BUSINESSEUROPE

COMMENTS

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PUBLIC CONSULTATION ON A FUTURE TRADE POLICY

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Following the 'Europe 2020' paper adopted by the European Commission on 3 March 2010, the European Commission is now launching a broad public consultation on the future direction of EU trade policy. This **'consultation issues paper'** is intended to set the scene for this consultation exercise. The paper raises a number of issues that are at the heart of the debate on EU's trade policy. The Commission's intention is to set out its policy during autumn 2010, explaining how trade policy can help achieve the objectives of the 'Europe 2020' Strategy.

The purpose of the present consultation is to gather views from relevant stakeholders regarding the rationale, scope and strategic objectives for a future EU trade policy. The consultation is open to all stakeholders within the EU and in third countries. Individuals, organisations and countries that wish to participate in the consultation process are invited to send their contributions.

The consultation will be open until 28 July 2010. The Commission services will prepare a report on the Consultation which will be published on DG TRADE's website. This report will provide a consolidated and anonymous analysis of input received through the public consultation and give an indication of how the Commission will take them into account preparing its future proposal to the Parliament and Council.

1. Introduction

The Lisbon Treaty clearly considers EU trade policy as an integral part of the Union's overall external action – and therefore it must address development, environmental and social objectives as well as contributing to the other objectives set out in the Treaty on the European Union:

1. Now that the new Lisbon Treaty has entered into force, how can we best ensure that our future trade policy is coherent with the EU's external action as a whole and notably in relation to the EU's neighbouring countries? (optional)

The Lisbon Treaty strengthens the EU’s hand in trade and investment policy. The enhanced role of the European Parliament brings the interests of European citizens further into the debate. Europe’s citizens are anxious about their economic future so it is vital that EU trade policy contribute to the expansion of European economic growth and the creation of jobs.

The Treaty also places the common commercial policy within the framework of the common foreign and security policy. High Representative / Vice-President Ashton will need to be aware of the vital economic component to European security that should be taken into account in foreign policy decisions. The Treaty should also help to avoid a “silo approach” to key relationships, where individual EU bodies act on their own

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without coordination. Coordination needs to happen across all of the Commission Directorates General, the External Action Service, the Council, the Parliament and Member States.

The Treaty expands exclusive competencies for commercial policy to fully cover investment, intellectual property rights and some service sectors. The EU will need to move carefully in these fields to safeguard the existing rights of European companies and to develop an ambitious common agenda to enhance them.

The European Neighbourhood Policy has not yet delivered on its promise. The EU needs to pursue economic integration agreements that cover both free trade and the adoption of key internal market rules to establish an open market and a level playing field. BUSINESSEUROPE hopes that the Commission will provide a clearer sense of direction for both EU member states and the EU business community on the level of EU commitment to these strategically important projects.

The principal focus of EU trade policy is stimulating growth, creating jobs and increasing prosperity for EU citizens. On 3 March 2010, the European Commission launched the Europe 2020 strategy which sets out a blueprint for achieving and securing smart, sustainable and inclusive growth. The Europe 2020 strategy acknowledges the important role that trade has to play in ensuring these ambitious objectives.

Over recent decades, the EU’s prosperity has to a large extent been built on the internal market, economic integration between the Member States and open markets at home and abroad for trade and investment. However, Europe’s prosperity is not only linked to its (open) internal market but also to the markets of other countries and regions, many of which enjoy much faster economic growth. Current forecasts suggest that by 2025, the volume of trade could double compared with 2005, with a bigger share of exports coming from emerging market economies (more than 30 % as against 20 % in 2005). The EU may no longer be the world's largest exporter.

In today’s global economy, production will increasingly be organised along global supply chains. They have become an important factor in ensuring competitiveness on domestic as well as global markets. Around two thirds of the EU’s imports are inputs to other products. As a result, open trade helps embed local companies in global production chains, makes them more competitive and creates more jobs. Trade and investment flows are complementary, create jobs and promote transfer of technology. While people may be wary about the impact of all this on their job security and income, the crisis has clearly shown that protectionism is not an option. People are equally wary about the environmental impacts of the way we do business, for instance in terms of resource use and climate change. All major economies are today in the same boat; if one of them closes its markets or pursues unsustainable policies, all will suffer.

The global financial crisis and its effects on the real economy have underscored the importance of sound regulation and the need to avoid major global imbalances. Trade flows were dramatically affected, although protectionism did not spread as widely as feared thanks to coordinated international efforts in G20 and WTO. The current initiatives (both at EU level and as part of the G20 mechanism) envisage a number of solutions to prevent similar crises from happening in the future. They should be part of an integrated coordinated approach:

2. Given the importance of boosting growth, creating more jobs and ensuring a more resource efficient and greener economy, how can EU trade policy help? What should the new trade priorities be in the light of the Europe 2020 Strategy? (optional)

The Global Europe strategy has served Europe well since 2006. Entrepreneurs believe that its economic orientation and main components must remain in place if the EU is to continue to be competitive in the future. Certainly, changes have taken place in recent years, not least the economic crisis, the drive towards greener growth and the Lisbon treaty changes. An updated trade policy will need to take these into account. However, the EU must address these new realities while remaining fully aware of trade's primary purpose – to generate long-term growth and employment in the European economy. A first milestone for the future trade policy will be to define the EU's strategic objectives – mid-term and long term, especially vis-à-vis the large emerging countries. As regards more "traditional" trading partners (US, Canada, Japan etc.), the main objective should be to tackle market access and advance regulatory convergence.

The economic crisis has triggered a 9 % decline in global trade in 2009 and created pressure for protectionist measures. Although the worst-case scenario of full blown protectionism has been avoided, more than 220 potentially trade-restrictive measures have been adopted, affecting up to 5.2 % of EU exports. To keep markets open, the EU should continue to monitor and push for the removal of protectionist measures, especially since high unemployment and budget deficits can increase pressure for restrictive or discriminatory measures. Europe should convince trading partners to abandon protectionist measures such as export taxes, tariff increases and "buy local" provisions. The EU should take appropriate and credible enforcement measures when there are violations of WTO or other international trade agreements. The EU should also continue to work with countries on WTO accession, in particular Russia, or China for the WTO Government Procurement Agreement, as a way to strengthen the global rules-based trading system.

The EU's Common Commercial Policy must work to support EU competitiveness, and is therefore a crucial component of the EU's 2020 growth strategy. To reach the growth objective of the Europe 2020 Strategy, trade policy should deliver real market access for European companies, to enable them to growth and boost employment. There are several components to such a market access strategy:

- Avoiding and fighting protectionism;
- Advancing multilateral and bilateral negotiations;
- Arranging regulatory cooperation;
- Asserting EU interests when cooperating with strategic partners;
- Addressing enforcement needs.

Multilateral and bilateral trade negotiations must focus on broad-based market access for trade and investment in key markets and improved global rules. A strong link between trade policy and overall EU competitiveness policy is needed. In an increasingly globalised world it is vital that the EU policies contribute to strengthening the EU's international competitiveness.

While firmly committed to successfully concluding the WTO Doha Round, which would restore confidence in open markets and accelerate world recovery, bilateral free-trade agreements are essential to increase market access for European companies in fast-growing markets like South Korea, India, South East Asia and Latin America (MERCOSUR). The EU must strongly promote its export and investment interests in these negotiations in close cooperation with European business.

Regulatory divergences can also undermine trade and investment. The EU should use its bilateral dialogues, in particular with the US but also with China, Russia and Japan, to prevent damaging regulatory divergences in, for example, financial sector regulation. Regulatory convergence should be based on the development of open and pro-competitive standards for industrial and services markets.

Trade policy should also be coherent with the EU's internal market and industrial policies. For instance, the EU should aim at promoting a strong and stable intellectual property regime within and outside the EU to foster innovation and the commercial deployment of new technologies. In addition, support should be given to areas in which the EU has a competitive advantage and is ahead its main trading partners; as in innovative and low carbon technologies. Specific attention should be given to ensure open public procurement markets which account for a significant share of GDP. Other issues of concern are related to state aid that leads to unfair competition, subsidies and an increase of anti-dumping measures.

Trade negotiations will prove meaningless without a strong EU enforcement policy to ensure that trade partners live up to their commitments. Europe's market access strategy should focus more specifically on barriers in leading emerging markets, including Russia, China, India and Brazil. It should also take a firmer line against countries which do not respect their international trade commitments.

2. Multilateral trade negotiations

Multilateral trade liberalisation remains our priority in the years to come because it avoids the costs of trade diversion and minimises transaction costs for a global round of liberalisation. The EU wants to see the Doha Round completed as soon as possible because the potential economic benefits are substantial for both developed and developing countries. However, the value of the WTO to the global trading system goes much beyond the Doha Round: Multilateral rules and trade liberalisation, complemented by a strong dispute settlement system, offer significant long-term gains and are of systemic interest to the EU as a leading trader:

3. In addition to continuing to push for a successful conclusion to the Doha Round, how can the EU best pursue overall EU trade policy objectives in the WTO? (optional)

BUSINESSEUROPE remains convinced that an ambitious and balanced Doha Round deal is the best way to deliver trade liberalization for the world economy. The Commission should make the WTO negotiations an immediate priority and press for a rapid, ambitious and balanced conclusion in its multilateral and bilateral contacts. Key emerging countries, in particular Brazil, India and China, will have to make contributions according to their economic and political weight. Specific sectoral agreements in goods (chemicals, renewable energy and energy efficient power equipment, machinery, gems and jewellery, footwear,) and services should be part of an ambitious Doha outcome.

Nonetheless, considering the challenges in the Doha negotiations the EU should consider parallel tracks for action within the WTO. Without undermining the single undertaking, the starting point for these could be existing elements of the negotiations which have wide support and could move forward before agreement on modalities, such as the trade facilitation package. Other new generation sectoral agreements could also be possibilities, such as a Digital Economy agreement to build on the existing Information Technology Agreement or agreements on chemicals and on renewable energy and energy efficient power which are building blocks for industrial development.

Substantial and meaningful improvements in key services sectors (information and communications technology services, transport, postal and courier services, energy and environmental services, financial services) and modes of supply, especially by the large emerging countries, are needed to create the new business opportunities essential for economic growth, development and job creation. On the temporary movement of skilled personnel (Mode IV), there is need for further liberalization in developed and emerging markets. BUSINESSEUROPE expects services negotiations to resume rapidly and ambitiously on all sectors and modes of supply.

The great benefit of the multilateral trading system is that it provides a system of rules to govern international commerce. Therefore, efforts to advance WTO accession negotiations with Russia in particular, are crucial for business.

Where our trading partners do not respect these rules, the European Union should not shy away in using the enforcement mechanisms of the WTO. Up to now, the EU has rarely made full use of this process. One way to improve the situation could be to make changes to the Trade Barriers Regulation (TBR) that would create a stronger obligation on the European Commission to launch action through the WTO if trade violations are established. This would also increase uptake of the TBR mechanism.

The multilateral Government Procurement Agreement is also important for improving the access to public procurement markets. The EU should aim at removing exceptions which limit the access to some public procurement markets (Japan, Canada) and achieving further engagement of sub-central authorities on commitments. Accession to the GPA is an important tool to further the objective of market access, provided the offer made is ambitious. For European business, China’s accession to the GPA is a priority.

3. Bilateral trade negotiations

After the adoption of the **Global Europe communication** in 2006, the EU launched a new series of negotiations leading to free trade agreements (FTAs) with fast-growing economies, including for example Korea, India, Singapore and Vietnam. Negotiations with Mercosur were recently re-started. The negotiations between the EU and Korea have now been concluded while others are still ongoing, offering the prospect of important economic gains for the EU.

FTA negotiations have also been launched with Canada. Although Canada was not mentioned explicitly in the Global Europe communication, an FTA would clearly accord with the objectives for FTA negotiations which were set out in Global Europe.

DG TRADE's website contains more information about **ongoing FTA negotiations**. Furthermore, trade negotiations have been completed with Central American and Columbia and Peru:

4. Do our current FTA negotiations provide the right geographic and substantive focus for our bilateral trade relationships in the context of the Europe 2020 strategy? (optional)

As a vital complement to the multilateral approach the EU's free-trade agreement agenda must be pursued with vigour.

The EU-South Korea Free Trade Agreement will bring significant benefits to a majority of European firms and will be the first FTA concluded under the Global Europe trade strategy. BUSINESSEUROPE supports its ratification, accompanied by strong implementing measures. These must address the concerns of parts of the business community by using all avenues provided under the terms of the agreement. The measures must ensure that both parties abide fully by their commitments – especially in the removal of non-tariff barriers and regulatory cooperation – and that safeguard procedures are enforceable and duly applied where justified. Under these conditions, the agreement needs to enter into force by the end of the year.[1] [1]

BUSINESSEUROPE will also advocate for the rapid adoption under Lisbon Treaty rules of the free trade agreements concluded with the Central American region, Colombia and Peru. These agreements will increase business opportunities on both sides of the Atlantic in a mutually beneficial way.

The EU needs to advance convincingly on the other major deals on the table according to the criteria that agreements need to deliver full access for European goods, services and investment. The full range of barriers faced by companies in these markets must be tackled, including tariffs, additional duties on imports, export duties, non-tariff barriers including regulatory measures, restrictions on trade in services, investment barriers, public procurement, intellectual property rights, access to raw materials, dual pricing and governance issues. The rules of origin should be simple to administer, coherent with other bilateral agreements and the reformed GSP system, and based on the full consultation of concerned sectors. Furthermore, the EU needs to defend the prohibition of duty drawback and the EU approach to rules of origin in future FTAs. Business wishes to see high quality results in all cases, but will not support long drawn-out discussions that have little hope of conclusion. If no progress is being made, negotiations should be re-evaluated. Negotiations, especially in the final phases, should be conducted in very close cooperation with BUSINESSEUROPE.

Key negotiations are with India, Canada, Ukraine, ASEAN members and Mercosur. Other important negotiations requiring attention include those with Euromed and the

[1] Confindustria does not subscribe to this paragraph on the EU-South Korea Free Trade Agreement since, while largely sharing its content, not all of its concerns are reflected.

Gulf Cooperation Council.

Looking forward, the EU will need to keep an open mind about future negotiations. Commercial interests and economic factors must continue to be the determinants of new discussions. Ultimately companies will benefit most from liberalisation with Europe's biggest trading partners, and fast growing but highly protected economies. The choice of partners should be made in consultation with BUSINESSEUROPE and be based on serious and comprehensive analysis.

Finally, the EU has a number of existing agreements with Turkey, Switzerland and the EEA countries. The EU should look at these agreements to see whether the remaining barriers to EU exports and investment can be removed. In addition, the EU should make clear to its new FTA partners that they should conclude parallel negotiations with Turkey to avoid negative impacts for EU exports and investment.

Over the last decade, the EU has also consistently engaged with its major strategic trading partners (such as the US, Japan, China and Russia) in regulatory dialogue and other forms of economic and trade cooperation. Our economic weight, notwithstanding current conditions, makes the EU an attractive partner for many countries, but this has not always translated into real progress in terms of a level playing field for EU companies, or new opportunities to do business and invest in these important markets:

5. Should the EU now try for closer economic integration and cooperation with such partners? What is the best way to further facilitate trade and investment, overcoming regulatory differences that may have the effect of barriers to trade and deepening our trade relationships with these important economies? (optional)

Europe already has specific dialogues with its traditional partners (US, Japan, other OECD members) and the large emerging countries, but more could be done to develop individual market strategies for each, including:

- Detailed and public studies into each country, going beyond an enumeration of barriers to a full market analysis. Clear ideas about future growth sectors will enable the EU to prioritise better its interests and use the leverage it does have with those countries effectively.
- Avoidance of a "silo approach" to key relationships, where Commission DGs, Council, Parliament and Member States act on their own without coordination. The Lisbon Treaty has the potential to help here.
- A clear mandate for action by the EU from Member States and the European Parliament, giving the strategies greater legitimacy and negotiators more room for manoeuvre.

US

The EU-US economic relationship will remain the largest in the world for the foreseeable future. The Transatlantic Economic Council (TEC) should take a leading role for EU-US economic cooperation on bilateral and global challenges, leading to concrete results for companies. For example, the new EU-US Energy Council is an appropriate forum for cooperation in this field, but needs to be closely linked to the TEC. Following a year of transition in 2009, Commissioner De Gucht, in cooperation with the EP and the Council, should give the TEC a binding structure with more resources and a broad re-commitment from both governments. Involving business closely is a key prerequisite for its success. In the medium term both sides need to strengthen the TEC to speed up the drive towards a barrier-free transatlantic market.

China

For the last decade, there has been a tremendous growth in EU-China trade and investment. The relationship with China should be a priority for EU trade policy. However, notwithstanding huge opportunities, China is already and will continue to be the single most important challenge for EU's trade policy (e.g. within government procurement, IPR, access to raw materials, governments subsidies etc). In order to secure EU businesses' offensive interests, this development requires a much more proactive European approach than what has been the case until now. The Commission should continue to regularly evaluate the EU-China relationship and push harder for China's full respect of its international obligations, and should also engage more in discussions at international level on the issue of macro-economic imbalances.

The EU-China High-Level Economic Dialogue (HED) can better foster concrete improvements for European businesses in China if priorities were better identified. This should lead to an EU-China Action Plan which should set and implement objectives and milestones to be reached within clear established deadlines. The Action Plan should be agreed jointly by both sides and evolution reviewed at the annual meetings of the HED. Close involvement of business is key.

Russia

The deep economic recession in Russia has reduced medium-term growth expectations and increased regulatory risks. Russia has adopted a number of trade and investment measures to shore up its companies in the wake of the crisis – often to the detriment of EU firms. Meanwhile WTO accession and bilateral trade negotiations with the EU are stalled and Russian raw materials, including energy, remain vital for Europe's economic activity. In this light, BUSINESSEUROPE suggests creating a strategic economic dialogue to advance practical improvements in the business environment for companies while maintaining support for WTO and bilateral negotiations to resume normally. Russian modernization policy aiming at alignment of standards, technical and other regulation with that of the EU should be supported in the EU-Russia economic dialogue.

India

India currently represents a small fraction of European international trade and investment but its dynamic growth and enormous population ensure that it is a strategic priority for the EU. It should also be subject of a comprehensive economic analysis by the European Commission. The top agenda item is the conclusion of an ambitious FTA that will open the Indian market. This agreement must be of the highest standard, include full industrial liberalisation with very limited loopholes and exceptions for India's increasingly competitive industries. Asymmetries in the phasing out of tariffs, which should remain limited, should be based on reasonable transitional periods. India also needs to figure highly in the resource allocation for the Market Access Strategy.

Japan

Prior to the elaboration of a new EU-Japan bilateral framework, the Commission should undertake an in-depth assessment of the achievements and shortcomings of the outgoing Ten-year Action Plan (2001-2010). BUSINESSEUROPE advocates the creation of an EU-Japan High-level Economic Partnership Council to foster closer economic cooperation at the highest level, involving different Japanese ministries and Commission DGs. The new framework should outline areas for closer EU-Japan ties and include concrete issues to be assessed on an annual basis and be solved within reasonable short timeframes. A focus should be set on NTBs.

Brazil

Brazil is a key market for Europe not just because of its own stable growth in recent years but also its role as a site for many regional investments by EU firms. The principal method to advance the relationship would be the conclusion of an FTA between the wider Mercosur region and the EU. However, there is much progress that can be made in the bilateral relationship, looking at issues such as technical barriers to trade, the conclusion and enforcement of bilateral tax treaties and investment protection treaties as well as infrastructure.

Switzerland

Switzerland is the second most important client for EU goods and services. Close cooperation and the smooth functioning of the more than 100 existing bilateral agreements are key. Further market opening should also be considered.

Regulatory differences are nowadays often a more important source of trade hindrances than tariffs, especially between developed countries, with low tariffs but sophisticated regulatory systems resulting in additional compliance costs for cross-border activities. Reducing these costs can generate significant trade and economic benefits. In today's world of global production chains, increased regulatory convergence at global level, for instance through the promotion of international standards or by other means such as the development of mutual recognition/equivalence of regulatory systems may help EU companies do business successfully abroad. The precise nature of the model to advance towards regulatory convergence will, however, depend on the specifics of the economic sector concerned:

6. How can the EU improve the effectiveness of regulatory dialogues? How can the EU promote the establishment of and greater recourse to international standards without compromising legitimate public policy choices? (optional)

Non-tariff or regulatory measures often create distortions to market entry for European companies around the world. They include everything from health and safety disciplines to technical standards. The discrimination against foreign competition they cause may be intentional or unintentional. Both negative and positive changes in the regulatory environment which have effect on business should be as predictable as possible by improving early warning mechanisms.

Often Europe's own regulatory regime creates huge burdens for EU industry that make it very difficult for exporters to compete globally. Global Europe clearly recognises that the EU should take these effects into account when legislating internally, but this has not been fully implemented. DG Trade, along with DG Enterprise, should systematically vet EU regulatory proposals for their impact on the external competitiveness of European business. The Trade Policy Committee of the Council and the International Trade Committee in the European Parliament need to play similar roles also.

Companies do not question the need for regulation to achieve important policy goals, but they seek transparent, proportional and science based regulation that minimises international trade and investment distortions. In this context and as an example, enhanced efforts should be made in harmonizing security regulations and rules on Authorised Economic Operators and other corresponding arrangements, SPS and other standards to avoid their use as protectionist measures.

The EU has improved its efforts to tackle regulatory barriers in recent years, both through bilateral and multilateral trade negotiations and by using bodies such as the Transatlantic Economic Council (TEC). The EU's regulatory dialogues should concentrate on the developing / developed economies that are of key importance to EU business, such as China, India, Russia, Brazil, the US and Japan.

However, while BUSINESSEUROPE appreciates these efforts we would like to see a more concrete strategy emerge. The nature of the model and the best suitable mechanism to advance towards regulatory convergence will depend on the specifics of the economic sector concerned. More harmonization and mutual acceptance of products and services serve the interests of both sides involved in regulatory dialogues and will strengthen the competitiveness and growth of both economies. These common goals and perspectives should be better stressed throughout the relevant discussions.

Regulatory dialogues require first an agreement on a common methodology on how to address barriers in the most efficient manner. Discussions should focus on selected economic sectors in which progress would seem most promising or where the EU has the biggest economic interests. In particular, the discussions should be supported by a thorough impact assessment of possible approaches and solutions, with special emphasis on the economic impact for both sides, in order to identify the existing barriers to trade and suggest possible ways for their reduction or elimination. A successful regulatory cooperation strategy will require time and resources. It needs the explicit endorsement of all decision-making bodies with a role in policy areas under discussion – Commission, Council and Parliament. In some case, the EU may consider establishing more effective decision-making systems (comitology) to engage in regulatory convergence negotiations on the basis of negotiating directives. This will be necessary to give EU negotiators some margin of manoeuvre with its main partners.

Concerning the reduction / elimination of technical barriers to trade, the WTO's TBT agreement provides an excellent basis and reference tool for discussions in the context of any regulatory dialogues. Reliance on international standards to specify regulatory requirements as well as conformity assessment based on the use of the relevant international standards and supported, if necessary, by accreditation, remain the keys to advancing regulatory convergence. Recourse to international standards, in particular, provides the freedom of demonstrating compliance with regulatory requirements also by means other than national standards.

With regard to this promotion of international standards, its harmonisation and / or mutual recognition – as much as possible and reasonable, depending on the concrete issue – the principle of functional equivalence should get more weight in order to achieve a higher degree of convergence. As a matter of fact, a significant reduction of technical entry barriers is necessary to increase the competitiveness of the EU supply chain. This would enhance industrial and service growth.

The overall goal to strive for should be to achieve mutual market access on the basis of “one standard – one test – accepted everywhere / in both economies". The reliance on international standards can only develop its full potential regarding the facilitation of trade if these international standards are used / implemented without national deviations.

Regarding the way in which to demonstrate conformity with specified requirements, Supplier's Declaration of Conformity (SDoC), without the mandatory intervention of a third-party conformity assessment body, should be accepted by the relevant national authorities wherever this is proportionate with regard to the risks inherent in a specific product category. Reliance on SDoC is the simplest and least burdensome / bureaucratic means of demonstrating compliance. In those cases where certification by an independent third-party body is considered necessary, mutual acceptance of certificates (and thus, of the products and services supplied) should be achieved on the basis of the use of the existing relevant international agreements. In any case, and as a principle, the regulatory regime adopted for conformity assessment (i.e. mandatory third-party involvement or not) in a specific economic sector needs to be the same or at least equivalent on both sides.

Securing a reliable and sustainable supply of raw materials is crucial for EU industry. Taking into account development policy and environmental sustainability concerns, securing this supply from third countries requires a coordinated approach regarding EU external relations and trade policy:

7. How can the EU, and in particular trade policy, help to secure a reliable and sustainable supply of raw materials by third countries? (optional)

Access to raw materials and energy resources will be an increasing concern of EU companies over the coming years due to heightened global competition, interventionist policies by some governments and the demand for green technologies. The EU needs to step up implementation of the Raw Materials Strategy as well as the proposals of the report of the Ad-hoc Working Group on defining critical raw materials for the EU to counter government intervention and to keep the global market for raw materials open.

A coordinated EU strategy requires a strong trade, development and foreign policies to address this challenging issue. It requires negotiations and dispute settlement cases in the WTO and action in other fora such as the OECD. It also necessitates a proper approach to the EU’s own policies, such as on illegal shipments of secondary raw materials, the Generalised System of Preferences, and tariff liberalization for renewable feedstock for industrial use. The EU can also facilitate investments in resource-holding countries to increase security of supply. Consistent use of bilateral Free Trade Agreements to curb export restrictions and to ensure free trade in raw materials is crucial for the credibility and success of the Strategy. As regards energy, the EU needs to make full use of bilateral negotiations and WTO accession agreements to increase European energy security.

BUSINESSEUROPE recommends the following policy actions:

- include rules on raw materials trade in bilateral and regional trade agreements;
- when justified, pursue dispute settlement at WTO level on strategic raw materials for the EU industry; dispute settlement can create important case law when existing GATT rules lack clarity;
- engage without reservation in consultations with third countries whose policies are causing distortions on international raw materials markets to discourage discriminatory policy measures that undermine the market economy;
- foster an exchange of views on policies made within the institutional framework of EU economic cooperation agreements (e.g. with China on its NFM recycling plan to year 2015);
- raise awareness of the negative economic impact of export restrictions on developing and developed countries in multilateral fora, such as WTO or the OECD;
- shape a new EU-wide policy on investment agreements to better protect EU investments in raw materials and ensure a level playing-field with other foreign investors who benefit from State support;
- increase the coherence of EU policy with respect to raw materials supply, for example in the assessment of injurious dumping and subsidies.

4. Services

Services are an increasingly important part of the global economy. A manufacturing supply chain is unthinkable without services inputs. Tackling barriers to trade with major partners in areas such as financial services and communication services; business services and Information and Communication Technology (ICT) too could give an important boost to EU economic recovery. At the same time, trade in many services, especially those that can be delivered through digital communication channels, has increased rapidly. Services negotiations, both under the WTO General Agreement on Trade in Services (GATS) and in Free Trade Agreements, have so far focused mainly on consolidating market access conditions already in place, and only rarely on creating new openings for services trade. The difficulties in securing significant new market access are holding back potential productivity increases and job creation in EU services sectors — and in manufacturing sectors:

8. Should the EU aim for more trade in services, and if so, how? Multilateral and bilateral negotiations have only partially succeeded in opening trade in services so far, so would a renewed focus on trade in services among key trading partners (plurilateral approach) offer a useful alternative avenue? (optional)

Trade in services is an essential part of international trade, trade liberalisation in the service sectors will be necessary to enable the EU reap the full benefit of its stated ambitions under the EU 2020 strategy. With more than one quarter of the world's global exports, the EU is the well established leader in trade in services. Services should therefore be a priority in trade negotiations at all levels. To pursue a higher level of ambition, BUSINESSEUROPE advocates the use of a negative list, starting negotiations from the assumption that all sectors are included, listing only the exceptions rather than a detailed account of what is covered. As the "digital economy" is playing an expanding role in international trade, all new or revised trade agreements should include a strong emphasis on digital economy issues incl. allowing free market access to advanced information and communications services, digital content and electronic commerce.

In addition, a strong and vivid internal market plays a vital role in the competitiveness of the services industries. Completing the integration of EU's internal market would represent a huge boost to the competitiveness of European companies on international markets. Many legislative and administrative barriers are hampering the proper functioning of a true single market. An important element of this is the creation of Digital Single Market by removing barriers to sale of digital content and services freely within the EU (incl. reform of the digital copyright system). The Services Directive is another important step to realise the untapped potential of the service sector both domestically and internationally. Member States bear the responsibility to make this happen by ensuring a correct and timely transposition but the Commission must also enforce the directive more pro-actively.

Industrial Services are another relevant and growing part of the services market. Therefore the single market for industrial services should be strengthened to increase competitiveness, growth and welfare of the EU by completing the integrated market for some of the remaining sectors with limited European competition (infrastructure markets, public procurement of business services, energy markets) and removing all remaining obstacles to the free movement of services.

5. Investment

Foreign direct investment (FDI) is an increasingly important means for businesses to participate in the dynamic economic development of markets around the globe. Supplementing as well as complementing trade, FDI creates more direct and deeper links between economies. It is a source of extra capital, encourages efficient production, stimulates technology transfer and fosters the exchange of managerial know-how. However, the increasing importance of FDI as a driver of economic activity - the EU itself is one the largest source of FDI in the global economy – is not yet fully reflected in its global governance: the current differences in national rules and policies create an uneven playing field for economic operators. The Commission is currently preparing a Communication on this subject:

9. Given that the Lisbon Treaty gives the EU greater competences in international investment policy, how should we contribute to facilitating cross-border direct investment (both outward and inward)? What are the key issues to be addressed in agreements governing investment? (optional)

Foreign Direct Investment is an important driver of global competitiveness and a vital element in their competiveness strategies. With the new authority granted by the Lisbon Treaty, the EU will need to develop a coherent policy to safeguard and enhance European investments abroad. The first step is to provide legal security to companies availing of existing Member State Bilateral Investment Treaties (BITs). Legislation must clarify both that existing BITs are compatible with the new treaty arrangements, and the conditions under which new Member State agreements are possible. The EU should outline a framework for the negotiation of new agreements and the renegotiation of existing BITs by individual Member States. In BUSINESSEUROPE's view, this framework should enable such negotiations, provided these do not generate a serious competitive disadvantage for the investments of other member states.

Following that, the EU should seek a robust outward-looking investment policy, securing the highest level of protection for its investors in key markets. Whether these negotiations form part of FTAs or stand alone treaties, BUSINESSEUROPE should be closely consulted on all aspects.

The negotiation of ambitious investment agreements is an important tool to further the investment interests of European companies. Investment provisions should be of the highest standard and include a broad definition of investment, covering all sectors of business. Negotiations should start from the assumption that all sectors are included, listing only the exceptions rather than a detailed account of what is covered. This negative list approach will give companies legal certainty that new business models they may develop, which might not be foreseen today, will also be protected. Furthermore, investment provisions should provide for full market access, fair and equitable treatment and full protection of European investments. To guarantee their effectiveness, relevant enforcement mechanisms such as an investor-to-state dispute settlement system should be incorporated. Finally, a dialogue on investment promotion and facilitation with the partner country or region could complement the agreed provisions.

The focus of EU investment policy should be on partners with high economic growth potential, such as China or Russia, which present real value-added in terms of investment opportunities and protection. Preference should be given to countries that have agreed on a limited number of BITs or market access commitments with the EU or its Member States. The most important goal for the EU should now be to push access for and protection of its investments abroad.

As far as inward FDI is concerned, the EU must maintain an open market policy and pro-actively act against protectionism or discrimination. Inward investment has always been an important source for capital and know-how and therefore for growth in Europe. The EU should continue to develop the internal market to one of the most efficient, competitive and attractive in the world to attract new foreign investment. However, while the EU should always adopt investment-friendly policies, it should not create parallel EU structures that might undermine national investment promotion agencies.

6. Sustainable trade

Environmental and social concerns extend beyond EU borders: climate change and degradation of natural resources, for example pose a threat to the prosperity and well being of people in rich and poor countries alike. Trade policy should to the extent possible support green and inclusive growth around the globe. This could be by including the opening up of trade in environmental goods and services or via trade incentives promoting labour and environmental commitments. Greening the world economy and putting it on a more sustainable footing, in particular, will require considerable regulatory work. We should be careful however to avoid 'green protectionism'. On the other hand, possible negative environmental and social effects should be appropriately addressed:

10. How can trade policy best support green and inclusive growth around the globe including through Sustainability Impact Assessments? (optional)

The development of the Better Regulation Agenda and the impact assessment procedure by Commission have made considerable strides towards ensuring that competitiveness on both the domestic EU market and internationally is taken fully into account in policy-making. However, more weight needs to be given to global competitiveness issues in impact assessments. Europe's energy and climate change policy is a specific example of this trend and must be adapted to be compatible with securing the future of European industry. The current proposals will increase energy prices and levies on carbon emitting industries, without securing commitments for similar action from our competitors in international markets. There is a real risk that an energy and climate change policy which does not take fully into account the competitiveness issue may severely harm Europe's industries and jobs by seriously undermining competitiveness of vital energy-intensive sectors.

Many goods and services can contribute to environmental improvements including the fight against climate change and have the potential to create huge business opportunities in Europe. The EU should foster these developments through a favourable business climate and, wherever possible, through a liberal trade policy. However, in defining this favourable business climate, the concept of green goods should be interpreted in a broad sense. Many goods and inputs to green products come from traditional industries, sometimes not considered to be environmental. Yet without those inputs, green products cannot be produced.

EU trade policy should develop a strategy that will combine multilateral action in the WTO and bilateral negotiations to address the international challenges that face companies exporting green technologies and products. This should include strict opposition to protectionist measures, the highest level of intellectual property rights protection, the elimination of tariffs on a wide range of goods (especially energy efficient machinery/equipment and chemicals), the removal of barriers to services and investment, the elimination of restrictions on key raw materials, open regulatory policies and standards, and liberal public procurement policies. BUSINESSEUROPE opposes unilateral trade measures to enforce non-trade objectives. Proposals to impose "border adjustment measures" for carbon-intensive imports will not solve the carbon leakage problem. Even if made compatible with WTO rules such measures would fail to address the competitiveness concerns of European industries. Only if import restrictions were taken by other large countries (e.g. the US), the EU would have to consider appropriate reactions. To support the development and diffusion of goods and services linked to environmental purposes, a stable and strong IPR regime is needed, especially for the most innovative products and technologies. The EU should examine ways to support the commercial diffusion of technology while increasing its vigilance against forced technology transfer.

Because the definition of environmental goods and services in international trade law is very challenging, BUSINESSEUROPE supports the widest possible scope for trade liberalisation. In addition, where a sector can be classified in a clear and non-discriminatory manner, BUSINESSEUROPE strongly supports sectoral tariff liberalisation in the WTO. This is the case for energy efficient and renewable machinery and power equipment, which, along with chemicals, is a BUSINESSEUROPE sector priority for the Doha Round. We support the full elimination of tariffs in as simple a manner as possible to ensure that the trade liberalising effects will lead to a rapid decline in global prices for these products as was the case for information technology products under the Information Technology Agreement. Therefore, the agreement should not impose new obstacles in the form of certificates or other bureaucratic red tape.

Given its economic interest in advancing multilateral trade liberalisation for energy efficient and renewable power equipment and machinery (as well as chemicals), the EU should adopt a policy of integrating these objectives into bilateral free trade agreements. This strategy will help build up a constituency of supporters of trade liberalisation in the WTO.

The EU is a major market for agricultural imports from developed and developing countries. The EU is also a key producer and exporter of processed food and other high value agricultural products:

11. Given the forthcoming revision of the Common Agricultural Policy and the continuing need to foster a sustainable agricultural sector in Europe, how should EU trade policy develop in this area consistently with the overall objectives of the Lisbon Treaty?
(optional)

CAP reform must continue by advancing toward market-based regulation of the agricultural sector. While BUSINESSEUROPE accepts the need for targeted support policies for farming in difficult terrains and for fostering more sustainable farming practices, it warns against policies that ignore the fundamentally important economic role of agriculture in the EU economy. Together with the food industry, European agriculture is an important economic driver. The competitiveness of the sector should therefore be fostered by encouraging innovation and cooperation between different actors (e.g. farmers and the food industry). This requires a Commission that makes policy decisions on the basis of science rather than misguided and politicised interpretations of the precautionary principle as was done in the regulation of genetically modified organisms (GMOs).

In addition, the Commission must make a clearer distinction between agricultural policy that fosters food security and policy that aims to encourage agro-energy development. The latter is not always sustainable in Europe and also has considerable negative side effects for industries that use agricultural resources as a raw material as is the case for the food, chemicals and paper industries. High tariffs and subsidies in the agro-energy sector threaten the competitiveness of these high value added industries. These support systems must be reviewed immediately to lessen, if not eliminate, these competitive distortions. Otherwise, the CAP will not be able to prepare the EU agriculture to the two main challenges in the next ten years: rising demand for agricultural goods, and the demand for sustainable production where GMOs will be one strategic success factor.

7. Inclusive trade

The distribution of the benefits to trade is also affected by the changes in the way business in conducted today. The European economy is increasingly dependent on the participation of its businesses in global value chains. A final product often incorporates hundreds of subcomponents, which are traded back and forth around the globe before reaching the final consumer. Greater openness in trade has allowed this to happen:

12. How can EU trade policy ensure that the benefits of global value chains are shared by European producers, consumers and jobholders? (optional)

The pursuit of trade liberalisation at multilateral and bilateral level is imperative to strengthen the competitiveness of European business by enabling companies to maximise value added in global supply chains. The EU must continuously move forward in this area.

To date, European companies have been able to take advantage of global supply chains to increase opportunities for employment in Europe. However, it is also clear that an adequate skills policy on all levels is required to facilitate the upward mobility of employees as the supply chain evolves. Employees need to take responsibility for their employability and national education and training systems have to provide the skills needed in a globalised economy. Furthermore labour markets must become less rigid in order to increase employment opportunities for people and to enable companies to rapidly adjust to fluctuating global demand. To achieve this BUSINESSEUROPE advocates, in cooperation with the Trade Union federation ETUC, for a focus on “flexicurity” to create active and dynamic labour market policies within the national employment frameworks of EU member states. This approach should be fostered.

Governance compliance is becoming a new competitive distortion between EU companies and their rivals in many markets due to gaps in national regulations and weak enforcement of international conventions. The EU should encourage its partners to enforce their international commitments on governance in all discussions.

The gains from trade are not evenly distributed, and adjustments can lead to short-term costs in the form of unemployment, retraining the workforce and converting production structures. The EU has a number of instruments available to address the problem of adjusting to new global trade patterns, such as EU Structural Funds, he European Social Fund (ESF), and the European Regional Development Fund.

In addition, the EU launched the European Globalisation Adjustment Fund (EGAF) in 2007, which offers a general response in terms of managing the negative employment effects of globalisation. The EGAF is designed to provide one-off individual support for a limited period to workers who are 'severely and personally affected by trade-adjustment redundancies'. In the longer term, the aim is to help redundant workers find and hold on to jobs:

13. Are existing 'flanking' policies sufficient to ensure that the benefits of trade are shared among different people and across different regions and markets in the EU? And how can the EU best ensure, where necessary, that trade and other policies play their part in helping people, sectors and communities adjust? (optional)

BUSINESSEUROPE believes that liberalisation is the most effective way for trade to create jobs, improve productivity and boost growth. Europe's most successful industries, which create well-paid, knowledge-intensive jobs, are in export-oriented sectors. It is clear that the interest of citizens and employees is best served by further market opening, within the EU and in third countries. Within the EU, market opening creates the need for less rigid labour markets and the availability of a skilled workforce to reap its full benefits. For those who are negatively affected by global competition in certain occupations or sectors, (re)training and assistance (e.g under the Global Adjustment Fund) should be provided so as to enable them to seize new opportunities.

BUSINESSEUROPE is engaged in social dialogue with its trade union partner (ETUC) which is an important tool to help companies and employees adapt to global challenges. It would be helpful to foster cooperation (including where relevant jointly with ETUC) with non-EU countries that want to adopt a social dialogue model through, for example, EU projects. However, to be successful experience shows that this policy should be focused on countries that share a cultural commitment to this approach, like our Eastern partners.

We also accept that the EU seeks to foster cooperation with more international trade partners on this issue provided it is based on a shared understanding. The EU-Korea Free Trade Agreement provides a positive example of this kind of mutually acceptable cooperation. The EU should also continue its cooperation with the International Labour Organisation in order to raise awareness about and make best use of positive effects of trade on societies in different regions and countries.

8. Trade and Development

The link between trade and development has become a major issue in recent decades as more and more countries, especially in Asia, have shown that trade can be an important means of boosting economic growth and lifting people out of poverty. The EU is a global player and takes its development responsibilities seriously. It is negotiating and implementing Economic Partnership Agreements with a view to sustainable development and regional integration in Africa, the Caribbean and the Pacific. Negotiations have also taken place with the Central American and Andean Community countries. A parallel consultation is already in progress on reforming the EU's general system of preferences for developing countries. However, trade policy alone cannot address the development challenges some countries face. Note that in light of the importance and scope of the topic, a future communication on trade and development will address these complex linkages between these policies. This too will be preceded by a public consultation:

14. How can the EU best strengthen the issue of trade and development in its trade policy? Should the EU pursue a more differentiated approach in its trade relations to reflect the level of development of particular partners? How should the EU approach the issue of trade preferences in relation to the generally low level of EU Most Favoured Nation (MFN) tariffs, which will further be eroded following the possible conclusion of the Doha Round? (optional)

Given the huge size of the EU development aid budget, a more coherent approach is vitally needed. Development policy should seek to improve governance in partner countries as a tool to attract investment and spur entrepreneurship. Moreover, a simplification of EU aid rules governing investment in all types of infrastructure projects is needed. Procurement rules for EU aid projects must also be reviewed to take account of lifecycle costs, quality transparency and governance issues and longer-term developmental objectives. EU development policy must also take better account of raw materials and energy security of supply.

As regards “financing competition”, the EU should support and expand the respect of OECD’s Arrangement on Guidelines for Officially Supported Export Credits (the "Consensus"), which provides a regulatory framework that assists exporters from member countries in competing on a financial level playing field. The Consensus works to promote competition among exporters based on the quality and price of the goods or services being sold rather than on the most favourable export credit support.

At the end of 2011 a new regulation governing the Generalised System of Preferences (GSP) will be introduced. BUSINESSEUROPE supports its objectives to contribute to poverty reduction and promote good governance, but the EU has to implement a number of changes to ensure that trade preferences are targeted towards developing countries that need them most, in particular Least Developed Countries (LDCs). The attractiveness of the GSP must be increased by making it more accessible for weak and vulnerable countries, and more user friendly in its procedures. It should also be more coherent with the broader EU trade agenda, for example by incorporating provisions concerning the protection of intellectual property rights and rules limiting its use in cases of trade distorting measures operated on raw materials. An improved graduation system should treat the highly competitive sectors or companies of emerging economies as such by removing their preferential advantage. Similarly, “developing” countries with high per capita incomes should be excluded from the GSP as a matter of principle.

The EU must stress in the internal as well as in the external trade policy debate that open markets including free and rule based trade are the best engine for growth and development around the world. It is counter-productive to compromise free trade due to potential preference erosion. Moreover, it does not make sense to keep tariffs or higher tariff rates only to allow discrimination between EU trading partners. Preference erosion problems can be addressed through the implementation of economic partnership agreements and through improved aid-for-trade support to help preference-dependent countries move up the value chain.

Trade facilitation is important for growth of foreign trade and increase of FDI especially in developing countries. Related capacity building should be increasingly supported by the Neighbourhood programme and its financial instrument ENPI, GSP and especially GSP+ arrangements as well as by the means of aid to developing countries.

9. 'Smart trade'

The Europe 2020 strategy emphasises the 'smart' growth dimension, that is to say growth driven by innovative products, services and industries. A number of emerging market economies are likely to catch up with the technologies of the developed economies, at least in some sectors. Convergence between developing and developed countries can boost our economy, including in new and innovative 'smart' high-tech goods and services. While tariffs may be an issue in some instances, de facto barriers might arise as a result of divergent regulatory developments. Fortunately, in many of these high-tech domains, regulation is still on the drawing board. Upstream regulatory dialogue on these newly emerging technologies, addressing both risks and the response to risks, could facilitate international convergence and avoid the emergence of new barriers to trade:

15. What initiatives could the EU take and which EU trade policy instruments could we mobilise to complement and reinforce the 'smart' dimension of the Europe 2020 strategy and facilitate trade in high-tech goods and services? (optional)

Open markets foster innovation through fair competition. Therefore, the EU trade policy should focus on removing trade distortions and barriers to trade. This will foster innovation. Nevertheless, to advance free trade in innovative fields can also be a lever for free trade on a broad level. For example, the global challenge of climate change spurs the need for the commercial diffusion of innovative climate mitigation technologies. Liberalizing trade in this area can help to solve the global climate change challenge but also foster innovation by creating bigger markets and more demand for innovative low-carbon technologies.

Trade policy should be seen as an enabling tool to enhance EU competitiveness in a variety of ways. Instead of thinking of trade policy as an end in itself, the Commission, Parliament and Member States should seek to put in place strategies to allow trade policy to facilitate growth in the wider economy. To allow such growth, some prerequisites are needed, which would include a stable IP regime or setting standards that could be promoted worldwide.

The Digital Economy, broadly defined, is an area where the EU should develop a trade policy enabling strategy. The Information Technology Agreement has shown the way to future progress. The EU should continue in its effort to expand that agreement to allow it to address the regulatory measures and standards that are creating today's barriers to equipment trade but also go further to add information technology services as a pillar of the agreement. The impact of raw materials, intellectual property, and procurement will also be vital in this sector.

10. Enforcement and dealing with unfair practices

The EU benefits from being one of the most open economies in the world by having access to cheaper goods and services, for citizens, the public sector and companies. It is in a strong position to shape globalisation and promote its interests. At the same time, we should not be naively open and defenceless in the face of unfair practices by some of our trading partners, e.g. distortion of international competition by the payment of unfair subsidies, in cash or in kind, or by dumping practices.

To defend the EU against such practices, we have recourse to trade defence instruments, in line with WTO obligations. In addition, existing multilateral, bilateral and plurilateral agreements provide for enforcement tools, including dispute settlement. This is particularly important with risk of protectionist measures still high in the aftermath of the economic crisis:

16. How can the EU best safeguard its firms or interests against trading partners who do not play by the rules? Are the existing tools and priorities sufficient to address unfair competition from third countries? (optional)

Negotiations and trade agreements will have little value if they are not enforced. Given the continuing risk of protectionist measures, the European Union should take all available measures to ensure that existing rules are respected. This will require an improved commitment to enforcement by the European Union. Such vigorous action applies to all the EU's trading partners.

As a first step, the EU should use its political weight to convince its trading partners to trade fairly in a constructive dialogue. Trade wars caused by tit-for-tat strategies have to be avoided. Unfair competition from third countries should be addressed in FTA negotiations (competition chapter) and through the EU's trade defence instruments. The EU needs to use dispute settlement in the WTO and in bilateral free trade agreements, where available and justified. It should also improve the Trade Barriers Regulation through a thorough review that would require the EU to engage more pro-actively in investigations instead of placing the entire burden on complainant industries. Addressing unfair competition should also include IPR enforcement, access to procurement and abuses of state aid including in the area of export credits.

In addition to these measures, the EU Market Access Strategy has identified the removal of trade barriers as a specific objective of trade policy. The strategy needs greater resources to build on its successes. The EU must also ensure that the External Action Service is also leveraged to address these issues.

Many partner countries still give limited access to their markets, for example to their procurement markets by giving national preferences to their enterprises. The EU is also looking into new areas such as access to raw materials and energy (see question 7 above). Furthermore, the EU has developed a comprehensive Market Access Strategy which uses a variety of formal and informal tools to make sure that European companies can make use of the market access opportunities which have been negotiated in trade agreements. Following the recommendations of the Europe 2020 Communication, an annual trade and investment barriers report identifying ways to improve market access and regulatory environment for EU companies will be presented to the Spring European Council starting in 2011:

17. How can the EU best safeguard its firms or interests against major trading partners who maintain an asymmetric level of openness and resort to protectionist measures? Are the existing tools and priorities sufficient to address practices such as keeping EU suppliers out of government procurement markets, market access restrictions, restricted and insecure access to energy and raw materials? (optional)

Governments are significant purchasers of goods and services and important drivers of international trade. Although EU public procurement markets are among the most open in the world, many external markets operate restrictive public procurement practices that exclude EU companies. EU countries have profited immensely from this open domestic market, therefore the EU should not stop convincing its trading partners of the advantages of open public procurement markets.

BUSINESSEUROPE appreciates the EU efforts in this area through its Market Access strategy, as part of bilateral FTA negotiations but also in other dialogues with main trading partners, e.g. China. However, BUSINESSEUROPE is concerned about the limited progress made. Many external markets operate restrictive public procurement practices that exclude EU companies. In view of the persistent dissymmetry in openness of public procurement markets between the EU and its main trading partners, BUSINESSEUROPE recommends a proactive market access policy based upon open trade and investment and reducing discriminatory measures in third countries. At the same time, it should be considered to which extent EU public procurement markets can sustainably remain open whilst third countries maintain an unlevel playing field.

Over the last two years, both developed and developing countries have increasingly adopted policies that directly or indirectly force companies to localize production or provision of goods and services in the countries' domestic markets. Buy-national provisions, local content requirements and other performance specifications, particularly prevalent in government procurement processes, have favored domestic businesses over foreign counterparts. While the financial crisis has fuelled the political need to protect home industries and jobs, some developing countries have employed these policies for technology transfer and industry creation, most notably in the green energy sector. To counter this growing problem, the EU must ensure that governments practice transparent, reciprocity-based, open-trade and open-investment policies. Specifically, the EU should engage the relevant international community to:

<u>Expand the membership of the WTO Government Procurement Agreement (GPA)</u>

- The WTO applies national treatment to government procurement market primarily through the GPA, most of whose members are developed countries. Until the GPA includes developing countries, a significant portion of global public procurement market will continue to discriminate against EU bidders and suppliers.
- GPA members can utilize legal trade mechanisms to incentivize developing countries to join the agreement. Trade preference program eligibility conditioned on GPA membership and tools to address non-participation in the GPA are some of these possible policy measures that can encourage developing countries to open their government procurement markets to international competition.

Reinforce the principle of national treatment in existing and future multilateral trade and investment negotiations

- Overall, the EU should strengthen the principle of national treatment through free trade agreements and bilateral investment treaties, as well as any ongoing or future trade negotiations.
- The EU could also address forced localization policies by engaging bilaterally on the issue with other countries. This two-way approach can allow the EU to negotiate more effectively on specific trade policies and practices, investment in particular industrial sectors and procurements by specific government entities.

Enforce compliance with existing national treatment obligations

- The EU should challenge new trade-restrictive measures that infringe the obligation to give national treatment to imported goods, where they are applied outside the legitimate boundaries of government procurement.
- This may involve initiating WTO rule enforcement mechanisms in partnership with the US and other major trading partners against those countries violating national treatment as a part of their industrial policies.
- Lastly, the EU should ensure open market access to procurements of state-owned enterprises (SOEs) in developing countries. While the large infrastructure project procurements by SOEs provide great business opportunities for EU companies, their market-restrictive policies – such as local content requirements, licensing specifications and others – have prevented EU companies from competing fairly in the market.

The EU should address these measures that distort business models by pursuing multiple policy options, including advocacy in international forums, such as G20 and G8. While discriminatory policies favoring local businesses and suppliers can reduce competition, restrict market access and cause economic inefficiency for EU companies expanding globally, market-oriented economic policies can create trade opportunities, support investment flows and bring long-term benefits to both countries and companies.

The EU needs to build on the Global Europe Strategy to tackle the main challenges that European companies are encountering in key sectors such as energy, water treatment, healthcare, construction and transport. As outlined above, the EU should address these challenges through the WTO Government Procurement Agreement, which can be improved by removing derogations and encouraging new accessions with balanced offers; bilateral free-trade agreements and strategic dialogues, where robust approaches are needed; efforts to improve procurement procedures by key international organisations and tougher enforcement by the EU of existing rules; a reflection on an improved Trade Barriers Regulation and carefully targeted restrictions on access to part of the EU procurement market to encourage partners to offer reciprocal market opening.

One important factor in promoting ‘high-quality’ growth is innovation, for which the Europe 2020 strategy also has a number of initiatives. Ideas and innovation need to be protected through effective protection of Intellectual Property Rights (IPR), including geographical indications (GIs). This is why the Commission in November 2004 put in place a strategy for enforcing IPR outside the EU. The strategy is currently being evaluated, and an Enhanced IPR Protection and Enforcement Strategy in third countries is due to be launched in 2011. Cooperation is also underway with major partners in order to promote better respect of IPR rules in third countries. Other issues such as access to medicines in developing countries need to be taken into account:

18. What else can EU trade policy do to further improve the protection of IPR in key markets? (optional)

Strong and effective protection of intellectual property rights (IPR) is key for Europe's innovation and international competitiveness. According to the OECD, global trade in counterfeit and pirated tangible goods reached over €180 billion in 2007 and continues to grow. The EU must address the scourge of counterfeiting and piracy in its bilateral relations with key strategic partners (e.g. China, Russia, India and Brazil) and in the framework of the Anti-Counterfeiting Trade Agreement (ACTA) negotiations. It also needs to press for the adoption of the highest standards of IPR protection in the domestic legislation of its trading partners and for global patent harmonisation.

The EU should also address the issue of business secrets and knowhow protection at EU level. For the moment, there is no formal recognition and protection of trade secrets at EU level. This combined with the growing trend in trade secret theft is very damaging to European industry.

The work with customs should also be strengthened and the EU could reflect on introducing a instrument similar to one used in the US, which is article 337 of the International Trade Administration (ITA). This gives companies the ability to seek an ITA order to have customs prohibiting the entry of "fraudulous" equipment, products or services. To be effective, the process has to be fast, transparent and based on serious established facts (like a legal Arbitration or non appealable decision).

11. An open approach to shaping trade policy

The Commission is committed to shaping trade policy as openly and democratically as possible. Thanks to the Lisbon Treaty, the increased role for the European Parliament in trade policy improves both the accountability and the transparency of trade policy. However, in addition, trade policy should build on a wide range of points of view inside the EU and from other parts of the world. There are a number of structures, such as DG TRADE's Civil Society Dialogue to assist with this, but the approach can further evolve to take full account of the new EU institutional environment and changes in modern communications technology:

19. What more should the Commission do to ensure that trade policy becomes more transparent and to ensure that a wide variety of views and opinions is heard in the policy-making process? (optional)

European business expects the EU to use its competences to establish a coherent, credible and coordinated EU foreign policy which recognises the broad benefits, in terms of stability and therefore security, of responsible trade and investment led by

European business, particularly in developing countries. The EU can much better demonstrate its ability to help European businesses defend their investments and assets in third countries against expropriation for instance, though established legal channels should remain the appropriate recourse in such disputes. It can also include access to resources including energy as a key component of relations with major resource countries while not sacrificing our values or exposing Europe to coercion.

BUSINESSEUROPE very much appreciates the opportunity for business to comment at an early stage. Companies can constructively support the Commission in its negotiations. Therefore, we are very positive that the close cooperation between the EU Commission and the business community will be beneficial for both sides also in the future.

For BUSINESSEUROPE, transparency in trade policy-making should be guaranteed through open consultation procedures with the Commission and a high degree of scrutiny by the Council and European Parliament while respecting the need for the protection of sensitive commercial information. We appreciate improvements made recently by the Commission in terms of civil society consultations and more specifically in the field of trade defence where improvements have been made to procedures. We also appreciate the efforts made by the INTA committee of Parliament to reach out to BUSINESSEUROPE on key policy dossiers. The rotating presidency of the EU has also increased its outreach to BUSINESSEUROPE on specific dossiers which is highly appreciated.

While transparency is of central importance to business to ensure predictability and fairness, this should not be confused with the decision-making authority of the EU institutions as defined by the Lisbon Treaty. The Commission, Council and Parliament are ultimately accountable for trade policy successes and failures. As trade policy contributes significantly to growth and job creation across the EU, EU political leaders should pursue a pro-active and constructive policy that favours the EU's global competitiveness.

In addition and while fully supportive of transparency as a key tool for predictability, BUSINESSEUROPE is concerned that there is a lack of awareness of the need to protect confidential business information in trade policy. The release of this information presents huge commercial and, in some exceptional cases, might even include physical risks for companies and for their employees. The abuse of access to documents regulations by anti-business groups presents a serious risk that EU institutions would be well advised to address.

20. Are there additional priorities in relation to trade policy that the Commission should pursue? (optional)

The EU needs to ensure that the Modernised Community Customs Code delivers clear facilitation for business, in particular by making certain that integrated security provisions are workable and not excessive. It should also refrain from shifting all responsibility on to companies for incorrect declarations of origin in the revised Rules of Origin as this would lead to an unjustifiable increase of responsibilities and risk for importers without giving them the possibility to act in "good faith". Furthermore, business wishes to see consistent implementation, based on better regulation, in all EU member states of the Authorised Economic Operator (AEO) concept in order to make it an attractive tool for European companies.

On the international front the EU should further push the objective of mutual recognition of AEO with the US Customs Trade Partnership against Terrorism (C-TPAT) and other relevant AEOs. Business also continues to reject the looming and very costly US 100% container scanning rule as this will not lead to the envisaged security objectives, while creating huge costs for business. Instead the EU should work with the US towards a permanent solution on trade and security. The EU should also push for transparency and proper governance of customs procedures in its negotiations with key trading partners. It needs to work to improve implementation of GATT rules on customs valuation through all channels. Finally, the EU's rules of origin in GSP and FTAs should be simple to administer, coherent and based on consultation of affected sectors.

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