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REPORT FROM THE COMMISSION TO THE EUROPEAN COUNCIL

Trade and Investment Barriers Report 2013

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Trade and Investment Barriers Report 2013

INTRODUCTION

In 2012, the Commission presented its second Trade and Investment Barriers Report (TIBR) to the European Council. The report, as the first one, implemented a mandate given in the Europe 2020 Strategy[1] which was subsequently taken up in the Commission's Communication "*Trade, Growth and World Affairs*"[2]. This Communication committed to "*produce from 2011 onwards an annual trade and investment barriers report for the Spring European Council as our key instrument to monitor trade barriers and protectionist measures and trigger appropriate enforcement action*".

The report is meant to highlight a selection of key barriers faced by European Union (EU) companies, and more generally to raise awareness on the importance of addressing trade obstacles in such way that companies can fully reap the benefits of the global market in accordance not only with what has been negotiated with the EU's trading partners at the multilateral or bilateral level, but also with the commitments taken in other fora to foster free trade, e.g. in the context of G20 meetings.

In view of protracted economic stagnation in the EU, this third report is all the more important as a pillar of our market access strategy and as a complement to the EU's ambitious negotiating agenda. As pointed out in the Commission Staff Working Document on external sources of growth[3], the contribution of external demand to economic development is bound to increase in the future, as 90% of global economic growth is expected to be generated outside the EU by 2015. Moreover, due to the generalisation of interdependent regional and global supply chains, the EU must confirm its prominent role as a key value-provider on a global scale be it in manufacturing, R&D, design, logistics, etc. In order to fully consolidate this potential, stronger links with the new global centres of growth – that have been largely covered in the 2012 edition of the TIBR – are therefore crucial in ensuring sustainable economic recovery in the EU.

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[1] "*Starting in 2011 and then annually before the Spring European Council, a trade and investment barriers report identifying ways to improve market access and regulatory environment for EU companies*" in Europe 2020, A European strategy for smart, sustainable and inclusive growth, ec.europa.eu/research/era/docs/en/investing-in-research-european-commission-europe-2020-2010.pdf

[2] Trade, Growth and World Affairs, COM (2010) 612, 9.11.2010., eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2010:0612:FIN:EN:PDF trade.ec.europa.eu/doclib/docs/2010/november/tradoc_146955.pdf

[3] Commission Staff Working Document on external sources of growth, Progress report on EU trade and investment relationships with key economic partners, 2012, trade.ec.europa.eu/doclib/docs/2012/july/tradoc_149807.pdf

To this end, this third edition of the TIBR (2013) provides an account of the progress achieved on those barriers identified in previous editions of the TIBR (2011 and 2012) which continue to be of concern to EU exporters and could not be fully solved to date. Furthermore, the TIBR 2013 also highlights a number of new barriers which appeared in 2012 and deserve concerted action and political prioritisation both by the Commission and the Member States in certain key markets.

The focus of this report on some of the EU's strategic partners does obviously not mean that barriers in other markets should be neglected. On the contrary, the Commission is actively engaging with a far broader group of trading partners to improve market access conditions for EU companies still confronted with a considerable number of trade obstacles.

Monitoring of trade barriers

The TIBR is one of the reporting exercises which assess, monitor and address trade barriers faced by EU exporters. These reporting exercises pursue different objectives, although they mechanically overlap to a certain extent:

First, and as mentioned above, the TIBR highlights a selection of key barriers faced by EU companies in a limited number of markets. It aims at raising awareness at the political level of the importance of tackling these barriers as a priority.

Second, the monitoring of potentially trade restrictive measures[4] (ninth report published in June 2012) is a broader exercise to identify measures adopted in the context of the financial and economic crisis. This exercise demonstrated that protectionism was on the rise in the markets of many of our partners notably through the implementation in several emerging economies of industrialisation policies often based on local content requirements and import substitution practices.

Third, in the context of the Market Access Strategy, and starting in 2009 further to specific request by the Council, DG TRADE has also been conducting a more comprehensive "Key barriers exercise". It resulted in an overall selection of 220 barriers in 32 markets. The purpose is to prioritise among trade issues, by establishing with input from Member States and business priority lists not exceeding 10 barriers per country, in order to focus on the most economically and legally relevant ones. The list is regularly reviewed and accompanied by hymsheets for Member States use in order to ensure that concerted messages are conveyed. This exercise obviously includes barriers in the six countries addressed in the TIBR report, as well as barriers in Ukraine, Indonesia, Mexico, Thailand or Israel for instance.

As in the 2012 edition, this report focuses on market access barriers in some of the EU's strategic partners, i.e. China, India, Japan, Brazil[5], Russia and the United States (US), for three main reasons. First, these selected partners represent the EU's main exports markets, in terms of goods (40.9% of goods exports in 2010), services (40.0%) and foreign direct

[4] trade.ec.europa.eu/doclib/docs/2012/june/tradoc_149526.pdf

[5] And in some cases Argentina / Mercosur

investments (41.1% of FDI outward stock): the US is the EU's 1st export market, China 2nd, Russia 4th, Japan 6th, India 8th and Brazil 9th.

	Share of EU exports of goods (2010)	Share of EU exports of services (2010)	Share of EU FDI - outward stock (2010)
US	*18.0%*	*23.9%*	*28.8%*
China	*8.4%*	*4.2%*	*1.8%*
Russia	*6.4%*	*4.3%*	*2.9%*
Japan	*3.3%*	*3.7%*	*2.3%*
India	*2.6%*	*2.0%*	*0.8%*
Brazil	*2.3%*	*1.8%*	*4.5%*
Other	*59.1%*	*60.0%*	*58.9%*
Total (bn€)	**1349.6**	**531.9**	**4152.0**

Second, among its ten largest export markets, the EU already has preferential trade relations with the other partners: Norway and Switzerland have access to the internal market respectively through the European Economic Area and specific agreements; the customs unions with Turkey; and since 2011 the Free Trade Agreement (FTA) with South Korea. Trade relations with these four partners are therefore facilitated by specific trade instruments that provide additional channels to address trade barriers, as opposed to the six key partners identified in this report.

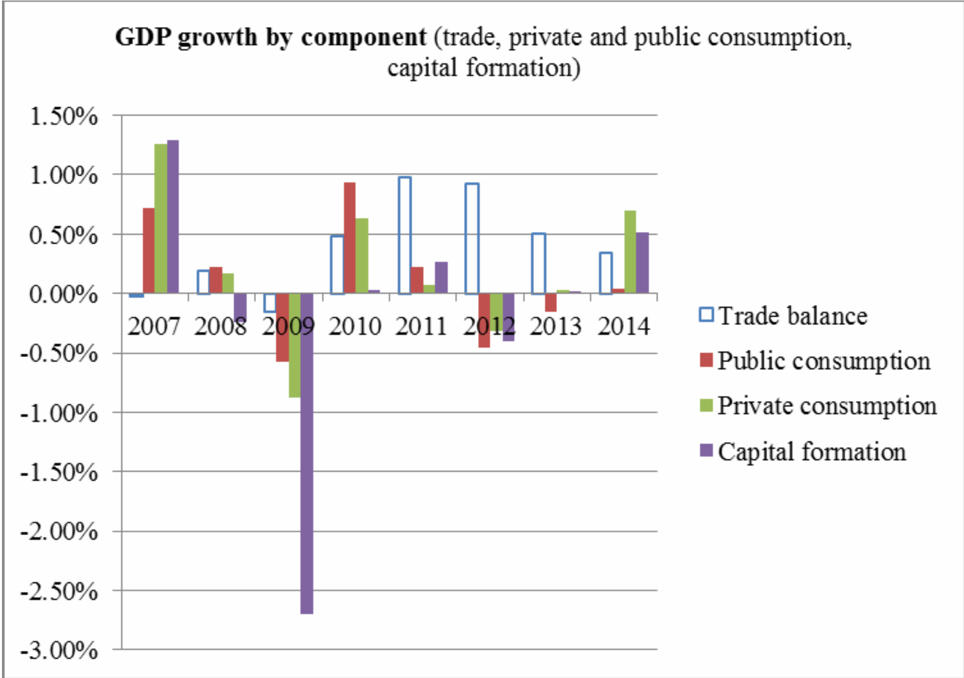
EU exports of goods to the rest of the world (2010)		
	bn€	%
US	242.3	*18.0%*
China	113.3	*8.4%*
Switzerland	105.4	*7.8%*
Russia	86.1	*6.4%*
Turkey	61.2	*4.5%*
Japan	43.9	*3.3%*
Norway	41.9	*3.1%*
India	34.8	*2.6%*
Brazil	31.4	*2.3%*
South Korea	28.0	*2.1%*
Other	561.3	*41.6%*
Total	**1349.6**	***100.0%***

Finally, these strategic partners represent markets with strong growth potential for EU trade and investment. Emerging countries such as Brazil, India, China and to a certain extent Russia, i.e. the so-called BRICs countries, will indeed continue to provide an increasing share of future opportunities for EU businesses. Over the 2007-2011 period, China's GDP growth averaged 9.3%, India's 6.9%, Russia's 4.3% and Brazil's 2.7%, according to the World Bank[6]. Conversely the EU's GDP declined by 0.2% on average over the period and may stall over the next three years, with 0.4% of annual growth on average over the 2012-2014 period according to the Commission's 2012 autumn forecasts[7]. This implies that exports to these countries is expected to play a pivotal role in driving the EU's future exports growth which is estimated to

[6] data.worldbank.org/indicator/NY.GDP.MKTP.KD.ZG/countries?display=default

[7] ec.europa.eu/economy_finance/publications/european_economy/2012/pdf/ee-2012-7_en.pdf

average 3.6% over the 2012-2014 period. Trade balance has not only mitigated the effects of the crisis since 2010, it is also foreseen as the main growth driver in 2013, as it was in 2011 and 2012.



However, trade with the strategic partners identified in this report, although very significant, is far from having delivered its full potential, partly because these markets are growing extremely quickly and will most likely continue to do so, but mostly because they are not sufficiently open to EU exports. The fact that this trend has been confirmed in 2012 and that the situation has further deteriorated in a number of these key markets justifies this year's renewed focus on this limited number of partners.

All too often, EU companies still face considerable barriers entering these foreign markets. Obstacles usually take the form of non-tariff barriers (NTBs), such as technical regulations and conformity assessment procedures, burdensome customs procedures or weak enforcement of intellectual property rights (IPR). The EU has been effectively addressing these matters in the framework of the Market Access Partnership. Considering, however, that these barriers often proliferate in areas where multilateral trade disciplines are still rather incomplete – such as in government procurement, and export restrictions – the further development of disciplines going beyond the current WTO rulebook through our trade negotiations agenda remains an overarching priority.

Over the past year and in parallel to its enforcement efforts, the EU has therefore proactively pursued its ambitious negotiating agenda. The FTA with Korea entered into force on 1 July 2011 and has already started to provide significant economic benefits to EU companies and consumers. Bilateral trade negotiations were concluded with Central America, along with Peru and Colombia and these agreements received the consent of the European Parliament in December 2012. Negotiations for a Deep and Comprehensive Free Trade Agreement (DCFTA) including far-reaching disciplines on technical and regulatory issues have been concluded with Ukraine and in December 2012 negotiations on an FTA with Singapore were completed. Trade talks with Canada are in their final phase. Meanwhile, negotiations are still

on-going with India, Mercosur, Malaysia, Armenia, Georgia and Moldova, and have been launched with Vietnam in 2012. In December 2011, the Council authorised launch of DCFTA negotiations with Morocco. With regard to Japan, further to a fruitful scoping exercise including specific provisions related to NTBs, the Council authorised the launch of FTA negotiations, in November 2012. With regard to the US, the EU's first trading partner, preparations are now underway to launch FTA negotiations. Indeed the High Level Working Group on Jobs and Growth has now delivered its final report, recommending negotiations on a comprehensive Transatlantic Trade and Investment Partnership.

Preparatory talks have started with Tunisia, Jordan, Egypt and Morocco with a view to launch DCFTA negotiations once the countries are ready. Finally, discussions are also being held with Indonesia, Thailand and the Philippines in view of possible trade talks that would complement this challenging FTA agenda in the ASEAN region. Russia's accession to the WTO, an important trade event in 2012, has opened new perspectives for the on-going negotiation of a New Agreement designed to replace the Partnership and Cooperation Agreement (PCA). Further to discussions at the EU-China summit, preparatory work is on-going with a view to launch talks on a stand-alone investment agreement. Finally, with regard to the two largest economies in the world, the US and China, the EU is engaged in high-level dialogues with both dealing, *inter alia*, with market access barriers.

Trade negotiations and enforcement efforts must go hand in hand to guarantee the EU's insertion in global value chains and ensure stable and predictable framework conditions for business activities worldwide. Without an assertive enforcement strategy, implemented simultaneously through trade diplomacy, dispute settlement and negotiations, and implying action at different levels including at the highest political level notably in summits with third countries, the EU cannot guarantee the level playing field it owes to its business community on the global market. The Commission, Member States, and industry must continue to work together in accordance with the Market Access Strategy to ensure that barriers in third countries are removed, and that attempts to apply new barriers are challenged. This way, EU companies will benefit from better access to rapidly expanding foreign markets and effectively contribute to the EU's economic recovery.

This third edition of the TIBR is structured as follows: Section 1 describes progress achieved with regard to barriers identified in the last report and options for further action where progress is not yet satisfactory. Section 2 identifies a number of other barriers for priority action in the future. Section 3 reflects on how to combine available tools to tackle trade barriers in the most efficient manner.

1. 2012 BARRIERS: WHAT PROGRESS WAS ACHIEVED?

The TIBR 2012 identified 25 barriers in six trade partners / regions (US, China, Japan, India, Russia and Brazil / Argentina). These barriers were considered to be of major importance for EU business given the potential economic or systemic impact and the strategic importance of the countries where those barriers had emerged. These market access issues have been elevated to key priorities in the EU's bilateral trade relations with the countries concerned. This means that the Commission has systematically raised them in all bilateral meetings, often

up to the highest political level (e.g. summits). In addition, it should also be mentioned that Russia's WTO accession on 22 August 2012 has triggered a potential for solving many longstanding market access issues, although new barriers have been erected in the course of this process.

This section will report on the progress achieved in the course of 2012. In some cases, progress has translated into the full removal of a barrier. In other cases, some improvement has been achieved, while part of the barrier remains. For a few barriers, the situation has deteriorated as compared to last year notwithstanding the numerous actions undertaken. The analysis in this section will be carried out on these three categories according to the degree of progress achieved.

a. Barriers where substantial progress was achieved

For **China**, positive developments can be reported on the EU's action to address export restrictions on **raw materials**. A WTO dispute settlement case was initiated on 23 June 2009 by the EU and US, followed by Mexico. On 31 January 2012, the Appellate Body report upheld all the key claims raised by the EU, and confirmed the findings made by the panel in July 2011. It confirmed that China's export restrictions on several industrial raw materials were in breach of China's WTO commitments and that the restrictions could not be justified for reasons of environmental protection or conservation policy. This was a very significant economic and systemic success, enforcing the rules that China has agreed to abide with when acceding to the WTO. China had been granted until 31 December 2012 for implementation and has announced at the end of the year implementation measures which remove the export duties as well as the quotas. However, China subjects almost all products previously subject to a quota to export license requirements. The Commission will continue to monitor closely the situation and the development of exports, and in particular the newly introduced export licensing requirements.

On 13 March 2012, a second case was launched against **China**, as the EU, US and Japan requested consultations on China's export restrictions of rare earths, tungsten and molybdenum. A panel has been set-up and a ruling is expected towards the end of 2013.

With regard to **India**, the TIBR reported last year that progress had been achieved against quantitative restrictions introduced in 2010 on the export of **cotton**, namely on cotton yarn and raw cotton. In August 2011, the Indian government had indeed lifted all remaining quantitative restrictions on raw cotton. However, this progress was threatened immediately after the TIBR publication in 2012 since a new partial ban was introduced on 5 March 2012 prior to a formal removal on 4 May. Following bilateral and sectoral talks with the Indian Government, the EU obtained commitments from the Indian side not to introduce export restrictions in the next season.

In **Japan**, some progress had been reported in last year's TIBR. Following the EU-Japan summit in May 2011, a scoping exercise was launched with a view to exploring the range and level of ambition of future FTA negotiations. In 2012, a comprehensive list of NTBs was discussed in the context of this scoping exercise. On some of these identified problems the scoping exercise has already produced results, and the following NTBs included in the list have now been solved: organic food, liquor wholesale licensing, transparency, expansion of

Japan-EU mutual recognition agreement on good manufacturing practices on pharmaceuticals to 12 new EU Member States, and designation of two food additives, while good progress have been made towards the resolution of issues related to pyrotechnic safety devices in the car sector and the predictability of pricing of pharmaceuticals. Japan has also decided to lift the ban on import of beef from France and the Netherlands for animals of less than 30 months. The applications from other Member States are now being examined. It is expected that the effective opening would take place during spring 2013. In a number of other cases, such as radio equipment, medical devices, automotive or pharmaceuticals, further steps to address the EU's concerns should be taken by Japan before end of March 2013. For the remaining issues, the future FTA negotiations should enable further progress to be made.

With the WTO accession of **Russia** on 22 August 2012, the Russian import tariffs were bound for the first time. The main impact was the removal of the tariff hikes adopted in 2008 during the crisis.

b. Barriers where some progress was achieved

The TIBR 2011 had indicated that the Commission's persistent action had paid off for one of the most systemic issues on the list of bilateral trade irritants with **China**. Important progress was indeed achieved in the first half of 2011 on the so-called "**indigenous innovation**" policy which is based on the principle of providing access to public procurement only for innovative products whose intellectual property is of Chinese origin.

The Ministry of Finance had repealed 3 basic regulations early July 2011, and political announcements were made at the highest level. However, there is still evidence that pieces of legislation that call for the synchronization of technology standards with indigenous innovation developments are being published at the regional level (e.g. Guangdong government regulation which came into force in March 2012). Similarly, elements of indigenous innovation continue to reappear under one form or another, whether on information security standards developed in support of the Multi-Level Protection System (MLPS), or new government procurement catalogues, such as cars for officials or party leaders, or the new draft catalogue by the National Development and Reform Commission (NDRC) on strategic emerging industries. Progress therefore remains fragile: decoupling between indigenous innovation policy and public procurement does not seem to be a fully established policy, and detailed monitoring remains required, especially as recent legislation appears to be increasingly sophisticated.

In the area of standardisation and technical regulation, **Chinese** barriers in the **information security** sector that were identified as a priority (e.g. Office of the State Commercial Cryptography Administration [OSCCA] regulation on commercial encryption and the MLPS) continued to cause concern. Some limited progress[8] has been made but difficulties remain on

[8] A China Compulsory Certification for Information Security Products (CC-IS) was granted to a foreign-owned enterprise (FOE) in May 2012, on the basis of an Encryption Testing licence from OSCCA. This was the first time an Encryption Testing license had been granted by OSCCA to a FOE. However, certification was contingent on a need for the chip used on the smart card to be produced by a Chinese semiconductor manufacturer with embedded Chinese national encryption algorithms (Source: European Union Chamber in China Position Paper 2012).

obtaining OSCCA certification for products with encryption, and implementation of the MLPS continues.

Other issues of concern are **Chinese export financing** conditions and **subsidies**. China uses export credits which raise questions with respect to the OECD / WTO disciplines, in order to boost national champions' exports in capital-intensive, often high-tech, sectors. Some progress was achieved in 2012 since China has signalled its willingness in principle to enter into international negotiations regarding export financing conditions. A first meeting of an international working group was held in November 2012, and China has offered to host the next session in May 2013. The negotiation process has not had an easy start however. In order to allow the participants in the international working group to discuss export credit issues further at an informal level the EU will host in the meantime a technical meeting in March 2013.

Last year, the TIBR mentioned that no substantial progress had been achieved in **India** on opening to **foreign investment** certain sectors, such as retail, legal services, accountancy, insurance, banking and financial services. Equally, concerns persisted over the reform of the postal sector and potential negative impacts on express delivery services. However, in 2012, the government appears to have embarked on an economic reform agenda. Some concrete results of this process are opening of retail (single and multi-brand) to FDI and the decision to increase FDI in airlines. Other reforms being considered by Parliament are banking reforms and opening of insurance to FDI, both of which would confirm the intention of government to continue on the path of economic reform.

Also in **India,** some limited progress was achieved on **telecoms security clearance requirements**. First, concerning the security requirements introduced in 2010 for telecommunication equipment: these were finally modified in order to eliminate the most burdensome conditions in particular removal of the initial requirement to escrow source codes. There are still concerns regarding the requirement to certify equipment deemed of security concerns in India, contrary to international practices which work on mutual recognition criteria. India has also been implementing a certification regime by the Bureau of Indian Standards (BIS) on imported and **exported tyres** for a long time. In September 2012, India removed one of the most burdensome elements of the scheme, notably the prohibition of selling IS-marked (Indian Standard) tyres outside the Indian market. This had been a long standing request of the EU industry. However, a number of problems on the certification of tyres remain (fees charged per tyre, lengthy procedures, factory inspections, and required bank guarantees, etc.). Regarding BIS certification of **steel products**, India has postponed the entry into force of the certification requirements for some products until March 2013 (previously September 2012). However, the certification requirements remain disproportionate and not in line with international practices in this area (factory inspections, long deadlines, excessive testing, fees). The certification regimes for both tyres and steel products have been notified by India under the WTO Agreement on Technical Barriers to Trade (TBT Agreement) and are regularly being discussed in the framework of the TBT Committee.

In the **US**, the progress reported in last year's TIBR has been confirmed. The TIBR had indicated that progress had been achieved as regards the "**100% scanning**" legislation. Indeed, as a result of a number of actions, including from the EU, the US Department of Homeland Security delayed the requirements for 100% container scanning that were

scheduled to take effect in July 2012, for two years. In their trade policy review, the US confirmed that the deadline for 100% scanning will not go into effect until 1 July 2014. The statutory requirement still applies but the deadline for implementation has been changed. The Secretary of Homeland Security has the authority to extend it again at that time but no decision on such a further extension has been reached yet.

Also in the US, while this legislation remains problematic as such, there had been some success with regard to the "**Buy American**" legislation. The stimulus package introduced during the financial crisis in 2009 which contained far-reaching "Buy American" provisions expired in September 2011 and was not prolonged.

On 25 January 2013, 8 months after the launch of the WTO dispute settlement consultations on trade-restrictive measures, **Argentina** repealed the non-automatic import licences. This is an important move and a result of EU's continuous efforts to bring Argentina into conformity with its WTO obligations, and an indication that the WTO dispute settlement mechanism serves its purpose. However, it does not address the entire set of trade-restrictive measures in force in Argentina. Accordingly, the EU has requested on 28 January 2013 a WTO panel to seek removal of two other illegal measures (see next section).

c. Barriers where no progress was achieved in 2012

In spite of action undertaken by the EU during 2012, including in some cases addressing issues at the highest political level, no significant progress could be achieved on a number of barriers which will remain on the list of priorities for 2013.

Investment continues to be a crucial area in bilateral relations with **China**, given the vast potential offered by this country. Nevertheless, investment barriers persist and the picture has barely improved over the past year. The Foreign Investment Catalogue that was revised at the end of 2011 was disappointing in the sense that it indicated liberalisation in only a limited number of areas, while in some other areas market access was even further restricted. An example of deterioration is foreign investment in "components manufacturing" for the automotive industry that had been legally "unrestricted" until the adoption of the 2011 Foreign Investment Catalogue. The end 2011 catalogue now restricts investment for electric vehicle batteries to a maximum of 50%. Although at the EU-China summit of 20 September 2012 both sides reconfirmed willingness to prepare towards the launch of investment negotiations, preliminary contacts between the two administrations continue as internal preparations on both sides are still on-going. 2012 has seen numerous official statements on further opening to investments, particularly in the area of services. It remains to be seen whether this will be followed up in practice.

In the course of 2011, **China** adopted a **national security review mechanism for mergers and acquisitions** involving foreign investors, whereby China could block foreign acquisitions on the grounds of national security considerations. The final mechanism was adopted in September 2011. The problem is not the introduction of such a mechanism *per se* (such mechanisms also exist in certain EU Member States), but that it has a very broad application – both with regards to sectors and the definition of national security – extending far beyond agreed international (OECD) principles. No progress can be reported and we are aware of a recent case involving a joint venture with an EU company that is currently going through the

FDI screening mechanism where procedures and rules are still unclear and unpredictable, thus generating high uncertainty and discouraging potential investors.

India's new **policy framework on telecoms** is still in the process of being developed but some already published parts of the policy contain local content requirements (minimum 30%) which favour domestically produced equipment and electronic products in procurement procedures. Similar provisions exist in other industrial areas, such as renewable energy and the solar energy production. While India is not a party to the Government Procurement Agreement, these policy developments are rather worrying, in particular in the context of the current FTA negotiations, as they confirm India's intention to promote national champions in key industrial sectors where EU operators have significant stakes in India. These policies could therefore endanger the current business opportunities in India. As another worrisome development, it is also important to note that India plans to impose local content requirements in private procurement of telecom equipment in relation to security sensitive considerations, a project which is of high concern to the industry.

As reported last year some progress was achieved in 2011 with **India** on **Sanitary and phytosanitary** (SPS) issues. More specifically, improved prospects of alignment to international standards were obtained on bovine genetic material (semen). However, despite India's commitment to amend these import conditions, no significant real progress was seen in 2012. The Commission continues to follow-up closely with India on this issue but remains worried about the general approach of India of keeping unjustified and unnecessary SPS measures as a way to maintain its agri-food market closed to imports.

In 2011, no improvements had been obtained on the barriers identified for the **Mercosur** countries, where, on the contrary, we had observed the continuation of some protectionist tendencies notably with regard to the measures in place in Argentina and Brazil. For some of these barriers (e.g. restrictions in **maritime transport** and **export restrictions on raw materials** in Argentina and Brazil), the FTA negotiation was envisaged as the main framework for these issues to be discussed. Although negotiations with Mercosur have progressed very slowly, on 26 January 2013 the parties agreed at ministerial level that an exchange of offers will take place no later than the last quarter of 2013.

Overall, **import restricting measures** are increasing. Argentina's policy on re-industrialisation and import substitution is on-going and discriminates imports. In February 2012, Argentina implemented a new single electronic window for all imports with an obligation of sworn prior importer declarations on all imports, subject to discretionary approvals of various State Agencies. This adds to already serious delays of imports in many sectors. In April 2012, this system was extended to the services sector. Foreign companies are also increasingly affected by restrictions of transferring foreign currencies, dividends and royalties. In addition, importers have to respect import balancing requirements. These measures are at odds, in particular with the prohibition to institute quantitative restrictions as well as the obligation of non-discrimination and national treatment principle under the GATT 1994 and the rules of the Agreement on Import Licensing Procedures. On 25 May 2012, the EU requested WTO dispute settlement consultations on non-automatic licenses (which were repealed in January 2013 – see above), sworn prior importer declarations and import balancing requirements but the consultations of July brought no results. On 6 December 2012 the EU asked the WTO to rule over the legality of Argentina's trade-restrictive measures and

to establish a panel. The US and Japan have requested the establishment of a panel on the same day on the same measures.

Argentina also maintained restrictions in the **reinsurance services sector**. In February 2011, the Argentine insurance regulator (*Superintendencia de Seguros de la Nacion* or SSN) issued a resolution modifying the regulatory framework for reinsurance. Among its main provisions, the new regulation restricts market access by only authorising national companies or locally-established branches of foreign companies to provide reinsurance services in the country. No progress has been achieved.

The situation did not improve as regards access to **government procurement** in **Brazil**. In 2010, Brazil introduced a 25% horizontal preference margin in its national public procurement law, which was immediately applied to the Information and communications technology sector. No progress has been made in 2012.

Brazil also tightened its procedures for imports of **textiles and clothing** by means of stricter customs controls since the last quarter of 2011. Textiles and clothing imports are passing through the grey and red customs procedures. This means that goods are subject to physical inspection and samples can be subject to laboratory tests. No progress can be reported.

2. OTHER SIGNIFICANT BARRIERS INCLUDING PRIORITIES FOR THIS YEAR'S TIBR

In addition to the barriers identified as unsolved in the 2012 TIBR, a number of new market access barriers that have emerged this year have been included in the list of priorities for enforcement action.

a. New barriers

The 2012 TIBR reported that in September 2011, **Brazil** had increased the **tax on industrial products (IPI)** on sales of automotive vehicles and trucks that do not meet certain conditions of local production. The temporary IPI rules of 2011 were replaced by new rules in October 2012 for the period 2013-2017, with further conditions and requirements (the so-called INOVAR-AUTO support programme). Local manufacturers will be able to benefit from reductions on the IPI tax if they comply with conditions concerning, among other things, investment in R&D and performance of an increasing number of manufacturing steps in Brazil. Tax reductions are granted in the form of an incremental tax credit that is linked to the use of domestically produced car parts. Brazil has therefore prolonged, in essence, the discriminatory tax regime initially put in place in 2011. The 2013-2017 regime continues to provide incentives for local production to the detriment of imports.

The use of **indirect taxes** to afford protection to Brazilian manufacturers against imports is not limited to the automotive sector. Problematic measures have been reported also in other sectors, such as electronics and telecommunication equipment. There is concern about the possible extension of questionable tax practices to more areas, including with the aim of subsidising Brazilian exporting companies.

The problems detected with regard to internal taxation are further compounded by Brazil's decision, in October 2012, following a Mercosur summit decision, to **raise tariffs on a 100 lines** up to WTO bound rates as an exception to the common **Mercosur** tariff. While this is not in breach of WTO commitments, the decision does not conform to the G20's political commitment to refrain from taking import restricting measures. Many products are included, such as ceramic products and refractories, paper, viscose yarns, processed potatoes, chemicals, etc., many of which are of significant economic importance for the EU. An additional tariff hike of 100 lines as exception to the common Mercosur tariff is expected in early 2013.

On cars there is a trend in Brazil to implement own **domestic regulations** and own **certification procedures for car parts** whereas in the past UNECE certified and marked products were accepted in Brazil without additional testing, certification or marking. Ideally, Brazil should join the multilateral agreement on the adoption of uniform technical prescriptions and reciprocal recognition of approvals for cars and car parts (UNECE 1958 Agreement) but political will to do so is not secured. Alternatively ways to facilitate the acceptance by Brazil of conformity assessment procedures (testing and audits) carried out in the EU would help EU manufacturers.

The **local content requirements** trend mentioned in the case of Brazil and India as detailed above can also be observed in **China**, although local content requirements are generally not published in national or local Chinese regulations. That does not mean that they do not exist, but rather that they have become more sophisticated and hidden than in the past. In recent years, government procurement has also arisen as a major area of concern. Public procurement in China is mainly governed by two laws – the Government Procurement law (estimated market value CNY 1.13 trillion, and which does not apply to State owned enterprises [SOEs]) and the Bidding and Tendering Law (estimated market value CNY 8.3 trillion, and which applies to SOEs). In some cases local governments have stipulated local content requirements of 70%. In practice, the requirement of "domestic goods" in bidding documents and the lack of clear guidance on the definition of such "domestic goods" have prevented foreign invested companies established in China from having equal access to public procurement contracts.

In **Argentina**, the government has worryingly and actively pursued that certain sectors and industries increase **local content** in their production process in the last years. As a result, a wide range of sectors and industries are bound by local content requirements including: mining, automotives, footwear, agriculture, machinery, construction materials, medicines, chemicals and textiles. Services sectors are also highly concerned by the government policy: bank, insurance and media services are bound by heavy local content requirements.

In April 2012, in Argentina, the Government took the decision to expropriate 51% of YPF shares owned by the Spanish company **Repsol** and 51% of the shares in Repsol YPF GAS S.A., owned by the Spanish company Repsol Butano S.A.. First, this expropriation may be discriminatory as only one shareholders' shares in YPF were expropriated, not others. Second, contrary to the Spain-Argentina Bilateral Investment Treaty provisions, Argentina has not provided any compensation for the loss of the former owner.

India has recently notified the TBT Committee of its intention to impose a **compulsory registration scheme on electronic and information technology goods**. The system at stake

(e.g. obligation to test the products in Indian laboratories as of April 2013) establishes a conformity assessment procedure which is stricter than necessary as regards the risks non-conformity would create. In the EU, such products are considered low risk products and are therefore subject to suppliers' declaration of conformity. EU-India trade on these products can be significantly affected.

A further case of concern is China's **VAT exemption for domestically produced regional aircraft**. This exemption raises serious difficulties under the non-discrimination WTO obligations and hampers market access for foreign producers. The issue will be further pursued so that China brings itself into compliance with its international commitments.

b. Russia – new barriers upon WTO accession, in addition to longstanding market access issues

Russia has concluded its 18 year negotiation process towards WTO accession and formally acceded to the WTO on 22 August 2012. This accession is welcomed as a milestone in the improvement of trade relations with this country. However, in the run up of its accession Russia maintained or adopted a series of protectionist measures, the majority of which are not in compliance with Russia's WTO commitments.

As regards the **cars recycling fee for vehicles**, as from 1 September 2012, new framework legislation and its implementing decree came into force, establishing a recycling system with recycling fees for vehicles to be put in circulation. Domestic manufacturers can give a guarantee concerning the recycling of their vehicles instead of paying the fee, while foreign suppliers must pay the fee as a condition for the registration of the imported car – a clearly discriminatory measure. Bilateral negotiations are on-going with a view to finding a solution on this issue. If no results can be achieved, the EU will consider launching a WTO dispute settlement proceeding.

For a wide range of products including used vehicles, paper, car bodies and several others, Russia is applying since its WTO accession **import tariffs** that are higher than the committed (so-called bound) levels (e.g. by adding a specific duty in the form of a minimum import price to the existing *ad valorem* duty)[9]. These measures which are in breach of WTO commitments should be terminated rapidly. Bilateral negotiations are on-going. Some progress has been achieved toward the amendment of a number of tariff lines by 1 March 2013, but not as regards tariffs on car bodies.

On **TBT**, a number of technical regulations (e.g. alcoholic drinks, cars and textiles) have been recently prepared in the context of the Russia, Kazakhstan, Belarus Customs Union (CU). If these are approved in the current form they will amount to difficulties for EU operators to place their products on the Russian market. Russia has been asked to comply with its obligations under the WTO TBT Agreement by notifying draft technical regulations at an early appropriate stage in order to give an opportunity to other WTO Members to analyse and comment on them. Two notifications (on alcoholic drinks and cars) have been received so far

[9] It should be noted that a similar situation could occur in the case of Ukraine, which is in the process of revising certain of its applied rates. Besides, Ukraine has also initiated WTO procedure for revision of its bound rates for a large number of tariff lines, which could create an unfortunate precedent.

but Russia did not provide the opportunity for other WTO Members to comment on it as requested by the TBT Agreement. The problems with alcoholic drinks and textiles have been discussed extensively at bilateral and multilateral level.

Progress on many **SPS issues** was expected upon Russia's WTO accession, since Russia should normally ensure from day-one full compliance with the WTO SPS Agreement and the relevant international standards. It should ensure in particular that its SPS measures are based on the principles of transparency and scientific justification and should guarantee that they are proportionate and justified. However, new barriers were put in place, and some existing restrictions still remain. Since 20 March 2012, Russia has banned the import of live animals from the EU. The disproportionate ban on slaughter pigs was justified by Russian authorities because of irregularities found in the health certificates of certain shipments from the EU. EU food producers still face extremely long delays or refusal to be newly authorised for exports to Russia or the CU, and Member States are invited to request audits of their system. Bilateral negotiations are on-going but so far without any satisfactory results. Recently Russia started a series of new SPS measures concerning ban of chilled meat and potato seeds from Germany. The EU is worried by the systemic use of bans towards its product by Russia as soon as one problem arise, without taking into account the WTO principles of justified and proportionate actions for SPS measures.

With regard to **wood imports** from Russia, the EU-Russia bilateral agreement concerning two tariff-rate quotas (TRQs) for spruce and pine should have allowed EU operators to import these wood species at significantly reduced export duty rates as of September 2012. However, the issuance of export licences was seriously delayed and the EU had to raise the issue on several occasions to remove the most important obstacles. After months of delay, the issuance of export licences has finally started and imports of wood under the TRQs are now increasing significantly. The EU will ensure that this trend is not reversed in 2013.

c. Implementation of the FTA with South Korea

The FTA between the EU and South Korea has been provisionally applied since July 2011[10]. It is the first of a new generation FTA and is characterised by its far-reaching and comprehensive nature. It is also the EU's first trade deal with an East Asian country.

The main conclusions, based on a comparison of data for the first year of implementation of the agreement (July 2011 – June 2012) with an average of the data from the past four years (the "reference period") suggest that EU exports to South Korea increased by 37% overall. At the same time, EU imports from South Korea have only marginally increased (1%).

With regard to the remaining obstacles to trade, the agreement's institutional structure has enabled the Commission to raise important concerns such as, *inter alia*, South Korea's ban on EU beef imports as well as South Korea’s refusal to accept international UNECE marking on certain car parts. The Commission will continue its efforts to resolve these and other market

[10] The FTA is provisionally applied in the EU until all EU Member States have ratified it. The state of play of the ratification can be checked on the Council's Agreements website: www.consilium.europa.eu/policies/agreements/search-the-agreements-database?command=details&id=&lang=en&aid=2010036&doclang=EN

access problems to the benefit of the EU industry. Since the entry into force of the FTA, there have already been some positive developments e.g. in the automotive sector, with regard to tyre marking, acceptance of UNECE type-approval certificates for cars which belong to the same family, car part manufacturer registration, emissions measurement and electric vehicle standards.

d. Other barriers on the markets of selected strategic partners

In a number of cases, significant progress was observed in relation to a number of barriers which had not been reported in the 2012 TIBR.

On the long-standing issue of **Computer Reservation Systems** (CRS), **China** has, with the entering into force of the Interim Regulations, at last put a legal framework in place to enable foreign CRS providers to operate in the Chinese market. Difficulties in the implementation of this new framework still seem to exist, and the Commission will continue to closely monitor the situation in the light of China's WTO commitments.

Regarding **cosmetics** in **China**, difficulties still persist regarding the approval of new ingredients, and of products containing new ingredients. However, some progress can be reported on other cosmetics issues. For instance, during the bilateral talks with the EU on 25 October 2012, the State Food and Drug Administration (SFDA) confirmed that after extensive consultations with the industry and with trade partners, they had decided to postpone the intended legislation on reclassification of a considerable number of product categories from "non-special" to "special" products[11]. Such reclassification would have entailed significantly more burdensome requirements. Future plans will be considered in the context of the revision of the CHMR (China cosmetics basic regulation) which is planned for 2013-2014. China has indicated that they may consider moving away from a pre-market approval system to a notification regime system. However, it remains unclear whether this would be the case for all cosmetic products.

Regarding **Chinese CO2 / fuel efficiency regulations** the Ministry of Industry and Information Technology (MIIT) stated that plans for a uniform consumption target were shelved and that MIIT would use a corporate average system instead (as in the EU). However, MIIT also indicated that in calculating these averages it would not be possible to pool domestically produced fleet with imported fleet, which is problematic since imported vehicles tend to be the bigger, up-scale, and niche vehicles, which are often heavier and consume more. The inability to pool may make it difficult to reach the average target for the imported fleet.

Finally, **China** postponed the NDRC draft pricing policy on implantable medical devices which stipulated a price cap on advanced medical implants and also foresaw a complicated but discriminatory maximum price calculation between domestically produced and imported products. There is a risk that the measure is raised again after the leadership transition, but for the moment these pricing plans are not being pursued.

[11] WTO TBT notification G/TBT/N/CHN/887

The **US** has announced that in 2013 the longstanding final rule on **Bovine Spongiform Encephalopathy** (BSE) will be published and the **Classical Swine Fever** rule will enter into force. Besides, end 2012, the proposed notice for swine vesicular disease, which will recognise some Italian regions free of this disease, was published for public comments. The EU expects that soon after the publication of these rules, EU exports to the US of bovines, pigs and their products will resume. However, the EU remains worried by the extremely long delays in treating other SPS export applications submitted by the EU, e.g. apples, pears and bell peppers.

Brazil has announced that the **SPS** measures related to the imports of ruminant animals (e.g. bovines, ovines) and their products from the EU, related to Transmissible Spongiform Encephalopathies (TSE), could soon be aligned with the relevant international standard and allow trade. On the other hand, Brazil made no significant progress on executing their own calendar of visits to EU Member States. This continues to negatively and very seriously affect the exports from the EU, mostly of added-value products of animal origin.

3. HOW TO COMBINE AVAILABLE TOOLS TO TACKLE TRADE BARRIERS

This section aims to provide an overview on how to use the combination of the different tools at the EU's disposal.

a. Trade diplomacy

Trade diplomacy is an important element of the EU's external relations and conducted both at working level within EU institutions, in close cooperation with EU Delegations in the field, and Member States administrations, and as an exercise undertaken at the highest political level, for example during summits and bilateral contacts. The way the EU conducts its trade diplomacy and external economic relations reflects the call by the European Council for improved synergies between the EU and national levels, consistent with the provisions of the Treaties, for enhanced coordination between institutional actors, for better integration of all relevant instruments and policies, and for summit meetings with third countries to be used more effectively. Trade diplomacy is part of the EU's coherent approach on external action.

Trade diplomacy is usually the fastest way to tackle trade barriers as it does not require a specific context, as in the case of FTA negotiations, or a long and complex litigation strategy as in the case of trade disputes. Direct contacts with local authorities can be sufficient to highlight barriers, and point to the inconsistency of certain measures with WTO obligations.

In addition, such a way to address trade barriers is indeed a diplomatic tool, as its objective is precisely to solve issues, suggesting that no party has to lose while the other wins. This avoids the risk of escalation in the disputes and retaliatory measures, legal or not.

However, the efficiency of trade diplomacy depends on the possibility to convince the country concerned that it is in its own interest to address barriers at stake. This depends in particular on:

- the possibility to demonstrate convincingly that removing the barrier would create benefits for its consumers and companies, to an extent that would exceed losses for other companies in direct competition with the EU companies that suffer from the barrier.
- the EU's capacity to provide convincing alternative solutions, concrete proposals, ideally based on its own experience and the wealth of experience in its Member States and lessons-learnt. Regulatory cooperation or dialogues are a very useful tool to do so. Such cooperation should be fully integrated in and support the overall external economic agenda of the EU *vis-à-vis* a particular country, thereby complementing trade negotiations and facilitating market access[12].
- the possibility to bring the matter to Court: it can be successful if the threat of litigation create a sufficient deterrent to prompt the country to remove the barrier. In that sense, a credible and efficient dispute settlement process is crucial to deliver results on the trade diplomacy front.

This demonstrates that effectiveness of trade diplomacy is much higher when used in combination with other instruments, as the most practical tools can only deliver if they are backed by credible sanctions mechanisms.

b. Dispute settlement

In terms of **dispute settlement**, the EU has been among the most active WTO members over the past 17 years, since the creation of the Dispute Settlement Body (DSB) in 1995[13]. Over the last two years, the EU launched five new offensive disputes. The EU is currently challenging rules on local content, discretionary import licensing, export restrictions and the abuse of anti-dumping and countervailing duties imposed by third countries against EU exports.

Over the same period, the EU has gained significant victories in WTO dispute settlements: the EU won an important case against China's restrictions on the exportations of raw materials and ensured that EU spirits in the Philippines benefit from non-discriminatory treatment. The EU has also settled the long-standing dispute with the US on the "zeroing methodology" on anti-dumping. The broad litigation with the US on Large Civil Aircraft continues, and the EU has obtained important WTO rulings against US' illegal subsidies to Boeing.

To further strengthen the enforcement pillar of EU trade policy, the Commission has also recently proposed improved rules to enforce EU's rights under international trade agreements[14]. The objective is to allow the EU to react swiftly and efficiently in order to

[12] As detailed for instance in the Single market review in 2007 – ec.europa.eu/citizens_agenda/docs/sec_2007_1519_en.pdf

[13] Out of 452 disputes brought to the DSB as of November 2012, the EU has been involved in 87 offensive cases (and 73 defensive cases)[13], i.e. 19.2% of all cases, 66 of which against one of the six countries / region identified in this report (32 against the US, 4 against Brazil, 8 against Argentina, 10 against India, 6 against Japan, 6 against China, none against Russia so far), i.e. 75.9% of EU offensive cases.

[14] trade.ec.europa.eu/doclib/press/index.cfm?id=856

defend its rights. The Commission is proposing a Regulation to establish a clear and predictable framework for adopting implementing acts following international trade disputes that have a negative economic impact on the EU.

c. Effective use of WTO Committees

With regard to technical regulations and conformity assessment procedures, the EU is, along with the US, the most active WTO Member in the TBT and SPS Committees. TBT Committee meetings in Geneva are an effective tool for highlighting the EU's concerns with technical regulations introduced by other WTO Members, enhancing the transparency of such requirements, raising awareness and building alliances with other WTO Members affected. The March 2012 meeting of the TBT Committee witnessed discussion on 65 specific trade concerns – the highest number ever – of which the EU raised or supported 35.

The EU's pro-active approach is not limited to the TBT and SPS Committees and extends to all other WTO Committees. Import Licensing Procedures and Trade Related Investment Measures (TRIMS) Committees are the most relevant ones with regard to the trade barriers mentioned in this report.

d. FTA negotiations

Preferential trade agreement negotiations, and notably FTAs and DCFTA, but also WTO accession negotiations can be a useful instrument to address certain specific trade disruptive measures in third countries, in conjunction with the other instruments mentioned above. Among the six countries and regions discussed in this report, the EU is currently negotiating FTAs with two, namely India and Brazil / Argentina (as part of Mercosur) and will enter into negotiations with Japan soon and possibly with the US within the next few months. These negotiations, along with the New Agreement talks with Russia, can set a positive framework to address trade barriers, for a number of reasons:

First, in negotiations the EU's position as a key export destination provides it with an opportunity to extract concessions from third countries which have a strong incentive to negotiate with a 500 million consumer-strong integrated market.

Second, such agreements are precisely designed to address a large number of barriers simultaneously and where possible, to include stricter disciplines than existing international trade rules. For this reason, the EU aims at obtaining more through these discussions than from simple enforcement of existing rules.

Finally, new generation FTAs can facilitate trade disputes resolution as they include bilateral dispute settlement mechanisms, based on the WTO model. FTAs also set up a comprehensive structure of sectoral and thematic working groups and committees to ensure proper implementation of the agreement, and to prevent new barriers for being erected in the future.

However, as a market access tool, preferential trade agreements have also their limitations. For instance, there are one-off occasions: barriers which will not have been solved through the process, or which emerged afterwards, will have to be addressed *via* other channels. In addition, the time needed to negotiate and adopt FTAs does not always provide a good match

for much faster business cycles. Finally, the balance of concessions is difficult to find and often means that not all trade barriers can be addressed at the same time and specifically and some have to be given priority to reach an overall satisfactory agreement.

5. CONCLUSION

Trade is expected to drive most of the EU's economic growth for the years to come. It will also provide one of the most important tests for our continent's competitiveness on global markets *via* our industry's capacity to consolidate regional value chains and be an integral part of global ones. In this context, the Commission intends to further strengthen its partnership instruments under the Market Access Strategy to address trade and investment barriers worldwide to make sure the playing field is levelled for our economic potential to be fully unleashed. In order to make the collective trade diplomacy efforts conducted by the Commission, EU Delegations and Member States on the ground in third countries more effective, the Commission will in particular regularly review and update the list of key barriers in the markets of our main trading partners and provide Member States with *hymsheets* allowing them to convey concerted messages in their contacts with the authorities of the countries concerned. Trade diplomacy will benefit from optimising the use of all relevant instruments and policies, and of summit meetings with third countries and the EU's external relations across the board – the EEAS shall support these efforts and work towards greater consistency.

The EU remains the world's largest exporter, importer, foreign direct investor and recipient of foreign direct investment. It has managed to hold on a share close to 20% of total world exports[15] over the years in spite of the economic crisis and the dramatic changes that have shaped world trade over the last 30 years. Our massive manufacturing trade surplus of €281 billion – a figure that has increased fivefold since 2000 – has more than compensated for the increase in our energy bill over the same period. EU surplus in services has been multiplied by more than 20 in 10 years at €108 billion in 2011 and the EU's agricultural trade balance has shifted from a deficit of more than €3 billion in 2000 to a surplus of about €7 billion in 2011.

In support of this telling track record, the Commission together with the Member States will continue to step up its efforts to remove barriers in third countries through concerted action and by using in combination all means available to ensure fair market access. Besides trade diplomacy conducted from Brussels and on the ground, this includes using in an effective way WTO Committees, enforcing commitments taken under multilateral and bilateral agreements also *via* well-targeted dispute settlements, when necessary, when the EU's partners do not respect their international obligations, and taking best advantage of FTA negotiations to solve trade barriers in a systemic way.

[15] Trade in goods, oil and gas excluded, source UN-COMTRADE database