

AMENDMENT FORM

Suggestion for amendment of Article : **Part II, Title B, Article 24**

Suggestion for protocol :

By Ms / Mr : **Hain**

Status : **- Member** **- Alternate**

24.1 The common commercial policy shall be based on uniform principles, particularly with regard to changes in tariff rates, the conclusion of tariff and trade agreements relating to trade in goods and services and the commercial aspects of intellectual property, foreign direct investment, the achievement of uniformity in measures of liberalisation, export policy and measures to protect trade such as those to be taken in the event of dumping or subsidies. ~~The common commercial policy shall be conducted in the context of the principles and objectives of the Union's external action, as set out in Article 1 of this Title.~~

Art 24.4 add new second paragraph "This article shall not affect the rights of the Member States to maintain and conclude agreements with third countries or international organisations insofar as such agreements comply with Union law and other relevant international agreements."

Art 24.5 ~~The exercise of the competences conferred by this Article in the field of commercial policy shall not affect the delimitation of internal competences between the Union and the Member States, and shall not lead to harmonisation of legislative or regulatory provisions of Member States insofar as the Constitution excludes such harmonisation.~~
An agreement may not be concluded by the Council if it includes provision which would go beyond the Union's internal powers, in particular by leading to the harmonisation of the laws or regulations of Member States in an area for which this Treaty rules out such harmonisation.

Explanation (if any) :

24.1 This paragraph introduces a significant change from the current Article 133, by placing trade in services and commercial aspects of intellectual property on the same basis as trade in goods rather than limiting the application of the Common Commercial Policy in these areas to the negotiation and conclusion of agreements in the fields of trade in services and commercial aspects of intellectual property. We are concerned that this leaves the text ambiguous and potentially provides conflicting legal bases for action. We would welcome clarification from the Praesidium of the purposes of the changes introduced.

Foreign direct investment requires more precise formulation – see comments on Art 23.

The last sentence duplicates Article 1 of the Title and should be removed.

24.2 We support the intention to give the European Parliament a greater role, but providing for co-decision on all European laws and framework laws is impractical and may lead to long delays. Currently, many autonomous instruments under the CCP are adopted very rapidly to ensure the smooth operation of annual Community import licensing or quota regimes. Perhaps the appropriate level of scrutiny for the European Parliament would be consultation, in line with the procedure under Article 33 paragraph 7. This paragraph should also provide for QMV and consultation on internal common commercial policy measures, such as agreeing WTO accessions, where legislation is not required.

24.4: We support the intention to replicate some of the derogations laid down in the existing Article 133 (5), but it is not clear that this draft will have the same effect as 133 (5). This should be the subject of further reflection. The last sub-paragraph of 133(5) seems to have been accidentally omitted and should be reinstated.

It will also be necessary to include provisions in this Article to ensure that the Council acts unanimously when negotiating and concluding agreements which affect areas where unanimity would otherwise be required internally. To the extent that the scope of Article 24.1 is extended beyond Article 133.1, it will be necessary to have some similar provisions relating to the adoption of internal rules.

24.5: The UK supports the intention behind this paragraph, but believes it is expressed better in the current text of Article 133(6), first sub-paragraph. We propose reverting to the current language.

We note the removal of specific derogation for Transport (Article 133 (6) last sub-paragraph). In our view, transport should remain outside the scope of the CCP. This needs to be clarified in the Treaty.

On a jurist-linguist point, the English phrase “commercial aspects of intellectual property” is ambiguous, whereas “trade related aspects of intellectual property” has a direct link to TRIPS. Both are respectable translations of e.g. “les aspects commerciaux de la propriété commerciale.” We would like to see “commercial” replaced by “trade related” throughout the text.