European Commission Trade and Investment Barriers Report 2011

25-03-2011

The European Commission identifies market access barriers in six strategic trade partners

The European Commission published, on 10th March 2011, the first Trade and Investment Barriers report to be presented to the European Council in March 2011. The aim of the report is to identify important barriers in the markets of six strategic trading partners of the EU which should be addressed as a matter of priority.

The report comes at a time when protectionism threatens the world trade and the growth potential of the European economy. The Commission forecasts that by 2015, 90% of world growth will be generated outside Europe. The EU emphasizes in the document its inherent interest in an open and fair global system. The Commission efforts will be geared at keeping market open (at home and abroad), basing on the principles of mutuality and reciprocity. Asia receives particular attention in the EU market access strategy.

The selected strategic trade partners are China, India, Japan, Brazil/ Argentina (taken together within the Mercosur dimension), Russia and the US. The Commission report reveals that, in 2009, trade with these partners represented 45% of the EU's trade in goods and commercial services and 41% of the EU's foreign direct investment flows.

The European Commission argues that there has been a surge in protectionism following the global economic crisis and European exports have suffered from trade restrictions in third markets more than others. Such measures are thought to have affected European exports that are worth €96 to €130 billion, which equates to 9 to 12 % of EU's total exports in 2009. EU imports of raw materials worth around €6 billion were affected, according to the Commission.

Market access barriers to be addressed by the EU trade policy include tariffs for goods, regulatory barriers, market access for services and investment, public procurement markets and the protection and enforcement of Intellectual Property Rights (IPR). Export restrictions for raw materials are also addressed although it is not strictly speaking a market access issue.

Major trade and investment barriers (which may be of interest to the machine tool industry) in a selection of countries are as follows:

China:

- ***Indigenous innovation*****:** this refers to government policies at supporting Chinese firms moving up the value chain. The Commission reports that the Chinese government requires foreign companies to register their IPR in China to gain access to public procurement markets. The report mentions that Draft rules also require applicants to disclose commercially sensitive information related to innovation and IPR.

- ***Intellectual property rights*** **(**protection and enforcement)**:** access to the Chinese IPR enforcement system remains difficult for foreign businesses, burdensome and costly. Foreign operators are prevented from defending their rights before the courts and administrative authorities in an effective manner.
- China is increasingly imposing requirements for compliance with specific Chinese ***standards*** and related burdensome ***third-party testing*** and ***certification procedures*****.** There is a problem of non-recognition of international standards.
- There is a lack of transparency and predictability in the Chinese investment climate. The access of energy companies (especially in the renewable energy sector) to the Chinese market is hampered by Chinese regulations (e.g. qualification requirements, restricted access to concession projects and assembling requirements). Better market access for EU energy companies in third markets may have a direct impact on the machine tool business by boosting orders for new equipment.
- **Export duties and quotas** on raw material, especially rare earth elements.

India:
High tariff barriers and a number of non-tariff barriers in the form of quantitative restrictions, import licensing, burdensome mandatory testing and certification for a large number of products. Complicated and lengthy customs procedures. As for public procurement markets, the application of international standards by the Indian government is required to ensure a predictable environment for bidders.

Japan:
Tariffs in Japan are generally low. Regulatory obstacles to trade in goods and services, as well as barriers to investment and public procurement are thought to make the Japanese market more difficult to access compared to others.

- ***Public procurement***: Japan is a signatory of the WTO Government Procurement Agreement and the Commission reports that it has committed to open to GPA partners (including EU businesses) the public procurement market worth some €22 billion. In 2007 this represented only 4% of Japan's total public procurement markets and 0.5% of its GDP. In contrast, Japanese companies had access to EU public procurement markets that were worth €312 billion (or 2.5% of the EU GDP).

Mercosur (Brazil & Argentina):
Brazilian market is relatively highly protected with an applied customs tariff averaging 12% and significant non-tariff barriers hampering the activities of traders and investors.

- ***Public procurement*** in Brazil**:** a recent law introduced a 25% preference margin for local goods and services and restricted to national suppliers the procurement of goods and services considered of national strategic interest.
- Argentina: the extension of its system of ***non-automatic licenses*** to a wide range of products. Initially focusing on textiles, footwear and toys, the system is being applied more and more to other products such as tyres, iron pipes, machinery and mechanical appliances (e.g. elevators, harvesting machinery).

Russia:
Temporary Russian tariff increases in the context of the Common External Tariff of Customs Union with Kazakhstan and Belarus which entered into force on 1st January 2010. However, Russia is making progress on its way to WTO accession, Russian tariffs are expected to be lowered back to normal levels.

- Costly and burdensome ***customs procedures***, including arbitrary valuation and resorting to minimum prices.
- High export duties on a number of commodities such as wood, ferrous and non-ferrous metal scraps.
- ***IPR:*** systematic infringements of patents, commercial secrets and know-how in innovative sectors. The Commission reports that the establishment of the Customs Union between Russia, Kazakhstan and Belarus brought a considerable risk of further weakening the enforcement of protection of trademarks. The risk is linked to the weak IPR regime in Kazakhstan, whose porous borders allow for the entry of counterfeited goods and for illegitimate parallel imports from Asian countries, China notably.
- Russia's ***investment policy,*** which aims at protecting and fostering domestic industries. Trade related investment measures include requirements of local content, domestic sales, export performance and technology transfer.

USA:
Given the low average tariffs (under 3%), the key to unlocking this potential lies in tackling ***non-tariff barriers***, the Commission reports. The biggest obstacles are derived from the divergence of standards and regulations across the Atlantic.

- ***Public procurement***: low level of openness of US government procurement (covering only 3.2% of the US public procurement market) to EU bidders (in contrast to the EU which commits to opening up 15% of its public procurement markets). Restrictions on access to public procurement markets under the Buy American initiative, the American Economic Recovery and Reinvestment Act and similar legislations.
- ***'100% scanning'*** provisions: this US legislation aims to reinforce security by countering potential terrorist threats to the international maritime container trade system. It foresees the 100% scanning (pre-scanning of containers before arrival in US ports) of all US-bound containers by 1 July 2012 and have a significant impact on EU exports destined for the US market.

The EU Response
The remarks of the Commission on horizontal market access barriers and proposals for solutions (as well as initiatives already in place) are as follows:

- ***Market access teams***: Commission delegations cooperate with member states and businesses to identify and remove market access barriers in third countries. An early warning system is in place. The newly created External Action Service is to be incorporated into this structure.
- The Commission plans to propose a legislative instrument to enhance leverage and secure improved symmetry in access to ***public procurement*** markets. Comprehensive

provisions on access to public procurement are negotiated in bilateral Free Trade Agreements (FTA).

- ***IPR protection*****:** Strong IPR provisions negotiated in bilateral agreements. The Anti-Counterfeiting Trade Agreement (ACTA concluded with a number of like-minded countries. Specific 'IPR dialogues' reinforced with certain key partners, such as China and Russia. The newly created China IPR SME Helpdesk to help European SMEs protect and defend their IPRs in China.
- ***Regulatory dialogues*** ongoing (e.g. Russia, China), for ensuring the approximation and the harmonization of technical regulations
- ***Services:*** As approximately 75% of trade in services concerns the supply of infrastructure services, increased opening of trade in services could also enhance the competitiveness of manufacturing firms, leading to overall welfare gains. The FTA with Korea addresses the liberalization of services. FTAs with Canada and India are under way.
- ***Investment:*** Barriers to foreign investment take the form of regulatory restriction such as restrictions on foreign ownership of equity capital or operational restrictions such as input restrictions or restrictions on repatriation of profits. The Lisbon treaty gives new powers to the Commission to negotiate investment agreements with third countries. The Commission plans to negotiate stand-alone investment agreements with countries with which no FTA is foreseen (e.g. China and Russia)
- ***Raw materials****:* For the production and export of many high-tech and greener products, the EU industry is highly dependent on imports of specific raw materials. A specific EU trade strategy on raw materials is in place.
- The Commission will regularly monitor progress on this agenda and report on an annual basis to the European Council.