

# Position paper

## ETNO Reflection Document on the future direction of EU trade policy



**July 2010**

### Executive Summary

This Reflection Document lists ETNO's replies to the 20 questions in the European Commission DG TRADE public consultation on a future trade policy (close 28 July 2010). The Association's comments were submitted via the EC's dedicated web tool.

## 1. Introduction

The Lisbon Treaty clearly considers EU trade policy as an integral part of the Union's overall external action – and therefore it must address development, environmental and social objectives as well as contributing to the other objectives set out in the Treaty on the European Union:

**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?**

The key role of the electronic communications sector has been highlighted by EU policy makers as a driver for growth and social welfare and as a key pillar of the EU 2020 strategy. Next generation access networks and services will be the principal engine of the smart and sustainable growth at the centre of the new Commission's priorities.

Through their innovation efforts and new service development, electronic communications companies are demonstrating the direct

impact telecoms services can have on people's welfare and quality of life.<sup>1</sup>

Against this background, trade of services may be instrumental to produce positive effects on development, environmental and social objectives also in third countries and especially EU's neighbouring countries, notably through opportunities for private investments.

Therefore in ETNO members' opinion the EU trade policy must back these efforts on the global scene especially in an environment of economic downturn where risks of protectionism have to be taken into consideration.

The principal focus is stimulating growth, creating jobs and increasing prosperity for EU citizens. On 3 March 2010, the European Commission launched the Europe 2020 strategy which sets out a blueprint for achieving and securing smart, sustainable and inclusive growth. The Europe 2020 strategy acknowledges the important role that trade has to play in ensuring these ambitious objectives.

Over recent decades, the EU's prosperity has to a large extent been built on the internal market, economic integration between the Member States and open markets at home and abroad for trade and investment. However, Europe's prosperity is not only linked to its (open) internal market but also to the markets of other countries and regions, many of which enjoy much faster economic growth. Current forecasts suggest that by 2025, the volume of trade could double compared with 2005, with a bigger share of exports coming from emerging market economies (more than 30 % as against 20 % in 2005). The EU may no longer be the world's largest exporter.

In today's global economy, production will increasingly be organised along global supply chains. They have become an important factor in ensuring competitiveness on domestic as well as global markets. Around two thirds of the EU's imports are inputs to other products. As a result, open trade helps embed local companies in global production chains, makes them more competitive and creates more jobs. Trade and investment flows are complementary, create jobs and promote transfer of technology.

While people may be wary about the impact of all this on their job security and income, the crisis has clearly shown that protectionism is not an option. People are equally wary about the environmental impacts of the way we do business, for instance in terms of resource use and climate change. All major economies are today in the same

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<sup>1</sup> ETNO 2010 annual report <http://www.etno.eu/annualreport/>

boat; if one of them closes its markets or pursues unsustainable policies, all will suffer.

The global financial crisis and its effects on the real economy have underscored the importance of sound regulation and the need to avoid major global imbalances. Trade flows were dramatically affected, although protectionism did not spread as widely as feared thanks to coordinated international efforts in G20 and WTO. The current initiatives (both at EU level and as part of the G20 mechanism) envisage a number of solutions to prevent similar crises from happening in the future. They should be part of an integrated coordinated approach:

**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?**

Again it is a fact that next generation access networks and services will play a pivotal role in a smart and sustainable growth.

As stated by the Commission, a part of the growth that Europe needs to generate over the next decade will need to come from the emerging economies<sup>2</sup> many of which enjoy much faster economic growth. In this respect telecommunications technologies and services evolution in some emerging and developing countries is outstanding, where for instance the penetration of mobile phones continues to grow at double digit rates. As far as Internet is concerned those countries will represent the main potential of the so-called « next billion » of users.

## 2. Multilateral trade negotiations

Multilateral trade liberalisation remains our priority in the years to come because it avoids the costs of trade diversion and minimises transaction costs for a global round of liberalisation. The EU wants to see the Doha Round completed as soon as possible because the potential economic benefits are substantial for both developed and developing countries. However, the value of the WTO to the global trading system goes much beyond the Doha Round: Multilateral rules and trade liberalisation, complemented by a strong dispute settlement system, offer significant long-term gains and are of systemic interest to the EU as a leading trader:

**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?**

Many ETNO members have international operations around the world, some with global reach. In this regard ETNO consider that

<sup>2</sup> [http://ec.europa.eu/eu2020/index\\_en.htm](http://ec.europa.eu/eu2020/index_en.htm)

telecoms services should be maintained a priority in EU trade negotiations at WTO level through the current Doha Services negotiations as well as any possible future negotiations.

ETNO shares the view to place emphasis on concluding on-going multilateral and bilateral trade negotiations, in particular those with the strongest economic potential, as well as on better enforcement of existing agreements.

The system of trade rules needs to continue to promote legal security for services and investment and ensure that continued barriers to ICT growth are reduced so that countries don't miss out on the developmental benefits of the sector.

In the area of electronic communications services the regulatory framework is key to ensuring open access to third country markets. Issues can be addressed at multilateral, plurilateral, regional and bilateral level – whether in the form of concrete trade commitments or of political and regulatory dialogue with the respective authorities.

At the core of any regulatory talks has to be the effective application of the principles on the regulatory framework for the Basic Telecommunications services as outlined in the Reference Paper annexed to the WTO Telecommunications Agreement. These are in particular:

- Prevention of anti-competitive practices and access to essential facilities of the major supplier through interconnection under non-discriminatory and transparent terms and in a timely, cost-orientated and reasonable fashion;
- Recourse to independent dispute settlement within a reasonable period of time;
- Publicly available licensing criteria;
- Establishment of an independent and impartial regulator;
- Objective, transparent and non-discriminatory allocation of scarce resources, including frequencies, numbers and rights of way.

In many third country markets these rules still lack proper enforcement even where the Reference Paper has been adopted as part of the WTO Telecommunications Agreement.

However, there are also other crucial aspects to ensure market access in electronic communications, which go beyond the Reference Paper:

- Where possible, elimination of all foreign equity limits on International Basic telecom services and value added services. Such limitations remain the single most significant market entry barrier for our sector in many countries;
- Unduly restrictive market access conditions should be removed to facilitate foreign participation in Basic and value added Telecoms Services;

- There should be a transparent and streamlined application and granting processes for all types of licences;
- Rigorous accounting transparency requirements should be applied to services in which the legacy operator retains market dominance;
- Where competition law is in place also the telecommunications sector should be subjected to it;
- Harmonization of regulatory frameworks for electronic communications across specific regions (like Latin America or ASEAN) is desirable in areas such as access regulation, spectrum policy, universal service or license regime;
- National Treatment across the ICT sector would be optimal;
- Promotion of better regulation through open consultations prior to the enactment of new law;
- A general strengthening of transparency, non-discrimination and the rule of law in general should be promoted.

Regulatory predictability and legal certainty are a vital pre-condition to stimulate investments in this sector.

### **3. Bilateral trade negotiations**

After the adoption of the Global Europe communication in 20064, the EU launched a new series of negotiations leading to free trade agreements (FTAs) with fast-growing economies, including for example Korea, India, Singapore and Vietnam. Negotiations with Mercosur were recently re-started. The negotiations between the EU and Korea have now been concluded while others are still ongoing, offering the prospect of important economic gains for the EU.

FTA negotiations have also been launched with Canada. Although Canada was not mentioned explicitly in the Global Europe communication, an FTA would clearly accord with the objectives for FTA negotiations which were set out in Global Europe.<sup>5</sup> Furthermore, trade negotiations have been completed with Central American and Columbia and Peru:

**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?**

While ETNO Member companies as a whole have global presence, individual members of ETNO pursue different business strategies. Some ETNO members operate only in domestic or European markets, some only in specific regions and others have a global presence. Some have invested in new entrant operations and some in incumbents and some in both. Each case depends on the markets in question and the chosen company strategy.

However, considering the ICT development potential mentioned above (Question 2), to expand EU influence and business in regions like Africa, Middle-East, and South America would be a natural focus.

Furthermore, ETNO believes that those countries and regions which are already listed in the “plurilateral requests” put forward in 2006 by the “Friends of Telecoms Group” during the ongoing WTO negotiations provide an indication on the markets with the highest potential for those European telecommunications operators, which are expanding their businesses abroad.

Over the last decade, the EU has also consistently engaged with its major strategic trading partners (such as the US, Japan, China and Russia) in regulatory dialogue and other forms of economic and trade cooperation. Our economic weight, notwithstanding current conditions, makes the EU an attractive partner for many countries, but this has not always translated into real progress in terms of a level playing field for EU companies, or new opportunities to do business and invest in these important markets:

**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?**

Regulatory differences are nowadays often a more important source of trade hindrances than tariffs, especially between developed countries, with low tariffs but sophisticated regulatory systems resulting in additional compliance costs for crossborder activities. Reducing these costs can generate significant trade and economic benefits. In today’s world of global production chains, increased regulatory convergence at global level, for instance through the promotion of international standards or by other means such as the development of mutual recognition/equivalence of regulatory systems may help EU companies do business successfully abroad. The precise nature of the model to advance towards regulatory convergence will, however, depend on the specifics of the economic sector concerned:

**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?**

Regarding Services GATS article VI (Domestic regulation) constitutes a first step of guidance specifying *inter alia* that technical standards and licensing requirements do not constitute unnecessary barriers to trade in services.

Securing a reliable and sustainable supply of raw materials is crucial for EU industry.

Taking into account development policy and environmental sustainability concerns, securing this supply from third countries requires a coordinated approach regarding

EU external relations and trade policy:

**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?**

## 4. Services

Services are an increasingly important part of the global economy. A manufacturing supply chain is unthinkable without services inputs. Tackling barriers to trade with major partners in areas such as financial services and communication services; business services and Information and Communication Technology (ICT) too could give an important boost to EU economic recovery. At the same time, trade in many services, especially those that can be delivered through digital communication channels, has increased rapidly. Services negotiations, both under the WTO General Agreement on Trade in Services (GATS) and in Free Trade Agreements, have so far focused mainly on consolidating market access conditions already in place, and only rarely on creating new openings for services trade. The difficulties in securing significant new market access are holding back potential productivity increases and job creation in EU services sectors – and in manufacturing sectors:

**Question 8: Should the EU aim for more trade in services, and if so, how? Multilateral and bilateral negotiations have only partially succeeded in opening trade in services so far, so would a renewed focus on trade in services among key trading partners (plurilateral approach) offer a useful alternative avenue?**

As agreed in §7 of the Annex C of the Hong Kong WTO Ministerial Declaration in December 2005, Plurilateral negotiations were conducted in early 2006, *inter alia* in the Telecommunications sector (See Question 4). As a matter of fact such an initiative, if a satisfying « critical mass » of offers is met, would reduce significantly national treatment limitations and substantial market access limitations, e.g. in terms of foreign capital participation.

## 5. Investment

Foreign direct investment (FDI) is an increasingly important means for businesses to participate in the dynamic economic development of markets around the globe.

Supplementing as well as complementing trade, FDI creates more direct and deeper links between economies. It is a source of extra capital, encourages efficient production, stimulates technology transfer and fosters the exchange of managerial know-how. However, the increasing importance of FDI as a driver of economic activity - the EU itself is one the largest source of FDI in the global economy – is not yet fully reflected in its global governance: the current differences in national rules and policies create an uneven playing field for economic operators. The Commission is currently preparing a Communication on this subject:

**Question 9: Given that the Lisbon Treaty gives the EU greater competences in international investment policy, how should we contribute to facilitating crossborder direct investment (both outward and inward)? What are the key issues to be addressed in agreements governing investment?**

It is of highest importance to integrate investment liberalisation and also investment protection.

As far as liberalisation is concerned, the General Agreement on Trade in Services (GATS) provides for a framework for undertaking commitments on the supply of services through a commercial presence (defined as "mode 3") relevant for Foreign Direct Investment in services sectors. Thus limitations in this mode must be curtailed as much as possible (See Question 3 and Question 8).

In the second place those investments have to be secured *inter alia* via improved Bilateral Investment Treaties (BITs) as envisioned by the recent Commission policy paper ('Towards a comprehensive European international investment policy').

## 6. Sustainable trade

Environmental and social concerns extend beyond EU borders: climate change and degradation of natural resources, for example pose a threat to the prosperity and well being of people in rich and poor countries alike. Trade policy should to the extent possible support green and inclusive growth around the globe. This could be by including the opening up of trade in environmental goods and services or via trade incentives promoting labour and environmental commitments. Greening the world economy and putting it on a more sustainable footing, in particular, will require considerable regulatory work. We should be careful however to avoid 'green protectionism'.

On the other hand, possible negative environmental and social effects should be appropriately addressed:

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

Against this background of "green" products and technologies, wide and smart use of ICT to increase energy efficiency in other industry sectors, as well as CO2 emissions reduction, is a strategic target which should be underlined.

For instance the potential of low carbon broadband enabled applications for achieving a reduction of CO2 emissions must be fully promoted and exploited.

The EU is a major market for agricultural imports from developed and developing countries. The EU is also a key producer and exporter of processed food and other high value agricultural products:

**Question 11: Given the forthcoming revision of the Common Agricultural Policy and the continuing need to foster a sustainable agricultural sector in Europe, how should EU trade policy develop in this area consistently with the overall objectives of the Lisbon Treaty?**

## 7. Inclusive trade

The distribution of the benefits to trade is also affected by the changes in the way business is conducted today. The European economy is increasingly dependent on the participation of its businesses in global value chains. A final product often incorporates hundreds of subcomponents, which are traded back and forth around the globe before reaching the final consumer. Greater openness in trade has allowed this to happen:

**Question 12: How can EU trade policy ensure that the benefits of global value chains are shared by European producers, consumers and jobholders?**

The gains from trade are not evenly distributed, and adjustments can lead to short-term costs in the form of unemployment, retraining the workforce and converting production structures. The EU has a number of instruments available to address the problem of adjusting to new global trade patterns, such as EU Structural Funds, the European Social Fund (ESF), and the European Regional Development Fund.

In addition, the EU launched the European Globalisation Adjustment Fund (EGAF) in 2007, which offers a general response in terms of managing the negative employment effects of globalisation. The EGAF is designed to provide one-off individual support for a limited period to workers who are 'severely and personally affected by trade adjustment redundancies'. In the longer term, the aim is to help redundant workers find and hold on to jobs:

**Question 13: Are existing 'flanking' policies sufficient to ensure that the benefits of trade are shared among different people and across different regions and markets in the EU? And how can the EU best ensure, where necessary, that trade and other policies play their part in helping people, sectors and communities adjust?**

## 8. Trade and Development

The link between trade and development has become a major issue in recent decades as more and more countries, especially in Asia, have shown that trade can be an important means of boosting economic growth and lifting people out of poverty. The EU is a global player and takes its development responsibilities seriously. It is negotiating and implementing Economic Partnership Agreements with a view to sustainable development and regional integration in Africa, the Caribbean and the Pacific. Negotiations have also taken place with the Central American and Andean Community countries. A parallel consultation is already in progress on reforming the EU's general system of preferences for developing countries. However, trade policy alone cannot address the development challenges some countries face. Note that in light of the importance and scope of the topic, a future communication on trade and development will address these complex linkages between these policies. This too will be preceded by a public consultation:

**Question 14: How can the EU best strengthen the issue of trade and development in its trade policy? Should the EU pursue a more differentiated approach in its trade relations to reflect the level of development of particular partners? How should the EU approach the issue of trade preferences in relation to the generally low level of EU Most Favoured Nation (MFN) tariffs, which will further be eroded following the possible conclusion of the Doha Round?**

As already stated (Question 3), in the area of electronic communications services the regulatory framework is key to ensuring open access to third country markets.

With regards to less developed countries the European Commission should – while promoting the principles of the WTO Reference Paper

on Basic Telecommunications services - take into account differences in ICT sector development and market realities rather than looking for a direct transposition of the principles of the EU regulatory framework.

## 9. 'Smart' trade

The Europe 2020 strategy emphasises the 'smart' growth dimension, that is to say growth driven by innovative products, services and industries. A number of emerging market economies are likely to catch up with the technologies of the developed economies, at least in some sectors. Convergence between developing and developed countries can boost our economy, including in new and innovative 'smart' high-tech goods and services. While tariffs may be an issue in some instances, de facto barriers might arise as a result of divergent regulatory developments. Fortunately, in many of these high-tech domains, regulation is still on the drawing board. Upstream regulatory dialogue on these newly emerging technologies, addressing both risks and the response to risks, could facilitate international convergence and avoid the emergence of new barriers to trade:

**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?**

ETNO sees a need to consider market access issues in converged market segments. Convergence is increasingly blurring the boundaries between telecommunications and audiovisual services. Some European operators may become also content providers in third country markets, such as for mobile TV, IPTV or VOD, developing quadruple play strategies and new and innovative services that are critical for the global competitiveness of the EU industry. In this sense, current regulatory restrictions limiting foreign capital for companies not only in the telecommunications sector but also in broadcasting should be addressed by ongoing and future trade negotiations.

## 10. Enforcement and dealing with unfair practices

The EU benefits from being one of the most open economies in the world by having access to cheaper goods and services, for citizens, the public sector and companies. It is in a strong position to shape globalisation and promote its interests. At the same time, we should not be naively open and defenceless in the face of unfair practices by some of our trading partners, e.g. distortion of international

competition by the payment of unfair subsidies, in cash or in kind, or by dumping practices.

To defend the EU against such practices, we have recourse to trade defence instruments, in line with WTO obligations. In addition, existing multilateral, bilateral and plurilateral agreements provide for enforcement tools, including dispute settlement. This is particularly important with risk of protectionist measures still high in the aftermath of the economic crisis:

**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?**

Many partner countries still give limited access to their markets, for example to their procurement markets by giving national preferences to their enterprises. The EU is also looking into new areas such as access to raw materials and energy (see question 7 above). Furthermore, the EU has developed a comprehensive Market Access Strategy which uses a variety of formal and informal tools to make sure that European companies can make use of the market access opportunities which have been negotiated in trade agreements.<sup>6</sup> Following the recommendations of the Europe 2020 Communication, an annual trade and investment barriers report identifying ways to improve market access and regulatory environment for EU companies will be presented to the Spring European Council starting in 2011:

**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?**

In the context of enforcement, ETNO would also very much welcome an annual review process on the compliance of third countries with existing trade commitments in the ICT field (WTO and FTAs) with particular focus on telecommunications services. This review should feed into the agenda of trade policy and regulatory dialogues with the respective countries and regions. The process and the outputs of this kind of review must be considered carefully in order to really facilitate the dialogue with third countries. That means that it must be envisaged in a constructive spirit, avoiding an ill-controlled system of allegations that could be *in fine* counterproductive in the relationship with some countries.

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

Innovation needs to be protected through effective protection of Intellectual Property Rights (IPR). E-communications service providers strongly believe in the importance of IPR for the economy. They are actively cooperating with rights holders and consumer organisations in the fight against illicit file-sharing within the existing legal framework.

But ETNO urges the Commission to avoid initiatives or provisions that would hamper the development of the Information Society. By no means provisions should jeopardise the existing legal framework, hinder the development of new e-services and limit European citizens' rights to privacy. In particular draft liability provisions must not contradict the "mere conduit" principle established by the EU eCommerce Directive. Otherwise they would put confidentiality of communications at risk and would undermine the level of legal security needed for ISPs to exercise their activities.

As reiterated by the recently adopted Digital Agenda, offering a wide choice of attractive legitimate online content services is the best response for stamping out illicit file sharing.

## 11. An open approach to shaping trade policy

The Commission is committed to shaping trade policy as openly and democratically as possible. Thanks to the Lisbon Treaty, the increased role for the European Parliament in trade policy improves both the accountability and the transparency of trade policy.

However, in addition, trade policy should build on a wide range of points of view inside the EU and from other parts of the world. There are a number of structures, such as DG TRADE's Civil Society Dialogue to assist with this, but the approach can further evolve to take full account of the new EU institutional environment and changes in modern communications technology:

**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?**

Compliance with existing market access commitments and their enforcement are crucial to favor European growth through participation in open and fair global markets. Therefore to secure better market access for EU business ETNO welcomes initiatives which aim for a close partnership with industry. ETNO would also urge the dedication of sufficient resources for the enforcement of service commitments, including telecommunications services.

## **Others**

**Question 20: Are there additional priorities in relation to trade policy that the Commission should pursue?**