

# The EU's new trade and investment policy in a nutshell

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## A new template for future initiatives

On 14 October 2015, the European Commission revealed its long-awaited communication setting out an updated trade and investment policy for the EU, entitled "Trade for all: Towards a more responsible trade and investment policy".<sup>1</sup> Going forward, the EU will seek to incorporate all of the principles set out in this policy document in its trade/investment initiatives and negotiations, but the extent to which future free trade agreements (FTAs) will actually reflect these objectives will of course depend on the EU's negotiating partners, as the EU is less able these days to impose its "model" on other countries than it may have been in the past. The policy document underlines the importance of trade for the EU's economy, and shows how modern FTAs (in particular the one with South Korea) have been shown to help EU exports grow and ensure a good share of world exports.

## Why now?

In line with tradition, shortly after the installation of the new Juncker Commission in late 2014, an update of the EU's trade policy was announced by the current Trade Commissioner, Cecilia Malmström. The controversies and close interest taken by civil society and the European Parliament (EP) in the EU's pending negotiations with the United States on the Trade and Investment Partnership Agreement (TTIP) in particular have significantly influenced this exercise, and the new policy clearly seeks to address growing concerns of the general public on transparency and a perceived threat to certain societal values. Unsurprisingly, the new policy also seeks to firmly support further globalization of business, the increased importance of services vs. goods trade, and the fast growth of e-commerce. In addition, the EU wanted to do more to ensure that FTAs offer real opportunities for small and medium-sized enterprises (SMEs), and not just larger companies that tend to have more resources to make use of FTAs. Under the "trade for all" motto, the Commission also wants to do more to explain the opportunities provided by the various agreements.

## The EU will continue shifting focus away from goods trade to enabling services trade

Although EU FTAs have long stopped focusing mostly on tariff preferences for goods, the aim is to further increase efforts to remove non-tariff barriers and increase trade in services. Technology has made the cross-border provision of services much easier, and manufacturing operations heavily depend on all kinds of services as well (e.g., training, transport, logistics, insurance, telecoms). The EU wants to place more emphasis on the need for mobility (e.g., of experts to install or maintain exported goods, senior managers, and other service providers) and the recognition of professional qualifications. The pending international negotiations with other World Trade Organisation (WTO) countries on the plurilateral Trade in Services Agreement (TiSA) and the Environmental Goods Agreement (EGA) are also seen by the Commission as stepping stones to further liberalization in this area, in recognition of the enabling role for trade in goods as

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<sup>1</sup> [http://trade.ec.europa.eu/doclib/docs/2015/october/tradoc\\_153846.pdf](http://trade.ec.europa.eu/doclib/docs/2015/october/tradoc_153846.pdf)

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well. At the same time, the EU reiterates that any agreement it negotiates will never require EU Member States to reduce the level of any public services such as water, education, health and social services.

## **A wider range of issues will systematically be addressed in trade negotiations**

E-commerce is seen as a promising area for more opportunities for SMEs to expand their markets, so the EU's trade policy must facilitate this type of trade. Also, in today's digitalized world, FTAs must find a balance between ensuring smooth data flows (and tackling unjustified data localization and data storage requirements) while ensuring appropriate protection of data privacy. In future EU FTAs, more attention will also be given to ensuring access for EU companies to public procurement markets, and ensuring fair competition (including by state-owned enterprises).

## **Boosting investment and investment protection**

At the same time, the EU wants to integrate investment and investment protection provisions in its broader trade agreements, where investment agreements have so far tended to be negotiated separately. In light of the EU's difficulties in obtaining acceptance for investor-state dispute settlement mechanisms in the context of negotiations for bilateral agreements, the EU is striving for provisions that will avoid actions which could somehow undermine a government's right to regulate or push down certain standards. The ultimate goal – as also widely publicized in the context of the TTIP discussions – is to create a new international public Investment Court System to handle such disputes, including both a first instance and an appeal level.

## **Making trade in goods/services easier...**

The EU wants to continue to make the trade of goods easier by simplifying origin rules (e.g., by accelerating discussions within the framework of the Pan-Euro-Med Regional Convention) and allowing more cumulation of origin, and by simplifying customs procedures, increasing customs cooperation with third countries, and encouraging trusted trader programmes. At the same time, it will continue to push for the removal of non-tariff barriers and more regulatory cooperation (ideally at the international rather than bilateral level), in particular to make it easier for SMEs to enter new export markets by avoiding the need to adapt their products to the export market's rules.

## **...but also more sustainable**

While expanding trade to achieve EU growth and jobs is the major driver of the EU's trade and investment policy, the EU wants to ensure that in doing so, there is no "downward" regulation on consumer protection. It wants to place equal emphasis on EU values relating to labour, environmental standards, and human rights, which it wants to be included in a dedicated "sustainable development" chapter in all its trade and investment agreements. In addition, the Commission will review its Generalised Scheme of Preference (GSP) by 2018 to ensure improved implementation of certain core international standards under the GSP+ scheme, and the pending review of the EU's dual-use export controls will likely see the introduction of a human rights criterion. In addition, the pending initiatives on conflict minerals and illegal logging demonstrate the EU's sustainable trade goal, as does its involvement in the EGA negotiations. The EU further wants to include anti-corruption provisions in all its FTAs (as it already does under the GSP+ scheme).

## **Access to raw materials and energy is a key new challenge**

In order to guarantee that EU producers have access to key input materials and energy for their production process and global competitiveness, the EU wants to ensure that all FTAs include a dedicated chapter with provisions to avoid disruptions, and promote energy efficiency and trade in renewables. The underlying concern is that the secure supply of these inputs can easily become problematic if one or more countries have the power to cut off such supplies, and the recognition that many raw materials needed in production processes are scarce commodities.

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## EU focus will be on realistic WTO initiatives and certain priority bilateral relationships...<sup>2</sup>

While the EU reiterates the importance of the WTO as the key forum for trade negotiations, it has clearly moved away from a “single undertaking” approach<sup>3</sup> by announcing that it will seek more issues-based negotiations at the multilateral level and limited plurilateral initiatives - ultimately open to all WTO countries, however - to achieve gradual improvements to international trade rules. But the EU’s focus will be on reaching agreements with key partner countries, notably the United States and Japan, and – as regards investment only at this stage – with China. It hopes to formally submit the agreement negotiated with Canada to the Council and EP as early as possible in 2016. The Commission also intends to seek negotiating mandates for FTA talks with Australia and New Zealand, and will explore the possibility of negotiating an investment agreement with Taiwan and Hong Kong (building on the discussions with China). The EU also remains committed to resuming the pending negotiations with Malaysia, Thailand, India, ASEAN, Mercosur and the Gulf Cooperation Council, and to opening FTA talks with the Philippines and Indonesia “when the conditions are right”, and hopes to conclude the investment agreement talks with Myanmar. In Latin America, the EU intends to develop soft law principles on investment (as a first step) with unnamed key countries where the EU has significant investment stocks. Deepening trade/investment relations with Iran is stated as a longer term goal. The EU’s relationship with Russia is called “challenging” and the Commission states that, while the EU’s strategic aim is to achieve closer economic ties, this will depend primarily on Russia’s domestic and foreign policy.

## ...but the potential impact on the “rest of the world” will not be ignored

To help EU businesses and workers adjust to the effects of new agreements, the Commission will use and improve the efficiency of supportive programmes such as the EU’s Structural and Investment Fund and the European Globalisation Adjustment Fund. To address concerns of third countries on the possible effects of its bilateral agreements, the Commission wants to make its FTAs and customs agreements more open, so that third countries could join such agreements if they meet certain criteria. It cites the FTA it negotiated originally with Colombia and Peru which will be extended to Ecuador as an example, and indicates that a similar approach is envisaged for TTIP and the FTAs with countries of the Asia-Pacific region. In addition, it wishes to continue promoting regional integration by simplifying origin rules and allowing extended cumulation for countries with which both the EU and its FTA partners have FTAs in place. The EU also intends to better address the impact of its FTAs on least developed countries, including in review of the GSP scheme.

## The EU will tackle unfair trading practices

Although the Commission states that there is “no advantage to be gained from resorting to protectionist measures”, it reiterates that it will make use of dispute settlement mechanisms (of the WTO and/or under FTAs) and trade defence measures where needed, while applying procedures rigorously and taking EU interests into account before doing so. The Commission also notes its determination to tackle increasing circumvention of such measures. To protect innovation and high-quality products, it will also reinforce the protection of intellectual property rights, with more focus on enforcement of rules and procedures agreed in this area.

## How will this all impact existing agreements?

The EU will seek negotiating mandates to update its existing agreements with Mexico and Chile, and to update its customs union agreement with Turkey to include services and public procurement. It will also aim to review the FTA with South Korea to include an investment chapter. In Africa, the EU wants to increase efforts to help countries carry out domestic reforms and achieve regional integration, and will consider supplementing the three existing Economic Partnership Agreements with provisions on services and investment. The EU is

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<sup>2</sup> Many existing FTAs and trade relationships will gradually be updated as well to reflect the new policy objectives (as discussed later in this Alert).

<sup>3</sup> i.e., nothing is agreed until everything is agreed.

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also working on deepening its trade relations through pending negotiations on new agreements with Morocco and Tunisia, and is exploring doing so with Jordan as well.

## A word on transparency

One of the key drivers of the EU's new trade policy is to make it more transparent. The Commission wants to use the more open approach it has been forced to take on the TTIP negotiations in all other negotiations. Concretely, it will encourage the Council to disclose negotiating mandates, publish draft chapters submitted to its negotiating partner, and reveal finalised texts earlier (even before the so-called "legal scrubbing"). It will also step up its efforts to promote a fact-based debate within the Member States and enhance its dialogue with civil society. Significantly, the EU also wants to do more to show the impact of an FTA after it has become applicable. In the area of trade defence, the Commission promises to make non-confidential versions of complaints and review requests more available on an improved, dedicated website, starting in the first half of 2016.

## What next?

In the coming months, the Commission will explain and discuss its new policy with the Council, the EP and civil society. Some of the ideas are already being implemented (e.g., in the pending dual-use export controls review, and with more transparency in negotiations), but other proposals will require legislative changes, i.e., buy-in from the EP and Council. The new policy will as a result only gradually make its way into concrete initiatives and agreements.

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