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**COMMISSION STAFF WORKING DOCUMENT**  
*Accompanying the document*

**Report from the Commission to the European Council**

**Trade and Investment Barriers Report 2012**

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TIBR 2011 barriers

Country/barrier	Progress/ latest developments/state of play	Actions taken in 2011	Next high level events (also in 2012)	Next technical/working level events (also in 2012)
<b>CHINA</b>				
China - Indigenous Innovation	At HED/3 of December 2010, China indicated that foreign and domestic products will be treated equally and laws and regulations will be amended accordingly. President Hu in January 2011 also committed that there will not be any link between procurement and the origin of IP. In June 2011, the Ministry of Finance (MOF) adopted a notice on Abolishing 3 National Indigenous Innovation-related Policies. At the recent US-China JCCT of November 2011, China furthermore indicated that the State Council had issued legislation mandating provincial governments to eliminate all catalogues linking government procurement to innovation policies by 1 December 2011.	Economic and Trade Working Group (May); Joint Committee (July); meeting between Head of EU Delegation and Vice Minister of Finance mid October. Raised during China's Transitional Review Mechanism in WTO (October-November).	EU-China Summit 15-14 February (tbc); HED (March 2012, tbc)	Trade and Investment Policy Dialogue (Feb 2012 tbc). China's 4th Trade Policy Review in WTO (June 2012).
China - Investment Catalogue	A draft Catalogue was issued on 1 April with no significant improvements. COM sent comments towards the end of April. The Catalogue was finally adopted on 24 December 2011.	EU Delegation sent comments to the draft in April; the issue was raised at the Economic and Trade Working Group (May); raised also at a meeting at	EU-China Summit 15-14 February (tbc); HED (March 2012, tbc)	Trade and Investment Policy Dialogue (Feb 2012 tbc). China's 4th Trade Policy Review in WTO (June 2012).

		Director General/Vice Ministers level 29 June; raised at the Joint Committee (July). Raised during China's Transitional Review Mechanism in WTO (October-November).		
China - Raw Materials	Final WTO panel report was issued on 5 July on China - Measures related to the exportation of various raw materials (DS 394, 395, 398). The report is very positive for the EU since it clarified that export restrictions, as applied by China on a number of raw materials, are inconsistent with China's obligations under WTO law. The Panel found in particular that China's export duties imposed on nine raw materials were inconsistent with its obligations under the Accession Protocol. The Panel also found that China cannot revert to Art. XX GATT 1994 to defend these duties. Secondly, China's export quotas restricting access to certain raw materials would violate Art. XI:1 GATT 1994, with its general prohibition against quantitative export restrictions and would not be justifiable for reasons of shortage of essential products (Art. XI:2(a) GATT 1994) and of environmental/exhaustion concerns (Art. XX(b) and (g) GATT). Thirdly, conditions imposed by China for the allocation of export quotas violate its obligations under the	Economic and Trade Working Group (May); meeting at Director General/Vice Minister level 29 June; Joint Committee (July). Raised during China's Transitional Review Mechanism in WTO (October-November).	EU-China Summit 15-14 February (tbc); HED (March 2012, tbc)	Trade and Investment Policy Dialogue (Feb 2012 tbc). China's 4th Trade Policy Review in WTO (June 2012).

	<p>WTO accession protocol and certain aspects of its export licensing regime are in breach of Art. XI:1 GATT 1994. Finally, China imposing a minimum export price requirement on exporters of certain raw materials would violate the "general elimination of quantitative restrictions" provision contained in Art. XI:1 GATT 1994. China is now expected to bring its export regime in line with international rules. China appealed to the Panel's decision and, on 30 January 2012, the WTO Appellate Body confirmed the illegality of the Chinese quotas and export duties.</p>			
China - ICT security	<p>Contacts with OSCCA in November 2010 and April 2011 hinted that the <b>commercial encryption regulation</b> would be revised by 2011 and that EU industry concerns will be taken into account. Now the adoption of the revised regulation is to be expected rather for 2012. In the meantime, the <b>Multi-level Protection Scheme</b> is becoming a more serious concern for the industry. The China Information security Standardisation Technical Working Group also issued 6 draft standards for IT appliances in July 2011. While soliciting comments was a positive development per se, the drafts unfortunately confirmed intentions to apply the fundamental - and discriminatory - provisions of the commercial encryption regulation and the MLPS.</p>	<p>ETWG (May); Joint Committee (July); DG ENTR Dialogue on Conformity Assessment (May). TBT Committee March, June and November; COM comments on the draft standards August 2011. Raised during China's Transitional Review Mechanism in WTO (October-November).</p>	<p>EU-China Summit 15-14 February (tbc); HED (March 2012, tbc)</p>	<p>Trade and Investment Policy Dialogue (Feb 2012 tbc). China's 4th Trade Policy Review in WTO (June 2012).</p>
INDIA				

<p>India - security measures for telecom equipment</p>	<p>After action at the highest political level, including by President Barroso, in December 2010, a new text adopted eliminating the most problematic provisions that have been put forward in 2010 (escrow of source codes and other sensitive information, obligation for technology transfer and lack of cap on the amount of penalties in case of security breach). However, there are still some issues of concern. As of 1 April 2013 all security components have to be tested in India. Moreover, there is the possibility of far-reaching official inspections in the supply chain which should be restricted to a minimum possible (software, hardware, design and development should not be subject to inspection arrangements). Finally, the new rules still include the requirement to replace foreign resident employees by "trained Indian nationals". Nevertheless, industry confirmed (MAAC of June 2011) that the new provisions solve the most worrying issues.</p>	<p>The issue was raised in the TBT-Committee in March 2011. EU-India TBT/SPS Working Group on 7 July 2011 and EU-India Sub-Commission on Trade on 12 July 2011.</p>	<p>EU-India Summit 10 February 2012.</p>	<p>Contacts continue in the framework of FTA negotiations.</p>
<p>India - export restrictions on cotton</p>	<p>Quota for cotton yarn was discontinued as of 1 April 2011; Export tax on raw cotton and cotton waste was revoked in September 2011.</p>	<p>The issue was raised on many different occasions including at Director General level. The EU Delegation in Delhi had several meetings with the relevant ministries. The issue was also raised at the EU-India Sub Commission</p>		

		on Trade 12 July 2011.		
India - Investment restrictions	India's investment policy continues to hinder foreign investments. Many important economic sectors such as multi-brand retail, insurance, banking and financial services, legal services and accountancy still remain closed to foreign investment. India is considering steps to open up certain sectors such as insurance, but the outcome is still uncertain. In the meantime, draft legislation on allowing foreign investment in retail and distribution services is going through adoption process; but investment in multi brand retail swiftly put on hold sine die due to negative political and social reaction.	The issue is being dealt with in the framework of FTA negotiations. Raised in the context of India Trade Policy Review in WTO (September).	EU-India Summit 10 February 2012.	Next rounds of FTA negotiations.
India - SPS (poultry, pork, fruits and vegetables)	India Sanitary and Phytosanitary (SPS) import requirements going beyond international standards without scientific justification hinder various EU exports, mainly bovine semen, pig meat, poultry vegetables, fruits and timber. In 2011, with regard to bovine semen, we have seen some progress: in March 2011, India agreed, in writing, on several suggestions made by EU to bring the Indian import requirements on bovine semen in line with the international standards of the World Organisation of Animal Health (e.g. testing requirements for diseases such as brucellosis, bluetongue, trichomonas). Other import criteria are still not	The Commission together with the EU delegation kept on pushing for these longstanding SPS barriers with India. The barrier related to avian influenza continued to be flagged in the WTO SPS Committee and the other issues were continued to be raised at bilateral level. Our concerns have been expressed in writing and repeated during several	EU-India Summit 10 February 2012.	

	<p>in line with relevant international standards and wherefore India has not provided its risk assessment justifying its deviation from the international standards. Thus to date exports from EU to India are still unnecessarily hampered. India needs to align further to international standards with a view to open the market for all EU countries. In the food safety area, India provided ad-hoc guidelines in October 2011 which facilitated trade for several EU's agri-food products exported to India.</p>	<p>meetings, including the EU-India TBT/SPS WG in July 2011. The Commission continues to closely follow-up on these outstanding issues. Issues were also raised in the context of India Trade Policy Review in WTO (September).</p>		
<b>JAPAN</b>				
<p>Japan - technical regulations and conformity assessment in medical devices</p>	<p>Following regular contacts with the Ministry of Health, Labour and Welfare, "pre-market" approval procedures applied in Japan for medical devices were clarified and a small improvement in the process was achieved for certain categories of medical devices. In particular, on site audits required for Class IV devices will be performed only every two year and in the meantime a document review will be conducted.</p>	<p>Following regular contacts with the Ministry of Health, Labour and Welfare, "pre-market" approval procedures applied in Japan for medical devices were clarified and a small improvement in the process was achieved for certain categories of medical devices. In particular, on site audits required for Class IV devices will be performed only every two years and in the meantime a document review will be conducted.</p>	<p>EU-Japan Summit Spring 2012 (tbc)</p>	<p>Regular meetings with Japan in the context of the exploratory talks on a possible FTA initiated at the 28 May 2011 Summit.</p>

Japan - discrimination in insurance services	No progress on the discriminatory treatment in postal services.	Coordination with USTR. Regular discussions at bilateral policy dialogues.	EU-Japan Summit Spring 2012 (tbc)	Issue to be raised in the scoping exercise for the FTA.
Japan - government procurement	In the framework of the Government Procurement Agreement (GPA) negotiations, which were successfully concluded in December 2011, Japan undertook the commitment vis-a-vis the EU to apply the operational safety clause in railways procurement in a transparent and non-discriminatory manner. This commitment should result in a non-discretionary use of the clause, thereby keeping procurement in the railway sector open to foreign operators.	The issue continues to be raised at all levels. Progress in the field of procurement in the railway sector was achieved in the context of GPA negotiations in December 2011. Government procurement was also brought to the High Level Group. To be raised also in the context of Japan Trade Policy Review in WTO (February).	EU-Japan Summit Spring 2012 (tbc)	Issue to be raised in the scoping exercise for the FTA.
<b>MERCOSUR</b>				
Brazil - preferential margins in government procurement	Brazil's initially temporary 'Buy Brazilian' law of July 2010 – which set a very high 25% preference margin for domestic suppliers – was made permanent in December 2010. The preference margin was immediately applied to the ICT sector and is now being extended to cover other sectors such as health, communication and high-tech equipment following the Plano Brasil Maior, adopted by President Rousseff on 2 August 2011.	The issue was raised in the Joint Committee of June 2011.	EU-BZ Summit 2012	EU-Brazil Joint Committee 2012



Brazil/Argentina - restrictions in maritime transports	No progress on the issue of cargo sharing agreement between Argentina and Brazil limiting opportunities for EU shipping companies.	The issue was raised in the EU-Brazil Joint Committee of June 2011, in the follow up meeting with Argentina on the 2010 Joint Committee, and in the context of the EU-Mercosur negotiations. The issue is also being followed up in the context of DDA negotiations.	EU-BZ Summit 2012	EU-Mercosur FTA negotiations, EU-Argentina and EU-Brazil Joint Committees 2012, EU-Brazil Maritime dialogue (February 2012).
Brazil/Argentina - export restrictions on raw materials	No changes for export restrictions on agricultural products and hides and skins.	The issue was raised in the EU-Brazil Joint Committee of June 2011, in the follow up meeting with Argentina on the 2010 Joint Committee and in the context of the EU-Mercosur negotiations.		EU-Mercosur FTA negotiations, EU-Argentina and EU-Brazil Joint Committees 2012
Argentina - non-automatic import licences	The situation has not improved and, between February and March 2011, the government of Argentina even extended the application of non-automatic import licenses (NALs) to a list of 178 new tariff lines (8 digit-level) as to include some cars and parts thereof, motorcycles, bicycles and parts thereof, textiles, metallurgical products and some electric products. As a result, NALs by now cover 589 tariff lines, thereby affecting 12.3% of EU export to Argentina. In the meantime, Argentina has shown some limited readiness to find solutions on a case-by	The issue was raised in the follow-up meeting to the Joint Committee of 2010 and in other high-level meetings. Action is also undertaken in the multilateral framework (WTO Import Licensing Committee and Committee on Trade in Goods). Alliance building with other affected WTO members.		EU-Argentina Joint Committee 2012 and WTO framework.

	case basis and some European companies have been able to alleviate their problems by entering into agreements with the Argentine government.	Several bilateral meetings in Brussels and Buenos Aires. Inclusion in FTA negotiations.		
<b>RUSSIA</b>				
Customs issues	<p>Concerns of exporters due to the setting up of the customs union have largely abated and the system seems to be functioning reasonably, in that no further worsening of conditions has been observed and the situation in general reveals the same 'usual' concerns as before (customs documentation, arbitrary checks, restrictions on customs inspection points for certain goods, customs valuation, congestion). Concerns regarding the setting up of the customs union (CU) have been reduced thanks to EU seminars with CU authorities held in February 2011 and earlier in June 2010. No major issues linked to the customs regime as such have appeared. However, arbitrary interpretation of customs legislation by the Russian authorities continues to remain an issue of concern. Russia's upcoming <u>accession to the WTO</u> is expected to bring a number of improvements, as Russia should start applying the relevant WTO provisions, such as GATT Article VII and the WTO Customs Valuation Agreement (customs valuation). Work has also started to implement the objectives of the EU-Russia Strategic Framework for Customs Cooperation,</p>	<p>A Strategic Framework for EU-Russia Customs Cooperation was agreed by in December 2010. First concrete steps in terms of implementation were agreed in May 2011, at the last meeting of the EU-Russia Working Group on Customs Border Issues. Two expert groups on Authorised Economic Operators and Legislative Convergence are scheduled to take place in Moscow 29-30 November as a follow-up to the last meeting of the Working Group and a part of the implementation of the Strategic Framework. The EU continues to raise any such issues in regular fora established with Russia, including the EU-Russia Working Group on Customs Border Issues</p>	<p>Final decision on Russia's WTO accession was taken at WTO Ministerial 16 December. Meeting of Commissioner Šemeta and the Head of the Federal Customs Service of Russia Belyaninov (first quarter of 2012).</p>	<p>Follow-up to the activities undertaken in 2011: meetings of the EU-Russia Working Group on Customs Border Issues, expert groups on Authorised Economic Operators/Risk Management and Legislative Convergence; signature of the joint statement on the Early Warning Mechanism in the first half of 2012.</p>

	aiming to achieve maximum trade facilitation while enduring its security and safety.	and the EU-Russia Trade and Investment Dialogue. In the latter case, customs related issues were discussed in July and November 2011.		
IPR enforcement	<p>Question of IP regime is linked not least to new rules in the CU, which are being negotiated by the parties and to Russia's WTO accession. Formally, it is the enforcement of legislation rather than its content that poses problems. Hence, the EU-RU IP dialogue is the most appropriate forum to raise enforcement and other ad hoc issues. Russia's <u>WTO accession</u> will help address IPR problems as Russia will be legally bound by the TRIPS Agreement. However enforcement-related problems will still need to be tackled on ongoing basis through our IPR dialogue with Russia.</p>	<p>The issue was raised during the Russian government's visit in February 2011. Last IPR Dialogue took place on 12 October in Moscow.</p>	<p>Final decision on Russia's WTO accession to be taken at WTO Ministerial 16 December</p>	<p>Regular follow-up through the IPR dialogue with RU, usually once a year. Next meeting is foreseen for Feb/March 2012.</p>

<p>Investment - trade-related investment measures in the automotive sector</p>	<p>Compatibility of RU's investment policy with TRIMs was also addressed in the negotiations on RU's accession to the WTO. Recent initiatives in the automotive sector indicate the worsening of the investment climate, such as the introduction of local content requirements and wider import substitution policies. According to the agreed terms of Russia's accession, the trade-related investment measures in automotive will be exempt from WTO rules until 1 July 2018. In order to reduce the risk that this investment regime may lead to delocalization from the EU during this transitional period, the Commission has negotiated a bilateral agreement with the Russian Federation which will establish a compensation mechanism which will come into play if exports of car parts to Russia fall following the introduction the Russian measures.</p>	<p>The issue was also raised in the EU-Russia Summit in June 2011. Before that, the issue was raised during the Russian government's visit in February 2011.</p>	<p>Final decision on Russia's WTO accession to be taken at WTO Ministerial 16 December. The bilateral agreement on The Russian investment measures should be signed just before the Ministerial decision in the morning of 16 December.</p>	<p>The bilateral agreement will have to be formally concluded by the Council upon the EP consent.</p>
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SPS issues	<p>Certification for export of EU animals and products thereof currently takes place under conditions agreed with Russia, which are not yet fully aligned with international standards. Better conditions that would benefit trade flows are therefore sought. Additionally, burden on the certification of plant products persists due to unjustified complications caused by the control services. Both issues depend on RU's convergence with international standards, which Russia should comply with also in the context of WTO accession without any transitional periods. This requires adequate preparations. Discussions in 2011 have been focussing on the WTO accession and CU rules in parallel. The commitments obtained in the WTO accession process and listed in the Working Party Report concern harmonization with international standards and practices, as well as the possibility to develop common EU-Customs Union certificates based on conditions no less favourable than the ones existing within Russia, proportionality and scientific justification. The implementation of the necessary acts and other legislation in conformity with WTO/SPS rules needs to be closely monitored.</p>	<p>The issue was marginally raised in the EU-Russia Summit in June 2011, in the context of Russia's abiding by the WTO rules upon accession. Before that, the issue was raised during the Russian government visit in February 2011.</p>	<p>Final decision on Russia's WTO accession to be taken at WTO Ministerial 16 December</p>	<p>Regular meetings on export conditions across the Customs Union with Russia, Kazakhstan and Belarus are conducted by the Commission with the active participation of Member States.</p>
USA				

<p>USA - Buy American/procurement</p>	<p>US stimulus package introduced in response to the financial crisis new 'Buy American' requirements. The stimulus package was discontinued in September 2011. Nevertheless, the tendency in the US Congress and Administration of tabling legislative proposals with similar 'Buy American' provisions is still there. The most recent example is the announcement by President Obama on 12 September 2011 of the so called "American Jobs Act" proposal. Among all the measures included, the proposal includes about \$110 billion spending on infrastructure (ie. school modernisation, highway restoration, airports, railways, etc) which would be subject to Buy American provisions giving a price preference to projects made with US iron, steel and manufactured goods to the extent that they do not increase the price of overall project by more than 25%. Waivers could be provided on the basis of non-availability or public interest. Given the funding structure, the funding under the stimulus will be to large extent limited to iron, steel and manufactured goods produced in the US At this stage, the prospects of any of these bills becoming law are quite limited, given the current political divisions in the US Congress. Notwithstanding this, any Buy American new requirements are well perceived by the Republican majority so we are monitoring closely</p>		<p>11th Trade Policy Review of the US in WTO (December 2012).</p>
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	that new proposals do not move ahead in the near future.			
USA - 100% scanning	<p>Following several actions also from the Commission, the US Secretary of the Department of Homeland Security announced they would seek the postponement of this measure, initially foreseen for 1 July 2012. The Transatlantic Economic Council (TEC) has in 2010 and 2011 addressed a number of issues relating to secure trade, which should help the US to postpone the entry into force of this measure and hopefully the Congress to repeal it. For example, cooperation on supply chain security is ongoing and a joint statement by US Homeland Security Secretary Napolitano and Commissioners Šemeta, Kallas and Malmström was made at the World Customs' Organisation (WCO) Council meeting on 23 June 2011. This statement provides a political framework for EU-US cooperation in multilateral organizations such as WCO, International Civil Aviation Organisation (ICAO), International</p>	Transatlantic Economic Council (November 2011)		US-EU Joint Customs Cooperation Committee (Spring 2012). 11th Trade Policy Review of the US in WTO (December 2012).

	<p>Maritime Organisation (IMO), and the Universal Postal Union (UPU). A first outcome of this was seen at the November 2011 TEC, when the EU and the US completed their preparatory work on mutual recognition of trade partnership programs namely the EU Authorised Economic Operator (AEO) programs and the U.S. Customs-Trade Partnership against Terrorism (C-TPAT) programs. Once a mutual recognition regulation is signed, application to qualified AEOs and CTPAT members may begin as early as July 2012. These initiatives are meant to provide an alternative to the bill on 100% scanning in order to avoid unnecessary costs for exporters while taking into account security concerns.</p>			
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