SECTION 1

POLICY AND PILLAR ASPECTS OF THE
CONSTITUTIONAL TREATY
CHAPTER 2

THE EU CONSTITUTIONAL TREATY AND INTERNATIONAL TRADE

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INTRODUCTION

This chapter tackles the complex issue of the prognosis of the European Union (EU) in the world trading system and provides a view into the near future for finding better ways to use EC trade policy in the global context. When the World Trade Organisation (WTO) Agreements (the GATT, the GATS and the TRIPS Agreement) were signed in 1994, the concern in the EU was whether the mere fact that the GATT was being extended to the areas of services (the GATS) and intellectual property (the TRIPS Agreement) meant that the WTO membership of EU Member States would come to an end by formally recognising the exclusive competence of the EC with regard to the conclusion of the WTO agreements. The (in)famous Opinion 1/94 of the European Court of Justice (ECJ) on the WTO agreements, the actual genesis of the whole competence-allocation confusion, proved otherwise, by arguing that both the EC and its Member States shared competence with respect to the GATS and the TRIPS Agreement. Years later, the EU Constitutional Treaty tries timidly to

1 The reader should bear in mind that this chapter was written before the EU Constitutional Treaty was abandoned in June 2007. Reference to the Constitutional Treaty is therefore in the present or future tense. Although the Treaty will not enter into force, the European Council meeting of June 2007 agreed on a fallback revised Treaty (the Reform Treaty) which contains much of the substance of the Constitutional Treaty, including the provisions concerning external trade. Therefore, an examination of these external trade provisions is amply justified since they are still likely to enter into force, possibly in 2009.

2 At present, the EU is founded on four basic Treaties that lay down the rules by which it has to operate. These treaties are long and complex and EU leaders intend to replace them with a single, shorter, simpler document spelling out the EU’s purposes and aims and stating clearly who does what. This new document (technically known as the Constitutional Treaty) will be similar to the constitution of a country—even though the EU is not, and does not aim to be, a single country. The text of this new EU Constitution was agreed in June 2004 and signed by all the Member State governments in October 2004 in Rome. It was due to come into force in 2006, but first it must be ratified by all the national Parliaments and, in some countries, be approved by referendum. See Treaty Establishing a Constitution for Europe, 16 December 2004, 2004 O.J. (C 310), 1. Available at http://europa.eu.int/eur-lex/lex/JOHtml.do?uri=OJ:C:2004:310:SOM:EN:HTML. Vernon Bogdanor, however, argues that it would make more sense to have a Europe-wide referendum with a double and qualified