Business Interests and the Transatlantic Trade and Investment Partnership

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Introduction

Much business lobbying takes place on the Transatlantic Trade and Investment Partnership (TTIP) on both sides of the Atlantic. Early on, both European and America business representatives contacted the European Commission to influence the agenda of the negotiations (Hakim 2013). In the United States (US), broad-based business associations such as the U.S. Chamber of Commerce, sectoral associations such as the American Farm Bureau and individual companies such as Time Warner have been active in lobbying on TTIP.

What do business interests want to see in TTIP, and what are the chances of success of these lobbying efforts? To answer these questions, we first discuss how trade policy lobbying works in the European Union (EU) and the US. We briefly compare the European and American lobbying styles and also review the literature on trade policy lobbying success in both entities. We then empirically investigate business lobbying on TTIP, relying on 222 contributions to consultations held on TTIP in both the EU and the US. The evidence shows a strong lobbying effort by business, stark variation across sectors in which topics are seen as essential in these negotiations and some areas of high conflict between European and American business groups.

Trade Policy Lobbying in the EU and the US

Business interests possess many channels of influence in both Europe and the US. In Europe, interest groups can try to influence trade policy formation via the "national route" or via the "Brussels route" (Greenwood 2007: 25). The national route entails lobbying the national government or the national parliament with the expectation that these actors then defend business interests at the European level, for example in the Council of Ministers. The Brussels route, by contrast, means directly addressing the European Commission or the European Parliament. Lobbying the Commission has been important since the early days of the European Economic Community (see Dür 2010), as it is the Commission that makes a proposal for the start of trade negotiations and that represents the EU in the negotiations. Specifically for the TTIP negotiations, the Commission set up an expert group that offers formal access to a wide range of societal interests, including business associations but also trade unions and nongovernmental organizations. Influencing the European Parliament in matters of trade policy has become more important as a result of the increased powers of the Parliament in this domain with the entry into force of the Treaty of Lisbon on 1 December 2009. Following this latest revision of EU treaties, the Parliament's approval is needed for the ratification of international trade agreements.

Neither the European Commission nor the European Parliament is a unitary actor. In the Commission, although the Directorate-General (DG) for Trade takes the lead, various other DGs also play a role in preparing and conducting international trade negotiations. Not all of these DGs are considered "business friendly". DG

Environment, for example, may be more open to lobbying by environmental non-governmental organizations (NGOs) than business actors (Pollack 1997). Similarly, in the European Parliament several committees play a role in approving international trade agreements, with some being more (International Trade) and others less business friendly (Development). Moreover, members of the European Parliament (MEPs) tend to vote in line with their party groups. Some of these party groups (e.g. the European People's Party) take a more business-friendly position than others (e.g. the European United Left).

In the US, too, business interests benefit from several channels of access. The Office of the United States Trade Representative (USTR), which is part of the Executive Office of the US President, is responsible for the conduct of trade negotiations. Many other federal agencies and offices are involved in formulating US trade policy, including the Council of Economic Advisors and the departments of State, Agriculture and Commerce. The US National Economic Council, which is chaired by the US President, also sometimes deals with issues related to international trade. The US International Trade Commission is a final executive agency that can be the target of business lobbying. It not only administers the US's trade remedy laws, but also offers information to the US President on trade policy issues.

Business interests thus have many targets for their lobbying efforts in the US administration. They can either approach these institutions informally or have their voices heard via the trade policy advisory committee system. This system currently consists of 28 advisory committees that bring together representatives from companies, business associations, labour unions and a few NGOs. Business interests clearly dominate most of these committees.

Business interests also address Congressional committees (e.g. the House Committee on Ways and Means) and individual members of Congress. Formally, the regulation of trade and the setting of tariffs is a constitutional prerogative of Congress. Indeed, until the early 1930s Congress mostly unilaterally determined US tariffs on imports. The 1934 Reciprocal Trade Agreements Act, then, delegated competences to negotiate trade agreements to the president (Dür 2010). Congress, however, did not abdicate its trade policy powers. For one, trade agreements signed by the president could only enter into effect with the approval of a simple majority in both houses of Congress. Moreover, the delegation only happened for a limited period of time, with Congress repeatedly renewing the delegation. The last piece of legislation that delegated trade policy authority to the President, the Trade Act of 2002, expired in 2007. If no legislation is passed prior to TTIP being signed, any agreement negotiated between the EU and the US will have to be ratified by a two-thirds majority in the US Senate (as required by the US Constitution for all international treaties signed by the President). With many Democratic members of Congress currently taking a critical view of international trade agreements, and (at the time of writing) the Senate dominated by Democrats, such a two-thirds majority may be difficult to reach.

A European and an American Lobbying Style?

It seems plausible that the different institutional structures of the EU and the US may result in a transatlantic divide in lobbying styles (Woll 2012). In the EU, most decisions require the approval of many different actors, most importantly the Commission, a qualified majority of member states in the Council of Ministers and the European Parliament. By contrast, in the US many decisions just require simple majorities in both houses of Congress (and consent from the President). The requirement for having many actors on board may make business lobbying in Europe less adversarial than in the US. The US political system is also more reliant on money from interest groups to finance election campaigns, meaning that financial contributions play a larger role in lobbying in the US than in the EU.

Especially for business interests, however, the transatlantic differences in lobbying style should not be exaggerated. On both sides of the Atlantic, business actors mainly engage in inside lobbying, that is, direct contacts with decision-makers to convey the interest groups' demands (Gais and Walker 1991, Dür and Mateo

2013). In such contacts, adversarial tactics are necessarily of limited use. This is particularly so because, again in both the EU and the US, interest groups have most contacts with "friendly" decision-makers, that is, politicians who are favourably disposed towards the groups (Hall and Deardorff 2006). In both entities, moreover, lobbying is mainly a case of strategically transmitting information to decision-makers. Business actors possess both political information (i.e. information about constituency preferences and the preferences of other decision-makers) and technical information (i.e. information about the feasibility of a proposed policy). While certainly some differences in lobbying styles exist, the expectation is for business actors trying to influence the TTIP negotiations and ratification process to behave in broadly similar ways in the EU and the US.

Business Influence in the EU and the US

Several studies suggest that the EU's institutional structure insulates trade policy-making from lobbying by societal interests (Meunier 2005: 8-9, Woolcock 2005: 247, Zimmermann 2007). In the EU, the argument goes, the chain of delegation from societal interests to decision makers is long. Together with the EU's complex institutional structure, this long chain of delegation creates information asymmetries between politicians and interest groups that favour the former. For example, decision-makers may tell interest groups that they fought as much as possible for their interests, but that they were unable to pull other actors to their side, even if in practice they barely considered the groups' position. The insulation of the trade policy-making process in the EU may have been a conscious effort by the designers of the EU to keep protectionist interests at bay. In the words of Sophie Meunier (2005: 8), European policymakers "chose to centralize trade policymaking in order to insulate the process from protectionist pressures and, as a result, promote trade liberalization." What worked for protectionist business interests should also be effective in reducing influence from business interests that favour trade liberalization. Following this strand of literature, therefore, business influence over EU trade policy should be low.

Several factors, however, cast doubt on the insulation thesis. Most importantly, considerable evidence shows that the EU's trade policy is largely in line with interest group demands (van den Hoven 2002, Coen and Grant 2005, Dür and De Bièvre 2007, Dür 2008). Illustratively, in the Doha Development Agenda, the currently on-going round of trade negotiations in the World Trade Organization, the EU has consistently taken a position in line with business demands (Dür 2008). On topics such as services liberalization, investment protection and intellectual property rights, where European business has taken offensive positions, the EU has demanded far-reaching commitments at the WTO level. With respect to agricultural trade and trade in audio-visual services, where European business takes a protectionist position, also the EU has tried to slow down the process of liberalization. The theoretical reason for this coincidence between business positions and the EU's position in international trade negotiations seems to be that the EU's institutional structure actually facilitates lobbying. The EU's many access and veto points make it relatively easy for societal interests to have their demands heard.

Nevertheless, public opinion can act as a restraint on business influence over trade policy. The case of the failed Anti-Countervailing Trade Agreement (ACTA) offers an illustration of this effect (Dür and Mateo 2014). Most European business interests supported this agreement which promised to improve the transnational enforcement of intellectual property rights. Only very few sectors of the economy, most notably internet providers, opposed provisions contained in ACTA. Dür and Mateo (2014) empirically show that only when NGOs and informal networks managed to increase the public salience of this agreement, both national governments and MEPs changed opinion about ACTA. Even a concerted business campaign in favour of ACTA could not deter the European Parliament from voting down the agreement. Public opinion, if mobilized by organized groups, thus seems to be a greater obstacle for business lobbying than the EU's institutional structure. With issues such as the treatment of poultry with chlorine dioxide having the potential to mobilize public opinion in Europe, this point may become crucial if the agreement reaches the stage of ratification.

For the case of the US, the extent to which business interests can influence trade policy formulation has also been hotly debated. Little doubt exists that business interests were key in determining US tariff levels when Congress set these rates unilaterally. The Smoot-Hawley Act of 1930, which led to an across the board increase of tariffs, has become a prime example of how lobbying by concentrated interests can affect legislation (Schattschneider 1935). Some authors, however, have suggested that the delegation of trade policy competences to the President limited the influence of protectionist interests over US trade policy (Destler 1986, Ehrlich 2008), creating the basis for the subsequent liberalization of US trade policy. Business interests may also be trumped by geopolitical considerations. With the executive playing a key role in the negotiation of trade agreements, and the executive also having strong foreign policy preferences, these preferences may spill over into the trade policy domain (Milner and Tingley 2011).

Similar to the case of the EU, however, there are good reasons to be sceptical of the notion that business interests have little influence over US trade policy. In fact, several studies found that interest group pressures play a major role in shaping US trade policy (Chase 2005, Fordham and McKeown 2003, Milner and Tingley 2011). Moreover, references to foreign policy aims in trade legislation may simply be a rhetorical ploy to enhance support for the legislation (Dür 2010), as the likelihood of Congress passing foreign policy legislation is higher than of it passing domestic legislation (Fleisher et al. 2000). For both the EU and the US, therefore, the expectation is for business interests to play a major role in shaping the TTIP negotiations.

TTIP: The Business Position

So what is the business position with respect to the TTIP negotiations? To answer this question, we draw on contributions that business actors on both sides of the Atlantic submitted to public consultations. Eleven stakeholder meetings, hearings or calls for written contributions took place between January 2012 and March 2014, including two joint EU-US solicitations. Although for most of the events a list of attendees is available, written submissions or transcripts of the meetings can only be accessed for four rounds of consultations, namely the EU's initial general public consultation completed in April 2012, the joint EU-US solicitation in October 2012, the – US organized – US-EU high level regulatory cooperation forum from 10 to 11 April 2013 and the US public hearing on 29 and 30 May 2013. In addition, the EU conducted a survey with 114 respondents for which 77 responses are available online. Because the European Commission designed the survey and thus set the agenda of contributed issues by asking specific questions, the results of this initiative cannot be used for the purpose of this analysis, namely assessing business actors' issue priorities.

Consequently, we analyze 222 contributions submitted to the four rounds mentioned above. These 222 documents or speeches were addressed to either or both the US (Office of Information and Regulatory Affairs, United States Trade Representative) and the EU (DG Enterprise and DG Trade). For our analysis, we coded the contributors' profiles (sector[1], headquarter, size) and the issues the stakeholders want to see tackled in the TTIP agreement. Because we hardly found statements where business stakeholders plead for an exclusion of specific issues from the trade agreement, we did not consider negative approaches in our coding scheme[2]. Furthermore, we coded the contributors' preferences in terms of overcoming the regulatory discrepancies between the US and the EU. Suggested mechanisms of the industries were mutual recognition, application of international standards, establishment of a new bilateral standard, unilateral EU or US adjustment, provision of an investor-state dispute settlement (ISDS) body and regulatory harmonization among EU Member States.

[1] From 26 sectors with which we started, 19 applied to our sample: there were no submissions from business stakeholders representing the arms and ammunition, computer and IT equipment, railway equipment, waste management, construction, maintenance service and architecture sectors.
[2] In fact, import-competing interests hardly contributed. The multinational companies and exporting interests that contributed want a broad and encompassing agreement.

We proceed as follows: First, we assess how much business lobbying we see relative to lobbying from other actors. Second, we present the number of contributions to a certain issue per sector to show which issues business actors want to see tackled in a transatlantic trade deal. Our data allows for a comparison of the preferred scope of the trade agreement both between the EU and the US and across different industries. Moreover, we discuss preferences regarding mechanisms, such as mutual recognition, harmonization and unilateral adaption of the EU or the US. Finally, we conclude by comparing the business demands with the trade policy positions of both the EU and the US to get an idea of business influence or success.

How much business lobbying can we observe with respect to TTIP?

Business associations and companies were the main contributors to the four stakeholder events. They dominated with 87 per cent among the European, 67 per cent among the US and 76 per cent among the transatlantic stakeholders. The stakeholders' profile varies the most for the US based contributors, ranging from NGOs (16 per cent), trade unions, citizens' representatives, academics, governmental institutions to companies and business associations.

By contrast, the profile of EU stakeholders is restricted to companies, business associations, citizens' representatives and governmental institutions (the two EU-based NGOs submitted together with a US NGO and presented themself as a transatlantic interest group). Case selection – which includes one joint solicitation, one EU- and two US- based submissions – explains this evidence. As a.) the analyzed consultations primarily took place in the US and b.) stakeholders tend to communicate their interest to their own political representatives, the American submissions are greater in terms of number and also variance. Moreover, the US hearings took place later in time which could also lead to a more intense NGO and academic participation as the public debate became more intense over time.

Furthermore, 20 per cent of the 222 consultation documents presented their position as a transatlantic one. These 45 submissions primarily came from business interests (76 per cent) followed by NGOs (17 per cent) and governmental institutions or regulatory authorities (7 per cent).

Overall, business submissions dominate clearly in terms of delivered speeches and written advices addressed to the negotiating parties. Hence our sample is big enough to assess the extent to which business interests differ across sectors. Moreover, the similarly strong presence of business in the EU and in the US allows for a comparison of the business positions on both sides of the Atlantic.

Do EU and US business interests pursue the same aims?

Overall, business is much more concerned about non-tariff barriers – such as technical regulations, standards, intellectual property rights, investment and procurement regulations – than about tariff barriers. In this regard, the EU, US and transatlantic business interests agree. Furthermore, the need to remove barriers in trade in services (especially with respect to financial services) was emphasized on both sides of the Atlantic.

Not on all issues, however, do EU and US business interests agree. Based on the intensity of claims, we found that US business pushes strongly for the inclusion of sanitary and phytosanitary as well as intellectual property provisions in TTIP, but the European-based firms and business associations stressed procurement and investment regulations. The stakeholders that represent both US and EU interests care most about double-testing procedures. Hence, they asked for mutual recognition of certifications and standards. By contrast, US industries favour approximation via the adoption of international standards. Moreover, some US business interests demanded that the EU should unilaterally adopt US regulations and standards. By contrast, EU business interests want the US to apply EU rules. Both agree, however, that the differences in standards are mainly caused by political preferences rather than technical reasons. Mutual recognition is for 21 per cent of businesses in the EU and 23 per cent in the US a goal worth striving for. Moreover, new bilateral rules and standards are favoured by 21 per cent of the business stakeholders.

Even though some consistent similarities and differences between US and EU business interests were identified in the paragraphs above, we must differentiate between industries in order to understand the business interest patterns on either side of the Atlantic. The following subsection deals with this issue.

Is business a homogenous actor?

In the EU as well as in the US, the food sector (food, beverages and other agricultural products) dominated in terms of contributions, but in the US it is far above all other industries (accounting for 40 per cent of all contributions). This explains the intense debate on sanitary and phytosanitary regulations in the US. The financial service sector was in the EU on second position and in the US on third. American IT service firms and associations submitted frequently. Moreover, the European car industry contributed nine submissions to the TTIP debate wherein they emphasized unfair procurement regulations. The chemical sectors (including pharmaceuticals, rubber and plastic) were equally strongly engaged in the EU and the US, but preferably submitted jointly, partly reflecting the fact that key companies in these sectors are active in both of these entities. This industry primarily addressed testing procedures, claiming that mutual recognition of product assessment results would decrease their costs significantly.

Figure 1 shows the number of contributions across five major industries (the automotive and air transport, chemicals, financial services, IT services, and nutrition sectors) to the debates concerning tariffs, trade in (financial) services, technical regulations, standards, assessment procedures, border crossing, intellectual property rights and investment and procurement regulations[3].

[insert Figure 1 here]

Technical regulations are an important barrier to trade for all sectors besides the financial services and IT services industries. The same is true for standards, an issue mainly pushed by US food producers that worry about the EU's sanitary and phytosanitary regulations. Tariff cuts are most important for the food sector; interestingly, this issue is also of concern to the IT services sector. Investments, trade in services (with the exception of the question of financial services) and public procurement are issues that come up in only very few contributions. Investments are an important issue only for the financial services sector. Interestingly, with the exception of the IT services industry, there is no big push to protect intellectual property rights in TTIP. The representatives of the chemicals and pharmaceuticals industries are concerned about testing procedures and demand a common product assessment system.

Concerning the mechanism used to establish common laws, exactly half of the groups prefer the adoption of international standards (see Figure 2). This demand is particularly strong from the financial services sector. Mutual recognition is the next preferred approach to deal with divergent standards. Nevertheless, there is much more support for mutual recognition from some sectors (the chemicals sector) than others (the food industry). The (US-based) food industry has a preference for a unilateral adjustment of EU standards, whereas a substantial proportion of the financial services sector would like to see a unilateral adjustment of US standards.

[insert Figure 2 here]

The discussion has so far shown which issues business actors want to see tackled in an EU-US trade deal. In the following section, we discuss business influence on the trade policy positions of the EU and the US with respect to TTIP.

Business Influence in the EU and US during TTIP negotiations

[3] Because sanitary and phytosanitary concerns were only discussed by the food sector, this issue is not included in Figure 1.

The evidence shows that both the US position and the EU position in the TTIP negotiations are in line with business demands. Tariff cuts, technical regulations and standards serve as examples for the strong links between business and policy-makers.

One major divide across the Atlantic concerns the extent to which tariffs should be liberalized. Whereas the EU negotiators have called for further tariff cuts, the US representatives have paid little attention to this issue (ViEUws 2014a). This reflects the relative importance given to this issue by business interests in the EU and the US. Whereas the EU-based business interests emphasize the necessity to cut tariff for their US counterparts this is not a major topic. Moreover, the chief negotiators have not yet reached an agreement on technical regulations and standards. For the US food industry, technical regulations and standards cause major trade obstacles. Consequently, the US negotiators repeatedly addressed this problem during the (at the time of writing) four rounds of negotiations. By contrast, EU representatives focused on (financial) service regulations and investment protection, thus paying heed to the strong lobbying effort by the financial services sector in Europe. Furthermore, the European Commission continues – despite public opposition - to push for the inclusion of investor-state dispute settlement in TTIP (ViEUws 2014b). Again, this reflects demands voiced by European business interests.

This brief discussion casts doubt on the insulation thesis discussed above. Both EU and US business groups play a major role in the TTIP negotiations and benefit from the many available channels of influence. On both sides, they have excellent access to key decision-makers. In fact, decision-makers actively reach out to business interests, as their input and expertise are needed in the negotiations. To understand the launch of the negotiations and the issues on the agenda, studying business lobbying is thus crucial.

Conclusion

We have discussed business lobbying on TTIP. Business actors in both the EU and the US have many access points to have their voices heard. Their lobbying styles, while different in degree, are largely similar: they mainly rely on inside lobbying, targeting friends rather than foes and relying on the transmission of information to wield influence. For both the EU and the US, some studies have argued that the influence that societal actors can exert on trade policy-making is limited. There are good reasons to doubt this assessment. Indeed, we expect business actors to be quite powerful unless the public salience of the TTIP negotiations strongly increases over the course of the negotiations.

A brief empirical study that relies on contributions to public hearings in the EU and the US has illustrated the extent of business lobbying on TTIP. According to business interests, the planned EU-US trade deal must be comprehensive, including a wide range of issues and consequently leading to a far-reaching liberalization of trade. Business sees the reach of the TTIP far beyond the territories of the EU and the US. Applying and – where not available – setting new international standards is on the top of the agenda of companies and business associations on both sides of the Atlantic. The trade policy positions of the EU and the US largely reflect these business interests. Any analysis of the TTIP negotiations without close attention to business lobbying is thus likely to be seriously incomplete.

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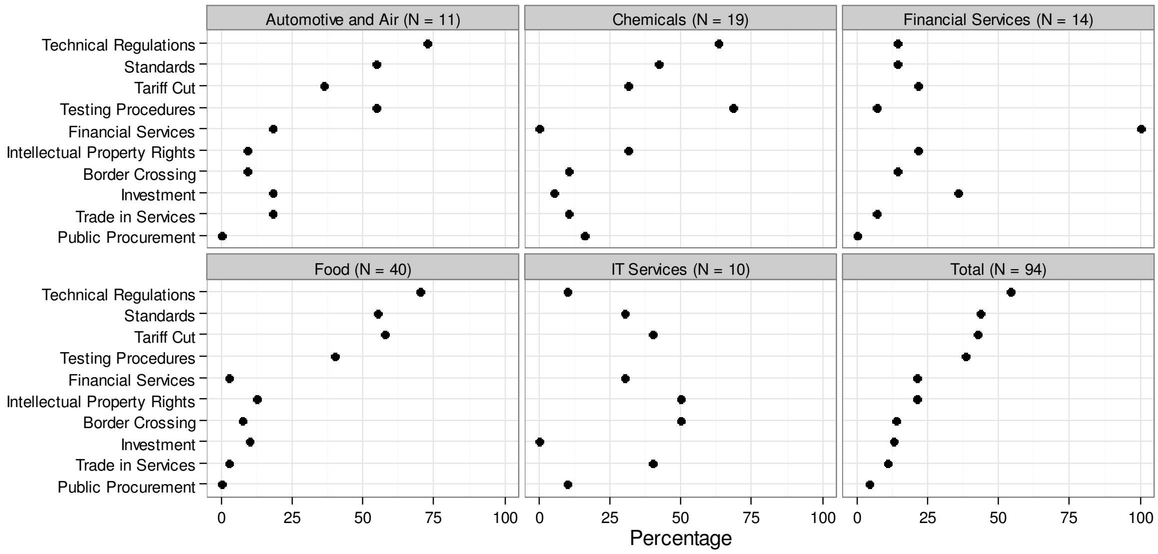
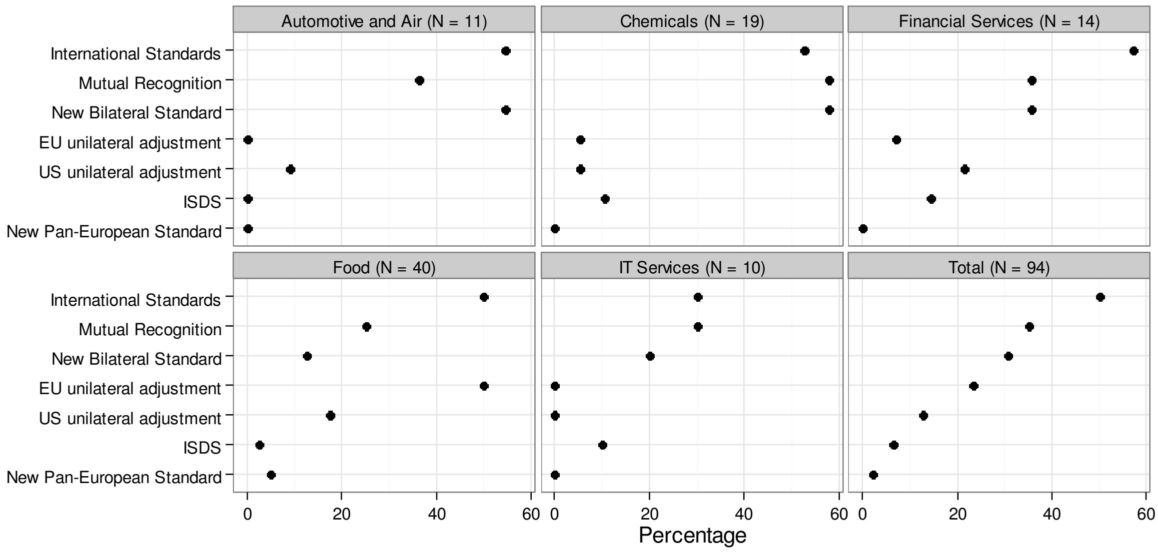
Figure 1: Trade barriers for industries headquartered in the EU, the US or both.



Note: The N indicates the number of submissions (in total 94 submissions from the five major sectors shown).

Figure 2: Industries' preferred approach to trade liberalization.



Note: The N indicates the number of submissions (in total 94 submissions from the five major sectors shown).