

3 The EU's approach to Free Trade Agreements Market Access for Goods

This paper forms part of a series of eight briefings on the European Union's approach to Free Trade Agreements. It aims to explain EU policies, procedures and practices to those interested in supporting developing countries. It is not intended to endorse any particular policy or position, rather to inform decisions and provide the means to better defend them. The views expressed in the briefings do not necessarily reflect the views of the publishers.

This briefing is divided into four sections:

- What's at stake?
- Tariffs and related issues: Analysing what's on offer from the EU
- Non-tariff barriers
- Rules of origin

What's at stake?

For developing countries

Trade can be a powerful force for development and poverty reduction. In the right circumstances, policies that reduce tariffs and other barriers to the movement of goods can increase trade and support development. However, to realise these gains, tariff liberalisation needs to be managed carefully and strategically.

Many agricultural, industrial and fisheries products are critical to human development, poverty reduction, food security, rural development and environmental protection. Properly managing these issues is important, and trade instruments such as tariffs can be significant, for example, in mitigating the potentially detrimental effects of unfair import competition resulting from European subsidies.

The EU is focusing not only on import duties but also export tariffs and non-tariff barriers. Tariffs and non-tariff barriers give a degree of protection to vulnerable and sensitive sectors, provide policy autonomy to the importing nation and raise revenues for the government.

On the offensive side, developing countries might wish to discuss damaging EU subsidies or any persisting barriers to European markets for their own goods. Protection of sensitive sectors through tariffs and non-tariff barriers such as standards are frequently cited as problems affecting potential developing-country exports to the EU. The value of these gains and the likelihood of winning them during a negotiation should be considered in assessing potential trade-offs. As many European tariffs are already at low levels, it is likely that the partner country or region will make greater concessions and face greater costs of adjustment.

Goods trade is the trade in tangibles – such as agricultural, industrial and fishery products as well as wines and spirits.

The 'free movement of goods' (also termed 'goods market access') remains the core element within EU Free Trade Agreements. The free movement of goods in EU FTAs covers issues that might hinder or facilitate trade, including both imports and exports, customs duties (tariffs) and other barriers to trade (also termed non-tariff barriers). FTAs also entail extensive and complicated rules of origin.

Box 1: What's at stake? Development and environmental implications

Policy space

Sustainable development and poverty reduction require policy space large enough for developing-country governments to craft and implement home-grown strategies. As long as all countries are not at equal levels of development, development in poorer nations requires temporary protection from foreign competition – different sectors of the economy will require changing levels of protection depending on the country's level of development.

Historical evidence shows that in order for countries to develop, they must change the composition of their exports, thereby reducing their vulnerability to shocks and generating employment. Developed countries not only export more – they export products with more added value. All advanced countries as well as the Asian tigers used manufacturing tariffs to protect their nascent industries. They only fully exposed firms to international competition when they were strong enough to compete on world markets. The existence of this 'pattern of optimal tariffs' is a key reason why developing countries need to maintain a high degree of policy autonomy.

However, successful development not only requires flexibility in the determination of tariff levels but other policies as well such as subsidies, export taxes and other non-tariff measures. Take export taxes: these are often in place to protect natural resources from over-exploitation (which could be justified under the General Agreement on Tariffs and Trade (GATT) Article XX) or to promote value-added within a particular country. Not only are all these policies under threat in EU FTAs, but many would be eliminated immediately or within a relatively short period of time. Because commitments would be irreversible, these tariffs could not be re-imposed and raised at some future date (the 'standstill principle').

Government revenues and public spending

Government revenues from tariffs are also under threat. In EU–Mercosur, loss of revenue to the Latin American countries could amount to over \$4.3 billion which “could have negative impacts on social, educational and health expenditure”.¹ Many African, Caribbean and Pacific (ACP) governments earn a significant proportion of their revenue from imposing tariffs on imports. African governments rely on import taxes for an average of 25 per cent of their revenues.² Under any EU–ACP trade agreement, the hardest hit will be those who trade most with the EU (Nigeria for example will lose \$427 million) and those who still have high tariffs (Cameroon will lose \$149 million).³ Specifically, Zambia stands to lose \$15.8 million in government revenue, equivalent to its annual HIV and AIDS spending.

Government revenues are also predicted to fall heavily in certain countries in the EU–Mediterranean FTA, particularly Algeria, Lebanon and Palestine but also in Tunisia and Morocco; “if this [loss] is not mitigated by levying the same amount of income by other means, adverse impacts on health, education and social support programmes can be expected.”⁴

Impacts on jobs, farmers, producers

If not carefully managed, eliminating tariffs on a wide range of products could result in significant dislocation of local producers as well as trade diversion, loss of output, exports and jobs, and increased imports with further implications for the trade balance and the debt position. In the EU–ACP negotiations, full liberalisation would lead members of the Eastern and Southern Africa (ESA) region to lose \$212 million worth of trade with each other, while the EU would increase its exports to the region by \$1.1 billion. Studies for Kenya's Ministry of Trade, the International Monetary Fund, and the European Commission indicate that under an EPA, up to 65 per cent of industry in Kenya is vulnerable to the opening up of markets, and millions of rural livelihoods are at stake. The European Commission's own impact assessment in advance of any EU–ACP agreement in West Africa confirms the potential impact of liberalisation: surges of imports could rise by 16 per cent for onions, 15 per cent for potatoes, 17 per cent for beef and 18 per cent for poultry.⁵

1 University of Manchester, 2007a. Trade SIA of the Association Agreement under Negotiation between the EU and Mercosur: The Automobile Sector Study. www.sia-trade.org/mercotur/phase1/MTR_AUTO_FINAL_EN.pdf. Page 39

2 Bilal, S. and V Roza, 2007. Addressing the fiscal impacts of an EPA, ECDPM, May.

3 Karingi, S. et al, 2007. Economic and Welfare Impacts of the EU-Africa Economic Partnership Agreements, ATPC briefing No 6, UNECA. www.uneca.org/atpc/Work%20in%20progress/10.pdf

4 University of Manchester, 2007b. The EU's SIA of the Euro-Mediterranean Free Trade Area. www.sia-trade.org/emfta/en/Reports/Phase2FinalreportMaro6.pdf Ibid, pages 18, 25, 31 and 32

5 PricewaterhouseCoopers, 2005. SIA of the EU-ACP Partnership Agreements – West Africa Agro-Industry.

Box 1: What's at stake? Development and environmental implications continued

The development of the domestic automobile sector in Mercosur, but particularly in Brazil and Argentina, has been a key strategic part of their industrial development. It is one of the sectors being targeted by the EU but could have serious economic and social impacts as a result of an EU–Mercosur deal; output and employment is expected to drop by between 13 and 16 per cent. This could equate to many tens of thousands of people losing their jobs.⁶

All these issues are highlighted in the EU's FTAs with the Mediterranean countries. In an assessment of the liberalisation of industrial products, the negative implications heavily outweigh positive ones. There were particular significant negative impacts for employment/ unemployment. In Algeria, Morocco, Egypt and Tunisia, employment in the total workforce is predicted to fall by 8 per cent. The sectors experiencing the biggest short-term employment losses include food and beverages, textiles and clothing, motor vehicle production, chemicals, iron and steel and wood products.⁷

The impact of the liberalisation of agricultural products in the Mediterranean countries is less severe but nonetheless, the negative implications again outweigh the positive ones. For example, employment falls should be expected in the livestock sector (Egypt) and in sugar, meat and dairy (Morocco); government revenues will fall (in Algeria, Lebanon and Palestine), and food insecurity will increase in food importing countries (i.e. Egypt).⁸

6 University of Manchester, 2007a. *Op cit.* page 57

7 University of Manchester, 2007b. *Op cit.* pages 24, 31 and 32

8 *Ibid.*, pages 42 and 43

For the European Union

Agriculture and manufacturing sectors are significant export earners for European countries. Many European exports still face higher tariffs in target partner markets – and addressing this is a key offensive interest for the EU. The European Commission's assessment of growth in goods trade between FTA parties is heavily skewed in favour of the EU. EU trade would grow by 24.2 per cent with ASEAN (Association of South-East Asian Nations), 47.8 per cent with South Korea and 56.8 per cent with India. Yet in contrast, ASEAN trade to the EU would only grow by 18.5 per cent, 36 per cent from Korea and 18.7 per cent from India.⁹

Global Europe (see Briefing 1, Introduction to EU Free Trade Agreements) emphasises that in order to maintain the competitiveness of EU companies, increased market access for goods must be achieved.¹⁰ Much of this market access is aimed at high-growth emerging markets. “[We] need to open markets and create new opportunities for trade and ensure European companies are able to compete fairly in those markets [by] going further and faster in promoting and openness and integration, by tackling issues which are not ready for multilateral discussion and by preparing the ground for the next level of multilateral liberalisation.”¹¹

As suggested in this quotation, non-tariff barriers and regulatory issues are equally a target of the EU. This covers elements such as quantitative restrictions (export and import bans), standards, technical requirements, conformity procedures, trade defence mechanisms, customs procedures and internal taxation and regulation. A particular priority for the EU appears to be sanitary and phytosanitary measures, standards and export bans. Many of these instruments can be important policy tools for public policy and economic development objectives and do not only have trade implications.

The EU is also targeting export restrictions, such as export tariffs, as it is keen to secure access to raw materials for European firms. These can be tools for developing countries to develop their own domestic processing and manufacturing industries, for example by providing affordable and predictable access to key inputs.

As part of the *Global Europe* strategy, the European Commission conducted a review of market access. The resulting publication shows that the Commission continues to pay lip-service to fighting poverty, development or protecting the

9 Agence Europe, 2007. Council green light to launch of negotiations for bilateral free trade agreements with ASEAN, South Korea and India. 23rd April.

10 European Commission, 2006a. *Global Europe: Competing in the World.* trade.ec.europa.eu/doclib/docs/2006/october/tradoc_130376.pdf

11 European Commission, 2006a. *Op cit.*

12 European Commission, 2007. Global Europe: A Stronger Partnership to Deliver Market Access for European Exporters.
http://trade.ec.europa.eu/doclib/docs/2007/april/tradoc_134507.pdf

environment. In praising the benefits of market access for EU exporters, development, poverty and environmental issues are not even mentioned.¹²

On the defensive side, domestic agricultural subsidies are not included in EU FTAs and only sporadic reference in the past is made to export subsidies (ie in the EU–South Africa FTA). Agriculture remains the EU's most defensive sector.

Box 2: Understanding market access texts: Key terms and definitions

Article XXIV of the WTO's General Agreement on Tariffs and Trade (1994): Under WTO rules, Article XXIV governs the formation of a free trade area between two or more countries. Any free trade area must be concluded within a reasonable length of time and tariffs must be eliminated on 'substantially all trade' between both parties. WTO members have agreed that a reasonable length of time equates to ten years, except under exceptional circumstances. There is no accepted definition of 'substantially all trade' (although the EU interprets this as an average 90 per cent of trade having to be liberalised). No major sector is to be excluded and only products subject to total tariff elimination count towards the 'substantially all trade' target.

Most Favoured Nation (MFN): This is a commitment by a country that it will apply to another country the lowest tariff rate (for example) that it applies to any other trading partner. This is the guiding principle of the WTO. Thus, if a country cuts a tariff on a product to one country, this rate cut automatically applies to all other trading partners. This means that treatment of imports is non-discriminatory. Free Trade Agreements are one of the main areas where countries can deviate from this principle in that they are able to liberalise towards each other without having to offer this liberalisation to other WTO members.

Reciprocity: This is the principle that negotiating parties offer each other comparable concessions in trade deals. It is a generally accepted principle at the WTO, although it tends not to apply to developing countries who are allowed to offer "less than full reciprocity" (i.e. lesser concessions) or even non-reciprocity (no commitments in return – this tends to apply to Least Developed Countries).

Asymmetry: The principle of reciprocity is observed in WTO rules on FTAs, even North–South. However, as the coverage of trade concessions that must be offered by each party is left undefined, the EU sometimes offers to make use of de facto flexibility that this provides. For example, in order to hit the combined coverage target of 90 per cent of trade, the EU might liberalise 100 per cent and its developing country/region partner only needs to liberalise 85 per cent. It terms this approach "asymmetry".

Tariff lines: A tariff line corresponds to one item in the list of classification of goods used by customs authorities when applying border duties. These are usually according to the 'Harmonised System' of classification maintained by the World Customs Organisation. Goods can be differentiated to different degrees, indicated by the number of digits in the HS code. At the two-digit HS level, there are 97 chapters (or sectors). Agriculture is covered by HS chapters 1, 2 and 4 to 24; industrial products are covered by HS 25–97; fish and fish products are covered by HS chapter 3.

Dual pricing: Where the negotiating partner has two different prices, one for the domestic market (usually a lower price) and another for the export market (usually a higher price).

Standstill clause: No new tariffs can be introduced and once eliminated, tariffs cannot be re-imposed or raised. This principle in effect binds tariffs at current applied levels.

Rules of Origin (RoOs): In order to benefit from preferential tariffs or other treatment, producers need to prove that their good originates in one of the countries that benefits from this treatment. This is done by applying the relevant "rules of origin"

Non-tariff barriers (NTBs): These are rules, restrictions or other conditions than tariffs that make it difficult to import goods. These include Sanitary and phytosanitary measures (SPS) that are safety standards relating to food and human, animal and plant health and technical barriers to trade (TBT) that are other standards and regulations that distort trade.

FTAs are covered by multilateral trade rules at the WTO. How trade in goods is dealt with in a North–South FTA falls under Article XXIV of the GATT 1994.

South–South FTAs by contrast are covered by another WTO provision the ‘Enabling Clause’. These are discussed in more detail in the ‘Tariffs’ section on page 6.

Market access text, language and proposals from existing and future EU FTAs

	Existing FTAs (Chile)	Draft negotiating mandates (Indian and ASEAN)	Latest developments on new FTAs	‘WTO plus’ for the negotiating partner?
Import tariffs	“Customs duties on imports shall be eliminated in accordance with the provisions of Articles 64 to 72” Art 60	“The aim of the Agreement will be to dismantle import duties and charges” Annex Para 7		Yes. Tariff liberalisation will be deeper and quicker
• Exclusions	These are built into the schedules.	“A comprehensive FTA covering substantially all trade” Section 2	To the EU, substantially all trade means 90 per cent. In the ASEAN and Indian FTAs, the EU is pushing for greater than 90 per cent	
• Transitional periods	“Customs duties on imports shall be eliminated in accordance with the following timetable” Arts 64 to 72. For Chile, tariffs on industrial products would be eliminated within 7 years, for agricultural products within 10 years, and for fishery products on the date the agreement came into force (i.e. year 0).	“... over a period of time not exceeding 10 years” Annex Para 7	EU will insist on a maximum seven years with India and ASEAN	
Export tariffs	“Customs duties on exports shall be eliminated as from the date of entry into force of this agreement” Art 60	“All customs duties, taxes or charges on exports ... to the other party which are not justified by exceptions under the Agreement shall be abolished upon the application of the Agreement.” Annex Para 11	A priority for the EU. All export tariffs will go immediately unless justified under GATT articles XX and XXI	Yes. Export tariffs are not covered by the WTO
Trade defence Instruments	Articles 78, 92 and 93. Covers, anti-dumping and countervailing duties, safeguards and shortages clause.	“The Agreement will contain a bilateral agricultural safeguard clause ... the Agreement will include a clause on anti-dumping and countervailing measures [in accordance with WTO rules] ... The Agreement will also integrate commitments that go beyond WTO rules in this area in line with EC rules and previous agreements”	In the EU's new FTAs, the safeguard will only cover agricultural products. Some measures will be ‘WTO plus’	Yes. The EU has already admitted that its TDIs will go beyond WTO rules.
Non-tariff barriers (esp SPS and TBT)	Articles 75 to 89. See also section below on export bans.	“The Agreement will forbid any ban, restriction or other non-tariff barrier (NTB) to trade which is not justified by the general exceptions” Annex Para 10	The exceptions will again fall under GATT Articles XX and XXI.	Yes. Particularly procedural aspects.
• Import & export bans	“All import and export prohibitions shall be eliminated upon the entry into force of this agreement” Art 76	“All ... quantitative restrictions on exports to the other party which are not justified by exceptions under the Agreement shall be abolished upon the application of the Agreement.” Annex Para 11	A priority for the EU. All export restrictions will go immediately unless justified under GATT articles XX and XXI.	
Rules of Origin	Various mentions (Articles 26, 58, 79 and 81) but main provisions are in Annex III.	“A protocol setting out simple and development-friendly rules of origin to be applied”	Still under discussion. However, the EU is pushing for a development-unfriendly approach (value added) whilst developing countries would prefer a ‘tariff jump’ approach.	

Tariffs and related issues: Analysing what's on offer from the EU

How do the EU and others interpret WTO rules on FTAs?

The trade in goods in FTAs falls under WTO rules, specifically Article XXIV of the GATT (see Box 2 on page 4).

To the EU this means that in an FTA:¹³

- on average 90 per cent of total trade value between the two parties must be liberalised (also known as coverage);
- a small proportion of trade – about ten per cent – can be excluded from commitments by either party (measured either by trade volume (effectively value) and/or number of tariff lines);
- no major sector is excluded;
- the timeframe (the transition period) for this elimination should not exceed ten years unless under exceptional circumstances.
- “asymmetry” in coverage commitments is acceptable when negotiating with developing countries – provided that the 90 per cent target is reached (see below).

But many FTAs have much longer timeframes than this and coverage also varies. For example in the agreements between Australia and Thailand, and New Zealand and Thailand, Thailand got 20 years in both cases. And in the Canada–Chile agreement, Chile got 18 years.¹⁴ Yet in contrast, every indication points to the EU pushing for FTAs with India, ASEAN, South Korea, the Andean Community and Central America with transition periods that are ten years or less, possibly as low as seven. And even then, the EU is pushing for tariffs to be eliminated in the front end of the transition period (what is called ‘maximum front loading’).

The EU has agreed to longer transition periods – i.e. in excess of ten years – in EPAs with ACP countries. These are some of the poorest countries in the world and as such many (for example countries in the ESA region) had initially requested a transition period of 25 years. Although transition periods of 15–20 years have been granted in the ‘interim’ EPAs initialled in December 2007, these apply for a very small number of products. The vast majority of liberalisation is set to occur within 10–15 years. As recently as September 2007, a demand from ESA was rejected by the European Commission who countered with the proposal that they would permit a period of only 12 years.¹⁵ Should negotiating partners to the EU achieve longer periods, this may come at a price: in the past the EU has also proposed a trade-off that “sufficiently long transition periods should limit the scope for outright exclusions”.¹⁶ This appears to have been the outcome in the negotiations between the EU and the East Africa Community (see Box 3).

Box 3: Latest development in EPAs and market access between the EU and the East Africa Community (EAC)

In November and December 2007, a number of ACP countries initialled interim goods-only EPAs with the EU (as of end December 2007, some 35 ACP countries had ‘initialled’ deals). For example, the five countries of the EAC, which initially had been negotiating as part of the ESA region (16 countries), broke away to conclude the deal as a sub-region. EAC will get duty- and quota-free (DFQF) access to the EU market with the exception of rice and sugar which will be phased in. In return EAC has agreed to freeze tariffs at zero on 64 per cent of trade by 2010; eliminate tariffs on a further 16 per cent by 2023; and eliminate tariffs on a further 2 per cent by 2033. This translates into an 82 per cent opening of their markets within 25 years.

13 European Commission, undated. WTO compatibility of an EU-Mercosur free trade agreement
http://ec.europa.eu/comm/external_relations/mercosur/background_doc/template_papers.htm

14 Scollay, R., 2005. ‘Substantially All Trade’: Which Definitions are Fulfilled in Practice? An Empirical Investigation. A report for the Commonwealth Secretariat. 15th August 2005.

15 Report on the ESA-EC EPA negotiations 17th – 24th September Kigali, Rwanda

16 European Commission, 2006b. Comments from the EC on ESA Proposals on Trade Co-operation/Trade in Goods September 2006.

Box 3: Latest development in EPAs and market access between the EU and the East Africa Community continued

But what does this mean? Four of the five EAC countries are LDCs. They already have DFQF access to the EU market under the EBA arrangement. In return they have obtained a transition period of 25 years and can exclude 18 per cent of their trade. But given the timetable, they have also committed to open their markets by 64 per cent within three years and 80 per cent within 15 years. EAC countries have fronted-loaded their commitments and will only be allowed to protect a further 2 per cent of trade up to 25 years. In addition, these same countries, as part of ESA, had initially requested 57 per cent exclusions, but they finally agreed to just 18 per cent.

Whilst the principle of asymmetry is an improvement on straight application of the reciprocity principle in WTO rules, the EU approach has limitations. The extent to which the negotiating partner liberalises their trade should not be determined by arbitrary timeframes and product coverage. Because of massive differences in levels of development between the EU and the negotiating partner, the extent and timing of liberalisation should be based on their individual development and economic needs.

Also, something like 95 per cent of EU tariffs are already at zero (or close to zero). The greater adjustment costs will therefore be borne by the other country and not the EU, as was the case in the EU–South Africa FTA. The development limitations of the EU's approach to reciprocity and asymmetry are amply reflected in the impact assessment of a potential EPA in Kenya. To avoid any negative impact from an EPA, Kenya would need to exclude more than half its trade from liberalisation with the EU.¹⁷ But as revealed in box 3, as part of EAC, Kenya got no more than 18 per cent exclusions.

The EU interpretation of Article XXIV is open to challenge, and practice and interpretation of WTO rules vary considerably. Key terms in the WTO rules remain undefined and negotiations to revisit these are ongoing as part of the WTO Doha Round of negotiations. The African, Caribbean and Pacific group of countries put forward a proposal that the principle of special and differential treatment – a fundamental WTO principle – should also apply to FTA rules where these involve developing countries. This would allow longer transition periods and lower liberalisation commitments for developing countries, for example. This principle has achieved widespread support among WTO members, including the EU, although negotiations are making little progress. An alternative approach is to use the WTO's "Enabling Clause" which allows non-reciprocal market access concessions to be made to developing countries. For North–South FTAs that involve only particular regions of developing countries to be covered by the Enabling Clause would also require amendments to WTO rules.

What are the implications for any developing countries that sign an FTA with the EU given that domestic agricultural subsidies are not included?

One of the anomalies of EU FTAs (when compared to the WTO) is that domestic agricultural subsidies are not included; and in only a few cases are export subsidies (refunds) mentioned as for example in the EU–South Africa FTA.

Moreover, the EU has excluded, and will continue to exclude, its own agricultural sectors from tariff elimination. However, these same sectors also carry large amounts of subsidies and are of export interest to developing countries because they include products such as sugar, rice, meat and dairy products, fruit and vegetables. As the following table shows, these same sectors produce surpluses which will continue to be exported and possibly dumped on world markets.

17 TWN Africa and Oxfam International, 2007. *A Matter of Political Will*. www.oxfam.org/en/files/bno7o425_EU_economic_partnership_agreements.pdf

Main agricultural sectors excluded by EU from tariff elimination	Does this sector have high levels of EU domestic support?	Is subsidised production exported and possibly dumped in others' markets?
Meat products	Yes	Yes
Dairy	Yes	Yes
Cereals	Yes	Yes
Sugar	Yes	Yes but declining
Fruit and vegetables	Yes	Yes

How can developing countries protect themselves in FTAs?

There are several ways by which negotiating partners could protect themselves against damaging agricultural and industrial imports.

The first is through much longer transition periods for tariff elimination and backloading of implementation to the end of the transition period, as far as possible. This additional time during which tariffs can continue to be applied could be used to implement pro-active policies aimed at boosting the competitiveness of specific sectors, so that if and when the time comes for their liberalisation, they are in a better position to withstand foreign competition.

The second is through outright exclusions. Since WTO rules are clear in not requiring that all mutual trade among parties to a FTA should be liberalised, there is scope to constitute a list of sensitive products on which no liberalisation commitments are made (exclusion lists). Products included in such lists would be wholly excluded from any liberalisation commitment. But negotiating partners to EU FTAs need to be very diligent in choosing the specific tariff lines (and the correct number), not least to protect that sector against (dumped) EU subsidised products.

Negotiating partners could demand to exclude more than ten per cent of tariffs or trade. Whilst reciprocity is a key objective in all EU FTAs, in the past the EU has allowed for 'asymmetry' in the level of liberalisation. (By doing so, the EU argues that it provides a degree of special and differential treatment to the other country.) For example, in the EU–South Africa FTA, the EU agreed to eliminate tariffs on a higher percentage of products (95 per cent) than South Africa (86 per cent), by value.

However, asymmetry is not mentioned in the draft negotiating mandates for the new FTAs in Asia and possibly did not make it into the final negotiating mandates. The latest information from the negotiations between the EU and India confirm that the EU is pushing for a reciprocal and symmetrical trade agreement, despite the request from India for an asymmetrical approach (i.e. for the EU to liberalise 95 per cent of trade in goods and India 90 per cent). It is also interesting to note a change in the way that any exclusions are calculated; in their negotiations, both the EU and India have suggested exclusions will be based on the number of tariff lines and trade volume, not by value.

A third way in which negotiating partners could try to maximise flexibility is to use a combined trade volume/ tariff lines approach to hit 'substantially all trade' targets. Eliminating tariffs on 90 per cent of trade reduces the number of existing sectors that can receive protection, eliminating tariffs on 90 per cent of tariff lines allows countries to protect more sensitive sectors (as tariff lines that are not traded can be liberalised) but reduces the options to use tariffs to support industrial policy (it would not be possible to re-impose tariffs on a particular import such a local industry later emerge).

Another means of protection is through the use of Trade Defence Instruments (TDIs). Typically these include actions against unfair subsidies and the use of safeguards. Safeguard provisions work both ways and to date, much of the EU's emphasis has been on how the EU might best use these provisions to protect EU interests. This could limit any market access gains by the developing country partner.

Increasingly the EU may also try and limit the application of other forms of market protection that could be used by negotiating partners. It has made its intentions clear: to counter the “abusive and/or WTO-incompatible use of trade defence instruments by third parties”.¹⁸ The annex paper to *Global Europe* (and the EU Green Paper on Trade Defence Instruments) suggests that the EU may include procedures which will make TDIs more difficult for negotiating partners to use: “Current Trade Defence Instruments contain a degree of flexibility but might need to be reviewed in light of the new challenges posed by globalisation”.^{19,20} In any event the EU has confirmed that TDIs “will ... integrate commitments that go beyond WTO rules in this area in line with EC rules and previous agreements”.²¹

There has been much debate about safeguards for developing countries in the WTO as these can be difficult for developing countries to use effectively. Suggestions in agricultural negotiations at the WTO are that to be of benefit, a safeguard needs to be simple and effective to implement; be triggered automatically in terms of both volume and prices; and cover all products (particularly agricultural goods). Also, it should be able to have both increased duties (in potential violation of the standstill principle) and quantitative restrictions applied to it.²² In addition, duty rates should be able to go beyond the bound rate where applicable and should be imposed for a sufficient duration to protect the particular sector or industry.

But both the ASEAN and Indian draft negotiating mandates stipulate that a safeguard would only cover agricultural products. In contrast, the recently signed EPAs have agreed more general safeguards as well as measures to protect infant industries from damaging imports – but these can only be imposed for a limited duration (i.e. twelve years for some of the Southern Africa Development Community countries). This wording is misleading however, as safeguards are inadequate to pursue industrial policies as they can only apply where injury can be proven to an *existing* industry.

For tariffs, what in particular are the EU's offensive/defensive interests?

In EU FTAs, tariffs would be eliminated on about 90 per cent of all trade. Clearly, this obligation goes considerably further than multilateral commitments at the WTO (WTO-plus). In multilateral talks, developing countries tend to benefit from lower concession requirements, or even none at all in the case of least developed countries.

Import tariffs

The EU's offensive interests on import tariffs in FTA negotiating partners are many and cannot all be listed here but in general, the priority sectors include cars, goods vehicles and parts; machinery and mechanical appliances; agricultural products; metals; textiles; and electrical equipment. For example, the EU's market access database is an excellent source of specific information regarding the EU's interests in this area (see ‘Important information and where to find it’ on page 13). In India, the following import tariffs are being targeted: agricultural products, ceramics and glass, copper and copper alloy scrap, textiles, steel, marble, food preparations, wines and spirits, fine papers and packaging board segment, and the automobile sector. (One study predicts that Europe's vehicle exports to India would be expected to increase by 700 per cent.²³) For Mercosur, EU sectoral interests include ceramics and glass, cars, goods vehicles and parts, machinery and mechanical appliances and machinery and electrical equipment. In ASEAN, some of the targeted sectors include paper, spirits and ceramics.²⁴

In previous FTAs, the EU has defended its agricultural sectors by maintaining (i.e. excluding) agricultural tariffs. This is likely to continue. But in the new FTAs the EU's defensive interests may change given that some countries in current FTA negotiations with the EU – for example Malaysia, Brazil, India and South Korea – are major industrial exporters and directly compete with EU producers. In the South Korean talks, the EU is reported to be baulking at commitments on automobile tariffs and steel.²⁵

18 European Commission, 2007. Op cit.

19 Annex to the Global Europe communication (A Commission Staff Working Document) on page 23 at http://trade.ec.europa.eu/doclib/docs/2006/october/tradoc_130370.pdf

20 European Commission, 2006c. *Europe's TDIs in a Changing World Economy*. http://trade.ec.europa.eu/doclib/docs/2006/december/tradoc_131986.pdf

21 The draft negotiating mandates for the new FTAs with India, South Korea, ASEAN, the Andean Community and Central America have been posted at www.bilaterals.org

22 G33 proposal on common safeguard measures. www.tradeobservatory.org/library.cfm?refID=73080

23 Agence Europe, 2007. Ibid.

24 The source for these priority sectors is mainly the EU's market access database. However, see also http://ec.europa.eu/enterprise/steel/conference_glass-ceramics/2007/speech_amilhat.pdf; www.bilaterals.org/article.php3?id_article=6392; http://ec.europa.eu/external_relations/mercosur/bacground_doc/template_pa_per4.htm

25 Bridges, 2007. Still stuck on auto trade, EU-Korea FTA talks to continue into next year. *Weekly Trade New Digest* Vol. 11, Number 41 28th November.

26 European Commission, undated.
Market Access Strategy.
http://ec.europa.eu/trade/issues/sectoral/mk_access/cs101106c_en.htm

27 European Commission, 2006d.
Global Europe: A Stronger Partnership to Deliver Market Access for European Exporters.
http://trade.ec.europa.eu/doclib/docs/2007/april/tradoc_134507.pdf

28 European Commission, 2006a.

29 For a list of some of these export taxes, see <http://mkacddb.eu.int/cgi-bin/stb/mkstb.pl>

30 See ASEAN and Indian EU draft negotiating mandates.

31 This is not explicit in the Global Europe document but is laid bare in the supporting Annex to the communication (A Commission Staff Working Document) on page 17 at http://trade.ec.europa.eu/doclib/docs/2006/october/tradoc_130370.pdf

Export tariffs

Secondly, there is the issue of tackling export restrictions (ensuring raw material supplies for companies in the EU). This is particularly important because the WTO does not cover export tariffs. Europe is clear that its FTAs need to go beyond import tariffs: “While tariffs remain an important issue, non-tariff barriers, and other regulatory restrictions “behind the border” have become increasingly important in determining the access of EU exporters to third country markets... the expansion of WTO rules has not fully kept pace with the expanding range of trade barriers ... In areas such as export taxation ... multilateral WTO rules do not fully reflect the complex problems faced by exporters.”²⁶

According to the EU, a number of export restrictions (mainly tariffs but also see next section) remain in the following sectors: agricultural materials, energy, metals, minerals, scrap metal, hides and skins. They are a priority for the EU because: “Measures taken by some of our biggest trading partners to restrict access to their supplies of these inputs are causing some EU industries major problems.”^{27, 28}

Eliminating these restrictions on exports is central to the EU's competitiveness agenda. On the EU's market access database, specific mention is made of export duties on raw hides and skins and raw and semi-finished leather products as barriers to trade from Argentina, Brazil (i.e. the Mercosur region) and India.²⁹

Not surprisingly, the EU is demanding that the five new FTAs eliminate all customs duties, taxes or charges on exports upon the application of the Agreement. (This might even apply to some of EPAs although the interim deals suggest that countries may be able to continue to maintain some of them but not introduce new ones.) The EU has indicated that general exceptions might be applicable under GATT Articles XX (for example, protection of protected human, animal or plant life or health and the conservation of natural resources) and XXI (security reasons); how useful these exceptions prove in practice in FTAs, particularly for developmental reasons, remains to be seen.

Non-tariff barriers

What are the EU's priorities?

The term ‘Non-tariff barriers’ (NTBs) applies to export and import bans (quantitative restrictions), standards, technical regulations, conformity procedures, trade defence mechanisms, customs procedures (and trade facilitation) and internal taxation and regulation.

The EU is prioritising NTBs, and in short “will forbid any ban, restriction or other non-tariff barrier (NTB) to trade which is not justified by the general exceptions [GATT Articles XX and XXI]”³⁰

According to Global Europe, the EU is also proposing policies that would allow interested stakeholders (i.e. EU companies) the right of prior consultation on any measure that the negotiating partner might want to introduce in the future and an enforcement procedure along the lines of the WTO's dispute settlement mechanism “*and make them accessible to industry*” (a development that departs from the WTO state-to-state procedures).³¹

In terms of issues, the EU appears to be placing particular emphasis on three areas.

Export bans and restrictions

The first is the elimination of all export restrictions (i.e. bans) to complement the fact all export tariffs will be abolished. This is all part of the EU's ambitions to gain access to raw materials.

As part of these FTA negotiations, the EU may well attempt to restrict or even prohibit the practice of dual pricing. This is where a negotiating partner has two prices, say in the energy market where there is one (lower) price for the domestic market and another (higher) price for the export market. The European Commission has made its intention in this area abundantly clear: “in order to remain competitive in the world, you firstly need affordable energy without unfair distortions deriving from dual pricing systems or non-competitive market structures ... Securing and diversifying our sources of energy supply ... is at the core of our external energy policy and will be a major priority in our negotiations with energy supplying countries (Russia in particular). Trade disciplines play a key role such as ... addressing dual pricing systems.”³²

Technical standards

The second issue is standards. According to the European Commission: “The gradual reduction of tariff barriers to trade has been accompanied by an increase in the number of measures creating technical obstacles to trade, such as regulations on packaging and labelling or conformity assessment procedures ... they are sometimes wrongfully used in order to erect protectionist barriers around the domestic market.”³³

“The EU does not have significant provisions on TBTs [Technical Barriers to Trade] in its [existing] FTAs.”³⁴ The inclusion of technical regulations in FTAs “is to facilitate and increase trade in goods by eliminating and preventing unnecessary barriers to trade while taking into account ... the principle of non-discrimination, within the meaning of the WTO Agreement on Technical Barriers to Trade (TBT).”³⁵ This is likely to be the template for new FTAs. “The aim [of the new FTAs] will be to include provisions on the adoption of recognised international standards and on the streamlining of testing requirements.”³⁶ This is in line with others’ conclusions: because mutual recognition around EU standards and accreditation has caused so many problems, “in future, the EU is likely to emphasise the use of agreed international standards as much as mutual recognition in FTAs.”³⁷

Sanitary and phytosanitary (SPS) measures

The third issue is sanitary and phytosanitary measures. The EU is increasingly concerned about measures that restrict food exports from the EU: “In recent years, the use by third countries of food safety, animal and plant health issues as a trade barrier for imports has increased considerably. Governments frequently go beyond what is needed for health protection and use sanitary and phytosanitary restrictions to shield domestic producers of agricultural products from economic competition.”³⁸

In part this is due to a spate of food health scares in the EU over the last 20 years or so and the fact that importers have reacted by imposing various import restrictions on EU food products. Such is the growing concern in the EU over the growing use of SPS measures, the EU has established a separate SPS section in their market access database (see ‘Important information and where to find it’ on page 13).

What the EU appears to be doing is to shift the emphasis on SPS provisions more towards procedural aspects within Agreements. The WTO SPS agreement is largely silent on procedural obligations³⁹ yet in contrast, the EU–Chile agreement goes further than the WTO (i.e. WTO-plus) by laying out a whole series of procedural SPS measures. The EU–Chile agreement thus provides more robust legal security for EU exporters.⁴⁰

The five new FTAs (and possibly EPAs) are likely to follow the EU–Chile example. The text in the draft FTA negotiating mandates reaffirms the general principles of the WTO SPS Agreement, including transparency and non-discrimination. Procedural aspects are likely to make the five new FTAs ‘WTO-plus’ as far as SPS measures are concerned, and possibly make it increasingly cumbersome and expensive for negotiating partners to use these provisions.

32 DG Trade speaking at the conference ‘From 2007 on: The principal challenges facing the European glass and ceramics industries’ http://ec.europa.eu/enterprise/steel/conference_glass-ceramics/2007/speech_amilhat.pdf

33 European Commission, undated. Technical barriers to Trade. http://ec.europa.eu/trade/issues/sectoral/tbt/index_en.htm

34 Woolcock, S., 2007. *European Policy towards FTAs*. <http://ecipe.org/european-union-policy-towards-free-trade-agreements/PDF>

35 EU-Chile Agreement, page 45 at http://trade.ec.europa.eu/doclib/docs/2004/november/tradoc_111620.pdf

36 See ASEAN and Indian EU draft negotiating mandates.

37 Woolcock, 2007. *Op cit*.

38 European Commission, undated. Trade in agricultural goods and fishery products. http://ec.europa.eu/trade/issues/sectoral/agri_fish/spis/spsei_en.htm

39 Isaac, G., 2006. The interaction between levels of rule-making in international trade and investment: The case for SPS measures in Trade and Investment Rule-making: The Role of regional and bilateral agreements. Ed S Woolcock

40 Rudloff, B. and J. Simons, 2004. *Comparing EU free trade agreements: Sanitary and Phytosanitary Standards*. (ECDPM InBrief 6B). Maastricht: ECDPM with CTA -the Technical Centre for Agriculture and Rural Cooperation ACP-EU

But equally, negotiating partners should be giving even more attention to the proliferation of private standards on imports into the EU. More exacting private sector SPS standards are becoming the norm and creeping into public standards. The EU appears content to accept this trend. Private standards could be challenged under Article 13 of the SPS agreement. This was done when Caribbean and South American countries challenged private standards in relation to the EU banana sector. The EU responded by saying that it was powerless to intervene because the private sector argued that its standards reflect consumer demand which is justified under the SPS agreement.⁴¹

41 CUTS, 2006. *SPS standards and developing countries: The skeleton in the closet for the Doha Round*. <http://www.cuts-citee.org/PDF/tdp-1-2006.pdf>

Rules of origin

Is what is being proposed by the European Commission development-friendly?

Rules of origin are needed in preferential trade agreements to stop trade deflection through the country receiving preferences. However, rules of origin (RoOs) in current EU FTAs are viewed as highly restrictive and yet another barrier to trade imposed by rich nations.

Under the Cotonou Partnership Agreement, the EU committed itself to simple and development-friendly RoOs in the context of EPA negotiations. Despite this commitment and concrete proposals from several ACP regions, the Commission was unable to make a complete offer in time for the deadline (31 December 2007). Instead the Commission is proposing an interim arrangement for RoOs (lasting three years) and is pledging to offer more 'development-friendly' rules of origin in the future. The interim offer is largely based on the current rules, with some notable improvements to fisheries and textiles. As it stands, this offer is too limited in scope to make a substantial difference to the development prospects of ACP countries. One analysis of the EU-Cariforum agreement found that "The language is so complicated and technical that it seems impossible for anyone other than the drafters to understand what would be and what would not be eligible for export to Europe."⁴²

42 Girvan, N., 2008. *Implications of the Cariforum-EC EPA*. www.normangirvan.info/wp-content/uploads/2008/01/girvanimplicationsepa10jan.pdf

43 European Commission, 2005. *The rules of origin in preferential trade arrangements: Orientation for the future*. http://eur-lex.europa.eu/LexUriServ/site/en/com/2005/com2005_0100en01.pdf

44 Ibid

At a global level, the European Commission has set out its proposals to make RoOs simple and development-friendly in its 2005 Communication entitled *The rules of origin in preferential trade arrangements*.⁴³ These provisions will form the basis of the Rules of Origins in the new EU FTAs with India, ASEAN, South Korea, Central America and the Andean Community. The EU's long-term solution is to go for a valued-added approach: goods would qualify for preferences if a certain percentage of valued added (VA) had accrued locally – and to extend cumulation of origin "between countries belonging to economically-integrated regional entities."⁴⁴ Yet typically, the level of value-added in developing countries is low, and below the thresholds currently established by the EU. Value-added varies considerably between products and between countries, which makes a uniform, simple and development-friendly system almost impossible. In addition, this approach can also be adversely affected by currency fluctuations and requires accounting systems that represent a significant administrative burden, particularly for smaller firms. It will be practically impossible to set a fair VA threshold unless it is very low, an approach that the Commission does not appear to be considering.

A further issue for many developing country exporters – particularly amongst poorer nations such as the ACP – is that their production systems have been designed to satisfy existing rules, which are predominantly based on changes in tariff heading (CTH) (also known as a 'tariff jump'). In principle the concept is easy; imported products are allowed, into say the EU, so long as they have been transformed into another product with a different tariff heading to that of the input materials that were used. Many developing countries favour this approach but it has been rejected by the EU.

On cumulation, the new proposals appear to be *more* restrictive as the cumulation provisions are no longer ACP-wide, but are likely to apply only to each EPA region. Furthermore, in the interim EPA agreements, cumulation is only possible with countries that have signed the same EPA. Since many ACP countries have signed individual agreements, the rules of origin are now far more restrictive than under Cotonou.

Important information and where to find it

Global Europe

http://ec.europa.eu/trade/issues/sectoral/competitiveness/global_europe_en.htm

http://trade.ec.europa.eu/doclib/docs/2006/october/tradoc_130370.pdf

http://trade.ec.europa.eu/doclib/docs/2007/april/tradoc_134507.pdf

http://trade.ec.europa.eu/doclib/docs/2006/december/tradoc_131986.pdf

Key market access texts for EPAs, Mexico, South Africa and Chile

www.bilaterals.org/rubrique.php3?id_rubrique=52 (for latest EPA texts)

http://eur-lex.europa.eu/LexUriServ/site/en/oj/1999/l_311/

[L_31119991204en00030297.pdf](http://eur-lex.europa.eu/LexUriServ/site/en/oj/1999/l_311/l_31119991204en00030297.pdf) (South Africa)

http://trade.ec.europa.eu/doclib/docs/2004/october/tradoc_111722.pdf (Mexico)

http://ec.europa.eu/trade/issues/bilateral/countries/chile/euchlagr_en.htm (Chile)

EU market access database (see 'trade barriers' and 'SPS' databases)

www.madb.europa.eu/mkaccdb2/indexPubli.htm

Draft negotiating mandates on the EU's new FTAs

www.bilaterals.org/rubrique.php3?id_rubrique=52

Sustainability impact assessments of EU FTAs

<http://ec.europa.eu/trade/issues/global/sia/studies.htm>

WTO and market access for goods

www.wto.org/english/tratop_e/markacc_e/markacc_e.htm

The EU FTA Manual is a series of eight briefings on the European Union's approach to Free Trade Agreements.

1. Introduction: Tackling EU Free Trade Agreements
2. Inside European Union Trade Policy
3. The EU's approach to Free Trade Agreements: Market Access for Goods
4. The EU's approach to Free Trade Agreements: Services
5. The EU's approach to Free Trade Agreements: Investment
6. The EU's approach to Free Trade Agreements: Competition
7. The EU's approach to Free Trade Agreements: Government Procurement
8. The EU's approach to Free Trade Agreements: Intellectual Property

We will be updating these briefings as negotiations and understanding progress, and would welcome your feedback.

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