

AUSTRIAN FEDERAL ECONOMIC CHAMBER

on a Future EU-Trade Policy

28 July 2010

Facing societal, environmental, demographic, technological and last not least, economic challenges for Europe 2020 adequately, one of the things the European Union needs most is economic growth. A growing European and Austrian economy and recovery from a global economic and financial crisis can mainly be achieved by imports and exports of goods, services and foreign direct investment. Judging from a number of political and economic measures the relevance of promoting exports and of progressively opening markets for growth and wealth in Austria can be deemed intra-Austrian consensus.

This is why the basic tendency of Austrian positions within the common EU trade policy should stay unvaried: progressively improving access to trade partners' markets, eliminating unjustified tariff and non tariff barriers, improving and enforcing trade rules. In respect thereof favourable pre-conditions are to be established for intensifying regulatory dialogue (incl. early warning systems) as well as for harmonisation and mutual recognition of technical standards. These objectives can be achieved by an ever closer cooperation of the EU with its trade partners by negotiating on multilateral, regional and bilateral level as well as by establishing institutionalised trade talks and special dialogues. Indispensable conditions for internationally trading enterprises like legal certainty, predictability and coherency of applying rules can thus be guaranteed.

The focus of common EU trade policy on primarily trade and economic priorities should clearly be emphasised.

Enhanced involvement of European Parliament (EP) in trade policy by having been granted the right of consent by the Lisbon Treaty is basically welcome. MEPs are perfectly suited to act as intermediaries by communicating technically quite complicated results of trade negotiations to their constituencies and thereby enhance acceptance and understanding of EU citizens. Hence the Commission and the Council of Ministers have to inform and involve Parliament comprehensively and in due time ahead. However, the new role of Parliament must by no means neither lead to "politicising" trade matters nor delaying adoption or implementation of trade policy measures or agreements. Only time will tell whether the delicate system of checks and balances between EU-institutions might be endangered by the new situation, which will be carefully monitored in the months to come.

Multilateral Trade Negotiations, World Trade Organisation, WTO

Despite the fact that after nine years of negotiations no compromise on modalities seems to be in sight and that in all those years the original ambition of the EU and member states had to be drastically reduced, a swift conclusion of the round should still be reached out of political and economic reasons.

A conclusion would offer the unique chance of

- improved access to markets of interesting trade partners like fast growing emerging economies and industrial countries at the same time, especially for non-agricultural goods,
- tangible results for trade facilitation (which by the way are very well advanced and least controversial - a possible candidate for early harvest, if the single undertaking-principle should be abandoned, sooner or later) and
- service negotiations

on multilateral level.

A very substantial environmental, trade and economic potential of promoting and (voluntarily) transferring green technologies by improved market access for environmentally friendly goods and services risks to be jeopardised by paralysed negotiations.

In case the DDA should not be able to yield tangible results in one year or two, negotiators will have to consider new approaches for saving at least some of the preliminary results on the table. The credibility of the multilateral trading system per se stands at risk of being unsettled by such long lasting delays of consensus. This must not happen!

- WTO as a standing platform for discussion and problem-solving between its members, accession candidates and observers,
- numerous technically specialised bodies with considerable know how,
- WTO as a recently tested bulwark against protectionist trade measures in times of severe economic and financial crisis and
- the famous WTO dispute settlement

have become indispensable "institutional infrastructure" for all stakeholders in international trade, which cannot be overestimated.

The yet to come accession of the last major national economy to the WTO, Russia, is awaited impatiently not only by the Austrian economy. Only technical preconditions like Russia's preparedness to accept and implement WTO-rules in its entirety will, however, turn the balance.

Bilateral and Regional Free Trade Agreements

According to the "Global Europe" communication from the Commission of 2006 the key economic criteria for new FTA partners should be market potential (economic size and growth) and the level of protection against EU export interests (tariffs and non tariff barriers). Based on these criteria the Commission mentioned ASEAN, South Korea, Mercosur, India, Russia and the GCC as priorities for trade agreements. Until now the Commission was unable to conclude negotiations with ASEAN, Mercosur, India, Russia and GCC. So far only the FTA with South Korea could be finalised.

Although bilateral negotiations are for various reasons (different conceptual approaches, level of ambition, lack of political will, lack of administrative capacities) often lengthy and there is

little progress, we further support the aim of the Commission to conclude ambitious bilateral trade agreements including services, government procurement, intellectual property rights, SPS and dispute settlement mechanisms. A particular focus should be on NTB, access to raw materials and the implementation of the commitments resulting from the FTA.

It has to be noted that during the ongoing negotiations the information policy of the Commission seems to be extremely restrictive. As far as intellectual property rights are concerned we missed the involvement of the IPR-experts. In the negotiations with South Korea the Commission did not wait to take account of the result of the intra-EU-discussion before closing IPR-negotiations.

For the ongoing and future trade negotiations we urge the Commission to consult actively with the Member States at every critical stage of the negotiations. We would also appreciate more transparency during the negotiation process and a more frequent involvement of experts. Furthermore an extensive discussion about the results of the negotiations and the possible negative effects of the trade agreement should be held with the Member States in due time before the negotiations are closed.

Services

In the past the EU has regularly conducted its service negotiations on the basis of a positive list approach (Cariforum, South Korea, Andean States, Central America) and is making use of this approach also in the ongoing bilateral negotiations with India, Singapore and the Euro-Mediterranean Countries. The Austrian Federal Economic Chamber would prefer to continue on the basis of a positive list approach, also with regard to future negotiations. That way the results will be easier to compare and the danger to forget the scheduling of restrictions resulting from national law can be minimised.

The EU mode 4 offered to Cariforum should continue to be the limit in bilateral negotiations. „Multirecognition“ of qualifications of third party personnel among EU member states should not be a negotiation issue as long as the discussion within the EU regarding the recent proposal for an EU directive on common entry and residence conditions for intra-corporate transferees is going on.

Investment

In absence of multilateral regulations the Austrian Federal Economic Chamber emphasises the economic importance of better market access, non-discrimination and enhanced transparency in bilateral and regional free trade agreements. Given the change of competence for the regulation of investment issues within the EU, legal certainty on the basis of the bilateral investment protection treaties has to be the top priority. The Austrian Federal Economic Chamber welcomes the new EU competence and expresses the hope, that it will be used in future negotiations to realise the highest possible standard achieved in bilateral settings or even reach beyond that.

Implementation of and Compliance with Multilateral and Bilateral Trade Obligations

The implementation of the EU's Market Access Strategy with MATs "sur place", with working groups in Brussels and the revival of discussions between the Commission, Member States and European Business in the MAAC, together with several other instruments gradually results in a better overview of the state of compliance of trade related rules in third countries. Continuing this strategy, while at the same time using other multilateral and bilateral fora, seems quite promising as a method of attaining valuable information on third countries' trade practices.

However, the subsequent information-processing within the Commission, the way this information is used as well as the choice of remedy for existing trade barriers clearly lacks transparency.

We furthermore can spot considerable shortcomings in the Commission's efforts to address, contact and cooperate with small and medium-sized enterprises (SMEs). Instead of trying to get in touch with SMEs it would be more efficient for the Commission to seek and use the cooperation of existing local and national networks, specialized in working with SMEs, like regional business associations, economic chambers etc. Of course such networks would have to be fed, attended and cultivated. MATs are a right step in the right direction. Much more information could be obtained, though of appropriate networks *within* the EU.

In order to have multilateral and bilateral trade obligations better implemented in third countries it seems important to focus on all possible instruments that discuss and solve implementation problems, like institutionalised dialogues, technical trade talks aiming at problem solving, bilateral dispute settlement, "fast-track" dispute settlement for trade barriers, WTO dispute settlement etc. These instruments are not being used and developed in its full entirety. In any case transparency on these instruments has to be improved.

Trade defence instruments (TDIs) like antidumping, countervailing and, to a certain extent safeguards, must continue to provide for the possibility of sanctions on unfair trade measures applied by third countries while strictly observing the principles of legal certainty and predictability for EU-enterprises concerned. Improving and strengthening multilateral and bilateral disciplines of TDIs seems more than necessary, considering the growing number of protectionist TDI procedures introduced in third countries or the discussion on zeroing, lesser duty rule, parties' rights etc.

Intellectual Property Rights

In terms of competitiveness, innovation and technological development the EU runs the risk of falling behind compared to other - fast growing - regions in various parts of the world. Impairment of existing intellectual property rights in international negotiations as well as lacking implementation and practical application in a lot of states cause economic damage to an extent that is hardly conceivable (product piracy, counterfeiting, weakening of patent rights, non-voluntary transfer of technology etc). Protecting intellectual property rights must again become an important principle in international negotiations, that deserves more attention. Implementing and applying existing intellectual property rights should be monitored, implemented and complied with to a much greater degree.

Sustainability

The Austrian Federal Economic Chamber supports multilateral, regional and bilateral negotiations aiming at improving and implementing social and environmental standards. Apart from other considerations it seems desirable to strive for a level playing field by achieving a fair competitive business environment and considering the fact that many states try to attract business one way or the other. Undesirable "races to the bottom" concerning these standards should be avoided.

International and possibly multilateral rules on core labour or environmental standards should be designed, negotiated and monitored by the specialised, competent and technically qualified international organisations or networks dealing with them, eg. the UN, the OECD, the Council of Europe, ILO and a variety of multilateral environmental agreements (MEAs). These international organisations and networks must also provide themselves with the instruments necessary to guarantee the standards they agree upon. Enhanced and increasingly institutionalised cooperation between related networks adhering to comparable objectives of sustainable trade and development, promises better impact on their implementation (eg. Aid for Trade). However, it seems inconceivable that implementing instruments are taken out of a certain set of international or multilateral rules (eg. trade sanctions out of a system of trade rules) in order to implement a completely different set of rules (eg. social, foreign policy, environment, military standards and objectives etc.). Such non-system instruments will never work! Non-trade concerns should not be achieved by using (restrictive) trade instruments! We repeat: The focus of common EU trade policy on primarily trade and economic priorities should clearly be maintained.

We also object to using protectionist, irregular or unilateral trade measures, be it for trade, social, environmental nor any other objectives.

Well targeted and coherent technical aid, policy and capacity building as well as intensified cooperation between sustainability-oriented national and international networks, institutions and organisations should be actively supported. The Aid for Trade-Initiative could serve as a role model for making related networks pursuing the same objectives.

It furthermore seems clear, that incentives and active policy-making based on clear, transparent, predictable rules appear preferable to abusing (restrictive) trade instruments for implementing social and environmental standards.

Legal Certainty, Predictability and Coherence

Legal certainty, predictability and coherence are indispensable elements of all trade policy instruments with regard to practical usability for economic operators. The Austrian Federal Economic Chamber reiterates its strong criticism of the Commission's intention to abolish the preferential proof of origin Form A in the course of the reform of the GSP preferential rules of origin because of its negative impact on legal certainty for EU-importers under the GSP. The Austrian Federal Economic Chamber holds the view that in bilateral free trade negotiations exceptions from the EU standard set of preferential rules of origin should only be envisaged, if they appear to be indispensable in order to obtain substantial concessions, as a system of preferential rules of origin, that gets more and more incoherent, is difficult to manage for economic operators and therefore generates little incentive to be used.