

Response to the EC consultation on the future direction of EU trade policy

28 July 2010

Question 1: Now that the new Lisbon Treaty has entered into force, how can we best ensure that our future trade policy is coherent with the EU's external action as a whole and notably in relation to the EU's neighbouring countries?

Trade policy is a critical aspect of the EU's external action, and must contribute to achieving the goals of the Europe 2020 strategy. First and foremost, EU trade policy needs to comply with international commitments, and particularly WTO provisions.

The Lisbon Treaty may help to further European integration, but it could also prolong the lead time for the adoption of legal measures. In other words, the preparation of legal measures and legal procedures take a long time due to the need for coordination among the various EU institutions. This must not become a handicap to the adoption of legal provisions in step with the advance of the global economy. EU institutions need to seek good action standards to avoid protracted decision-making procedures. In particular, more cooperation is needed amongst all committees (not just the Committee on International Trade) under the European Commission and the European Parliament.

Question 2: Given the importance of boosting growth, creating more jobs and ensuring a more resource efficient and greener economy, how can EU trade policy help? What should the new trade priorities be in the light of the Europe 2020 Strategy?

1. WTO as a whole

EU trade policy should boost production in the goods and services industries that contribute to effective EU competition and to global economic growth. The EU needs to consider rebuilding those industries which have been unable to adapt to the changing times and have lost their competitiveness, but trade policy should not be abused to artificially maintain industries that have lost competitiveness. As noted in the Europe 2020 paper, the future of EU industry rests on the creation of high added value and the production of smart products utilizing this. EU trade policy must therefore promote innovation and boost the global competitiveness of innovative products and services.

In addition, if the Doha Round is not successfully concluded, it may become extremely difficult to reach further agreement on the multilateral rules critical to promoting innovation and boosting competitiveness.

Equitable protection of intellectual property (IP) on a global scale is also vital. Ongoing innovation is only possible where the parties investing in that innovation receive appropriate compensation. However, the most critical issue is the harmonization of regulations at an international level. Mutually balanced improvement in market access allows industry to enjoy the benefits of having no barriers to market entry.

2. Greener economy

Trade policy also needs to pay more heed to the environment. The EU needs to promote the production and trade of environmentally-friendly products and highly energy-efficient products. A system providing incentives for environmental goods and services would be an effective means to that end.

3. Generalized System of Preferences (GSP)

The new GSP rules of origin are scheduled to enter into force as of 1 January 2011, but given the recent state of progress, that schedule may be delayed. There is an urgent need for rules which industry finds clear and easy to handle so that firms can make sound and strategic business decisions.

Question 3: In addition to continuing to push for a successful conclusion to the Doha Round, how can the EU best pursue overall EU trade policy objectives in the WTO?

1. Early completion of the Doha Round

As noted in our response to Question 2, the EU first needs to work toward the early completion of the Doha Round, which will be vital in building a rule-based trade environment grounded in legal principles. The recent economic crisis demonstrated the effectiveness of the WTO in preventing the wide spread of protectionist measures. We suggest that, WTO members continue to use the existing WTO consultation mechanisms, and indeed make greater use of them, as an effective means of resolving issues before turning to the adoption of unilateral trade measures or entering into WTO dispute settlement procedures.

Dispute settlement should be regarded as an exceptional measure—a last resort. The simple possibility of WTO dispute settlement is already helping to restrain disputes, encouraging WTO members to settle disputes amicably and avoid trade distortions. We would therefore like to see the EU work with other WTO members in consulting on how the WTO dispute settlement system and its effect in terms of time can be improved.

2. Non-preferential rules of origin

One set of international rules conferring origin should be formulated, and consideration given to adopting the decoupling method, which applies one rule for trade remedies and another rule for other purposes, for products for which international rules would be difficult to formulate. Adoption of this method for certain products would allow the formulation of harmonized rules that industry would find effective, such as applying CTC rules to general trade. We would like to see the EU work with other WTO members at the WTO in consultations on adoption of the decoupling method.

Question 4: Do our current FTA negotiations provide the right geographic and substantive focus for our bilateral trade relationships in the context of the Europe 2020 strategy?

1. EU-Japan EIA

The Japanese electronics industry has a long history of engaging amicably in a wide range of business activities in the EU, including production, sales and R&D, and has in fact created many jobs. For those Japanese electronics firms which are already European corporate citizens, most trade between Japan and the EU is conducted in-house. To the globally-active electronics industry, it is accordingly absolutely critical that the EU has an open, undistorted trade and investment structure. This would also benefit EU consumers and companies and encourage economic growth. In

particular, JEITA remains concerned at the high tariffs which remain on AV products (TVs 14 percent, DVD players 14 percent, video cameras a maximum of 14 percent, etc.) and the continuation of duty suspension of certain parts (LCD modules five percent).

With the WTO Doha Round negotiations effectively stalled, bilateral free trade agreements (FTAs) are undeniably becoming more important. Accordingly, pursuing the conclusion of high-level FTAs with key strategic trade partners that go beyond regulatory dialogue and economic and trade cooperation would certainly contribute to realizing the Europe 2020 vision. We welcome trends in the EU's existing FTAs and those FTAs currently under negotiation. We urge that negotiations on the EU-Japan Economic Integration Agreement (EIA) are launched as soon as possible toward early conclusion, helping to expand trade and investment between the EU and Japan. Trade liberalization for high-tech products and services and environmental products and services should be a priority issue in these negotiations.

Question 5: Should the EU now try for closer economic integration and cooperation with such partners? What is the best way to further facilitate trade and investment, overcoming regulatory differences that may have the effect of barriers to trade and deepening our trade relationships with these important economies?

Japan and the EU provide each other with an important market. In particular, there is room for more cooperation in regard to innovation, industrial R&D and the environment, making a major contribution to realizing the smart and sustainable growth targeted by the Europe 2020 strategy. Pursuing negotiations on the EU-Japan EIA, which will be more comprehensive than standard FTAs, could also help to resolve the issue of regulatory differences which has been a burden for EU firms in terms of doing business.

Question 6: How can the EU improve the effectiveness of regulatory dialogues? How can the EU promote the establishment of and greater recourse to international standards without compromising legitimate public policy choices?

1. Strengthening and promoting dialogue

Enhanced regulatory dialogue is needed at a high technological level among the relevant authorities in countries with similar philosophies. Changes to existing dialogues, regulations and practices should be discussed at an early point with the aim of resolving disputes constructively and as quickly as possible. While there are already mechanisms for this purpose (for example, the TBT Committee and the existing bilateral dialogue), these platforms could be used more effectively and practically.

In addition, to encourage consistency in the regulatory approaches of the EU and Japan, the relevant authorities should engage in further cooperation in various areas, including electronic communications, the environment, energy supply, commercial transport services and construction, as well as standards and conformance assessment.

2. Promoting innovation

In the area of international standards, we are concerned that even where a new technology emerges and makes an existing technology obsolete, innovation could be stifled by adherence to the One Standard, One Test approach. It is absolutely critical

that technical standards are maintained appropriately in line with technological advance. It is also important that the international institutions determining international standards should not be restricted and should be selected in accordance with fairness and transparency of procedures for determining international standards.

Question 7: How can the EU, and in particular trade policy, help to secure a reliable and sustainable supply of raw materials by third countries?

Overheated international competition for resource acquisition is not healthy in terms of international order. The EU should lead the way in technological innovation to conserve resources and use alternative resources, contributing to the formation of a better international order as the responsibility of an advanced socioeconomy.

Question 10: How can trade policy best support green and inclusive growth around the globe including through Sustainability Impact Assessments?

1. Trade liberalization for environmental goods and services

We would like to see the EU move proactively to liberalize trade in environmental goods and services. Introducing environmentally-friendly technologies on a global scale will be critical to successfully combating global warming. Environmentally-friendly goods and services will also encourage innovation, pushing ahead industry and helping to promote economic growth. Action in this area should also be undertaken as a strand in global development policy, in that boosting the energy efficiency of developing economies must be supported and promoted. The EU should therefore promote the negotiation and conclusion of a WTO agreement on environmental goods and services that focuses on trade liberalization for environmentally-friendly goods and services. This agreement should include products with high energy efficiency, as these are used by the public in their daily lives, and would consequently contribute directly to energy conservation as well as to greater public awareness of global warming.

Lowering tariffs on environmentally-friendly products would open the way for the early and worldwide transmission of products contributing to a reduced environmental burden. This would also contribute via the environmental product value chain (development—production—sales—services) to an early economic recovery, more innovation, reduced CO₂ emissions and lifestyle changes, with innovation and technology making a major contribution to resolving global warming. In this process, the contribution of energy-saving products to reducing CO₂ emissions should be given appropriate recognition in the same way as products creating alternative energy. Creating, storing and saving energy are all important elements in combating global warming. Promoting the development of energy-saving technologies and disseminating the benefits from these technologies widely around the globe promises to produce major results at little cost. We would like to see discussion on trade liberalization for environmental goods and services invigorated toward early realization of this in the WTO.

In terms of the development of measures for assessing the energy efficiency of products and policy recommendation activities, it is vital that the EU works with other governments and relevant groups from the initial stage toward producing globally acceptable results, as seen in the current ICT4EE initiative.

2. Laws and regulations

EU environmental laws are becoming a model for other countries and regions. The EU should be lauded for acting as an environmental leader at the global level and contributing to a sustainable economy. In particular, the EU's environmental laws are impacting significantly on global trade through global supply chains. Consequently, they need to be created appropriately with an eye to their global-scale impact.

For example:

(1) REACH: The EU requires information on the relevant chemical substances to be included in notifications, but compliance with this is hindered for Japanese firms by Japanese laws that make it difficult to require detailed information from suppliers. The EU should take into consideration actual conditions faced by companies importing into Europe.

(2) RoHS directive: Despite moves in relation to REACH to regulate chemical products based on risk, the EU is moving to expand the coverage of the RoHS directive, including substances that do not reflect the results of scientific assessment (e.g., bisphenol).

Generally, regulations should be implemented in a harmonized manner. Regulations and laws pursuant to Article 95 of the Treaty of Nice (Article 95 in the Lisbon Treaty) should theoretically be the same in all EU countries, but there are cases where all EU countries do not necessarily agree, as seen in the debate over how articles should be defined under REACH. Ambiguities of this type make it difficult for industry to satisfy the requirements of all EU countries.

Question 15: What initiatives could the EU take and which EU trade policy instruments could we mobilise to complement and reinforce the 'smart' dimension of the Europe 2020 strategy and facilitate trade in high-tech goods and services?

1. Early review of the Information Technology Agreement (ITA)

In recent years, technology convergence has seen the emergence of many products that should be described as a fusion of ICT and home appliances. This is closely related to the important step in the innovation process of finding new ways to combine technologies to make new products. However, inconsistencies have arisen in interpretations of the customs classification into which these fusion products fall. As a result, where the ITA has played a major role in disseminating information technology products, the more leading-edge the product, the more likely it is to be considered outside the scope of the ITA, or for the treatment of that product to be uncertain. This uncertainty over customs classification cannot be allowed to stifle innovation. To fulfill the original ITA objective of promoting and disseminating IT products, which will above all encourage innovation and impact positively on the world economy, the ITA needs to be properly maintained and an updating process instituted, something which is even more critical in this era of ongoing innovation. Paragraph 5 of the ITA Annex anticipated such innovation back in 1996 when the ITA was formed, and consequently calls for the EU, Japan and other ITA members to continue to update ITA coverage within the WTO. We look forward to all those involved complying with WTO rules pursuant to the final decision of the WTO's ITA dispute settlement panel. Further, the EU and Japan should work with other ITA member countries to review and expand ITA coverage and to consider the elimination of tariff barriers on IT products. We call on EU governments to move forward strongly in this regard. Efforts must also be made to expand ITA membership.

2. Promoting multilateral initiatives

The EU should work with other countries toward conclusion of the ambitious Doha Round NAMA negotiations which aim to reduce tariff peaks.

Promoting trade in high-tech goods and services as noted above will not only complement and strengthen the 'smart' dimension of the Europe 2020 strategy, but will also encourage the dissemination of energy-saving products that contribute to the sustainable economic growth to which Europe 2020 aspires.

Question 16: How can the EU best safeguard its firms or interests against trading partners who do not play by the rules? Are the existing tools and priorities sufficient to address unfair competition from third countries?

The EU can deal with unfair trade by launching investigations pursuant to WTO regulations and adopting trade remedies. Such compliance with international regulations is an extremely important means of preventing arbitrary protectionist measures. We believe that current WTO mechanisms and procedures provided under other agreements are functioning adequately.

Question 17: How can the EU best safeguard its firms or interests against major trading partners who maintain an asymmetric level of openness and resort to protectionist measures? Are the existing tools and priorities sufficient to address practices such as keeping EU suppliers out of government procurement markets, market access restrictions, restricted and insecure access to energy and raw materials?

Unilateral retaliatory measures are not the right answer to restricted or insecure market access.

Market access, non-discriminatory procurement practices, and securing energy and raw materials—those issues on which the EU is currently focused—are adequate to protect the interests of EU industry. We believe that, currently, EU industry, EU representatives in the relevant countries, and EU market access officers identify market access issues in those countries and immediately institute consultations with the relevant authorities to resolve the issues (for example, the Japan-EU regulatory reform dialogue). We do not believe that additional tools or procedures are needed in these areas.

Question 18: What else can EU trade policy do to further improve the protection of IPR in key markets?

1. The European Commission can promote and strengthen IPR protection in those countries with which it is negotiating or has negotiated FTAs. In fact, EU FTAs contain IPR chapters aimed at achieving effective, high-level IPR protection. We also welcome the following initiatives which are currently underway to address counterfeit products.

- Promotion of ACTA in conjunction with other countries
- Review of regulations concerning the tariff treatment of products suspected of infringing IPRs
- Strengthening international cooperation on IPR from intellectual property dialogues with third countries to training programs and capacity-building.

2. In terms of copyrights, given that that more and more copyrighted works are likely to be distributed, that the Internet is borderless, and that it is technically possible to restrict the distribution of copies, protection of reproduction rights on copyrighted works needs to be considered primarily from the perspective of consent based on technology, both within and beyond the EU. Accordingly, copyright incentive schemes in Europe should be reduced or eliminated and thought given to protection of copyright reproduction rights with a focus on consent in relation to distribution.

3. Proper protection of patent rights depends on patent inspections being completed and rights established in a sufficiently timely manner not to hold up business development, product sales or IP licensing negotiations. From that perspective, the European Patent Office tends to have longer inspection periods than Japan and the US, raising the concern that, for example, firms could be delayed in their acquisition of patent rights for product sales, etc., creating a blank period during which they do not have patent protection. We would like to see the EU adopt policies to expedite inspections.

Question 19: What more should the Commission do to ensure that trade policy becomes more transparent and to ensure that a wide variety of views and opinions is heard in the policy-making process?

1. Continued implementation of public consultation

The EU Commission has launched wide-ranging public consultation regarding the EU's future direction, of which this current initiative is a good example. Collecting numerous and diverse views and opinions will be critical in forming future EU policy. A similar initiative has recently been underway in relation to the EU's future GSP scheme, and we would like to see this kind of public consultation continued.

2. Implementation of trade-related consultation

Trade policy can also be derived from regular conferences among the interested parties. Regular consultations and information-sharing among EU institutions and manufacturers, importers and users would be useful.

3. Securing transparency

For example, the following kind of measures could be taken to strengthen transparency in relation to regulations on anti-dumping and anti-subsidy measures, safeguards and trade barriers.

- (a) Provide better access for related parties to petition content
- (b) Provide detailed information in inspection notifications
- (c) Release petitions on the day of filing
- (d) Make decision-making procedures more transparent
- (e) Particularly in regard to anti-dumping, establish a prior notification system among governments.