

Trade Policy Guidelines of the German Chemical Industry

Position Paper
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Core Principles

The German chemical industry

- favours open markets of goods and the elimination of all chemical tariffs,
- calls for a strong and rules-based multilateral trading system,
- strives for ambitious results of the Doha Round with a sectoral agreement on the elimination of all chemical tariffs,
- encourages the EU to engage in free trade negotiations with all major trading partners,
- insists that free trade agreements result in full tariff elimination, the abolition of non-tariff barriers and address WTO-plus issues,
- underlines the need of new rules in order to prevent restrictions in raw materials trading, including a prohibition of export taxes,
- calls for the maintenance of the existing level of protection for foreign investment and the enhancement of investment protection through EU investment treaties,
- rejects sectoral free trade for so-called "environmental goods",
- rejects unilateral border adjustment measures in the context of climate change,
- sees the need to limit the Generalised System of Preferences to real developing countries.

1. Fundamental considerations

The German chemical industry is an integral part of the international division of labour. With its exports of 122 billion euros in 2009 it was the world's leading exporter. In the same period Germany imported chemical products worth 87 billion euros. Thanks to the competitiveness and the openness of its chemical industry, Germany is the fourth largest chemical producer worldwide.

Chemical tariffs are still a barrier to international trade. It is estimated that 2.15 billion euros in chemical tariffs were paid worldwide on German chemical exports in 2008. Tariffs reduce the total export volume. Conversely, production in Germany is made more expensive by costly inputs due to import tariffs of the European Union and – in individual cases – because of export taxes on raw materials in third countries.

In addition to tariffs, various non-tariff trade barriers have gained in importance. They can impair trade directly or indirectly, e.g. through insufficient protection of industrial property rights. In this context it is not always easy to differentiate between legitimate rules – for example, to protect consumers – and protectionist measures.

The German chemical industry is convinced that globally open markets of goods are at the core of a good trade policy in so far as they boost the development of the global economy for

industrial and developing countries alike and ensure worldwide availability of the most efficient products and processes. Open markets must be embedded within a strong multilateral trading system, and they must be protected and enforced with clear-cut, straightforward and transparent rules. The multilateral rules-based system requires constant development. In those areas where WTO rules do not yet apply, the EU can and should fill the gaps with bilateral agreements.

In Europe the political competence for trade policy lies with the European Union. The "**Global Europe**" strategy which has set a frame for the European trade policy since 2006 is based on the right principles, should be maintained and extended in some respects (e.g. for raw materials).¹ The principle of reducing negative impacts of internal legislation on external competitiveness, contained in the strategy should be applied more forcefully. Moreover the EU should maintain its commitment to the WTO and its rules.

The **Lisbon Treaty** and the resulting new distribution of competences offer an adequate institutional framework which gives a democratic legitimacy to the EU trade policy and allows a more uniform new investment policy. However, this new competence should be used responsibly with a view to developing good framework conditions for open markets and towards a sustainable economic development.

The **German federal government** should contribute to an EU trade policy aimed at creating open markets. Moreover it should continue to give political support to export activities and strengthen existing instruments (export credit insurance, Germany Trade & Invest / GTAI, network of chambers of trade and commerce).

2. WTO: Doha Round and strengthening the multilateral regime

With its multilateral set of rules, the WTO provides the best possible framework for a further liberalization of world trade. Still, it needs to be further developed and adapted to new realities of the global economy.

Since 2001 new world trade rules are being negotiated within the **Doha Development Round**. To achieve its development goal it is essential for the Doha Round to facilitate world trade of industrial products. An ambitious reduction of tariffs for industrial goods under a general formula as well as new sectoral agreements are important elements. As many chemical products are innovative inputs, the elimination of chemical tariffs fosters economic development in all countries, particularly emerging countries.

The chemical industry has made excellent experiences with the sectoral Chemical Tariff Harmonization Agreement (CTHA) of the Uruguay Round. In the Doha Round, it strives for a comprehensive **agreement on the elimination of tariffs for chemical products**. The world map of chemical production has changed significantly since 1995. Today four emerging economies are among the ten largest chemical producers. They are competitive in many segments, so that their share will continue to increase. Given this situation **all major chemical producing countries** – including emerging countries – **must** be part of a new chemical sector agreement. To this end the European chemical industry has made proposals which adequately reflect the development status of the latter countries.

However, we are critical of trade liberalization for environmental and climate protection goods, as these goods cannot be clearly defined. A selective customs classification of individual goods is bound to lead to discrimination between competing products. Instead of introducing further criteria for distinction at the border, it would be better to eliminate tariffs for industrial goods altogether.

The lack of progress of the Doha Round is a great disappointment. After nine years of negotiations a successful conclusion is still far away. The political commitment for a bold and

¹ Cp. the Communication from the Commission "Global Europe: Competing in the world" (COM2006(567)).

ambitious result needs to be strengthened. The G20 communiqués must be followed by concrete actions in the wake of the financial and economic crisis.

Beyond the ongoing Doha negotiations, the WTO needs to be strengthened and its scope extended to new topics, such as e.g. access to raw materials, international investment or international competition policy. The **dispute settlement system** is a successful instrument and should be used more intensively by the EU to tackle non-WTO compliant practices.

3. Bilateral trade agreements and bilateral regulatory cooperation

For the VCI, multilateral trade liberalization through the WTO is the best possible way to open markets. However recent developments show that the WTO does not adapt fast enough to the changing global economic environment. For this reason, bilateral free trade agreements are an important additional option.

Partners of free trade agreements (FTAs) should be selected according to strict economic criteria. Further trade liberalization with the major trading partners of the EU is just as important as tariff free access to new emerging markets. Therefore, widening the scope of negotiations to OECD countries – including the USA and Japan – is advisable, and this step should be taken without taboos.

In the past, we were able to understand the argument according to which FTA negotiations with a major OECD country – e.g. with the USA – might render negotiations within the WTO more difficult. But in the light of the extremely slow progress of the Doha negotiations, we are ever more convinced that bilateral negotiations with the USA and Japan could put a healthy pressure on WTO members and so bring fresh impetus to the WTO as a whole.

However such free trade agreements need to fulfil **minimum requirements**:

- They should result in a comprehensive market opening. They should go beyond WTO requirements and lead to the complete elimination of tariffs for industrial goods – this applies also to FTAs with emerging and developing countries. **Asymmetries** – such as "negative" or "exclusion lists" – should be **deal breakers** for the EU. Asymmetries in tariff reduction can be permitted only in the form of **transitional periods**.
- They should tackle and eliminate non-tariff trade barriers to the largest extent possible, and they should reduce bureaucratic hurdles to imports.
- They must include effective rules of origin according to EU standards, in order to keep bureaucracy low for companies. Duty drawback should be excluded. Generally, the degree of coherence between the provisions of different FTAs should be as high as possible.
- They should take up WTO-plus issues, i.e. issues which are not yet covered by the WTO set of rules. These include provisions for the reduction or prohibition of export duties/taxes and dual pricing practices; and rules on competition, intellectual property, government procurement and investment protection.
- Furthermore, they must contain dispute settlement mechanisms and ensure protection against unfair trade practices.

Political clauses can make useful additions to trade policy rules, but they must not stand in the way of concluding FTAs where these are desirable from a trade policy point of view.

The EU also wants wider and deeper **regulatory cooperation** with major partners. VCI fully supports these efforts, because an international level playing field safeguards the competitiveness of the German chemical industry and regulatory convergence reduces bureaucratic burdens.

Especially a deepening of transatlantic relations is of paramount importance to VCI. However, the **Transatlantic Economic Dialogue** (TEC) shows that there are divergent ideas on both sides of the Atlantic and that neither side wants to sacrifice regulatory autonomy. Continuing TEC makes sense, but expectations should be realistic. To achieve

better success than in the past, legislators/parliaments need to become involved at an early stage, because they have – and need to retain – the sole legislative competence. The chemical industry expects the principle of the TransAtlantic Business Dialogue (TABD) – *"approved once, accepted everywhere"* – to remain the guiding principle in regulatory cooperation with the USA.

Beside bilateral regulatory dialogues, the EU needs to keep up its leading role in joint international activities to develop international uniform standards. It is worth noting that such standards need to apply both in the EU and in Germany – imposing additional stricter conditions should be no longer possible.

4. Trade and access to raw materials

Germany has few raw materials. The chemical industry – with its unique position in the value chain – needs a level playing field in raw materials markets. This holds true not only for access to mineral oil and natural gas but also for access to mineral and renewable raw materials. Restrictions by third countries are increasingly impairing the access to raw materials. Moreover, some countries - especially China – are pursuing aggressive policies to secure raw materials for their own industries. The chemical industry is impacted in particular by dual pricing practices (e.g. for natural gas in Russia or in the Gulf States), export duties/taxes and – threatening production in Europe - non-WTO compliant quantitative export restrictions (e.g. for rare earths from China).

The EU needs to drive forward its **raw materials strategy**, put an emphasis on enforcement and extend it to include non-mineral raw materials. In the short term, a wide range of instruments are already available for implementing existing legislation:

- Use of WTO dispute settlement and anti-dumping procedures to curtail non-WTO compliant practices,
- use of the EU's Market Access Strategy for reducing trade barriers for raw materials,
- withdrawal of unilateral preferences under the Generalised System of Preferences (GSP) for trade distorting barriers in raw materials markets, and
- denial of market economy status to countries which create or maintain barriers in raw material markets.

In the long term, the EU should conclude bilateral agreements with raw material-rich countries, in order to regulate access to raw materials. Obviously, partner countries have the right to decide on the use of their own natural resources. But there should be no difference between domestic and foreign customers, as regards access to these raw materials.

More strongly than in the past, the EU needs to advocate relevant rules under the WTO – mainly to put an end to dual pricing practices and export duties/taxes. Clear-cut rules to ban such practices should be laid down also in WTO accession negotiations, in FTAs and other bilateral agreements. Recently, the EU has had difficulties on this point (WTO accession of Russia and Saudi Arabia, FTA with GCC countries).

Actually, the EU, too, makes access to renewable raw materials difficult within its "Common Agricultural Policy" (CAP). Therefore, the EU should lower its own import tariffs on raw materials for industrial production, including agricultural raw materials.

5. Trade and climate and environmental protection / Social standards

The German chemical industry is committed to the concept of sustainable development. Protecting the environment and the global climate is an important feature of sustainable development. The necessary international framework should be agreed at multilateral level within the UN. The WTO must not be held hostage by individual members for their specific

environmental policy interests. The sustainability chapter in the FTA with Korea is a good example of the integration of environmental and social standards in the EU's FTA policy.

The EU's trade policy should not be given a one-sided "greener" orientation; it should continue to take into account the three pillars of sustainability.

a) Tariff reductions for climate and environmental goods

The general reduction of trade barriers – including an agreement on the elimination of tariffs for chemical products – is the right way ahead. Instead, the chemical industry rejects **tariff reductions for "environmental goods"**. Such reductions are *de facto* impossible, because environmental goods cannot be defined. This is bound to lead to unjustified discrimination between goods that compete with each other. Selective tariff reduction for "climate protection goods" is not really suitable, either, because value chains are not given any consideration. For example, many climate protection goods would not be possible without inputs from chemical industry.

b) Unilateral measures to enforce climate and environmental protection

The German chemical industry rejects the introduction of **border adjustment measures** to balance the economic burdens from emission trading in Europe and elsewhere in the world. Such measures would not work in practice and might trigger a global spiral of protectionism. It is questionable whether border adjustment measures can be made WTO-compatible.

6. Trade and the protection of intellectual property

The chemical industry is a research-intensive and innovative industry. Germany and Europe can maintain their lead in know-how and productivity only by developing innovative products. As a supplier of innovative materials, chemistry plays a key role. Consequently, the chemical industry depends, to a particularly high degree, on effective protection of its intellectual property. Patent protection is of paramount importance. However, intellectual property is not equally safeguarded everywhere. Inadequate protection can impair trade flows, e.g. where there is a danger of counterfeiting and product piracy. This can result in decisions being made against investments or supplies of goods.

The chemical industry fully supports **TRIPS Agreement**. All the same, in some WTO member states the chemical industry continues to be faced with administrative – and partly also with substantive law - obstacles when trying to obtain or keep up industrial property rights. Therefore, a further development of intellectual property rights is desirable especially in those countries.

Within the Market Access Strategy, the EU should increasingly address the insufficient protection of intellectual property and of data/documents in third countries and work towards improvements.

The chemical industry also welcomes multilateral efforts to conclude an **Anti-Counterfeiting Trade Agreement (ACTA)**. It expects significant improvements in the level of protection of intellectual property in many of the contracting states. ACTA should oblige the contracting parties to implement all measures - and especially measures to protect patents.

Intellectual property rights are also important in the diffusion of climate protection technologies. Proposals to reduce or to fully abolish such intellectual property rights are counterproductive. Technology transfer of goods for climate protection should take place through general tariff reduction, a reliable protection of intellectual property and by expanding *Joint Implementation* and *Clean Development Mechanism*. Therefore, the chemical industry speaks against any weakening of industrial property rights, where climate-friendly technologies are concerned.

7. Trade, development and unilateral granting of preferences

At present, the European Union unilaterally grants preferential market access for products from 176 developing and emerging countries. This is done within the **Generalised System of Preferences (GSP)**, as a measure of development cooperation.

The GSP can be a useful development instrument only if it benefits those countries most in need of it. However, the GSP unilaterally grants preferential market access also to emerging countries which have – at least partly – competitive industries or a higher per capita income than some EU Member States. The GSP favours especially those emerging countries which produce competitive products and protect their home markets with high tariffs. Such distortions of competition cannot be the goal of tax-financed development aid instrument.

Moreover, emerging countries view GSP advantages as their "vested rights" and oppose further WTO tariff reductions, because these would involve the potential for preference erosion. Therefore this instrument is detrimental to the EU's negotiating position in the WTO and in FTA negotiations.

For this reason, the German chemical industry urges a fundamental reform of the GSP scheme as a part of an overall trade strategy. Trade with emerging countries should be liberalized contractually through FTAs and not unilaterally through tariff preferences. These should be granted **exclusively** to the **poorest developing countries** – ideally to LDCs (Least Developed Countries). This is the only way for the GSP to have its intended effect, i.e. promoting development.

8. Unilateral activities to reduce distortions of competition: Trade defence instruments (TDI) and Market Access Strategy

The German chemical industry strongly advocates **trade defence instruments** to continue to provide clear-cut rules, in order to safeguard fair trade. TDI should be applied stringently wherever relevant legal requirements are fulfilled. This holds true also in view – or especially in spite – of the fact that chemical companies are invariably both manufacturers and users of products.

Mainly emerging countries are increasingly resorting to **dumping** as a strategy to push competitors out of the market: their dumped products are offered at unfair prices in export markets. Initially, this causes – only ostensibly – a conflict of interests between manufacturers of the respective products on the one side and their users on the other. Users have a fundamental interest in low procurement costs; manufacturers want to achieve profitable prices in the long run. They cannot stand up to dumping practices and will sooner or later disappear from the market allowing the 'dumper' to create a monopoly. This monopoly can result in rising prices for the product in question, so that the initial advantage on the procurement side turns into a major disadvantage for users.

The German chemical industry calls for a consistent policy against dumping practices and opposes a differentiation depending on whether interests of manufacturers or users are impacted in a given case. Otherwise, the EU would be arbitrarily exposed to the export interests of third countries and their industries.

The *Market Access Strategy* is a good framework for tackling **non-tariff trade barriers in countries outside Europe**. The WTO dispute settlement system, FTA negotiations, anti-dumping proceedings, local market access teams and political talks all provide a set of instruments to be used within the Market Access Strategy, in close cooperation with industry. The activities of the Market Access Working Group on Chemicals can contribute to eliminating individual barriers. A closer linkage between EU Commission and the Member States would be desirable for achieving progress.

9. Customs legislation, export control and *Außenwirtschaftsgesetz* (German foreign trade act)

In respect of **customs legislation**, chemical companies see full conformity with the law as a competitive advantage. However, they need clear-cut rules which can be applied easily and reliably in daily routine business and enable IT support. For the implementing regulation of the Modernized Customs Code, the chemical industry asks for adequate requirements which reflect real processes in companies – as regards customs valuation, non-preferential rules of origin and customs procedures with an economic impact. Furthermore, substantial facilitations of procedures need to be maintained for authorised economic operators (AEO).

The same applies to rules for **export control** and the monitoring of chemicals in connection with the illicit manufacture of narcotic drugs and explosives; they need to be straightforward, target-oriented and easily and safely implementable with IT support – because these rules can considerably influence the export activities and thus the economic success of companies. Unilateral sanctions by the EU without UN measures to the same effect are hardly suitable to achieve their aim, as they can be circumvented by economic players from other countries at any time. Consequently, such sanctions cannot serve their purpose: the sanctioned country is not negatively impacted. There is little incentive for UN members outside the EU to close ranks with the European Union, whilst export interests of companies are adversely affected by sanction measures which fail to accomplish their goal.

Chemical companies support unreservedly the **Chemical Weapons Convention (CWC)**. It is important for the chemical industry to prove within regular inspections that companies do not produce any chemical warfare agents. The 100th industry inspection at a German chemical company in March 2010 did not result in any complaint, as had been expected. Primarily the CWC is addressed to the State Parties who commit themselves, inter alia, to notify remaining stocks of chemical weapons and to destroy them within given periods of time up until 2012. Unfortunately, it is already evident that the destruction of considerable stocks will not be achieved for a long while after expiry of this deadline. Instead of driving forward the destruction process, increasing numbers of industry inspections are being planned for the future – including inspections of so-called OCPF plant sites which are of only minor relevance to the CWC (OCPF = other chemical production facilities). We are deeply concerned with this development. We also reject the new orientation of the Organisation for the Prohibition of Chemical Weapons (OPCW) towards "security" issues in connection with terrorist acts. Relevant measures and legislations are and will remain the competences of national/regional legislators.

10. Cross-border investment

Foreign direct investment (FDI) is an important element of corporate strategies. This applies also and especially for the chemical industry, where the stock of FDI amounted to 44.3 billion euros in 2008. At national level, this type of investment used to be guaranteed by **bilateral investment treaties (BITs)**. With the Lisbon Treaty, the competence for bilateral investment treaties has shifted to the EU. Now the EU urgently needs a coherent strategy which gives the same level of protection throughout the EU of that which is in force in Germany.

Industry must have legal certainty for existing investments. Therefore, the chemical industry considers that the Commission's proposal to annul individual investment treaties is counterproductive in so far as it creates legal uncertainty, as existing treaties would be declared non-applicable without being replaced by a European treaty. This would result in a legal vacuum, which is precisely what the Commission wants to avoid. For this reason, a *grandfathering* of rules of existing BITs of individual Member States is essential. National BITs should remain in force until Europe concludes a European investment treaty with the third country. BITs should not be given up without replacement – not even when the Commission has doubts about their EU-compatibility.

Furthermore, levels of protection in new EU treaties must not fall short of the existing high protection level in Germany. Investment treaties need to include holding structures.

International dispute settlement mechanisms (ICSID, UNICITRAL, ICC) should be used also in future. Additional political support (EU, Member States) in disputes will remain important, too.

Free trade agreements and investment treaties should not be linked with each other. Moreover, investment treaties should be concluded independently from environmental and social standards, so that they can adequately pursue their core purpose.

The EU wants to conclude BITs primarily with major partner countries. But where the EU does not wish to negotiate with a country, Member States should be able to conclude treaties separately if this is in the interest of their industries. Furthermore, existing treaties should remain applicable.

11. Trade and competition rules

Monopolistic and oligopolistic market structures – e.g. as a result of market access barriers created by public administrations – can lead to unequal and unfair competitive conditions in foreign markets. This is to the detriment of both domestic customers and international competitors. Therefore, competition policy elements should be added to trade policy. A trend towards strong supplier concentration can be observed, especially in some raw materials markets. Here, attentive monitoring by competition authorities would be desirable.