SEMINAR 10  THE EU’s COMMON COMMERCIAL POLICY  
(i.e. external trade policy)

Barnard: ch 2 pp 38–42

Questions/issues for discussion

1. What is the significance of the endowment of the EU with international personality? What has the Lisbon Treaty changed in that respect?

2. What is the significance of the notion of competence?

3. Why does exclusivity matter?

4. How does the Court justify (a) the wide scope of CCP, and (b) the exclusive nature of the Union’s competence in Opinion 1/75 and Opinion 1/78? (now incorporated into the TFEU)

I  External Aspects of the SEM
• Common Customs Tariff (CCT)
• Common Commercial Policy (CCP)

II  Common Customs Tariff (CCT) (Articles 31 and 32)
• What is it? Uniform system of tariffs
• In place since 1 July 1968 – administered by the Commission and national customs officers – duties become part of the Community’s own resources – comprises 3 elements:
  - a nomenclature for the classification of goods
  - rules for the valuation of goods
  - rules for determining origin of the goods

NB  Once goods have paid their duties then treated for purposes of free movement as Community goods.

III  Common Commercial Policy

A  External Relations

Article 47 TEU: The Union shall have legal personality.

The European Union has some form of trade or economic co-operation agreement with virtually every country in the world. This involves a problem of how the EU regulates its relations with the outside world and the principles it has to observe in doing so. External relations comprise four main areas:
• Common Commercial Policy (CCP) and trade relations Article 206 and 207 TFEU
• Cooperation with third countries and with competent international organisations Article 211 & 212 TFEU
• Association with third countries Articles 198-204 TFEU
Under the external relations heading we shall deal briefly with explicit powers/implied powers and the treaty making procedure. We shall then concentrate on the commercial and trade relations Articles 206 & 207 TFEU.

B Common Commercial Policy (CCP)
The Treaty of Rome (Article 131-135, now Articles 206 and 207 TFEU) had required the EEC to develop a CCP, which should aim to contribute to the harmonious development of world trade and to the progressive removal of barriers.

Note on the Lisbon Treaty
The Lisbon Treaty entered into force on 1 December 2009. It sets out the new rules which now govern the EU's external relations.

The CCP is meant to integrate the Member States’ trade with the outside world into the EU system. Here we shall deal with the following areas:

- The inseparable link between the internal free movement of goods within the EU and the Commercial Policy of Member States towards third countries.

  Yet, Rules of Origin, adopted as rules for uniform application of CCT are the main tool on principle of uniformity of treatment vis a vis third countries rather than abolition of barriers of integration of Member States.

- Scope of Common Commercial Policy

  Article 207 (1) TFEU

  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.

  Sociaal Fonds voor de Diamantarbeiders v NV Indiamex et al, Cases 37 & 38/73 [1973] ECR 1606

  - Article 207 TFEU – aim to contribute to the harmonious development of world trade and to the progressive removal of barriers.
  - Scope: Opinion 1/94 (The GATT Opinion – re services and TRIPS)

- Common trade rules: regulation of imports and exports

  - The Common Customs Tariff, which applies common rules to the import of products from third countries
• Common rules on imports (Council Regulation 2015/478, OJ 2015 L83/16)
• Common rules on exports (Council Regulation 2015/479, OJ 2015 L83/34)
• Rules on exports of dual-use goods, that is, products which may be of both civil and military application (Council Regulation 428/2009 [2009] OJ L 134/1) - we shall discuss them later in the course;
• Regulation 1225/2009/EC on protection against dumped imports from countries not members of the European Community, OJ [2009] L 343/
• Generalised System of tariff Preferences (GSP), that is, a set of rules which subjects imports from developing countries to a preferential regime (the more recent measure is Council Regulation 978/2012, OJ 2012 L303/1 which applies the GSP system).

EU’s role in WTO, OECD etc

C EU Trade defence measures

Safeguard measures and other Community measures (Anti-dumping rules and countervailing duties, legislation concerning the protection against illicit commercial practices).

• Anti-subsidy rules products (Council Regulation 2016/1037, OJ 2016 L176/55)