

## **BUSINESSEUROPE- CONFEDERATION OF EMPLOYERS OF UKRAINE PROPOSALS FOR A NEW EU-UKRAINE AGREEMENT ON TRADE AND INVESTMENT**

BUSINESSEUROPE - the Confederation of European Business – Confederation of Employers of Ukraine - call for deeper EU-Ukraine economic integration. Both parties strongly support the forthcoming political EU-Ukraine summit in Paris and start of negotiations on a Free Trade Agreement.

Business firmly believes that it is in the mutual interest of the EU and Ukraine to move toward a more integrated EU-Ukraine economic relationship based on WTO membership and equal partnership. This joint view outlines a business vision for the framework of a trade and investment agreement between the EU and Ukraine.

### *Launching ambitious negotiations on Free Trade Agreement*

The EU and Ukraine have a broad agenda of political, economic, security and cultural cooperation issues to address over the coming years. However, business believes the trade and investment accord should be based on economic criteria and commercial questions must remain at the centre of the negotiations. A closer economic partnership between the parties should be built upon the Partnership and Cooperation Agreements between the EU and Ukraine and the vision of extending EU's internal market and regulatory structures as set out in the EU-Commission's communication "Wider Europe".

As the leading supporters of the new economic agreement, business calls on the EU and Ukraine to elaborate the objectives of a future agreement in close consultation with relevant business organizations and representatives to ensure that all barriers faced by the EU and Ukrainian companies receive adequate and fair treatment. During the course of negotiations, there is a clear need for open and transparent consultation with business on the issues under discussion. Accordingly, the European Commission and Ukraine should set up appropriate advisory structures where business associations of EU and Ukraine could take part and be considered as important members of such structures.

### *Tariffs*

Comprehensive tariff reductions with full coverage and effective market access. There should be no exemptions for any products and sectors from tariff elimination, which should be reduced within a short period of time. Comprehensive tariff reductions with full coverage and effective market access,

### *Non-tariff barriers*

Non-tariff barriers (NTBs) represent a significant obstacle to EU-Ukraine trade. It is crucial that the agreement tackles NTBs effectively and a standstill on non-tariff barriers should be envisaged as a starting point for the negotiations. Export restrictions and taxes as well as other subsidies should be eliminated and appropriate decisions taken to move towards market based approaches. Customs related barriers and discriminatory product regulations and standards must also be given priority treatment. An efficient process for monitoring regulatory and other activities to ensure that new NTBs are not being created or in case of necessity are created with the observing of EU and WTO rules and procedures as well a mediation mechanism should be included in the agreement.

#### *Opening Opportunities for Services*

Given the increasingly important role of services, the agreement must include mechanisms to ensure comprehensive liberalization of key sectors like financial services, telecommunications, professional and business services, transport and express delivery services, including regulatory disciplines. The coverage of the agreement should be comprehensive as set out in WTO GATS Article V. It is important that in the new agreement there would be mechanisms for comprehensive liberalization of key services sectors.

#### *Promoting Better and Fair Treatment for Investment*

Business favours the oft-stated long term goal of achieving a worldwide comprehensive investment agreement guaranteeing full transparency, non-discrimination and national treatment, free access to markets and full protection of investments both in EU and Ukraine.

However, it is essential that the EU and Ukraine reach a significant agreement bilaterally. The investment elements should take a broad definition of investment to capture the full array of companies' assets. Free access to markets, most favoured nation, transparency - through publication of all elements of the investment regime - national treatment - and non-discrimination against foreign investors in any regulatory measures - must be key principles of any agreement.

An FTA should address pre- and post-establishment issues such as foreign equity caps and restrictions on legal status. It should also provide for including refund of VAT from investments the first year. A negative list approach is much more preferable here.

The investment clauses of the EU-Ukraine economic agreement should be considered a minimum platform that builds on and in no way undermines or conflicts with existing EU Member State-Ukraine bilateral investment treaties (BITs). The free flow of cross-border investments should become the cornerstone of strategic partnership.

Ukraine as well as the EU should further develop strategies to encourage industrial policy cooperation, creation of comprehensive investment policy including privatization of state-owned enterprises (telecom, transport, energy sectors). Special accent should be done on defense and clarification of minority shareholders rights. Such efforts should be aimed at boosting effective competitiveness of enterprises of both EU and Ukraine. These measures could serve as platform to encourage cross-border investments in key high technology industries.

#### *Strengthening Intellectual Property Rights for Innovation*

The protection of intellectual property is critical to innovation and competitiveness. Companies must know that their intellectual property is secure when they sell and, more importantly, invest, especially in research and development. Full implementation and enforcement of TRIPs commitments must be one of the key issues in the new agreement. However the EU and Ukraine should also grasp the opportunity to go further. The new agreement must contain commitments to sign up to all provisions of all relevant international conventions on intellectual property and could contain other new provisions where relevant.

The agreement must also contain strong provisions on enforcement, and provide detailed prescriptions on the legal and procedural reforms necessary to ensure that regimes effectively protect intellectual property and fight against counterfeiting. The implementation of these commitments must be fully subject to dispute settlement provisions and a company-to-state dispute settlement mechanism should also be examined in this context. The agreement should also foresee the possibilities of business associations to defend the business interests of their members in intellectual property rights ensuring.

### *Ensuring Effective Cooperation on Competition*

Companies should be able to compete with each other on a level playing-field and be able to trust on the systems to enforce competition policy. Disciplines should include basic principles of transparency and non-discrimination as well as commitments to tackle cartels. Procedures to enforce common strict rules on government subsidies should be envisaged where possible and appropriate.

Cooperation between enforcement bodies should also be envisaged, as long as this protects confidential business information. The implementation of such provisions should be subject to dispute settlement. It should remain clear, however, that individual cases are the preserve of Ukrainian or EU authorities.

### *Reaping the benefits of Open Public Procurement*

Public procurement represents a substantial proportion of GDP in both goods and services in Ukraine and the EU. The EU-Ukraine agreement should facilitate national treatment and non-discrimination. Transparency is also a key issue to be addressed.

The agreement should foresee substantial lower threshold for non-discriminatory public procurement mechanisms and procedures for companies and organizations both of EU and Ukraine. There are further disciplines should be mentioned in the agreement to ensure national non-discriminatory treatment to companies of the agreement parties.

There should be provisions ensuring the further approximation by Ukraine of EU public procurement legislation in its national legislative base.

### *Strong Rules for a level playing field*

The agreement should also be a tool to ensure best practices in trade policy implementation, particularly in trade facilitation.

Accordingly the new agreement must also address the area of trade facilitation. The provisions of the agreement should be focused on:

- the minimization and/or elimination of fees and charges;
- procedures for legal recourse and appeal, complaint or mediation services in the case of disputes with customs;
- the establishment of a single window;
- publication of trade regulations
- accelerated and simplified procedures for the release and clearance of goods.

Such an approach will help to facilitate trade significantly for both the EU and Ukrainian companies.

Beyond trade facilitation, the EU and Ukraine should establish deeper customs cooperation to facilitate the integration of markets for trade in goods and development of cross-border investment. Similarly, the EU and Ukraine must work together to overcome transport and logistical problems that further hinder trade relations.

### *Mutually Favorable Domestic regulation*

Strong disciplines on domestic regulation should include the competition and non-tariff barrier elements referred to above and build on the provisions of the WTO TBT, SPS and GATS agreements to ensure a transparent, predictable regulatory process, based on the best available scientific information. Business also supports an enhanced regulatory convergence between the EU and the Ukraine to achieve an intensified economic integration. Disciplines that would cover issues such as impact and risk assessment are supported as well.

#### *Trade defense instruments*

There are no specific privileges and derogations from current trade defense regulations set up in the agreement for both EU and Ukraine. Both parties follow the developments in this area and would dismiss any bilateral agreements or informal practice which would undermine current trade defense standards of EU and Ukraine. The agreement should also make reference to the need for full compliance with WTO agreements on trade defense instruments.

#### *Transparency and economic government*

The agreement between the EU and Ukraine should support similar principles of transparency, objectivity and administrative efficiency in decision-making process. The Ukrainian government should make considerable efforts in acceding to the OECD Convention on Bribery, also enforce the Council of Europe Tools and continuously improve its legal system.

#### *Effective Dispute settlement*

Dialogue and negotiated solutions are the best way of resolving trade disputes. However, the new EU-Ukraine agreement should also include a binding and effective bilateral dispute settlement mechanism to guarantee full implementation of rules and strong rights for EU and Ukrainian companies involved in cross-border trade and investment. The WTO's Dispute Settlement Understanding should serve as the model for such provision.

#### *Avoiding further complication*

The parties must endeavor to ensure that the new agreement creates the minimum degree of complications to the international trading system. This can be achieved in a number of ways. As mentioned above securing substantial product coverage in goods and as broad coverage as possible in services together with strong investment agreement is a necessary starting point.

The agreement should also include straightforward rules of origin that are clear, transparent, easily implemented and harmonized with WTO rules.

#### *Conclusion*

The joint aim of the EU and Ukrainian business is to seek to conclude a robust, ambitious agreement creating deep economic integration.

In parallel, EU and Ukrainian business underline that participation in international conventions on good administrative practices and well-functioning, non-discriminatory judicial systems are vital for a thriving business environment. The EU and Ukraine could also benefit greatly from wider exchange of best practices and effective cooperation in relevant international organizations on these issues.

Business encourages the EU and Ukraine to step up their cooperation in international organizations, such as the WTO, OECD, the IMF and World Bank to address international economic governance issues across the board.

BUSINESSEUROPE and Ukrainian business associations are ready to contribute to the negotiations through ongoing dialogue with negotiators from both sides.