

CIVIL SOCIETY MEETING

## BILATERAL TRADE NEGOTIATIONS: STATE OF PLAY

**Date:** 18th July 2012

**Time:** 14:30 – 17:30

**Location:** Charlemagne Building, J. Durieux room, Rue de la Loi 170, 1040 Brussels

### Lead participants

Mr Peter Berz, Deputy Head of Unit, South and South East Asia, Directorate-General for Trade

Mr Antonio Parenti, Deputy Head of Unit, Far-East, Directorate-General for Trade

Mr Philippe Cuisson, Deputy Head of Unit, Russia, CIS, Ukraine, Western Balkans, EFTA, EEA and Turkey, Directorate-General for Trade

Mr Kristofer Du Rietz, Policy Co-ordinator, USA and Canada Unit, Directorate-General for Trade

Mr Michelangelo Margherita, Policy Co-ordinator, Latin America Unit, Directorate-General for Trade

Mr Timothée Sautter, Policy Co-ordinator, Latin America Unit, Directorate-General for Trade

### Moderator

Ms Montserrat Gago de la Mata, Coordinator relations with Civil Society, Directorate-General for Trade

### Agreements with ASEAN countries

**DG Trade (PB)** updated the participants on the ongoing EU FTA negotiations with ASEAN member states.

Negotiations with Singapore are close to conclusion, but some areas require further discussions.

Negotiations with Malaysia are expected to progress only after the upcoming elections in Malaysia. Until the elections have taken place, the focus of negotiation rounds lies on technical issues. Particularities of these negotiations are in part due to the fact that Malaysia is a Muslim country and applies the so-called *bumiputra policies* - areas that affect the alcohol and car negotiations, in particular. The aim of both sides remains to conclude the negotiations as soon as possible.

A ministerial level decision to launch negotiations with Vietnam has been taken and a public consultation with a call for comments with an August deadline has been opened. The first round of EU-Vietnam negotiations is scheduled to take place in October 2012. Vietnam, as well as Singapore and Malaysia, is also a TPP partner and is thus negotiating a FTA with the US in parallel.

The dialogue with Thailand has experienced a new impetus after the Thai government renewed its engagement to bilateral negotiations.

Talks with Indonesia are profiting from the newly appointed trade minister, who has shown interest in bilateral negotiations with the EU. However, public opinion in

Indonesia remains sceptical since the Indonesian market experienced a surge in Chinese imports after the conclusion of the ASEAN-China FTA.

The Philippines are engaged in internal discussions on the advantages of a potential bilateral FTA with the EU.

In conclusion, **DG Trade** pointed out that the picture of FTA negotiations with ASEAN member states is positive. After a pause following the halt of region-to-region negotiations, three individual bilateral negotiations have been launched and more negotiations seem possible in the future. While the EU sees the merit of engaging ASEAN in a regional deal, a completed ASEAN Economic Community would be a welcome step for such a region-to-region engagement. Meanwhile, EU Trade Commissioner Karel De Gucht has underlined the importance of the EU's bilateral approach as a building block for a bi-regional approach in talks with his ASEAN counterparts.

### Questions and answers

**International Trade Union Confederation** enquired whether the EU intended to use the Asia Europe Meeting (ASEM) to negotiate trade related matters.

**DG Trade (PB)** responded that activity in the economic/trade pillar of ASEM is very limited. ASEM serves more as a forum to debate and promote ideas and awareness than as a negotiating forum.

**European Automobile Manufacturers Association** asked about the status of talks with the three ASEAN members with whom negotiations are not yet ongoing and whether scoping exercises have been launched already.

**DG Trade (PB)** replied that scoping exercises have not been launched yet but highlighted the constant contact with these countries, especially with Indonesia and Thailand.

**European Biodiesel Board** pointed out the Indonesian differential export tax system and asked if DG Trade was aware of it.

**DG Trade (PB)** stated that export duties are not only observed in Indonesia but all over Asia and are not necessarily incompatible with WTO rules. Furthermore, some ASEAN member states claim difficulties to eliminate them since in many cases they represent important government revenues.

**European Services Strategy Unit** asked about the status of the ongoing negotiations with India.

**DG Trade (PB)** referred to the latest ministerial meeting in Brussels in June, during which European Commissioner for Trade Karel De Gucht met his Indian counterpart, Minister Sharma. Intense discussions were held and the ambition of both sides is to close the deal by the end of this year. A series of meetings after the summer break will show whether or not this goal can be achieved given the existing difficulties, such as the number of outstanding issues and the fact that this is the most ambitious FTA ever negotiated by India.

**Foreign Trade Association** requested information on the Pakistan trilogue discussions.

**DG Trade (PB)** explained that for a long time the EU had been trying to procure a WTO waiver, which is needed for duty elimination for key products as envisioned by the EU. This waiver has now been obtained and is valid until the end of 2013. An agreement between co-legislators on the terms of the preferential access is expected to be voted by the European Parliament in its September plenary session and the duty elimination will likely enter into force soon after 1 October 2012.

**European Services Strategy Unit** asked if Mode-4 preferences were offered to all Southeast Asian negotiating partners.

**DG Trade (PB)** replied that matters concerning Mode-4 are less of an issue in the negotiations with Singapore. Malaysia has so far not signalled any interest in the European services market. Since no negotiation rounds have taken place with Vietnam, any comment on the content of the negotiations would be but speculation.

**European Economic and Social Committee** enquired whether the Commission sees the growing engagement of the USA in Asia, for example in the context of the TPP, as a threat and whether the engagement of the EU and the USA in the region is therefore perceived as competition or cooperation.

**DG Trade (PB)** stated that the Commission does not see the TPP negotiations, which include four ASEAN member states, as a threat and is addressing similar issues in its own negotiations. Furthermore, any institution building outcome of the TPP negotiations will have positive effects for extra-TPP partners as well.

While the EU and the US may not share a common view on Geographical Indicators (GI), they have many other areas of similar interest, such as tariff reduction.

**European Man Made Fibres Association** asked about regional cumulation on textiles.

**DG Trade (PB)** replied that in regard to the question of regional cumulation, a balance is yet to be found. Singapore is interested in a wide definition of regional cumulation. This reflects Singapore's position as a regional trading hub throughout which other regional countries could trade with the EU.

**European Automobile Manufacturers' Association** enquired when the new Malaysian government will be in place and if any details regarding the negotiations on car tariff reductions could be shared.

**DG Trade (PB)** responded that elections in Malaysia will be held in 2013 at the latest, but that no further information on the schedule was available. When a new government is elected, further substantial progress in negotiations can be expected. The EU presses for full liberalisation of all industrial sectors while Malaysia has expressed interest to liberalise the trade in palm oil, in particular, and other sectors.

**European Patent Office** requested more information on the role of Intellectual Property Rights (IPR) in FTA negotiations.

**DG Trade (PB)** answered that IPR chapters which go beyond TRIPS are a feature of every FTA the EU negotiates and pointed out the IPR chapter in the EU-Korea FTA as an example of how an IPR chapter may look like and of what the EU is trying to achieve.

**International Federation of the Phonographic Industry** asked whether the Singapore FTA will feature an IPR chapter similar to the EU-Korea FTA.

**DG Trade (PB)** confirmed his reply to the previous question.

## EU-Japan negotiations

**DG Trade (AP)** informed that the College of Commissioners had adopted that same day proposals to launch negotiations for an FTA and a framework agreement, which serves as an umbrella covering political aspects with Japan. The negotiations with Japan will be of particular importance for two reasons:

- it will be an agreement between two large and developed economies, and
- the outcome of the negotiations will be a different type of agreement involving two liberal economies with already low tariffs.

The main difference between the two partners is the way in which tariffs are displayed. To reduce unnecessary burdens to trade, it will also be important to tackle non-tariff barriers such as standards.

FTA negotiations will address the long standing issue investment capacity, i.e. measures which make investments into the Japanese market difficult. A change in attitude towards this issue has been registered in Japan in the recent years.

A clause agreed upon in the scoping exercise will allow assessing whether Japan has lived up to its commitments after one year of negotiations. Failing that, negotiations would be halted. This represents a radical clause but is seen as a necessary stimulus to ensure timely results of the negotiations.

Negotiations should be started before the end of this year, but since the negotiating directive was only sent to the council on the 18<sup>th</sup> of July, the exact timing has not yet been agreed.

## Questions and answers

**International Fund for Animal Welfare** asked whether the FTA will include a sustainable development chapter and raised awareness on the fact that Japan is one of the few countries in the world which is upholding whaling. It further enquired how the Commission will address the whaling issue in negotiations.

**DG Trade (AP)** confirmed that a sustainable development chapter will be part of the agreement and that it will be modelled along the lines of any of the EU agreements which are currently negotiated.

**International Federation of the Phonographic Industry** asked about the potential of Japan delivering concessions in areas in which the EU has offensive interests, such as copyright standards.

**DG Trade (AP)** confirmed that IP would be a central area in the negotiations, as confirmed by the scoping exercise.

**Eurocommerce** inquired about the Commission's approach regarding distribution.

**DG Trade (AP)** noted the engagement of both sides to deliver an ambitious package on services, therefore including distribution.

**European Economic and Social Committee** asked whether an impact assessment similar to the ones for Georgia and Moldova will be carried out.

**DG Trade (AP)** responded that a first impact assessment had already been carried out, which will be followed up by an economic analysis at the end of negotiations. Since the impact assessment is linked to a confidential document, the timing of its publication has not yet been decided.

**European Trade Union Confederation** asked for clarification about the scope of the negotiating mandate, especially whether investor-to-state dispute settlement clauses are foreseen in the mandate.

**DG Trade (AP)** stated that the mandate covers the current practices of the European Commission and reflects the changes in competency brought on by the Lisbon treaty.

### **Ukraine, Georgia, Moldova and Armenia FTA negotiations**

**DG Trade (PC)** explained that the Deep and Comprehensive Free Trade Area (DCFTA) with Ukraine is being used as a model for the negotiation of the other three DCFTAs. The initialling of the DCFTA with Ukraine will take place on the 19th of July.

Although the trade stakes involved in these DCFTAs are modest, these trade agreements give a real incentive for spreading EU good governance and regulatory practices in the countries concerned. Their principal objective is to foster the economic integration of Georgia, Moldova and Armenia by adopting a part of EU legislation and its practices in trade and trade-related areas.

The negotiations have shown good progress in the last months, mostly owing to the preparatory work carried out prior to the launch of negotiations. There is a good dynamic, in which Moldova has proved to be particularly committed to the approximation process.

A sustainability impact assessment is currently going on for Georgia, Moldova and Armenia, which is expected to be concluded by next year. The Commission invited civil society to be actively involved in the reach-out activities organised by the consultant in this context.

### **Questions and answers**

**International Trade Union Confederation** asked how the Commission envisages promoting the implementation of labour standards in Georgia.

**DG Trade (PC)** explained that the Commission has established in the last years a good dialogue with Georgia in the framework of the GSP+ regime. The Commission

has also conveyed the message that ILO standards will be reflected in the sustainable development chapter as a part of the future DCFTAs. Lack of respect for such obligations in the future DCFTA would be considered as contrary to the commitments within the agreement.

**European Services Strategy Unit** asked to have more details on the provisions of the Agreements related to the mobility of persons.

**DG Trade (PC)** clarified that the sustainability impact assessment on labour mobility is not a part of the DCFTA, since the provisions on the free movement of people have been inserted in the Association Agreement. Elements covered by the DCFTA and the ongoing impact assessment relate to the provision of services as established under GATS (Mode 4) and concern the temporary transfer of highly qualified personnel with respect to trade-related services. The Commission applies the GATS terminology and practice in these negotiations, covering all categories of mode 4 movements of personnel.

**International Federation of the Phonographic Industry** asked whether the Commission is in a position to provide assurances that the IP regime in Ukraine will ensure better protection for the right holders after the completion of the negotiations. IFPI further enquired whether political developments in Ukraine could have a positive effect on the implementation of these provisions.

**DG Trade (PC)** explained that once the DCFTA enters into force, the EU will be able to adopt sanctions with regard to the infringements of the IP rights of traders, which is not feasible at the moment. The Commission acknowledged that so far there has been no particular improvement in Ukraine concerning the respect of IP rights.

**European Trade Union Confederation** asked further explanations on the retaliation system to be adopted in the DCFTAs regarding sustainable development.

**DG Trade (PC)** explained that sustainable development commitments will be subject to scrutiny in the same way as other parts of the agreement and appropriate measures may be envisaged in case of non-compliance, including suspension of trade preferences. Such mechanism exists already now under the GSP+ regime and the EU has had some experience in this regard already.

**EuroCommerce** asked if the publication of the text of the DCFTA with Ukraine had already been foreseen after the initialling.

**DG Trade (PC)** explained that the text will be made public but the date has not been agreed on yet. In this regard, the current state of play in bilateral relations and the political context will be taken into consideration.

**International Federation of the Phonographic Industry** asked whether the EU foresees any additional technical assistance to Ukraine in order to improve enforcement of IP rights and reduce the risk of corrupt behaviour in this area among public officials.

**DG Trade (PC)** explained that the EU provides significant assistance efforts to help Ukraine improve its procedures and practices in this area. There are no objective indicators that confirm this assistance has helped reduce corruption but we will continue to deliver it within the ENPI.

### **CETA EU-Canada negotiations**

**DG Trade (KDR)** informed participants on the latest developments in the negotiations for an agreement with Canada (CETA).

Progress has been made all over the field. Although a few open chapters remain, negotiations are closer to conclusion than ever before. Since the EU is negotiating with a fully developed country, every aspect touched by negotiations matters and involves stakeholders, a ministry and clearly defined goals on both sides. The few outstanding issues are therefore complicated and it has not been possible to close one chapter after the other.

In the goods chapter, the main outstanding issues revolve around rules of origin and agricultural issues where a compromise is still to be attained. Financial services and investment have turned out to be complex issues in the services chapter, to which much work has been devoted during the ministerial level negotiations in July.

IPR, which is the chapter that has drawn most public attention in the last weeks, has not been concluded yet. **DG Trade (KDR)** emphasised that the Commission is not attempting to utilise CETA to introduce ACTA "through the back door" as has been suggested and that the comments found in the media were based on leaked negotiation texts dating back to February, which had been changed substantially since then taking into account the evolution of the ACTA file.

Negotiations are therefore moving closer to their finalisation and the Commission hopes to attain a political agreement this year. The importance of the agreement has been emphasised by EU Commissioner for Trade Karel de Gucht, who has stated that CETA is a priority for the Commission.

### **Questions and answers**

**Joint Secretariat of Agricultural Trade Associations-SACAR** asked for more precise information on the difficulties concerning the negotiations on agricultural goods.

**DG Trade (KDR)** explained that the EU has both offensive and defensive interests in this field and is insisting in strengthening rules on GIs.

**Comité Européen des Fabricants de Sucre-CEFS** raised the point that the EU is granting Canada sugar concessions when it is a net importer of sugar. It voiced its worry that a 40% or more non-originating content would set a worrying precedent for future negotiations on rules of origin. CEFS advised the Commission to stick to its negotiating mandate.

**DG Trade (KDR)** reminded the audience that the EU is a net exporter of high sugar content products to Canada. The Commission has every intention of following the mandate, but also sees the need to keep the agreement balanced.

**European Trade Union Confederation** enquired whether the investor-to-state mechanism would be a channel made available after the exhaustion of national judicial remedies and raised the question of whether national judicial systems would be overruled.

**DG Trade (KDR)** replied that this was an issue still under negotiation and that it was too early to speculate about the content of the agreement at this point.

**European Trade Union Confederation**, in reference to the EU-US exchange of notes on the TPP discussions, asked if the EU and Canada also compared notes on the matter and whether EU negotiations with Asian states undermined the Canadian position on labour rights.

**DG Trade (KDR)** answered that the EU insists on the reference to a number of ILO conventions in CETA, which Canada has not included before in its FTAs with other countries.

**International Federation of the Phonographic Industry** stated that it expected the EU acquis as the basis for CETA's IPR chapter and asked whether the Commission thought the Canada-Japan negotiations would have any impact on the CETA IP chapter.

**DG Trade (KDR)** replied that the basis for the EU position on IPR is the EU acquis and that the Commission did not expect the Canada-Japan negotiation to have any impact on CETA.

**International Confederation of European Beet Growers-CIBE** pointed out that it considered that a relaxation of rules of origin was not satisfactory and asked why the Commission does not hold to the Rules of Origin threshold laid out in the negotiating directive.

**DG Trade (KDR)** assured CIBE that the Commission is taking note of their concern, underlined that the basis for negotiations is EU rules and evoked that all negotiations reflect the particular relationship between the EU and the partner country in question. Since sugar is still under negotiation, it is too early to speculate about the content of the agreement on this point

### [Latin and Central America agreements](#)

**DG Trade (MM)** informed the participants that the agreements with Peru/Colombia and Central America have both been signed at the end of June. The texts of both agreements are now definitive and can only be modified by formal amendments. The signature has also triggered the formal consent procedure in the European Parliament.



Both agreements could be adopted in the European Parliament's plenary sessions of October or November. Depending on the ratification procedures in partner countries, both agreements should enter into force by the end of 2012 or early 2013.

### **Questions and answers**

**European Trade Union Confederation** asked for clarification on whether the agreements are mixed agreements and will have to be ratified by every EU Member State's parliament. It further enquired on the state of human rights issues in both agreements.

**DG Trade (MM)** confirmed that both agreements are mixed and will thus have to go through Member States' parliaments.

With regard to human rights, he referred to the extensive discussion in the European Parliament on this issue which had resulted in a very detailed and complete resolution passed in May, which encompasses various aspects of the agreement. The resolution refers to Colombia and Peru's need to develop a roadmap for human and labour rights. The European Parliament has requested the Commission to assist both countries in achieving the objectives.

**European Services Strategy Unit** enquired on the modalities by which the agreements will come into force.

**DG Trade (MM)** responded that both agreements contain provisional application provisions which allow the possibility to apply the agreements before they have been ratified by Member States' parliaments once the authorisation for provisional application is granted by all parties. The authorisation has already been given by the EU, since the Council has already adopted a provision to sign and provisionally apply the agreement. However, Commissioner De Gucht has proposed that provisional application should be delayed until the European Parliament has voted on the matter.

**European Fair Trade Association** asked if European banana traders will lose preferences once the agreements come into force. It also enquired if and when Ecuador will join the Peru/Colombia agreement.

**DG Trade (MM)** answered that both agreements contain provisions protecting European banana producers in the form of several safeguard clauses.

The agreement with Peru and Colombia foresees the possibility of Ecuador and Bolivia joining the agreement. Ecuador still needs to clarify various aspects such as government procurement and investment protection before it can adhere to the agreement.

### **EU-MERCOSUR negotiations**

**DG Trade (TS)** presented the latest developments in the trade part of the association agreement with MERCOSUR.

The last negotiation rounds took place in March as the following round, which was scheduled to have taken place in Brazil, was suspended because of two regional developments:

- the suspension of Paraguay from MERCOSUR, and

- Venezuela's accession to MERCOSUR.

The next round will therefore take place after the summer break.

For the trade in goods chapter, all issues not directly linked with the exchange of market access offers have already been discussed.

Useful discussions have taken place on the protocol of rules of origin.

Discussions on all items of the customs code have also taken place, with the exception of textiles and automotives for which we are still waiting for Mercosur's proposal.

The technical barriers to trade chapter has also made progress, with items such as mutual recognition and sectoral discipline still open.

Discussions on SPS are ongoing with certain elements related to regional integration in Mercosur remaining difficult.

No substantial discussions have taken place with regard to the IPR chapter, which is relevant to the EU, whereas discussions on dispute settlement have only few outstanding issues remaining.

The competition chapter is nearly finalised and the remaining issues are mostly technical.

Customs and trade facilitation items are expected to make significant progress during the upcoming negotiation round.

The text for public procurement has been discussed in March for the first time but internal MERCOSUR discussions have been postponed for the above mentioned reasons.

### Questions and answers

**European Trade Union Confederation** asked why the sustainable development chapter has not been discussed by MERCOSUR and why the EU does not aim for a deal with Brazil only, instead of engaging with the whole of MERCOSUR.

**DG Trade (TS)** answered that the sustainable development chapter will not be the most difficult for MERCOSUR to accept as it is of mutual interest. Although Brazil is the economic powerhouse of the region, it is part of a customs union with the other MERCOSUR members and negotiations must include the whole of the association.

**European Biodiesel Board** enquired whether Argentina will be asked to abandon its differential export tax regime and if the REPSOL case will have any impact on the on-going negotiations.

**DG Trade (TS)** replied that the matter will be dealt with in the trade in goods section: the position of the EU is that the agreement should deal with all export taxes, whether differentiated or not. The Commission is concerned about the REPSOL case, but it is more a bilateral trade issue that has no direct impact on the bi-regional negotiations.

**International Federation of the Phonographic Industry** asked for the possibility that a breakthrough in the IPR chapter will be achieved in the upcoming rounds and expressed its hopes that the content will be TRIPS+ and in line with the EU acquis.

**DG Trade (TS)** answered that IPR is one of the most relevant chapters and the Commission shares the view that a content which does not surpass TRIPS is

insufficient. The Commission expects no breakthrough in negotiations until market access offers have been exchanged.