

# EU statement at the 12<sup>th</sup> Trade Policy Review of the EU, 08/07/15 (2<sup>ND</sup> day)

*Statement by Denis Redonnet, Head of Delegation/EU Headquarters*

Mr Chairman, Mr. Discussant, Distinguished Delegates,

## **INTRODUCTION**

I would like to use my intervention and the time available to engage systematically with all the comments and issues raised in the oral statements made on Monday, bearing in mind the huge number of advance written questions we have received as well as follow-up questions received just yesterday evening. We will reply to all outstanding questions within the deadline foreseen for this exercise.

## **EU DECISION MAKING PROCESSES**

Several Members expressed concerns on Monday on the perceived uneven implementation of EU legislation in Member States in certain areas, or on aspects of our regulatory practices. Let me be clear: the EU is not a unitary State and we operate within our specific institutional framework. This affects some areas more than others, like certain fiscal matters.

Having said this, the European Commission, in its role of Guardian of the EU treaties, wields robust instruments to ensure the proper application of EU law in the EU Member States. Commission prepares own reports on the application of EU level technical regulations in the EU Member States,



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examines any problem relating to their inconsistent application and ensures the appropriate follow-up, which can lead to the initiation of legal proceedings and ultimately financial sanctions on national governments.

With respect to our regulatory development process, they are sometimes characterized as lengthy and complex. At the same time, however, often our partners call for more consultations of stakeholders and third countries (this has been mentioned on Monday e.g. by Japan in area of data protection). Let me just say that we are convinced that the EU's legislative process is highly transparent. It gives today numerous possibilities for stakeholder to express their positions which is not the case yet in some WTO Members.

Still, I would like to stress the significance of the further steps that we are taking in this area, which we believe far from putting us "out of step", get us at the forefront, in our view, of global regulatory best practices. I referred on Monday to the comprehensive "Better Regulation" package of reforms, which covers the entire policy cycle and will boost openness and transparency in our decision-making process horizontally, improve the quality of new laws through better impact assessments of draft legislation and amendments, and promote constant and consistent review of existing EU laws. These developments are naturally driven by the political and policy environment in which we operate in the EU, which is characterized by a high degree of democratic scrutiny and engagement with civil society.

Finally, we have been encouraged in context of this review by the recognition by many Members of our efforts to operate as much as possible as an integrated economic entity, including through facilitations at the border, which will reduce the time and cost of importing goods for all our trade relationships.

## **AGRICULTURE**

We are pleased that the reform process of the Common Agricultural Policy, undertaken over the last two decades, has been acknowledged by our Discussant and by many Delegations. It is worth recalling in our view that the level of trade-distorting support in

the EU has decreased tremendously over time and the use of market price support measures is actually minimal. Successive reforms of the CAP have increased the market orientation overall of European agriculture, and for the current period of 2014-2020, the CAP will continue along this path.

Therefore, we were surprised that a few interventions on Monday criticised the latest CAP reforms for not having been more than "box shifting" (from amber into the green box), stating also that EU farmers remained isolated from market signals and realities. We basically disagree with such view. The main direction of policy in recent years has been the decoupling of support which has given the incentive to farmers to produce to market needs, while at the same time providing them with a certain level of income support to ensure provision of basic public goods.

The last CAP reform introduced a new architecture of direct payments; better targeted, more equitable and greener, while concluding the full market orientation of the CAP by abolishing the last remaining production quotas (for instance, the end of the dairy quota - April 2015, the end of the sugar quota - by 2017).

The direct payments will continue to represent the largest share of spending of the CAP and are fully in line with our WTO commitments.

We also took note of certain specific criticism of EU domestic support under our Rural Development policy, in particular that it would have important effects on productivity and trade competitiveness. Rural Development payments in the EU are not related to production and have no or very little influence on farmers' production decisions. Rural Development policy addresses a broad range of environmental and socio-economic challenges in a very targeted way.

Some Members have also expressed concerns about the level and the structure of EU agricultural tariffs. First, I would like to reiterate that the EU is the world's largest importer of agricultural products, with imports exceeding 103 billion € in 2014. Secondly, we note that such criticism has also come from some Members who, arguably, maintain themselves a high level of agricultural protection.

The EU only has a very limited number of tariff peaks which were accepted and bound as part of the Uruguay Round Agreement. Our non-ad valorem tariffs are in our view fully transparent and predictable. Their simplification has been discussed in the context of the DDA but without any concrete outcome yet. The EU has no plans to autonomously change our tariffs for agricultural products and last CAP reforms have therefore not sought to cover tariffs. It is well known that our view is that any change will result from a successful conclusion to the DDA, which the EU is fully committed to.

As regards more specific concerns raised by Mauritius and Zimbabwe about the end of the sugar quota (by 2017), I would like to recall that the end of the production quotas in the sugar sector is in itself the most important reform to ensure that EU farmers can clearly discern market signals. As a consequence, EU prices are likely to be further in line with world prices.

We also noted some positive comments from some WTO Members like Australia and New Zealand related to the EU decision of removing the milk quota (April 2015). Indeed, this is another additional important step to ensure that EU agriculture sector is more market oriented.

In relation to cotton, I would like to respond to comment made by the Delegation of Benin. As we all know, this issue is crucial for a number of LDCs. The EU already provides duty-free quota-free access to LDC imports and we do not grant any export subsidy. The EU has also reformed its domestic support to the sector eliminating the trade distorting amber support— so this is clearly an area where we have sought to lead by example.

Finally on agriculture, many Members welcomed the fact that all export subsidy rates for agriculture products had been set at zero since 2013. The EU's new Common Agricultural Policy provides very clearly that export subsidies cannot be used other than as an exceptional measure. The EU ensures that its policy will be fully in line with its international commitments and the Bali Declaration on export competition. The full phasing-out of export refunds could similarly only be part of the Single Undertaking and

specifically need to respect the concept of parallelism within the Export Competition pillar of the DDA negotiations.

## **SPS - TBT**

The EU believes that the use of good regulatory practices helps to avoid unnecessary obstacles to trade and ensures that legislation is not more trade restrictive than necessary.

As regards the proposed EU legislation on GMOs food and feed referred to by several Members on Monday, I would like to take the opportunity to clarify a number of points:

First of all, the proposal would not affect the EU procedure of authorisation because GM food and feed will remain assessed by the European Food Safety Authority, based on harmonised science-based criteria, and they will continue to be authorised following an EU decision of authorisation.

The legislative proposal would only provide the possibility for the EU Member States, which so wish, to opt out from the EU decision on authorisation based on overriding reasons of public interest that are distinct from the assessment of risks to health and to the environment. Strict substantial conditions are foreseen in the proposal and ensure, in our view, full compatibility with EU law and with our international obligations; measures adopted by Member States shall be based on compelling grounds, not discriminatory and proportionate. And Members here have also noted that pending consideration of what is at this stage only a legislative proposal, we are indeed applying our current rules and it was noted that we have recently approved 19 pending applications.

More generally, the EU pays maximum attention that TBT and SPS measures do not create unnecessary obstacles to trade or disproportionate burden for producers. We are convinced that our Regulations are based on all available information, and are not more trade restrictive than necessary to fulfil their legitimate objectives.

Turning to SPS measures – as this was the focus of many comments on Monday - I would like to say that these are extensively harmonised within the EU and only very marginal areas are not harmonised in the EU.

In exceptional circumstances, EU Member States may adopt provisional measures in the event of a potential risk, including when this risk cannot be fully quantified or its effects determined because of the insufficiency or inconclusive nature of the scientific data. Such measures are only maintained while the scientific uncertainty exists, and for a "reasonable period of time" as per the provisions of Article 5.7 of the SPS Agreement.

Contrary to what has been mentioned by some, EU SPS measures are taken on the basis of thorough risk analysis. In particular, maximum residue levels (MRLs) of pesticide residues, including import tolerances, are set on the basis of a scientific opinion of the European Food Safety Authority (EFSA). In the EU, like in other third countries, the MRLs are based on the actual use of a pesticide. If a particular pesticide is not used in the EU, it would be unreasonable to request the EU or anybody to replace default MRLs for some other arbitrary value. So the rule is that when there are no authorised uses for a particular pesticide in the EU, MRLs are fixed at the lowest analytical level – the level of determination (LOD) - to give traders a form of legal certainty.

In so doing, the EU avoids the trade disruptive 'zero tolerance' approach often used by other countries. An import tolerance can also be applied for – and granted by the EU - under the condition that there is no health risk for consumers and that the requested MRL is not higher than the one established in the third country.

A number of more specific concerns were also raised about ractopamine. Here the EU has a scientific justification for not following the Codex standard on ractopamine. As many Members here know, this standard was adopted on the basis of a very narrow majority, and after a fair amount of controversy. The EU has repeatedly stated that there are no grounds upon which to determine MRLs for ractopamine. The EU position is based on the EFSA opinion on ractopamine, which is available on the organization's website. We have also replied in writing to a number of other specific points raised on Monday.

Finally, in response to Brazil's comments on foot and mouth disease, the EU would like to reiterate its full support towards the provisions contained in Art 6 of the SPS Agreement on Regionalisation. The EU would actually like to see the same level of commitment towards Regionalisation apply when the EU tries to export to some third countries which continue to refuse the recognition of regionalisation for EU exports of agriculture products.

## **TRADE DEFENCE**

Mr Chairman,

Trade defence is a policy area that again has attracted attention in this review both in writing and orally. As was already the case at the last review, the Secretariat's report confirms that the EU is actually a modest user of antidumping measures, particularly when their number is put in relation to our share in world imports. Also, the recent fairly sharp decline of our use of trade defence instruments – in particular the reduction by around half of the number of new anti-dumping investigations – was recognized by several Members on Monday.

When it comes to trade defence instruments, however, I would like to be very clear that protecting ourselves against unfair trade practices should as a matter of principle not be considered as protectionism. This being said, some Members reiterated on Monday a number of specific questions which they had already raised in writing in advance of our meeting. We have provided written explanations seeking to respond in details to these questions.

Several Members also asked us on Monday about the pending process of modernisation of our trade defence instruments which is described in the Secretariat report in some depth. While this is again only a legislative proposal at this stage, not adopted piece of legislation, I can indicate that one of its central purposes is to improve transparency for all stakeholders.

As regards Russia's statement related to normal value calculation, let me just say here that these issues are currently subject to Dispute Settlement Proceedings. The EU is confident that the approach we follow in its investigations is in line with its international obligations and it would not be appropriate for us to comment further on an ongoing case in the context of a TPR.

Regarding the specific concerns raised by Switzerland on Monday, I would wish to refer them to the written responses we gave to their advanced questions. Anti-dumping duties in our system are exclusively levied on products originating in the country targeted by the measures. The EU also applies specific rules to deal with instances of circumvention.

However, the imposition of AD measures can only take place as a result of an investigation in our system. As clarified also in our written replies, the anti-dumping investigation is limited to the 'product under investigation' or 'product concerned' and not to the final product into which it may be an input.

## **OTHER SPECIFIC ISSUES**

First, intellectual property. The discussant and several Members have pointed out the key role of innovation for EU growth and jobs; they referred to the €80 billion European horizon 2020 programme and asked how the results of research would be treated. Let me assure you that this programme establishes clear rules for the exploitation and dissemination of IPR and clearly acknowledges the need to ensure open access to research and data.

There have also been questions raised on the ongoing revision of the EU trademark legislation and the possibility to interrupt generic medicines in transit in the EU. Let me first clarify that this piece of legislation is under normal legislative procedure so the Commission cannot expand much on the content at this stage of legislative process. However, what I can say is that legislators have confirmed their commitment to guarantee smooth transit of generic medicines across the EU. Secondly, the revised legislation does not cover patents or designs. Only traders of goods bearing a sign which

is an exact imitation of a trademark granted in the EU are concerned by this. Once the legislation will be adopted, in any case the Commission will also ensure uniform application by national customs notably through issuance of detailed guidelines.

With respect to Public Procurement, the discussant and several Members stressed the positive developments that have taken place recently, in particular the objective of generalizing e-procurement, and commended the EU for the adoption of new Directives that will increase transparency.

Certain concerns were raised on the new Directives, to which the EU replied in writing.

Let me therefore simply say the following. First, the reform has clearly broadened the categories of services under Public Procurement rules.

Second, under our rules the third countries undertakings are subject to exactly the same requirements as EU entities. Regarding SMEs participation in Public Procurement, the EU has no preference scheme for SMEs in place. Let me also clarify that the new provision allowing for a division of tender procedures into lots aims at stimulating the participation of SMEs and certainly does not aim to introduce a preference (not a “salami slicing protectionism”).

Third, some Members suggested that *de facto* participation by foreign firms to procurement in the EU remains low. This is, in our view, a partly distorted view, since indirect procurement by European affiliates of foreign companies is widespread, and our procurement markets are highly contestable.

Let me finally recall that the EU has taken extensive market access commitments at international level while third countries with no or lower levels of commitments have in recent years increased protection of their public procurement markets and resorted to measures such as “Buy National”, offsets or technology transfer schemes etc.

Several members referred to the fact that the EU is an important actor in the area of fisheries, not only in terms of trade (first importer in the world) but in terms of our overall level of support for the sector in the EU. Here, we were pleased to note that there was a general recognition of the 2013 reform of our Common Fisheries Policy as a step in the right direction, towards greater sustainability and science based management of the resources. But I would also like to underline that the focus of our reforms in this area is not limited to support measures, but aims to ensure that all EU fishing activities - be it the reduction of unwanted catches or reduction or elimination of wasteful practices - are geared towards avoid overfishing. With respect to Illegal, unreported and unregulated (IUU) fishing, I would like to point out that the new rules adopted this year contain robust enforcement mechanisms in that they specifically stipulate that operators found in breach can be rendered inadmissible for EU financial support.

One Member made a statement on Monday in relation to a number of diplomatic measures reported to in the secretariat report. I refer the representative of the Russian Federation to our replies to their questions which we have provided in writing. I would like to take this opportunity to stress that in the adoption of these measures, the EU has duly taken account of our WTO obligations, and considers that the measures comply with these obligations, given that WTO rules provide for certain exceptions. I also recall - as reported by the WTO secretariat in its report - that these measures are published in the Official Journal of the EU.

The representative of Russia also made comments on the EU imports of nuclear fuels from Russia. Let me say that this issue has been the object of EU written replies which were sent yesterday, and confirm that there are no trade restrictions against Russia or any other 3rd country in this area. Incidentally, the numbers show that Russia's share of the EU enrichment market has actually increased to more than 40% in recent years.

Finally, on the questions related to the 3<sup>rd</sup> energy package, I will provide a similar reply to an earlier issue on anti-dumping methodology: this is an issue which is subject to dispute settlement proceedings and it would therefore not be appropriate to comment on it in the context of our TPR.

## **BILATERAL TRADE POLICY ISSUES**

Several members made comments on the bilateral strand of our trade policy and in particular our larger preferential negotiations such as TTIP. The EU would first like to underline our commitment to pursue "high quality and cutting edge" FTAs, to quote Japan, that are fully compatible of course with our WTO obligations and complementary to the priority we attach to the development of the multilateral trading system.

These initiatives will be "WTO+" and perhaps more importantly they will be "WTO-beyond" in the sense of covering issues that are not presently falling under the scope of multilateral trade rules. In that sense, we do hope they can ultimately be, at some point in the future, a contribution to deliberations in this Organisation. Moreover, we believe - and some economists estimate - that our preferential agreements can produce positive spill-over effects for third country partners, notably through the non-tariff component of these agreements, and that the risks of trade diversion or preference erosion for the poorest and most vulnerable WTO Members remain very limited due to the respective structures of trade involved.

In the same way that our own internal integration did not lead to a "Fortress Europe", we are strongly committed that deep integrative initiative with other large members on a preferential basis will not lead to a scattering of the global level playing field. I would add that these initiatives are pursued, on the EU side, with a large degree of general and public transparency, and we encourage interested members to enter into policy dialogue with us using our various fora of cooperation, in the manner for example that we have responded to the call for consultations over TTIP negotiations from our ACP partners under the formal framework of the Cotonou Agreement. These very large preferential agreements are of course negotiated on a bilateral basis. Ultimately, however, there might

be a need to reflect on whether these could become platforms able to interact with countries capable of meeting their high standards, on a case by case basis. I have certainly noted the views expressed by certain Members on this particular question.

## **TRADE AND DEVELOPMENT**

Before I conclude, let me now turn to the trade and development nexus which is so fundamental to our Organisation. Many of you acknowledged the positive contribution which the EU strives to make in this area. I can confirm that the intrinsic link between trade and development policy will remain a prominent feature of the revised Trade Strategy which the European Commission will adopt in the fall.

Several Delegations, notably from developing and least-developed countries, recalled that the EU had been and was at the forefront of the collective efforts to make good on the commitments taken vis-à-vis LDCs to provide duty-free-quota-free market access for their exports. The EU is the largest market for LDC exports and our "Everything But Arms" initiative was quoted as a positive example to be followed by other major developed countries and we are thankful for these statements. To help less advanced countries grasp the market access opportunities provided by such schemes, technical assistance is however a necessary piece of the puzzle. In this regard, we noted that many of you recognized the role played by the EU as well as the fact that it was the world's largest provider of Aid for Trade. Some delegates from Latin American and ACP countries reminded us that the EU network of regional trade agreements responded to strategic, development-oriented considerations that go way beyond the mere protection of the EU trade interest. Pakistan for example also stressed the positive role played by Generalized System of Preferences, in the projection of EU values linked to the promotion of human rights and sustainable development.

A number of questions were however also raised on development-related matters, which I would not want to leave unanswered. Concerning the question by Mauritius on the disbursement procedures of assistance for the implementation of the Trade Facilitation Agreement, let me first say that we appreciate the acknowledgment of our Aid for Trade

effort. Indeed, the EU has allocated 400 mio € to assist developing countries with the implementation of the TFA over the next 5 years, which will be channelled through national or regional programmes under the European Development Fund. Although the EU is still finalizing the disbursement modalities with the relevant Regional Economic Organisations (such as COMESA and SADC), we are confident that all countries requiring technical assistance will be sufficiently assisted.

Regarding the EU's GSP scheme, delegations of Pakistan and Sri Lanka had questions on rules of origin. The last reform of the EU GSP Rules of Origin primarily aimed at answering concerns which had been raised by LDCs at the time. For example that 70% of non originating material can be covered and that LDCs benefit from a certain comparative advantage since the single transformation criterion applies for sector of clothing and textiles.

## **CONCLUSION**

Mr Chairman,

I realize that my statement today was very long. This was however unavoidable in view of the huge number of questions which had been raised on Monday.

In itself, the great level of interest which WTO Members have shown towards our Trade Policy Review is something that we fundamentally welcome – even if this exercise represents, in capitals, a significant policy and resource undertaking. This exercise also reminds us that we need to be attentive to what we are hearing from rest of the world, and this will help our internal reflection on a revised trade strategy which the Commission will adopt in the fall.

Let me just say to conclude that many of you commended the EU on Monday for maintaining an overall open and transparent economic stance. I can assure the membership that this is here to stay, for fundamental underlying reasons: we have a strategic, long term interest in market openness since 90% of future growth will be generated outside of our borders; we increasingly need to import to export – and our trade

policy reflects that – so we have every interest to offer more in order to get more in our trade relations; and we can increasingly reap the benefits externally of sustained reform processes that we undertake at home.

We are of course willing to address further comments and questions that Members may still have today.

Thank you very much.