cultural exception on board, largely for strategic reasons, i.e. to win the support of the French on the overall package.³⁶ Not without reason has this stage been called 'IGC-pre-negotiations'. It was no longer characterised by the deliberative spirit of the Convention (cf. Dinan 2004: 31).

(V) The Convention spirit did not allow (or at least made it very difficult for) Convention members, unlike IGC Representatives, to reject something with justification and explanation (cf. Closa 2004: 201). A participant of the Working Group on External Action has stated for example that 'when the German government's deputy [...] came along with an idea, I among others said "that isn't particularly well thought-out". And he said: "no, you're right about that". Unlike an intergovernmental conference, where you keep your cards close to your chest and you don't give anything before getting something, the Convention is the opposite: bring on the ideas, in with them!' (interview with Göran Lenmarker, cited in Karlsson 2008: 616). Those Convention members that preferred derogations on the Community method for the CCP reportedly also had to enter into a (reasoned) debate (interview 2004).

(VI) It has also been reported in the literature that conventioners have been willing to change their views, an aspect that has been considered an important indicator for deliberation (Risse 2000). Karlsson (2008: 613ff), for example, holds that a sizeable fraction of conventioners suggested to have been prepared to change their viewpoints on some central point during the Convention (either in terms of expressed or real preferences). And usually this shift has been

³⁵ One example, where this could be traced perhaps most thoroughly is the case of Pascal Lamy, who was not a member of the Convention, but was heard in the Working Group on External Action as an expert and participated in the discussion. Cf. e.g. Lamy's (2002a) account in the Working Group and speeches in other forums (e.g. Lamy 2003a; 2002c).

³⁶ It has been suggested that deliberation in the Convention took place within the limits set by (key) Member States (Norman 2003). This was one of the instances where elements of this judgement are demonstrated. See footnote 38 for accounts that have been more positive concerning the possibilities of/for deliberative action in the Convention.

attributed to endogenous factors, most often through the interaction with other members of the Convention, especially in the Working Group setting. My interviewing has also revealed such a case. As one conventioneer admitted, ‘initially I was rather skeptical of more Community competence with regard to trade in services and investment, but the continuous discussions on the issue convinced me that more OMV and speaking with one voice make sense in international trade negotiations’ (interview 2004). (VII) It can be assumed that when issues have already been discussed without (much) success in a bargaining-like setting, like during the Nice and especially Amsterdam IGCs, and can be advanced in a more discursive setting, deliberation and arguing is likely to have played a role (cf. Kleine and Risse 2005, 2010).

3.3. The role of supranational institutions

The role of supranational institutions would in its most forceful expression culminate in changed positions of national governments. During the *1996-97 IGC* the role of supranational institutions provided little integrative impetus. The *Commission*, to begin with, aimed for a straightforward extension of Article 113 to services, intellectual property rights and investment (Commission 1996a). However, the Commission did not manage to assert itself on the Article 113 question during the IGC. This was due to several factors. Firstly, having overplayed its hand at Maastricht (Gray 2002) and in terms of external trade policy in the early/mid 1990s, the Commission faced an uphill struggle during the Conference and diminished its possibility of influencing the CCP dossier. Secondly, after Commission representatives had recurrently argued that the Commission would not seek to expand its competences in the 1996-97 IGC (Santer 1995), some Member States were irritated later when the Commission asked for, what was perceived as ‘new competencies in disguise’ (interview 1997). The fact that it merely wanted to ‘update’ or ‘modernise’ the Common Commercial Policy was seen as sheer rhetoric by them. Thirdly, one of the general strengths of the Commission – its ability to forge internal cohesion (cf. Nugent 1995, 2001) – could not be played out. (Former) DG I, the IGC Task Force, Commissioner Brittan and his cabinet, and the legal service failed to unite their energies in pursuit of achieving an extension of external trade competences. Apart from (former) DG I, the other Commission fractions did not wholeheartedly push the issue in the IGC process (interviews 1997, 1999). Fourthly, 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 (cf. Commission 1997). Finally, the Commission negotiator, Marcelino Oreja, had only minimal interest in, and little understanding of, the issue and his performance on the CCP dossier was judged as rather poor (interview 1999).

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. Although the Court’s ruling is in the first instance an interpretation of an existing Treaty, it also tends to be a comment on how the law should develop and also is not free from political considerations (Weiler 1981; Meunier and

Nicolaïdis 2000). In its ruling 1/94, the Court showed that it had not endorsed important arguments in support of bringing services and IPRs within the scope of the CCP. 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 the CCP and EC law in general (cf. Emiliou 1996; Pescatore 1979). 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 many national actors, for whom '[t]he Opinion clearly served as a focal point' (Elsig 2002: 129). 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 the *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. For the Italian Presidency, trade policy had only very subordinate importance and featured lowly on its agenda (Council 1996a; interview 1997). It wasted little political energy on the issue and was also not particularly progressive in terms of its substantive approach (cf. Council 1996a). The Irish Presidency's goal was to bring forward a comprehensive general Treaty outline and sought to fulfill the role of honest broker in the interest of the Union (Humphreys 1997; Ludlow 1997b). 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 (cf. Council 1996b). The Dutch Presidency had a strong preference to seal the IGC negotiations during its term. On the issue of trade policy the person mainly in charge of this dossier, the Dutch *Titulaire* in the Article 113 Committee, has been considered to be rather critical of an extension of the CCP (interview 1999). The Dutch Presidency was thus less supportive. 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 1997). Although there had been underlying 'protectionist' tendencies in many national ministries 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 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's* priority was foremost to improve its own role in trade policy, while an extension of QMV and Commission's role as (sole) negotiator was of lesser concern (EP 1996, interview 1997). 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.³⁷ In its most important contribution, the EP (1996) did not mention the extension of Article 113 as an explicit aim. The fact that Parliament was not outrightly supportive may have taken some legitimacy away from the Commission proposal (interview 1997). On the other hand, the EP was very explicit about its own ambitions. It sought the introduction of co-decision for Article 113 and to extend assent to all international agreements (EP 1996). It 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 somewhat augmented. The Commission, after the resignation of the entire Santer Commission in March 1999 and the difficult early days of the Prodi Commission, was obliged to give priority to administrative reform and putting its own house in order (Grabbe 2001; Monar 2001). Although an increase in competencies was less of a Commission priority at the IGC, extending the scope of the CPP to services, IPRs and investment remained a Commission preference. More emphasis was put on an augmentation of EP power in trade policy this time (Commission 2000c; interview 2004). At the 2000 IGC the Commission's assertion and impact on the CCP debate was more effective on this issue than at Amsterdam. Its ability to influence the debate was hampered by the continuing lack of trust by some Member States. 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 (interview 2004). However, the Commission managed to establish more cohesion on trade policy as compared to the Amsterdam IGC. Trade Commissioner 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. More importantly, at the Nice summit, the Commission, together with the Finnish delegation, successfully asserted itself and made sure that QMV was introduced for services and IPRs (albeit with not insignificant exceptions). After negotiations had become deadlocked and promotional brokerage by the French Presidency had been largely absent, the Commission (assisted by the Finnish delegation) stepped in and tabled two proposals on the third day of the summit, while cultivating support behind the scenes (Gray and Stubb 2001). Eventually agreement was reached in deliberations between the French Presidency, the Council Secretariat, the Finnish delegation and the Commission, on the basis of a latter's proposal. Observers have held that the Nice compromise – and the acquiescence of the French Presidency, which essentially had to shift its position – owed substantially to the Commission's assertion in the final part of the negotiations (interview 2005; Beach 2005: 169; Gray and Stubb 2001: 21).

³⁷ With the exception of one line in EP (1995b: 7).

While the Portuguese *Presidency* fulfilled its role as an honest broker and furtherer of common interests (cf. Edwards and Wiessala 2001), the French Presidency failed in that respect. Unlike the Presidency's expected role, the French did not take an ambitious approach on the issue and failed to sufficiently modify its own national interest in the search for a far-reaching solution in the European interest (Schout and Vanhoonacker 2006).³⁸ Instead, the French Presidency insisted on the preservation of unanimity in several sectors, above all cultural services (cf. Lequesne 2001; Gray and Stubb 2001; Beach 2005: 148). It also made sure that investment was dropped from the negotiating drafts (cf. French Presidency 2000). This was rather inviting for other delegations to oppose the extension of QMV in other aspects and areas of the CCP (interview 2002). 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 2001: 138). Despite this not particularly constructive role played by the French Presidency, the final compromise reached at Nice was enabled by the very fact that France held the chair, 'which led them to be more accommodating' (Beach 2005: 151). As one insider noted, 'it also became a matter of reputation given expectations on the Presidency. The limits of what could be blocked as a Presidency had been reached' (interview 2006).

The *European Parliament* was more supportive of the extension of Article 133 than at the Amsterdam IGC. The EP's stance basically mirrored that of the Commission on the CCP. 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 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 for the *Commission*, whose preferences remained unchanged from the previous Treaty revision (Lamy 2003a, b), the background conditions for its engagement and assertion were considerably more favourable than at IGCs. Its two representatives enjoyed informational advantages – not least due to their very substantial infrastructural backing – and were considered 'first-tier' members of the Praesidium (Beach 2005: 200). Despite problems of coherence between the official Commission opinion and the so-called 'Penelope' paper initiated by Prodi (Norman 2003) – which however contained no contradictions on external trade policy – the Commission played a leading role during the Convention (Goulard 2003: 381). This is certainly the case for the CCP, mainly for two reasons: first, the Commission

³⁸ The overarching preference of the French Presidency seems to have been to shift the balance of power within the Union towards the larger Member States (Gray and Stubb (2001). With regard to trade policy its main interest was to maintain the national veto on trade in cultural and audiovisual services (interview 2004; cf. Lequesne 2001).

had strong support in the Praesidium, with ten out of twelve members at least sympathetic to its views (cf. Norman 2003: 161-162), and a significant number of allies on the CCP issue in the Convention, most notably the EU (Commission 2004: 25). The Commission also successfully cultivated contacts, most importantly with Jean-Luc Dehaene who chaired the Working Group on External Action, and members of the Praesidium, but also by providing background information for interested conventionnels (Norman 2003: 162). Secondly, 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 actually listened to and reflected upon. 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; cf. Commission 2004: 25). For these reasons, along with the superior expertise of the Commission on the CCP, observers judged that the Commission played a leading role securing the progressive CCP outcome in the External Action Working Group, and in defending its essence later in the Praesidium and Plenary (interviews 2004, 2006).

The *European Parliament*, managed to assert itself to a much greater extent than during previous Treaty revisions. Most representatives of the European Parliament at the Convention held preferences analogous to that of Parliament during the IGC 2000, supporting an expansion of Community competence to the new trade issues and a substantially augmented role of the European Parliament in trade policy (interview with K. Hänsch 2004; Brok 2003). EP representatives who were, unlike during an IGC, equal participants at the Convention were 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. 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 2003: 137). As a result, amendments by one EP member were often backed by more than ten MEPs. Secondly, representatives of the EP constituted the most active fraction in the Convention in terms of making proposals, participating in the debate and liaising with other Convention members (Duff 2003: 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 (interview 2004; cf. Presidency Conclusions 2001). 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). In the dying days of the Convention, the EP turned into the strongest supported of the Convention

text and thus contributed to its bonding strength with regard to the subsequent IGC negotiations (Beach 2005: 209).

As one neutral observer suggested ‘the representatives from the European Parliament and the Commission acting united during the Convention on the trade policy issue definitely contributed to changing positions by other Conventioneer; they softened up status-quo-oriented views and stances, for example, by some of the French concerning the need of a broad derogation concerning trade in cultural services (interview 2004). The exception to a full transfer of Community competence on trade in cultural and audiovisual was narrowed down during the Convention, thus bringing about some progress on this issue (cf. pp. xx).

The role played by the various *Presidencies* had a moderate additional impact on the CCP outcome. The main priority of the Belgian Presidency in the second half of 2001 was an ambitious document on the Union’s future, with an open/comprehensive reform agenda, and Treaty revision prepared by a Convention rather than a representatives’ group (Kerremans and Drieskens 2002; Voss and Bailleul 2002). The Belgian Presidency was, along with the EP, which had first suggested the idea of a Convention (Göler and Marhold 2003), and the Commission, the strongest supporter of the Convention method. The Belgian Presidency has particularly been credited for reaching agreement, despite considerable reservations especially from France and the UK (Voss and Bailleul 2002: 23), on a very broad mandate for the Convention (Göler 2002: 4). External trade policy as well as many other policy areas would have otherwise probably fallen prey to a more restricted mandate. During the Convention, the chairman of the External Action Working Group, which dealt with EU trade policy, played a very constructive role. When Convention President Giscard d’Estaing sought to redraft the progressive CCP provisions of the Working Group report, it was the Working Group chairman, Dehaene, decisively backed by EP representatives in the Praesidium Brok and de Vigo as well as Commissioner Vitorino, who made sure that the external trade provisions were not (decisively) watered down (interview 2004). The Irish Presidency in the first half of 2004 exemplifies how an impartial Presidency may foster integrative outcomes. Although the Irish government held specific preferences on most issues under negotiation, albeit not on the most controversial institutional issues, it was also considered important by the Irish to act as an honest broker and pay respect for the impartiality norm attached to the office of the Presidency not only in a rhetoric sense (Dür and Mateo 2008: 65; cf. Elgström 2003: 45). Unlike the French Presidency, which before Nice had the issue of trade and investment dropped from the agenda, the Irish did not touch the dossier, even though it did not favour Community competence on the issue, ‘because as a Presidency one is expected to promote the larger European interest’ (interview 2004). Eventually, the Irish Presidency received much applause for skillfully cultivating agreement among member governments on the Constitutional Treaty (Rees 2005; Quaglia and Moxon-Browne 2006; Dür and Mateo 2008).

Due to the bonding strength of the Convention provisions (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 German and Dutch governments who became allies in preventing the CCP from being watered down during the IGCs (interview 2004, 2009). Overall, it can thus be said that supranational actors contributed to the progressive outcome concerning the Common Commercial Policy in the Treaty of Lisbon.

3.4. Countervailing forces

So far we have looked at the potential dynamics of integration. On the other side of the equation we have countervailing forces impacting on the decision-making process, especially through domestic constraints and sovereignty consciousness on the part of national actors. As a result, governments may not considerably move their positions even in the face of relatively substantial integrational dynamics. Firstly, domestic constraints provide some useful insights for explaining the restrictive *IGC 1996-97* outcome. 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 domestic laws (Smith and Woolcock 1999: 440-41). As a result, these issues also tend to be more politicised, which make the transfer of competences to the Community more difficult. For example, during the IGC negotiation France asked for a derogation on cultural services to safeguard its cultural diversity policy behind which there is strong public support and strong lobbies. Domestic constraints regarding some goods issues also affected the debate on the extension of Article 133. 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 (interview 1997, Krenzler 1996).

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: 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 an exclusive Community competence for trade in services, since its collective negotiating position cannot be held up by the Member State least ready to confront international competition (Meunier and Nicolaïdis 2000). 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 has been strongly spurred by the distrust *vis-à-vis* the Commission. During the 1996-97 IGC, it was particularly detrimental that certain individuals such as the Dutch *Titulaire* of the Article 113 Committee

had direct access to agenda-setting and decision-making processes (interview 1999; cf. p. 26). The introduction of the ‘shopping-list’ approach by the Dutch Presidency provided an effective outlet for bureaucratic resistances (and domestic constraints). All in all, countervailing pressures manifested as (very) substantial during the Amsterdam IGC.

Countervailing 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 (interview 2004). Sovereignty-consciousness sparked by some Commission distrust can largely explain provisions on unanimity for areas where this decision-mode is required internally (to prevent potential liberalisation through the back door) and also partly the unanimity requirement for horizontal agreements with which some governments felt more ‘at ease’ (interview, 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 national identity perceptions, no loss of sovereignty in such sensitive areas as culture could be accepted (Le Monde 31/10/2000: 31).

On specific trade policy issues, bureaucratic resistances played an important role. For example, officials at the French Ministry of Economy, Finance and Industry blocked the issue of investment to come under the scope of Article 133 largely. Bureaucratic resistances were particularly strong here because of the substantial amount of bilateral investment and since ‘this is one of the few areas where we not just shadow the Commission’ (interview 2004). As France was holding the Presidency and had significant agenda-setting power, the issue was dropped from the agenda in November 2000 (French Presidency 2000; interview 2004). 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; Goh 1998).

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’ (quoted in Rollo and Holmes 2001). The unfortunate, cautious as well as defensive role by the French Presidency on the CCP 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 (cf. Lequesne 2001; Le Monde 18/11/2000). 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 some of the about 4.5

million jobs in the French cultural sector would be endangered through WTO level liberalisation (interview 2002; Le Monde 22/04/2000).

During the *Convention* countervailing forces were much weaker than during an IGC. Due to the absence of inter-departmental coordination, government representatives were not curbed by the influence of various functional ministries. Bureaucrats, who have been identified as important agents of sovereignty consciousness and as 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 (as intended through the Convention idea) to negotiate freely without significant restrictions (Maurer 2003: 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. The 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 preparation exercises. They turned the Draft Constitutional Treaty into the default setting, which was easier to defend than to change (Beach 2005). When the IGC formally began in October 2003, countervailing forces, 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 external trade 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. Moreover, bureaucratic resistances were also less intense, as the IGC was largely conducted on the political level and partly because of its relative short duration. As a result, it was more difficult for departments to have their voices heard in the formation of national positions (interview 2004).³⁹ During the IGC 2007, that paved the way towards the Treaty of Lisbon, the CCP package was not reopened due to the above rationale (interview 2009). Hence, the considerably reduced countervailing pressures during the last Treaty revision process should be seen as endogenous in nature: due to the altered negotiation infrastructure, which was successfully promoted by supranational institutions (cf. p. 29 above), countervailing forces that traditionally constrain integrative outcomes at IGCs could not substantially unfold.

The strongest countervailing pressures on the CCP 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 spring 2003 did not provide for a French cultural exception (Le Monde, 16/05/2003). Largely as a result, the Praesidium decided after the Thessaloniki European Council to include the cultural exception (albeit defined more narrowly than before), as otherwise it would have been difficult for the French government to support the Draft Constitutional Treaty.

³⁹ In addition, 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.

During the 2003-2004 IGC, the strongest countervailing pressure on the CCP issue came from the Swedish and Finnish delegations. They sought (and obtained) a narrow exception to 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 can be explained by a mix of sovereignty consciousness and domestic constraints and diversities. The issue of trade in 'public' services was raised by many national Parliamentarians (from different parties) in the Finnish Parliament during the Convention and IGC and thus effectively tied the hands of the government, which needed to go through Parliament to ratify the Treaty (interview, by telephone, 2005). The Swedish situation was similar. The issue of public 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 cautious approach (interview 2004; Finish Consulate 2007).⁴⁰

Conclusion

While most (of the few) accounts that have subjected CCP Treaty revision to (causal) analysis have tended to point to exogenous dynamics as the main dynamics for change, this paper has argued that we need to focus particularly on endogenous factors in order to account for different outcomes in past Treaty revisions. All in all, my (mainly endogenously-based) framework seems to have provided a robust account for an analysis of the past three Treaty revisions on the reform of the Common Commercial Policy. My empirical findings are summarised in Table 1.



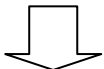



I argue that the failure to modernise Article 113 at the *Amsterdam IGC* can be explained here as the result of overall weak dynamics combined with strong countervailing pressures. Exogenous dynamics were insufficiently accompanied by other pressures. Functional arguments stemming from the internal market were less pressing and had been rejected by the Court in its opinion 1/94. Socialisation, deliberation and learning processes were offset by several factors. 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.

⁴⁰ 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 2006a).

The IGC 2000 negotiations were generally characterised by stronger dynamics. Functional pressures stemming from the internal market, and from enlargement, had also become more substantial. The assertion of supranational institutions, through the Commission, had also grown. On the other hand, socialisation and learning processes among governmental elites remained at about the same modest level as during the IGC 1996-97. In combination, these dynamics can explain the partial extension of QMV. These pressures were countered by a number of forces that were of similar strength as during the Amsterdam IGC. While suspicion in the Commission had decreased, the politicisation of some issues in the domestic context had somewhat grown.

During the last Treaty revision the dynamics were considerably stronger. Functional rationales, particularly through enlargement (now being more immanent), provided an important structural pressure (along with continuing exogenous dynamics). 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 supranational institutions. Largely due to the Convention framework, countervailing 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 cases

Case	IGC 1996-97	IGC 2000	Convention 2002 IGCs 2002-04, 2007
Pressures			
Functional pressures	Low	Medium	Medium to High
Socialisation, deliberation and learning	Low	Low	Medium to High
Role of supranational institutions	Low	Medium	Medium to High
Dynamics (combined)	Weak 	Medium 	Strong 
Countervailing forces (combined)	 Strong	 Strong	 Weak to Medium

Outcome (in terms of level/scope)	Low	Low to Medium	Medium to High
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Arguably, the framework, especially through its dialectical nature enables us to account for more *specific* aspects of decision outcomes. For example, where there is comprehensive pressure for an extension of competence on trade in services, IPRs and investment, countervailing forces help us to make an informed guess concerning the level and scope of such extension, including aspects where progress is less likely. The strong dynamics during the last Treaty revision suggested the likelihood of a full switch of competence on the above issues. When also considering the countervailing pressure at work, we can estimate that areas such as cultural, social, health and education services will be exempted given the relatively strong countervailing pressures in France, Sweden and Finland. Hence, by analysing both sides of the dialectical equation the specificity of our judgment concerning decision outcomes is considerably enhanced.

The impact of the Lisbon provisions on EU trade policy actorness are not yet entirely clear, given the short time span since the Treaty came into force. It seems that the EU's role as an actor in trade policy-making will be enhanced through the new arrangements. However, a lot depends on the implementation of the Lisbon provisions, especially with regard to how the European Parliament will exercise the newly acquired powers (cf. Niemann 2012 forthcoming).

The seeming utility of the framework, the tentativeness of parts of the preceding analysis and the possibility of greater specification regarding the causal relevance of hypothesised pressures (e.g. which ones are merely *conducive* and which ones *necessary*), suggest that there is substantial ground for further research emanating from this study.

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