Introduction to European Business Law

Lund University MOOC, Jan 5 to Mar 15, 2015

Module 9 (the external dimension)

A glossary of key terms from week 9

[note: there are no case notes for this module in the assigned materials]

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These notes were prepared by Penny Parker for others who are taking this MOOC course, for personal private use only. Please feel free to comment or submit corrections to pennyparker@me.com.

Anti-dumping measures – a company is dumping if it is exporting a product to the EU at prices lower than the normal value of the product. Trade defense agreements, which are efforts to prevent anti-dumping, are one of the external dimension areas where the EU is authorized to act. These anti-dumping measures are intended to prevent the market from being distorted by products sold under their normal value. Moreover, these measures also aim to protect the internal market and its industries from subsidized imports from third states.

Acquis -- The *acquis* is the body of common rights and obligations that is binding on all the EU member states. It is constantly evolving and comprises:

- the content, principles and political objectives of the Treaties;
- legislation adopted pursuant to the Treaties and the case law of the Court of Justice;
- declarations and resolutions adopted by the Union;
- instruments under the Common Foreign and Security Policy;
- international agreements concluded by the Union and those entered into by the member states among themselves within the sphere of the Union's activities.

Article 47 TEU – both the EU and its member states have competences in the field of the external dimension. This is due to the fact that the European Union according to article 47 TEU, is an international organization with legal personality, that means that it exists distinct from its member states. And as a result, both the EU and the member states can act, on the international arena.

Article 216 TFEU – this is the article that opens up the possibility for the EU to conclude international agreements with third parties on behalf of the member states. Article 216 TFEU sets up the general competence of EU to conclude international agreements. Please note, that this is the general provision. In the next lecture, we will look at the separate fields of law where this competence may be exercised.

According to Article 216, the EU has a competence in the following circumstances.

- Where the treaties so provide.
- Where the conclusion of an agreement is necessary, in order to achieve within the framework of the union's policies one of the objects referred to in the treaties.
- When it is provided for in the legally binding union act,
- and when it is likely to affect common rules, or alter there scope.

Article 288 TFEU – this article presents the legal acts which can be adopted by the EU, regulations, directives, decisions, recommendations and opinions. Regulations, directives and decisions are referred to sometimes as hard law. Recommendations and opinions are sometimes called soft law. Even though these are internal measures that the EU can take in regulating the internal market, they can have an impact on external relations as well. They sometimes become the tools by which commitments made in international agreements are implemented.

Banana Saga – this is an example where the EU acted externally to address trade barriers and market access. The Banana disputes essentially concerned claims of discrimination, in particular, discrimination against Latin American Bananas in favour of African, Caribbean and Pacific (former European colonies) Bananas. Several claims were filed with the WTO and its predecessor GATT, claiming that the EU had discriminated in violation to its obligations under global trade agreements. The cases have been written about a lot in the academic literature. One book abstract, "The Saga Continues …" described the controversy this way: "The regulation adopted by the European Commission on 2 May 2001 may herald the end of the long-standing banana dispute. In its wake, the saga has left a long trail of panels, arbitration, and procedural battles. This article completes the 'roadmap' of the banana dispute and its progeny, by reporting on the following distinct matters: (i) US – Section 301–310 of the Trade Act of 1974; (ii) US – Import Measures on Certain Products from the EC; (iii) Ecuador – Recourse to Article 22.2 and 22.7 of the DSU (authorization to suspend concessions); (iv) Section 306 of the Trade Act of 1974, as amended by Section 407 of the Trade and Development Act of 2000 (carousel provision). It also provides a table that lists all the disputes that have been initiated since 1993 and that are related to the banana dispute."

Bilateral agreements – agreements between the EU and particular countries, usually the method to fill in gaps in coverage. For example, in the area of energy instruments, bilateral agreements are one tool for addressing the European Coal and Steel Community agreements (ECT). These are used for countries not party to the ECT. Such instruments have been concluded with a large number of countries, including Russia and even India. These include memoranda of understanding in energy matters, and other types of joint declarations.

Categories of agreement – the Commission's authority to conclude international agreements falls into four basic categories. (1) There are mixed agreements which implies that both the union and its member states become parties to the agreement. (2) There are association, accession, and withdrawal agreements involving reciprocal rights and obligations, common action, and special procedure. (3) There is the accession to international organizations. (4) And finally, there are the future agreements concluded by the member states only.

Coherence – one of the three aspects of the EU Development Policy. Coherence has significant legal and political implications. The other two are complementarity and coordination. There is coherence of EU development cooperation with the more general principles and objectives of EU external relations. Poverty reduction as the primary policy objective, providing intra-policy focus as to how different initiatives cohere to the central goal. The obligation to take account of the development activities in other policies which are likely to affect developing countries.

Common commercial policy (CCP) -- The Common Commercial Policy, or CCP for short, is the origin of all EU external policies. The existence, nature, and scope of the external competence as we discussed in the previous lecture on the external dimension have largely been defined by reference to early cases in the area of CCP. Bart Van Vooren and Ramses A Wessel in their textbook on EU external relations law, which has also inspired this lecture, go as far as saying that CCP is not just a key external relations policy, but in substantive terms, it is at the very heart of European integration project and the logical consequence of the interaction between internal and external developments. Examples are the EEC as a customs union and the rules of free trade laid down in the General Agreement on

Tariffs and Trade. The CCP is, therefore, the external complement to the internal market rules on trade. Instruments and policies for the CCP include the Common Customs Tariff, trade barriers and market access, trade defense instruments (anti-dumping measures), and the application of WTO law in the EU (including the famous Banana Wars/Banana Saga events). However, note that the WTO law is not directly available, it is relevant only if addressing a particular EU action that purported to implement a WTO requirement -- and so the ungraded quiz asked a tricky question which specific instruments and policies are directly available for the EU to realize integration and the abolition of restrictions on international trade? The correct answers were Common Customs Tariff, trade barriers/market access and trade defence instruments. Incorrect answers included WTO law and EEA Joint Committee statements.

Common Customs Tariff -- So, what specific instruments and policies are available for the EU to realize integration and the abolition of restrictions on international trade? The first is the Common Customs Tariff. It works on a simple principle. Once internal tariffs are removed, one needs to agree on common external tariffs to prevent goods from entering the internal market through the member state with the lowest import tariff. Article 206 TFEU provides that: "By establishing a customs union in accordance with Articles 28 to 32, the Union shall contribute, in the common interest, to the harmonious development of world trade, the progressive abolition of restrictions on international trade and on foreign direct investment, and the lowering of customs and other barriers."

Common Foreign and Security Policy (CFSP) -- The Common Foreign and Security Policy, or the CFSP, for short is based on a set of compromises. Member states have been reluctant to hand over powers to the EU in this particular area. However, the strong links to other policies and the single institutional structure forced the integration of CFSP into the legal order of the EU. Originally separated from EU law, it is now an integral part of it. However, the CSFP is still distinct. It is the only substantive policy domain found in the treaty of the European Union. You can see, for example, Articles 3 paragraph 5 and 24 paragraph 1 TEU. In article two, paragraph four, TFEU, it is stated that the EU shall have competence in this field. The existence of competence is therefore clear, but the nature of that competence remains difficult to define. Under the CFSP, the member states have an obligation to inform and consult each other. You can see this in Article 32, TEU. They are also under the loyalty obligation which you find in Article 24, paragraph 3, TEU.

Common Security & Defense Policy (CSDF) -- The Common Security and Defense Policy, the CSDF for short, is a part of the CFSP. Actually, defense cooperation was a taboo for a long time, but is now growing to become a distinct subfield of the CFSP. The policy is addressed in articles 42-46 TEU. The CSDP is an integral part of the CSFP. It includes the progressive framing of the common union defense policy. Although this indicates that there is a progressive change taking place, the obligation of loyal support in article 42, paragraph 7 TEU and article 222 TFEU indicate that there is a far-ranging obligation of the EU member states to support each other in the event of a terrorist attack or a natural or a man-made disaster. The decision-making takes place along similar lines as the CFSP. Decisions are the main tool. Within this policy, there are a number of institutions which are not expressly regulated in the treaties.

- The pivotal body is the political and security committee.
- The European Union military committee is the highest military body within the Council. It is composed of the Chiefs of Defense of the member states.
- On the civilian side, it is complemented by the CIVCOM, the Committee for Civilian Aspects of Crisis Management.
- There is also the CMPD, the Crisis Management and Planning Directorate.
- Further bodies deal with coordination and planning.

Complementarity -- one of the three aspects of the EU Development Policy. The other two are coherence and coordination. Complementarity is found in article 208 TFEU. This concerns the nature

of EU competence. It means that the competence is shared between the member states and the EU. This is clear from the wording of Article 208. The Union's development cooperation policy and that of the member states complement and reinforce each other. They are positively and mutually reinforcing coherence.

Concluding international agreements (article 216 & 218, TFEU) – Article 216 TFEU sets out EU competence to enter into international agreements, including when the EU treaties specifically call for international agreements, or where such an agreement is necessary to achieve some of the Union's policies, or when it is likely to affect common rules or alter their scope. Article 218 TFEU sets out the procedure for concluding an international agreement -- The Commission initiates the procedure by a recommendation. We find this in paragraph three. But needs the approval of the Council, paragraph two. The Council then controls the procedure through directives or consultations. You see this in paragraph four. Then the Council issues an authorization to sign according to paragraph five. According to paragraph six, the European Parliament must be consulted in a number of cases.

Conferral – The principle of conferral is a fundamental principle of EU law. According to this principle, the EU is a union of member states, and all its competences are voluntarily conferred on it by its member states. The EU has no competences by right, and thus any areas of policy not explicitly agreed in treaties by all member states remain the domain of the member states. The principle was important in this week's material because it makes the Member States one of the 7 main actors in the external dimension since unless the EU is expressly authorized to act in the international arena on behalf of the Union, the member states retain this authority and may act on their own behalf instead.

Constitutional dimensions of statehood – this is the concept unique to the external dimension associated with freedom, security and justice issues. This is a relatively new policy area that was mainly designated to facilitate cooperation between the EU member states. The main areas are

- immigration,
- judicial cooperation in civil and criminal matters,
- approximation of criminal law,
- police cooperation,
- and fundamental rights protection.

In these fields, the EU has enacted legislation and concluded international agreements. One of the elements which distinguish this field from other areas is that the issues almost always relate to what is considered to be fundamental and sometimes constitutional dimensions of statehood. I would like you to pause a second and read article 67 TFEU.

Coordination -- one of the three aspects of the EU Development Policy. The other two are coherence and complementarity. Coordination is the operative arm of other two C's. Complementarity and coherence. Coordination refers to article 210 TFEU and is very important. There is multi-track financing of the development budget and coordination between the Commission and the EEAS. And finally, since the competence is shared in this field, the EU must coordinate with the member states.

EAS -- The EFTA Surveillance Authority plays the same role as the commission in the EU. The role of ESA, as it is often called is to exercise the supervision in the EEA EFTA states. This include State aid control, competition policy, and making sure the EEA EFTA states implement and apply EEA law just like the Commission keeps an eye on the EU member states. But there are also important differences. ESA cannot impose a fine for infringement of EEA law and since there is no legislative process. Although, I personally consider the incorporation process to be quasi-legislative, the ESA does not have that initiative to legislation as the commission has in the EU.

ECT – European Coal & Steel Community -- The ECT is a system based on the European coal and steel community with independent bodies and an independent dispute settlement system. The aim is to

create the stable regulatory and market framework capable of attracting investment, so that all parties have access to continuous gas and electricity supply that is essential for economic development and social stability. It was one of two tools addressed in this week's materials for external dimension aspects of the EU energy policy. The ECSC Treaty was signed in Paris in 1951 and brought France, Germany, Italy and the Benelux countries together in a Community with the aim of organising free movement of coal and steel and free access to sources of production. In addition to this, a common High Authority supervised the market, respect for competition rules and price transparency. This treaty is the origin of the institutions as we know them today.

EEA – The Agreement creating the European Economic Area (EEA) entered into force on 1 January 1994. It allows the EEA EFTA States (Norway, Iceland and Liechtenstein) to participate in the Internal Market on the basis of their application of Internal Market relevant acquis. All new relevant Community legislation is dynamically incorporated into the Agreement and thus applies throughout the EEA, ensuring the homogeneity of the internal market. The EEA agreement is unique in the external relations of the EU. It extends the internal market and the rules of competition to the three E FTA states, Norway, Iceland and Liechtenstein. But the most unique feature is the judicial structure of the EEA agreement and the way in which EU law is incorporated in the EEA agreement to ensure the uniform application of EU law also for the EEA states. No other international agreement between the EU and other third countries goes as far as the EEA agreement. This was the focus of the 3rd lecture in this week's materials.

Figure 1 EEA as of 2014 -- Wikipedia

EEA legal coverage -- The EEA agreement covers two distinct areas, all of which have been covered earlier in this MOOC. The first is the free movement of workers, capital, services and the freedom of establishment. The second area is the rules of competition, including State Aid Control. But just like the EU has seen its competences move beyond these core issues, the EEA agreement also covers other issues, but to a much smaller extent than in the EU. The EEA agreement also integrates EU rules on the environment, such as the REACH regulations, financial regulations and so on. If a certain field falls outside the scope of the EEA agreement, the EU concludes bilateral agreements with the EEA EFTA states. Such an example is the bilateral agreement between the EU on one hand and Iceland and Norway on the other on the mutual recognition of arrest warrants.

But EU legislation, which could be said to implement the core rules in the EEA agreement is incorporated in the EEA agreement. Therefore, EEA law contains exactly the same directives and regulations as EU law in these fields. These EU directives and regulations are continuously placed in the annexes to the EEA agreements. Sometimes, they contain minor adjustments in order to adapt them to the EEA. Adaptations include everything from the addition of lists of competent authorities in the EEA EFTA states to political declarations from the contracting parties in constitutional matters.

Therefore, if you ever have to deal with an EEA agreement, always look at the relevant acts to see if there has been a specific amendment to the act when it was incorporated in the EEA agreement. Once these regulations and directives have been incorporated however, they have the same effect in the EEA as in the EU. Let us now turn to the institutional structure of the EEA agreement.

EEA Joint Committee – this committee implements EU legislation into the EEA Agreement, but it is not a lawmaking body like the EU Council. Instead it incorporates new EU legislation by adding it into various annexes of the EEA Agreement. The Committee is represented by one member from each of the EFTA states, plus the EU. Each member has one vote. From the EFTA website: The EEA Joint Committee (EEA JC) is responsible for the management of the EEA Agreement and typically meets six to eight times a year. It is a forum in which views are exchanged and decisions are taken by consensus to incorporate EU legislation into the EEA Agreement. Whenever an EEA-relevant legal act

is amended or a new one adopted by the EU, a corresponding amendment needs to be made to the relevant Annex of the EEA Agreement. This is essential to maintain the principle of homogeneity of the EEA. The amendment to the EEA Agreement should be taken as closely as possible to the adopted legislation on the EU side, with a view to permitting simultaneous application in the Community and in the EEA EFTA States. Note that the ungraded quiz for this week had a question, what is the main function of the EEA Joint Committee? The correct answer is "to incorporate new EU legislation into the EEA Agreement."

EEAS -- In the external dimension of the European Union, there are seven main players. One is the European External Action Service and the high representative, or the EEAS, for short. You find the legal basis in Article 27 TEU. The purpose is to present a strong, coherent voice, in fields outside of the common commercial policy. It is not an EU institution, which naturally limits its influence and scope of action.

EFTA -- During the 1980s, there were two free trade organizations in Europe. The European Economic Community and the European Free Trade Association or EFTA for short. Negotiations continued through the 80's and 90's on a more permanent treaty agreement. In 1995, many of the EFTA states left the EFTA to become members of the European community. Since the EEA agreement is a mixed agreement, all EU member states remain members to the EEA agreement together with the three EEA EFTA states, Iceland, Norway and Liechtenstein.

EFTA Court -- The EEA Joint Committee and the ESA are complemented by the EFTA Court. The EFTA Court ensures the judicial functions in the EEA. It works very much like the ECJ in the EU. It receives requests for interpretation of EEA law from the courts and the EEA EFTA states and it is the appeals court for decisions from ESA in state aid and competition. It also deals with infringement cases brought by ESA against the EEA EFTA states. And how does this work in practice? Here we have the EEA EFTA states. They apply EU law, but they have their own institutions and their own court. Isn't there risk that EU law and EEA law may be interpreted differently, even if the rules are the same? It is tempting to say that it is easy but actually, the EA agreement raises a number of issues in this regard. Mostly, they are solved by the principles of homogeneity and reciprocity. These two principles are essential for the good functioning of EEA agreements. So to sum up, the application of EU law and EEA law is identical if the rules are identical and this must be achieved in such a way that the rights exercised under EU law are the same under EU law and EEA law. See also the topics of homogeneity and reciprocity in this glossary.

EFTA Surveillance Authority -- The EFTA Surveillance Authority plays the same role as the commission in the EU. The role of ESA, as it is often called is to exercise the supervision in the EEA EFTA states. This include State aid control, competition policy, and making sure the EEA EFTA states implement and apply EEA law just like the Commission keeps an eye on the EU member states. But there are also important differences. ESA cannot impose a fine for infringement of EEA law and since there is no legislative process. Although, I personally consider the incorporation process to be quasi-legislative, the ESA does not have that initiative to legislation as the commission has in the EU.

Energy Community Treaty -- According to this treaty, EU energy law is applied to market participants from countries outside the EU. The treaty entered into force in 2006, for a period of ten years, and covers the EU and large numbers of countries in Eastern Europe, including the Ukraine since 2010. It is a regional, multilateral agreement, which aims to create an integrated bath market, in natural gas and electricity, between the participants. This is one of the two tools that were addressed in the 2nd lecture on the external dimension of EU energy policy.

EU competence in external fields (articles 47 & 288 TFEU) -- the European Union according to article 47 TEU is an international organization with legal personality, which means that it exists distinct from its member states. And as a result, both the EU and the member states can act, in the

international arena. Article 288 TFEU describes the customary methods with which the EU implements legal commitments internally – regulations, directives, decisions, recommendations and opinions. In addition Article 216 TFEU authorizes the EU to negotiate agreements with third countries in certain cases. We focused on sixe of these fields in lecture 2 – Common Commercial Policy, EU Development Policy, Common Foreign and Security Policy, Common Security and Defense Policy, the external dimension of the internal energy market, and the external dimension of freedom, security and justice.

EU Development Policy -- The EU has been involved in development since its inception. Its development policy is guided by the 3 Cs, complementarity, coherence, and coordination. You find these in articles 208 to 210 TFEU. Complementarity refers to the shared compentence the EU has with the member states in this field. Coherence refers to process of aligning programs with general principles and objectives of EU external relations. Coordination refers to the multi-track financing, multiple EU institutions and members states, all active in this field.

European Defence Agency – this is part of the EU Common Security & Defense Policy (CSDF). It is the one body that is expressly mentioned in the treaty. It is mentioned in Article 42 paragraph 3 TEU, and it's further defined in Protocol 10 on permanent structured cooperation, established by Article 42 TEU. Missions here include Mali, Operation Atalanta in the Somalian waters, and EUPOL, the European Union Police Mission in Bosnia and Herzegovina. There are more than 20 CSDP operations since 2003. Article 45(1), TFEU sets out the main tasks for which the European Defence Agency is responsible: identify objectives, evaluate commitments, promote harmonization of operational needs & procurement methods, propose multilateral projects, support technology research, plan joint research activities, and identify, implement useful measures for strengthening industrial and technological base

Foreign Affairs Council – one of the 7 main players in the EU external dimension. The Foreign Affairs Council, which consists of the Ministers of Foreign Affairs of the member states, elaborate the Union's external action on the basis of strategic guidelines laid down by the European Council, and ensure that the Union's action remains consistent.

Freedom, security and justice external dimension -- This is a relatively new policy area that was mainly designated to facilitate cooperation between the EU member states. The main areas are

- immigration,
- judicial cooperation in civil and criminal matters,
- approximation of criminal law,
- police cooperation,
- and fundamental rights protection.

In these fields, the EU has enacted legislation and concluded international agreements. One of the elements which distinguish this field from other areas is that the issues almost always relate to what is considered to be fundamental and sometimes constitutional dimensions of statehood. I would like you to pause a second and read article 67 TFEU.

GATT – the predecessor of the World Trade Agreement, which originally laid down the rules of free trade.

Hard law – binding legal procedures such as regulations, directives and decisions. As compared to soft law, which is advisory only, and includes recommendations and opinions.

Homogeneity – an important principle in the EEA Agreement. In order to ensure that EU law is applied in the same way in the EU member states and the EEA EFTA states, the EEA agreement contains provisions concerning the homogeneous application of EU law under the EEA agreement. The relevant provision is found in article six EEA. In principle the EEA EFTA system must stay in

alignment with the EU law in effect at the time the agreement was signed. However, this principal also applies to later case law. In another agreement, concluded between the EEA EFTA states establishing the ESA and the EFTA court, it is stipulated that these institutions must pay due account to later developments in the case law of the ECJ. The question is how far reaching this obligation is? In the EFTA court, the principle of homogeneity is taken seriously. In addition to rules in the EEA agreement itself, the principle of homogeneity has also been applied to procedural rules. This is called Procedural Homogeneity. But the exact scope of the principle is unclear. There are examples where the EFTA Court has let case law of the ECJ have precedence over its own previous case law. Although, it could be discussed whether the rules applied by the two courts in those cases were really identical in substance as stipulated in article six EEA. In another case, the EFTA Court has stated that homogeneity can only be applied if the relevant provisions are identical in substance in the EU and the EEA, after a decision in the EEA joint committee that the relevant rule should indeed be applied in the EEA.

These are the most extreme cases. But on the whole, the EFTA court and the ECJ apply the rules in the same way. The ECJ regularly stresses the fact that the EEA agreement and EU law are to be interpreted in a uniform manner. Actually, the EFTA Court is one of the few courts regularly cited by the ECJ. In fact, there is an ongoing judicial dialog between the ECJ and the EFTA Court on the interpretation of EU law. This is particularly important where the EFTA court must go first due to a lack of existing jurisprudence from the ECJ. So to sum up, the application of EU law and EEA law is identical if the rules are identical. If they are not, well that must be solved case by case.

Internal Energy Market -- The final field we looked in lecture 2 this week was the external dimension of the internal energy market. There is no comprehensive EU external energies policy. However, the Lisbon Treaty strengthened coherence in the EU external relations and expressly conferred energy competence onto the EU. Today, there are disagreements on the roles of the high representative and the EEAS. They have different views on what the EU external energy policy is about. The strength and role of the European Parliament must also be taken into account. The main requirements are laid down in article 194 TFEU. The wording of Article 194 TFEU does not have any express external competence conferred on the EU in energy policy matters. Any external action, therefore, must follow the general internal rules in the EU, such as the gas and energy market packages. The provision focuses on ensuring the well-functioning of the internal market, security of supplies, and environmentally friendly energy policies. The main challenge to EU policies is the tendency of member states to give priority to their national interests over common EU interests. We will focussed on two tools for the external dimension of EU energy policy in our materials – the Energy Community Treaty, including the Treaty for the European Coal & Steel Community and, second, bilateral energy instruments. Such instruments have been concluded with a large number of countries, including Russia and even India. These include memoranda of understanding in energy matters, and other types of joint declarations.

Legislative procedure – the legislative procedure for implementing the Common Commercial Policy is set out in articles 206 and 207 TFEU. For example, the Parliament and Council, acting in accordance with their ordinary legislative procedures, will adopt measures defining the framework for implementing the common commercial policy. For agreements to be negotiated with third countries or international organisations, the Commission will make recommendations to the Council, who will then authorize the opening of negotiations. The Commission will conduct the negotiations with a special committee appointed, and will regularly report to the Parliament on progress.

Loyalty obligation – this refers to the loyalty obligation each of the member states owes to the Union in matters of common foreign and security policy. The loyalty obligation is found in Article 24, paragraph 3, TEU, which states:

> "3. The Member States shall support the Union's external and security policy actively and unreservedly in a spirit of loyalty and mutual solidarity and shall comply with the Union's action in this area.
>
> The Member States shall work together to enhance and develop their mutual political solidarity. They shall refrain from any action which is contrary to the interests of the Union or likely to impair its effectiveness as a cohesive force in international relations.
>
> The Council and the High Representative shall ensure compliance with these principles."

Multi-track financing -- this refers to the complex collection of financing streams present in EU Development Policy. The Van Vooren/Wessel book on EU External Relations Law (p.337) makes reference to "the three dominant streams of development assistance that make up European (as opposed to EU) development cooperation: funds from Member State budgets disbursed in accordance with national rules and policy priorities; funds from the EU budget disbursed in accordance with EU development policy priorities (article 208 TFEU); funds from the Member State budgets which are pooled in an EDF and disbursed in accordance with the priorities jointly agreed in the Cotonou Agreement with the ACP countries..." [ACP = African, Caribbean and Pacific states]

Principle of conferral – see the topic of conferral in this glossary.

Principle of uniformity -- uniformity is particularly important in the EU external dimension relating to CCP – Common Commercial Policy. For example, Article 207(1) TFEU specifies that: "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."

Procedural homogeneity – this refers to the requirement relating to the EEA Agreement, that the EFTA court attempt to follow the same procedural rules as the ECJ in common subject matters. Or put another way, the principle that not only substantive provisions but also procedural and institutional provisions pertaining to the EEA should be interpreted in line with corresponding provisions of EU law.

REACH regulation -- REACH refers to Registration, Evaluation, Authorisation and Restriction of Chemicals. The REACH regulation entered into force on 1st June 2007. It streamlines and improves the former legislative framework on chemicals of the European Union (EU). It came up in this week's materials in connection with the EEA Agreement. The EEA agreement integrates EU rules on the environment, such as the REACH regulations. The main aims of REACH are to ensure a high level of protection of human health and the environment from the risks that can be posed by chemicals, the promotion of alternative test methods, the free circulation of substances on the internal market and enhancing competitiveness and innovation. REACH makes industry responsible for assessing and managing the risks posed by chemicals and providing appropriate safety information to their users. In parallel, the European Union can take additional measures on highly dangerous substances, where there is a need for complementing action at EU level.

Reciprocity – one of two key principles of the EEA Agreement. The other principle is homogeneity. The principle of reciprocity in the EEA is the corollary to homogeneity, but from the perspective of the individual. It is the core of the protection of individual rights in the EEA agreement. The fourth recital of the EEA agreement underlines the purpose to establish a dynamic and homogeneous legal system based on common rules and equal conditions of competition and providing for the adequate

means of enforcement, including at the judicial level. This has to be achieved on the basis of equality and reciprocity and of an overall balance of benefits, rights and obligations of contracting parties.

In the jurisprudence of the EFTA Court and the ECJ, reciprocity has been extended to mean that the rights of individuals in the EEA and the EU must be the same if the rules are identical. This is of particular importance in the exercise of the four freedoms. There would be an imbalance in benefits and obligations if the outcomes would not be identical in the EU and the EEA EFTA states. Take more instance mutual recognition or the right to social benefits. Both, which may be essential for a self-employed person moving within the EEA with his family.

Rules of competition (EFTA harmonization) – one of two areas where the EEA agreement is brought into the EU law system.

Seven main players – the 7 main players in the external dimension of the EU system are:

1. The European External Action Service and the high representative, or the EEAS, for short. You find the legal basis in Article 27 TEU. The purpose is to present a strong, coherent voice, in fields outside of the common commercial policy. It is not an EU institution, which naturally limits its influence and scope of action
2. The European Council sets out the future policy-making of the EU, and as such, may influence non-legal but important foreign policy activity. The Council is another agenda-setting institution. In the ungraded quiz for this module, the question is asked, how is the Council an important actor in the external dimension? The correct answer is "the procedure for the conclusion of new international agreements is in the hands of the Council". Other incorrect answers were that it has no role or that it has a veto power.
3. The Foreign Affairs Council, which consists of the Ministers of Foreign Affairs of the member states, elaborate the Union's external action on the basis of strategic guidelines laid down by the European Council, and ensure that the Union's action remains consistent.
4. The European Commission is a key player in this field. Although the dedicated director general for external relations was removed and became the EEAS, the external dimension of most policy areas mean that the Commission has remained a key player in this field. The fields of trade, energy, and humanitarian aid were never transferred to the EAAS and they remain fully in the hands of the Commission. The Commission also represents the EU abroad, with the exception inter alia for the common foreign and security policy.
5. The European Parliament has proven to be a very active player in the field of external relations. The European Parliament must be regularly consulted during the process. It must give its consent before an international agreement can be concluded by the European Union. This was apparent before the signing of the TTIP with the United States of America.
6. The Court of Justice, of course, plays a pivotal role in the external dimension. One of its main tasks is to decide on the delimitation of external competences between the union and its member states. Its judgments in these matters are therefore very important for the institutional balance in the EU.
7. And then last but not least, there are the member states. Despite their membership in the EU, the member states are still international actors themselves. The principle of conferral means that the EU can act only as long as there is a competence to act. If there is no competence for the EU, or indeed, if there is a shared competence between the EU and the member states, the member states remain free to act on the international arena.

Shared competence – the EU has shared competence with the member states in most areas of the external dimension which means it needs to step aside in areas where the member states have competence to act, and it needs to coordinate/collaborate in areas where both levels are empowered to act and negotiate.

Soft law – soft law refers to non-binding instruments like recommendations and opinions. By contrast hard law is the traditional binding instruments adopted by the EU, such as Regulations, Directives and Decisions.

Trade barriers and market access – one of two major areas of instruments and policies that the EU uses to implement the Common Commercial Policy (CCP). See also the Banana Saga which was a heavily litigated trade preference the EU extended to certain banana producing countries in Africa, Pacific and the Caribbean.

Trade defense instruments – these are another way that the EU implements its common commercial policy in the external dimension. These anti-dumping measures are intended to prevent the market from being distorted by products sold under their normal value. Moreover, these measures also aim to protect the internal market and its industries from subsidized imports from third states

TTIP -- The EU is negotiating a trade and investment deal with the US - the Transatlantic Trade and Investment Partnership - or TTIP. The agreement is still in negotiations and has not been signed. You can see the EU negotiating texts and factsheets, chapter by chapter at the Europa web site, http://ec.europa.eu/trade/policy/in-focus/ttip/about-ttip/

Uniformity – see principle of uniformity in this glossary.

WTO law – Law of the World Trade Organisation. In this context, it will be appropriate to mention the application of WTO law in the EU. During the so-called Banana Wars, the issue of the applicability of WTO law in the EU was raised by importers who had suffered financial damage through the measures adopted by the EU. In the context of these proceedings, it was established by the Court of Justice that WTO law does not have direct effect in the EU. However, by exception WTO law may be invoked if EU law was adopted to implement a specific measure or when an EU measure makes an express reference to WTO law.