

# LEGISLATIVE TRAIN 06.2017

6A A BALANCED AND PROGRESSIVE TRADE POLICY TO HARNESS GLOBALISATION



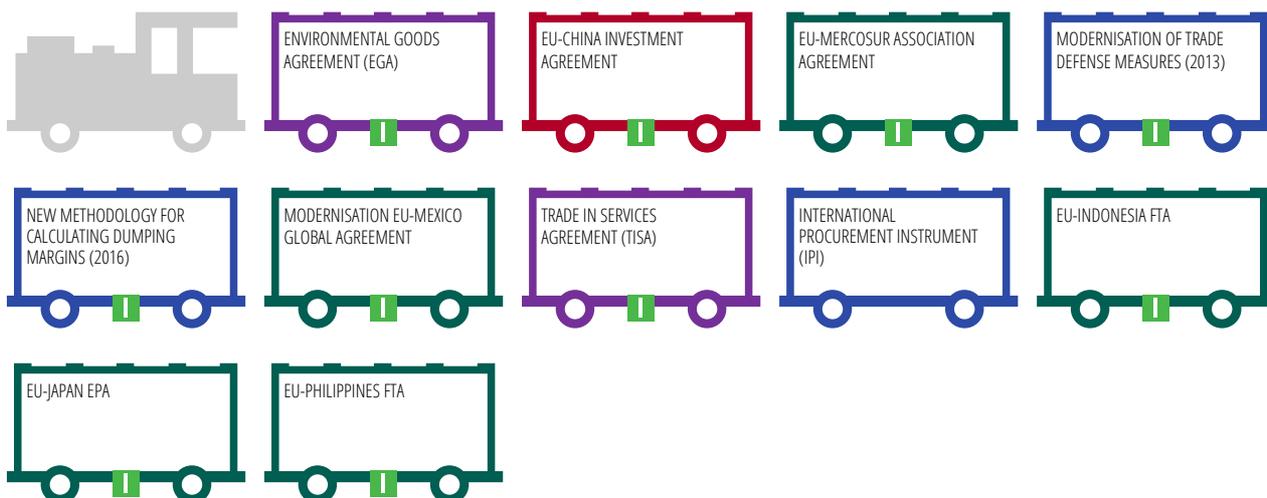
## DEPARTURE DEMANDS

0



## DEPARTURES

11



## EXPECTED ARRIVALS

2



## ON HOLD

2



## → ARRIVED

1



## ✗ DERAILED

0

## LEGEND

- MULTILATERAL AND PLURILATERAL TRADE AGREEMENTS WITHIN AND OUTSIDE THE WTO FRAMEWORK
- ECONOMIC PARTNERSHIP AGREEMENTS (EPA)
- OTHER FREE TRADE AGREEMENTS
- EU TRADE REGULATION
- BILATERAL INVESTMENT AGREEMENTS

- DEPARTED
- EUROPARL
- EUROPEAN COURT OF JUSTICE
- COUNCIL
- COMMISSION
- JOINT DECLARATION ON THE EU'S  
LEGISLATIVE PRIORITIES FOR 2018-19
- MULTIANNUAL FINANCIAL FRAMEWORK  
2021-2027

## GLOSSARY

### DEPARTURE DEMANDS

European Parliament legislative initiative reports in the fields covered by the Ten-Point Juncker Agenda

### DEPARTURES

Initiatives announced by the European Commission in its annual Work Programme; legislative proposals submitted by the Commission to the Parliament and the Council; the files are considered departed when the Co-Legislators have started legislative work

### EXPECTED ARRIVALS

Legislative proposals close to be finalised

## **ON HOLD**

Initiative blocked by one institution or under negotiations for more than 2 years; announced legislative initiatives or legislative proposals by the European Commission with no follow-up for more than 9 months

## **ARRIVED**

Legislative proposals finalised and adopted by the two Co-Legislators: the European Parliament and the Council of the European Union

## **DERAILED**

Proposals withdrawn by the European Commission

## **DISCLAIMER**

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European Parliament

# LEGISLATIVE TRAIN 06.2017

## 6A A BALANCED AND PROGRESSIVE TRADE POLICY TO HARNESS GLOBALISATION

### CONTENT

The European Parliament Committee on International Trade (INTA) is responsible for matters relating to the establishment, implementation and monitoring of the Union's common commercial policy and its external economic relations, including financial, economic and trade relations with third countries and regional organisations; the opening, monitoring, conclusion and follow-up of bilateral, multilateral and plurilateral trade agreements governing economic, trade and investment relations with third countries and regional organisations and relations with the relevant international organisations and international fora on trade-related matters, and with organisations promoting regional economic and commercial integration outside the Union. The committee liaises with the relevant interparliamentary and ad hoc delegations for the economic and trade aspects of relations with third countries. The INTA Committee numbers 41 members and is chaired by Bernd Lange (S&D, DE).

EU has been negotiating trade agreements since the 1970s, back then as the European Communities. Originally focused on European, African, Caribbean and Pacific (ACP) and Mediterranean trade partners, the EU now negotiates with partners on every continent. The EU has also started negotiations to modernise older agreements. The multilateral trading system is organised principally in accordance with multilateral rules, concluded under the umbrella of the World Trade Organisation (WTO), of which the EU and its Member States are all members. The EU also negotiates in the WTO on behalf of its Member States.

Originally concerning mainly agreements on trade in goods and the establishment of free trade areas, the content of trade agreements has evolved to include agreements making commitments going beyond WTO rules and concessions (also known as WTO+) in a wide range of areas such as services, intellectual property rights, investment, and regulatory cooperation.

In 2015, the Commission issued a trade policy strategy designed along four main axes: a) promotion and better integration of the EU economy in global value chains; b) improved implementation of existing trade agreements; c) a more transparent trade and investment policy and d) a trade and investment policy based on European values.

The Commission's priorities include: tackling outstanding issues in the post-Nairobi process within the WTO, particularly regarding agriculture; negotiations with a view to a plurilateral agreement on a trade in services agreement (TISA) and for an environmental goods agreement (EGA); revision of trade defence instruments such as antidumping, countervailing measures and safeguards; the development of greater engagement with the Asian-Pacific region via the negotiation of FTAs with ASEAN countries and Japan; preparation for negotiations with Australia and New Zealand; negotiations toward a bilateral investment agreement with China; a redefined partnership with Africa, in particular with the conclusion and implementation of Economic Partnership Agreements (EPAs); the conclusion of an ambitious trade agenda with Latin American countries; and finally, reviewing agreements with EU neighbourhood countries.

The EU has also signed an agreement with Canada (CETA), and has provisionally enforced part of its provisions whilst awaiting conclusion of the ratification process.

This train supplements Train 6 (Reasonable and balanced free trade agreement with the United States - TTIP).

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# LEGISLATIVE TRAIN 06.2017

6A A BALANCED AND PROGRESSIVE TRADE POLICY TO HARNESS GLOBALISATION

## PLURILATERAL ENVIRONMENTAL GOODS AGREEMENT (EGA)

[ DEPARTURES ]

### > MULTILATERAL AND PLURILATERAL TRADE AGREEMENTS WITHIN AND OUTSIDE THE WTO FRAMEWORK

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## CONTENT

### *Background and state of play*

Since July 2014 the EU has been negotiating a plurilateral trade agreement with other WTO Members to liberalise the trade in environmental goods (EGs).

EGs are goods that can contribute to environmental protection, climate action, green growth and sustainable development. The Commission gives the following examples of products that it would like to see liberalised under the EGA: energy saving products, such as insulating glass units; environmental monitoring products such as smart meters; environmental clean-up goods such as oil skimmers; waste management goods such as biomass boilers; renewable energy goods; and products for water treatment. There were eight rounds of negotiations. The current negotiating members include: Australia, Canada, China, Costa Rica, Chinese Taipei, the European Union, Hong Kong (China), Iceland, Israel, Japan, Korea, New Zealand, Norway, Singapore, Switzerland Turkey and the United States of America. The parties had hoped to finalise negotiations during the last negotiating round, which took place between 3 and 4 December 2016, but failed to reach agreement on the outstanding issues. The negotiating members will try to find a consensus to finalise the agreement by the end of 2017. For the moment the negotiating position of the new US administration remains unclear.

### *Objectives*

The main objective of the EGA is to make trade policy contribute positively to environmental protection and climate change. Via trade liberalisation, EGA is expected by the Commission to boost trade in green goods and services, support the development of green industry globally, help achieve the targets agreed in Paris in the 2015 Climate Agreement, provide cheaper access to green technologies worldwide and therefore promote greener cities and sustainable development. It is also expected to help the EU reduce its dependency on fossil fuel and strengthen energy supply security. Finally, though EGA is negotiated as a plurilateral agreement, the Commission hopes that it will create an impetus for further talks on green goods and services within the WTO.

According to the Commission, in 2013, the EU exported €146 billion of EGs (totalling 9 % of EU total exports) and imported €70 billion

of EGs (totalling 4 % of EU imports). The sector is considered by the Commission to be extremely dynamic as it registered 20 % growth rates in employment during the recession years (2007-2011), and currently employs 4 million people (see Commissioner Malmström statement to co-chair, 2 December 2016).

The final version of the Trade Sustainability Impact Assessment report on EGA was published in March 2016. The assessment showed that the potential economic impact in terms of volumes and also regarding the price of energy would be positive. However, greater benefits would accrue were the agreement multilateralised (through the participation of developing countries) as tariffs on the goods considered by the assessment are already low in the participating Member States but are significantly higher in other developing countries. It was also found that the EGA would play an important role in facilitating the implementation of environmental policies, although the magnitude of the impact would depend on the renewable energy and energy efficient technologies liberalised under EGA and the EGA's impact on the costs of these technologies. Reduced costs for those technologies and increased efficiency in these markets would impact positively on climate change, green urbanisation, ocean governance and water scarcity. The EGA was found to have indirect impact on some human rights at the local level. Generally this was considered to be positive. A negative indirect impact on human rights (forced displacement of people) could be found in large infrastructure projects such as hydroelectric power projects but the causes of these human rights issues were not tied to trade liberalisation (these negative effects could be counteracted by applying proper good governance measures to infrastructure projects). Finally by making greener technologies cheaper and more efficient, EGA could help firms comply with corporate social responsibility rules and promote green jobs.

### ***Main negotiation issues***

The following are the main outstanding negotiation issues.

- **Scope of the agreement:** For the moment the EGA negotiations cover only tariffs for certain EGs. Non-tariffs barriers (NTB) and services have not been considered. In its Council Conclusions, the Foreign Affairs Council of May 2014 supported the EGA but also emphasised the need to explore grounds for addressing services and NTB. Certain trade in environmental services will be covered by the TiSA negotiations. Moreover, EGA is seen as a 'living agreement'. Negotiators are therefore discussing the inclusion of a review clause and of a work programme on NTB and services.
- **List of goods covered:** The EGA focuses on reducing tariffs on a specified list of products. The initial idea was to build upon a list of 54 'green goods' that were part of a previous agreement concluded by the Asia-Pacific Economic Cooperation (APEC) countries. EGA negotiating countries exchanged proposals for the list of goods covered, ultimately nominating about 650 tariff lines as candidates for inclusion in the EGA. Doubts were expressed as to whether all of these goods were really 'green goods' and some sensitivities persist regarding certain EGs. The Australian chair therefore presented a 'convergence list' of 340 tariff lines at the end of December 2015, but without reaching a consensus. The current list of goods covered entails potentially 304 tariff lines but again failed to reach consensus; parties will still need to find 'a revised products list that balances priorities and sensitivities'. Discussions include the

insertion of a periodic revision clause to expand the list of goods in the future.

- **Scope of tariff reductions:** As opposed to the APEC scheme (asking for tariffs to be reduced to 5 % only), the EGA wants to achieve duty-free status for the goods covered. The 2016 SIA study showed that for the 54 known APEC goods, average tariffs of EGA members is low (on average tariffs amount to 1.55 % for the 17 participating WTO members and 1.83 % for the EU), however some tariff peaks remain. Talks continue on the staging for liberalisation. The staging offers in June 2016 included: (a) goods to be liberalised immediately, (b) goods to be liberalised after a transition period, (c) 'sensitive' products with reservations. In particular, China had raised concerns on full liberalisation for certain sensitive goods.

- **EGA as an open agreement:** A plurilateral agreement can create rights for non-Members on a Most-Favoured-Nation (MFN) basis if its participants reach a 'critical mass', generally understood to be 90 % of world trade. The current EGA members, including some leaders in EG trade (including the EU, China and the US), probably represent about 90% of global trade. If the concessions made by EGA members are extended on an MFN basis to other non-participating states, the latter will be able to export duty free to the EGA markets under conditions similar to other EGA partners. China is particularly concerned by these free-riding possibilities, as some major developing economies, (such as India, Brazil, some non-EGA ASEAN members, etc.), which are experiencing major growth and dynamism in this sector, are not participating, maintaining higher import tariffs. Discussions included how to maintain critical mass and how to address significant free riding. A clause will allow future membership accessions to the agreement.

- **New US administration position:** For the moment the negotiating position of the new US administration remains unclear. The 2017 Trade Policy Agenda and 2016 Annual Report of the President of the United States on the Trade Agreements Programme speaks mainly of past engagement in the negotiation without revealing the current position. At the same time, the US has already made commitments with respect to environmental goods in APEC and the US import tariffs on these goods are already low, suggesting that costs of the agreement for the US could be extremely low compared with the benefits for US exports.

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### ***Main debate on the agreement***

In 2015, the Commission issued a report on the public consultations that took place in 2014. The Commission received 48 contributions: 16 contributions from businesses (only 5 SMEs), 29 associations and only 3 non-governmental organisations. 73 % of respondents supported the initiative, 17 % were against and 10 % did not express an opinion. Those that were against were in favour of across-the-board liberalisation as opposed to a sectoral approach. Their main problem was the definition of a green good and potential discrimination against certain sectors. Some of the issues raised included for many the definition of environmental goods and for the most ambitious the need to include intermediate products beyond final goods. The majority mentioned the following priority order: first eliminate tariffs on environmental goods, then reduce tariffs and non-tariffs barriers, and, finally, liberalise services. The vast majority of respondents asked for a review mechanism to be included in order to update the list of goods and reflect technology changes and thus avoid negative effects on innovation.

In 2015 there was also controversy surrounding whether certain items included in the list of goods negotiated were really helping the environment. A Brussels-based organisation, Transport and Environment, had found around 120 items in the list of 650 goods for which they did not see any environmental justification. As explained above, this was one of the reasons for further reducing the list of goods covered by the EGA negotiations. Finally, some organisations highlighted the missed opportunity to tackle non-tariff barriers as well as the accrued benefit of multilateralising the negotiations.

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### ***Position of the European Parliament***

Already in 2010 the European Parliament called for the WTO to facilitate trade in environmental goods and services and it has on several occasions mentioned its support for the EGA negotiations. Parliament has called for ambitious and balanced negotiations and stressed the need to multilateralise the agreement. In particular, in its resolution of 5 July 2016, Parliament asked the Commission to develop quantitative and qualitative criteria to identify 'green goods' within the framework of the negotiations. It also called for the Commission to consider the inclusion of services in the EGA and to account for the role played by antidumping duties, IP rights, financing programmes and national environmental policies. Following the procedure under Article 218(6) of the Treaty on the Functioning of the European Union, once the negotiations are finalised, the European Parliament will have to give its consent in order for the Council to conclude the agreement.

**Standing rapporteur:** Alessia Mosca (S&D)

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## EU-CHINA COMPREHENSIVE AGREEMENT ON INVESTMENT (EU-CHINA CAI)

[ DEPARTURES ]

### > BILATERAL INVESTMENT AGREEMENTS

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## CONTENT

### *Background and state of play*

At the 15th EU-China summit in February 2012 an agreement was reached to launch negotiations for an EU-China bilateral investment agreement. In May 2013 the European Commission published an impact assessment on EU-China investment relations, accompanying a recommendation for a Council Decision authorising the opening of negotiations on an EU-China bilateral investment agreement.

In October 2013 the Council adopted the negotiating mandate for the Commission and on 21 November 2013 the launch of negotiations was announced at the 16th EU-China Summit. The first round of negotiations was held in January 2014. At the 12th round of negotiations in Brussels in September 2016, the parties discussed issues such as definitions, performance requirements, fair and equitable treatment/minimum standards of treatment and expropriation. Discussions also covered domestic regulations, dispute settlement, sustainable development and the EU text proposals on state-owned enterprises (SOEs). The 13th round took place in Beijing from 15 to 19 May 2017.

## **Objectives**

The EU's general objective is to use the exclusive competence for investment it gained with the entry into force of the Treaty of Lisbon to replace the current fragmented legal framework of Member States bilateral investment agreements with China by a single EU-China comprehensive investment agreement (CIA). Although except for Ireland all EU Member States have concluded bilateral investment treaties (BITs) with China, some of them have been in force for a long time and will expire in the near future. There is a considerable difference in scope among the BITs, but they all cover only the post-entry protection of investment. They do not include market access provisions for the pre-entry phase (pre-entry national treatment) to ensure that foreign investors have the same market access as domestic investors.

The EU's specific objectives include i) improving legal certainty as regards the treatment of EU investors in China; ii) improving the protection of EU investment in China; iii) reducing barriers for EU investment in China; and iv) increasing the flow of foreign direct investment (FDI) between China and Europe.

The EU-China CIA is planned as a stand-alone investment agreement, not including any trade issues. Its scope will go beyond the usual investment protection dimension to cover market access as well.

According to the Commission's impact assessment, the main issues justifying EU action are: i) the EU-China investment climate; ii) the absence of a level playing-field for prospective and existing European investors in China; iii) the lack of a comprehensive framework to remedy the shortcomings of the EU-China investment relationship; iv) Chinese and EU bilateral agreements and negotiations with third countries and implications for investment; v) concerns linked to Chinese investment in the EU; vi) Chinese concerns regarding investing in Europe.

## **Position of the European Parliament**

In its resolution of October 2013 on the EU-China negotiations for a bilateral investment agreement the Parliament stressed the need for the highest possible level of transparency in the negotiations as one of the preconditions for it to give its consent to the outcome of the negotiations. It urged the Commission to negotiate an ambitious and balanced CIA that seeks to improve market access for EU investors in China and vice versa, in order to increase the level of reciprocal capital flows and to guarantee transparency as regards the governance of state-owned enterprises (SOEs) and private companies. Moreover, it pointed to the need to address China's interventionist industrial policies and ambiguities in the substance and application of the rules. In this respect, it recalled that China had recently set up a security review mechanism to scrutinise foreign investment and stressed that both parties might use such mechanisms on legitimate grounds. Finally, it asked the Commission to complement its impact assessment by also evaluating the CIA's impact on human rights. More recently, in its resolution of December 2015 on EU-China relations, the EP called for a sustainable development chapter to be included in the CIA containing binding commitments to international labour and environmental standards.

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## EU-MERCOSUR ASSOCIATION AGREEMENT

[ DEPARTURES ]

### > OTHER FREE TRADE AGREEMENTS

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## CONTENT

### *Background and state of play*

The Common Market of the South (Mercosur) was founded in 1991 by Argentina, Brazil, Paraguay and Uruguay. Venezuela adhered to the constitutive Treaty in 2006 and officially joined Mercosur in July 2012, and that same year Bolivia signed a Protocol of Accession, which was signed by all Mercosur Member States in 2015 and is now in the process of being ratified by their respective parliaments.

Negotiations towards an EU-Mercosur Free Trade Agreement with the four founding members of Mercosur started in 2000 as part of the overall negotiation for a bi-regional Association Agreement - which also covers the political dialogue and cooperation pillars - following negotiating directives adopted by the Council in 1999. Nevertheless, they were suspended in 2004, due to substantial differences between both parties regarding trade in agriculture, services, and the opening up of public procurement markets, after they had made their market access offers available.

The European Commission relaunched trade negotiations with Mercosur at the 2010 Madrid EU-ALC Summit with the aim of reaching a fully-fledged trade agreement. The next negotiation round will be held in Brussels in July 2017.

### *Objectives*

The EU's objectives for the trade negotiations with Mercosur since 2010 have been to achieve full liberalisation for large parts of trade in goods (such as for EU dairy, wine, spirits, processed foods, chocolates, all types of pork products, and canned fruits) and to obtain concessions for all major industrial sectors. Major liberalisation of service sectors is another aim. The EU's negotiating objectives also relate to public procurement, intellectual property, geographical indications, and provisions on sustainable development.

The European Union is Mercosur's first trading partner (20.3 % of total trade in 2016), closely followed by China (19.4 %) and the United States (16.8 %); and Mercosur is the 10th most important export market for the EU in 2015. The EU is also the biggest foreign investor in the region. As a trading bloc, Mercosur has not yet concluded any free trade agreements with major competitors of the EU.

### ***Main negotiation issues***

In May 2016, Mercosur and the EU exchanged offers on access to their respective markets of goods, services and establishment of government procurement. The most recent, XXVII negotiation round was held from 20-24 March 2017 in Buenos Aires (Argentina). Trade negotiators discussed texts on every area, including sanitary and phytosanitary measures, trade facilitation, services, intellectual property rights, government procurement, and trade and sustainable development, resulting in a common negotiating text. Negotiators reached full agreement on the text of the chapter on competition policy. In addition, the EU presented textual proposals on access to energy and raw materials, trade and sustainable development, transparency, an annex on technical barriers to trade in the automotive sector, agriculture including provisions on bilateral and multilateral cooperation, wine and spirits, and other topics.

### ***Position of the European Parliament***

The European Parliament - in particular through the International Trade (INTA) committee - is following the negotiations closely, and will have to give its consent to the agreement. In its resolution of 17 January 2013 on trade negotiations between the EU and Mercosur, the EP stressed the economic and political importance of the talks; regretted their slow pace; deplored the protectionist measures on trade and investment taken by some Mercosur countries; and reiterated the importance of including respect for democratic principles, fundamental and human rights and the rule of law, as well as environmental and social standards in any agreement.

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## PROTECTION AGAINST DUMPED OR SUBSIDISED IMPORTS - 2013/0103(COD)

[ DEPARTURES ]

>  EU TRADE REGULATION

1

### CONTENT

#### Background

Trade defence measures (or trade defence instruments, TDI) are temporary instruments that enable the level of duty on a product to be raised in order to protect the industry in certain specific circumstances. There are three types of trade defence measure: antidumping duties (AD), countervailing duties (or anti-subsidies, AS) and global safeguards. Antidumping duties and countervailing duties are temporary higher duties imposed on firms that engage in unfair trade practices. More precisely, antidumping duties are imposed on foreign firms that 'dump' their EU imports causing injury to the EU industry; 'dumped' imports are sold at prices lower than the 'normal value'. Countervailing duties are imposed on foreign firms exporting to the EU and that receive trade-distorting subsidies causing injury to the EU domestic industry.

Within the World Trade Organisation (WTO) framework, global safeguard measures consist of temporarily imposing against all trade partners a trade duty or trade restrictions that would otherwise have been WTO inconsistent, when the industry is seriously threatened by a sudden rise in imports of a certain product. Some EU bilateral free trade agreements (FTA) contain bilateral safeguards clauses, which under certain conditions allow the temporary suspension of further reduction in preferential tariffs or the increase of the preferential duty up to either the MFN rate applied at the time the measure is introduced or the base rate specified in the party's tariff schedule contained in the FTA (whichever is the lesser). Multilateral and bilateral safeguards are not covered by this Commission proposal.

Anti-dumping is the most frequently used trade defence instrument (TDI). The second most commonly used instrument, anti-subsidy instruments, are designed to offset the price distorting effect to imports of subsidies granted by the country of production. In April 2013, the Commission adopted a proposal to modernise antidumping and anti-subsidy instruments, including enhanced transparency, faster procedures and more effective enforcement.

## The Commission proposal

The 2013 Commission communication proposed the following changes to the current AD and AS procedures:

- The procedure's transparency would be enhanced by means of: (1) pre-disclosure of the provisional AD/AS (two weeks in advance of imposition) and advance notice of non-imposition of provisional measures. That would give time to the interested parties to comment on the calculations that led to the imposition of the measure if any. (2) Duties would not be imposed during the two weeks of pre-disclosure, that would allow importers who had placed goods in transit prior of the antidumping investigation to pass through customs clearance without paying the AD/AS that would be imposed after the two weeks' notice had elapsed. (3) New guidelines would be issued on AD/AS procedures, including on refund procedures. (4) An SME helpdesk would be established.
- Provision would be made for ex-officio investigations (special procedures protecting EU industry, which would enable the Commission to initiate investigations on its own (ex-officio) without an official request from the industry): (1) in cases where EU producers have received threats of retaliation if they lodge an AD/AS complaint; (2) in cases of anti-circumvention proceedings (i.e. proceedings to avoid the circumvention of existing AD and AS duties via transshipment, or small modifications of the product so that it is no longer covered by the AD/AS measure, or product assembly in the EU or another country not subject to the AD or AS); (3) for ex-officio producers for the imposition of AD/AS, the Commission wanted to impose an obligation on Union producers to cooperate.
- Changes would be made to the EU's 'WTO+' measures (Union interest and the Lesser Duty Rule). EU trade defence measures are based on WTO law. Under WTO law, importing authorities imposing TDI must prove: (1) the existence of the unfair practice (dumping or subsidisation) or the sudden increase in imports (for safeguard measures), (2) the existence of an injury, (3) a causal link between the first two points (the unfair practice and injury).
- Beyond this point, EU law would require that it be proven that the TDI measure is in the interests of the Union. Moreover, in the case of positive findings in an AD investigation, WTO law requires that the antidumping duty to be imposed be no higher than the dumping margin, given by the difference between 'normal value' and the export price. EU law applies what is known as the 'lesser duty rule' (LDR), which compares the dumping margin and the injury margin (i.e. the level of duty needed to remove the injury), and takes whichever is lower. Therefore if the injury margin is lower than the dumping margin, the AD/AS measures will be based on the injury margin as the latter is considered sufficient to remove the injury, whereas if the dumping margin is lower than the injury margin found, the duty would be set at the level of the dumping margin as requested by WTO law. The Union interest and the 'lesser duty rule' are considered WTO+ features of EU law as they restrict the application of AD/AS more than would have been required by WTO law. The Commission's 2013 proposal proposed to modify these WTO+ features. In particular the proposal suggested that the 'lesser

duty rule' should not apply in the case of: (1) AS, as this rule reduces states' incentives to stop subsidisation, (2) where structural raw material distortions exist, (3) in anti-circumvention cases. In the Union's interests, the Commission proposal simply suggests granting longer deadlines to all parties to register as interested parties and answer the questionnaire, so as to account for SMEs' difficulties in participating.

- Furthermore, the proposal suggests reimbursing duties collected during expiry reviews whenever the review ends with the removal of the duty. It also proposes the introduction of systemic reviews whenever the Commission finds that Union producers have engaged in anti-competitive behaviour (such as establishment of cartels) that raises prices and therefore can distort injury findings.
- Finally, the Commission proposal introduces further changes required by rulings of the Court of Justice of the European Union or of the WTO's Dispute Settlement Body (DSB).

## **Position of the European Parliament**

The European Parliament adopted its amendments to the Commission proposal on 5 February 2014, on the basis of Mr Christofer Fjellner's report, adopted in the INTA Committee, and closed its first reading on 14 April 2014, just before the end of the previous legislature, because of a stalled situation in the Council. In its amendments Parliament asked for a substantive increase in the scope of non-application of the 'lesser-duty rule' (LDR) in AD beyond the single case of structural raw materials distortions as proposed by the Commission. In particular, Parliament also requested the lifting of the LDR when the exporting country does not have a sufficient level of social and environmental standards, when the complainant represents a diverse and fragmented industry, largely composed of SMEs, and when the exporting country provides the exporting producers with subsidies. An exception from lifting the LDR in cases of structural raw material distortions was proposed for least-developed exporting countries.

In addition, Parliament requested, inter alia: shorter investigation times; more transparency in general, including regarding undertakings; the introduction of a procedure to consult the EP and the Council with regard to the guidelines that the Commission intends to publish to clarify established EU practice with regard to TDI; extension of ex-officio investigations to cases where the EU industry is composed mainly of SMEs. The EP also deleted: (1) the pre-disclosure on the imposition of the provisional duty, (2) the changes introduced with respect to the Union interest procedure, and (3) the provision on reimbursement of duty collected during the expiry revision when the latter ends with the removal of the provision. The EP further requested that the Commission introduce a provision requiring it to submit to it and the Council an annual report on the application and implementation of the TDI regulation as part of an interinstitutional dialogue on the implementation of these trade measures. Parliament also requested the inclusion in the regulation of the Hearing Officer as an institution.

## **Council mandate**

In the Council, discussions relating to this proposal were stalled for more than three years. In particular, more 'free-trade'-oriented Member States and/or those fearing for possible retaliation preferred staying with the current application of the LDR. On 13 December 2016, on the basis of a compromise put together by the Slovak Presidency, Coreper finally agreed on a Council negotiating position giving a mandate to the Presidency to enter into trilogue negotiations with the European Parliament. The Council negotiating position among others significantly modifies the definition of raw materials distortions in the context of the LDR, adding two new thresholds (the lifting of the LDR can be triggered when it is found that the raw materials distortion, including energy, represents at least 27 % of the cost of production of the product concerned, and taken individually at least 7 %); also, the lifting of the LDR would be subject to the Union interest test. The Council also modifies the scope of the information to be provided for operators in general and SMEs more specifically in the context of public pre-disclosure. It provides for a pre-disclosure period of four weeks after the publication of information concerning the imposition of provisional AD and AS measures, during which provisional duties will not yet be applied. The Council negotiating position furthermore slightly shortens the investigation period, but less than proposed by Parliament. The Council negotiating position also contains additions with respect to the calculation of the injury margin and provisions enabling importers to be reimbursed duties collected during expiry reviews but not maintained. In its meeting on 28 February 2017, the European Parliament's Committee on International Trade (INTA) voted in favour of opening inter-institutional negotiations, with a view to reaching an 'early second reading agreement' (first reading in the Council and second reading in the Parliament). The first trilogue meeting was scheduled for the 21 March 2017, where a working method (based on a list of topics rather than article by article) and tentative timeline were agreed. The first trilogues focused on consensus issues. Future sessions will concentrate on more controversial issues such as pre-disclosure and the shipping clause. The fourth trilogue took place on 13 June 2017.

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## CONTENT

### Background

The EU's anti-dumping (AD) and anti-subsidy (AS) regulations are two crucial elements of the EU's trade defence instruments (TDIs). They are used to shield EU producers against damage caused by the unfair trade practices of non-EU companies.

On 9 November 2016, the European Commission published a proposal, 2016/0351(COD), which aims to make targeted changes to the AD and AS regulations currently in force. This proposal is complementary to the European Commission's 2013 proposal for a TDI modernisation, 2013/0103(COD), which was deadlocked in the Council until December 2016. The European Parliament adopted its position in first reading in 2014.

### Commission proposal

The proposed AD amendments are inextricably linked with the expiry on 11 December 2016 of certain provisions in China's 2001 Protocol of Accession to the World Trade Organisation (WTO) which has so far allowed WTO members to treat China as a non-market economy (NME) for the purpose of AD investigations and thus to deviate from the standard methodology of calculating dumping margins, which uses domestic prices and costs of the exporting country to determine 'normal value'. Given extensive state interference in the Chinese market which prevents market forces from operating normally, there has been a presumption that domestic prices and costs in China tend to be distorted and that therefore in AD probes involving dumped imports from China a methodology for calculating dumping margins needs to be applied which uses the prices and costs of a comparable 'analogue' country that is a market economy and at a similar developmental stage.

The Commission proposal would be country-neutral. It would eliminate the distinction between market economies and NMEs for the choice of the calculation methodology and would replace it with a differentiation between WTO members and non-WTO members. The analogue country methodology would cease to apply to those WTO members currently classified as NMEs, but would continue to be applicable to non-WTO members. The standard methodology would apply to all WTO members equally. However, in case of 'substantial market distortions' the Commission would be allowed to construct values based on 'costs of production and sale reflecting undistorted international prices, costs, or benchmarks, or corresponding to costs of production and sale in an appropriate representative country with a similar level of economic development as the exporting country'.

To determine 'significant market distortions', several criteria would be taken into account. They include i) the widespread presence of enterprises that the state owns or that operate under its control, policy supervision or guidance, ii) the presence of the state in companies allowing interference with respect to prices and costs, iii) public policies or measures discriminating in favour of domestic

companies, or otherwise influencing free market forces, and iv) the access to finance granted by institutions implementing public policy objectives.

The proposal indicates that the Commission may publish reports on specific situations in certain countries based on the criteria set out for 'significant market distortions' given the difficulty EU industry may face in gathering evidence of market distortions in the respective exporting country. EU importers would be able to rely on these reports in making their case.

The proposal would eliminate the market economy criteria set out in Article 2(7) of the current AD regulation, as NME status would be abandoned. It would also entail a reversal of the burden of proof, whereby it is up to the European Commission to prove the existence of significant market distortions allowing for the application of the alternative method, i.e. the use of the constructed value.

The analogue country methodology would continue to be applied to ongoing probes, while the standard methodology and the proposed constructed value methodology as applicable would be used for new AD investigations.

In addition, the Commission proposes to amend the EU's AS regulation by extending AS investigations to subsidies that emerge only at a later stage of ongoing AS probes. So far, AS investigations have been limited to those subsidies that were notified by industry in the complaint triggering the AD probe in the first place.

### **European Council/Council position**

At its meeting on 20-21 October 2016, the European Council highlighted that unfair trade practices need to be tackled efficiently and robustly. It stressed that the EU's TDIs must be effective in the face of global challenges in order to safeguard European jobs, ensure fair competition in open markets and preserve free trade. Adequate provisions should address situations in which market conditions were not prevailing. The Foreign Affairs Council of 11 November 2016 took note of the proposal for a new AD methodology and agreed to work on it in a speedy manner. On 11 May 2017 the Foreign Affairs Council took stock of work on a new methodology for assessing market distortions resulting from state intervention in third countries. It endorsed a mandate for negotiations with the European Parliament that EU ambassadors had approved on 3 May 2017. The Council called on the Parliament to adopt its negotiating position rapidly, so that an agreement could be reached and the regulation applied well before the end of 2017.

### **European Economic and Social Committee**

On 29 March 2017, the European Economic and Social Committee (rapporteur Christian Bäumler, co-rapporteur: Andrés Barceló Delgado) adopted its opinion on the Commission proposal. The EESC supports the proposal to change the calculation methodology so that a non-standard methodology can be used in the event of significant trade distortions. It reaffirms its 2016 opinion on preserving sustainable jobs and growth in the steel industry, according to which the standard methodology should not be used in AD- and AS investigations into Chinese imports as long as China failed to meet the EU's five market economy status (MES) criteria. It suggests that respect for ILO standards and multilateral environment agreements also be considered, since violations of minimum

labour and environmental standards can also contribute to distorting competition with EU companies. The opinion notes that there is room for improving the proposal in terms of the effectiveness and practicability of the AD investigation process (legal status, feasibility and pertinence of the proposed reports), and particularly with regard to the burden of proof, which should not be shifted onto EU industry. It emphasises that the AD complaints procedure must also be accessible for small and medium-sized enterprises (SMEs). Given that China's complaint against the EU at the WTO refers also to the Commission's proposal, the opinion suggests that the compatibility of the new approach with WTO rules be carefully assessed.

## **Position of the European Parliament**

In its resolution of 12 May 2016 on China's market economy status Parliament stressed that until China met all five EU criteria required to qualify as a market economy, the EU should use a non-standard methodology in AD and AS investigations into Chinese imports in determining price comparability by making use of those parts of Article 15 of China's Accession Protocol that did not expire in December 2016. It called on the Commission to make a proposal in line with this principle.

In preparation of the draft report, on 28 February 2017 the European Parliament's Committee on International Trade (INTA) organised a hearing on EU trade defence instruments. In the INTA meeting of 4 May 2017, rapporteur Salvatore Cividino presented his draft report.

In his explanatory statement the rapporteur identified two major issues of the Commission proposal which require further clarification:

- 1) the meaning of 'significant distortions' and the criteria to define them; and
- 2) the nature and the content of the Commission reports that are set to serve as a basis to be used by EU industry to underpin its claims.

Accordingly, the rapporteur's amendments to the Commission proposal as well as those of other INTA members, submitted by 18 May 2017, focus on clarifying the scope of the term 'significant distortions'. MEPs have gathered a broad range of criteria, including for example the exporting country's adherence to and compliance with multilateral environmental agreements (MEAs) and core conventions of the International Labour Organisation (ILO), to complement the succinct non-exhaustive list proposed by the Commission.

As for the Commission's reports, the amendments to the Commission proposal seek to make mandatory the provision by the Commission of timely (in respect of the entry into force of the regulations as amended) and regularly updated country-wide or, if relevant, sector-specific evidence-based reports, notably on countries that are the subject of a large number of AD and AS investigations. These reports are intended to support EU industry in making their claims. Furthermore, the amendments address the monitoring role of the European Parliament as regards these reports as well as the input of EU stakeholders to them.

The ITRE Committee opinion, drafted by Jerzy Buzek, emphasises broadly the same issues. In addition, it highlights for example the need for the EU to coordinate with major trading partners before and during investigations, suggesting a comparative follow-up on the anti-dumping calculation with the EU's major trading partners. On 30 May 2017, the ITRE opinion was adopted with 30 votes in favour, 21 against and 5 abstentions.

The JURI committee did not adopt the draft opinion prepared by Gilles Libreton, who advocated the rejection of the Commission proposal given its legal ambiguity and the lack of a recent evaluation of China on the basis of the five technical criteria under EU law for the granting of market economy status (MES). The draft opinion was rejected by 20 votes against, 3 votes in favour and no abstentions on 28 February 2017.

The INTA committee is scheduled to vote on the file at its meeting of 19-20 June 2017. Both the Council and the Commission have expressed a strong desire to proceed to trilogues as of July.

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## MODERNISATION OF THE TRADE PILLAR OF THE EU-MEXICO GLOBAL AGREEMENT

[  DEPARTURES ]

>  OTHER FREE TRADE AGREEMENTS

1

## CONTENT

### Background and state of play

Trade relations between the EU and Mexico are currently governed by the trade pillar of the EU-Mexico Economic Partnership, Political Coordination and Co-operation Agreement ('Global Agreement'), which was signed in 1997 and came into force in 2000. The trade provisions in the Global Agreement were further developed into a comprehensive Free Trade Agreement between the EU and Mexico that entered into force in 2000 (although the part related to trade in services was not applied until 2001). A Strategic Partnership was also established between the EU and Mexico in 2008, which also covers trade-related issues.

In 2013, the EU and Mexico decided to explore the possibilities for a comprehensive update to the Global Agreement, including its trade pillar. Formal negotiations were subsequently launched in May 2016. Three rounds of talks have since been held, with the last one taking place at the beginning of April 2017. During EU Commissioner Malmström's visit to Mexico City at the beginning of May 2017, both sides reiterated their commitment to concluding the talks by the end of this year. A fourth round of negotiations is now scheduled for the end of June 2017. Talks will be accelerated during the second half of the year, when negotiators will meet every month.

### Objectives

The aim of the modernisation of the trade pillar of the Global Agreement is to adapt it to the new realities of global trade, geopolitics, and investment policies, which have all changed profoundly since 2000.

Although the Global Agreement is suited to achieve the objectives that were envisioned at that time, it does not adequately address trade issues that have gained (further) prominence since then, such as non-tariff barriers, intellectual property rights and sustainable development. The EU's more recent comprehensive trade agreements do tackle such topics however, and therefore serve as examples for the planned modernisation. The EU and Mexico accordingly seek to unlock unfulfilled bilateral trade and investment potential within the new international trade context by achieving the highest possible level of liberalisation while also securing better rules for all.

In relation to trade in goods, specific objectives of the modernisation include: further liberalisation of existing tariff lines, updating of rules of origin, removal of technical barriers to trade and the inclusion of sound sanitary and phytosanitary rules. As regards trade in services, the modernisation seeks further liberalisation that goes beyond the level of the two sides' WTO commitments.

According to a 2015 Commission Impact Assessment, unfulfilled investment potential is caused by at least the following factors: the Global Agreement only partially covers payments related to investment in real estate and sale of securities, Mexico has traditionally imposed significant restrictions on foreign direct investment in a number of important economic sectors, cumbersome administrative procedures impose additional costs on foreign investors in all sectors, and investment protection is currently regulated by 16 different Bilateral Investment Treaties concluded between individual EU Member States and Mexico. The modernisation aims at establishing a

high level of investment protection, as well as a modern investment dispute resolution mechanism.

The aforementioned Impact Assessment has determined that a comprehensive and ambitious modernisation of the Global Agreement could result in economic benefits for the EU (a potential increase in EU GDP of 0.01 % per annum by 2028), as well as improvements in social and environmental standards.

## **Main negotiation issues**

The negotiations have so far included the following topics: trade in goods, trade in services, investment, rules of origin, customs and trade facilitation, technical barriers to trade, regulatory coherence, sanitary and phytosanitary measures, public procurement, energy and raw materials, intellectual property (including Geographical Indications), sustainable development, SMEs, transparency and dispute settlement.

The Commission has so far published 22 negotiating textual proposals. In November 2016, the first six texts were made public. They concerned rules of origin, public procurement, sanitary and phytosanitary measures, energy and raw materials, intellectual property rights and SMEs. In May 2017, the Commission added another sixteen on the following topics: competition, competition (subsidies), digital trade, dispute settlement, good regulatory practices, investment and trade in services, rules of origin (product specific rules), rules of origin (section A), rules of origin (section B), management of preferential treatment, state-owned enterprises, technical barriers to trade, sustainable development, goods, remedies and transparency.

Contentious issues are reported to include the EU's defensive interests in goods (including in the agricultural sector), services, and public procurement, while its offensive interests include loosening Mexico's control of access to gas, oil and raw materials.

## **Main debates on the agreement**

Civil society criticism of the proposed modernisation of the Global Agreement's trade pillar has so far focused on the alleged precedence of EU commercial interests over the protection of human rights and social and environmental standards in Mexico. The latter, however, were included in the negotiations rounds that have taken place between the Commission and Mexico, it remains to be seen whether such concerns are justified.

## **Position of the European Parliament**

The European Parliament is following the negotiations closely, as it will have to give its consent to the updated agreement. In its resolution of 5 July 2016 on a forward-looking and innovative future strategy for trade and investment, the EP supported the modernisation of the Global Agreement. The European Parliament has also posed numerous questions to the Commission and the Council, including on, among other things, the inclusion of a sustainable development chapter, the agreement's benefits for SMEs, the inclusion of anti-corruption provisions and anti-money laundering objectives, the publication of the negotiating directives, the need to

give the negotiations a new political impetus and to make rapid progress, and the protection of Geographical Indications.

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## PLURILATERAL TRADE IN SERVICES AGREEMENT (TISA)

[ DEPARTURES ]

### > ■■■■ MULTILATERAL AND PLURILATERAL TRADE AGREEMENTS WITHIN AND OUTSIDE THE WTO FRAMEWORK

1

## CONTENT

### Background and state of play

Negotiations on a Trade in Services Agreement (TiSA) were launched in March 2013. Since then, 21 rounds have taken place up to and including May 2017. Ambitions to have an agreed text by the end of 2016 did not materialise although the negotiations are said to be at an advanced stage. A new round of talks is expected to take place in 2017.

The current TiSA negotiating parties consist of the EU and 22 countries: Australia, Canada, Chile, Chinese Taipei, Colombia, Costa Rica, Hong Kong, Iceland, Israel, Japan, Liechtenstein, Mauritius, Mexico, New Zealand, Norway, Pakistan, Panama, Peru, South Korea, Switzerland, Turkey and the United States. This would make TiSA a plurilateral agreement as it involves more than two or three World Trade Organisation (WTO) members but not a majority of them.

The 23 current negotiating parties together represent 70 % of global trade in services. All negotiating parties are WTO members but the negotiations are taking place outside the WTO-framework. The talks are open to other WTO members wishing to join and are based on the WTO's General Agreement on Trade in Services (GATS).

### Objectives

Negotiations on TiSA aim to achieve further liberalisation in trade in services and ultimately to upgrade the WTO's 1995 GATS. The latter is considered outdated, not least because it precedes the internet era.

The EU is the world's leading exporter and importer of services and employs around 70 % of its workforce in the services sector. It accordingly has a lot to gain from further liberalisation of trade in services. An interim Sustainability Impact Assessment of TiSA has determined that the agreement could lead to an increase in EU trade in services while social, human rights and environmental effects in the EU would be limited.

### Main negotiations issues

For the moment, TiSA is being negotiated as an economic integration agreement in accordance with Article V of the WTO rules. The EU is eager to have TiSA become a multilateral agreement through its incorporation into the WTO at a later stage. In order to facilitate such a step, TiSA builds on the principles of the GATS. Each party accordingly chooses to what extent it is ready to open up its services markets to foreign competition (i.e. give market access) and in which sectors it wants to retain the ability to give preference to domestic service providers over foreign ones (i.e. deviate from the principle of national treatment).

In an unprecedented move to enhance transparency, the Commission published core (draft) negotiation documents on its website. The Council, in turn, decided to declassify the negotiation mandate given to the Commission in March 2015. The EU's initial offer contained, among others, substantial commitments in computer, telecommunications, information technology and general business services. As requested by the Council, the EU offer did not contain any commitments in the audiovisual sector and excludes services 'supplied in the exercise of government authority' from the scope of the agreement.

In addition, the EU made no market-access offers for public utilities and also explicitly excluded water distribution, publicly funded education, health and social services from national treatment. The engagement not to back-track on current levels of openness ('standstill'), and not to reduce the liberalisation levels attained in the future ('ratchet') was offered for national treatment only, but did not extend to the exceptions listed in the schedules of commitments. This engagement did not apply to market-access issues either, to allow for possible future revisions of the concessions on market access. In May 2016, the EU came up with a revised offer (as did other parties in the negotiations), which was also made available to the public.

The negotiations are currently at quite an advanced stage, although initial plans to have an agreed text by the end of 2016 did not materialise. Among the main issues waiting to be resolved are reported to be cross-border flows of data and new services (services that are not known at the moment and are therefore not part of the existing United Nations classification system). Uncertainty about the position of the new US administration is also reportedly causing delays.

## **Main debates on the agreement**

Critics of TiSA have expressed concerns on the following topics: protection of public services, data protection, transparency of the negotiations, and multilateralisation.

The EU's approach to excluding public services from TiSA's scope has come under criticism from various civil society organisations. Their main concern is that governments' right to regulate public services in line with EU law will not be sufficiently protected under the agreement, which could lead to lower standards in key public sectors. The Commission, however, has held that its specific approach to public services in trade agreements has worked since 1995 and that public authorities' right to regulate will not be adversely affected.

As regards data protection and privacy, critics of TiSA have pointed to a US proposal that was leaked in 2014 and that was seen as facilitating cross-border data transfers and data processing (including personal data) across all sectors without limitations. According

to the Commission, however, TiSA will contain the same safeguards for protecting privacy that currently exist in the GATS as well as in recent free trade agreements, such as the one with South Korea. This means that the EU and its Member States can continue to apply their confidentiality and data protection laws under TiSA.

Transparency issues are also regularly evoked in relation to the TiSA negotiations, which are held behind closed doors. Significant efforts have nevertheless been made by the Commission to improve the transparency of the negotiations. In addition to frequently consulting and informing the Member States, it has also been keeping the European Parliament regularly informed during the course of the negotiations. Moreover, the Council and the European Parliament receive all negotiating documents and consultations are held on a regular basis with representatives of civil society and stakeholders. Finally, the Council declassified the Commission's TiSA negotiating mandate in March 2015.

Finally, commentators have expressed scepticism about the ambition to eventually integrate TiSA into the WTO-framework. Some point to procedural factors that hinder such multilateralisation, such as the lack of formal assent of the entire WTO body for the TiSA negotiations, the fact that the negotiations are taking place outside the WTO framework and the secrecy in which they are conducted (no observers from the WTO secretariat or third countries are allowed). Others have pointed to the absence of key players from the negotiations, such as Brazil, India, Russia, China and several important ASEAN economies. This also raises the question whether or not a 'critical mass' for multilateralisation can be reached; previous agreements that were ultimately anchored in the WTO claimed over 90 % of trade in the relevant areas whereas the current TiSA negotiating parties represent 70 % of global trade in services.

### **Position of the European Parliament**

On 3 February 2016, the European Parliament adopted a resolution with a large number of recommendations for the Commission with respect to the TiSA negotiations.

On a general note, the European Parliament made clear in its resolution that it views TiSA as a stepping stone towards a more ambitious renegotiation of the GATS in the framework of the WTO. It supported a more integrated global services market, but TiSA should prevent social, economic and environmental dumping and be in full compliance with EU standards. According to the European Parliament, TiSA should also preserve the right of states to regulate and to pursue legitimate public policy objectives such as public health, safety and environment. It supported securing increased market access for European services suppliers (including small and medium-sized enterprises) in key sectors of interest, but specific carve-outs should be permitted for sensitive sectors (including all public services).

As regards market access, the European Parliament stressed in its resolution, among other things, the need to exclude public services and audiovisual services from the application of TiSA and to take a cautious approach with respect to cultural services. At the same time, it sought ambitious commitments with respect to the further opening of foreign markets in the areas of public procurement, telecommunications, transport, and financial and professional services. The European Parliament further detailed the kind of commitments it wanted to see with respect to cross-border trade (mode 1) and commercial presence (mode 3) and included

recommendations concerning telecommunications and financial services. With respect to the digital economy, it asked the Commission to ensure that cross-border data flows would be in compliance with the right to privacy and EU data protection law. Lastly, in relation to transparency, the European Parliament recommended maintaining the practice of carrying out public consultations.

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## A NEW EU INTERNATIONAL PROCUREMENT INSTRUMENT (IPI)

[  DEPARTURES ]

### > EU TRADE REGULATION

## CONTENT

### Background

Public procurement represents a substantial part of the EU economy and the economies of many countries around the world. The EU has opened its public procurement markets to a significant degree to competitors from third countries and has advocated the need for more open public procurement within the context of the revised WTO Agreement on Public Procurement (GPA). The EU is also asking for these markets to be opened further within its bilateral trade negotiations, such as the planned free trade agreement with Japan and the Comprehensive Economic and Trade Agreement (CETA) with Canada that was signed last year.

Many non-EU countries, however, are reluctant to open their public procurement markets to international competition. According to the Commission, while the EU opened some €352 billion of EU public procurement to bidders that from countries party to the GPA in 2012, foreign bidders had access to only €178 billion of US procurement and €27 billion of Japanese procurement in that same year. In addition, only a fraction of Chinese procurement is open to foreign bidders.

### State of play

In 2012, the Commission proposed the creation of an International Procurement Instrument (IPI). After a legislative deadlock, it amended its proposal in 2016.

### The 2012 Proposal

The Commission first proposed an IPI in 2012 as a means to obtain more ambitious commitments from other trade partners on public procurement market access.

This proposal made a distinction between what is referred to as 'covered procurement', which corresponds to international commitments that the EU has undertaken, and 'non-covered procurement', which is not covered by EU international commitments on procurement market access. The IPI proposal intended to introduce a new procedure to restrict access of foreign products to the EU procurement market access in the framework of non-covered procurement whenever there was a substantial lack of reciprocal opening of public procurement access in the originating country of the foreign product.

The Commission had proposed two distinct procedures for the introduction of restrictions. The first was the 'decentralised procedure' in which the procuring entity would request the Commission's approval in order to exclude a tender. The second procedure was the 'centralised procedure' in which the Commission investigated the situation directly in the foreign market and negotiated with the third country. If necessary, the Commission could adopt a restrictive measure under this second procedure, such as market closure or price penalty (also called price adjustment measure), which would then be applied by procuring authorities to the foreign product originating in the investigated country.

Members of the European Parliament, just as Member States in the Council, were divided as to whether the EU was in need of such an instrument. The European Parliament debated the proposal both in its Committee on International Trade (INTA) and in plenary. The plenary session voted in January 2014 to include amendments, but referred the file back to INTA, giving a mandate to the rapporteur to enter into negotiations with the Council. Technically, the proposal is therefore still in first reading, where no deadlines apply. The Council, however, never managed to issue an opinion because of divisions and reservations from certain Member States on the principle of closing the EU procurement market.

The amendments debated in the European Parliament included in particular:

- an alignment of the decentralised procedure with the centralised procedure: the fear was the possibility of fragmentation of the internal market and the administrative burden;
- expansion of the exception to avoid applying such a procedure to least developed countries (LDCs) and countries participating in GSP+ frameworks;
- tightening of time limits for the Commission investigations.

## **The 2016 amended proposal**

The deadlock in the negotiations on the 2012 proposal led the Commission to present a revised proposal for an IPI on 29 January 2016.

In order to respond to concerns over fragmentation, the proposal completely abolished the decentralised procedure and maintained

only the centralised procedure in relation to which the Commission decided to shorten the duration of country investigations. The proposal also only provided for the possibility to introduce price penalty measures so as to respond to the Member States that were cautious with respect to a measure allowing for complete market closure. Moreover, in order to restrict the application of the measure, the IPI would now be applied to products originating from countries where a 'restrictive and or discriminatory procurement measure or practice' exists, which must result in 'serious and recurrent impairment of access of Union goods and services and economic operators to the public procurement market or concession market of that country'.

Hence, the new proposed procedure entailed the following basic steps:

1. The Commission initiates a public investigation in the event of alleged discrimination by a third country of EU companies in procurement markets.
2. When an investigation finds discriminatory restrictions vis-à-vis EU goods, services and/or suppliers, the Commission will invite the country concerned to consult on the opening of its procurement market. Such consultations can also take place in the form of negotiations on an international agreement.
3. As a last resort, the Commission could, after consultation with Member States, apply the new price adjustment mechanism (or price penalty measure). This means that bids consisting of goods and services from the country concerned would, while compared to other bids, be considered to offer a higher price (up to 20 %) than the price put forward. This would provide European and non-targeted countries' goods and services with a competitive advantage.

In line with the amendments of the European Parliament, the Commission also introduced an exemption for goods and services originating in LDCs and countries participating in the GSP+ in its new proposal. However, this exemption would only apply when more than 50 % of the value of the tender is made up of goods and services from these countries.

A further exemption has been introduced for small and medium-sized enterprises established in the EU and engaged in substantive business operations in at least one Member State. Furthermore, the price adjustment measure shall not be applied where an economic operator, originating in the third country concerned by the price adjustment measure, can demonstrate that less than 50 % of the total value of their tender is made of goods and services originating in the third country concerned.

## Position of the European Parliament

The dossier is currently with the INTA committee. Committees that will deliver an opinion include the Committee for Internal Market and Consumer Protection (IMCO) (rapporteur: Ivan Stefanec (EPP)) and possibly the Development Committee (DEVE) (no rapporteur designated yet).

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## EU-INDONESIA FREE TRADE AGREEMENT

[  DEPARTURES ]

>  OTHER FREE TRADE AGREEMENTS

1

## CONTENT

### Background and state of play

Negotiations between the EU and ASEAN for a regional free trade agreement (FTA) began in 2007. After negotiations were suspended in 2009, the EU decided to pursue bilateral trade agreements with the individual ASEAN member states, based on the 2007 ASEAN negotiating directives.

Following the successful conclusion of the exploratory talks ('scoping exercise') in April 2016, negotiations for an EU-Indonesia FTA were launched on 18 July 2016. The first round of negotiations took place in Brussels on 20-21 September 2016. The second round of negotiations took place in Indonesia, between 24 and 27 January, 2017.

## **Objectives**

The objective of the FTA is to facilitate trade and investments and address various issues, such as tariffs, non-tariff barriers to trade, trade in services and investment, trade aspects of public procurement, competition rules, and intellectual property rights, as well as sustainable development. The EU's final objective is to have a region-to-region agreement with ASEAN, based on the bilateral FTAs concluded with ASEAN member states.

In 2006, at the Commission's request, a report focusing on the economic impact of the EU-ASEAN FTA was drawn up as part of the preparation of the negotiating authorisation. The report stated that both the EU and ASEAN member states would gain from the FTA, yet benefits would be significantly higher for the latter. In 2009, while negotiations were ongoing, a Trade Sustainability Impact Assessment (Trade SIA) was published which evaluated the likely economic, social and environmental impacts of the future FTA. It concluded that, with some sectoral exceptions, the FTA was expected to have a positive impact on all countries. It predicted significant gains in terms of GDP, income, trade and employment for all ASEAN member states, and small but positive effects for the EU (a gain of 0.2 % of GDP and more than a percentage point in export value under the most ambitious long-run scenario).

## **Main negotiation issues**

During the first negotiation round, the EU highlighted the need for coherence with the results achieved in its bilateral free trade agreements with other ASEAN member states. For example, as regards rules of origin, the EU made reference to the agreement concluded with Vietnam (2014) and Singapore (2015). During this round, 18 negotiating areas were discussed, including trade in goods, trade in services, investment, trade and sustainable development, competition, energy and raw materials. The Parties also agreed on modalities regarding the exchange of text proposals.

During the second negotiating round, detailed discussions were held on all topics to be included in the agreement, and the two sides analysed all nine draft negotiating texts tabled by the EU. Indonesia presented a non-paper on economic cooperation and capacity building, as well as several counter-proposals.

In February 2017, the Commission published nine specific European proposals accompanied by short factsheets on the different topics, related to the trade agreement under negotiation. Further EU proposals will be made available as the negotiations progress.

To allow negotiations to proceed as fast as possible, preparatory inter-sessional work is continuing between the two negotiating rounds.

## **Main debates on the agreement**

The Commission published a questionnaire addressed to stakeholders and interested parties, launching a consultation to gather information that would help define a negotiation position. The survey closed on 1 December 2016.

## **Position of the European Parliament**

The European Parliament, in its resolution of 5 July 2016 on a new forward-looking and innovative future strategy for trade and investment, requested that the Commission begin negotiations with Indonesia as soon as possible after the conclusion of preparatory talks for a free trade agreement. A delegation from the International Trade (INTA) Committee visited Indonesia between 22 and 24 May 2017. Key issues discussed in relation to the prospective FTA included the production of palm oil and non-tariff barriers to trade.

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## EU-JAPAN ECONOMIC PARTNERSHIP AGREEMENT (EPA)

[ DEPARTURES ]

### > OTHER FREE TRADE AGREEMENTS

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### Background and state of play

The start of preparations for a bilateral trade agreement was agreed at the 20th EU-Japan Summit in May 2011. The scoping exercise was subsequently concluded in May 2012. Based on the negotiating directives adopted by the Council in November 2012, negotiations were launched in March 2013. The first round of negotiations was held in April 2013. There have been 18 rounds of negotiations to date, with the latest taking place in Tokyo, on 3-5 April 2017. During the negotiations, the Parties exchanged text proposals and advanced on the text of the chapters. To allow negotiations to proceed as quickly as possible, preparatory work continues between two negotiating rounds. Talks could potentially be concluded by the end of 2017.

In March 2017, President Juncker, President Tusk and Japan's Prime Minister reaffirmed their commitment to conclude the agreement as early as possible.

## Objectives

EU interests are focused on a few specific areas. A significant part of the negotiations is dedicated to the reduction of regulatory and of non-tariff barriers, which present the main obstacles for the EU. Several key EU exporting sectors are affected, including chemicals, automotive, processed food, and medical devices, as well as telecommunications and financial services. Moreover, there are significant barriers both to FDI and in the area of public procurement. Tariff liberalisation is also an important objective, particularly in sectors where tariffs are still high, such as processed foods, agricultural products and motor vehicles. Better access to the opportunities offered by Japan's public procurement market (including the railway sector), as well as to the service and investment sector is an outstanding issue. Finally, protection of intellectual property rights, and geographical indications in particular, is also of considerable interest to the EU.

## Main negotiations issues

Although significant progress has been achieved during the negotiations, both sides have yet to reach ambitious compromises in the key areas of the agreement, including trade in agricultural and processed agricultural products, services, investment, public procurement, non-tariff measures and the protection of geographical indications. The two negotiating teams are in regular contact to allow negotiations to proceed as swiftly as possible.

## Main debates on the agreement

The idea of an EU-Japan FTA met with mixed reactions from industry. The European automobile industry, especially French and Italian car manufacturers, fear increased import of Japanese cars, and are sceptical about easier access to the Japanese market for European businesses. They have also expressed concern regarding the non-tariff barriers applied by Japan in certain areas, including specific safety and environmental standards. Other sectors, such as the agri-food, chemical, pharmaceutical and ICT (information and communications technology) industries, supported the initiative to conclude the agreement, considering it a key opportunity for market access and trade liberalisation.

The Japanese trade unions and the European Trade Union Confederation (JTUCRENGO and ETUC) published a joint statement on the EU-Japan FTA, asking for a commitment from the EU and Japanese negotiators to achieve an agreement that contributes to the creation of quality jobs, sets up a monitoring mechanism, including social partners and civil society, and protects workers.

## Position of the European Parliament

In May 2011, the European Parliament adopted a resolution on EU-Japan trade relations. The EP stressed that it supports the idea of a free trade agreement between the EU and Japan, and noted that Japanese commitments on the removal of non-tariff barriers and obstacles to market access in public procurement are a precondition for opening the negotiations. In June 2012, the European Parliament adopted a resolution on EU trade negotiations with Japan. In this resolution, the EP requested that the Council refuse

approval to launch the negotiations until the EP adopted its position on the proposed negotiating mandate. In its resolution of October 2012, the European Parliament concluded that the significant potential of the EU-Japanese commercial relationship has remained unfulfilled, mainly due to the negative effects of Japanese non-tariff barriers on market access opportunities for European businesses. The EP called on the Council to authorise the Commission to open negotiations for the FTA, based on the results of the scoping exercise and clear targets. Moreover, the Parliament also presented a series of recommendations on the Commission's negotiating directives. In April 2014, the European Parliament published a resolution including its recommendation on the EU-Japan Strategic Partnership Agreement negotiations, calling for the timely conclusion of the talks to provide a longstanding framework for a stronger relationship between the two partners. A delegation of the European Parliament's Committee on International Trade, headed by the INTA Committee chair, Bernd Lange (S&D, Germany), visited Japan in November 2015. The members of the delegation noted that a trade agreement could be hugely beneficial for both economies.

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## EU-PHILIPPINES FREE TRADE AGREEMENT

[  DEPARTURES ]

>  OTHER FREE TRADE AGREEMENTS

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#### Background and state of play

Following the launch of negotiations between the EU and ASEAN for a bi-regional free trade agreement (FTA) in 2007, talks were

suspended in 2009. Negotiations with ASEAN member states continued in a bilateral format, as the 2007 negotiating directives for an FTA with ASEAN had already envisaged the possibility of negotiating with these countries bilaterally.

Following the exploratory talks that started in 2013, negotiations for an FTA with the Philippines were officially launched in December 2015, based on the 2007 ASEAN negotiating directives. The first round of negotiations took place on 23-27 May 2016. The second round of negotiations was held on 13-17 February 2017.

## **Objectives**

The objective of the negotiations is an agreement similar in coverage to those already concluded with other ASEAN member states, namely with Singapore in 2014 and Vietnam in 2015. The EU's final objective is to have a region-to-region agreement with ASEAN, based on the bilateral FTAs concluded with the ASEAN member states.

In 2006, at the Commission's request, a report focusing on the economic impact of the EU-ASEAN FTA was drawn up as part of the preparation of the negotiating authorisation. The report stated that both the EU and ASEAN member states would gain from the FTA, yet benefits would be significantly higher for the latter. In 2009, while negotiations were ongoing, a Trade Sustainability Impact Assessment (Trade SIA) was published, which evaluated the likely economic, social and environmental impacts of the future FTA. It concluded that, with some sectoral exceptions, the FTA was expected to have a positive impact on all countries. It predicted significant gains in terms of GDP, income, trade, and employment for all ASEAN member states, and small but positive effects for the EU (a gain of 0.2 % of GDP and more than a percentage point in export value under the most ambitious long-run scenario).

## **Main negotiation issues**

During discussions in the first negotiation round, which focused on such issues as rules of origin, sanitary and phytosanitary measures, services and investment, the EU presented its position based on its most recent negotiations (for instance, those conducted on its FTA with Singapore, Vietnam and Japan, and on the TTIP). Prior to the second round, the EU presented nine initial text proposals, including those on rules of origin, sanitary and phytosanitary measures, public procurement and intellectual property. The Philippines tabled seven text proposals, for instance on services, investment, and trade and sustainable development. Progress was achieved in several negotiation areas, and it was decided that a number of negotiation groups will continue working ahead of the next round, for which a date has yet to be set. In March 2017, the Commission published short factsheets to accompany the above mentioned proposals for legal texts.

The Commission is currently considering the human rights situation in the country. As a part of the review process on trade preferences accorded to the Philippines, the EU will establish a report on the country's compliance with the various UN conventions. The findings of this report might have an impact on the ongoing FTA negotiations and on the country's GSP+ status.

## **Main debates on the agreement**

The Commission published two questionnaires (a general version for industry and one specific to fisheries issues), addressing stakeholders and interested parties, and launching a consultation to gather information that would help define a negotiation position. The survey closed on 30 April 2016. The feedback from industry stakeholders identified great interest and opportunities in several sectors, for instance in the automotive and pharmaceutical industry; it also revealed major obstacles for market access in sectors such as investment and public procurement.

## Position of the European Parliament

On 8 June 2016, the Parliament adopted a non-legislative resolution in which it welcomed the agreement of December 2015 to open talks on a FTA with the Philippines. While the Parliament stressed the need for high standards on human rights, labour and the environment, it underlined that such an FTA should act as a building block towards a bi-regional EU-ASEAN agreement. In September 2016, in its resolution on the Philippines, the Parliament expressed deep concern regarding the excessively high number of people killed in anti-crime and anti-drug operations. It called on the EU to assist the Philippines to meet its international human rights requirements. In March 2017, the Parliament adopted another resolution on the Philippines, this one highlighting the case of Senator Leila M. De Lima. While again firmly condemning drug trafficking and drug abuse in the Philippines, the Parliament urged the Commission to convince the Philippines to cease extrajudicial killings related to the anti-drug campaign. Should little or no progress be made in this area, the Commission is to follow up with specific actions such as the possible removal of GSP+ preferences.

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## EU-SINGAPORE TRADE AND INVESTMENT AGREEMENTS

[  EXPECTED ARRIVALS ]

### > OTHER FREE TRADE AGREEMENTS

## CONTENT

### Background and state of play

The EU-Singapore negotiations were launched in 2010, on the basis of the ASEAN negotiating directives adopted in 2007, which already envisaged the possibility of negotiating with ASEAN member countries on a bilateral level. As the Treaty of Lisbon came into force after the Commission's negotiation mandate was approved by the Council, the 2007 negotiating directives were modified in July 2011, to authorise the Commission to open negotiations on investment protection provisions within the FTA with Singapore. Following the conclusion of talks on investment protection, negotiations were completed in October 2014, with other parts of the FTA having already been initialled in September 2013.

## **Objectives**

Because of the low or zero tariffs already applied by Singapore in most manufacturing sectors, one of the EU's main areas of interest was obtaining better market access for a range of services sectors, such as financial and banking services, telecommunication, engineering and architectural services, maritime transport, and postal services.

Another core issue for the EU was geographical indications. As Singapore applied a US-inspired system of geographical indications, there was a significant difference between the systems used by the two parties. Regarding copyright, Singapore again applied a US-style regime.

Rules of origin was also a priority for the EU. Although the EU did not consider exports from Singapore a risk to its sensitive sectors, it was concerned that third countries, such as China, may seek to export their goods to the EU duty free via Singapore.

## **Content of the agreement**

The EUSFTA is a 'new generation' FTA agreement, with an ambitious, comprehensive scope that goes beyond current World Trade Organization (WTO) commitments. It covers areas such as tariff liberalisation (elimination of virtually all tariffs); reduction of non-tariff trade barriers (for instance, removal of duplicative testing requirements for motor vehicles and electronics); and promotion of services and investment. Other trade-related issues include, for example, stronger protection for certain geographical indications (GIs) than required in the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), based on a register of GIs. The FTA will also provide improved access to government procurement opportunities. The EU has, for example, for the first time in an FTA, granted access to tendering opportunities in the railway procurement market; similarly, Singapore has included in the EUSFTA, also for the first time, some of its key procuring entities in certain utilities sectors, such as the Public Utility Board. Moreover, the EUSFTA includes provisions on promoting 'green growth'.

While preserving the parties' right to regulate in the interest of the public, the investment-protection chapter introduces important innovations on substantive standards and investment dispute settlement. However, the FTA does not cover all aspects of the EU's new investment approach, as already reflected in the EU-Vietnam FTA, because negotiations with Singapore had ended prior to the finalisation of the new approach.

## **Main debates on the agreement**

In 2010, the European Commission conducted a public consultation on the future agreement. It received contributions mainly from exports-oriented sectors interested in the ASEAN market. Negotiations also mobilised European investors, particularly those in the services sectors. As a study on the EU's preferential trade agreements with Singapore and Vietnam pointed out, the consultation carried out by the Commission revealed that negotiations did not trigger specific protectionist reactions.

Another study, published in the Asia Europe Journal, which analysed the results of a survey among EU service providers operating in Singapore, found that business respondents did not expect the EUSFTA would have a significant direct impact. Although the agreement was favourably received by most of the companies, these companies would nonetheless welcome the relaunch of the EU-ASEAN negotiations.

## **Status of the procedure to adopt the agreement**

### *European Commission*

Following the CJEU ruling, the Commission, together with the Member States, have to reflect on how to take the Court's opinion into consideration. On the other hand, the Commission has not yet finalised the discussions with Singapore on the investment protection provisions. Once discussions on these two issues are concluded, the draft agreement will be formally approved by the Commission and then presented to the Council for signature and conclusion and the European Parliament for consent.

### *Court of Justice of the EU*

The EUSFTA was created as an EU-only agreement, between the EU and Singapore, to be concluded without the participation of the Member States. However, in 2015 the Commission lodged a request for an opinion from the Court of Justice of the EU (CJEU). The Court was asked which provisions of the EUSFTA are within the EU's exclusive or shared competences, and which remain within the exclusive competence of the Member States.

In September 2016, the CJEU held a hearing on the EU's competence regarding the EUSFTA. The CJEU's Advocate General (AG) delivered an opinion in December 2016. The AG concluded that the EU has exclusive external competences as regards the parts of the agreement which cover areas such as trade in goods, trade in rail and road transport services, and foreign direct investment. On the other hand, the AG pointed out that the EU's external competence is shared with the Member States in areas such as types of investment other than foreign direct investment, and non-commercial aspects of intellectual property rights. With regard to the Investor State Dispute Settlement (ISDS) mechanism, the AG's opinion stated that the EU has shared competence with Member States in some of the substantive investment provisions, and consequently in the relevant provisions on dispute settlement.

On 16 May 2017, the CJEU issued its opinion. While the CJEU agreed with the AG that the EUSFTA also covers areas of shared

competences, and therefore needs to be concluded as a mixed agreement, there are substantial differences in the way the Court allocated the competences. Both the AG and the Court concluded that non-direct foreign investment and the ISDS must be considered a shared competence. Contrary to the AG, the Court stated that EU competence was exclusive in all transport chapters as well as in provisions related to intellectual property rights and trade and sustainable development.

## Position of the European Parliament

The European Parliament resolution of 5 July 2016 on a new forward-looking and innovative future strategy for trade and investment stressed the need for successfully concluded trade agreements to be ratified as swiftly as possible; more specifically, it called for the conclusion of the deal with Singapore.

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>  OTHER FREE TRADE AGREEMENTS

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### Background and state of play

Following the breakdown of talks with ASEAN (Association of Southeast Asian Nations) on an EU-ASEAN region-to-region free trade agreement (FTA) in 2009, the EU decided to pursue bilateral FTAs with individual ASEAN member states. Negotiations between the European Commission and the Vietnamese government began in 2012. After 14 rounds of negotiation, the two sides reached agreement on the broad lines of an FTA in August 2015, and the text of the FTA was agreed in December of the same year. Before it can be signed, however, the text has to be checked by lawyers for consistency ('legal scrubbing') and translated; this process is now ongoing. The European Commission will also have to decide whether to modify the text in the light of the May 2017 European Court of Justice ruling on the EU-Singapore FTA (see section on *Status of the procedure to adopt the agreement* below for more details).

### Objectives

The EU hopes that a free trade agreement (FTA) with Vietnam will boost its trade and investment ties with the country; at the same time, the FTA is an important stepping stone to a wider EU-Southeast Asia trade deal, something which the EU has been striving towards for nearly a decade. Vietnam, a fast-growing and competitive economy whose bilateral trade with the EU has quintupled over the past ten years, is equally keen on the deal, which according to the European Commission, could potentially boost its GDP by 15 %. In addition, an FTA with the EU would reduce Vietnam's dependency on China.

### Content of the agreement

The European Commission has described the EU-Vietnam FTA (EVFTA) as the most ambitious free trade deal ever concluded with a developing country:

- **near complete removal of tariff barriers:** elimination of over 99 % of customs duties on exports in both directions: 65 % of duties on EU exports to Vietnam and 71 % of duties on Vietnamese exports to the EU to disappear as soon as the FTA enters into force, the remainder to be phased out over several years;
- **reduction of non-tariff barriers:** Vietnam will align more closely with international standards on motor vehicles and pharmaceuticals. As a result, EU products (which already comply with these standards) will not require additional Vietnamese testing

and certification procedures. Vietnam will also simplify and standardise customs procedures;

- **EU access to Vietnamese public procurement:** EU companies will be able to compete for Vietnamese government contracts (and vice-versa);
- **improved access to Vietnamese service markets:** the FTA will make it easier for EU companies to operate in the Vietnamese postal, banking, insurance, maritime transport and environmental and other service sectors;
- **investment access and protection:** the FTA will open up various Vietnamese manufacturing sectors to EU investment, for example food and beverages, tyres, ceramics and construction materials. EU investors in Vietnam and Vietnamese investors in the EU will enjoy the same treatment as their domestic counterparts. The FTA establishes an investor-state tribunal to resolve disputes between EU investors and Vietnamese authorities (and vice-versa).
- **promoting sustainable development:** the FTA includes commitments to implement International Labour Organization core standards (for instance, on freedom to join independent trade unions — potentially a momentous change, as Vietnam does not at present have any such unions), and UN conventions (for instance, on combatting climate change and protecting biodiversity).

## Main debates on the agreement

Vietnam is a politically repressive state, with widespread human rights abuses. Independent political parties, trade unions and NGOs are not tolerated, nor are there any free media. For this reason, many stakeholders oppose closer ties between the EU and Vietnam.

According to some NGOs, the proposed investor-state tribunal, intended to protect foreign investors, could also give international companies undue influence in Vietnam, potentially discouraging the Vietnamese government from taking legitimate decisions (for example, on environmental protection) that affect business interests.

There are also concerns about negative economic impacts for Vietnam; by opening the country up to competition from EU companies, the FTA could put the country's manufacturers at risk, forcing them into low value-added sectors, such as textiles.

## Status of the procedure to adopt the agreement

The text of the Free Trade Agreement was agreed in December 2015 and published by the European Commission. Legal scrubbing has taken longer than expected, and it is now hoped to finish this by the end of June 2017; translation into EU official languages and Vietnamese should take another four to five months. The Commission was originally planning to present a proposal for ratification by the Council and Parliament in autumn 2017, which no longer looks realistic; nevertheless, the Commission continues to hope to have a final text by the end of 2017.

A further potential obstacle is the 16 May 2017 ruling of the European Court of Justice on the FTA with Singapore. According to the ruling, most provisions of the EU-Singapore FTA relate to exclusive competences of the FTA; however, two areas covered by the FTA — non-direct ('portfolio') investment, and the investor-state dispute settlement mechanism — are mixed competences. This ruling has obvious implications for the EU-Vietnam FTA, which has similar provisions.

The European Commission now has to decide how to move forward. On the one hand, if it leaves the text of the FTA unchanged, it will have to be ratified not only at EU level, by the Council and the Parliament, but also at Member State level. In this case there is a strong risk that adoption will be delayed or even derailed, as objections from one single national (or even regional) parliament to ratification can block the whole process.

A second option would be to exclude provisions on mixed competences from the FTA, thus enabling it to be ratified by the Council and Parliament alone, without any need to involve the national level.

At present, lawyers within the Commission Directorate General for Trade are studying the options and will make recommendations to European Trade Commissioner Cecilia Malmström, who can in turn discuss those recommendations with the other commissioners, the other EU institutions and Vietnamese partners. No timetable has been set for this process, but the Commission hopes to decide on the next steps as soon as possible, so as not to delay the FTA.

## Position of the European Parliament

The European Parliament has to give its consent to the FTA in order for it to be ratified by the EU. Although the European Parliament was not directly involved in negotiations with Vietnam, it put forward several recommendations for the FTA in a resolution of 17 April 2014. Most of those recommendations (such as the inclusion of a binding sustainable development chapter, and the possibility to suspend the FTA in the event of severe human rights abuses) have been included in the text. However, another EP recommendation, to carry out a human rights impact assessment of the Agreement before implementation, was not followed.

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## ECONOMIC PARTNERSHIP AGREEMENT (EPA) WITH WEST AFRICA

[  ON HOLD ]

### > ECONOMIC PARTNERSHIP AGREEMENTS (EPA)

## CONTENT

### Background and state of play

In 2002 the European Union launched negotiations to conclude free trade agreements, referred to as Economic Partnership Agreements (EPAs), with different configurations of ACP countries. One of the groups to be covered by such an agreement is made up of 16 countries in West Africa - the 15 members of the Economic Community of West African States (ECOWAS) plus Mauritania.

ECOWAS is itself a party to the agreement, as is UEMOA (the West African Economic and Monetary Union), a further level of regional integration comprising eight ECOWAS countries. The negotiations with West Africa started in 2003 and lasted 11 years until 2014, when the text of the agreement was finally initialled by the chief negotiators. The final agreement is an asymmetric free trade agreement with a strong development dimension. Asymmetric liberalisation is aimed at protecting sensitive sectors and emerging industries in West Africa.

## **Objectives**

According to the Council's negotiating directives, the overarching objective was to conclude an agreement that would promote the smooth and gradual integration of West-African partners into the world economy, spur sustainable development and reduce poverty. To promote regional integration in West Africa, the regional agreement was negotiated with the region as a whole. A more concrete objective was to assure further free access for West African countries to EU market in line with WTO rules. Since some of the countries in West Africa had graduated from the status of least developed countries (LDCs), without a free trade agreement they risked losing free access to EU market; the EU can grant such access unilaterally only to LDCs. This situation has been of particular concern to Ghana and Côte d'Ivoire, two middle income economies that export agricultural products to the EU and that benefit from tariff exemptions. Given the delay in the ratification of the regional EPA, Ghana and Côte d'Ivoire have ratified interim EPAs to preserve their free market access.

## **Content of the agreement**

The agreement provides for asymmetric liberalisation of trade in goods. While the EU will fully open its market, the African partners can maintain tariffs on 25 % of tariff lines in order to protect sensitive sectors. The agreement mentions the objective of pursuing sustainable development at all levels of the economic partnership. Nevertheless, it does not include an explicit obligation of the parties to comply with international environmental standards and labour rights, relying instead on the relevant provisions in the Cotonou Agreement. The agreement establishes a dedicated development programme, endowed with €6.5 billion for the 2015-2019 period, to support implementation.

In order to protect the parties from the potentially harmful effects of trade liberalisation, the agreement provides for a series of safeguards, including the temporary imposition of customs tariffs and quantitative restrictions in case of a sudden surge in imports threatening local producers. Certain export taxes are temporarily allowed in order to protect infant industries in West Africa. The agreement contains a rendezvous clause providing that the parties will begin negotiations on a comprehensive agreement covering services, capital transfers, competition, investment, copy right and sustainable development.

In addition to the two executive bodies charged with the implementation (a ministerial body and a subordinated body composed of senior officials), the institutional structure includes a joint parliamentary committee composed of MEPs and members of ECOWAS and UEMOA parliamentary assemblies and a consultative committee to promote civil society dialogue.

## **Main debates on the agreement**

The debates on the agreement have focused mainly on two crucial issues: the potential disruptive effects of trade liberalisation on agricultural and industrial sectors in West Africa and the loss of customs duties – an essential source of government revenue in many countries in West Africa.

Concerning the first aspect, during the negotiation phase, civil society organisations from Europe and West Africa as well as West African farmer associations have expressed their concern about the potential effects on West African agriculture, which would be unable to cope with competition from EU exports. The final text of the agreement protects many sensitive agricultural products at the same level as the ECOWAS Common External Tariff and includes substantial safeguards to protect emerging industries. Concerns regarding the negative impact on the industrialisation of the region persist, particularly in Nigeria, and have been expressed by manufacturers and trade unions alike. However, a report by the World Bank comes to the conclusion that the effect on Nigerian producers would be positive on the whole.

As regards the second aspect, the loss of tax revenue, when liberalisation is completed, is estimated by the European Commission to be lower than the growth in gross domestic product (GDP) expected as a result of the EPA. Government revenue in the region should decrease by 2 % by 2035 because of the EPA, but the agreement provides for dialogue and cooperation on the matter, including financial resources.

## **Status of the procedure to adopt the agreement**

The agreement was signed by all EU Member States in December 2014 and has been signed by 13 of the 16 West African states so far. West Africa has decided to act as a single region and therefore the EPA needs to be signed by all the West African countries. This is also due to the fact that ECOWAS introduced a Common External Tariff in 2015 with a view to creating a customs union in the long run and to have a common trade policy. Mauritania, Nigeria and the Gambia have until now delayed signing. Nigeria is the region's biggest economy and its endorsement of the EPA is crucial. Nigeria's government has declared that it is 'examining' the agreement and intends to carry out consultations with the private sector before signing. The country has a long tradition of protectionist policies, with a questionable record – as its current economic woes show. In the Gambia, the recent election of a new president wishful to revive relations with the international community could speed up the process of signing. The two regional organisations in West Africa, ECOWAS and UEMOA, support the EPA. ECOWAS has encouraged all its member states to proceed with signing.

The EU is awaiting the completion of the signature process before proceeding to ratification, which would open the way to provisional application. In order to fully enter into force, the agreement will have to be ratified by the EU (which implies the consent of the European Parliament), by all EU Member States, and by at least two thirds of West African States.

## **Position of the European Parliament**

During the EPA negotiations, the Parliament supported the objective of concluding asymmetric trade agreements with ACP countries that promote sustainable development, regional integration, and a reduction of poverty. It encouraged the Commission to adopt a flexible and pragmatic approach to negotiations with West Africa. It also insisted on the inclusion of appropriate provisions for the protection of human rights and good governance in the agreement. The Committees on International Trade and on Development held debates and exchanges of views on the agreement in 2015.

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## ECONOMIC PARTNERSHIP AGREEMENT WITH THE EAST AFRICAN COMMUNITY (EU-EAC EPA) / 2014-10

[ ON HOLD ]

### > ECONOMIC PARTNERSHIP AGREEMENTS (EPA)

## CONTENT

### Background and state of play

Under the previous ACP-EU Convention (Lomé IV), ACP states benefitted from a preferential tariff system for their trade with the EU. This system was against the 'most favoured nation' principle of the World Trade Organisation (WTO), according to which preferential treatment granted to ACP countries should have been granted to other countries with a similar level of development. In 2000, to make the Cotonou Agreement compliant with WTO rules, a new provision was included in it, making it possible to negotiate different economic partnership agreements with regional groupings.

The negotiations with the East African Community (EAC: Burundi, Kenya, Rwanda, Tanzania, and Uganda) were finalised in October 2014.

### Objectives

According to the EU Council negotiating mandate for EPAs (June 2002) 'EPAs shall aim at fostering the smooth and gradual integration of the ACP States into the world economy (...), thereby promoting their sustainable development and contributing to poverty eradication'. The agreement with the East African Community (EAC EPA) features provisions on trade in goods facilitation, customs, sanitary and phytosanitary measures, sustainable development of agriculture and fisheries.

An impact assessment produced by the European Commission's DG for Trade found that 'the GDP of all EAC countries will be positively affected by the agreement, albeit to a small extent, on average by 0.3 %' and the 'Tariff reduction is expected to slightly reduce the poverty headcount in EAC countries'. On average, EAC exports to the world would increase by 1.1 % and imports by 0.9 % (the EU share of total EAC imports would grow from 10.6 % to 12.6 %).

## **Content of the agreement**

The EAC EPA provides for an asymmetric opening of the markets: immediate duty-free quota-free access to the EU market for all EAC exports; partial and gradual opening of the EAC market to imports from the EU; safeguarding provisions allowing each side to reintroduce duties if imports from the other side threaten to disturb its economy. The EPA contains detailed provisions on sustainable agriculture and food security and on the sustainable use of resources in the area of fisheries. A chapter on economic and development cooperation is included. The parties are committed to concluding negotiations on environment and sustainable development, services, investment and private sector development within five years of the entry into force of the agreement. Several articles relate to the institutional set-up and the dispute settlement mechanism. The EPA falls under the umbrella of the Cotonou Agreement: a breach of one of its 'essential elements' involving human rights, democratic principles and the rule of law, could entail the suspension of the EPA trade preference for the country concerned.

## **Main debates on the agreement**

The signing of the EPA agreements has been stalled for months, because of discussions within the EAC. Tanzania and Burundi have not signed for various reasons: Tanzania believes that the EAC countries will not be able keep up with the progressive liberalisation of their markets that is envisaged. According to Tanzania, competition from EU manufactured goods will hinder the industrialisation path in East Africa. As for Burundi, its government has refused to sign the agreement until EU sanctions cease (EU aid to Burundi has been suspended on account of gross human rights and rule of law violations by its president and government). Uganda has expressed its interest but has not formally signed: it is waiting for a full appraisal of the consequences of the EPA, and for a regional position to be taken.

In August 2016, EAC civil society organisations working on trade issues exposed their concerns about the potential consequences of the EPA (loss of revenues, risks to industrialisation and agricultural production and a threat to South-South cooperation and regional integration).

The Tanzanian private sector is lobbying for its government to endorse the agreement.

## **Status of the procedure to adopt the agreement**

*European Commission*



The European Commission issued its proposal for a Council Decision on the conclusion of the EAC EPA in February 2016.

### *Council*

On 20 June 2016, the Council of the EU authorised the signature and provisional application (as concerns the exclusive competencies of the EU) of the economic partnership agreement between the EU and the East African Community (EAC).

To fully enter into force the agreement has to be ratified by the EU, the EAC and their member states.

### *East African Community*

So far, the EPA agreement has been ratified by Kenya and signed by Rwanda.

As the signing of the agreement by only two member states of the EAC would jeopardise its customs union, at their 17th summit in September 2016 EAC heads of state decided to postpone the endorsement of the agreement by the EAC until January 2017, in order to find a regional position. The deadline for signature was extended by the Commission until 2 February 2017 - in order to allow EAC countries to assess its impacts, based on statistical data. But this deadline was missed again, and an EAC Council of Ministers postponed *sine die*, since Burundi, Uganda and Tanzania had failed to provide a consistent dataset. The postponement of the ratification has few consequences for four out of the five EAC states, which are least developed countries and will continue to benefit from duty-free quota-free market access into the EU for 'Everything But Arms'. Kenya on the contrary is a low-middle income country and should have lost duty-free quota-free market access in the event that the EPA was not concluded at regional level by 2 February 2017. However, as Kenya has negotiated and signed the EPA, it still benefits from a specific form of EU market access (a measure offered to 'States which have concluded negotiations on an agreement with the Union which at least meets the requirements of Article XXIV of the General Agreement of Tariffs and Trade 1994' under the EU Market Access Regulations).

At their May 2017 Summit, the Heads of State acknowledged the stalemate in the signing of the agreement, but agreed that Kenya might be allowed to pursue the implementation of the trade deal 'in the event that an acceptable way forward is not reached with the EU within the next six months'; they also 'agreed that the EU sanctions on Burundi should be discussed alongside the EPA discussions'.

## **Position of the European Parliament**

The European Parliament's consent is required. The Committee for International Trade (INTA) is responsible for the dossier, with an opinion from the Committee for Development (DEVE). Parliament's position is being prepared: so far, DEVE has drafted a report calling on INTA to recommend Parliament give its consent to the conclusion of the EAC-EU EPA, despite reservations 'as regards parliamentary involvement in the monitoring process'. INTA has not yet issued its recommendation.

In previous resolutions on economic partnership agreements, Parliament insisted that EPAs must be primarily aimed at sustainable development, poverty reduction, and regional integration.

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## EU-CANADA COMPREHENSIVE ECONOMIC AND TRADE AGREEMENT (CETA)

[ ➤ ARRIVED ]

### > OTHER FREE TRADE AGREEMENTS

## CONTENT

### Background and state of play

EU-Canada negotiations for a Comprehensive Economic and Trade Agreement (CETA) began in May 2009 and were declared concluded at the EU-Canada Summit on 26 September 2014. CETA is currently being ratified by the individual EU Member States and Canada is in the process of completing its ratification.

### Objectives

CETA's overall aim is to increase trade in goods, services and investment between the EU and Canada to the benefit of both parties. It also seeks to remove concerns associated with traditional investor-state dispute settlement (ISDS) mechanisms through the introduction of a new investment court system (ICS). Furthermore, specific CETA-provisions on sustainable development seek to ensure that trade and investment do not develop to the detriment of, but rather support, environmental protection and social development in the EU and Canada.

A 2011 Sustainable Impact Assessment (SIA) found that CETA is expected to lead to an increase of 0.02-0.03 % in the EU's real GDP and an increase of 0.05-0.07 % in the EU's total exports over the long-term.

### Content of the agreement

CETA is the EU's first comprehensive economic agreement with a highly industrialised Western economy and has been referred to as one of the most ambitious trade agreements that the EU has ever concluded. It regulates trade in goods and will remove practically all tariffs on goods exchanged between the two parties, except for a few sensitive agricultural products. In addition, CETA regulates trade

in services and contains separate chapters on, among other things, financial services, international maritime transport services, telecommunications and electronic commerce. CETA also regulates investment relations between the EU and Canada and introduces various novelties in this area, including the creation of an ICS.

CETA further deals with topics such as rules of origin, sanitary and phytosanitary rules, technical barriers to trade, customs and trade facilitation, subsidies, intellectual property rights, regulatory cooperation, sustainable development and competition policy. As regards government procurement, CETA will lead to a substantial opening up of Canada's public procurement at both federal and sub-federal level, thereby eliminating a major asymmetry in the parties' access to each other's public procurement markets. A number of joint committees are also envisaged under CETA, to accompany the implementation and the further development of rules initiated by the agreement.

### **Main debates on the agreement**

Common criticisms of CETA have focused on provisions in the following areas: regulatory cooperation, trade in services, investment protection and the ability of governments to regulate, democratic control, and sustainable development (including labour rights as well as consumer and environmental protection). The debate also has a more general, fundamental dimension about the way trade agreements are currently approached and negotiated.

In relation to regulatory cooperation, opponents fear that possible future harmonisation and mutual recognition of rules could lead to the erosion of strict European standards in consumer, health and environmental protection. The Commission, however, argues that CETA will not affect EU rules on food safety or the environment, and that CETA's Regulatory Cooperation Forum (RCF) will set the stage for voluntary cooperation, but will not be able to change existing legislation or restrict the decision-making powers of national or EU regulators.

As regards trade in services (in particular public services), some commentators have found the public-sector carve-out and the reservations taken up for specific public services as not effective in sheltering public services from liberalisation pressures. However, the Commission together with the Canadian government, point to the fact that CETA does not oblige Member States to liberalise services and public utilities, and also makes it possible to backtrack on earlier steps in liberalisation.

Critics have also questioned whether the new ICS for investment dispute resolution would be compatible with EU law and in particular the principle of autonomy of the EU legal order. Despite the introduction of this ICS, some commentators have also found some of the other novelties (such as on 'fair and equitable treatment' and 'indirect expropriation') to be insufficient, and expect a sharp rise in investor claims. However, a study commissioned by the German Federal Ministry for Economic Affairs concluded that investor protection in CETA is in fact lower than that under national (German) and EU law and CETA accordingly does not constrain Member States' sovereign right to regulate.

On the transparency of the negotiations and democratic control, critics have denounced the exclusion of civil society groups from the

CETA negotiations and have argued that democratically elected parliaments were not given a sufficiently prominent voice in the talks. The Commission, in response, points to various civil society dialogue meetings and to the fact that Member States (through the Council) and the European Parliament were kept informed at all times. The text of CETA was also published soon after an agreed text was available, namely after the negotiations had been declared concluded. This text has in the meantime been debated by the European Parliament and will soon also be discussed in national parliaments.

Finally, as regards labour standards, trade unions have emphasised that Canada has not ratified ILO Convention 98 (Collective Bargaining). Nevertheless, Canada is party to seven of the eight core ILO conventions and is reported to be considering ratifying Convention 98. Moreover, basic principles of that convention are said to be already enshrined in Canadian labour law.

### **Status of the procedure to adopt the agreement**

On 5 July 2016, the Commission offered a package of proposals for Council decisions on the signing, provisional application and conclusion of CETA. The EU and Canada subsequently held complicated discussions in October 2016 regarding the conditions under which CETA could be signed. They reached an agreement at the end of that month, which allowed the Council to adopt a decision for signature on 28 October 2016 that then paved the way for the EU and Canada to sign CETA on 30 October 2016.

As part of the agreement reached at the end of October 2016, the EU and Canada decided to issue a joint interpretative instrument to take various concerns that had been raised by the Walloon region into account (Belgian sub-federal parliaments must give their consent in order for Belgium to be able to ratify CETA). This joint interpretative instrument clarifies how the EU and Member States should interpret a number of provisions in CETA that are the object of public debate and concerns (such as labour rights and environmental protection). It came on top of 38 declarations and statements that had been issued unilaterally by the EU and its Member States ahead of signing, which set out individual positions on particular issues. In addition, Belgium committed itself to requesting an opinion of the Court of Justice of the EU (CJEU) on the compatibility of the new ICS with EU law (including the principle of autonomy of the EU legal order).

The Council needs to obtain the consent of the European Parliament before it can conclude trade agreements on behalf of the EU (Article 218(6) TFEU). The European Parliament gave its consent to CETA on 15 February 2017. However, as the Commission decided in July 2016 to present CETA to the Council as a 'mixed agreement', the agreement not only has to be ratified by the EU, but also by the individual Member States before it can enter into force. As each Member State follows its own national ratification procedure, this involves the approval of all national parliaments as well as around a dozen regional parliaments (either directly or through their representation in national chambers). So far, Latvia (on 23 February 2017) and Denmark (on 1 June 2017) have ratified CETA.

Pending Member States' ratification, mixed agreements are typically applied on a provisional basis. In the case of CETA, the Council adopted a decision on 28 October 2016 on its provisional application (Article 218(5) TFEU). However, CETA's provisional application can only take effect one month after Canada and the EU have completed their relevant internal procedures and have informed each other accordingly (or in case the parties agree on an alternative starting date). Since Canada is still in the process of completing its

ratification of CETA, it will take a bit more time before the envisioned provisional application can take effect. Provisional application would apply to the majority of CETA provisions, except for the following parts: investment protection; portfolio investment; investment and investment dispute resolution; provisions from the financial services chapter insofar as they concern portfolio investment; protection of investment and the resolution of investment disputes between investors and states (the new ICS); the article on camcording in the Intellectual Property Chapter; the administrative proceedings and review and appeal in the Transparency Chapter; and the part of the article on taxation in the Exception Chapter.

In the coming years, CETA will have to overcome several legal and political hurdles before its formal conclusion by the Council. These include the expected aforementioned request for an opinion of the CJEU from Belgium, constitutional challenges in at least Germany and France, and potential referenda in some Member States.

### **Position of the European Parliament**

The European Parliament approved CETA in its plenary session on 15 February 2017 by 408 votes to 254, with 33 abstentions. Earlier, on 24 February 2017, the Committee on International Trade (INTA) had also voted in favour of CETA by 25 votes to 15, with 1 abstention.

As early as 2011, the European Parliament adopted a resolution on EU-Canada trade relations, in which it set out its position on key chapters of the CETA negotiations, including investment disputes, the right to regulate, regulatory differences and agriculture.

Regarding investment disputes, the European Parliament noted in this resolution that a state-to-state dispute settlement mechanism and the use of local judicial remedies would be the most appropriate tools to address such disputes given the highly developed legal systems of Canada and the EU. Furthermore, any potential investor-to-state dispute settlement mechanism should not inhibit future legislation in sensitive policy areas. More specifically, the investment chapter would have to respect environment and labour conditions, as well as the right of both parties to regulate, particularly in the areas of national security, environment, public health, workers' and consumers' rights, industrial policy and cultural diversity. In line with this position, CETA contains various provisions reaffirming the parties' right to regulate, including to achieve legitimate policy objectives like the protection of public health, safety, the environment, public morals, social and consumer protection and the promotion of cultural diversity.

The European Parliament also indicated in its resolution that it wanted sensitive sectors (such as culture, education, national defence and public health) to be excluded from the scope of CETA's investment chapters. This call has been followed by the negotiators through the introduction of reservations on market access and national treatment.

Lastly, the European Parliament called in its 2011 resolution on the Commission to consider regulatory differences regarding Genetically Modified Organisms (GMOs) between the EU and Canada and to take into account the various agricultural priorities and interests when negotiating CETA's agricultural chapter (including high quality sanitary and phytosanitary measures).

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European Parliament

# LEGISLATIVE TRAIN 06.2017

6A A BALANCED AND PROGRESSIVE TRADE POLICY TO HARNESS GLOBALISATION

## **MULTILATERAL AND PLURILATERAL TRADE AGREEMENTS WITHIN AND OUTSIDE THE WTO FRAMEWORK**

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### **CONTENT**

Multilateral negotiations are those negotiations involving all the WTO Contracting Parties. The current negotiation round is the Doha Round which started in November 2001.

Plurilateral trade agreements involve several countries with a common interest but do not involve all WTO countries. Not all the plurilateral agreements are negotiated within the WTO framework. When started within the WTO context, plurilateral agreements may come from the failure to find agreement among all the WTO Contracting Parties and therefore a smaller group of countries decide to conclude the agreement between themselves.

#### LEGISLATIVE FILE(S) INCLUDED

 Environmental Goods Agreement (EGA)

 Trade in Services Agreement (TiSA)

## **ECONOMIC PARTNERSHIP AGREEMENTS (EPA)**

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### **CONTENT**

Economic Partnership Agreements (EPA) are trade and development agreements concluded with African, Caribbean and Pacific (ACP) countries. The negotiations of these agreements started with the signing of the Cotonou Agreement in 2000 in order to make trade agreements with ACP countries compatible with the WTO.

#### LEGISLATIVE FILE(S) INCLUDED

 EPA WITH WEST AFRICA

 EPA WITH EAST AFRICA

## OTHER FREE TRADE AGREEMENTS

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### CONTENT

Free trade agreements (FTA) are agreements that liberalise trade preferentially between two or more countries. EU trade agreements must comply with WTO in particular article XXIV GATT which requires inter alia that the creation of an FTA remove substantially trade barriers between participating countries.

#### LEGISLATIVE FILE(S) INCLUDED

-  EU-Mercosur Association Agreement
-  CETA
-  Modernisation EU-Mexico Global Agreement
-  EU-SINGAPORE TRADE AND INVESTMENT AGREEMENTS
-  EU-INDONESIA FTA
-  EU-JAPAN EPA
-  EU-PHILIPPINES FTA
-  EU-Vietnam FTA

## EU TRADE REGULATION

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### CONTENT

EU trade regulation includes all those legislation that the EU enacts in order to implement trade measures. The procedures to adopt EU legislation with respect to trade follows the ordinary legislative procedure as foreseen in article 207 of the Treaty on the Functioning of the European Union.

#### LEGISLATIVE FILE(S) INCLUDED

-  Modernisation of trade defense measures (2013)
-  New methodology for calculating dumping margins (2016)
-  International Procurement Instrument (IPI)

## BILATERAL INVESTMENT AGREEMENTS

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### CONTENT

Bilateral Investment Agreements (BIT) are agreements aiming at ensuring a minimum level of investment protection and sometimes also liberalisation. They often include a dispute settlement procedure to solve disputes between the investor and the State if the State has violating any of the protection rules.

#### LEGISLATIVE FILE(S) INCLUDED

 EU-China Investment Agreement