

**PERSPECTIVES FOR THE EUROPEAN PUBLIC POLICIES REGARDING THE
DEEPENING OF THE TRANSPARENCY IN INTERNATIONAL TRADE**

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Abstract: Transparency is a very complex concept, equally in the public or private sphere. It is the oxygen of democracy, the key of an appropriate functioning of any European or national institution and the necessary ingredient of the international trade. This paper aims to analyze Union's trade legislation and strategy in the context of international trade. We will discuss the importance of transparency in achieving growth in international trade, the legal framework in this field and also the strategy of the European institutions for improving the transparency, in order to convince and secure the international partners, the Member states, but also, the civil society.

Keywords: transparent practices, international trade, European legislation, institutional framework, future strategies on transparency

1. Introduction: a brief focus on the importance of transparency in trade

In the last decades all the European countries, the European Union as a whole but also the most important international economical and political organization were very concerned to promote and to develop a legal framework and a practice of transparency in European and international trade. Due to the fact that the economical interests directly involved into an international agreement have subsequently implications over fundamental principles of the functioning of any democratic state, over the rule of law, over the human rights and also, over

the sustainable development, it is very important to have a clear and transparent process in trade's negotiation and implementation.

But what do we mean by transparency? Although it was much disputed in the international doctrine from different related sciences, this concept still remains unclear, even for the main actors which are dealing with the elaborations and implementation of its principles. Some authors consider that „transparency is a commonly shared knowledge about the economy, its performance, and the way policy influences it”¹ while others are focusing on the crossing of two informational flow: the people's right to be informed, to have free access to documents and to discuss ideas and perspectives of the public policies and the government's obligation to offer them free access to public information, in respect with some confidential aspects that may occur².

In general, we may consider that transparency intervenes on three stages: as a trade facilitator, as an intrinsic part of any public consultation before and/or after the adoption of any agreement and as a necessary condition for the quality of regulations in this field. Some authors³ considered that transparency has two main dimensions: predictability –which has the role to diminish the risks of business - and simplification –which has a direct influence over the quality, the flexibility and the efficiency of any trade.

In the mean time, it is important to note that transparency has a very important role in avoiding unnecessary trade restrictions, to remove gradually trade barriers that can affect the commerce and may have a negative influence over the cost-benefit approach for every partner in an international trade⁴.

However, the most important and challenging aspects in transparency in international trade are yet to come. The present time, but especially the future is based on global networks, standardized and minimized procedures that will be made with the use of new technologies (like

¹ Tibana, R. *The composite indicator of economic activity in Mozambique(ICAIE): Filling in the knowledge gaps to enhance public-private partnership*. OCDE Development Centre, Working Paper, 227/2003, p. 11.

² For further informations see Mitchel, R. B. *Sources of transparency: Information systems in international regimes*. *International Studies Quarterly*, 42, 1998, pp. 109–130.

³ See Lejarraga, I., & Shepherd, B., *Quantitative evidence on transparency in regional trade agreements*. OECD Trade Policy Papers, 2013, pp. 1–57.

⁴ Helble, M., Shepherd, B., & Wilson, J. S. *Transparency and regional integration in the Asia Pacific*. *The World Economy*, 2009, pp. 479–508.

for example, varied and sophisticated programs on the Internet), all these aspects being susceptible to bring new standards for the future of international trade. Moreover, the European Commission has an intensive preoccupation to develop a new set of rules in relation with the United States - since November 2014 there are ongoing negotiations for adopting a Transatlantic Trade and Investment Partnership⁵, susceptible the boost the economic growth, to create new jobs for both partners, to go beyond tariff reduction and tackle behind-the-border barriers. But, „The Union's trade strategy cannot be limited to the creation of new negotiation tables, it must also ensure the proper implementation of negotiated agreements and combat the rise of new non-tariff barriers. The European Union and its bodies must also be able to convince civil society that its actions are correct and secure the solid support of Member States and public opinion for the new international agreements which will gradually come into force”⁶.

2. Legal framework on transparency in European and international trade

In the last two decades, the majority of international economical and political actors were very preoccupied to develop a coherent legal framework, susceptible to simplify, to standardize and to harmonize the practices in international trade.

One of the first organization which developed a set of norms and practices on transparency in

international trade is World Trade Organization (WTO), who published in 1994 the General Agreement on Tariffs and Trade (GATT), “with a view to raising standards of living, ensuring full employment and a large and steadily growing volume of real income and effective demand, developing the full use of the resources of the world and expanding the production and exchange of goods”⁷. One of the purposes of this act was to make more transparent the economic and financial operations, through a proper dissemination of information toward the partners of an international agreement, the stakeholders and the civil society.

⁵ For further information see <http://trade.ec.europa.eu/doclib/press/index.cfm?id=1201>.

⁶ Roberto Bendini, *The future of the EU trade policy*, <http://www.europarl.europa.eu/thinktank/en/search.html?authors=34934>

⁷ https://www.wto.org/english/res_e/booksp_e/analytic_index_e/gatt1994_04_e.htm

Seven years later, at the GATT's Doha Ministerial Meeting, it was adopted the Declaration 2001, which reinforced the need for clarifying the main pillars of business and international trade: non-discrimination, transparency and procedural fairness between all actors, which contributes to the creation of „stable and predictable conditions for long term cross-border investment, particularly foreign direct investment, that will contribute to the expansion of trade, and the need for enhanced technical assistance and capacity-building in this area”⁸.

The following years bring more and more concrete measures and provisions that set a step forward towards a better implementation of transparency in international trade. Since 2006 when it was adopted the Revised Kyoto Convention, every country that wish to become a contracting part, must agree the implementation of the following fundamental principles: (a) transparency and predictability of customs actions; (b) standardization and simplification of the goods declaration and supporting documents; (c) simplified procedures for authorized persons; (d) maximum use of information technology; (e) minimum necessary customs control to ensure compliance with regulations; (f) coordinated interventions with other border agencies; and (g) partnership among members of the supply chain (formal consultative relationships)⁹.

One final regulation that we will refer to is the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions¹⁰, adopted by the Organization of Economic Cooperation and Development in 2011 (on the ground of the 2009 Recommendation of the Council for Further Combating Bribery and the 2009 Recommendation on the Tax Deductibility of Bribes to Foreign Public Officials), which pushed forward the obligation of transparency as a minimum standard not only for the public but also for the private sector (here, the corruption is more difficult to detect or to prove, but has the same negative consequences on the economy).

The European Union respects all these regulations, with the mention that since the Doha Ministerial Meeting in 2001 until now, the European's strategy in trade with its international partners has changed, the multilateral approach preferred before being converted into bilateral negotiation and agreements. Article 207 of Lisbon Treaty has defined the common trade policy

⁸ https://www.wto.org/english/thewto_e/minist_e/min01_e/mindecl_e.htm

⁹ General Annex to the RKC to be consulted: http://www.wcoomd.org/en/topics/facilitation/instrument-and-tools/conventions/pf_revised_kyoto_conv/kyoto_new.aspx

¹⁰ <http://www.oecd.org/corruption/oecdantibriberyconvention.htm>

in the context of the Union's external action „The common trade policy shall be conducted in the context of the principles and objectives of the Union's external action”. This article must be related with article 3(5) of the Treaty on the European Union which states that „ In its relations with the wider world, the Union shall uphold and promote its values and interests and contribute to the protection of its citizens. It shall contribute to peace, security, the sustainable development of the Earth, solidarity and mutual respect among peoples, free and fair trade, eradication of poverty and the protection of human rights, in particular the rights of the child, as well as to the strict observance and the development of international law, including respect for the principles of the United Nations Charter”.

„The Lisbon Treaty has substantially increased the powers of the European Union in trade matters, depriving Member States of their competency in the matter of the protection of foreign investments and services and guaranteeing the European Parliament a leading role in definition of the objectives and aims of the common trade policy”¹¹.

As for the European Union as a special case study, the role of Commission has become prominent (especially after the entry into force of the Lisbon Treaty), by having the main role in the definition and execution of the common trade policy, by having the power of initiative in legislative matters, by representing the Union at the WTO and by preparing and conducting multi or bilateral negotiation in the name of the European Union.

Of course that other institutional or non-institutionalized actors, such as European Parliament, Council, stakeholders or group interest, national parliaments, etc., are involved through different channels in this process, with certain limits and restrictions. For example, after the the entry into force of the Lisbon Treaty, the European Parliament was vested with new powers, as a co-legislator (with the Council) with a right of consensus in international treaties.

The preparation process, before the starting of a new agreement in international trade, is conducted by the European Commission on its discretionary will, either in terms of transparency in relation with the other actors (based on democratic principles, so that the future agreement to reflect the perception of the European civil society), either „behind closed doors”, with a weak level of transparency in internal negotiation (inside the Commission and in relation with other

¹¹ Roberto Bendini, op. cit. pp. 16-17.

relevant European institutions involved) or external (in relation with international actors). The trend promoted by the Commission, at least on a declarative manner, is to make appeal to all democratic tools, in order to encourage and to involve the civil society to all stages of negotiations.

The reality is disappointing in relation with the empirical expectations on transparency in international trade. The causes can be multiple. We do not discuss here eventual reasons of the European institutions for altering the transparency of negotiations because the field is very sensitive and it depends on different aspects involved by an international agreement. What we want to stress is that due to the high level of technicality of those negotiations, this process is not very attractive for the civil society or for the media from national or European level. Maybe that the most active non-institutionalized actors in this process, but without a clear or obvious finality for their actions, are the pressure groups and the NGOs whose interests are involved in a certain field.

3. What to expect for the future?

The European Union's policy on trade must be reexamined in the near future, by taking into account two facets of the reality: its importance, as a very big and influencing actor on the international trade scene and, secondly, the socio-political and economical environment, which is quite instable in the last couple of months. On establishing and implementing the future agreements on transparency in trade with its international partners, the European Commission and Council have clear evidence, which offers a better position in international negotiations: the European Union is the most important economic area in the world; it is the main exporter and importer (the highest level is 16,4 % in 2013) and the main beneficiary of foreign investment (3.947 billion euro in 2012) . With a population of only 7% of the world's population, the European Union achieves a quarter of gross domestic product (13.816 billion euro in 2012, meaning 17,2% of the world GDP).

Even if the World Trade Organization is responsible for establishing the legal frame on transparency in international trade, we consider the European institutions, and mainly, the European Commission (which represents the member states on the international trade's scene),

must play a more active role in negotiating partnerships, and representing the interests of the member states.

The European policy on trade is a very important part of the Strategy Europe 2020, with the aim of employment growth in European member states, of stimulating the economy to boost and to adapt into a challenging international environment, in order to become more stable and durable, but also more flexible and competitive. European Union need to revise its strategy on trade, with an accent on innovation, by reinforcing its partnerships with the strongest actors in this field (Japan, United States of America and China), because the flux of commerce and investment, accompanied by new technologies, investment in research will lead in the near future to a better productivity, which means a better life and an economic growth for all parties (international actors, member states and citizens). Only sustained economic growth can create more jobs and safeguard our welfare state.

Open, flexible and innovative economies tend to grow faster than the closed ones. On this field of flexibility and innovation, European Union is still deficitary, because in 2015, 90% of the world growth and innovation is generated outside Europe, with a third coming from China¹². In this respect, in the years to come European Union needs to revise its strategy in international trade, needs to fulfill its weaknesses and to transform them in strengths. One perspective is to seize the opportunity to grow abroad, to export more, especially in East and South Asia. By investing outside the Europe, the companies will gain field, will grow globally, will generate jobs (both inside and outside European Union), will reduce their costs by preserving or even, improving the standards of quality and will generate sustainable development. For making this step from theory to practice, the European institutions should intervene, in order to adopt a more flexible, transparent and encouraging legal and economical framework, that will support in the future the investments outside the Europe.

As procedural steps to achieve these goals, we envisage several direction that must be taken into account by European Commission in the near future: support the trade and investment flows, as a main key to the diffusion of innovation, technologies, products and services across the Europe and around the world; reduce the trade barriers to trade in goods, services and

¹² http://ec.europa.eu/eu2020/index_en.htm.

investment, which sometimes makes vulnerable and impede the member states to develop their own strategies of economical development; „strengthen the mutual links between internal and external regulatory actions and to explore how to improve coordination between the two in areas like government regulation and international standards, with a particular focus on future legislation. These issues are also discussed in the Commission Communication Towards a Single Market Act”¹³; encouraging (through stimulating benefits) the temporary movement of people, in order to provide better and more competitive services and products inside and outside the European Union. Least, but not last, we consider that the European Commission must reconsider the consultation with the civil society and the stakeholders from national member states, in drafting policies, including in the international trade. Only in this manner we will have a transparent development, based on an active and inclusive participation of civil society and also on the feed-back come from the people, which is, in fact, the essence of European democracy and rule of law.

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