BUSINESSEUROPE

POSITION PAPER

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A Trade Policy for the 21st century

KEY MESSAGES

1 Increased openness to trade and investment is a competitiveness driver that can support the renewal of European industries and their success in rapidly developing business areas and key growth markets. Therefore business needs to be at the forefront of an efficient and ambitious trade policy with the primary objective of improving conditions to invest and trade.

2 EU Trade Policy should be clearly focused on its main objectives: improved market access and a more level playing field for companies. A successful trade policy leads to the promotion of other policy objectives, like development, on a complementary basis.

3 Trade policy needs to promote SME internationalisation by enhancing their integration in global value chains and opening new business opportunities in third markets. Efficiently addressing tariff and particularly non-tariff measures is a positive step towards promoting more SME participation in world trade.

4 Liberalisation in goods and services is increasingly linked. An ambitious agenda that promotes further market access for services going beyond the commitments in the General Agreement on Trade in Services (GATS) is therefore needed.

5 The EU's Trade Policy must select the best tools to efficiently achieve meaningful market access by: (a) concluding on-going bilateral negotiations; (b) reinforcing the role of the WTO; (c) reviewing older bilateral agreements; (d) developing specific strategies towards major trade partners; (f) improving monitoring and implementation of concluded agreements; (e) streamlining the agreements' adoption process.

6 The EU needs a clear and consistent investment policy that comprises market access and protection of investments including a reformed and effective ISDS that is more transparent, balanced and publicly acceptable.

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1- A challenging environment

In the past 20 years the digital revolution has led to a world that is better connected and to the emergence of global value chains. Businesses have new opportunities but many of them are outside traditional markets. By 2015 90% of world economic growth is expected to be created outside Europe- 1/3 alone in China. Developing and emerging countries are likely to represent nearly 60 % of world GDP by 2030 (< than 50% today).

Today, exports support over 31 million jobs in the European Union and the EU registered a trade surplus of €22.5 billion in 2014.

However the EU is still struggling to get economic growth back on track while most of our competitors have fully recovered from the crisis. US output is already 8% higher than in 2008 and around 1 million jobs have been created in the meantime. The EU is still struggling with an output that is 0.2% lower than the pre-crisis level. In the meantime China's GDP has grown by 64% and India's by 48% since 2008.

On global foreign direct investment (FDI) flows, the EU's share dropped from 40% to 17% between 2000 and 2013, a decline of 23 percentage points.

Serious challenges are undermining the competitiveness of the EU industry. Despite the reduction in oil prices European industry continues to pay 2½ times higher industrial energy prices than the United States. The International Energy Agency predicts that by 2035 the EU's share of the global export market for energy-intensive products will drop by 10% while the US' share will increase by 1%.

In addition to increasing world competition and fragmentation of the supply chains, in the last years we have witnessed the emergence of new economic and political powers, new technologies and a rise in the use of social media. We are also witnessing an increased interest and activism from civil society in trade and trade related issues.

International trade remains key to promote economic growth but is increasingly used to foster other objectives- development, sustainability, etc.

<u>Other important developments that have to be taken into account</u>:

Nowadays trade liberalisation is mostly agreed bilaterally and no longer multilaterally. For business, preferential agreements are not necessarily a threat to the multilateral system. The two tracks should be perceived as complementary, provided these agreements are consistent with the multilateral system and they do not lead to additional market fragmentation.

The WTO continues to be the "anchor organisation" that governs world trade. However its role is being challenged by a new trade and investment environment that has led to the emergence of regional or plurilateral agreements and also the appearance of new topics that are not included in the traditional WTO agenda e.g. investment, competition, data flows, energy.

Investment flows are increasing worldwide. Both developed as well as developing economies are recipients and providers of investment. More investment leads to more jobs and innovation, fostering economic growth. Therefore building trust among

economic operators by having clear and reliable rules that protect investments worldwide is a major priority.
Protectionism has not disappeared. Governments are more creative in finding ways to limit access to their respective markets and promoting local champions and local investment. Before it used to be high tariffs; now we have to face a wide range of measures:

- Burdensome customs procedures and unfair or discriminatory tax rules and practices;
- Technical regulations, standards and conformity assessment procedures not in line with WTO rules;
- Misuse of sanitary and phytosanitary measures;
- Restrictive access to raw materials, including export taxes;
- Insufficient protection of intellectual property rights, including geographical indications and absence of proper implementation and enforcement;
- Barriers to trade in services and foreign direct investment such as unjustified equity caps, joint venture obligations and discriminatory treatment;
- Restrictions in accessing public procurement markets;
- Abusive use of trade defence instruments;
- Unfair use of state aids and other subsidies;
- Forced localisation and forced technological transfers.

Trade and development are interconnected. Trade is viewed as the best tool to ensure political and economic stability and promote sustainable growth. To complement this, the role of the private sector in development has become more prominent in the past years. Companies have a growing interest in newly developing markets due to business potential but also due to the possibility to combine R&D with production closer to new and growing markets. Although not exclusively, but often part of their Corporate Social Responsibility agendas, companies – large and small – engage in partnerships with governments and Non-Governmental Organizations, in an effort to offer comprehensive solutions and to allow developing countries to make the most out of trade and investment.

There is also an increasing politicisation of trade. Trade is not a mere economic/technical policy. Trade is seen as a tool to achieve other objectives- social, environmental, consumer protection. There are also concerns that trade agreements can negatively impact public policy choices and regulatory freedom. As a consequence trade policy is more and more under public scrutiny.

2- Trade as a competitiveness driver

The primary and key objective of trade policy should remain improving trade and investment conditions for EU companies in third markets leading to more business opportunities, growth and jobs.

During the economic crisis trade has been an engine of growth and job creation. Although there is still room for improvement including in getting more companies engaged in extra-EU export activities, more than 750,000 firms are already exploring business opportunities outside the EU.

Improved access to third markets, particularly in fast growing markets, can generate new business opportunities for European companies both big and small. More and better trade means more possibilities for companies to grow and invest, leading to more and better paid jobs in the EU but also abroad.

Therefore business needs to be at the forefront of an efficient and ambitious trade policy. The primary objective should be to improve the conditions for EU companies to invest and trade. More open and fairer worldwide market conditions will promote sound competition that ultimately will benefit EU companies already leading the market through creativity and innovation.

As a consequence the EU's Trade Policy needs to be ambitious and proactive, looking to seize market opportunities where there is economic growth and market potential. Priority should be given to larger markets to maximise benefits for a larger number of companies and sectors. However smaller markets with high growth rates and potential to expand in sectors where the EU has a competitive edge should also be targeted.

It is up to political actors and institutions as well as the business community to stand up for free trade and advocate trade liberalisation. Protectionist tendencies at home and abroad need to be effectively countered.

There should not be a *"one size fits all"* policy to select the tools. For some markets Trade and Investment Agreements are the best option but in other cases we should proceed with an offensive market access strategy that effectively addresses existing problems.

Trade liberalisation should be inclusive, benefiting as many sectors and companies as possible. Possible negative impacts of trade liberalisation should be effectively addressed by accompanying measures aimed at mitigating economic, social or environmental risks. Currently the European Globalisation Adjustment Fund provides support to people who lose their jobs as a result of major structural changes in world trade patterns due to globalisation.

An offensive Trade Policy should be accompanied by the use of all instruments that ensure balanced and fair market conditions for EU companies. This means that the EU should have reliable and effective Trade Defence Instruments fit for today´s competitive environment and globalised supply chains. The EU should also use multilateral and bilateral legal tools to obtain improved market access for EU companies and effectively enforce existing engagements.

Complementary Trade Policy can and should fulfil other objectives such as promoting EU and global standards in areas such as health and safety, environment, consumer protection or social policy, developing better governance and transparency or fostering political stability. However the primary and key objective should remain improving trade and investment conditions for EU companies in third markets leading to more business opportunities, growth and jobs.

Key action points:

- *Improving market access for EU companies should remain the core objective of the EU Trade Policy*
- *Trade policy tools should be adapted according to the markets*
- *An offensive trade policy must include the use of instruments that ensure balanced and fair market conditions for EU companies*

3- Promoting SME internationalisation

About 600.000 companies exporting outside the EU are SMEs. This represents 80% of all EU companies trading in third markets (750.000 total) and over €500 billion of goods exports. These companies employ around 6 million workers across the EU.

However, given that SMEs are the backbone of the EU economy, representing 90% of all companies, those SMEs benefiting from trade are still a relatively small proportion. This shows there is an untapped business potential that needs to be explored to ensure the benefits of trade liberalisation reach a wider number of businesses and consequently a larger number of workers and citizens.

Many SMEs are indirectly benefiting from trade and investment liberalisation as they are part of global supply chains. In this context it is key to promote further integration of SMEs in global value chains by improving the competitive environment in the EU. Today European companies still face a number of hurdles that add to their costs and make them less competitive than companies in both developed and developing economies.

A few examples[1]:

- The overall tax burden in the EU is over 50% higher than in the US and over 25% higher than in Japan;
- Starting a business in the EU is 3 times more expensive than in the US and takes twice as long;
- The average tax wedge on average income earners is almost 40% higher in the EU than the US and Japan;
- Broadband investment in the EU fell from €106 per person in 2008 to €90 in 2013, making the EU the only major economy with a decline in investment over this period.

These impairments have a stronger impact on SMEs and can seriously hinder their ability to compete on a global scale. That is why competitiveness proofing, including an SME test, should be part of the impact assessment that accompanies any legislative proposal in the EU.

Trade liberalisation benefits both big and small companies. However when negotiating with Third Countries special attention should be given to those areas that potentially have a greater impact on SMEs and their ability to access third markets. This is especially the case with regulatory differences, customs procedures or rules of origin.

Having to understand and comply with different sets of rules is a burden for any company but it weighs more heavily on SMEs that traditionally have less financial and human resources to deal with these problems. Although not always possible, having harmonised standards and common approaches to the regulatory framework is the best option for an SME.

[1] BUSINESSEUROPE Reform Barometer Spring 2015

In this context rules of origin are of paramount importance since they determine the use of trade preferences. Having simple and harmonised rules of origin will allow SMEs to make better use of trade preferences and explore new business opportunities in third markets. On the other end it will also improve market integration and promote more efficient value added chains.

Many SMEs are not aware of the market opportunities and all the benefits that come from trade liberalisation. Access to information is of paramount importance. Often the information is available (e.g. DG Trade Market Access website) but is not fully known by SMEs across the EU. On other occasions the information is scattered among Member States, the European Commission and private platforms, which means that SMEs have difficulties in understanding which tool to use.

An Internationalisation Platform, where a company could have information on conditions to access a given market, existing financial tools to support them, local public and private support and other relevant information could be very useful as a way to initiate companies in trade and investment outside the EU.

The inclusion in every free trade agreement of a provision establishing a portal/entry point with specific information on how companies can benefit from market opportunities generated by the FTA, as is being negotiated in TTIP (SME chapter), would be highly welcomed.

Key action points:

- *Enhance participation of SMEs in global value chains by improving the competitive environment in the EU. Competitiveness proofing, including an SME test, should be part of the impact assessment that accompanies any legislative proposal in the EU*
- *Effectively address regulatory barriers in third markets and promote simple and more harmonised rules of origin*
- *Ensure SMEs have access to information on how to explore business opportunities in third markets e.g. Internationalisation Platform, specific provisions in FTAs*

4- Liberalisation for goods and services should be parallel

Companies have tried to differentiate and gain market share by increasing value and adding services to products, leading to an integrated supply of goods and services, thereby better satisfying customers' needs and enhancing competitive advantages.

This transformation has challenges: ownership of services initiatives within the business; demonstrating the value of long-term services contracts to customers; and most importantly changing the culture of a production-based company to one that is customer-centric and service led.

Knowledge-Intensive Business Services (KIBS) and similar advanced business services are vital for the competitiveness of industrial sectors particularly in well-developed and high cost economies like the EU. This means that traditional manufacturing sectors have to include tools, techniques and methodologies to incorporate services and service providers in their value chains. This leads to more complex value chains and the development of new technologies particularly in ICT-Information and Communication Technologies.

As a consequence, industry needs improved market access not only for goods but also for services. The two areas are increasingly interconnected in trade and investment negotiations in key areas like regulatory cooperation or public procurement.

In this context both Industry and Services have the aspiration to reach a multilateral agreement that increases market access and establishes a trading system that effectively responds to the challenges of the 21st century.

We seem a step further in achieving this goal in Services with TISA (Trade in Services Agreement). For this reason we support expanding the number of participants in the TISA negotiations at the same time as ensuring a high level of ambition and far-reaching commitments. In practice countries should be prepared to go significantly beyond their current GATS schedules and have the goal of eliminating remaining obstacles in services.

For bilateral trade and investment negotiations we aim to obtain ambitious market access commitments for trade and investment both at central and sub-central levels, including for public procurement, going much further than existing multilateral commitments.

An area that is increasingly important for EU companies across sectors is skilled labour mobility. New trade and investment possibilities require in many cases the mobility of highly qualified workers to ensure know-how and technology transfer and to be able to provide high quality services. We should ensure that all trade and investment agreements include provisions that address this key priority.

The digital sector plays an important role as a driver of economic growth. Interconnectivity is critical for both industry and services and ensures companies can effectively integrate in global value chains and do business across the world. The importance of the digital economy is being internationally recognised but it is also leading to an increased interest from governments to regulate and promote local champions, leading to new market barriers.

Data flows in particular are essential for international trade and investment. Companies need to move data to run internal processes and to ship goods and services, exchange data with headquarters and affiliates (including human resources data), manage their global investments and move data to and from R&D facilities abroad. The estimated value of EU citizens' data was €315 billion in 2011 and has the potential to grow to nearly €1 trillion annually by 2020[2].

In this context the right balance needs to be made between protecting citizens and companies' rights to privacy and security and the need to enable data flow as a precondition for business to take place. This can be achieved by clearly indicating that data transfers should comply with data protection rules in force in the country of

[2] BUSINESSEUROPE The Digital Economy is crucial for growth- September 2014

residence of the data subjects. Furthermore, it is fundamental to avoid the imposition of forced data localisation requirements which can undermine data flows.

Key action points:

- *Seek to improve market access in parallel for goods and services in trade and investment negotiations by obtaining ambitious market openings both at central and sub-central levels, including for public procurement, going much further than existing GATS commitments*
- *Include in our trade and investment agreements specific provisions addressing skilled labour mobility*
- *Promote the right balance between the need to have data flow and citizens' rights to data privacy and security*

5- Selecting the best tools to open third markets

Ideally multilateralism is the best tool to pursue wider, more consistent and ambitious opening up of markets. However business needs results in a relatively short period of time and the current environment is more conducive to the bilateral and plurilateral agendas. For business, preferential agreements are not a threat to the multilateral system that remains a priority. The two tracks are complementary, since there are criteria in the WTO that ensure coherence of the preferential trade agreements with the multilateral system. If substantial progress is achieved on market access (tariffs), investment, regulatory cooperation or services via the bilateral agenda, we believe this could have a positive spill-over effect in the WTO.

The WTO continues to be the "anchor organisation" that governs world trade. Businesses need clear rules and they also need rules that are respected and implemented worldwide. The role of the WTO is therefore critical and should be reinforced in terms of trade governance with real and effective instruments adjusted to today's trade reality.

a) Bilateral Agreements

Bilateral Trade and Investment Agreements are in most cases the best tool to improve conditions to improve access to external markets. In this context we need to focus on concluding important bilateral negotiations- in particular with Japan, the US and Vietnam. We should also work towards rapid approval and implementation of agreements already concluded like Canada and Singapore. Furthermore we should work on revising old FTAs adapting them to new trade and investment realities (e.g. Chile, Mexico).

- **TTIP**- *keep the momentum and high level of political engagement to conclude an ambitious agreement as early as possible*

TTIP should deliver practical solutions to long term identified problems. Many of the barriers to trade and investment are well identified and the solutions well known. The agreement should effectively improve market access by eliminating barriers and reducing the costs of trading and investing in the transatlantic market.

TTIP should encourage a modern and state- of- the- art regulatory framework in a number of areas. Regulations are important to ensure a sound competitive environment at the same time as promoting a high level of protection for consumers and the environment. However regulations must be conducive to growth and business development and not an obstacle that hinders companies' efforts to be innovative and develop long term investment strategies in the transatlantic economy.

TTIP should advance cooperation between the EU and the US in international fora and set the framework for ambitious trade and investment provisions on 21st century issues such as regulatory cooperation, access to raw materials, competition or investment. In this context TTIP is a unique chance to set a new, modern and publicly acceptable framework for Investor-State Dispute Settlement.

- **Japan**- *substance should prevail over speed and the objective should be to conclude a comprehensive and far reaching agreement*

The agreement should effectively improve market access across the board including in public procurement.

Removal of Non-Tariff Barriers (NTBs) is critical for the EU since tariffs, particularly in Japan are already very low. A good agreement on NTBs is essential to ensure support from a wide range of sectors in the EU. The EU-Japan FTA/EPA should also include a mechanism that prevents the risk of future non-tariff barriers by establishing an on-going dialogue between public authorities and business on both sides.

Japan is currently negotiating with the EU and the US. It is likely that the negotiations with the US in the context of TPP will we be concluded first. We should make sure this will not pre-empt the EU's ambition to obtain a far reaching agreement enabling European companies to take full advantage of the market opportunities in Japan.

- **Canada and Singapore-** *should be swiftly approved and implemented*

The agreements with Canada (CETA) and Singapore have been concluded after long negotiation processes. The outcome is extremely positive for EU business and overall these agreements establish negotiation benchmarks in different areas. For instance both agreements include modern and transparent provisions to settle investor-state disputes.

Therefore we should proceed with their rapid approval and implementation without further changes or reopening negotiations that could jeopardise the positive balance that was achieved.

- **China BIT-** *the agreement should be ambitious both in terms of market access as well as protection of investors*

The agreement should include a broad definition of investment, covering pre-establishment (market access) and post-establishment (investment protection, particularly against expropriation) for all sectors of business. Furthermore, to guarantee the agreement's effectiveness, relevant enforcement mechanisms such as an investor-to-state dispute settlement system must be included.

However EU-China trade and investment relations go much further than this agreement. We should design a clear, comprehensive and ambitious strategy towards China that in addition to investment also covers other important areas like accession to the WTO's Government Procurement Agreement, more transparent rules on competition and financing, access to raw materials, regulatory cooperation and IP protection and enforcement, amongst other issues.

- **Vietnam and ASEAN-** *taking advantage of market growth opportunities*

ASEAN is one of the fastest growing areas in the world with GDP growth above 4,6% in 2014. EU companies need to be well positioned to take full advantage of these new business opportunities. Therefore concluding ambitious trade and investment agreements with the different ASEAN countries should remain a priority.

b) WTO- multilateral agenda

BUSINESSEUROPE strongly supports the WTO, the guardian of multilateral trade rules and standards. However the current legal framework needs to be updated to respond more effectively to the challenges of a continually evolving global economic landscape.

Adopting the Bali package, and in particular the trade facilitation agreement (TFA) - the first multilateral agreement to be concluded in 20 years - was an important step to move the WTO forward. It is now essential that the TFA is effectively implemented by all WTO members, providing concrete and substantial benefits for both developed and developing countries, strengthening the WTO as an institution.

However improving market access remains the core objective of the WTO and of the Doha Development Agenda. Confronted with a number of bilateral, plurilateral and regional agreements aimed at achieving improved market access, it is of critical importance that the WTO can soon achieve a meaningful conclusion of the DDA, reaffirming its leadership on trade liberalisation. In a new DDA work programme, political feasibility must not eliminate ambition – a doable approach should also be possible with a high level of ambition.

There is also a number of other issues that are important for business and are not addressed by the Doha Round negotiations. Namely WTO members should address topics likely competition, subsidies, investment, data flows, energy or raw materials. This could refresh the interest on multilateralism and underline the central role of the WTO in rule making.

c) Plurilateral agenda

Plurilateral Agreements have the potential to be important building blocks towards an improved market access for goods and services and they can contribute in advancing the WTO trade liberalisation agenda. However, their compatibility with the multilateral system should always be guaranteed. All plurilaterals should aim to become a part of the WTO system and therefore have an architecture that facilitates new membership. In this context we welcome the on-going revision process through expansion of coverage and membership of the **Information Technology Agreement (ITA)** and the negotiation for a broad liberalisation in the services sector through the **Trade and Services Agreement (TISA)**. It is also important to work on expansion of the

Government Procurement Agreement (GPA) with the accession of important players like China and Russia. Regarding the **Environmental Goods Agreement (EGA)** we support initiatives aimed at furthering liberalisation, always ensuring that they do not deter from the main objective that is to obtain improved market access for all goods and services.

d) Tailor-made strategy for major economies and regions

Bilateral Trade and Investment Agreements are one of the best options to enhance relations with key markets and regions. However they are not always an option and in other cases negotiations are stalled after a promising start. In these situations a specific strategy should be defined with the main objective of improving the overall business environment for EU companies. This strategy should be designed and coordinated between the Commission, the Member States, the European Parliament and the private sector to ensure consistency and maximise results.

India- an ambitious EU-India Free Trade Agreement delivering significant market access and investment opportunities for European businesses remains a priority. In the meantime we should work towards improving the overall conditions to access the Indian market. Developing a specific strategy to engage in closer cooperation with the Indian government in several areas including services, investment, infrastructure or intellectual property could be the best approach to address some of the outstanding market access issues that European companies are confronted with at all levels (national and local).

Mercosur- although we are convinced that a Free Trade Agreement is the best tool to achieve meaningful market openings and improve the overall trade and investment conditions for EU companies in the region, we should in the meantime explore other possibilities to enhance our relations with these countries, in particular Brazil. A comprehensive assessment of our current trade and investment relations focusing on Argentina and Brazil taking stock of existing problems and proposing possible medium-term solutions is a possible way forward. This would allow the EU to define a road-map with concrete actions aimed at improving the business environment for EU companies in the short to medium term independently of the outcome of free trade negotiations.

Africa- in 2015 Sub-Saharan Africa's growth is expected to be below the 4.4% annual average rate of the last two decades. The average does not reflect the differences between the different countries but the slowdown is primarily due to a fall in the price of oil and other commodities, the main exports for many countries in the region. However the region has a huge development potential and the EU should develop a holistic approach towards Africa including different aspects like trade, investment, development, migration, raw materials including energy and security. The conclusion of Economic Partnership Agreements (EPAs) is the right approach towards more balanced and sustainable trade and investment relations with Africa.

Eastern Europe/ Mediterranean countries- these regions are part of the EU Neighbourhood Policy that is also under revision. We are developing a specific position on the Neighbourhood Policy that will cover most of the issues related to trade and investment but also other policies like energy and raw materials. Considering the current geo-political situation in the two regions, the main EU objective should be to support economic development and political reforms and to help these countries become more competitive and in line with EU standards. Concluding deep and comprehensive Free Trade Agreements is a potential tool but whenever this is not possible other alternatives aimed at promoting more and better trade and investment should be considered – e.g. Bilateral Investment Agreements, Customs Cooperation Agreements.

Russia- trade and investment relations with Russia are for the moment conditioned by the political agenda and in particular the economic sanctions that are in place. The current situation underlines the need for maintaining active dialogue on trade issues since Russia remains a very important market for our companies and a major energy supplier for the EU. We have long standing problems of compliance with WTO rules on the part of Russia. These problems have not been solved and must remain a priority for the EU. The EU should also find a way to deal with the Eurasian Customs Union and ensure a consistent dialogue particularly on regulatory issues.

Australia/New Zealand- the possibility to start negotiations to conclude ambitious and comprehensive Free Trade Agreements between the EU and these two countries is already being considered. BUSINESSEUROPE views this as a positive step towards strengthening existing trade and investment ties. However we should take into account DG Trade's resource constraints and ensure that new negotiations do not jeopardize the ones already on-going.

Gulf Countries- the EU is negotiating a free trade agreement with the six countries of the Gulf Cooperation Council (Bahrain, Kuwait, Oman, Qatar, Saudi Arabia and the UAE). However negotiations were suspended by the GCC in 2008 and no progress was registered since then. Considering the potential interest of the area both in terms of trade as well as investment we should remain committed to find a solution that allows for the negotiations to resume and hopefully be successfully concluded.

e) Market access strategy and FTA implementation

Implementation is increasingly important as more and more free trade agreements are concluded. Moreover many of the "so called" new generation FTAs will be "living agreements". This means that extra efforts will need to be deployed to ensure good monitoring and implementation, and to effectively address problems that might appear namely in the regulatory area.

A more coordinated and determined approach on the ground to improve market access will be of key importance. This means that we should use more efficiently the existing resources in third countries, both private and public, both EU and Member States. Many institutions and organisations are already helping companies by providing more information and better access to third markets. We do not need to duplicate efforts. We just need to make sure that existing structures work together to address problems in a coordinated manner. The motto should be "my problem is your problem" and we should all work together to solve it in a consistent way. Additionally we should use all available platforms both bilaterally (within the framework of the FTAs or other type of agreements) and multilaterally (e.g. WTO) to solve problems. BUSINESSEUROPE believes that the Market Access Strategy is a key and strategic tool to ensure an improved worldwide market access for our companies.

f) Faster benefits of trade liberalisation

The EU will have to look at ways to improve efficiency in the procedures so that the effective benefits of trade liberalisation can be brought to the market faster. Today we are looking at a process that can last up to 6-7 years in the best case scenario from when a negotiation is launched to the point when an agreement is effectively implemented. Without pre-empting the need to ensure consistency of the agreement with the existing EU legal framework and to submit the agreements to a democratic scrutiny process by the European Council and the European Parliament, we should work on ways of streamlining the procedures (e.g. legal scrubbing and translation), making them more efficient. For instance by undergoing legal scrubbing in parallel with negotiations once a chapter is agreed and by reducing the number of languages in which the agreements need to be translated.

Key action points:

- *Maintain an offensive bilateral agenda by concluding ambitious and modern trade and investment agreements, reviewing older agreements and making them fit to 21st century needs, and by working on ways to make the process of approval and implementation more streamlined and efficient*
- *Strengthen the WTO role by ensuring effective implementation of the Bali package, in particular the Trade Facilitation Agreement, and maintaining the objective of improving worldwide market access through the DDA. Work towards a reformed WTO agenda that includes new topics that are key for today´s trade agenda like competition, access to raw materials including energy, data flows and investment.*
- *Promote an ambitious plurilateral agenda that addresses market access barriers in specific areas, always with the aim of furthering liberalisation for all goods and services*
- *Design a clear and tailor-made strategy to improve market access for EU companies according to the specificities and importance of the partner country or region*

6- Defining a clear and consistent investment policy

In 2013, EU inward investment flows reached €327 billion, while EU outward investment flows amounted to €341 billion[3]. As regards foreign direct investment (FDI) specifically, in 2012, the EU was host to 34% of global FDI stocks, while it accounted for 46% of the world's outward investment[4]. This makes the EU the largest FDI contributor worldwide. Due to the EU's role as source and destination of global FDI, it is of critical importance for the EU to have a well-defined investment policy both in terms of market access and protection.

With the Lisbon Treaty, investment policy has become an exclusive competence of the EU. However, as the EU only recently acquired such competences, unlike many other countries in the world, it has not yet developed its own *model* Investment Treaty, which could be used as a basis for its negotiations.

[3] Sources: Eurostat, UNCTAD
[4] Sources: Eurostat, UNCTAD

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The EU is currently in the process of creating such a model. The two first agreements including Investment provisions have not yet entered into force – CETA and Singapore. However these agreements have introduced already significant changes compared to the Bilateral Investment Agreements (BITs) that were negotiated in the past by the individual Member States.

The EU needs to define its key objectives both in terms of market access as well as protection of investments. Objectives concerning outward investment need to be adjusted to the partner country with which the EU negotiates, the main aim being to equitably improve market access for all EU investors and to guarantee a level of protection superior to that provided by existing Member States' BITs. The need to make the system transparent, reliable, efficient and publicly acceptable should be taken into account.

There is an on-going discussion on the merits of Investor to State Dispute Settlement (ISDS) and in particular including this mechanism in agreements with developed economies. We strongly believe that ISDS should be part of the Investment Protection chapter in all Free Trade Agreements and Bilateral Investment Agreements that the EU concludes with third countries, whether those are developed or developing economies.

We believe however that ISDS needs to be reformed to make it a more effective, modern, predictable and transparent tool. In this context the right balance needs to be found between respecting investors' rights and property including IPR and the right of States to regulate.

Among the main features of a reformed ISDS:
(1) Inclusion of the new United Nations rules on transparency in the EU agreements, ensuring the protection of information that is sensitive for companies for commercial or security reasons;
(2) Clearer definitions of important concepts such as "fair and equitable treatment" and "indirect expropriation";
(3) A code of conduct for arbitrators that safeguards impartiality and prevents conflict of interests;
(4) Introduction of filters to prevent clearly unfounded or frivolous claims;
(5) Definition of investor to ensure that "shell" or "letterbox" companies are not considered;
(6) Not allowing an investor to proceed with parallel claims in domestic courts and ISDS, while ensuring investors will not be denied justice in case domestic courts declare they have no jurisdiction or competence to interpret and apply an International agreement;
(7) An appellate mechanism should preferably be developed multilaterally to ensure consistency in processes and decisions. An international court can be a good option but we need to have a critical mass of countries to make a substantial difference and ensure a coherent and balanced approach;
(8) To ensure the possibility for more SMEs to use ISDS, we should reduce the procedural delays and improve recognition and enforcement of the decisions. Cases of lack of enforcement should be taken up at the multilateral level, as well as final awards lacking recognition or enforcement, for instance in UNCITRAL (United Nations Commission on International Trade Law), which works inter alia to promote the framework of the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the "New York Convention").

The EU should include an investment chapter comprising market access and investment protection in all the free trade agreements currently under negotiation and in those that it will negotiate in the future. Investment should also be included in the revision process of older free trade agreements like Chile or Mexico. For important markets where negotiations of bilateral trade agreements are not foreseen for the moment, the EU should assess the possibility of concluding Bilateral Investment Agreements, e.g. Indonesia and Taiwan.

Key action points:

- *Investment should be part of all the trade agreements negotiated by the EU including both provisions related to market access as well as protection of investments. And it should be part of the process of revision of older free trade agreements*
- *The main objective of the EU´s investment policy should be to ensure an improved market access and a high level of protection for investors, while promoting a transparent, reliable, efficient and publicly acceptable system*
- *A reformed ISDS should be part and parcel of the investment chapter in all free trade agreements or bilateral investment agreements the EU is negotiating or intends to negotiate with both developed and developing economies*

7- Sustainability and responsible sourcing

An operational objective within the EU Sustainable Development Strategy is to include sustainable development concerns in all EU external policies, and consequently the EU includes a chapter on “Trade and Sustainable Development” in all its Free Trade and Investment Agreements. Therefore the Sustainability Chapter is increasingly important in Trade and Investment Agreements, but its scope should not jeopardize the main aim of the agreements - that is to enhance trade and investment.

It has become a standard feature of Free Trade Agreements to include labour and environmental aspects, either combined in sustainability chapters or in separate side agreements that require each party to:

- Apply their own laws and uphold their levels of protections (EU Free Trade Agreements include an obligation not to weaken national standards with a view to fostering trade and investment).
- Comply with certain international principles (ratified International Labour Organisation ILO- core conventions and Multilateral Environmental Agreements - MEAs).

Trade and Investment Agreements should be a way to develop shared commitments on labour and environmental issues, ensuring that each Party implements its labour and environmental laws and policies, whilst committing to continuous improvement.

The sustainability chapter should encourage effective domestic implementation of ratified ILO core conventions and Multilateral Environmental Agreements at central and sub-central levels.

We welcome provisions aimed at fostering cooperation on trade-related aspects of the current and future international climate change regime, promoting low-carbon technologies, renewable energy goods and related services, as well as energy efficiency.

Regarding Corporate Social Responsibility (CSR) we favour the inclusion in the sustainability chapter of explicit references to the OECD guidelines for multinational companies, a reference to the UN Global Compact, the ILO Tripartite Declaration of Principles concerning multinational enterprises and social policy (MNE Declaration) and the UN Guiding Principles on Business and Human Rights.

CSR can further sustainability objectives, but the provisions included in Trade and Investment Agreements should not interfere with voluntary and business-driven approaches by companies. These have the merit of better adjusting to different business models and supply chain structures.

Implementation, monitoring and enforceability are key aspects in Trade and Investment Agreements including the sustainability chapter. In this matter we should take a pragmatic and efficient approach favouring information exchange, transparency, cooperation and meaningful participation of civil society in monitoring the implementation.

The constitution of Domestic Advisory Groups with participation of civil society organisations, including business, trade unions, consumers and NGOs appointed on the basis of their representativeness is the best platform to ensure meaningful engagement and participation in the monitoring exercise. The effectiveness of the implementation monitoring lies on the representativeness and composition of the advisory body and its working procedures, therefore clear rules must be laid down to this effect.

If implementation of the sustainability chapter is deemed insufficient, consultations with the other Party should start with the possibility to set up an independent panel of experts and seek the opinion of relevant international organisations such as the International Labour Organisation. Different levels of consultations should be foreseen, with the possibility to defer the matter to the political level if warranted.

BUSINESSEUROPE supports the EU's approach to use soft pressure, consultation and transparency, as well as publicity, as the best way to achieve concrete results more efficiently.

European companies are increasingly committed to ensure that production and sourcing are done in a sustainable manner. However a balance has to be achieved between promoting sustainable supply chains, existing business models and companies´ competitiveness. We need to prevent undue bureaucracy and reporting, avoiding duplication for instance by aligning verification systems.

To increase worldwide standards in labour, environment, health and safety or consumer protection is an objective that is fully supported by the European business community. The competitiveness edge and business model of European companies is based on high innovation, differentiation and creativity as well as on high standards of protection for workers, consumers and the environment.

Precisely because it is a strategy embedded in the companies´ business model, it is ultimately up to business to set up the most efficient and best suited means to achieve the objective of sourcing in a more responsible manner. Voluntary approaches have the advantage of being more flexible, therefore adjustable to different supply chain structures and business models. At the same time they have higher success rates as they are more inclusive, thereby furthering engagement from companies of all sizes.

Key action points

- *The sustainability chapter should encourage effective domestic implementation of ILO Conventions and Environmental Agreements that have been ratified by the Parties*
- *Provisions in the sustainability chapter should not interfere with voluntary and business-driven approaches by companies such as Corporate Social Responsibility (CSR)*
- *The sustainability chapter should provide an effective implementation and monitoring system with strong civil society engagement*
- *Enforcement of the sustainability chapter should be efficient and pragmatic, therefore based on soft pressure, consultation, transparency and publicity*
- *Responsible sourcing initiatives should be voluntary as they foster engagement from companies promoting more efficient and balanced results*

8- Rules fit for a sound trade and investment environment

Trade is a driver of growth but we need rules that promote fair competition and ensure a level playing field. At the same time these rules should take into account the current business reality characterised by global value chains, increased importance of services and flow of data, rising foreign direct investment, innovation and creativity, which are key competitiveness factors, as well as the need for companies to protect business sensitive information.

The reality is that most of the existing rules that govern trade and investment today were designed in a different era with very different needs. Therefore it is of critical importance to work towards revising these rules and adjusting them to this new reality. Because we live in a globalised world we need a multilateral approach.

The WTO remains the pillar of world trade rules and we should work towards reinforcing its role as the guardian of a sound and fair trade environment. Therefore we should start discussing in the WTO how to adjust multilateral trade rules to the new competitive environment and address important topics like investment, data flows, competition, and access to raw materials including energy, just to mention a few.

In parallel the EU should ensure that its own legal framework is also adjusted to the needs of European companies that trade and invest in a 21st century environment. This means that a balance has to be made between the need to streamline and simplify processes while ensuring that anti-competitive practices are properly sanctioned.

We should promote the respect and enforcement of Intellectual Property Rights (IPR) with high levels of protection in all its forms, including Geographical Indications and Trade Secrets, in all our trade and investment agreements.

Europe will only be able to retain its competitive edge if trade policy contributes successfully to safeguarding its raw material and energy supply, by mitigating non-existent or underdeveloped international rules on export restrictions.

State Owned Enterprises (SOEs) play a key role in many economies and are an important vehicle for governments to push their economic or industrial agendas. Creating national champions leads to market distortion and in most cases discrimination towards foreign competitors. The inclusion of provisions in the EU´s Trade and Investment Agreements to address this type of distortive practice can also encourage the uptake of this issue at multilateral level within the WTO.

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An offensive market access strategy should be complemented by the existence of efficient and modern trade defence instruments that can effectively address market distortions and re-establish as far as possible a level playing field.

Trade facilitation is essential to ensure that companies in particular SMEs can fully exploit the benefits of trade liberalisation. For this reason, European business is a strong supporter of the WTO´s Trade Facilitation Agreement and hopes that all parties comply with the commitments and implement them in a reasonable timeframe.

At the same time we expect the EU to ensure that trade facilitation principles are part of all Trade and Investment Agreements being negotiated, with clear provisions aimed at simplifying procedures and reducing customs related costs. The EU should also work towards simpler and more harmonised rules of origin in its Trade and Investment Agreements, to enhance the use of preferences especially by small and medium sized enterprises, as well as fostering market integration.

Internally the effective implementation of the Union Customs Code (UCC) should entail real simplification and cost benefits for companies. As top priorities we need workable rules of non-preferential origin, more tangible facilitation for trustworthy companies (AEOs- Authorised Economic Operators), no changes to customs valuation, and simpler and streamlined customs clearance procedures including centralized clearance and self-assessment. Only a successful and uniform implementation can effectively translate into less administrative burden and costs for companies especially SMEs. Regarding the revision of EU customs controls, procedures must be kept efficient respecting trade facilitation principles. Only this way we will avoid any competitive disadvantages for our companies. The EU should also ensure a full electronic environment at the time of the implementation of the UCC-Union Customs Code. If this cannot be guaranteed, the envisaged interim regimes should remain in place.

Key action points

- *The EU should promote the revision of existing multilateral trade rules by encouraging the WTO to discuss important areas like competition, investment, data flows and access to raw materials including energy*
- *The EU should include in its trade and investment agreements strong provisions addressing SOEs and anti-competitive practices including discriminatory state aid, as well as provisions that ensure a high level of protection and enforcement of IPR*
- *Trade facilitation provisions should be part of the EU Trade and Investment Agreements including simpler and more harmonised rules of origin*
- *The implementation of the Union Customs Code should effectively lead to simplification of customs procedures and cost benefits for companies. Trade facilitation at European borders should be guaranteed.*

9- A more inclusive trade policy

The recent public debate around the agreement with the US has shown the need to build a case for trade. The benefits of trade have to be conveyed in simple and constructive terms to a wider audience that comprises business, workers, consumers, politicians and citizens in general. This requires an effort to translate into common language the set of rules that regulate world trade and investment in very technical and complex areas like Services, Sanitary and Phytosanitary measures or Arbitration.

It also implies that trade benefits should be wide and shared by a larger number of citizens. In parallel to business, key stakeholders like workers and consumers need to feel they have a stake in the gains and that the EU´s trade policy is effectively working to achieve a balanced outcome that includes their interests.

On the other hand, trade policy should not lose sight of its main goal, which is to promote more and better trade and investment opportunities for European businesses. This means ensuring that more companies, particularly SMEs, can take full advantage of internationalisation by being active in markets outside the EU.

More inclusiveness means more information exchange and participation of the key stakeholders in the design and implementation of the EU´s Trade Policy. This can be achieved through regular exchanges with stakeholders via public consultations or specific meetings/forums and also by publishing texts with updates on legal initiatives or ongoing negotiations. However these initiatives furthering transparency and inclusiveness should under no circumstances jeopardise the interests of the EU or its companies in the negotiations with third countries. As a consequence the level of transparency and inclusiveness from the EU side should as much as possible be matched with similar commitments from our negotiating partners. We need to work towards a global level-playing field. Improved transparency in world trade and along global value chains enables political players, businesses and consumers to take their share of responsibility in the process.

If deemed necessary, specific expert groups acting as advisors can be set up to assist the European Commission in implementing some of the aspects of its trade policy. These groups should be representative by including major stakeholders directly impacted by EU trade policy and composed of experts with a recognised competency and expertise in trade. These expert groups should work towards promoting EU interests and therefore be subject to confidentiality rules depending on the sensitivity of their scope of action.

Key action points

- *Different platforms to promote further exchange with key stakeholders that are directly impacted by trade policy in particular business, workers and consumers are welcomed, provided the negotiating interests of the EU are not jeopardised*
- *Any initiatives to support a more inclusive trade policy should not overlook that its main goal remains the promotion of more and better trade and investment opportunities for EU companies*

10- Trade and other EU policies

From an eminently technical policy, trade is increasingly a highly political instrument used to achieve a number of objectives that go beyond a purely economic and business driven nature. This is not a problem *"per se"* provided that the main objective of trade remains the promotion of better conditions for European companies to do business in third markets.

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Trade can indeed foster a number of other policy objectives including political and economic stability, development, social inclusiveness, human rights, environment and labour standards, sustainable sourcing practices, energy efficiency, innovation, etc.

In the current context, with a number of conflicts and political instability in countries close to the EU´s borders, the geo-strategic dimension of trade has become especially important. Therefore the interplay between policy areas like energy, neighbourhood policy, migration and of course foreign policy is of critical importance.

Trade can and should be a tool to support other policies in attaining their specific objectives. However other policy objectives should not overshadow or minimise trade specific goals.

Key action point

- *Trade interplays with other important EU policies helping to reach their specific objectives, but this should not overshadow trade specific goals*

To accomplish such a vast and complex trade agenda it is key that the EU Commission and in particular DG Trade has the necessary human and financial resources. A strong political commitment in this sense is therefore needed from all the institutions involved– European Council, European Commission and European Parliament.