

Open Europe parliamentary briefing #6

Trade and development

Key points:

The EU's protectionism is the key issue for developing countries
The Lisbon treaty gives the EU more power over trade - without any reform.

Instead of reforming the EU's trade policy the Lisbon Treaty will give the EU greater powers in this field. Trade will continue, as now, to be made completely in secret in the unaccountable "Article 133 Committee".

Against the UK Government's wishes, trade in services, intellectual property rights, and foreign direct investment are brought under the "uniform principles" of the "Common Commercial Policy" for the first time. This would give the EU the same powers over these issues that it has over trade in goods.

The change is a significant transfer of power over trade policy. The Government opposed this transfer, and we believe they were right to do so: the UK will no longer have the power to independently make agreements with developing countries in key areas affecting trade and investment. Given the EU's highly dubious past record on development, and its general direction of travel in this regard, we would question whether the Union would handle these important new powers responsibly.

The Lisbon Treaty would make CAP reform even harder

By giving the European Parliament powers of co-decision for the first time over the Common Agricultural Policy element of the EU budget, Lisbon will further entrench anti-development protectionism. Despite its limited powers in this area at present Parliament has consistently voted against CAP reform whenever it has had a chance: e.g. in March 2007 the Parliament succeeded in blocking an attempt by the Council and Commission to allow 20% of CAP spending to be "modulated" (spent on other rural development projects). It also blocked plans for wine reform and sugar subsidy reform.

Giving the Parliament more powers will give protectionist interests a second line of defence against attempts to reform EU development policy - effectively a "double lock" against reform.

The EU has been criticised for tying aid to its foreign policy objectives.
The Lisbon treaty would mean EU aid would come with even more strings attached

The EU has been criticised for spending its aid budget not on the poorest countries but in order to support its political objectives. Of the top 5 recipients of the Commission's aid in 2004, three are middle-income countries that are fortunate enough to lie close to the EU (Serbia and Montenegro, Turkey and Morocco), with Congo and Afghanistan being the only low-income countries¹.

¹ European Commission, EU Donor Atlas 2006 Volume 1, Brussels, February 2006, p.27

As Oxfam put it in a December 2004 report, "the European Commission has prioritised regional security above global poverty reduction, allocating greater shares of aid to neighbouring Mediterranean and Eastern European countries"². In a report on the effects of the Lisbon Treaty, NGO umbrella group BOND warns that - by strengthening EU foreign policy powers - the Lisbon Treaty could pave the way for even more politicisation of EU aid and development policy.

Even DFID admits in a recent review of the effectiveness of the EU that: "The UK would like to see a greater focus on low income countries for spending from the EC Budget." But the Lisbon Treaty does nothing to bring this about.

The EU is going in the wrong direction. It needs reform - not new powers:

- 1) **The EU is an illiberal and protectionist force - and this protectionism hits developing countries hardest.** The GTAP database shows that in 2002, rich countries with a GDP per capita over £15,000 a year face an EU tariff of just 1.6%. Countries with a GDP per capita of between £5,000 and £15,000 faced an average tariff of 2.9%. But poor countries with a GDP per capita of under £5,000 a year faced an EU tariff of 5% on average.
- 2) **Europe is the roadblock to agreement at the Doha round of trade talks.** The EU's attempts to carve out a range of 'sensitive' agricultural products from tariff reductions in the Doha round of multilateral trade talks was a key factor in the collapse of talks in 2006.
- 3) **The CAP is not being reformed, and subsidy is increasing.** Spending on the CAP is to increase from €49.3 billion in 2004 to €55 billion in 2007. In real terms the CAP budget has increased from €330 billion over the last seven-year budget to €371 billion over 2007-13.
- 4) **Biofuels will starve the world's poorest - but are great way to bolster farm subsidies.** The EU Commission has just set out plans for huge targets for biofuel use: environmental arguments aside, these have significant implications for the developing world. The targets are corporatist policy-making at its very worst - a form of state support for an environmentally and economically harmful activity, in this case designed to consolidate existing price support mechanisms for vested interest groups, most notably agri-businesses. European farmers will reap billions of euros worth of extra subsidy as a result of the huge increase in biofuel incorporation. Based on Europe Economics' projections for the costs of biofuels Open Europe estimate total transfers to the agrofuels industry of around €15 - 17bn pa in 2020. This does not take into account the effect of rising crop prices caused by state mandated targets. We also estimate that EU targets will push 60 million people into food insecurity, with sub-Saharan Africa bearing the brunt of food shortages caused by biofuels.³

² Oxfam International, 'Paying the Price: Why Rich Countries Must Invest Now in a War on Poverty', Oxford, December 2004, p.48

³ Based on Runge, C & Senauer, B. "How Biofuels Could Starve the Poor" *Foreign Affairs* (May/ June 2007)

- 5) **The EU wants to protect itself, but it is bullying poor countries into opening their markets too much, too soon.** The EU is still negotiating Economic Partnership Agreements with developing countries, using the threat of higher tariffs on these countries' exports as a way to leverage market opening. The negotiating strategy of the EU has been widely criticised by NGOs and developing country governments. EPAs in themselves have also been heavily criticised on the following concerns: they force developing countries to liberalise trade with the EU too much, too soon; the EU's making development aid conditional on the signing of an EPA; potentially drastic reductions in developing country's tariff revenues; and controversial new rules on competition policy and investment which have been integrated within EPAs - which would affect developing country's ability to control their own economic policies.

In detail:

The EU is failing developing countries - the Lisbon Treaty makes reform harder

- Current EU policies are actively harming developing countries. Trade protectionism and direct farm subsidies and are perhaps the most objectionable aspects of the EU today - and despite warm rhetoric from the EU Commission and British Government, reform is not happening. The Lisbon Treaty does nothing to improve this situation and could even make matters worse in some respects by entrenching vested interests further.
- The EU's farm subsidies and trade barriers cost the poorest countries in the world billions every year. The intransigence and strength of the interests which underpin EU protectionism is described in detail below, and indeed we argue that these obstacles to reform are getting stronger.
- Setting this general trend aside, it should also be argued at this juncture it that the specific institutional changes of the new Treaty will make these chronic problems even harder to reform. By giving the European Parliament powers of co-decision for the first time over the Common Agricultural Policy element of the EU budget, Lisbon will further entrench anti-development protectionism. Despite its current lack of power in this area Parliament has consistently voted against CAP reform. And it has used its existing powers over the framework to block reform - e.g. in March 2007 the Parliament succeeded in blocking an attempt by the Council and Commission to allow 20% of CAP spending to be "modulated" (spent on other rural development projects).

- The European Parliament will also gain codecision powers over the framework for the Common Commercial Policy.
- Giving the Parliament more powers in this field will give protectionist interests a second line of defence against attempts to reform EU development policy.

Does the Lisbon Treaty offer anything positive for development?

Objectives and statements of principles look good - but are worthless on their own

- If the EU wants to take serious action on international development, it can do so now - but simply lacks the political will to come up with policies and work with existing powers to achieve for pro-poor development.
- The Government have cited the British Overseas NGOs for Development (BOND) paper as evidence that international development professionals support the Lisbon Treaty. The BOND paper welcomes the fact that the eradication of poverty becomes the primary objective of development cooperation. However, the paper then goes on to make the crucial argument that the Treaty and its principles and objectives will do nothing for development without the right policies in place, and the will to pursue them. This is absolutely correct - but the UK Government chooses not to refer to this part of the briefing.
- In any case, the Lisbon Treaty introduces other objectives that may conflict with those with an anti-poverty focus. Article 3 TEU: "In its relations with the wider world, the Union shall uphold and promote its values and contribute to the protection of its citizens".

Embedded EU protectionism is the fundamental issue for development - the EU is already going in the wrong direction in this respect, so why give it more power?

- **Trade protectionism is perhaps the most pernicious and iniquitous aspect of the modern day EU - and arguably the policy area most resistant to reform.** There is a wealth of evidence to suggest that Brussels policy is becoming more and more anti-development, with recent EU actions showing that protectionism and bowing to vested interest groups have as strong a grip as ever over EU policies. Warm words in the treaty cannot in themselves reverse this trend.
- **The EU is a protectionist force in world trade.** Average tariff rates, which are often cited by the EU as proof of openness, are misleading. They hide very high peaks in applied tariff rates in certain sectors and against certain countries. According to the WTO, the average EU applied tariff rate is 6.9%. However, for agricultural products this rises to 18.6%. Indeed, products enjoying high tariff protection are almost exclusively agricultural or processed food. These include flours and meat (427.9%); mushrooms

(300.8%); frozen beef (276.9%); pineapple juices (209.8%) and live chickens (167.2%).⁴

- **EU protectionism hits developing countries hardest.** Because of the discrimination against the products developing countries tend to produce, poor countries are hit hardest. In the case of the EU, for example, the GTAP database shows that in 2002, rich countries with a GDP per capita over £15,000 a year face a tariff of just 1.6%. Countries with a GDP per capita of between £5,000 and £15,000 faced an average tariff of 2.9%. But poor countries with a GDP per capita of under £5,000 a year faced an EU tariff of 5% on average.
- **The EU is the major roadblock to agreement at the Doha round.** Agriculture has emerged as the major stumbling block to agreement at Doha. Despite its relatively small overall importance in the world economy, trade in farm goods remains the most significant issue for developing countries, and the area where the EU has been most resistant to making concessions.
- The issue of tariffs was one of the central reasons for the collapse of talks in June 2006. The EU refused to give ground on this point beyond a very limited offer, below the levels of reduction being pushed for by the US and the G20. The EU would move no further than a 39% average linear cut on its tariffs. Later in the year the EU moved up its final offer to 46%. However, the EU wants to designate 8 percent of all the EU's tariffs "sensitive" and make them subject to a far smaller cut.⁵ World Bank research suggests the EU offer would mean a cut of just under 1% in the applied tariff. As the Commission for Africa has noted, "if only two percent of agricultural tariff lines are designated as sensitive... three quarters of global welfare gains will be lost." The US⁶, Canada⁷ and the Cairns Group⁸ also separately analysed the EU's proposal, in the weeks after 28 October 2006, finding that designating 8% of goods as "sensitive" would effectively block all exports of interest to developing countries in the EU market.
- A study by the United States Trade Representative (USTR) found that the use of so many sensitive products would radically undermine the effect of the round: "The proposed tariff on chicken leg quarters into the EU is 53%. Under the EU proposal, if, as seems likely, the EU selects this product as one of the 142 sensitive product tariff lines it has requested, it could reduce the tariff by as little as 15% (to 45%). The size of the additional

⁴ WTO, *EU Trade Policy Review* (2007)

⁵ More recently, EU Trade Commissioner Peter Mandelson has increased the EU's offer to a 54% average cut. However, it is unclear a) whether this changes the EU's offer on sensitive products and b) whether such a reduction is in fact acceptable to EU member states. France strongly criticised the 54% cut, claiming that Mandelson had exceeded his negotiating mandate.

⁶ USTR, Implications of EU Agriculture market Access Position, USTR website

⁷ Canadian Department of Foreign Affairs and International Trade *EC Proposal of October 28, 2005. Sensitive products: Preliminary Analyses of an Obscure Proposal* DFAIT website

⁸ Cairns Group, *Comments on EC Proposal*, Australian Mission, Geneva.

access to the EU market works out to only 0.02 kg per capita. That is not even one chicken nugget per person per year.”⁹

- **The CAP is not being reformed.** EU farm subsidies swallow up around €50bn per year, giving European farmers an unfair competitive advantage over would-be exporters from the developing world. While Tony Blair told Parliament that he wanted to “get rid of” the CAP (29 July 2005), the proportion of the EU budget spent on the CAP is actually going up from 40% to 44%. Spending on the CAP is to increase from €49.3 billion in 2004 to €55 billion in 2007. In real terms the CAP budget has increased from €330 billion over the last seven-year budget to €371 billion over 2007-13.
- Looking at the budget as a whole, in September 2007 the Commission published a consultation paper which made it clear there would be no fundamental change to the EU budget before 2014, and that the current Commission would not even make any proposals before it leaves office in October 2009. Neither is there appetite for serious reform amongst key EU member states. German Agriculture Minister Horst Seehofer has said that he will resist reforms to the EU’s Common Agricultural Policy, such as capping payments to the largest farms: “we are going to fight very, very hard for our corner” (Deutsche Welle, 21 January 2008). Days later, France published a document on the CAP calling for a “strengthening of community preference” and recommends “tariff protection taking account of the vulnerability of certain sectors” (Le Figaro, 28 January 2008).
- The “fundamental review” of the CAP promised by Tony Blair after giving away the UK rebate in 2005 was downgraded to a “health check”, which (according to a leaked Commission green paper) has only led to the re-proposal of the idea of a cap on large payments which would affect just 1.7% of the budget. Moreover the idea of a cap was rejected by member states in 1992, 1999 and 2003, and is opposed by the UK because (a) Britain would lose disproportionately, and (b) it incentivises less efficient small farms.
- Britain’s failure to force reform the CAP is an historic missed-opportunity. The UK has given up a key bargaining chip (by reducing its rebate), whilst the Lisbon Treaty will allow the pro-CAP European Parliament more power to block reform. The pro-farm subsidy camp has strengthened its hand over the last two years.
- **Biofuels will starve the world’s poorest - but are great news for farmers in Europe.** The EU Commission has unveiled legislation calling for 10% use of biofuels in transport by 2020. This is normally seen as an environmental policy; however, the social implications of this policy for the developing world are now becoming more widely recognised.
- Agrofuel targets are corporatist policy-making at its very worst - they are a form of state support for an environmentally and economically harmful

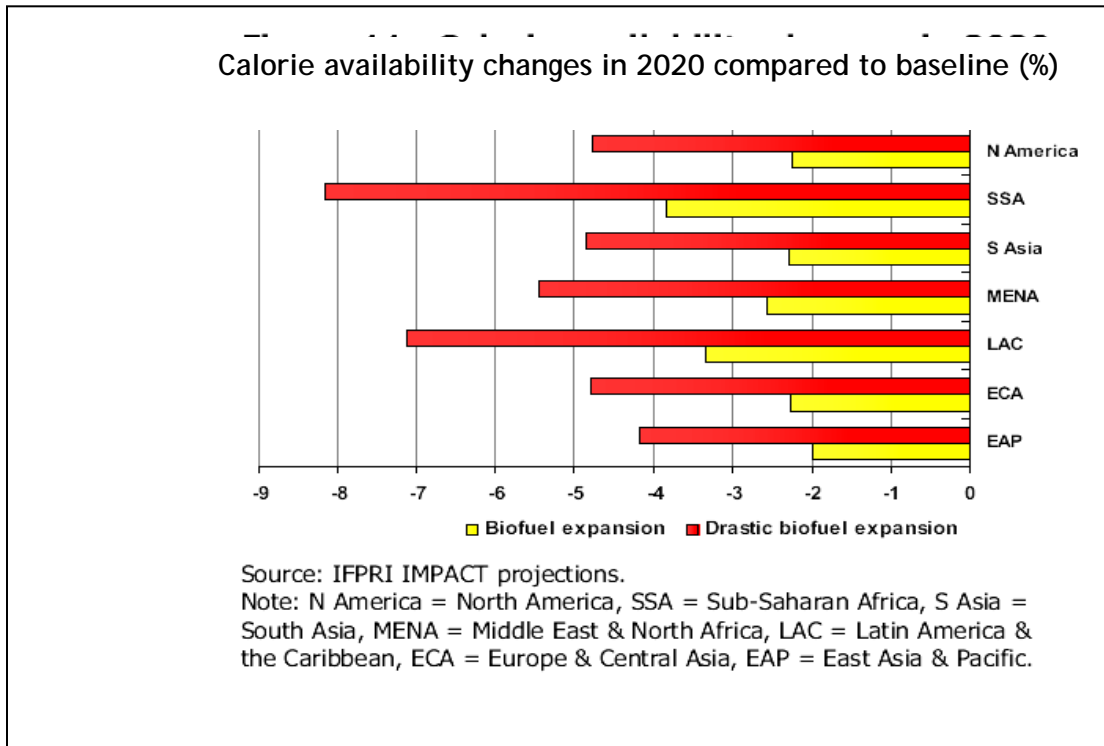
⁹ USTR, Implications of EU Agriculture market Access Position, USTR website

activity, in this case designed to consolidate existing price support mechanisms for vested interest groups, most notably agri-businesses.

- In addition to the price support implicit in state mandated biofuel targets, European farmers will reap billions of euros worth of extra subsidy as a result of the huge increase in biofuel incorporation. Based on Europe Economics' projections for the costs of biofuels, Open Europe estimate total transfers to the agrofuels industry of around €15 - 17bn pa in 2020. The Global Subsidies Initiative estimates that total transfers to the biofuels industry in 2006 were already as high as €3.7bn in total, speculating that a three-fold increase in total cost will occur by 2020 - meaning annual subsidy costs €11bn in that year. However, the GSI emphasises that this figure is almost certainly too low.¹⁰
- However, biofuels are not such good news in the developing world, diverting agricultural produce supply away from food to fuel. Filling a 95-litre fuel tank with pure ethanol requires about 200 kg of corn, which has enough calories to feed a person for a year. Biofuels are already leading to higher food prices on the back of US demand; the EU targets will make the situation far worse. Between 2006 and 2007 the price of food aid increased 20%, Indian food prices increased 11%, tortilla prices in Mexico quadrupled, Chinese pork prices rose 42%, the price of pasta in Italy rose 20%, the average Italian household faced an extra £700 on shopping bills and UK food prices rose by a similar amount. The EU's targets are equally ambitious to those of the US, and will further exacerbate this trend.
- The OECD and FAO predict global food price rises of between 20 and 50% for different food products over the next decade. Their report notes that increasing biofuel use is "one of the main drivers". The IFPRI estimate increases of up to 26% for various staples created by biofuel demand alone. Runge and Senauer estimate that for every percentage increase in real prices of staple foods, 16 million extra people will be drawn into food insecurity.¹¹ Given the scale of increases predicted by the IFPRI, this would mean 240 million people being pushed into food insecurity, of which the EU would be responsible for 60 million.
- As data from the IFPRI shows, Sub-Saharan Africa will be hit hardest by reduced food supply as a result of biofuels expansion:

¹⁰ Global Subsidies Initiative, Biofuels - at what cost? Government support for ethanol and biodiesel in the European Union (October 2007)

¹¹ Runge, C & Senauer, B. "How Biofuels Could Starve the Poor" *Foreign Affairs* (May/ June 2007)



The EU is protecting itself whilst bullying developing countries to rapidly open trade

- **Economic Partnership Agreements (EPAs) - an aggressive and over-rapid trade opening strategy.** EPAs are trade deals being negotiated between the EU and African, Caribbean and Pacific (ACP) countries, designed to replace the previous system of trade preferences given to these countries, which has been ruled illegal by the WTO. EPAs will mean developing countries would have to eliminate around 80% of their tariffs on imports from the EU.
- The key concerns about EPAs centre on developing countries being forced to liberalise trade with the EU too much, too soon; the EU's making development aid conditional on the signing of an EPA; potentially drastic reductions in developing country's tariff revenues; and controversial new rules on competition policy and investment which have been integrated within EPAs - which would affect developing country's ability to control their own economic policies.
- In order to get round these concerns, during negotiations the EU has continually used the threat of raising tariffs imposed on ACP exporters to strong-arm developing countries into signing up to its proposals by the December 2007 deadline. EU trade spokesman Peter Power said at the time that "If they [EPAs] are not signed by the end of the year, we will no longer be able to offer our current preferential access, and will have to move to an alternative, which will give less market access in Europe for many ACP

countries.”¹² In November, Kenyan Trade and Industry Minister Dr Mukhisa Kituyi said “The impression I get is that the European Union wants to use this (deadline) to arm-twist for more concessions on market access from our countries.”¹³

- At the time of writing, the majority of the ACP countries had still refused to sign, as a result of serious misgivings on EPAs – most choosing instead to sign up to interim agreements. The majority are just outlines of deals – signed before 31 December to save face – which leave many of the more controversial details to be agreed over the course of 2008. Some of the countries which have not signed deals with the EU are on the UN list of Least Developed Countries, and therefore will not face higher tariffs on exports to the EU. However, larger developing countries such as Nigeria are not on this list and face tariff rises.
- One of the most controversial aspects of EPAs still remains to be negotiated. The Commission noted on 20 December, “In 2008 the Commission intends to focus on building up existing and emerging regional agreements to form full EPAs with the greatest possible coverage on issues like services and investment rules.”¹⁴ This suggests very strongly that the EU renew its tactic of pushing ACP countries towards signing up to accepting agreement on rules on services and investment, the so-called ‘Singapore issues’. These areas are highly controversial and their dropping from many EPA negotiations in the run up to Christmas was crucial in realising the interim deals that have been signed. In addition, the question of “rules of origin” – the important “small print” of trade deals has not yet been resolved. Rules of origin determine the extent to which a country can use imported parts, materials or ingredients in its exports without facing higher tariffs. If this issue is not resolved somehow, incompatible rules of origin will become a major barrier to trade between ACP countries.

The Treaty risks further politicisation of development policy and sidelining poverty focus

- The EU’s aid policy has already been criticised for sidelining a real poverty focus. Of the top 5 recipients of the Commission’s aid in 2004, three are middle-income countries that are fortunate enough to lie close to the EU (Serbia and Montenegro, Turkey and Morocco), with Congo and Afghanistan being the only low-income countries¹⁵. EC funds are still not being distributed according to where their marginal effectiveness in relieving poverty is highest. On average, a Jamaican gets more than 50 times as much EC aid as a Bangladeshi, although 82.8 percent of Bangladeshis live on less than \$2 a day against 13.3 percent in Jamaica. A citizen of

¹² <http://www.ft.com/cms/s/0/361451e6-785e-11dc-8e4c-0000779fd2ac.html>

¹³ Reuters (6.11.07)

¹⁴ http://trade.ec.europa.eu/doclib/docs/2007/december/tradoc_137365.pdf

¹⁵ European Commission, EU Donor Atlas 2006 Volume 1, Brussels, February 2006, p.27

Jordan gets 18 times as much EC aid as a Nigerian, although 90.8 percent of Nigerians live on less than \$2 a day against 11.7 per cent in Jordan¹⁶.

- As Oxfam put it in a December 2004 report, “the European Commission has prioritised regional security above global poverty reduction, allocating greater shares of aid to neighbouring Mediterranean and Eastern European countries”¹⁷.
- BOND warns that - by strengthening EU foreign policy powers - the Lisbon Treaty could pave the way for even more politicisation of EU aid and development policy:

“Attempts to consolidate the EU's profile on foreign and security policy risk sidelining commitments on development... The proposal that the High Representative, responsible for the implementation of the Common Foreign and Security policy, also has at his or her disposal a significant aid budget and staff within an External Action Service suggests a potential danger of increased politicisation of development cooperation or instrumentalisation of development funds for implementing foreign policy objectives... Proposals on the table include incorporating all EU external actions, including development, into the External Action Service. This would not only blur the division of powers between the institutions but it would also allow development policy to be at the disposal of the High Representative.”

- We agree that the Lisbon Treaty allows greater scope for development policy to drift towards the EU's political agenda. Aside from the specific problems outlined by BOND, we point to the following concerns:

1) *Using the new QMV provision on urgent financial aid and humanitarian aid to make political foreign policy decisions*

Two new Articles 213 [188i] and 214 [188j](formerly III-320 and III-321 of the Constitution) set up majority voting on urgent macro-financial aid and humanitarian aid. Although this ostensibly seems a benign change (and is cited by the Government as an “uncontroversial” example of a move to QMV), it could raise highly important questions. To give a past real-world scenario, this might have been used to decide whether the Union should continue to fund the Palestinian Authority after the 2006 elections which brought Hamas to power - the UK and other member states disagreed about this, the UK being keen only to fund NGOs and not the Hamas-led authority. The UK tried to have these articles deleted. The UK argued that “Macro-

¹⁶ Because ODA figures are the sum of grants and loans, some countries have negative scores, as debt service payments outweigh new inflows. However, plotting the same graph using gross ODA figures (excluding debt service payments) or averaging net ODA figures across 2002-2004, reveals a very similar pattern. The Human Development Scores refers to 2003 because the figures for 2004 have not been published yet.

¹⁷ Oxfam International, ‘Paying the Price: Why Rich Countries Must Invest Now in a War on Poverty’, Oxford, December 2004, p.48

financial assistance has been agreed urgently when required." Both amendments were ignored.¹⁸

This change means that the ability of the UK to make its own decisions as to how aid funds are spent is reduced and the risk of politicised EU aid expenditure is increased.

2) *The Treaty creates legal uncertainty and new scope for 'competence creep'*

The new Treaty will heighten uncertainty over the boundary between the EU's Common Foreign and Security Policy (CFSP) and development policy.

A key illustrative example is the Small Arms and Light Weapons case (pending)¹⁹ dealing with the Council's decision to give financial assistance to the Economic Community of West African States (ECOWAS) for a disarmament programme. The Commission claim that the action should come under development cooperation, a Community competence - but the Council maintains that this is an intergovernmental matter. Advocate General Mengozzi has already given his opinion on the Small Arms case²⁰, saying that because this is essentially a security measure, it is an intergovernmental matter, clearly falling within the objectives set out in Article 11(1) of the current Treaty on European Union. However, under Lisbon, it is far from certain whether a similar programme would remain within the ambit of member states powers or those of the Commission. As Professor Marise Cremona of the University of Florence points out:

It becomes rather difficult, as you have a single set of objectives for all external action and in terms of content the CFSP encompasses all areas of foreign policy. So if we have on the one hand all areas of foreign policy as content of the CFSP and on the other a single set of [general] objectives for all of external action that doesn't differentiate between them, it's difficult to think about how a legal base decision is going to be made... If we had the same case come up in the context of the Treaty as reformed by the Lisbon Treaty...how would we decide whether this action should be adopted under the CFSP chapter or under the chapter on development powers? ...at some point there will be an institutional battle. At some point there will be a small arms case under the new treaty and the Court will then be asked to make a judgement as to which was the proper route, and its very difficult to see how one could do that.²¹

Lisbon Treaty will not improve transparency in decision making on trade

¹⁸ See <http://european-convention.eu.int/Docs/Treaty/pdf/869/Art29Hain.pdf> and <http://european-convention.eu.int/Docs/Treaty/pdf/870/Art%20III%20218%20Hain%20EN.pdf>. NB 188j also sets up a "European Voluntary Humanitarian Aid Corps". The UK also argued against this, saying that, "The idea of establishing a European Voluntary Humanitarian Aid Corps should have no place within the EU's humanitarian action". This third amendment was also ignored.

¹⁹ C-91/05 Commission vs Council

²⁰ <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:62005C0091:EN:HTML>

²¹ Speech to Centre of European Law, Kings College London (08.02.08)

- The EU's trade policy process is incredibly secretive. The Article 133 Committee produces no minutes or any proper record of its meetings. It is also extremely unaccountable. The Committee consists of a loose group of national experts and civil servants, rather than government ministers. It agrees Commission decisions in principle, and its decisions are usually endorsed without discussion by ministers.
- The Lisbon Treaty does nothing to make trade policymaking in the Committee more transparent. The only change that will result from the Treaty is that presumably the decision-making body in question will be renamed the Article 207 Committee.

The Treaty gives new trade powers to the EU - but will it use them responsibly?

- Under the current treaties (Article 133 TEC) EU ministers generally act unanimously when negotiating trade deals relating to trade in services and intellectual property rights (wherever these would touch on issues where unanimity is required for the adoption of internal rules). The current treaties also provide for unanimity when negotiating over health and education services. Agreements in these areas remain shared competences, and require national parliaments to ratify them. Foreign direct investment is not mentioned at all in the current treaties, and a proposal to include it was defeated at the Nice conference in 2000.

"The Reform Treaty will extend the scope of the trade policy to include all foreign direct investments and makes it clearly an exclusive competence of the Union."

European Commission, July 2007

- Under the new Article 207 [188C (1)] TFEU (the original Constitution's Article III-315), trade in services, intellectual property rights, and foreign direct investment are brought under the umbrella of the "uniform principles" on which the Common Commercial Policy is based, for the first time. This would give the EU the same powers over these issues that it has over trade in goods.
- Under current arrangements in some fields both the member states and the EU can negotiate trade deals, allowing member states to have their own trade agreements alongside those of the EU as a whole. For example, the UK and other EU member states have signed a number of Bilateral Investment Treaties with other countries around the world.
- However, exclusive competence in this area would make such bilateral agreements impossible. The revised Constitution deletes the clause in the existing treaty (Article 133.5 TEC) which states that EU trade policies "shall not affect the rights of the Member States to maintain and conclude agreements with third countries".

- **This is against the British Government's wishes.** In a proposed amendment Peter Hain wrote, "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... we cannot support the present formulation." The UK also wanted to reinstate the clause in the existing treaties which says that the EU's new powers "shall not affect the rights of the Member States to maintain and conclude agreements with third countries".
- **The change is a significant transfer of power over trade policy.** The Government opposed this transfer, and we believe they were right to do so. The UK will no longer have the power to independently make agreements with developing countries in key areas affecting trade and investment. Given the EU's highly dubious past record on development, and its general direction of travel in this regard, we do not believe the Union will handle these new powers responsibly.
- The Trade Justice Movement argue: "Given the problems of transparency and accountability already mentioned, we are concerned that extending the Commission's competence into new areas will be particularly harmful if trade policy is not guided by pro-development objectives."²²

Lisbon sets up a useless European Voluntary Humanitarian Aid Corps

- One change in the Treaty is the setting up of a European Voluntary Humanitarian Aid Corps, supposedly "In order to establish a framework for joint contributions from young Europeans to the humanitarian aid operations of the Union" - which is likely to function as some sort of institutionalized EU gap year.
- At best this is an overtly political provision, a waste of money and near pointless in development terms. At worst it could be harmful, disrupting the role of professionals involved in real humanitarian work. NGOs have derided the idea - BOND say:

"We oppose the creation of a European Voluntary Humanitarian Aid Corps in Title III Chapter III Article 118j. Humanitarian response is for experienced, trained professionals, not for volunteers, especially in dangerous crises."
- The UK also argued against this innovation during negotiations on the Constitution, saying that, "The idea of establishing a European Voluntary Humanitarian Aid Corps should have no place within the EU's humanitarian action".

²² <http://www.tjm.org.uk/lisbontreatyFeb08.shtml>