

AMENDMENT FORM

Suggestion for amendment for: *Chapter 2 : Common Commerical Policy.*
Article 24

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Status : Alternate

Article 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.
2. The European Parliament and the Council shall adopt, in accordance with the legislative procedure, the European laws and framework laws required to implement the common commercial policy.
3. Where agreements with one or more States or international organisations need to be negotiated, the relevant provisions of Article 33 of this Title shall apply. The Commission shall make recommendations to the Council, which shall authorise the Commission to open the necessary negotiations. The Council and the Commission shall be responsible for ensuring that the agreements negotiated are compatible with internal Union policies and rules.

The Commission shall conduct these negotiations in consultation with a special committee appointed by the Council to assist the Commission in this task and within the framework of such directives as the Council may issue to it. The Commission shall report regularly to the special committee on the progress of negotiations.

4. For the negotiation and conclusion of agreements in the fields of trade in services involving the movement of persons and the commercial aspects of intellectual property, the Council shall act unanimously where such agreements include provisions for which unanimity is required for the adoption of internal rules.
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. ***Agreements relating to trade in cultural and audio-visual services, educational services, and social and human health services, shall fall within the shared competence of the Community and its Member States. Consequently, in addition to a Community decision taken in accordance with the relevant provisions of Article (300), the negotiation of such agreements shall require the common accord of the Member States. Agreements thus negotiated shall be concluded jointly by the Community and the Member States.***

Explanation:

5. *Within the Common Commercial Policy, cultural and audio-visual services, educational services, and social and human health services have always been recognised as being of a special nature as compared to other, purely commercial services. These areas embody the very essence of a country's social, political and cultural identity. It has not therefore been considered appropriate to subject them to trade negotiations without certain safeguards. These are contained in Article 133 paragraph 6 of the current Treaty, which stipulates that these areas come under shared competence (as opposed to exclusive Community competence). This is perfectly consistent with the negotiating position held by the European Union in the WTO/GATS Doha round, as none of these services have been included in the Union's offer. Other States have followed a similar line (e.g. the US, in its offer, has been very explicit about excluding educational services). So there is no reason why such safeguards should not continue to be part of the Union's future constitutional arrangements.*

In terms of consistency within the future constitutional Treaty, it would be very difficult to justify why - in terms of pure logic - these areas where a high degree of subsidiarity should apply (they are classified either as shared competences or areas for supporting action and

legislative harmonisation is excluded) where internal policies are concerned while being classified as exclusive Union competences when common trade policy is concerned.

In purely operational terms, Art. 24(5) is incomplete. It states that commercial policy may 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 in so far as the future Constitution excludes such harmonisation. This provision can only be effective if it is clearly stated that this means that shared competence applies and the relevant areas are spelled out. Otherwise, the provision could lead to problems of interpretation, complicating to a considerable degree the design and implementation of a common commercial policy.