

## Main Content of the European Free Trade Agreements

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This analysis chose four Free Trade Agreements that for their modernity and their similarities with the kind of FTA will be proposed by the EU, will be more likely a useful benchmark on which evaluate the EU's demand vis-à-vis Vietnam. The Agreements are:

- EU – Chile
- EU – Korea
- EU – CARIFORUM
- EU – Colombia and Peru

	<b>EU - Korea</b>	<b>EU - Chile</b>	<b>EU – Col/Peru</b>	<b>EU - CARIFORUM</b>
<b>Trade in Goods</b>	YES	YES	YES	YES
<b>Trade Remedies</b>	YES	NO	YES	NO
<b>Technical Barriers to Trade</b>	YES	NO	YES	YES
<b>Sanitary and Phytosanitary Measures</b>	YES	NO	YES	YES
<b>Customs and Trade Facilitation</b>	YES	NO	YES	YES

	<b>EU - Korea</b>	<b>EU - Chile</b>	<b>EU – Col/Peru</b>	<b>EU - CARIFORUM</b>
<b>Trade in Services and Investment</b>	YES	ONLY TRADE IN SERVICES AND ESTABLISHMENT	YES	YES
<b>Payment and Capital Movement</b>	YES	YES	YES	YES
<b>Government Procurement</b>	YES	NO	YES	YES
<b>Intellectual Property</b>	YES	NO	YES	YES
<b>Competition</b>	YES	YES	YES	YES
<b>Transparency</b>	YES	YES	YES	YES
<b>Sustainable Development</b>	YES	NO	YES	YES
<b>Dispute Settlement</b>	YES	YES	YES	YES

## **Trade in Goods**

### **Tariff Reduction**

Tariff reduction has always been at the core of a free trade agreement. Depending on the trading partner of the FTA, and especially with developing countries, the reduction of custom duties on “substantially all the trade” will be at the centre of the negotiations. Of course the reduction of duties will come from both sides, but it will be on the EU-partner country the heaviest burden.

In fact, by looking at the EU tariffs on goods it is clear that they are almost uniformly low on all the products, with only the notable exception of fishery and agricultural products. In the negotiations European trade negotiators will

invariably leave the barriers to trade in agricultural and fishery products high and will reduce the tariffs on all the other products.

On the contrary, by examining the reduction of tariffs of EU FTA-partner countries (PC) it is clear that the reduction of tariff is higher in the long term. Partner countries cannot accept the asymmetry of concession and therefore the EU usually give up on other issues to rebalance the concessions. Usually even in PC the agricultural sector is left behind in terms of market opening in order to prevent EU subsidies agricultural products to invade the domestic market. The EU routinely excludes or strictly limits concessions on products such as beef, sugar, a range of dairy products, some cereals and cereal products, rice, some fresh fruits and vegetables, some cut flowers and fisheries products. The partner developing country also excludes a range of agricultural products, not least to protect their agriculture from imports of subsidised agricultural goods from the EU such as, beef, sugar, dairy products, and cereals. As a result, in the case of the agreement with Mexico, only 62% of bilateral trade in agricultural products is fully liberalised, while in the case of the agreement with South Africa 62% of EU imports are liberalised while South Africa fully liberalizes 82% of its imports from the EU. EU negotiators will also allow PC to take a longer time to reach the completed scheduled liberalization in trade in goods. In this respect, while usually the EU will complete its liberalization process in five years, PC will complete it in a period that could take from 5 to 15 years. The removal of customs duties is done over a transitional period so that domestic producers can gradually adapt to the lowering of customs duties. Consumers will benefit from lower prices and exporters from strengthened competitiveness. The pattern of tariff reductions in the developing country usually takes the form of duties on capital and intermediate goods being abolished before those on final consumer goods, which are also subject to significantly higher initial duties and which are only liberalised towards the end of the transitional period.

### **Non-Tariff Barriers (TBT)**

In the context of the new “Global Europe Strategy” the EU seeks deepen market access through the removal of non-tariff barriers (NTBs). NTBs are all barriers to trade other than tariffs and arise in many different shapes. In the WTO Agreements, there is an agreement that deals exclusively with NTBs, or Technical Barriers to Trade (TBT) as they are officially called. Such barriers take the form of differences in standards, requirements, regulations, and testing and certification procedures. The costs created by non-tariff barriers are a high burden, often higher than custom duties, particularly for smaller and medium enterprises. Since a number of these barriers are a side effect of the otherwise

legitimate pursuit of public policy objectives, overcoming the negative side effects requires finding carefully balanced solutions.

The annexes on NTBs address effectively those regulatory and other barriers that EU industry has identified as being the most important obstacles to access to the foreign markets in the sectors concerned. In view of their detailed and technical nature, these barriers are very difficult to address and require entering deeply into the regulatory practices of trading partners. It is therefore of particular value that the rules on NTBs could largely be based on the European regulatory model.

The EU negotiators have in each agreement analyzed chose some sector of particular relevance to EU exporters or importer and have negotiated specific annexes that try to recompose the asymmetry of regulations between the two countries. Usually this happens through the recognition of international standards as equivalent to domestic standards.

Specific annexes have been negotiated on: Consumer Electronic, Pharmaceuticals, Automotive and Chemicals products.

In the context of the NTB strategy, EU FTAs usually contain also a chapter that reiterates the provisions of the WTO TBT Agreement. In addition, are inscribed provisions to cooperate on standards and regulatory issues, and where appropriate, to establish dialogues between regulators, with the intention of simplifying and avoiding unnecessary divergence in technical requirements applying to products. The agreement includes specific undertakings on good regulatory practice: transparency in making rules, use where possible of international standards, providing the other Party with an opportunity to discuss rules before they are made, and allowing sufficient time for the other Party to comment on them and to take account of their adoption. Similar considerations apply to technical standards.

There are also provisions on marking and labelling, whereby requirements to mark or label products will be minimised as far as possible, and will be non-discriminatory. Finally, a mechanism for co-ordination is set up between the FTA members to keep these matters under consideration and to address any specific issues.

### **Sanitary and Phytosanitary Measures (SPS)**

The main objective of the Chapter on Sanitary and Phytosanitary (SPS) measures is to further facilitate trade between the EU and PCs in animals and animal products, plants and plant products while maintaining the high level of

human, animal and plant health. Another objective is to ensure full transparency as regards sanitary and phytosanitary measures affecting trade.

With the aim of having a common understanding on animal welfare, the chapter also includes provisions on cooperation. These objectives will be achieved by the introduction of the following key elements:

- A formal dialogue on SPS issues affecting trade;
- Specific commitments on: transparency (in particular with respect to import conditions), consultation, working towards developing a common understanding on international standards and equal treatment of all EU Member States;
- A procedure for the recognition of disease-free areas, i.e. areas eligible for exporting products to the other Party.

In the framework of FTA, a specific mechanism for co-operation between the parties can be established (Committee on SPS measures) for the implementation of the SPS Chapter. This Committee will develop the necessary procedures and arrangements, will monitor progress, and provide a forum for discussion of problems arising from the application of certain SPS measures.

### **Customs and Trade Facilitation**

The agreement will enhance co-operation in customs and customs-related matters. In particular the Parties commit, amongst other, to:

- Pursue harmonisation of documentation and data requirements with the aim to facilitate trade between them;
- Develop effective communication with the business sector;
- Assist each other in matters related to tariff classification, valuation and preferential origin of goods;
- Promote strong and efficient enforcement of intellectual property rights regarding import, export and transit;
- Improve the security, while facilitating trade, of sea-containers and other shipments imported into, transhipped through or transiting the Parties.

The agreement can also provide a comprehensive benchmark for the application of modern and trade friendly customs and border related procedures. It builds on international standards and addresses the majority of the issues raised in the WTO Trade Facilitation Negotiating Group. To provide increased transparency and legal certainty, the Trade Facilitation provisions included in the FTA could

provide for advance rulings, appeal procedures and detailed rules for publication of customs and trade related legislation, fees and charges, the designation of inquiry points and consultations with the representatives of the trading community. To simplify and streamline border procedures the chapter could contain provisions on the reduction of fees and charges, risk management, electronic submissions, the elimination of pre-shipment inspections, simplified customs procedures and customs valuation.

The agreement establishes a Customs Committee, which consists of representatives of the customs authorities and other competent authorities of the Parties responsible for customs and trade facilitation matters.

The Committee serves a forum to discuss and endeavour to resolve any difference that may arise between the Parties with regard to customs and trade facilitation matters including, amongst others, tariff classification, origin of goods and mutual administrative assistance in customs matters. It may also formulate recommendations and opinions, which it considers necessary for the attainment of the objectives established in the customs and trade facilitation chapter of the agreement. In between the Committee meetings, both sides cooperate closely through informal channels and also in the margins of the many International meetings (e.g. in the framework of the World Customs Organisation or the World Trade Organisation).

### **Trade Remedies**

The trade remedies chapter includes provisions relating to the use of the traditional trade defence instruments already existing in the WTO legislation (anti-dumping, anti-subsidy and global safeguard).

The key guiding principle concerning the traditional instruments is to re-affirm the need to respect the rights and obligations foreseen by the WTO legislation, while at the same time setting out disciplines in order to limit the use of these instruments to situations where this is necessary and to ensure a fair treatment for all the parties concerned. Those are already standard in the EU legislation.

For example, the FTA requires that the level of duty should be lower than the full amount of dumping or subsidy to the extent that this is sufficient to eliminate the injury. It also gives the possibility to conduct a public interest test in order to balance the various interests at stake and to examine the possible impact of the duties on the economic operators before imposing any measures.

There are also provisions aiming at increasing transparency of the investigation process, also giving the possibility of the economic operators involved in the

proceedings to file documents in English, which would allow interested parties to better exercise their rights of defence and to avoid costly translations.

The agreement includes a bilateral safeguard clause, which allows either party to reintroduce temporarily the tariffs applied to WTO members in case an increase of imports would cause or threaten *serious injury*. The EU will monitor the market in sensitive sectors and will be ready to activate safeguard procedures whenever the conditions are met. At the same time as the entry into force of the agreement, a EU Regulation will introduce rapid and effective procedures for the implementation of the bilateral safeguard clause.

Finally a working group on trade remedies has been established in order to set up a forum for dialogue on trade remedy co-operation. This will allow the investigating authorities of each party to have a better knowledge of their respective practice and exchange views in order to increase standards used in trade defence proceedings.

### **Trade in Services, Establishment and E-Commerce**

The new EU FTAs rely heavily on market access in services and try to the extent possible to reach a level of trade and regulatory concession beyond that of the GATS. So far EU FTAs, on the contrary to other countries' FTAs, do not contain a separate chapter for trade in services and investment. Rather, in the title that groups all the services concession, investment is limited only to commercial presence. This will probably change in the future as the EU had acquired unique competence also on investment.

The services title comprises between six to seven chapters. The first chapter sets out the general provisions. The second chapter, which deals with commercial presence/establishment, applies as under NAFTA-type agreements to both services and non-service economic activities. The third chapter relates to cross-border trade in services. The fourth chapter deals with the temporary movement of natural persons and the fifth one with the regulatory framework. The sixth chapter addresses the issue of e-commerce while the seventh could lay out the co-operation (aid for trade) package for services. In addition to that, EU FTAs contain additional and specific annexes on selected industries, such as transport, telecommunications, finance, legal services, environmental services, maritime transport and construction

Outside of the services title the EU FTAs also include provisions on free capital movement, which ensure the smooth functioning of the agreement. These

include standard safeguards for both sides with a possibility to apply measures to ensure the stability of the financial system.

## **Other Trade-Related Issues**

### **Government Procurement**

A chapter on government procurement can be found in all the EU FTAs. The Chapter applies to public procurement in both goods and services. The chapter's inclusion is noteworthy to the extent that many of EU's trading partners do not have their own internal discipline on government procurement nor are a signatory to the multilateral 1994 Government Procurement Agreement (GPA).

In its *Global Europe* strategy the EC identified government procurement as a policy domain of key importance for EC companies to better compete in international markets. In the specific context of the FTAs negotiations, perhaps two motivations explain the EC's desire to include a procurement chapter. First, and most straightforwardly, the EPAs offer the EC the possibility of improved access to FTA partner's public procurement markets. Second, the EPAs provide a platform to promote potential economy-wide gains on the part of FTA partner countries by improving the business climates, helping in the fight against corruption, improving domestic regulatory regimes and administrative procedures and affording cash-strapped governments better value for money in procurement transactions and foster the establishment of firms capable of tendering from one island into the market of another.

### **Competition**

In many of the EU FTAs there is a competition chapter whose intrusiveness in the regulatory space of the partner's country has increased with the new FTAs. In the competition chapter, the Parties agree to prohibit and sanction certain practices and transactions involving goods or services, which distort competition and trade between them. This implies that anti-competitive practices such as, for instance, cartels or abusive behavior by companies with a dominant market position and anti-competitive mergers, will not be tolerated by the Parties and be subject to effective enforcement action, as they lead to consumer harm and higher prices.

In order to ensure an effective enforcement, the Parties agreed to maintain effective competition laws and an appropriately equipped competition authority responsible for addressing such anti-competitive practices. Both Parties recognize the importance of respecting the principles of due process in applying

these competition laws. The agreement provides that competition law should also apply to state-controlled enterprises and that there is no discrimination by monopolies. This ensures that companies of both Parties have equal access to each other markets. Moreover, there are provisions laying down the main principles for consultations and cooperation between the Parties.

In the EU-Korea FTA there is also a section on subsidies, which provides that the Parties agree to remedy or remove distortions of competition caused by subsidies in so far as they affect international trade. This section is particularly significant in so far as it contains provisions that prohibit certain types of subsidies, which are considered to be particularly distortive. These are:

- a) Subsidies covering debts or liabilities of an enterprise without any limitation, in law or in fact, as to the amount or duration;
- b) Subsidies to ailing enterprises, without a credible restructuring plan based on realistic assumptions that would allow the recipient to return to long-term viability without further reliance on State support. The turnaround has to be made within a reasonable time, and the enterprise must make a significant contribution to the costs of restructuring.

The section also contains transparency provisions according to which Parties have to report annually the total amount, types and the sectoral distribution of subsidies. Moreover, parties are obliged to provide further information on subsidy schemes or individual subsidies on request.

The agreement also contains a rendezvous clause for services: Parties will discuss 3 years after entry into force of the agreement if this section should also be applied to services. Last, but not least, this section is subject to the dispute settlement mechanism.

Much of the co-operation on offer is voluntary in nature. However, there are rules that must be adhered to when co-operation does take place. One such rule calls on competition authorities to inform other competition authorities about enforcement proceedings against anticompetitive business practices which fall within the scope of the chapter and are taking place in the latter Party's territory.

### **Intellectual Property Right**

The protection and enforcement of IPR is crucial to European competitiveness. In order to preserve the standard of protection applied in Europe, the EU FTAs contain an IP chapter, whose regulatory structure varies depending on each partner. The most ambitious IP chapter was contained in the EU-Korea FTA

and included developed provisions on in particular copyright, designs and geographical indications (GIs), which served as a complement and up-date to the TRIPS Agreement. The chapter also included a strong section on enforcement of IPRs based on the EU's internal rules in the enforcement directive.

On copyright the provisions are in lines with the latest international developments. This part of the chapter also includes a provision that should facilitate for EU right holders to get adequate remuneration for the use of their music or other artistic works. Designs have lately become an economically important IP right. The chapter therefore includes provisions, which fills the gap in TRIPS as regards designs including provisions on unregistered designs.

EU wines, spirits, cheese or hams represent a good part of EU agricultural exports. The FTA offers a high level of protection for commercially important European GIs such as:

– *Champagne, Scotch or Irish whisk(e)y, Grappa, Ouzo, Polska Wódka*

– *Prosciutto di Parma, Szegedi szalámi or Jambon de Bayonne*

– *Manchego or Parmigiano Reggiano* cheese

– *Vinho Verde or Tokaji* wines as well as those from the *Bordeaux* and *Rioja* and many

other regions like the *Murfatlar* vineyard

– *Bayerisches Bier* or *České pivo*

Around 160 major EU GIs will be protected directly at entry into force of the agreement. All agricultural GIs, and not only those relating to wines and spirits, will have the same high level of protection. Both sides are committed to protect additional GIs through a procedure envisaged in the agreement.

The FTA will also protect GIs from South Korea. This will provide EU consumers with clarity that when for example buying *Boseong green tea* they will savor the authentic Korean product.

### **Trade and Sustainable Development**

The EU FTAs include provisions establishing shared commitments and a framework for cooperation on trade and sustainable development. The agreement breaks new ground in the field of trade and sustainable development and enables close dialogue and continued engagement between EU and partner countries in the fields of environment and labour.

The chapter on trade and sustainable development includes firm commitments on both sides to labour and environmental standards. The agreement also sets up institutional structures to implement and monitor the commitments between the parties, including through civil society involvement.

Key elements of the Trade and Sustainable Development Chapter include:

- On labour, a shared commitment to ILO core labour standards and to the ILO decent work agenda, including a commitment to ratify and effectively implement all conventions identified as up to date by the ILO (i.e. going beyond those Conventions relating to the core labour standards).
- On environment, there is a commitment to effectively implement all multilateral environment agreements to which they are party.
- Confirmation of the parties' right to regulate, while aiming at a high level of protection in the fields of environment and labour, and a commitment to refrain from waiving or derogating from such standards in a manner that affects trade or investment between the parties.
- Strong monitoring mechanisms, building on public scrutiny through civil society involvement by both partner country and the EU. Each side will set up a civil society advisory group, including a balanced representation of environment, labour and business organizations. The two groups will meet annually in a civil society forum to discuss the implementation of the sustainable development aspects of the chapter. Cooperation activities and monitoring of the implementation of commitments will be undertaken in a high level Committee on Trade and Sustainable Development.
- Mechanisms for settling differences through an independent panel of experts. Recommendations by the panel of experts will be subject to monitoring in the Committee on Trade and Sustainable Development. The Panel of experts should seek the advice of the Domestic Advisory Groups and competent international organisations, such as the ILO or relevant multilateral environmental organisations. The reports of the panel will be made publicly available to the Domestic Advisory groups.

### **Transparency**

As domestic regulatory environments have an impact on trade, the EU FTAs contain a chapter that set up the criteria to be followed in order to pursue an efficient and predictable regulatory environment for economic operators,

especially the small ones. Lack of transparency of the regulatory environment has often been a concern expressed by European firms doing business in other countries. It is therefore of great significance that EU FTAs include strong transparency commitments that apply to all regulations having an impact on matters covered by the FTA.

In particular, the Chapter provides for:

- Commitments to allow interested persons to comment on proposed new regulatory measures.
- The establishment of enquiry or contact points to respond to questions arising from the application of regulations or to seek to resolve problems arising from such regulations.
- Due process requirements as regards administrative proceedings, including as regards the review or appeal of administrative actions in areas covered by the FTA.

### **Dispute Settlement**

In most of the FTAs in force there is always a dispute settlement chapter. In the EU FTAs, the Dispute Settlement mechanism is based on the model of the WTO Dispute Settlement Understanding, but its procedures are much faster.

The first step of the procedure is the consultation between the parties, with a view to reaching a solution. If the parties do not find an agreement, the dispute is referred to an arbitration panel. The panel is composed of three experts that are chosen by the parties, or selected by lot from a list agreed in advance. The panel receives submissions from the parties, and will hold a hearing that will be open to the public. Interested persons or companies will be allowed to inform the panel of their views by sending *amicus curiae* submissions. The panel's ruling, delivered within 120 days after the establishment of the panel, is binding on the parties. After the ruling, the party in breach of the FTA will have a reasonable period of time to bring itself into compliance with the FTA. This period is agreed between the parties or decided by an arbitrator.

By the end of the period for compliance, the party that was found in breach of the agreement must have remedied the situation. If the complaining party considers that the defending party is still in breach of the FTA, it can refer the issue back to the panel. If the panel confirms that the defending party is still in breach of the FTA, the complainant is entitled to impose proportionate sanctions. All time limits of the arbitration procedure are reduced in cases of urgency. The FTA also contains a mediation mechanism that the parties can use

to tackle market access problems due to non-tariff measures. The aim of this mechanism is not to review the legality of a measure, but rather to find a quick and effective solution to a market access problem.

Under the mediation mechanism, the parties will be assisted by a mediator that they have jointly agreed, or that has been selected by lot from a list agreed in advance. The mediator meets with parties and will deliver an advisory opinion and propose a solution within 60 days of its nomination. The opinion and the proposal of the mediator are not binding: the parties are free to accept them, or use them as a basis for a solution.

The mediation mechanism does not exclude the possibility to have recourse to dispute settlement, during or after the mediation procedure.

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