

# 1 Introduction

## Tackling EU Free Trade Agreements

This paper forms part of a series of eight briefings on the European Union's approach to Free Trade Agreements. It aims to explain EU policies, procedures and practices to those interested in supporting developing countries. It is not intended to endorse any particular policy or position, rather to inform decisions and provide the means to better defend them. The views expressed in the briefings do not necessarily reflect the views of the publishers.

### Why Free Trade Agreements?

There are large and increasing numbers of Free Trade Agreements (FTAs) being negotiated, many of which feature far-reaching commitments on a broad range of issues.<sup>1</sup>

Trade agreements can be important. For neighbouring countries at similar levels of development, they can create larger, more effective and more attractive markets. Economic and political ties can be mutually reinforcing. However, when FTAs occur between countries at vastly different levels of economic development, they often serve to undermine rather than support the development process.

The incidence of North–South agreements is on the rise. Part of UNCTAD's 2007 Trade and Development Report was devoted to an analysis of North–South FTAs.<sup>2</sup> This is a summary of their findings:

- A broad range of issues that have serious development implications are being included in FTAs. These include issues that developing countries rejected at the World Trade Organization (WTO), including investment, government procurement and competition.
- Developing countries are required to implement broad and deep liberalisation in market access (for example, in goods, services and government procurement).
- Any market access gains for developing nations are likely to be severely limited because the reduction or elimination of (most) agricultural subsidies in rich nations are not included in FTAs. Gains are also limited by restrictive rules of origin, the prevalence of non-tariff measures and supply-side constraints.
- Many of the elements of FTAs reduce policy space, in some cases very significantly. If future FTAs are designed around current FTAs, this will “reduce or fully remove policy options and instruments available to a developing country to pursue its development objectives.”<sup>3</sup>
- Reciprocity precludes special treatment that could be offered to developing countries in the context of multilateral agreements.
- North–South FTAs tend to weaken existing regional trade blocs.

UNCTAD (the UN Conference on Trade and Development) concludes that whilst FTAs have the potential to provide developing countries with new trading opportunities, these may be quickly eroded if the same developed nation negotiates FTAs with other countries. The size and durability of any gains in trade and

The term ‘**Free Trade Agreement**’ (FTA) is often used to represent both bilateral and regional trade deals. FTAs can be negotiated between two or more countries, and can cover a range of trade issues (for example, tariffs on goods) and trade-related issues (for example, investment, services, intellectual property and competition). Where the FTA has a common external tariff across all members, this is termed a ‘customs union’.

1 Quantifying FTAs is problematic. This is because the most commonly used source of information (the World Trade Organization) exaggerates the total number, not least because FTAs in goods and services are notified separately. In addition, many FTAs are in the process of notification, at different stages of implementation or are simply extensions of existing FTAs. Notwithstanding the above, at the end of 2006, 367 FTAs had been notified to the WTO of which 214 were in force. Of these, 158 FTAs cover trade in goods, 43 cover trade in services and 13 are extensions covering existing agreements. A large number of FTAs are in the process of being finalised, many of which contain provisions on trade in services.

2 UNCTAD, 2007. Trade and Development Report, 2007.

3 Ibid. Page 63.

investment are also highly uncertain. This is because short-term gains can be eroded if increased imports lead to balance-of-payments and external debt problems.

Critics of North–South FTAs have rightly pointed out that the different levels of political and economic power between, say, the EU and a third party leave the latter at a distinct disadvantage in bilateral negotiations compared to multilateral talks.

This imbalance has been evident in the ‘Economic Partnership Agreement’ (EPA) negotiations with African, Caribbean and Pacific (ACP) countries. Many of these countries have disagreed with both the content and process of the agreements. Invariably, many of their concerns have been dismissed by the European Commission (EC) but not without numerous delays to the negotiating timetable. To date, fewer than half of the developing countries involved have concluded any form of agreement with Europe, despite the power politics and tactics the EC has used to undermine many development components of EPAs and also the principle of partnership on which they should be based. The EC has:

- dismissed many of the proposals put forward by ACP countries;
- disregarded ACP institutions and processes;
- pushed issues that ACP countries had rejected within the WTO back onto the EPA agenda;
- threatened the loss of market access into the EU if ACP countries did not sign an agreement;
- dismissed consideration of alternatives despite a legal requirement to do so;
- sidelined dissenting voices, such as civil society organisations and trade unions;
- put deadlines before development.

However, in other talks, developing countries have been able to use the fact that the EU tends to negotiate with regional blocs to exert more leverage and resist EU pressure. One example is the EU–Mercosur negotiations. These started in 1999 but were suspended in 2004 because of divergent positions between the EU on one hand and Brazil, Uruguay, Argentina and Paraguay on the other. The Mercosur countries would not be brow-beaten into accepting an FTA with the EU when they clearly saw that the potential deal on the table was not acceptable.

## EU FTA Strategy and ‘Global Europe’

The EU has the largest number of FTAs of any major power, accounting for nearly half of those notified to the WTO and in force. Many of these are agreements with other countries in Europe, but in 2006, the EU announced its new ‘vision’ for future trade policy and negotiations in *Global Europe: Competing in the World*.<sup>4</sup> One of the main purposes of the Global Europe strategy is to promote Europe’s commercial interests in world markets. It places a central emphasis on the rapid conclusion of a number of new far-reaching free trade agreements (FTAs) in nearly all global regions – and this would include about 120 developing nations (see Table 1 on page 3). If all these FTAs with developing countries (including China) were completed successfully, they would cover about 40 per cent of all EU trade with the rest of the world.

EU FTAs that are currently under negotiation (and some that have been completed recently) go considerably beyond WTO commitments. As well as deeper and quicker tariff liberalisation, EU objectives include negotiation on trade-related issues (known as the “Singapore Issues” in WTO circles and rejected by developing countries in that forum); and stronger rules and procedural requirements placed on intellectual property, food standards and other non-tariff measures.

<sup>4</sup> European Commission, 2006a. Global Europe: Competing in the World. [trade.ec.europa.eu/doclib/docs/2006/october/tradoc\\_130376.pdf](http://trade.ec.europa.eu/doclib/docs/2006/october/tradoc_130376.pdf)

The communication reveals that the EU's overall strategic aims are:

- New and growing markets for EU goods and services. *Global Europe* identifies the need to forge strategic links with economically significant emerging markets with prospects for economic growth, such as India, Mercosur, Russia, Gulf Co-operation Council, South Korea and ASEAN. China is also mentioned for special consideration and a separate policy paper has been published.<sup>5</sup>
- The geopolitics of trade. The EC has identified partner countries according to the number and scope of FTAs they have underway with other countries, notably the US. As well as the 'priority' FTAs, new ones are underway with nations in Central America and the Andean Community. The EU has fewer strategic interests in these regions but clearly the fact that the US has, or is negotiating, FTAs with these countries, is an important consideration. It is no coincidence that the EU's existing FTAs, and those in advanced stages of negotiation, also mirror the ambitions of the US; for example EU–Mercosur is similar to the US–FTAA; EU–Mexico similar to the US–NAFTA and so on.
- Targeting higher levels of protection against EU export interests. The EU commits to reducing tariffs in third countries to open new markets for its exporters – despite some recognition that this can cause problems including revenue and employment losses and bankruptcies in developing countries. The EU is also targeting other barriers to trade (i.e. non-tariff measures) in what it calls “behind-the-border regulation”. Important in respect of non-tariff measures is the proposal that would allow third-party stakeholders (i.e. EU companies) the right of prior consultation on any measure that the third party might want to introduce.
- The EU wants to ensure access to resources and raw materials for its producers. Those mentioned include agricultural materials, energy, metals, minerals, scrap metal, hides and skins.<sup>6,7</sup> In this regard the EU sets out to reduce or eliminate export taxes and other export restrictions. However, these are often in place in order to safeguard natural resources for environmental and developmental reasons.
- The prospect of introducing and enforcing “new trade-related areas” into FTAs, some of which have been rejected at the WTO. The EU lists intellectual property, services, investment, public procurement and competition as “areas of economic importance to us”.<sup>8</sup> These are areas of regulation that have important development implications for the countries concerned.

5 European Commission, 2006b. *Global Europe: EU-China Trade and Investment, Competition and Partnership*.

[http://trade.ec.europa.eu/doclib/docs/2006/november/tradoc\\_131234.pdf](http://trade.ec.europa.eu/doclib/docs/2006/november/tradoc_131234.pdf)

6 European Commission, 2006a. Op cit.

7 European Commission, 2007. *Global Europe: A Stronger Partnership to Deliver Market Access for European Exporters*.

[http://trade.ec.europa.eu/doclib/docs/2007/april/tradoc\\_134507.pdf](http://trade.ec.europa.eu/doclib/docs/2007/april/tradoc_134507.pdf)

8 European Commission, 2006a. Op cit.

**Table 1: EU and US FTAs with developing countries**

	EU	US	
<b>Existing FTAs</b>	Euromed (9 countries) South Africa Mexico Chile	Bahrain Chile Morocco Singapore NAFTA (1)	Jordan Oman CAFTA/DR (6) Peru
<b>Advanced stages of negotiation/ pending approval</b>	Economic Partnership Agreements (76) Gulf Co-operation Council (6)	South Korea Colombia	Panama
<b>Currently suspended</b>	Mercosur (4 excluding Venezuela)	FTAA (33) SACU (5) Ecuador	UAE Thailand
<b>First stages of negotiations (i.e. the EU's 'new FTAs')</b>	India South Korea Andean Community (4) ASEAN countries (10) Central American Nations (6)	Malaysia	
<b>Planned</b>	China	Other ASEAN countries	

The EU is planning further FTA negotiations with a number of non-developing countries, particularly Russia and Ukraine, after these countries have joined the WTO.

## Key lessons learnt from previous negotiations with the EU: How this manual can help

This manual is for those working towards trade agreements between Europe and developing countries that will really support development, whether they be trade officials, members of civil society organisations, private sector actors, or policy analysts. It is assumed that readers already have an interest and some knowledge of trade issues.

To date, little research has been conducted as to the lessons learnt from previous negotiations between the EU and third parties. This manual draws on academic research and NGO experience of the current and past EU negotiations to help draw out lessons learnt. Our experience shows that in order to influence the content of European trade agreements so that they serve development interests better, understanding in four main areas is important:

- Understanding the political context of Europe, within which the negotiations are conducted, is critical. There is a wide divergence of views within the 27 EU member states; it is important to understand these different views, and identify allies amongst member states as potential lobby targets. The EU negotiating teams are led by officials and civil servants who do not have a popular mandate and are largely unaccountable. Moreover, they often have a weak understanding of the links between trade policy and development. It is important to understand how to negotiate with technocrats in this regard.
- Understanding the bureaucratic processes and negotiating mindset will help to challenge some of the worst tactics (bullying, divide-and rule, etc) and help you to take the initiative and turn the tables on the EU rather than simply following procedures and processes set out by the EU.
- Understand the EU's offensive and defensive interests – both by issue and by sector – and potential trade-offs. Its defensive interests are usually to do with agriculture whilst its offensive agenda includes industrial goods, services, investment, competition, government procurement and intellectual property. In this respect, a detailed knowledge of tariff structures is critical to a successful negotiation.
- Understand your region's offensive and defensive interests, including development co-operation. Observing what concessions have been requested and even won in the past by other developing-country partners is important in this regard.

## How to use the manual

The manual provides the following tools:

- Definitions of key terms and explanations of legal language to enable observers to understand the complex and often arcane texts of trade negotiations.
- An introduction to the trade policy-making and negotiating process within the EU.
- An overview of evidence and experience relating to the development implications of different trade policy choices and negotiating outcomes.
- An analysis of EU interests in the area under question.
- An analysis of developing-country interests in the area under question.
- An overview of past practice in negotiations between the EU and developing countries and regions – showing concessions won and tactics used by both sides.
- A guide to key references and resources to help you find information you will need to develop positions and analysis.

We hope that the manual will be useful to help interested groups to identify areas for further investigation and research, to analyse EU proposals and their development implications and ultimately to engage more actively with and influence the process of negotiations in their country and regions.

It is useful to note that this manual does not provide all the information that observers will need to understand the specific interests of every country or region – these will vary according to local development needs, strategies and economic structures, as well as the varying interests of the EU with respect to each partner.

While this manual is not neutral, neither does it aim to give a definitive answer on the development implications of any particular EU proposal or negotiating outcome. Liberalising services, for example, can be good or bad for development depending on the conditions in place and how this liberalisation fits with the development strategy of the country concerned. Instead, the manual identifies what these conditions might be, and what affects the contribution of services liberalisation to development.

The manual is not a final word on EU trade deals – as negotiations and understanding progress we will update each briefing as necessary. We welcome your feedback to assist us in this.

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## Important information and where to find it

Global Europe (plus supporting annex)

[http://ec.europa.eu/trade/issues/sectoral/competitiveness/global\\_europe\\_en.htm](http://ec.europa.eu/trade/issues/sectoral/competitiveness/global_europe_en.htm)

[http://trade.ec.europa.eu/doclib/docs/2006/october/tradoc\\_130370.pdf](http://trade.ec.europa.eu/doclib/docs/2006/october/tradoc_130370.pdf)

Information and analysis on FTAs

[www.bilaterals.org/](http://www.bilaterals.org/)

Information on EU FTAs

[http://ec.europa.eu/trade/issues/bilateral/index\\_en.htm](http://ec.europa.eu/trade/issues/bilateral/index_en.htm)

[http://trade.ec.europa.eu/doclib/docs/2006/december/tradoc\\_118238.pdf](http://trade.ec.europa.eu/doclib/docs/2006/december/tradoc_118238.pdf)

[http://trade.ec.europa.eu/doclib/docs/2006/december/tradoc\\_111588.pdf](http://trade.ec.europa.eu/doclib/docs/2006/december/tradoc_111588.pdf)

Sustainability Impact Assessments of EU FTAs

<http://ec.europa.eu/trade/issues/global/sia/studies.htm>

Information on US FTAs

[www.ustr.gov/Trade\\_Agreements/Bilateral/Section\\_Index.html](http://www.ustr.gov/Trade_Agreements/Bilateral/Section_Index.html)

[www.ustr.gov/Trade\\_Agreements/Regional/Section\\_Index.html](http://www.ustr.gov/Trade_Agreements/Regional/Section_Index.html)

The EU FTA Manual is a series of eight briefings on the European Union's approach to Free Trade Agreements.

1. Introduction: Tackling EU Free Trade Agreements
2. Inside European Union Trade Policy
3. The EU's approach to Free Trade Agreements: Market Access for Goods
4. The EU's approach to Free Trade Agreements: Services
5. The EU's approach to Free Trade Agreements: Investment
6. The EU's approach to Free Trade Agreements: Competition
7. The EU's approach to Free Trade Agreements: Government Procurement
8. The EU's approach to Free Trade Agreements: Intellectual Property

We will be updating these briefings as negotiations and understanding progress, and would welcome your feedback.

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