

2 Inside European Union Trade Policy

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.

What's at stake?

The European Union is the world's largest trading power and, taking into account combined contributions of the European Commission and individual member states, also its largest aid donor.

This paper provides insight into the players, processes and policies that guide the European Union's external activities on trade and their interaction with development assistance.

This understanding is important as:

- European Union negotiators often use arguments relating to their powers or processes to justify behaviour in negotiations;
- it is helpful in identifying allies, opportunities and targets to influence change.

Key players

This section outlines the roles and responsibilities of key players in European Union trade policy-making, and their interaction with civil society.

European Commission

The European Commission (EC) has the exclusive right to initiate trade policy proposals and is the EU's sole representative in trade negotiations. It has a "collegial" structure, made up of different "Directorates General" (DGs) with responsibility for different areas of community policy. Each DG has a Commissioner and a Director General. The Commissioner has a political mandate from member states with the endorsement of the European Parliament and is the equivalent of a Minister; a Director General does not have the same limited term of appointment and is a civil servant. The Directorates cannot operate in each other's respective spheres so must co-operate where these overlap or combine. This is achieved formally through inter-service consultation, where affected Directorates can comment on each other's proposals before sending recommendations for discussion and decision at the weekly meetings of the college of commissioners. It also happens informally through contacts between officials.

Key Directorates General with respect to trade negotiations

DG Trade: has responsibility for commercial policy and external trade and is generally the main player in trade negotiations.

DG Relex: Responsible for external relations with international organisations, EC delegations overseas and the EC's participation in common foreign and security policy. It also has responsibility for relations with particular regions: Korea, Southern Mediterranean, Latin America and Asia. DG Relex has some role in negotiations with those regions, although DG Trade will lead negotiations on trade.

DG Development: has responsibility for the EC's development policy and relations with the African, Caribbean and Pacific regions (ACP). European Development policy is laid out in the EU Consensus on Development that identifies a series of areas and cross-cutting issues for community intervention.

Other relevant DGs include: Taxud (responsible for tax and customs policy including Rules of Origin), Agri (agriculture policy), Fish (fisheries policy), Competition, Markt (intellectual property), SANCO (standards).

The EC, as a bureaucratic institution, takes instruction from its member states, via the Council (see below). However significant private lobby activity is also directed at the EC as the body that is instrumental in introducing new areas of activity and establishing the direction of policy. This direct interaction should not be neglected by civil society.

Besides these informal lobbying opportunities, there are two formal channels of interaction between the EC and civil society. The first is the European Economic and Social Committee (EESC) which has a consultative role and whose opinions are forwarded to the larger institutions: the Council, the Commission and the European Parliament. This group represents "organised civil society" including employer and employee organisations. It has access to negotiations, as well as the opportunity to take a speaking role in meetings. Informal civil society organisations (i.e. NGOs) can be represented in the EESC, but in practice have tended to seek to develop their own structures and channels of influence. For European development NGOs, the main umbrella organisation is CONCORD, the European NGO Confederation for relief and development.

The second channel is the Civil Society Dialogue process through which regular briefings are given by EC officials to civil society – both businesses and NGOs. The meetings take place in a question–answer format, but offer very restrictive opportunities to cross-examine the EC or influence its positions properly. The process has been strongly criticised by NGOs as providing no engagement prior to decision-making and for the tendency for low-ranking officials to attend meetings, rather than those in charge of negotiations. The co-ordination group representing development NGOs, environmental NGOs, business and other interests meets with the civil society contact point to set the programme of CSD meetings.

The Council

The Council comprises ministers from the capitals of member states and is the formal body representing member states on European foreign and trade policy. It has the authority to mandate negotiations and approve deals. It delegates authority to the Commission to lead negotiations on its behalf. During negotiations, the Council considers trade at its regular GAERC (General Affairs and External Relations Committee) meetings and can take "decisions" to guide the conduct of the EC during talks. A significant number of decisions, particularly on issues falling within the exclusive competence of the European Commission (e.g. trade in goods) can be taken by Qualified Majority Voting (QMV). This means that a decision is passed if a two-thirds majority of member states that represent over 62% of the overall EU population vote in its favour. On other issues where the European

Commission has mixed competency with member states (e.g. services and investment), consensus is needed. Whilst the GAERC formally takes decisions, approves deals, etc, the details of trade talks and policies are considered in various council sub-groups mentioned below.

Article 133 Committee (C133)

This is the main committee where representatives of EU member states meet to discuss trade issues regularly. It has a formal consultative role to “assist” the EC in negotiations. It can assert considerable influence on the EC, and is the only body fully briefed on progress in talks and consulted on unpublished proposals. In reality, the EC shapes debate and sets the agenda within the C133. The committee meetings take place at deputy level fortnightly, and at full member level monthly. Officials from EU member state permanent representations in Brussels generally attend the former set of meetings, whilst experts or senior officials from capitals tend to travel to the latter. It has specialist subcommittees that meet to discuss services, textiles and mutual recognition. The C133 is largely secretive – minutes and lists of members are not published officially, although some civil society groups have worked to make at least lists of members available.¹ Whilst business lobby groups regularly meet with C133 committees, this is not yet happening systematically for NGOs.

1 See ‘Important information and where to find it’ on page 7

COREPER

COREPER prepares the decisions for the GAERC. It is made up of permanent representatives of EU member states and meets fortnightly. After discussion at the C133, COREPER prepares EC proposals for Council approval.

Regional working groups

The regional working groups comprise officials of EU member states who follow trade and foreign policy issues relevant to specific global regions. In principle, these are the discussion forum for regional trade negotiations. However, the C133 increasingly leads on these. Regional groups are still involved. Some relevant groups are the ACP (Africa, Caribbean, Pacific) working group, AMLAT (Latin America) and COASI (Asia, Oceania).

Civil society interaction with the Council mostly occurs at member state level. Informal lobbies with permanent representations are possible, but these officials tend to take instructions from their capital. Some member states meet with interest groups prior to C133 meetings, but this is not universal.

Presidency

Member states rotate presidency of the Council. This allows them in the year prior to their presidency to set the agenda for that period; however, during their six-month tenure they are required to behave more neutrally in Council discussions.

European Parliament

The European Parliament (EP) has a limited role in trade policy (although note that this may change under proposed reforms). It has no consultative status and was turned down for observer status on the C133. It has the power of “assent” if trade deals go beyond core issues into other areas such as intellectual property rights and investment. This means the parliament can approve or refuse ratification. It has exercised this right to refuse in the case of association agreements with Turkmenistan and Belarus.² However, the parliament has regular consultations with the European Commission on trade policy, via its International Trade (INTA) and Development (DEVE) committees. Parliamentary committees can also produce reports, petitions and resolutions and hold hearings and debates

2 Human Rights Watch, 4 December 2006

that carry some political weight. If these reports are carried out as part of the work programme of the Committee (decided annually), the Commission must respond. Or they can be at the own initiative of an individual Member of the European Parliament (MEP), in which case they are simply noted by the Commission. MEPs may also ask formal questions on any issue of constituency or other importance to Commission or to Council to obtain precise information on particular points or to force a policy statement to be made. These must be answered within three weeks (written priority question) or, for non-priority questions, within six weeks.

European civil society tends to have close relations with the parliament as it is the most directly representative body of the European Union institutions. As well as taking part in informal lobbying, civil society can provide input on reports and has taken part in hearings alongside Commission officials in the European Parliament.

Process

The external relations framework – linking trade and development

The European Union's common policy on trade and development assistance takes the form of trade and co-operation agreements with countries and regions, sometimes called "Association Agreements". Most agreements have a "three pillar" structure covering financial assistance, trade and other economic reforms, and political dialogue.

The process to achieve these agreements tends to be incremental, the final stage often being the negotiation of an FTA. It is worth remembering therefore that FTAs do not start from scratch – prior treaties and agreements, even if not labeled as trade deals, often include significant provisions relating to economic co-operation.³

The links between the three pillars are in fact quite weak. The political dialogue and co-operation chapters have been criticised as being strong on rhetoric but weak in implementation.⁴ The European Commission does not impose sanctions in order to reinforce the political dialogue chapter, for example, except that usually there is a clause which allows the European Union to suspend trade if a partner country violates human rights.

The co-operation chapter lays the legal basis for development assistance and agrees priorities for spending. The European Union also adopts multi-annual regional strategies for the implementation of the Community co-operation and aid instruments. These documents guide the implementation of assistance in a given region and outline the different priority sectors of co-operation, the main actors of co-operation, and cross-cutting issues to be considered. On the basis of these regional strategies, the Commission and its delegations in third countries establish in consultation with recipient countries a support strategy and prepare a country strategy paper that includes a 'national indicative programme' for each country. Aid is delivered in accordance with these country strategy papers that are established for periods of three to six years depending on the region. The strategies are subject to annual and mid-term reviews.

One difficulty for developing countries in co-ordinating aid and trade deals with the European Union is that the two processes are not well linked or synchronised. Trade deals usually contain a sustainable development/co-operation chapter that contains promises of assistance and development co-operation, for example on labour standards. However, in practice these provisions are non-binding and lack teeth in implementation. Another difficulty lies in timing: although the trade deal enters into effect immediately, the framework for development co-operation is decided through a separate process that may not coincide with decisions in trade deals.

³ See 'Important information section and where to find it' on page 7

⁴ ICCO (2007), *The EU-Mexico Free Trade Agreement Seven Years on: A warning to the Global South*

These bilateral agreements are negotiated in the context of a broader framework of relationships between the European Union and the different regions of the world. European Union heads of states and foreign ministers take part in regular summits and ministerial meetings with the different regional groupings where political declarations in favour of strengthened co-operation and dialogue are adopted. Some of these joint declarations are key stepping-stones in co-operation, as was the case for the Barcelona declaration of 1995 that was the starting point of a closer co-operation framework between the European Union and the Mediterranean countries and was followed by the negotiation of association agreements.

Policies

Two principles are meant to guide the interaction between the EC's activities on trade and development:

Policy coherence for development: The EC Treaty (Article 178) states that Community policy in the sphere of development co-operation shall be complementary to the policies pursued by the member states and shall foster:

- the sustainable and economic development of developing countries, particularly the most disadvantaged;
- smooth and gradual integration of developing countries into the world economy;
- poverty eradication in developing countries.

Consistency principle: The Treaty of Amsterdam (1997) states that the EU's development policy should not be subordinated to other external policies, including trade.

Although these principles could be much improved, the two together make a strong case that EU commercial interests should not guide negotiating positions as far as trade policy and negotiations involving developing countries are concerned.

Arguably, the effect of these principles has been primarily on the rhetoric of EC officials in trade talks; however, when used in combination with tools such as the sustainability impact assessments (SIAs), they can be a useful basis on which to argue for development interests.

Process of trade negotiations

As mentioned above, negotiations do not start in a vacuum – framework agreements and regional strategies agreed at the political level underpin them.

Negotiating Directive (the mandate)

Before the European Commission can begin negotiating it needs to take its proposals to member states in the form of a draft mandate. This sets out the issues for negotiation, the preferred outcome, and possibly a timetable for negotiations. The Commission drafts the mandate which is then discussed in C133 and COREPER before approval by qualified majority vote at the Council of Ministers. The Commission uses its mandate tactically in negotiations seeing it as an impetus to discuss particular issues, even when these prove unpopular, and as limiting its room for manoeuvre, for example in offering concessions or discussing extra-curricular topics. However, the status of the mandate is ambiguous – it is simultaneously used by the Commission negotiators as a bottom line and a target to achieve. The mandate can be modified (as was the case recently to allow South Africa to negotiate an Economic Partnership Agreement as part of the agreement with the Southern Africa Development Community) or ignored (although Singapore Issues are still in the European Commission's mandate to negotiate at the World Trade Organisation, these issues are no longer on the table). As the mandates are confidential documents, they are not open to public debate or influence, although civil society can raise key concerns with member states or even the European Commission.

Sustainability Impact Assessments (SIAs)

Once negotiations are launched, the Commission must carry out a Sustainability Impact Assessment to evaluate the impact of any proposed deal on sustainable development. These are not intended to influence the direction of negotiations, but to identify any necessary accompanying mitigation measures. This is reflected in the timing of the assessments, which are frequently finalised when talks are near completion or at an end. Civil society can influence the assessment process, suggesting sectors for examining or even proposing, consulting or commenting on drafts. Sustainability Impact Assessments have been criticised as too frequently accepting unproven optimistic assumptions of the benefits of preferred reforms, such as liberalisation.

During negotiations

Only officials of the European Commission, usually from the Directorate General of Trade, sit at the negotiating table on the European side. Member states monitor and influence negotiations via the C133 and occasionally via the General Affairs and Economic Relations Council. Civil society is updated via the Civil Society Dialogue process, and has some opportunity to raise concerns via informal lobbying.

After agreements

Once a deal is agreed, the text goes to the Council for final approval. Where the issue is exclusively European Commission competence, it is approved by qualified majority vote; where there is mixed competence a unanimous Council Decision is required. Assent from the European Parliament is required if the deal falls within its domain, for example if it has budgetary implications or sets up a specific institutional framework. Because of the expansion of the trade agenda, it is now rare that deals are solely within the Commission's competence, and therefore outside the Parliament's domain. Consensus approval by member states and the assent of parliament is generally required for new deals.

National parliaments

National parliaments can present issues for member states to raise within the C133 and improve transparency and scrutiny of the negotiating process. National parliaments can also have a ratification role.

After signing: Implementation and monitoring

The European Union tends to include two elements with respect to monitoring and review within its free trade agreements: dispute settlement procedures and provisions to be able to address possible future problems at the highest political level (ministers). To date no mechanism has been established to monitor the outcomes and impacts of free trade agreements, although agreements include provisions for periodic reviews at ministerial level to track progress in implementing the agreement. As there is no mandate for evidence-based analysis of the impact and no agreement between the parties on what would arise as a result of such assessments (nor the procedures for remedy if anything is going wrong),⁵ some observers argue that the European Union is interested not in monitoring the results of its agreements but only in checking the compliance to the agreed commitments.

5 See the cases of EU–Mexico FTA (www.tni.org/reports/altreg/eumexicofta.pdf); and of EPAs (www.ecdpm.org/trade/epamonitoring).

Important information and where to find it

For links to key European institutions and lists of members and contacts, visit:

www.s2bnetwork.org/index.jsp?id=15&random=r0533412941731513

European Commission directory:

http://ec.europa.eu/staffdir/plsql/gsys_page.display_index?pLang=EN

For links to existing agreements and statements on DG Trade's approach to different regions:

http://ec.europa.eu/trade/issues/bilateral/regions/index_en.htm

DG Trade's civil society homepage:

<http://trade.ec.europa.eu/civilsoc/index.cfm>

DG Trade's Sustainability Impact Assessment homepage:

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

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

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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.

Please contact: tradeandcorporates@actionaid.org