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REPORT FROM THE COMMISSION TO THE EUROPEAN COUNCIL

Trade and Investment Barriers Report 2015

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Trade and Investment Barriers Report 2015

1) Introduction

The 2015 Trade and Investment Barriers Report (TIBR) addresses a selection of key barriers faced by European Union (EU) companies on the markets of the **EU's six strategic economic partners**¹, i.e. **China, India, Japan, Mercosur (Brazil/Argentina), Russia** and the **United States (US)**. Its main objective is to raise awareness of the most significant trade restrictive barriers and reaffirm the importance of tackling such barriers in a focused and concerted way.

While the TIBR focuses on the '**priorities of the priorities**', the Commission also regularly publishes a 'report on potentially trade-restrictive measures' – or '**Protectionism Monitoring Report**' – which provides a more detailed overview of trade and investment barriers in a wider set of third countries². The TIBR and the 'Protectionism Monitoring Report' are thus complementary.

This fifth edition of the TIBR first provides an overview of ongoing EU trade and investment negotiations (part 2); it then takes stock of key trade and investment barriers maintained by the EU's strategic economic partners in 2014 (part 3); and concludes with a section (part 4) outlining the different strategies deployed by the EU to address these cases.

2) Creating trade and investment opportunities – ongoing EU negotiations

To create new trade and investment opportunities, the EU pursues a comprehensive negotiating agenda which has a multilateral, plurilateral and bilateral dimension. The dynamic created by the negotiating framework can also contribute to the resolution of longstanding trade barriers.

Regarding the EU's **multilateral** negotiating agenda, outstanding issues of the **WTO 'Bali Package'** – including notably those related to the Trade Facilitation Agreement – could recently be solved. This paves the way for a full implementation of this first global trade deal under the auspices of the WTO. At the **plurilateral** level, negotiations on a **Trade in Services Agreement (TiSA)** are progressing steadily. It should be possible to reach an agreement on the expansion of the **Information Technology Agreement (ITA)** product list

¹ As defined in the Commission Communication *Trade, Growth and World Affairs*, http://trade.ec.europa.eu/doclib/docs/2010/november/tradoc_146955.pdf

² The eleventh such report is available under http://trade.ec.europa.eu/doclib/docs/2014/november/tradoc_152872.pdf

shortly. Meanwhile, in July 2014 the EU and 13 other WTO Members launched negotiations to liberalise global trade in environmental goods. This plurilateral '**green goods initiative**' aims to remove barriers to trade and investment in goods, services and technologies that are contributing to improving our environment.

In parallel, the EU pushes on with its ambitious **bilateral** negotiation agenda with a view to strengthening its trade and investment position on a number of third country markets. In particular, negotiations with the **US** on a **Transatlantic Trade and Investment Partnership (TTIP)** are a key priority. A far-reaching and ambitious TTIP Agreement which is to include strong disciplines on regulatory cooperation and regulatory coherence will not only remove tariffs but also help reduce costs related to non-tariff barriers (NTBs).

In December 2014, the EU and **Japan** concluded their eighth session of technical talks to advance the EU-Japan FTA. With these negotiations, the EU seeks to address a number of concerns affecting EU business, notably tariffs, non-tariff barriers, and unsatisfactory access to the Japanese public procurement market.

At the 16th EU-China summit which took place in Beijing in November 2013, the EU and **China** launched negotiations on a comprehensive **Investment Agreement** which is expected to benefit both sides by ensuring that markets are open to investment in both directions.

In March 2014, the EU and **Myanmar/Burma** launched negotiations for an Investment Agreement.

The EU's FTA with **Singapore** was, for its most part, initialled in September 2013 although negotiations in the area of investment protection were only concluded in October 2014. The trade agreement with **Peru** and **Colombia** has been provisionally applied in Peru since 1 March 2013 and in Colombia since 1 August 2013. Negotiations were also concluded in July 2014 for the accession of **Ecuador** to the agreement with Colombia and Peru, while contacts are maintained to explore the possibility to integrate **Bolivia** into this trade deal.

On 26 September 2014, the Canada-EU summit in Ottawa marked the end of the negotiations of the **EU-Canada trade agreement (CETA)**. The agreement is expected to remove over 99% of all tariffs between the two economies and create sizeable new market access opportunities in services and investment.

On 27 June 2014, **Moldova** and **Georgia** signed Association Agreements with the EU which include Deep and Comprehensive Free Trade Areas (DCFTAs). The agreements apply provisionally since 1 September 2014. On 27 June 2014, **Ukraine** also signed a DCFTA and the remaining parts of the Association Agreement (AA) not yet signed on 21 March 2014. Following the signing of the political provisions of the AA, the EU unilaterally granted autonomous trade measures (ATMs) on 23 April 2014, bringing forward the tariff cutting part of the DCFTA, to the benefit of Ukraine. The ATMs have been extended until the end of 2015 and the entry into force of the DCFTA has been postponed to 1 January 2016.

In addition, the EU is engaged in Free Trade Agreement (FTA) negotiations with a number of other third countries and regions, namely **Mercosur, India, Malaysia, Vietnam, and Morocco.**

3) State of play of key trade and investment barriers maintained by the EU's strategic partners in 2014

a) Brazil/Argentina

- 1) In the field of **investment**, although Brazil generally does not distinguish between foreign and national capital, certain sectors – notably media and communications, aviation, transportation and mining – are subject to **foreign ownership limitations**.
- 2) **Discriminatory taxes and subsidisation** of domestic producers in Brazil are an important issue in many sectors. In particular, the (re)introduction of the *Reintegra* programme of export subsidies causes concern. Moreover, Brazil's granting of **subsidised loans or grants conditional upon the fulfilment of local content requirements** remains problematic. With regard to tax measures, the EU requested WTO consultations on 19 December 2013 on **discriminatory tax advantages which Brazil grants in relation to automotive vehicles, electronics, automated machinery for industrial or professional use, and other related goods which are manufactured in Brazil and which fulfil certain local content requirements**. In addition, Brazil provides tax advantages, in the form of tax-free purchases of capital goods and inputs, to domestic companies that export 50% or more of their production. After unsuccessful consultations with Brazil in 2014, the EU filed a request for a WTO Dispute Settlement panel on 18 November 2014. On 17 December 2014, the WTO established a panel to rule on the matter.
- 3) **Brazil** has adopted **measures further distorting the conditions for participation in public tenders** by establishing preferential margins for certain national products in tendering procedures. The measures fix margins ranging from 8% to 25%, and cover a whole range of sectors.
- 4) In the field of **sanitary and phytosanitary measures (SPS)**, there has been some, albeit insufficient progress with regard to **imports of dairy, pork and beef from the EU into Brazil**. The competent Brazilian authority performs 3 to 5 audits per year and has started audits in some EU Member States, but the backlog related to 50 applications submitted by Member States remains the main concern. Overall, Brazil still has a lengthy, burdensome and unpredictable SPS procedure to allow imports from EU Member States. In 2014, Brazil has announced new legislation and the EU made concrete suggestions to streamline import procedures. Brazil constitutes an important alternative market further to the ban imposed by Russia on EU exports of agricultural products and foodstuffs.

With regard to certain import restrictions on EU beef related to Bovine Spongiform Encephalopathy (**BSE**), **Brazil** has changed its import requirements, but did not yet fully align them with the international standard of the OIE (World Organisation for Animal Health).

- 5) In **Argentina**, the requirement to fill out a '**sworn prior importer declaration (DJAI)**' for all imports remains a major challenge. The WTO Dispute Settlement Appellate Body ruled on the DJAI dispute as well as a number of other unofficial import-restrictive measures such as import balancing requirements on 15 January 2015. The Appellate Body confirmed the previous Panel ruling which had found that Argentina's administration of the DJAI breaches WTO law.
- 6) Moreover, **Argentina** continues to apply severe **restrictions on the transfer of foreign currencies, dividends and royalties**. The situation is even worsening due to an increasing scarcity of foreign currency reserves. A new body with representatives of several authorities, including the Central Bank, has been created for the transfer and tracing of payments.
- 7) Lastly, **Argentina** has resorted to internal taxation to regulate imports of high-end cars, boats, planes and motorcycles, imposing a "**luxury tax**" rate of up to 50% above a certain value threshold. The tax affects premium cars and therefore imported models to a much greater extent than domestically-produced models.

b) China

- 8) **China** applies **significant restrictions on foreign investment**. In particular, China should open up sectors closed to Foreign Direct Investment (FDI) or subject to joint venture requirements, including where Chinese majority ownership is a condition. China should also remove other restrictions such as **technology transfer** and **local content requirements** as well as administrative pre-approvals. **Subsidisation** of domestic producers, and in particular of State-Owned Enterprises (SOEs), is also an important impediment to investment in China.

China has taken some measures related to investment unilaterally. In November 2014, it has proposed to **review its Foreign Investment Catalogue** and eliminate some restrictions. Although the review is welcome, the limited new opening of sectors and the closing of others in this draft review are disappointing. Reforms announced within the framework of the **Shanghai Pilot Free Trade Zone (SFTZ)** have not materialised at the appropriate speed. The "negative list" of the SFTZ (listing all sectors in which foreign investment is restricted, investment being permitted in all other sectors) has been subject to review in July 2014. Although a few restrictions on foreign investment have been relaxed for certain sectors, companies continue to face many important barriers to foreign investment in the zone. This situation will also be monitored in the light of the recent announcement by the Chinese authorities to open new FTZs.

- 9) In the area of **public procurement**, the EU continues to encourage China to join the Government Procurement Agreement (GPA) as soon as possible and to bring its legislation in line with the GPA. In January 2015, China submitted a revised GPA offer; the EU welcomes the progress in terms of coverage at sub-central level, but further significant improvements are still needed, in particular with regard to the coverage of SOEs.
 - 10) A multitude of issues persists with regard to the respect for **Intellectual Property Rights (IPR) in China**. This includes the registration of patents and utility models of low quality and of trademarks applied for in bad faith, as well as lengthy registration proceedings and a burdensome procedure for legalising foreign documents. In addition, protection against IPR infringements through administrative, judiciary and customs authorities is still insufficient. Also, there is still much uncertainty regarding the protection of trade secrets, which – reportedly – often must be shared with Chinese authorities/companies.
 - 11) **China** continues to consider that **only Chinese-developed information security technology is regarded as "safe"**, and applies a **concept of "national security"** far beyond normal international practise. This acts as a tremendous barrier for foreign companies competing for commercial applications in the IT sector. Furthermore, **foreign companies continue to be blocked from participating in security-related standardisation bodies**.
 - 12) EU companies are facing many **Sanitary and Phytosanitary (SPS)-related import measures in China**. The existing ban on EU beef and sheep meat imports should be lifted. In addition, international standards should be accepted, concerning for instance food safety and animal health.
 - 13) The EU is also concerned with **Chinese market access barriers in the health and cosmetics sectors**. For **medical devices** and **pharmaceuticals**, the new regulatory system should be aligned with international standards and practices on issues such as clinical trials and registration requirements. Concerning **cosmetics**, the registration process for new cosmetics ingredients should be improved and limited to higher risk ingredients. Labelling of cosmetics by using stickers should be allowed and testing regulations should be aligned with international standards.
- c) **India**
- 14) In **India**, EU companies are still facing **important market access barriers in the IT and electronics goods sectors**. No further substantial progress can be reported with regard to the implementation of the **Preferential Market Access policy for domestically manufactured electronic goods in public procurement** due to security considerations after India had suspended the policy in 2013 and explicitly ruled out its application to non-public procurement. India maintains that it is not bound by any WTO commitments (notably the Government Procurement Agreement to which India is not a

party). India is expected to soon announce the value addition criteria in its government procurement scheme.

Since 3 January 2014, **registration of 15 categories of IT and consumer electronic products became mandatory in India**. This was extended to further 15 products by an order published on 8 November 2014. The implementation of mandatory in-country testing and certification of telecom network elements was further postponed to 1 April 2015. Since a significant part of these products are imported on the Indian market, these measures can particularly affect trade.

- 15) Meanwhile, problems persist with the implementation of **India's Bureau of Indian Standards (BIS) certification regime for imported and exported tyres**. The main concerns are fees charged per marked tyre, lengthy procedures, factory inspections, and required bank guarantees.
- 16) Since August 2013, **India** has changed the interpretation and enforcement of the **2011 Food Safety Standards Regulations concerning labelling and packaging**, adopting a more restrictive approach for the use of stickers on packaging, thereby triggering a serious disruption in the trade of foodstuffs. More generally, India has recently extended its labelling schemes in a restrictive manner across many sectors (e.g. cosmetics, medical devices, ICT).
- 17) During 2014, India introduced several measures affecting the **cosmetics** sector on issues such as labelling, animal testing and registration requirements for imported products. With regard to **labelling**, in July 2014 India published labelling requirements for vegetarian and non-vegetarian origin. Moreover, India introduced a **ban on animal testing** for cosmetics in a way that could lead to a ban, in practical terms, of widely used and irreplaceable ingredients that still rely on animal test data when no replacement alternative exists.

d) Japan

- 18) Since the start of the **negotiations for a comprehensive FTA, non-tariff barrier-related discussions** continue. On some of these barriers (e.g. organic food, liquor wholesale licensing), Japan has already complied with the commitments it took during the preparatory phase prior to the launch of the FTA negotiations. On some others for which Japan committed to deliver within the first year of negotiations, significant progress can be reported (e.g. on pharmaceuticals, food additives, beef, medical devices authorisation procedures).

However, unresolved issues still remain and will need to be addressed before the end of the negotiations. In addition to the list agreed in the context of the scoping exercise, the EU has submitted a **second list of NTMs** to Japan in December 2014 which includes in particular many outstanding SPS-related issues. Discussions on this second list are still ongoing with Japan and the EU's aim is to achieve timely and meaningful progress. The negotiations are covering also other areas where EU business encounters problems

when doing business in Japan, such as for example public procurement (including railways).

e) **United States**

- 19) The EU continues to be concerned about **"Buy American"** restrictions governing **US public procurement**. Such restrictions still cover a large proportion of public purchasing in the US by reserving a significant part of public procurement to local goods and services and excluding foreign companies from procurement. It is clear that significant progress in this area is an important pre-requisite for a successful conclusion of the TTIP negotiations. In particular, it will be crucial to secure better EU access to sub-federal procurement in the US.
- 20) Difficulties to protect **intellectual property rights** – in particular **EU geographical indications (GIs) on food and drinks** (especially in the wine, cheese and meat sectors) – in the **US** are a source of considerable frustration for EU producers. The ongoing **TTIP negotiations** provide an important opportunity to achieve a better protection of EU GIs in the US.
- 21) A multitude of **SPS barriers** persist in the **US**. Major EU concerns remain with regard to US import restrictions on sheep and goat meat as well as egg products. In addition, EU applications to export products of animal origin, such as beef, certain dairy products, live bivalve molluscs, as well as plant products such as apples and pears, face long delays. Here again, TTIP negotiations may offer the opportunity to advance in settling these issues.

f) **Russia**

- 22) **Russia has incorrectly implemented its WTO bound tariffs** for many products, including paper, appliances and agricultural products such as palm oil. On 31 October 2014, the EU launched a request for WTO Dispute Settlement consultations.
- 23) The **new Russian law on personal data localisation** (Federal Law 242) signed by President Putin on 21 July 2014 requires that all personal data of Russian individuals are stored and processed in Russia, with no exemptions offered for commercial data. Such blanket local server requirements, without exemption for commercial data, are disproportionate and could have a detrimental effect on the digital economy as a whole. In particular, this creates a major barrier for European cloud providers and the development of a cross-border cloud computing market. In the EU's view, such localisation requirements should rather be limited to specific, exceptional instances (e.g. only where data security/privacy requirements cannot be ensured otherwise) and must be fully compatible with relevant provisions of WTO law.
- 24) **Many SPS issues with Russia remain**. On 8 April 2014, the EU requested WTO Dispute Settlement consultations with Russia regarding import restrictions against live

pigs, pork and certain pig products originating in the EU, due to the occurrence of African Swine Fever in limited areas in Lithuania and Poland close to the border with Belarus. Consultations did not bring any result and a WTO Dispute Settlement panel was established on 22 July 2014. A ban on the export of potatoes and other plants is still in place since 1 July 2013 while new issues include a ban on beef trimmings from the EU since 27 June 2014, a ban on fruits and vegetables from Poland (affecting apples in particular) introduced on 1 August 2014 and a ban on meat meals, offal and fat from the EU since 22 October 2014.

- 25) On 7 August 2014, Russia decreed a **ban on agricultural products and foodstuffs** from certain countries – including EU Member States – which have adopted **sanctions** against Russia in the context of the situation in Ukraine. These products cover almost all meat products (beef meat, pig meat, poultry, and certain prepared meat products), milk and dairy products, fruits and vegetables, as well as fish and crustaceans. Some processed agricultural products are also banned.
- 26) In the area of **Technical Barriers to Trade (TBT)**, EU economic operators are still facing numerous horizontal and sector-specific obstacles due to **burdensome technical regulations** which often establish **excessive certification and conformity assessment requirements**. In many cases, technical regulations – which are now adopted by the Eurasian Economic Union – are incompatible with international standards. Important examples of overly burdensome technical regulations established by the Eurasian Economic Union are the technical regulation on safety of consumer goods and goods destined for children and adolescents (amongst others relevant for textiles, clothing and footwear) as well as the draft technical regulation on alcoholic product safety.
- 27) Russia has adopted a subsidy programme that includes **subsidies to the producers of farm equipment and agricultural machinery**. This programme establishes subsidies for manufacturers and purchasers of agricultural machinery under **certain local content conditions**. This is detrimental for EU exporters of agricultural machinery (in particular of combine harvesters) which have a strong interest in the Russian market.
- 28) On 14 May 2013, the Eurasian Economic Commission imposed **anti-dumping duties on imports of light commercial vehicles** from Germany and Italy. As a consequence of the measure, exports of light commercial vehicles from the EU to Russia virtually stopped because of the prohibitive duty level. The anti-dumping measures are to be applied for 5 years and affect approx. 180 million € of EU exports. Several EU companies have seen their market presence dramatically reduced in this market segment in Russia. The Commission launched WTO Dispute Settlement proceedings and a panel was established on 20 October 2014.

4) Different tools to address trade and investment barriers

a) Ongoing FTA negotiations

The EU is engaged in FTA negotiations with four of its six strategic economic partners as well as in investment negotiations with China. Although progress has been insufficient in negotiations with India and Mercosur, the EU remains committed to signing ambitious agreements. The TTIP and the EU-Japan FTA negotiations are advancing at a steady pace. Bilateral talks with a number of other countries and regions are also ongoing as described in the overview in section 2 above.

Despite the improved prospects for a full implementation of the WTO 'Bali Package' in the near future and the variety of promising ongoing plurilateral negotiations, bilateral FTA negotiations are an increasingly important instrument to address specific trade-disruptive measures in important third country markets. The TTIP negotiations with the US have a particularly important strategic dimension as a comprehensive Agreement including strong regulatory disciplines could not only boost trade between the Parties but also establish an innovative model for regulatory convergence and set a global template. An ambitious deal with the US could thereby consolidate and further project the EU's role as a global regulatory leader.

In addition to the TTIP model, the EU also relies on FTA talks to address longstanding obstacles to key markets such as in the case of Japan where the negotiations are based on a comprehensive approach aimed at addressing a broad range of non-tariff barriers. This strategy has already delivered concrete results in the ongoing negotiations and could be a promising model for future FTA negotiations.

FTAs also have the advantage of allowing to address a large number of significant barriers simultaneously and to go beyond existing international trade rules where possible. Such agreements can help to prevent the emergence of new barriers.

However, preferential trade agreements also have limitations. The negotiation and implementation of these agreements takes time and the necessary balance of concessions implies that not all barriers can be addressed at once.

b) Implementation and enforcement of existing FTAs

On the implementation and enforcement side, the EU continues to work towards full implementation of all concluded agreements. To make sure trading opportunities created by negotiations are translated into real trade flows on the ground the EU deployed *inter alia* its Market Access Strategy to follow up on the commitments taken by third parties. The EU's negotiating and enforcement agenda are thus complementary.

The EU's FTA with South Korea which entered into force on 1 July 2011 is a good example of how the implementation of a preferential trade agreement can be efficiently monitored. For

instance, in accordance with the cooperation provisions established by the Chemicals Annex of the FTA, Korea and the EU could clarify various issues related to the new Korean "K-REACH" legislation in the meetings of the Chemicals WG under the FTA. Similarly, meetings of the pharma/medical devices Working Group under the FTA have allowed proper implementation of specific commitments agreed between both sides in these sectors. This approach – which has also been developed in the context of the Trade Agreement with Colombia and Peru and with Central America – sets a useful precedent to develop our implementation approach under future FTAs.

c) WTO Dispute Settlement proceedings

WTO enforcement action remains an important enforcement tool whenever necessary and appropriate. The EU continues to make frequent use of the WTO's Dispute Settlement proceedings. In 2014, the EU launched three new WTO Dispute Settlement cases against Russia as well as one case against the US concerning subsidies granted to *Boeing*.

A number of other WTO Dispute Settlement proceedings launched by the EU before 2014 are still ongoing. For instance, a WTO panel was established on 17 December 2014 in the case against Brazil regarding tax advantages for domestic producers of automotive vehicles, electronics and automated goods.

WTO Dispute Settlement remains the strongest option when other enforcement tools have proven to be insufficient. Although such proceedings take considerable time, they offer the possibility to tackle significant barriers in a more systematic way and achieve legal certainty in the longer term. An important example of a successful case launched by the EU concerns China's restrictions on the export of rare earths where China decided in January 2015 to abolish its export quotas.

d) WTO Committees

The EU is one of the most active WTO Members in the TBT and SPS Committees. TBT and SPS Committee meetings in Geneva are effective tools for highlighting the EU's concerns with technical regulations and unjustified SPS measures introduced by other WTO Members, as well as for informing, raising awareness and building alliances with other WTO Members affected.

The EU's proactive approach is not limited to the TBT and SPS Committees and extends to all other WTO Committees such as notably those dealing with Import Licensing Procedures, Trade Related Investment Measures (TRIMs) and Subsidies and Countervailing Measures (SCM).

e) International Summits

Finally, international summits both at the bilateral and multilateral level to which the EU and/or Member States participate have gained in importance over the last years and should be

seen as an important tool to address specific trade and investment barriers. Heads of State and Government meet more frequently to discuss crucial international economic challenges which oftentimes cannot be seen in isolation from a number of underlying trade concerns. Meetings in the G20 format provide good occasions in this regard. In the context of the EU preparation of Summits involving the HRVP³, the Commission and Member States particular attention should be paid to the trade and investment barriers prioritised in this report.

5) Conclusions

This fifth edition of the TIBR demonstrates once again that our strategic partners continue to maintain a variety of significant trade and investment barriers which are often difficult to tackle. In the current overall challenging context of economic uncertainty and considerable political tensions, there is a great risk that many of these barriers will persist and new barriers will be established, to the detriment of all.

More determination at the political level as well as an intensified and active implementation of the EU Market Access Strategy remain therefore crucial for the EU's efforts to remove barriers. The combined use of different tools, considering the specific context of each barrier and the prospects of its resolution, promises the best results.

³ High Representative of the Union for Foreign Affairs and Security Policy and Vice President of the European Commission