

# EU Market Access Teams: New Instruments to Tackle Non-tariff Barriers to Trade

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# **EU Market Access Teams: New Instruments to Tackle Non-tariff Barriers to Trade**

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## About the Author

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## **Abstract**

In reaction to modern protectionism, the European Union has reshaped its trade policy based on the principles of partnership and prioritisation. With the Market Access Partnership it has formalised a new diplomatic trade tool in third countries: the Market Access Teams. These teams are networks with multiple stakeholders and they are acting in a decentralised manner in the respective host countries. The various Market Access Teams created worldwide since 2007 underline the growing interest from the EU, Member States and businesses in offensive trade policy instruments. These instruments should be directed at opening foreign markets and eliminating obstacles to trade for European exporters. This paper analyses under what conditions Market Access Teams can effectively remove non-tariff barriers to trade (NTBs) for European exports in third countries. It focuses on non-tariff barriers for the European pharmaceutical industry in three Asian countries (Philippines, Indonesia and Japan). Pharmaceutical products are truly global products which are easy to transport and confronted by global competition and they heavily rely on European intellectual property rights knowledge. I argue that Market Access Teams in their composition and function are an adequate translation of the Commission's strategic ambition to deliver more tangible results for European exporters through offensive trade policy. A Market Access Team is likely to be more successful, the greater the cohesiveness of its members, the more salient a non-tariff barrier to trade for the European Commission and the less salient that NTB in the host country. The study draws on trade literature, news sources, questionnaires and interviews.

## 1. Introduction: Improving Market Access Abroad

"The European Union will continue to show leadership on global trade and stand firm against protectionism. We need this commitment more than ever to promote trade and overcome the economic downturn. We are committed to multilateralism, to transparency, and to open markets based on rules that benefit developed and developing countries alike."<sup>1</sup>

*Trade Commissioner Catherine Ashton*

In the current climate of financial and economic crisis, declining output and diminishing demand, protectionist policies appear as tempting measures to keep domestic economies running. Non-tariff barriers to trade (NTBs) such as technical standards and regulations, licensing constraints or subsidies to domestic manufacturing are more difficult to identify and even more difficult to tackle. The European Union (EU) is estimated to be losing orders worth 20 billion euro per year in China only because of these 'behind-the-border barriers'.<sup>2</sup> An important trade barrier is the insufficient protection of intellectual property rights (IPRs), and the reliance on the protection of research and development investments is especially high for one European key sector, the pharmaceutical industry. However, the fight against protectionism for this strategic sector in developing countries is especially sensitive as it touches not only upon the question of market access but also upon the question of access to medicines at affordable prices.

The fact that the Doha Development Round in 2008 grinded to a halt underlines that the successful conclusion of multilateral agreements on trade liberalisation becomes more complicated to achieve due to new issues, more actors and different trade patterns.<sup>3</sup> The EU has attempted to address this problem especially in its Market Access Strategy of 2007. In the document, the European Commission puts forward the concept of a Market Access Partnership.<sup>4</sup> Its main characteristics are the openness to all stakeholders and the prioritisation on key

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<sup>1</sup> C. Ashton, "WTO praises EU's stance on multilateral trade and support for developing countries", *RAPID Press Release*, 6 April 2009, Brussels, retrieved 30 April 2009, <http://europa.eu/rapid/pressReleasesAction.do?reference=IP/09/544&format=HTML&aged=0&language=EN&guiLanguage=en>.

<sup>2</sup> M. Koch, "Spürtrupps nach China", *Süddeutsche Zeitung*, 18 April 2007, retrieved 17 March 2009, <http://www.sueddeutsche.de/wirtschaft/796/349631/text>.

<sup>3</sup> Cf. B. Hocking, "Beyond Seattle: Adapting the Trade Policy Process", in B. Hocking and S. McGuire (eds.), *Trade Policy*, Routledge, London, 1999(2<sup>nd</sup> edn.), p. 264.

<sup>4</sup> Communication to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, *Global Europe: A Stronger Partnership to Deliver Market Access for European Exporters (Market Access Strategy)*, COM(2007) 183 final, 18 April 2007, Brussels, p. 2.

markets and sectors. The Market Access Partnership has an institutional set-up within the EU and another in form of the Market Access Team (MAT) outside the EU in third countries. The MATs are trade diplomatic networks that have been created to target specific NTBs.

This study seeks to explore under which conditions Market Access Teams succeed in removing NTBs for the European pharmaceutical industry in Japan, the Philippines and Indonesia. I argue that the composition and function of MATs can make it an effective tool for the Commission's strategic ambition to "deliver real economic benefits for its Member States and European citizen and businesses".<sup>5</sup> However, their actual influence remains dependent on specific conditions. Four hypotheses are developed to analyse these conditions of the MATs' influence on the removal of trade barriers abroad. More precisely, I argue that successful offensive trade policy through MATs depends on (1) internal factors such as the organisation and membership of the MAT and on (2) external factors such as the salience of the NTB in the EU as well as in the third country.

The three countries selected for the case studies share four main characteristics but vary with regard to the domestic influence of the MATs. First, all cases are located in Asia, which is one of the priorities of the *Global Europe* strategy.<sup>6</sup> Second, Indonesia and the Philippines offer further growth perspectives for European companies, especially in the sector of pharmaceutical products, as former 'South-East Asian tigers'. Third, despite some initial negotiations since April 2007, the EU has neither concluded a bilateral free trade agreement (FTA) with these countries nor a regional free trade agreement with ASEAN; in addition to that, all countries are members of the WTO. Fourth, NTBs such as the violation of IPRs or technical standards and regulations affecting exporters and investors in these countries are unlikely to disappear in view of the rise of Asian markets.

As Market Access Teams are a recent development, there is a lacuna of research on their internal structure, working procedures and impact. Therefore, primary empirical evidence had to be obtained for this study. For this purpose, I sent questionnaires to all participants in these teams in the Philippines, Indonesia and Japan. After general questions on the number of participants, the duration of their

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<sup>5</sup> *Ibid.*, p. 14.

<sup>6</sup> European Commission, Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, *Global Europe: Competing in the World. A contribution to the EU's Growth and Jobs Strategy*, COM(2006) 567final, Brussels, 4 October 2006, p. 9.

cooperation and the trade barrier targeted, the participants were asked to carry out a self-assessment within different issue areas. First, they had to evaluate the strengths of their MAT regarding its resources, information exchange and potential veto-players. Second, the participants had to assess the relationship with foreign or local trade associations and finally their status in the host country of their respective MAT. The questionnaire was sent out to all participants of MATs in the three countries of the case studies. Answers were received from different categories of stakeholders for each case study and the response rate was beyond 20%. In addition, interviews have provided valuable insights into the working procedures of the MATs.

The paper is divided into two sections. In the first section, the Market Access Partnership and its particular tool of MATs will be introduced and the strategies and conceptual innovations on which the Market Access Partnership is based will be outlined. The second section presents the empirical case studies of MATs in the Philippines, Indonesia and Japan and concludes with an overall assessment of the results in the light of theoretically derived hypotheses. Finally, the conclusions will offer further policy insights for the future development of the MATs.

## **2. Innovation in EU Trade Policy: A New Instrument**

### *2.1 The Strategy: Partnership and Prioritisation*

Despite the fact that the Common Commercial Policy is “one of the EU’s biggest success stories”,<sup>7</sup> foreign governments’ use of protectionist policies such as non-tariff barriers to trade limits the EU’s trade power. These “politics of ‘second-generation’ trade policy”<sup>8</sup> are often entangled with domestic policies. Consequently, these barriers are particularly sensitive, complex and difficult to identify. A salient example is the infringement of intellectual property rights in the area of public health systems. This sector is a particularly “strategic sector for Europe”<sup>9</sup> because of its contribution to health, growth and employment. Therefore, a key challenge for EU trade policy

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<sup>7</sup> European Commission, Commission staff working document, accompanying document to *Global Europe: a Stronger Partnership to Deliver Market Access for European Exporters – Impact Assessment*, COM(2007) 183 final, SEC(2007) 453, SEC/2007/0452, Brussels, 18 April 2007, p. 5.

<sup>8</sup> OECD, *Globalisation and Emerging Economies: Brazil, Russia, India, Indonesia, China and South Africa*, Paris, 2008, p. 158.

<sup>9</sup> European Commission, Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, *Safe, Innovative and Accessible Medicines: a Renewed Vision for the Pharmaceutical Sector*, COM(2008) 666, Brussels, 10 December 2008, p. 3.

efforts remains to achieve a "condition of competition provid[ing] foreign goods, services, service providers and investors opportunities to compete in a market on terms equal or comparable to those enjoyed by locally produced goods and services and locally established firms".<sup>10</sup>

The EU response to this challenge has developed under two key principles: partnership and prioritisation which are described in the renewed *Lisbon Strategy* (2008),<sup>11</sup> *Global Europe* (2006)<sup>12</sup> and the *Market Access Strategy* (2007).<sup>13</sup> These documents shape the concept of Market Access Partnership. Already in 2005, the Communication *Global Europe* issued by the Commission marks a shift in EU external trade policy "away from an almost exclusive focus on multilateral rule-making"<sup>14</sup> towards a more active involvement of the EU in trade diplomacy with third countries. This new commitment is motivated by the EU's ambition to increase its competitiveness which relies on its own openness and on the "greater openness and fair rules in other markets, in particular future trading partners".<sup>15</sup>

This approach is shaped in the renewed *Market Access Strategy* of 2007 by addressing, on the one hand, *prioritisation* in terms of key markets and key instruments and, on the other hand, *partnership* with Member States and industry and/or exporters.<sup>16</sup> These principles should help to provide "quicker [and] more responsive action"<sup>17</sup> to meet the needs of EU stakeholders. The Market Access Partnership between the Commission, Member States and businesses/business associations has become one of the key innovations to enhance the EU's external competitiveness. It is an umbrella term for a set of specific instruments and actions executed by committees, working bodies and networks which is unfolding on the

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<sup>10</sup> A.B. Zampetti and P. Sauvé, "New Dimensions of Market Access: An Overview", in *New Dimensions of Market Access in a Globalising World Economy*, Paris, OECD, 1995, p. 15.

<sup>11</sup> European Commission, Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, *On the External Dimension of the Lisbon Strategy for Growth and Jobs: Reporting on Market Access and Setting the Framework for more Effective International Regulatory Cooperation*, COM(2008) 874 final, Brussels, 16 December 2008, p. 14.

<sup>12</sup> European Commission, COM(2006) 567 final, *op.cit.*, p. 3.

<sup>13</sup> European Commission, COM(2007) 183 final, *op.cit.*, p. 2.

<sup>14</sup> S. Evenett, "'Global Europe': An Initial Assessment of the European Commission's New Trade Policy", January 2007, *Aussenwirtschaft*, p. 3, retrieved 1 April 2009, <http://www.evenett.com/research/articles/ECNewTradePol.pdf>.

<sup>15</sup> European Commission, COM(2006) 567 final, *op.cit.*, p. 3.

<sup>16</sup> *Ibid.*, p. 11.

<sup>17</sup> *Ibid.*, p. 9.



diplomatic or political level, addressing barriers through the preparation of free trade agreements, bilateral negotiations, regulatory dialogue and trade diplomacy.<sup>18</sup>

What is the innovation of trade diplomacy within the Market Access Partnership? Saner and Liu define trade diplomatic efforts as either led by the state or by the company, two actors which pursue distinctive categories of trade diplomacy in different arenas with different objectives.<sup>19</sup> The Market Access Partnership exceeds the concepts of state-state, state-firm or firm-firm diplomatic relations put forward by Susan Strange<sup>20</sup> and is closer to the concept of formalised cooperation between multiple stakeholders on equal grounds. It is 'joint trade diplomacy' or 'diplomacy open to multiple stakeholders' in which each actor is urged to invest its assets into a coordinated effort for the same objective of trade barrier removal. Therefore, it becomes comparable with a "networking mode of activity and [is] less hierarchical in both its structures and processes".<sup>21</sup>

Due to its innovative characteristics, Market Access Partnership diplomacy provides new answers to the specific challenge of changing trade patterns in the 21<sup>st</sup> century. First, the Market Access Partnership can offer additional access for business and civil society to trade policy and it can therefore actively promote their involvement in trade diplomacy. Second, the Market Access Partnership brings together actors with complementary sets of knowledge. Therefore, it promotes synergies in coordinating resources spent on identification of trade barriers.

## *2.2 The Structure of the Market Access Partnership*

The Market Access Partnership as one of the key principles of the Market Access Strategy has two characteristics. First, several stakeholders are convened and second, its internal structure is mirrored in an external set-up which are the MATs.

Actors from different levels are gathered as stakeholders of the Market Access Partnership. From the European side, Commission officials from DG Trade, DG Enterprise and DG Relex are part of the network, whereas the Commission Delegations in third countries form part of the external structure. Member States are

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<sup>18</sup> C. Ashton, "Remarks at the Market Access symposium 'Opening Borders to Business'", 27 November 2008, Paris, p. 2, retrieved 12 April 2008, [http://trade.ec.europa.eu/doclib/docs/2008/December/tradoc\\_141766.pdf](http://trade.ec.europa.eu/doclib/docs/2008/December/tradoc_141766.pdf).

<sup>19</sup> R. Saner and L. Yiu, "International Economic Diplomacy: Mutations in Post-modern Times", *Discussion Papers in Diplomacy*, The Hague, Clingendael, 2001, p. 13.

<sup>20</sup> Cf. S. Strange, "States, Firms and Diplomacy", *International Affairs*, vol. 68, no.1, 1992, p. 6.

<sup>21</sup> B. Hocking, *op.cit.*, p. 267.

participating not only through the Council and their Economic Counsellors in the 'Article 133 Committee' but also through their embassies in third countries. Finally, business is mostly represented through business associations. In some cases, the Market Access Partnership is also open for participation of representatives of civil society. In ideal circumstances, all stakeholders enumerated above act jointly through the committees and teams provided by the platform of the Market Access Partnership in order to detect, analyse and remove trade barriers in third countries (see Figure 1).



Figure 1: Participants in the Market Access Partnership<sup>22</sup>

In this partnership, each stakeholder has been attributed a specific role according to its resources and expertise. In the hub of the Market Access Partnership the EU Commission acts as a platform for convening all actors. Moreover, it functions as interface between the concerned parties and the public. It takes the role of a coordinator of external stakeholders but it has also to coordinate different approaches towards trade diplomacy within the different DGs.

The Market Access Partnership provides an institutional set-up for two playgrounds which are inside and outside the EU. Inside the EU, the Market Access Partnership is forged around the European Commission in Brussels, whereby DG Trade functions as driver for offensive market opening. In Brussels there are several committees and working groups in charge of opening markets. These are the Market Access Advisory Committee (MAAC), plus currently ten working groups, the 'Article 133 Committee' as well as the European Parliament as additional advisor. The MAAC serves as "central nervous system"<sup>23</sup> or "focal point for the coordination with Member

<sup>22</sup> Modelled on European Commission (Martin Pilsner), "The Market Access Strategy and its Implementation. Global Europe: a Stronger Partnership to Deliver Market Access for European Exporters", Market Access Unit, 25 June 2008, retrieved 3 April 2009, [www.cebre.cz/dokums\\_rwa/023\\_czech\\_business\\_representation\\_080625\\_2](http://www.cebre.cz/dokums_rwa/023_czech_business_representation_080625_2).

<sup>23</sup> European Commission, DG Trade Civil Society Dialogue, 15 April 2008, Brussels, retrieved 11 April 2009, [http://trade.ec.europa.eu/doclib/docs/2008/april/tradoc\\_138560.pdf](http://trade.ec.europa.eu/doclib/docs/2008/april/tradoc_138560.pdf).

States and business".<sup>24</sup> The agenda for the monthly meetings is prepared in coordination with other stakeholders. The MAAC is relying on the technical expertise coming from the working groups, which work under its supervision. First created in 2007, these working groups, organised alongside industries or countries, are seeking to "provide early warning on new measures, to provide technical analysis of the issue and to develop strategies for action".<sup>25</sup> From the companies' or trade associations' perspective, the 'Article 133 Committee' has a further important role within the Market Access Partnership. Through this partnership, member states' economic counsellors become directly involved in MAAC meetings. Consequently, national representatives can now directly report to business about important issues dealt with in the 'Article 133 Committee'.

The Market Access Partnership's inclusiveness also gave a fresh impetus to cooperation with other developed countries such as the US or Japan in the field of Market Access. Cooperation with the US in the framework of the Market Access Partnership was launched in 2006, and the EU-Japan Market Access Cooperation began in November 2007. This cooperation is usually initiated in fields where both partners share the same objectives.

### 2.3 The External Instrument: Market Access Teams

For external action, multiple stakeholders are organised in MATs which are the institutional structure of the Market Access Partnership. These stakeholders are delegated from the Member States' embassies, EC delegations, EU trade associations over even from local or other foreign trade associations or companies (see Figure 2).

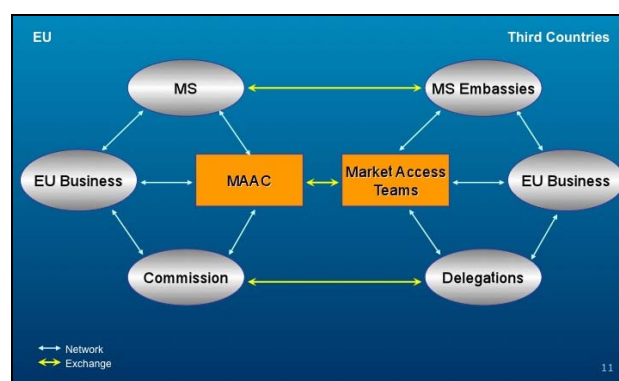


Figure 2: The Mirror Structure of MAAC and MATs<sup>26</sup>

<sup>24</sup> European Commission, *Progress Report 2008*, Trade/G/1/SL-D(2009) 1209, Brussels, 5 February 2009, p. 4.

<sup>25</sup> *Ibid.*, p. 5.

<sup>26</sup> European Commission (Martin Pilsner), *op.cit.*

The MATs are flexible networks as they take into account specific challenges resulting from geographical location, the industry working with or the issue concerned. As 'the eyes, ears and mouth of the EU' in third countries, the MATs have

- an information function, which consists in information gathering and clustering, translating input from the MAAC and the 'Art. 133 Committee' and returning locally collected information to the Brussels-based institutions,
- a communication function, and
- a negotiation function with the host country.

To date there are 31 MATs in 28 countries on five continents with 8 MATs in Asia (including China) and 6 MATs in South America. The majority of formalised MATs is concerned with IPRs and issues of sanitary or phytosanitary standards.<sup>27</sup>

### 3. Framework of Analysis

This study draws on two theoretical concepts in order to address the question under which conditions MATs may succeed in effectively removing NTBs in its host country. First, the organisational theory of networks is used in order to address the internal dimension of the MAT. Thereby the study seeks to analyse the composition of the MATs, the interdependence of actors as well as the type of cooperation. Networks are used as an analytical tool to categorise the relationships within the MATs as either cooperative or competitive. Second, the literature on lobbying of interest groups in the EU is used to explore the external dimension of the MAT, that is the MAT's lobbying efforts in the host country. Research on lobbying in the EU has concentrated on formation, organisation, access and activities of lobbyists.<sup>28</sup> In the specific literature on influence of lobbying, influence is understood as "control over political outcomes",<sup>29</sup> whereby the actual outcomes can be either the position declared by single politicians and governments or the implementation of that policy.<sup>30</sup> Both the internal and external dimensions influence the overall performance of an MAT. Hence, the following four hypotheses address both dimensions.

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<sup>27</sup> Number referring to June 2009.

<sup>28</sup> C. Mahoney, "Lobbying Success in the United States and the European Union", *Journal of Public Policy*, vol. 27, no. 1, p. 35.

<sup>29</sup> A. Dür and D. De Bièvre, "The Question of Interest Group Influence", in B. Kohler-Koch, D. De Bièvre and W. Maloney (eds.), *Opening EU-Governance to Civil Society: Gains and Challenges*, CONNEX, Mannheim, 2008, p. 28.

<sup>30</sup> *Ibid.*

1. *The greater the cohesiveness between MAT members over a longer period of time, and the more information and resources they share, the more likely the MAT succeeds in removing an NTB in its host country.*

The basic configuration of the MAT can comprise up to 27 Member States' representatives, the Commission Delegation as well as various – European, bilateral and local or even foreign – trade associations. This large number of participants with often various cultural backgrounds poses the challenge of strict coordination and coherent action to the actors in the host country as underlined in the first yearly market access report.<sup>31</sup> The first part of the hypothesis emphasises that a cohesive membership diminishes the risk of free-riding and enhances the cooperation between the stakeholders. According to McGuire, the cohesiveness of a lobbyist network over a long period constitutes even the prerequisite for any success.<sup>32</sup> This hypothesis therefore looks explicitly at the continuity of participants in the meetings and the level of assessed trust by the participants. In addition, the second part of the hypothesis highlights one of the main assets of the Market Access Partnership, which is the multiplication of resources through a joint approach towards NTBs. This asset is reflected in the assumption that "groups with more resources should, *ceteris paribus*, have more influence than groups with little resources".<sup>33</sup>

2. *The more an NTB issue has become salient for the committees and working groups in the European Commission, the more resources are shifted to the respective MAT, thus making it more likely that the MAT succeeds in removing the NTB in its host country.*
3. *The less salient an NTB issue in the host country, the easier the MAT's access to political decision-makers and the more likely the MAT succeeds in removing the NTB in its host country.*

This argument views politicians as rational actors who seek to raise their re-election prospects. It is one of the characteristics of the "second generation of trade-policy reforms"<sup>34</sup> to be politically sensitive and to affect "entrenched interests that are

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<sup>31</sup> European Commission, , COM(2008) 874 final, *op.cit.*, p. 14.

<sup>32</sup> S. McGuire, "Firms and Governments in International Trade", in B. Hocking and S. McGuire (eds.), *Trade Policy*, London, Routledge, 1999(2<sup>nd</sup> edn.), p. 279.

<sup>33</sup> *Ibid.*

<sup>34</sup> OECD, *Globalisation and Emerging Economies: Brazil, Russia, India, Indonesia, China and South Africa*, *op.cit.*, p. 158.

extremely difficult to dislodge".<sup>35</sup> When an issue is salient, the legislator cannot disconnect from its electorate's will without being most probably punished in the next elections.<sup>36</sup> By the same token, the less salient the issue is, the easier for the respective legislator to take action for a removal.

4. *The greater the involvement of local trade associations in the MAT, the more likely the MAT succeeds in removing an NTB in its host country.*

The literature on lobbying often evokes the role of countervailing forces.<sup>37</sup> Their existence has consequences for the potential influence exerted by the initial lobbying group. In the case of MATs, local trade associations are assumed to be more protectionist. However, when local trade associations join the MAT, the MAT can enjoy further resources. As institutions of the host country, they do not face any cultural, linguistic or other specific problems to access domestic political decision-makers. To the extent that the MATs are inclusive towards the active involvement of local trade associations or even other foreign trade associations (e.g. Australian trade associations or US trade promotion institutions), the MAT enjoys additional resources, which finally facilitate access to politicians in the host country.

#### **4. Case Studies: the MATs in the Philippines, Indonesia and Japan**

##### *4.1 The Market Access Team in the Philippines*

The EU market access initiative in the Philippines is in a delicate situation. On the one hand, the EU is supporting access to affordable medicines in developing countries, but on the other hand, it has to assure competitiveness and access to growing markets for European industries. Regarding the rise of local and Indian generic drug producers on the Philippine market, the MAT faces a difficult task in approaching political decision-makers for compliance with the TRIPS Agreement's provisions on the protection of IPR. What are the NTBs at stake for the pharmaceutical sector?

The pharmaceutical market in the Philippines is highly concentrated on multinational companies which control 60% of the market.<sup>38</sup> The access to medicines is a very salient issue for the Philippine government. Out of a population of 89 million,

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<sup>35</sup> *Ibid.*

<sup>36</sup> A. Dür and D. De Bièvre, *op.cit.*, p. 33.

<sup>37</sup> *Ibid.*, p. 35.

<sup>38</sup> C. Cruz, "The Patent System and the Quest for Affordable Medicines", *DLSU Business & Economics Review*, vol. 18, no. 1, 2008, p. 65.

24 million do not enjoy access to medicine<sup>39</sup> because of insufficient financial means spent on public healthcare and because of drug prices, which are “among the highest in Asia, if not in the world”.<sup>40</sup> The small market base of only 15-20% of the population<sup>41</sup> is one of the reasons alongside with “weak health-care systems, corruption, inadequate health insurance coverage, taxes and tariffs, non-tariff barriers to drug imports”.<sup>42</sup>

In order to improve public health, the Philippine government ratified the so-called ‘Cheaper and Quality Medicines Act’ of 2008. Generally speaking, this legislative act envisages the promotion of local drug production, while restricting the IPR of patent holders on R&D-based drugs. This Act thereby impedes the competitiveness of EU companies by allowing parallel importation of generic drugs on a broad scale. These parallel imports, especially from India, are even promoted by a state-owned agency (Philippine International Trade Centre) which issues more compulsory licenses without adequate compensation.<sup>43</sup> With this legislation the enforcement of IPR has become a major concern for pharmaceutical companies exporting to the Philippines.

The provisions of the Cheaper Medicine Act have not remained an issue for EU exporters and investors only. The MAT in the Philippines concerned with this legislation has a broad membership ranging from the European and four bilateral Chambers of Commerce (British, French, Spanish, German) to the Commission Delegation and EU member states having embassies on the ground. In general, the MAT has become very cohesive and the relations between its members are enhancing. Due to their cooperative conduct, the bargaining position improved *vis-à-vis* the Philippine authorities and they are a contact point for the local authorities.<sup>44</sup>

However, the MAT could not perform the role of an early warning alarm bell as it was only set up after the legislation on cheaper medicines was signed and ratified. This unfavourable timing together with the salience of the issue significantly constrains the potential range of actions taken by the MAT. It further limits the

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<sup>39</sup> *Ibid.*, p. 64.

<sup>40</sup> *Ibid.*, p. 65.

<sup>41</sup> K.M.A. Valdez, "Local drug manufacturers agree medicines law will bring prices down", *The Manila Times*, 3 February 2008, retrieved 12 April 2008, [http://www.manilatimes.net/national/2008/feb/03/yehey/top\\_stories/20080203top2.html](http://www.manilatimes.net/national/2008/feb/03/yehey/top_stories/20080203top2.html).

<sup>42</sup> *Ibid.*

<sup>43</sup> A. Pabico, "No cure for costly medicines? Draft law affirms patent rights of drug firms", *The Manila Times*, 12 May 2008, retrieved 12 April 2009, [http://www.manilatimes.net/national/2008/may/12/yehey/top\\_stories/20080512top4.html](http://www.manilatimes.net/national/2008/may/12/yehey/top_stories/20080512top4.html).

<sup>44</sup> Results of the questionnaire from participants of the Philippine Market Access Team.

opportunities to focus more attentively on this barrier in Brussels as any interference in this issue might be considered as highly inappropriate and unethical. Consequently, participants of the network value the MAT's information sharing function much more than attempts to get access to political decision-makers in the host country. But to what extent could and can the MAT in the Philippines still prove as influential?

The change of legislation in favour of EU exporters and investors has clearly not been achieved. The issue as such was less prioritised in Brussels but a high priority for Philippine legislators.<sup>45</sup> This implies that explicit action directed at the removal of this Cheaper Medicine Act can become a focal point of public attention. Moreover, the interference in this sensible issue could even be interpreted as unethical behaviour of the EU restraining the access to affordable medicines for the Philippine population. Consequently, the MAT has adopted a rather low profile or low-key approach in order to prevent any backfiring on the MAT's efforts. This low profile and avoidance to present the EU and its business as wary free trade drivers implies that the MAT's information sharing function remained most important.

It is very difficult for the MAT to gain influence on this highly prioritised issue in the Philippines. Therefore, the question can be raised whether the integration of foreign trade associations might balance this weakness. The precondition for an integration of other stakeholders is the consensus of MAT members on this issue. However, the MAT members disagree on the value attached to the involvement of local business or foreign trade associations.<sup>46</sup> Concerning the involvement of foreign trade associations – be they US American or others – the members of the MAT agree that they would contribute with important resources thus making the whole MAT more successful. In contrast to that, the search for local allies remains complicated as the Philippine government tries to boost the local manufacturing capacities and Philippine stakeholders remain rather wary of the interests of foreign stakeholders.<sup>47</sup>

By and large, the MAT in the Philippines has not been able to fulfil an early warning function. As it was created after the ratification of the Cheaper Medicine Act, the possibility only to *react* makes it particularly difficult to lift NTBs for EU companies. The social sensitivity and public attention directed at the issue of public health make the activities of the MAT a tightrope walking. Although the internal

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<sup>45</sup> Cf. Philippine News Agency, "PGMA signs Cheaper Medicines Act", 6 June 2008, retrieved 24 April 2009, <http://www.gov.ph/news/?=21129>.

<sup>46</sup> Results of the questionnaire from participants of the Philippine Market Access Team.

<sup>47</sup> Comment in one questionnaire from participants of the Philippine MAT.



dimension of the network has contributed to increased information and resource exchange, the salience of the issue in the host country prevents the MAT from proceeding in a visible and active manner. Its low profile approach with the ambition of depoliticising the issue seems, however, a well-adapted and promising long-term approach to the specific conditions in the host country.

#### 4.2 *The Market Access Team in Indonesia*

The economic growth potential of the Indonesian market for pharmaceutical products in the years to come attracts EU companies. However, their performance on the Indonesian market is limited by NTBs, especially the insufficient protection of intellectual property rights.

There are various trade barriers facing the EU pharmaceutical companies. First, the lack of transparency and of unified simple procedures leads to profit losses because lengthy application procedures are required for a permission to sell the product on the Indonesian market. Furthermore, imitation products are sold on a large scale.<sup>48</sup> Despite a legislative reform in 2000 targeting these problems, the investors in the pharmaceutical sector in Indonesia continue to encounter such obstacles to trade. The insufficient enforcement of the regulation especially hits EU investors “who rank first in the investment of pharmaceutical sectors”.<sup>49</sup> In Indonesia the sales of counterfeit drugs are estimated to make up 10% of the value of the total market corresponding to 20 million US\$.<sup>50</sup>

A further problem related to IPR is that Indonesia still does not assure data exclusivity although according to Art. 39.3 TRIPS Agreement each state is obliged to enact appropriate domestic legislation. Another barrier for investors in the Indonesian pharmaceutical sector is the problem of caps on foreign investment. The Indonesian government has blacklisted foreign direct investment on a negative investment list in favour of the local industries, *inter alia* in the pharmaceutical sector.<sup>51</sup> Finally, importers of pharmaceutical products face uncertain rules on the acceptance of their products. The Indonesian government tends to decide on the

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<sup>48</sup> Results of the questionnaire from participants of the Indonesian MAT.

<sup>49</sup> Price Waterhouse Coopers, *Identification and Analysis of Trade Barriers in Indonesia, Thailand, Malaysia and the Philippines*, Contract study for the European Commission, 3 December 2001, p. 86.

<sup>50</sup> International Pharmaceutical Manufacturers Group (IPMG), *Position Paper on Market Access Barrier and Intellectual Property Rights*, 7 November 2006, p. 3.

<sup>51</sup> Results of the questionnaire from participants of the Indonesian MAT.

acceptance on a case-by-case basis, providing no guarantee for a sales market. All these NTBs are the issues of the sector-based MAT on pharmaceutical products in Indonesia. As a consequence, its agenda is very broad and requires a large range of trade diplomatic activities.

Although the MAT only started in April 2008, the previously existing working group on pharmaceutical products organised by the European Trade Association has already provided some first experience for systematic coordination. This working group convened multinational companies, IPR consultants, embassies and other organisations. However, the Commission Delegation was not an active member of these meetings. The MAT shifted this working group on a new level with more members and additional resources. Under the MAT the Commission Delegation, EU Member States, one European Business Association and five to seven local companies and business associations come together. Furthermore, an international trade association with members from the EU, US, Singapore and Japan is involved in the work of the MAT.

The advantage of the MAT is that it provides a platform for enhanced information sharing for multiple stakeholders. This platform helped to exchange different perspectives on the problems at stake and to spread within the network the analysis on potential WTO violations. The relations between the members of the network have improved with the result of more information sharing and an approximation of viewpoints. In contrast to the Philippine MAT, however, this MAT had already some experience of enhanced cooperation because of the working group organised by the European Trade Association.

The diverse and complex array of trade barriers facing the pharmaceutical industry coincides with a weak Indonesian trade-policy capacity.<sup>52</sup> In addition to that, recently founded vociferous trade unions and NGOs raise their voice for more protectionist policies overshadowing the less organised Indonesian export-oriented interests.<sup>53</sup> In this clash of interests, only few people know the MAT and it adopted a low-profile strategy with the clear advantage of being able to tackle several issues in a constructive dialogue. However, it is also the low profile of the MAT which prevents the network from becoming a contact point and a provider of expertise for Indonesian officials.

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<sup>52</sup> OECD, *Globalisation and Emerging Economies: Brazil, Russia, India, Indonesia, China and South Africa*, *op.cit.*, p. 141.

<sup>53</sup> *Ibid.*, p. 135.

The stakeholders do not agree on the involvement of local companies or trade associations. Some stakeholders claim that they already had well-established contacts to Indonesian ministries, especially the Ministry of Health, without any local allies. Consequently, it is disputed between the members whether the Indonesian MAT shall be open to external stakeholders. While some trade associations do not agree on an ever more open network, the EU is a main driver for openness. It seems that in this case the basic assumption of hypothesis number four can neither be verified nor falsified as the disagreement on the involvement of local stakeholders prevents exactly these stakeholders from an efficient investment of their resources.

To sum up, Indonesian trade barriers are numerous and often complex to prove. Like in the Philippines, the MAT does follow a low-profile approach in order to launch a constructive dialogue in which issue-linkage is possible. The experience of the previous working group has already provided some additional resources in terms of information and contacts. However, the MAT has not clearly defined its boundaries yet. Moreover, the MAT in Indonesia has a broad agenda and works in a complex trade environment. These circumstances make it difficult for the MAT to deliver clearly identifiable results.

#### *4.3 The Market Access Team in Japan*

In contrast to the other two case studies, Japan is the "second largest developed economy",<sup>54</sup> and already a key trading partner for the EU. Although the period of intense trade disputes of the 1980s and 1990s is over, especially NTBs prevent EU companies from expanding their market share on the Japanese market. These NTBs restrict, *inter alia*, the pharmaceutical, medical equipment and cosmetic industries as the approval process for drugs continues to be very slow and cumbersome.<sup>55</sup>

The main issue for the MAT located in Japan has been vaccines. Foreign vaccine manufacturers account for only 2% on the Japanese market which is to 98% controlled by domestic manufacturers.<sup>56</sup> This discrimination is further underlined by the fact that these foreign manufacturers account for 38% of the Japanese pharmaceutical market. The European Federation of Pharmaceutical Industries and

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<sup>54</sup> European Commission, *EU-Japan Trade in Facts and Figures*, Brussels, 2008, p. 1.

<sup>55</sup> European Commission, "The Voice of the Delegations: From the European Commission's Delegation in Japan", *Market Access Newsletter*, issue 13, 31 October 2008, p. 4.

<sup>56</sup> Market Access Database, "Restricted Access to Japanese Vaccine Market", or: EFPIA, *Japan Position Paper: The Vaccine Gap*, p. 2.

Associations (EFPIA) even speaks of a “vaccine gap”<sup>57</sup> endangering public health and making Japan an “exporter of infectious diseases to countries that have these diseases under better control through vaccination”.<sup>58</sup>

The reason for this small market share of foreign vaccine producers lies foremost in the specific Japanese culture of preventive health care with very strict clinical guidelines.<sup>59</sup> These guidelines mainly prevent any testing of products according to EU standards. A second barrier constitute the Japanese technical specifications which are different from internationally accepted WHO/EMEA/FDA guidelines. These differing guidelines also affect Japanese vaccine manufacturers from exporting their product. That is why these guidelines operate as a double NTB to both European as well as Japanese companies. Consequently, foreign exporters as well as Japanese exporters should theoretically be interested in a harmonisation of these regulatory standards. However, the liberalisation of the purchase and supply of vaccines for emergencies, as a third barrier, is strongly running against local industries’ interests.

The establishment of a working group preceding the MAT dates back to mid-October 2007. The initiative was strongly encouraged by the pharmaceutical industry, expressing clearly its demands and suggestions for the work of such an MAT in Japan. While some members of the MAT in the Philippines or Indonesia explicitly suggested more active consultation of lobbyists of the pharmaceutical sector in Brussels, the EFPIA was one of the main drivers for a market access initiative in Japan.<sup>60</sup>

The actors of the MAT Japan have been the Commission Delegation, EFPIA Japan, Member States and at a later stage US trade associations. However, the number of EU Member States participating was very limited despite the fact that most of the 27 countries have manufacturing capacities for vaccines on their territory.<sup>61</sup> The MAT contributed to a significant increase of information sharing. This was especially an advantage for the EU and the Member States as EFPIA Japan was very well connected on the ground.

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<sup>57</sup> EFPIA, *EFPIA Japan Position Paper: The Vaccine Gap*, p. 1.

<sup>58</sup> *Ibid.*, p. 2.

<sup>59</sup> Interview at EFPIA, Department External Trade, Brussels, 28 April 2009.

<sup>60</sup> *Ibid.*

<sup>61</sup> *Ibid.*

Even though the initiative came from EFPIA, the Commission in Brussels was always very involved in the MAT's activities. Although consultation mechanisms existed beforehand, the new market access initiative with the MAAC in Brussels and the MAT on the ground systematized the cooperation between different stakeholders. Furthermore, the issue of market access for EU vaccines in Japan became a personal issue for the then Commissioner Peter Mandelson who increased his effort spent on this case in Brussels and abroad.<sup>62</sup>

One important asset of the Japanese MAT was not only the strong support from stakeholders in Brussels but also the point in time when the MAT was established. In contrast to the previous case studies, the MAT's creation in Japan coincided with the launch of reforms of the public health sector by the Japanese government. The possibility to take influence was facilitated because of this reform agenda. Additional expertise to this reform agenda was easily accepted because some MAT members had well-established contacts to Japanese officials and especially with the Ministry of Health. Consequently, the MAT managed to link into the ongoing reform process.

As the reform in the Japanese Ministry of Health progressed, three work streams were identified: clinical guidelines, technical specifications, flu and endemic preparedness. The influence of the MAT in each reform stream has varied. But especially in the stream of clinical guidelines, the MAT stakeholders have proven to be very influential. The reformed guidelines even indicate a shift from the preventive health care to the EU therapy approach which makes them comply to a high degree with already existing EU and international standards.<sup>63</sup> However, the reform agenda in the field of technical regulations is progressing only slowly as additional support from Brussels is lacking. Finally, the monopoly on supply of vaccines for potential emergencies is persisting. This field is still closed to foreign manufacturers which underlines the minor influence of the MAT to date on this issue.

By and large, the case study in Japan underlines the case of a – at least in partial issues – very influential MAT. Although the reform process is still ongoing, the high degree of compliance with EU standards proves the success of the MAT's efforts. Critics might point out that the Japanese MAT has not provided a breakthrough in trade diplomacy. However, the MAT in Japan has demonstrated

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<sup>62</sup> European Commission, "The Voice of the Delegations: From the European Commission's Delegation in Japan", *op.cit.*, p. 5.

<sup>63</sup> *Ibid.*

how to use the full potential of information sharing and of exchanging resources in a more systematic way. With its cooperative conduct, it has become the contact point for Japanese officials for constructive and effective dialogue on trade matters.

#### *4.4 Main Findings of the Case Studies*

The MATs in the three case studies have provided a platform for increased information sharing and for better exchange and allocation of resources. The Market Access Team therefore becomes an advantageous framework for the stakeholders in third countries. In particular, the internal cohesiveness of the MAT members turned out to be a precondition for the MAT's further action. Where previous multi-stakeholder initiatives had already provided some experience of coordination and cooperation in the third countries, the creation of a cohesive network was facilitated. As a consequence, it can be assumed that effective cooperation is much harder established in the cases of either strong Member States' interests or a large number of MAT stakeholders.

Turning to the external dimension of the MATs, the issues on the Team's agenda did not tend to become priorities in the Commission without the lobbying of concerned associations or federations in Brussels. The lobbying in Brussels is, however, facilitated when the main federation has direct subsidiaries in the respective host country. Otherwise, the voice of trade associations in the host country might run dry over the long distance between the EU and the third country. Nevertheless, the Commission delivered to all MATs legal expertise as valuable support.

The salience of the issue in the host country has proven to be a decisive factor for the influence of MATs in all three case studies. Across the three cases, the salience of the public health issue gradually declined from the first to the last one. While in the Philippines the issue was very salient for citizens as well as for political decision-makers, the complexity of the NTBs in Indonesia made the issue less salient. In Japan, the issue was even subject to a reform process induced by the Japanese Ministry of Health. The importance of the issue in the Philippines obliged the MAT to keep a low profile and to avoid the impression of any interference. This low profile restricts the possibilities to provide expertise and to become a contact point for Philippine decision-makers. However, even the Philippine MAT cannot be considered as unsuccessful because all MAT members gain experience through regular information and coordination meetings and therefore provide best practices for

future action or MATs in other countries. A further correlation which can be established is that the more salient an issue in the host country, the less it is prioritised in Brussels which tries to refrain from a further politicisation of the issue at stake. The reason for this might be the explicit ambition of the Commission to deliver results to citizens, Member States and business. There might be a tendency to prioritise an issue only when there is a chance to deliver results.

In addition to that, the MAT might also choose on a voluntary basis the low profile approach in the host country in order to avoid political attention to be drawn on their activities. When the issue at stake is very prominent, this additional attention from Brussels might render a constructive dialogue on the ground impossible. Therefore, the salience of an NTB tackled affects the MAT's choice of a particular strategy.

Finally, there turned out to be no agreement between the stakeholders on the added value of local or foreign trade associations joining the MAT. Generally speaking, the EU was keen on opening the MAT to other stakeholders, while trade associations were rather in favour of closing it, especially to the local companies or trade associations. Apparently, hypothesis number four has to be further specified: the more resources in terms of contacts and information the MAT members already have at their disposal in a host country, the less keen these members will be on sharing it with potential competitors. Furthermore, the EU as politico-economic actor has wider interests ranging from market access to good political contacts with the host country. As a consequence, the Commission Delegation follows a more political rationale and remains open to other stakeholders. In contrast to that, trade associations are applying a more economic rationale, thus being less keen to involve potential competitors.

The comparison of the case studies' results provides some additional policy advice. Pre-existing infrastructure (for instance working groups in trade associations) are an important link for the creation and activities of the MAT. The involvement of subsidiaries of federations in third countries or associations active in Brussels facilitates communication and helps to well establish the case in the Commission. Furthermore, the MAT should be created in important markets for important European industries at an early point in time as any reaction to already established legislation is much more difficult. Finally, the diverse attitudes towards the potential involvement of foreign and/or local trade associations underline the different rationales that actors in the

MAT apply. Whereby the Commission Delegation has a more political rationale and tries to keep the MAT open to other stakeholders, other actors prefer a less inclusive MAT. Second, the actors having more resources at their disposal are also less open to the involvement of other stakeholders. Therefore, a low-profile approach, especially in countries with less stakeholders' experience on cooperative trade policy, seems helpful in order to get to know the other stakeholders' viewpoints and analysis of the situation as well as to start a constructive dialogue.

#### **4. Conclusions: Conditions of Success**

There is no straightforward answer to the question under which conditions the EU Market Access Teams can effectively remove foreign non-tariff barriers to trade. Yet, this study has revealed various factors, conditions and strategies affecting the MAT's performance with regard to NTBs faced by the pharmaceutical industry in Asian markets. These factors concern both the internal and external dimensions of MATs. The first dimension designates the network itself and the relations between the actors gathered in the MAT. The second dimension looks specifically at the MAT's links with the European Commission in Brussels and at the salience of the barrier targeted in the host country. Another aspect in the MAT's external dimension is its cooperation with local trade associations and companies in the host countries or with the associations from other third countries.

The results of the case studies illustrate that the internal cohesiveness between EU actors in third countries has increased as the MAT has brought trade associations, Member States' embassies and EC delegations closer together. The information exchange between these actors has been significantly enhanced, and no internal veto player could be identified. This development brings with it advantages for all stakeholders as their combat against non-tariff barriers can build on positive synergies of their joint effort. It is furthermore a prerequisite for establishing long-term influence of the European MATs in the host countries.

As became evident during the course of this study, the overall influence of MATs in third countries remains highly dependent on the prominence of the issue in the host country. Therefore, short-term success is genuinely hampered if the issue at stake is highly politicised. In the case of the pharmaceutical industry the issue becomes even more heated, as the majority of citizens are *per se* interested and concerned as they rely on their access to medicines. However, as seen in the



Japanese case study, if or when the inception of the MAT's activities coincide with a reform process in the host country, it is more likely to bring about a certain degree of compliance with EU and international standards. By the same token, it underlines that the EU's "trade power and power through trade"<sup>64</sup> is unlikely to foster on its own domestic reforms in other countries.

The case of the MAT in Japan in addition illustrates quite nicely that – contrary to the common perception that more lobbying creates more attention and political support – it does not always create a positive working environment for the MAT to thrive in. As a consequence, it can be the most convenient strategy to avoid more political attention being drawn on the MAT when the issue is very prominent and the MAT has only been created after the popular domestic legislation has been ratified in the third country.

The MAT is able to correspond to the Market Access Strategy's ambition to deliver results for multiple stakeholders, if its stakeholders act in a cohesive and cooperative manner and if the barrier tackled is salient in the EU while less salient in the respective third country. Furthermore, because of their decentralised working approach and their networking diplomacy mode, they indeed reflect very well today's challenges for trade policy and therefore represent an adequate translation of the EU's ambition to strengthen its competitiveness. As the official MATs have only recently been created, the stakeholders are still gathering experience with a view to best practices.

In times of financial and economic crises the role of MATs is unlikely to diminish as the risk of protectionism is rising. The experiences gathered since 2007 can thereby be crucial to adapt and expand this EU instrument in order to maintain and promote market access.

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<sup>64</sup> S. Meunier and K. Nicolaidis, "The European Union as a Conflicted Trade Power", *Journal of European Public Policy*, vol. 12, no. 6, 2006, p. 912.

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