



## 學者專欄.....

本期第一篇學者專欄，特別邀請淡江大學歐洲研究所苑倚曼教授撰寫。作者針對歐盟與世界貿易組織的互動關係提出詳盡的介紹。本篇專文摘要如下：自每兩年召開一次的世界貿易部長級會議啟動以來，即以國際貿易的全球性展望出發，並認為所有的面向與結果必然是跨境貿易所產生。然而，最近的一次會議上，會員國間並無法取得共識並產出實質的結論，同時多數為發展中與未開發國家的各會員國內知識分子、農民、示威者及抗議人士，皆反對因 WTO 而開放的全球市場。本文回顧過往工業革命至近來之發展，簡短分析世界貿易之狀況，特別是歐洲(歐盟)的貿易夥伴關係及歐盟對世界貿易組織的貢獻及其對外貿易政策。

## EU & WTO

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Since its creation WTO Ministerial meetings kept on with a global perspective in international exchanges, and has been considering all the aspects and consequences bound to interborder exchanges. However the last Conferences, every second year, could not found consensus and conclusions overdue, while wagging up many of its members intelligentsia and farmers, sharp demonstrations and protests, these countries stand for developing countries or low means members, constituting a majority in number or in inhabitants and demographic growth, and characteristically denoting with the lowest GDP per capita of the World.

We propose to briefly analyze the World Exchanges with a quick look back to past industrial revolutions to recent developments, particularly for Europe (EU) and its contribution to the World Trade Organization (WTO) and its foreign trade policy

Finally will propose to look at the evolution for EU, the Doha Millennium round and world exchanges.

### I). GATT/ WTO:

The General Agreement on tariffs and trade (GATT) created in 1947 by 22 countries after

the second World War in Geneva (USA, European countries all industrialized ones) has the will to establish rules for freer trade, cut down main customs duties, with a more liberal trade flow imposing transparency, reciprocity and most favored country principles to avoid discrimination toward foreign products and beneficieate of market access for all members. It gained rapidly in members and can cover the majority of the trade in the world.

GATT 1994/WTO adopted all the GATT key principles and objectives, with a permanent body assuring dispute settlements under WTO new organization, it adopted a second fold entitled the General Agreements on Trade and Services (GATS) and a third one The Agreement on Trade Related Aspects of International Property Rights (TRIPS) , constituting a structured organization with Ministerial conferences, Councils, Bodies, Committees and Panels by which each country can be represented or resort to .

#### **A). The DOHA round**

This Millennium round started in Doha (Qatar) with the beginning this century, and shows quickly difficulties to conclude, and meetings has to be interrupted on last year (July 2006).

The new Directorate General : Pascal Lamy has been working to find a general consensus and bring back the debate on, aiming now to terminate the negotiations before end of this year although the difficulties and oppositions, due next year will be a presidential election year in some countries ( like USA, India...). During Doha round the members has by end of last year often chosen to sign bilateral agreements rather than multilateral and find common position in groups, constituted by a limited number of member countries, among the presently 150 members

#### **B). International Exchanges:**

##### **1). The flows in the time:**

Trade seems to begin with human culture and civilization and in the course of the time, began to find wider developments, particularly in the XVIIth and XVIIIth century, pushed by the first industrial revolutions; the invention of the steam machine and mechanization contributed largely to the development of coal, iron and steel industries, as well the railway network can grow not only in Europe (UK, France, Germany, Italy, Portugal, Spain, Netherlands and Belgium), and also in their colonies. Further; textile, car, chemical industries and electricity invention, went on and increased the import demand for raw materials, ores, and labor at no duty, enabling the export of more elaborated products reexportation. The trade flow

ensured by an “Exclusive pact” for the dependant countries to import these goods.

In the GATT 94/WTO “ Trading into the Future” publication, refers to this same period economist Ricardo and his economic theories for open trade;

- *David Ricardo (1772-1823) discovered in 1817 the relative industrial advantages for countries to find their specialization and manage to produce at a more competitive offer, create a comparative advantage for these countries traded products. After Adam Smith (1723-1790) who's main book in 1776 supported Free trade and absolute advantage to increase general wealth, Ricardo has reestablished the comparative advantage as well as Paul Samuelson Nobel laureate.*

At that period, European main countries find new resources by their colonies, submitted to settlers, the slave trade for example was largely practiced from 1781 on, and abolished by 1814, nevertheless 33 years of slavery were born mostly by African countries underdeveloped economically dependant on staple production, weak productivity in comparison to the high industrial and high productivity turned countries enhanced during the 19th and 20thcenturies by competition modifying little by little the world environment and the gap between countries.

With the time, further industrial revolutions appeared: electronics, nuclear, biotechnologies micro computing, data processing, office automation, and changed the society more concentrated into or around large cities; urbanization, modified the workers conditions and social laws, and also the demographic situation. Another important change is economic; like intervention of the government with planification , budgets for monetary, industrial and social policies. These modified the conditions evoked by Ricardo the mobility of the workers, delocalization of powerful multinationals and huge Foreign investment (FDI Foreign Direct investments ) to meet the competitiveness of market and improve the productivity.

## **2). The flows in category:**

Trade was redefined under 3 new categories in WTO:

- The Trade of Goods, stuff products that was traditionally bartered or exchanged, imported –exported (GATT)

- The Trade of Services and Investments with movement of natural persons, air transport, shipping, financial services, telecommunications

This includes cross border services, supplied from one country to another, the consumption abroad, commercial presence of foreign companies in another country, and individuals traveling abroad to supply services abroad.

- The Agreements on Related Aspects of Intellectual Property Rights (TRIPS) includes the trade of inventions, researches, design, know-how and remunerate creators each time their ideas would be used in other countries, as well as registered and patented in their country of origin, which name also becoming exclusive in rights to protect the original production, method or authenticity,

### 3). the flows in value:

#### a). Figures help to evaluate for EU the share of each

category of trades, the "Goods" represents : , while "Services" : and "Intellectual rights" :

This situation is similar for many industrialized countries, showing the importance of these 2 new categories.

#### b). The 9<sup>th</sup> agreement: entitled " Plurilaterals of

Minority interest" which includes 4 agreements, originally negotiated by Tokyo round by a few group of signatories, and EU represent one of them.

- The trade in Civil aircraft (1980: 21 signatories)
- Government procurement (1981: 24 signatories)
- Dairy products (1980: 10 signatories)
- Bovine meat (1980: 17 signatories)

**The 2 first agreements** covers by themselves far more than half of the total value of all forms of trades covered by WTO,

**The latter 2 agreements** are :

**For Dairy:** special arrangements that aims to assist the economic and social advancement of developing countries, to improve cooperation in

the dairy sector and lay down minimum export prices for milk products ( powders, fat and butters, cheeses) but the interested party( the developing countries are not signatory only the exporters of dairy products.

**For Bovine meat:** the creation of an International Meat Council, in the structure of WTO, with a world budget to evaluate the world supply and demand market for bovine meat and, promote the expansion, liberalization and stability of the exporters in meat and livestock

**c). Agricultural products and the Non Agricultural ones (NAMA),** defined this way constitute finally the rest of the total trades share.

## **II). EU trade and its Partners:**

The EU has gained in economic importance with presently 27 member countries increasing consequently, the trade results in volume and in value. This continuous growing has been contributing to the building up of the World Trade Organization (WTO), counting with 150 members. Some of the member states counted among the founding contracting Nations of the GATT in 1947 and further participated by promoting freer trade exchanges and market access. At the same time EU has brought its integration experience with customs union, free trade region agreements and technical assistance and funds, to help the liberalization of world trade, it has brought in, instruments of defense, adapted to different possible trade situations. EU has searched for its own status, regulations and constitute a Common Trade Policy applicable in a more opened system but at the same time able to protect its members in the trade of Goods, Services or investments with its current or strategic trade partners and with constant global vision preferring the multilateral approach to bilateral or regional agreements.

### **A). EU Trade: Figures for intra and extra trade**

#### **1). (Euro Area 13, EU 27) EU Trade Balance offers an analysis of the nature of the exchanges and evolutions**

(see annex)

#### **2). Main partners situation (per type and region)**

(see annex)

EU has concluded 22 Regional Trade Agreements (RTA's) with 24 countries and territories and for LDC's the "everything but arms" initiative (Duty Free & Quota Free access across the board/ GSP system).

Some of the European countries not members, enjoying very close and similar

relationship like European Economic Area (EEA) countries like Norway, Iceland and Lichtenstein and has more advanced agreements in 7 sectors with Switzerland.

Customs Unions apart from its members has been extended to Andora and San Marino

- Africa- Carrabean & Pacific islands (ACP) signed in 2000 Cotonou partnership agreement that replacing some way the former Lome Convention in place for the past years and counts now 77 countries signatories, that has been at task with the European Partnership Agreements (EPA's) that will lead these countries to integrate gradually the WTO by January 2008.
- Mediterranean countries FEMIP also are associated to the European Neighborhood Policy aiming to bring closer south Mediterranean coast countries and final integration. While the Pan Euro-Mediterranean system or diagonal cumulating of origin link is interesting the northern Mediterranean coast.
- Candidate countries Association agreements and liberalization of trade, and particularly Customs Union with Turkey.
- Caucasus has partnership and cooperation agreements
- Central Asia under GSP
- Balkans Autonomous measures and Central Europe Free Trade Area (CEFTA), Stabilization and Association Agreements (SAA) with Croatia, and former Yugoslav Republic and Republic of Macedonia.
- Asia and South East Asia (ASEAN, ASEM)
- Gulf Region bilateral agreements
- Mercosur Bi-regional associative Agreement and aiming to further evolutes to Free Trade Area with Mexico and Chile and last year summit with Central America and Andean nations confirms this direction to be targeted.

Brief conclusions on EC intra and extra commercial exchanges and relations:

This quick review on figures, allow to keep in mind the importance of the intra exchanges for EU with 80% of the trade flows since the beginning of the building of the Community and counting for one fifth of the Global trade volume. The consciousness by the Haye congress (May 1948, just after the two Wars) of solidarity necessity, to form a bloc, between neighbor countries, weaker, as small in size when facing larger countries like USA, or new players.

Economical power and the pillars guarantor of one continent, was since, the motor; aiming to recover Europe former influence, and become a pole and play a dynamic role, developing social progress in a democratic, peaceful environment, respectful of the laws, under an apolitical atmosphere.

As figures can show many of the bilateral or regional agreements were preexisting to the favor of historical links or geographical strategies of the past.

And that as seen although EU main exchanges are intra EU borders.

Such as EU-US Economic Integration and Growth Initiative was launched in 2005 and topics like the release of remaining Investment and Public procurement barriers are considered together, as well for EU-Canada bilateral worked on a Trade and Investment Enhancement Agreement (TIEA) to enhance transatlantic relationships.

## **B). The EU Trade policy:**

In the Trade Policy Review (Jan 22, 2007 report) The European Communities clearly reestablish its objectives and main trade policy with priority to multilateral agreements and the WTO.

### **1). Main trade policy objectives**

*“The main trade policy objectives has been redefined and taking office from autumn 2004 on, are to promote prosperity, social justice and sustainable development through open, rules-based trade, including the peaceful settlement of disputes.*

*The benefits of free and fair trade should be extended to all, especially the poorest”*

It defines the need of EU to ensure its own market open, as now reasoning in a global market, Europe will have to import and export and will have to use of strategies to compete fairly on those markets and create new areas of growth with sharper focus on market access, and stronger rules in new trade areas of economic importance (like Intellectual property, services, investment, public procurement and competition)

Another high priority for EU is to remove non-tariff barriers to EU industry key sectors and the restrictions on access to resources for EU industries inputs (like

energy, metals and scrap, raw materials, including certain agricultural materials, hides and skins )

EU willing to work for the conclusion of the negotiation in Doha Development Agenda, will a motor and one of the main player in the WTO, this way prepare a next level of multilateral liberalization, will propose a new generation of bilateral free trade agreements with key partners, with emerging economy and market potential to complement and build on WTO rules, by tackling issues which are not ready for multilateral discussions.

While the Trade policy instruments can positively contribute to the fight against climate change, consciousness of sustainability, and the environmental implications of competitiveness, with renewable energy, low emission efforts will be also promoted in the pursuit of economic growth through trade.

### III).Role and Importance of EU in The WTO

#### A). From the Creation of GATT/WTO

Some of the first GATT contracting parties counts among the same European Common Market members who participated to the building of the GATT rules. Particularly for the original safeguard instruments, there are similitude of both systems and illustrate the involvement and implication of EU members.

As formulated in the EU trade policy, the EU is completely supporting the WTO Trade policy route, and believes in the need for further multilateral liberalization and the strengthening of multilateral trade policy rules to guaranty stability of business and the true development for all WTO members.

- 1). EU support the Market access for industrial goods, agricultural goods and services, and define it as the WTO main *raison d'être*, and encourage the developing

countries to integrate the system, while inciting the Least developed countries (LDC's) to benefitiate of the opportunity to extend duty free, quota free access for continuous global economic growth . While EU in the process of its own Agricultural policy, committed to eliminate all forms of export subsidies to avoid trade distorting as practiced by the past, including food industries.

- 2). As for the Non-Agricultural goods ( textile, clothing, footwear, electronics, electrical equipment, automotive, etc...),

EU objectives have been **threefold**:

- Reduce South-South trade tariffs barrier to facilitate access to developing countries from developing countries.
- Adjust the contributions to the capacity of members so that weak and vulnerable economies to undertake fewer contributions than more advanced and support the Swiss formula with separate coefficients for developed and competitive developing countries.
- Exclude the weakest members such as LDC's from any reduction commitments.

- 3). EU is a key player for the GATS negotiations:

The Services considered also as the backbone of the modern economy, EU ranking among the largest importer and exporter of Services, has proposed shared objectives by group of WTO members for market access and modes of supply. EU also co-sponsoring collective requests on professional services (legal, architectural and engineering services, computer services, construction services, distribution services, postal and courier, telecommunication services, environmental services, financial services,, maritime and air transport services, energy services, commercial presence, tourism and professional services).

It actively supports the negotiations on Services Domestic regulations and Government Procurement in Services.

**B). Future Evolutions for EU and for DDA:**

Trade and development as the reported by EU is one of the nine priorities areas for EU aid as defined in the European Concensus on Development.

Therefore, EU has also an open approach and talk toward Asian high economic growth countries. EU has defined an agenda with China in regards to the textile free trade transition to ease both European industries to restructure and Chinese textile exports to increase from January 2008 on, and further enforce the intellectual property. As well talks with India on broad based trade and investment agreement are planned. Korea, Japan benefit for Mutual recognition Agreement and an Agreement on Cooperation on anticompetitive activities, EU has launched since 2005 and during 2006 summits to starts new agreements and on going talks to shape closer future relations with all other countries in the ASEAN other trading partners.

EU willing to promote the concept of policy coherence for development and can support this idea in other authority institutions such United Nations,, UNCTAD, ...EU shows efforts in its partnerships with LDC's or developing countries to bring in Fair trade and Sustainability considerations , assist these countries in achieving growth, and supporting the Integrated Framework on Trade related Technical assistance, and working on alleviating poverty and improving social equality.

WTO is for EU an important progress in its seek for new markets and higher competitiveness, and has proved its willingness to help this institution, not endowed with any executive power, support by all its means and broad trade partners influence to bring conclusions to DDA and find WTO 's bearings.

The empowering of Europe in the World Trade and its involvement with global and coherent considerations are reassuring, in the sense that the weakest will find more aids

and fair treatment at the difference of the past. Such in an epistemological break, the behavior of players can, no more go through one way consideration but well act like Nature wisdom does, and satisfy to all and each of the actors needs and offers on this chain. The started trend of globalizing this world becomes so evident on our everyday life but also on the climate and environment and consumptions as a key motor of the economic growth that helps EU to bear the cross and lead new models and policies for International trade for instance with next WTO round Agenda.

**Annex**

Figure 1: Main player in the world market for goods, 2005

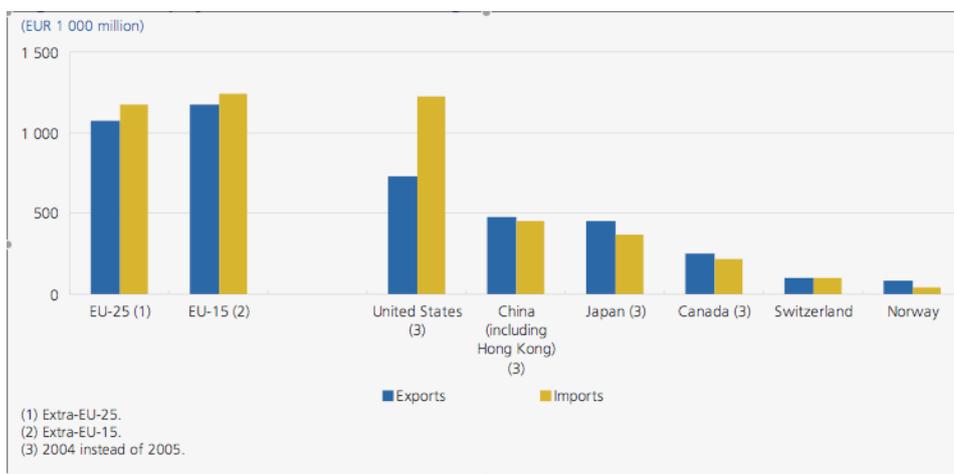


Figure 2 : Shares in the world market for exports of goods, 2005

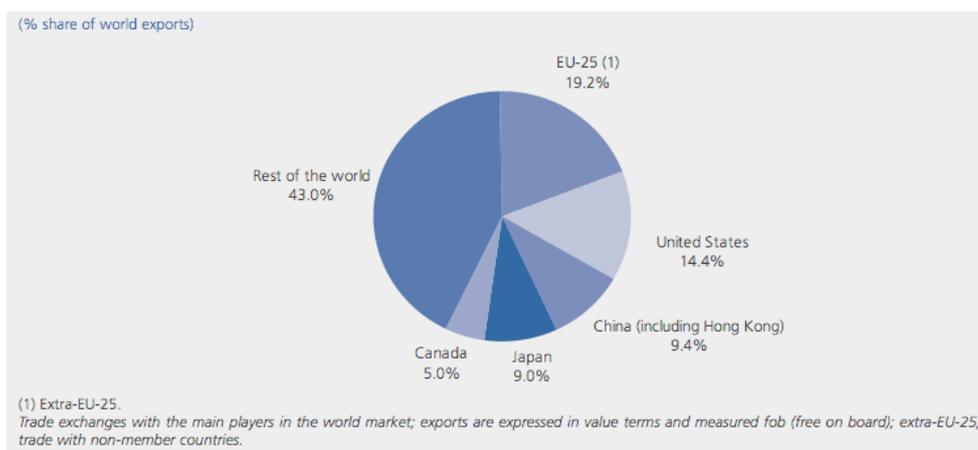


Figure 3 : Shares in the world market for imports of goods, 2005

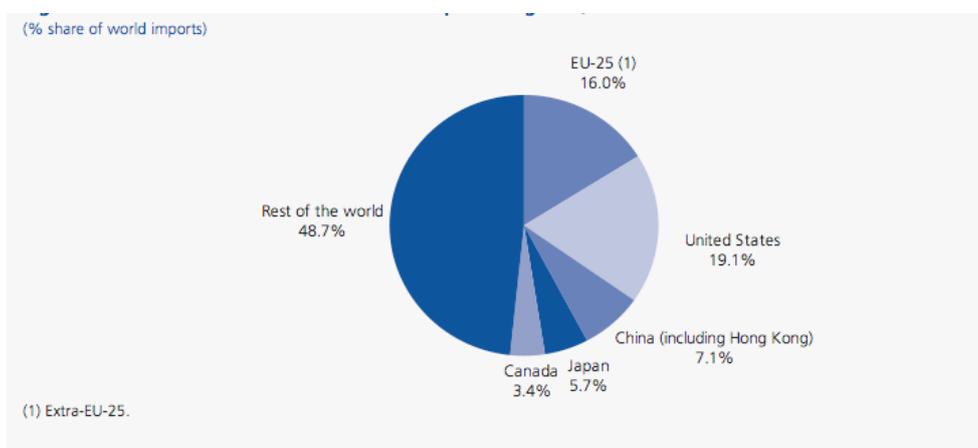


Figure 4 : Intra-Extra EU 25 trade, 2005

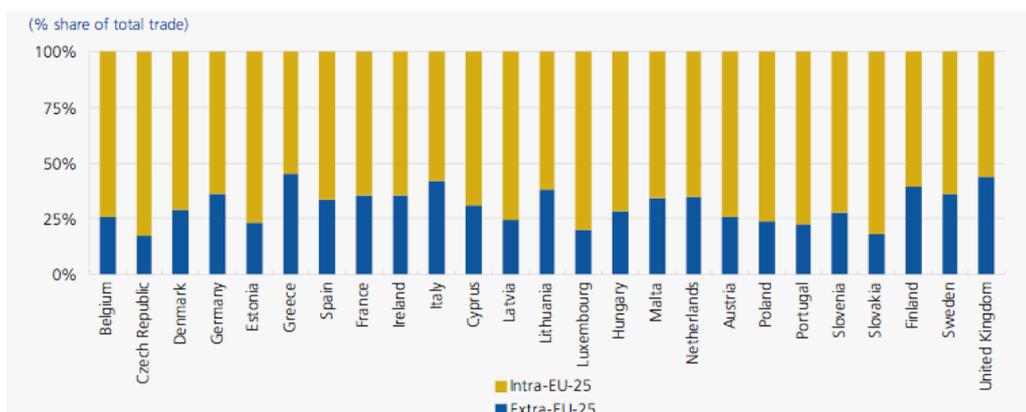


Figure 5 : Main trading partners for exports, 2005

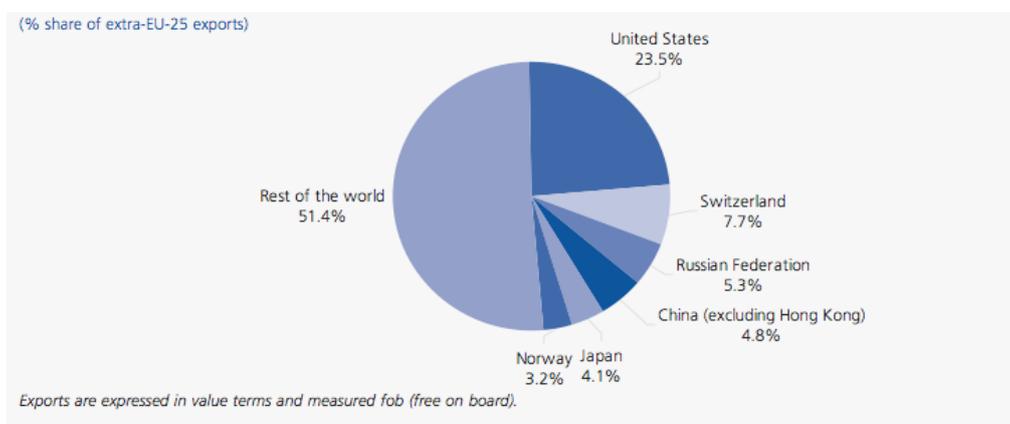


Figure 6 : Main trading partners for imports, 2005

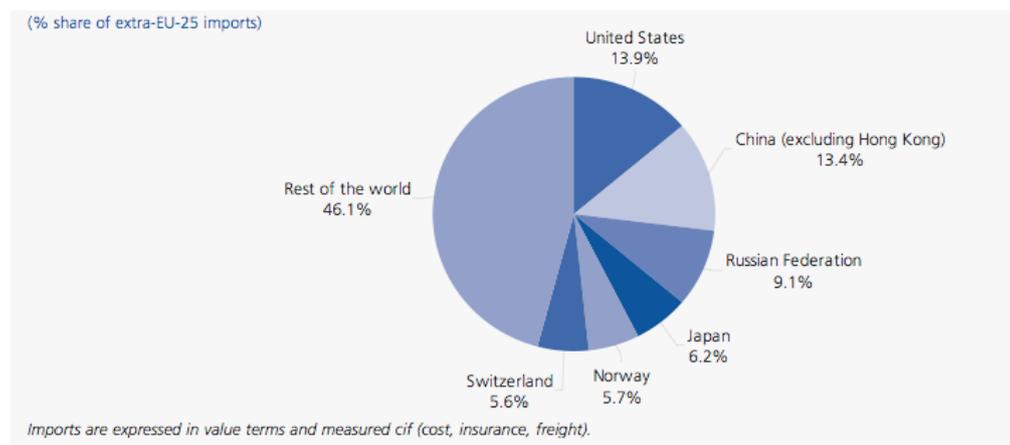


Figure 7 : Main imported products, euro area

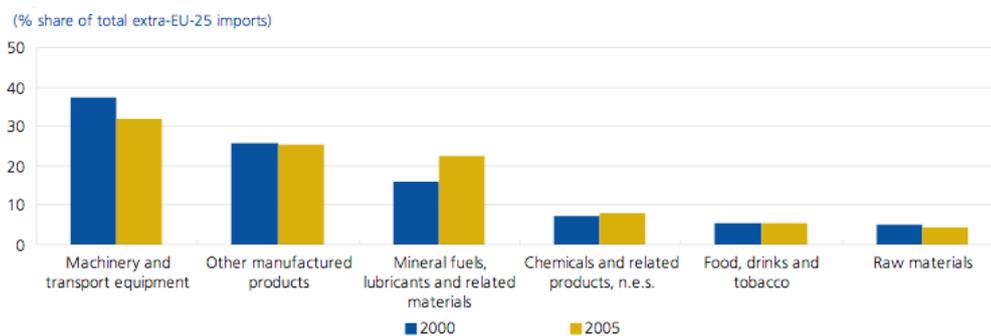


Figure 8 : Main exported products, EU-25

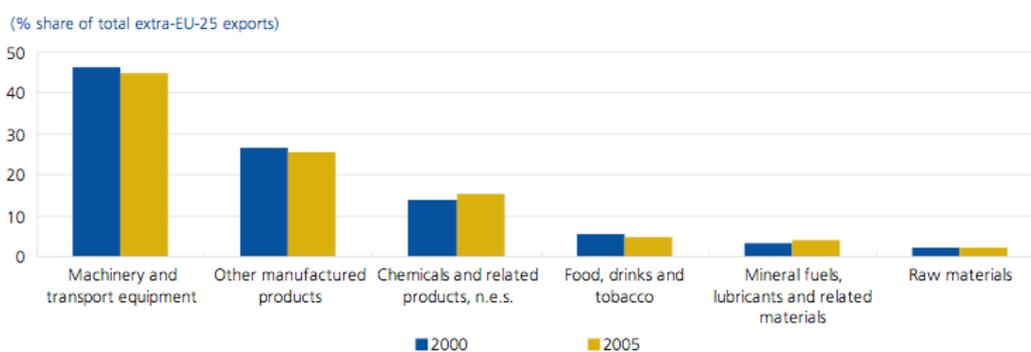


Figure 9 : Evolution of international trade in goods, euro area

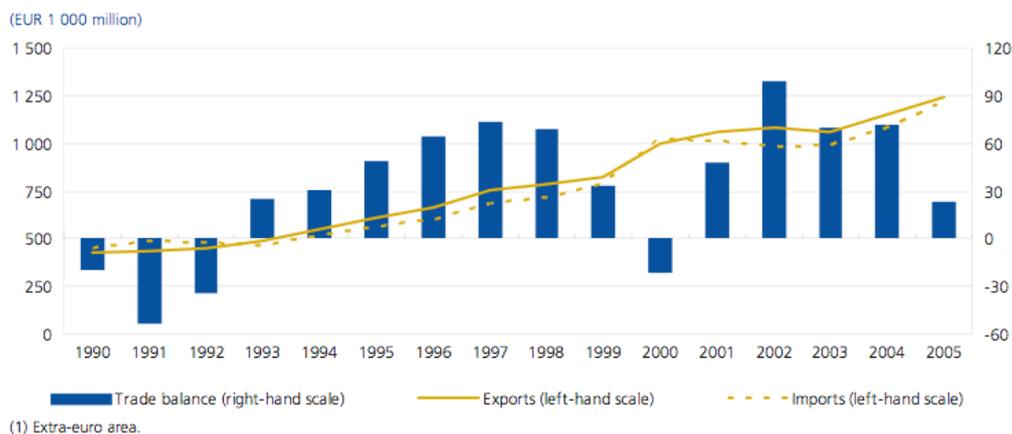


Figure 10 : International trade in services, by world regions, EU-25, 2004

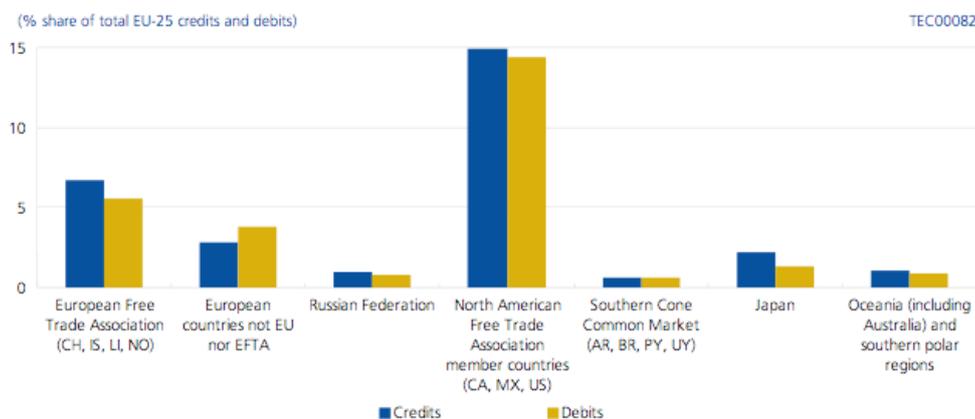


Figure 11 : International trade in services, by main service categories, EU-25, 2004

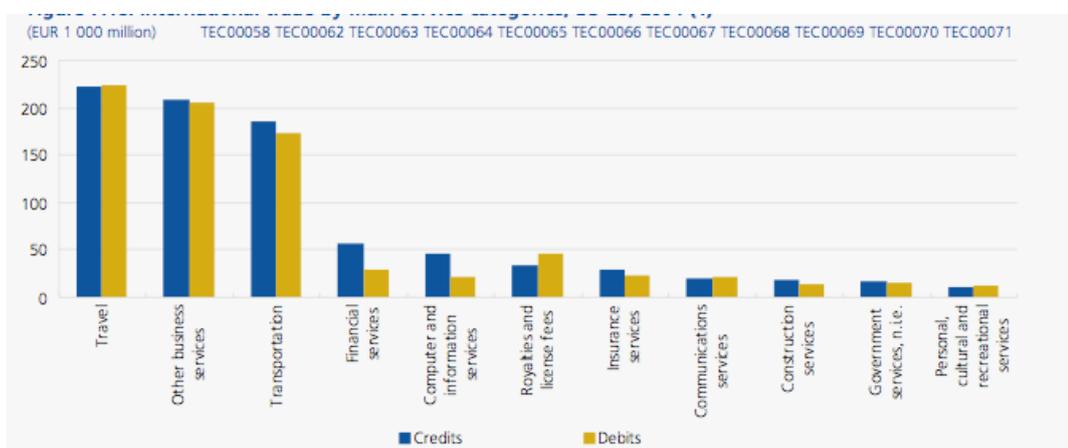


Table 1 : trade profiles on European Union (25)

April 2007					
<b>European Union (25)</b>					
<b>BASIC INDICATORS</b>					
Population (thousands, 2005)	459 377	<b>Rank in world trade, 2005</b>		<u>Exports</u>	<u>Imports</u>
GDP (million current US\$, 2004)	12 815 641	Merchandise		-	-
GDP (million current PPP US\$, 2004)	12 097 267	Commercial services		-	-
Current account balance (million US\$, 2005)	- 79 399	Merchandise excluding intra-EU trade		1	2
Trade per capita (US\$, 2003-2005)	...	Commercial serv. excl. intra-EU trade		1	1
Trade to GDP ratio (2003-2005)	...				
		<i>Annual percentage change</i>			
	2004	1995-2004	2003	2004	
Real GDP (1995=100)	123	2	1	2	
Exports of goods and services (volume, 1995=100)	...	...	...	...	
Imports of goods and services (volume, 1995=100)	...	...	...	...	
<b>TRADE POLICY</b>					
<b>WTO accession date</b>	1 January 1995	<b>Contribution to WTO budget</b>		-	
<b>Trade Policy Review date</b>	26, 28 February 2007	<b>Import duties collected:</b>		...	
		in total tax revenue		...	
		to total merchandise imports		...	
<b>Tariff binding coverage (%)</b>	100	<b>Number of:</b>		...	
<b>MFN tariffs</b>	<u>Final bound</u> <u>Applied 2006</u>	<b>Goods RTAs - services EIAs notified to WTO</b>		21 - 3	
Simple average of <i>ad-valorem</i> duties		<b>GATS services sectors with commitments</b>		115	
All goods	5.4 5.4	<b>Dispute rulings (complainant - defendant)</b>		27 - 25	
Agricultural goods (AOA)	15.4 15.1	<b>Notifications outstanding (CRN)</b>		24	
Non-agricultural goods	3.9 3.9	<b>Number of contingency measures in force:</b>		...	
Non <i>ad-valorem</i> duties (% of total tariff lines)	4.8 4.6	<b>Anti-dumping (30 June 2006)</b>		154	
<b>MFN duty free imports (%) (2005):</b>		<b>Countervailing duties (30 June 2006)</b>		14	
in agricultural goods (AOA)	43.2	<b>Safeguards (23 October 2006)</b>		1	
in non-agricultural goods	58.8				
<b>MERCHANDISE TRADE</b>					
	<i>Value</i>	<i>Annual percentage change</i>			
	2005	1995-2005	2004	2005	
Merchandise exports, f.o.b. (million US\$)	1 333 668	...	21	11	
Merchandise imports, c.i.f. (million US\$)	1 472 752	...	21	15	
	2005				
<b>Share in world total exports</b>	17.15	<b>Share in world total imports</b>		18.08	
<b>Breakdown in economy's total exports</b>			<b>Breakdown in economy's total imports</b>		
By main commodity group (ITS)		By main commodity group (ITS)			
Agricultural products	6.3	Agricultural products		7.7	
Fuels and mining products	6.1	Fuels and mining products		26.9	
Manufactures	84.6	Manufactures		63.3	
By main destination		By main origin			
1. United States	23.5	1. United States		13.9	
2. Switzerland	7.8	2. China		13.4	
3. Russian Federation	5.3	3. Russian Federation		9.1	
4. China	4.8	4. Japan		6.2	
5. Japan	4.1	5. Norway		5.7	
<b>COMMERCIAL SERVICES TRADE</b>					
	<i>Value</i>	<i>Annual percentage change</i>			
	2005	1995-2005	2004	2005	
Commercial services exports (million US\$)	494 086	...	19	10	
Commercial services imports (million US\$)	424 912	...	17	8	
	2005				
<b>Share in world total exports</b>	27.45	<b>Share in world total imports</b>		24.28	
<b>Breakdown in economy's total exports</b>			<b>Breakdown in economy's total imports</b>		
By principal services item		By principal services item			
Transportation	26.0	Transportation		24.9	
Travel	17.8	Travel		25.3	
Other commercial services	56.2	Other commercial services		49.8	
<b>INDUSTRIAL PROPERTY</b>					
	<u>Total</u>	<u>Residents</u>	<u>Non-residents</u>	<u>PCT residents</u>	<u>PCT non-residents</u>
Patents granted, national office	-	-	-	-	-
Patents granted, regional office	-	-	-	-	-
	<u>Total</u>	<u>Residents</u>	<u>Non-residents</u>	<u>Non-residents direct</u>	<u>Non-residents Madrid</u>
Trademarks registered, 2005	5 929	...	5 929	...	5 929

Resource: WTO Statistics Database

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10. Anti-subsidy measures  
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11. Protection against trade barriers  
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<http://www.curia.europa.eu/jurisp/cgi-bin/form.pl?lang=en&Submit=Rechercher&docrequir e=alldocs&numaff=&datefs=&datefe=&nomusuel=&domaine=PCOM&mots=&resmax=100>

13. The EU trade policy instruments (爭端解決機制)

[http://ec.europa.eu/trade/issues/respectrules/index\\_en.htm](http://ec.europa.eu/trade/issues/respectrules/index_en.htm)

14. WTO Dispute Settlement -- Cases involving the EU (爭端解決機制)

<http://trade.ec.europa.eu/wtodispute/search.cfm?code=1>

15. Fair trade for Small and medium-sized enterprises (SMEs) -- Frequently Asked Questions  
(問題群組中有關貿易救濟之調查程序)

[http://ec.europa.eu/trade/issues/respectrules/tdi\\_sme/faqs.htm](http://ec.europa.eu/trade/issues/respectrules/tdi_sme/faqs.htm)

本期第二篇學者專欄，由台灣大學法律學系王泰銓教授，以及淡江大學歐洲研究所博士候選人許琇媛、張怡菁共同撰寫。作者除陳述歐洲憲法條約演變為歐盟「改革條約」的成因，並詳細介紹歐盟「改革條約」修正歐洲憲法條約的重要內容。

## 演變中的歐洲聯盟法 — 歐盟「改革條約」(Reform Treaty)\*

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### 一、歐盟「改革條約」(草案)之歷史背景

經過 2005-2006 年間，荷蘭、法國、丹麥為歐洲憲法條約舉行公民投票遭否決後，歐洲憲法條約是否再逕付各會員進行表決，成為歐盟執委會與歐洲議會關注的焦點。2007 年 6 月 20 日歐洲執委會主席巴羅索(Jose Manuel Barroso)再次警告會員國不要為了自己的利益，反對歐盟整合的各項談判，其中關鍵點是英國與波蘭的問題。英國反對歐洲憲法條約，因為英國認為歐盟應該是政府間組織，不是一個超國家組織，英國反對法國與西班牙所倡導的超國家組織憲法條約的誕生。2007 年 6 月的歐洲高峰會，輪值主席再三警告英國不要踩紅線與杯葛歐盟事務，但英國首相布萊爾與其下任首相布朗(Gordon Brown)都認為要維護英國的立場為首要，不能透過談判來分享歐盟利益，特別是外交政策、司法、警務系統、稅務與社會安全規劃的控制權；波蘭反對歐盟憲法條約的理由是基於他是一個新加入的會員國，在未來新制的投票表決計票制度，對波蘭並不公平，因為波蘭的人口數與代表數不能真正反映出波蘭的代表權，而且波蘭也同英國一樣，拒絕以談判方式來分割歐盟的利益。其他提出異議的國家仍有荷蘭、捷克、法國等國。荷蘭的問題在於拒絕基本權利憲章、歐盟國旗、國歌的符號表徵等；荷蘭反對未來歐盟擴大的政策、提出「紅牌」(red card)機制(係指會員國退出機制)、反對歐盟干預四大自由流通政策。捷克支持波蘭提倡改革歐洲議會席次的分配方法，但不希望像波蘭一樣被孤立，捷克支持丹麥提出會員國議會增加權限或更加擴大會員國政府權限，也支持英國反對歐盟外交權限擴大。法國想簡化條約，比歐洲憲法條約更簡化，但不反對表決機制<sup>1</sup>。

基於英國與波蘭堅決反對歐洲憲法條約，德國總理梅克爾(Angela Merkel)於 2007 年 6 月 21 日，提出『改革條約』(Reform Treaty)的建議，23 日歐盟領袖致力克服制度性的障礙並同意新的歐盟「改革條約」綱要。然而此次高峰會會員國所達成的協商，卻是讓之前由各國簽署的『歐盟憲法條約』自此走入歷史，憲法這樣的概念將不再被運用在未來的修改條約中。高峰會主席結

\* 本篇內容節錄自王泰銓，『歐洲聯盟法總論』，台灣智庫出版，2007 年 9 月即將出版。

<sup>1</sup> See BBC News, "EU summit sticking points", on-lined resource: <http://news.bbc.co.uk/2/hi/europe/6222882.stm>

論中提出政府間會議授權的草案(Draft IGC mandate)<sup>2</sup>。這項授權主要提供政府間會議運作的基礎，要求政府間會議在未來草擬『改革條約』，以為修正現有的條約，加強歐盟擴大後的運作效率、民主正當性與對外關係行動上的一致性。

2007 年 7 月 23 日，布魯塞爾(Brussels)政府間會議終於通過『改革條約』(草案)，即修正歐洲聯盟條約與歐洲共同體條約之條約草案(Draft Treaty amending the Treaty on European Union and the Treaty establishing the European Community)<sup>3</sup>，該條約草案包含兩部重要條款，分別修訂『歐洲聯盟條約』(Treaty on European Union, TEU)與『歐洲共同體條約』(Treaty establishing the European Community, TEC)。未來 TEU 將維持原來的名稱，而 TEC 將更名為『促進聯盟功能條約』(Treaty on the Functioning of the Union, TFU)，歐洲聯盟(Union)將擁有單一的法人格(a single legal personality)，而條約中共同體(Community)字眼將全面以聯盟(Union)來取代，聯盟將取代與繼承共同體。未來修改後的『歐洲聯盟條約』與『促進聯盟功能條約』將不具憲法特質，兩者間有其同等價值。『改革條約』中的其他條款包含一般性的條約批准與生效規定，以及過渡期安排機制等。此外，有關修改歐洲原子能共同體條約與 2004 年政府間會議通過的相關議定書，將皆以議定書(Protocols)形式收錄在『改革條約』中。

## 二、歐盟「改革條約」(草案)之變革

「改革條約」中將不再使用憲法字眼，歐盟外交部長(Union Minister for Foreign Affairs)將改以歐盟外交與安全政策高級代表(High Representative of the Union for Foreign Affairs and Security Policy)稱之。原本歐洲憲法條約規定的法(law)與框架法(framework law)將不被採用，保留現行的規則(regulations)、指令(directives)與決定(decisions)。但如歐洲憲法條約之規定，以其立法程序具體區分立法規範與非立法規範之性質。大體上，2004 年政府間會議所提出的改革內容，被納入『歐洲聯盟條約』與『促進聯盟功能條約』當中，在 2007 年 1 月至 6 月，歐盟會員國對於上述改革內容的相關建議與修正也被納入未來條約中，主要涉及部分包括歐盟與會員國的個別權限與劃分、共同外交與安全政策的特殊本質、國家議會角色的加強、基本權利憲章的處理、有關刑事案件警政與司法的合作部份以及在特定情形允許部分會員國不參與，而讓參與的會員國能推動相關政策的機制，甚至於有關退出歐盟之條款等。諸多改革，事實上無不是源自於歐洲憲法條約之精神、原則！

依據 2007 年 6 月高峰會結論的『政府間會議授權草案』<sup>4</sup>，歐盟各會員國旋即於 7 月 23-24 日正式召開政府間會議，草擬『改革條約』內容，進而取代先前的『歐洲憲法條約』。『改革條約』正式內容預計將在 10 月於葡萄牙輪值主席任內完成，並於 2009 年下一屆歐洲議會大選前完成各會員國批准程序。

從此次政府間會議公佈的文件，『改革條約』草案的內容包括了 2004 年政府間會議對『歐洲聯盟條約』與『歐洲共同體條約』提出的改革構想，以及 2007 年 6 月經高峰會各國協商後，

<sup>2</sup> Council of the European Union, Presidency Conclusions – Brussels, 21/22 June 2007 (11177/07), pp. 15-31.

<sup>3</sup> See Conference of the Representatives of the Governments of the Member States, Brussels, 23 July 2007(CIG1/07)。

<sup>4</sup> IGC 2007: Draft Treaty amending the Treaty on European Union and the Treaty establishing the European Community, CIG1/07, Brussels, 23 July 2007.

對『歐洲憲法條約』所提出的廣泛性修正內容：

1. 對於聯盟與會員國的個別權限採行一更精確的定義；
2. 共同外交暨安全政策具有較特殊的本質；
3. 會員國國家議會的參與及監督歐盟決策；
4. 涉及刑事案件所採取的警政與司法合作機制；
5. 設定不同速整合機制，換言之，一方面部分國家若不贊同整合步調，可以選擇性不參與某些政策之整合；另一方面贊同整合步調的會員國則繼續向前發展。

6. 基本權利憲章(The Charter of Fundamental Rights)不似『歐洲憲法條約』內容，成為其條約的一部分，而是僅被規範在某一條文中，作為歐盟運作遵行的法律價值，但界定其適用範圍，其中英國與部份國家不適用之。

『改革條約』與之前的『阿姆斯特丹條約』、『尼斯條約』等性質相似，同屬於修正條約，『改革條約』包括七條條約：第一條為修正『歐洲聯盟條約』部分、第二條為修正『歐洲共同體條約』部分、第三條規定該條約締結並沒有期限限制、第四條規定議定書部份、第五條規範未來修正後的『歐洲聯盟條約』與『促進聯盟功能條約』條號、標題與章節等須重新編號與修正、第六條規定條約批准正本的存放地點與應該生效的日期(2009 年 1 月 1 日)、第七條規定各會員國簽署條約後，各國官方語言版本皆具同等效力，並將存置於義大利，各簽約國也將保留條約簽署附件。

總體而言，『改革條約』對於『歐洲聯盟條約』的修正部份包括下列幾點：

1. 聯盟的基本價值將名列在條約前言與第一條條文中；
2. 為尊重各會員國權限，歸屬聯盟之權限仍然界定在「補充原則」以及「比例原則」中，但更具體化內容且列舉於『促進聯盟功能條約』(即『歐洲共同體條約』的修正部份)；
3. 制訂新程序，允許會員國國會強化其對聯盟機構的監督機制；
4. 歐盟部長理事會將設常任主席(任期最長為 5 年)，取代現行的三頭馬車輪值主席制度。歐洲高峰會(The European Council)將成為聯盟的常設機構，設立常任主席，任期為 2 年 6 個月；
5. 關於波蘭所提出反對歐洲憲法條約的表決方式，本次高峰會的決議繼續沿用尼斯條約規定的加權計票方式，並將使用至 2014 年為止。在 2014 年至 2017 年期間，屬於過渡期，可以沿用尼斯條約的舊制，新的雙重投票表決機制(the double majority voting system)要到 2017 年 3 月施行。這項改革投票制度的做法，是為了要降低法案通過的門檻，逐步使各國投票數符合其人口數。修正條件多數決(qualified majority)的投票規範：雙重多數投票機制，當通過決議時，需達到 55%會員國數，以及 65%歐盟人口數的門檻，此項投票機制將在歐盟同意其 2014-2020 年間的長期預算計畫後，於 2014 年開始實施。2014-2017 年間將是新投票機制的過渡期，但是如果會員國有意願的話，仍然可以要求使用舊機制。此外，2017 年之前，一旦達到 75%會員國

數，以及 75% 歐盟人口數，則可以否決部長理事會的決議；2017 年起，一旦達到 55% 會員國數，以及 55% 歐盟人口數，則可以否決部長理事會的決議。

6. 『歐洲憲法條約』對於強化合作(enhanced cooperation)的規範部分也將被納入在『歐洲聯盟條約』中；
7. 聯盟將具備法人格，成爲一個法律實體；
8. 設置自願退出聯盟條款。

『改革條約』對於『歐洲共同體條約』的修正部份包括下列幾點：

1. 『歐洲共同體條約』將更名為『促進聯盟功能條約』；
2. 『歐洲憲法條約』改革的部分將同樣納入在『促進聯盟功能條約』中：例如歐盟的權限部分(共享權限、支持性權限、協調權限與補充權限等)將獲得更詳細地規範與擴展，特別是在太空、能源、民事保護、運動、旅遊、公眾健康、偏遠地區、行政合作、歐元治理、建構自由安全與司法區、自主財源等範疇；
3. 關於條件多數決以及共同決定程序的適用範圍將適用於四十多項領域中，歐洲議會也取得較以往更多的權力；
4. 同時針對『歐洲憲法條約』規範的部分，進行相關修正：(1)新增團結能源條款(solidarity energy clause)，因應能源供應危機問題、(2)對抗全球氣候變遷問題、(3)歐盟衍生法規的形式(the legal acts of the Union)將保留其名稱，如規則、指令與決定等，因此不採用『歐洲憲法條約』所規劃的歐洲法、歐洲框架法，但採行其以立法程序(legislative procedures)區分歐盟法爲立法規範(legislative acts)與非立法規範(non- legislative acts)兩種，以及接受其簡易立法程序爲一般立法程序(the ordinary legislative procedure)與特別立法程序(a special legislative procedure)。
5. 歐盟外交與安全政策高級代表擔任該部門會議的主席，並且擔任執委會的副主席，協調高級代表與對外關係執委的工作，獲得各國及歐盟外交人員對外行動服務上的支持。關於各會員國議會的權限則是採納荷蘭的建議，將賦予會員國議會在歐盟決策過程中有更大的發言空間，各會員國議會可以駁回任何侵犯國家權限的執委會意見。然而新條約也將限縮執委會委員數，至 2014 年將由現行的 27 名縮減爲 18 名，執委會專任執委由會員國輪流擔任，任期爲 5 年。
6. 歐盟「改革條約」對於自由市場將繼續支持，並加強社會保障條款。在 2008 年 1 月 1 日賽浦路斯與馬爾它將加入歐元區。

以上爲學者論點，不代表本通訊立場！