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BUSINESSEUROPE position on an EU-UKRAINE Free-Trade Agreement (FTA)

SUMMARY

BUSINESSEUROPE calls for:

- An ambitious EU-Ukraine FTA securing real market access for goods and services, and investments.
- Industrial goods: Full coverage, reciprocity and effective market access.
- Services: Ambitious liberalisation of as many sectors as possible.
- Investment: Strong rules to foster and protect investments.
- Agriculture: Reduced tariff and non-tariff-barriers for EU exports.
- Transparent rules for competition and public procurement.
- Trade facilitation including customs clearance

INTRODUCTION

Since 2001, the EU has prioritised multilateral trade negotiations under the WTO Doha Development Agenda, and should continue to do so. There are huge economic gains to be achieved from a multilateral trade agreement. European business is strongly committed to an ambitious conclusion of the Doha Development Agenda as soon as possible. To improve market access for European companies and ensure non-discriminatory treatment in Ukraine as well as other third country markets, the priority for BUSINESSEUROPE remains the multilateral approach in the framework of the WTO. In this light, BUSINESSEUROPE considers it essential for Ukraine to join the WTO before negotiating a bilateral free trade agreement (FTA) with the EU and welcomes recent progress in that direction.

Following accession to the WTO, BUSINESSEUROPE would support negotiations on a WTO-compatible FTA with Ukraine that is ambitious in terms of product coverage and liberalisation. The fundamental criteria for the agreement should be that it is based on economic criteria and full reciprocity.

Trade between the EU and Ukraine has been growing steadily but is still far from at its full potential. Ukraine is important for European business both as a market for European products and as a supplier of raw materials, but also as a destination for investment. Therefore BUSINESSEUROPE believes that EU-Ukraine economic ties can be further strengthened by an ambitious agreement covering trade in goods, services and investment. The agreement should also remove non-tariff-barriers (NTBs) caused by customs services and procedures and result in an improvement of business conditions, including through competition policy and public procurement. This should go beyond what has so far been agreed in the WTO framework (WTO+). An FTA combined with economic cooperation through the European Neighbourhood Policy programme could help realise the vast economic potential currently blocked by various distortions and barriers.

MAIN ECONOMIC ISSUES FOR AN AGREEMENT WITH UKRAINE

The starting point for negotiations with Ukraine must be reciprocity, effective access to the Ukrainian market and symmetry in tariff dismantling and implementation periods. The agreement should include full product coverage in goods, the broadest coverage of services possible and tackle different aspects of NTBs, notably export taxes and export restrictions. Against this background, the agreement should include the following key elements:

Tariff liberalisation

Ukraine's tariffs on industrial goods and agricultural products are an important barrier to trade. Negotiations on industrial tariffs should include all tariff lines. The high level of tariffs, compared with the EU level, is demonstrated in detail in the table below. It is immediately apparent, however, that Ukraine's simple average tariff on industrial goods is four times that of the EU.

Comparing tariff rates in Ukraine with the EU

Country	Most recent Year	Binding coverage	All products				Primary products		Manufactured products		
			Simple mean bound rate	Simple mean tariff	Weighted mean tariff	Share of lines with international peaks	Share of lines with specific rates	Simple mean tariff	Weighted mean tariff	Simple mean tariff	Weighted mean tariff
Ukraine	2002	N.A	N.A	7,6	3,9	11,2	10,5	6,8	1,5	7,6	6,4
EU	2005	100	4.2	1.8	1.7	1.8	10.3	2.6	0.9	1.7	2.1

Source: World Bank, World Development Indicators, 2006

The agreement should ensure free trade in all goods by liberalising 100% of tariff lines. It should be firmly based on the principle of reciprocity, securing free and effective access to the Ukrainian market without discrimination, including for food products. There should be no exemptions for any products and sectors from tariff elimination, which should be reduced symmetrically within a short period of time.

Removing Non-Tariff-Barriers (NTBs)

As tariff levels gradually decline, NTBs become major barriers to trade. Consequently, the elimination of NTBs is a precondition for better market integration. For instance, companies trading with Ukraine complain about export taxes or restrictions on raw materials, restrictive import licence schemes and the so-called GOST certificates dealing with quality certification as well as difficulties with customs clearance.

The EU should take the problem of NTBs to the forefront of the FTA negotiations. Effective standstill and rollback on NTBs as from the start-up of the negotiations should be agreed. The EU should ensure that:

- Trade facilitation (customs control) programs be adopted;
- International standards be applied where possible if the negotiating parties cannot agree on approximation towards European approaches;
- The parties accept supplier's declaration of conformity;
- The parties accept conformity assessment bodies outside their own other territory;
- Export taxes, dual pricing of energy and raw materials and other trade distorting measures be effectively removed e.g. by a specific clause banning any import or export restrictions or measures of similar effect.

An EU-Ukraine FTA should also set a course towards regulatory convergence - around transparent and predictable regulation by working towards a more transparent framework for technical regulations and standards. An efficient NTB arbitration mechanism could be instrumental to remove new NTBs (similar, perhaps to that proposed in the WTO). Moreover, a binding dispute settlement (comparable to the WTO mechanism or the mechanism in the FTA between EU and Chile) is an option.

The EU must also - at different political levels - work to improve capacity in the Ukrainian customs administration in order to secure fast, non-discriminatory, and transparent customs clearance. Capacity building programmes for customs officers and officials may be an option.

Commitments in the field of NTBs should be enshrined as precisely as possible and with exact deadlines in sector specific annexes as general wording is not sufficient. They should be foreseen for all sectors which face NTBs and have substantial offensive interests. Full respect of these NTB commitments should be enforced through appropriate clauses and dispute settlement procedures as described below.

Services

An EU-Ukraine FTA should be substantial as set out in GATS Article V and should cover all modes of supply. A negative list approach, whereby the EU obtains full market access and all services are automatically liberalised unless specifically provided otherwise, remains the preferred approach for BUSINESSEUROPE¹. An FTA between the EU and Ukraine must ensure comprehensive liberalisation of key services sectors.

Investment

An agreement with Ukraine should guarantee free access to the Ukrainian market, non-discrimination and national treatment, greater transparency and full pre- and post-investment protection, including free transfer of all investment-related capital flows.

Ukraine should commit to enforcing its comprehensive investment policy including privatization of state-owned enterprises (e.g. in the telecoms, transport and energy sectors) and clarification of minority shareholder rights.

Negotiations with Ukraine on investment must entitle EU companies to operate in a manner that will enable them to compete effectively in Ukraine. EU provisions on investment should be complementary to Member State bilateral investment treaties (BITs), neither undermining nor creating conflict with them. They must also offer strong protection from unfair treatment and unfair expropriation and provide a mechanism for investor-to-state dispute settlement.

Intellectual property rights (IPR)

Protection of intellectual property rights remains a problem in Ukraine. Intellectual property rules are crucial to ensure that companies continue to invest in research and development. European business strongly supports the WTO TRIPs agreement. Full

¹ If the EU does not adopt a negative list approach, for sectors with additional commitments (e.g. Telecommunications with the Reference Paper on Basic Telecoms), the schedules of commitments must respect the existing GATS classification in order to avoid confusion on the scope of the services subject to regulatory provisions.

implementation and enforcement of TRIPs commitments must be the absolute minimum for FTA negotiations between the EU and Ukraine, with a view to providing international standards of IPR protection, which will not only satisfy TRIPs requirements, but also reflect international standards and best practice.

More specifically, for anti-counterfeiting: there are general concerns about on-going transit and corruption issues which require better border controls to limit trade in counterfeit products. For trademarks, the processing time to registration, although reduced from 3-4 years to about 2 years, is still excessive. There are also concerns over the high trademark application fees which are charged to non-Ukrainian applicants. Non-discriminatory treatment for EU firms should be covered by an agreement.

Competition policy

For BUSINESSEUROPE the fundamental objective of a FTA between the EU and Ukraine is that companies should be able to compete with each other in both individual markets of Ukraine and EU members states on a level playing-field, taking full advantage of the expansion of international trade. Ukraine should, where appropriate, install meaningful systems to enforce competition policy. Disciplines should include basic principles of transparency, non-discrimination, government subsidies/state aids as well as commitments to tackle hard core international cartels.

Public procurement

Public procurement markets represent in the EU as well as in Ukraine a substantial proportion of GDP in both goods and services. Provisions on transparency and qualification procedures/decisions are important. Companies report that there seems to be an often inappropriately close relationship between operators and suppliers, making it difficult for foreign suppliers to enter the market.

The bilateral agreement should foresee a substantially lower threshold for non-discriminatory tendering than the current GPA-threshold (it should not be higher than the level stipulated in the FTA between the US and Ukraine). The number of institutions which fall under the bilateral procurement provisions should be substantially enlarged compared to Ukraine's current GPA commitments.

Given the complex system of exemptions it contains, an agreement with Ukraine should also include further disciplines to ensure that national treatment and non-discrimination are guaranteed and that national and/or local preferences are to the greatest extent possible eliminated.

Ukraine should also approximate EU public procurement legislation in its national law, in particular the regulations which introduce the new procedure known as "competitive dialogue" as this procedure has the advantage of allowing the input of those participating in a tender process.

Trade facilitation

An agreement with Ukraine on trade facilitation should be based, as a minimum, on the WCO Revised Kyoto Convention and take into account the results of the WTO negotiations from the Trade facilitation. The provisions of the agreement should be focused notably on:

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

Trade defence instruments

Ukraine must not be granted any privileges and derogations from the current EU trade defence regulations. Neither should concessions of this kind be granted informally on a case-by-case basis. BUSINESSEUROPE will closely follow developments in this area and would dismiss any bilateral agreement or informal practice which would undermine current EU trade defence standards.

Transparency and economic governance

The European Union strongly encourages adherence to a certain number of procedural safeguards designed to ensure transparency, objectivity and administrative efficiency in decision-making. These provide companies with predictability and ensure that decisions are neither arbitrary nor abusive.

The FTA between Ukraine and the EU could support similar principles of transparency, objectivity and administrative efficiency, including deadlines for decisions and objective justification for these decisions. For example, for the pharmaceutical industry, Ukraine's pricing and reimbursement policies and data/information protection for innovative medicines are a major continuing concern as the current system is opaque and causes commercial uncertainty.

Moreover, the Ukrainian government could accede to the OECD Convention on Bribery, enforce the Council of Europe Tools and do more to improve the functioning and efficiency of its legal system. These policy matters could be covered in the form of EU-Ukraine cooperation as part of an FTA or in the context of the European Neighbourhood Policy.

Dispute settlement

The agreement with Ukraine should include a binding and effective bilateral dispute settlement mechanism with clear cut deadlines. This should be set up in analogy to the WTO mechanism or the mechanism enshrined in the FTA between the EU and Chile. Precise deadlines and retaliation as a means of last resort are key. BUSINESSEUROPE supports direct access by companies to the mechanism which is essential when dealing with a country whose judicial system is undergoing reforms.

CONCLUSION

European companies favour the launch of EU-Ukraine negotiations on trade and investment leading to an ambitious agreement which facilitates economic integration between the parties. BUSINESSEUROPE looks forward to providing active support to these negotiations.