

AmCham EU Position Paper on the European Commission's new Trade and Investment Strategy

Shaping future EU trade strategy: thoughts from AmCham EU

* * *

AmCham EU speaks for American companies committed to Europe on trade, investment and competitiveness issues. It aims to ensure a growth-orientated business and investment climate in Europe. AmCham EU facilitates the resolution of transatlantic issues that impact business and plays a role in creating better understanding of EU and US positions on business matters. Aggregate US investment in Europe totalled €2 trillion in 2014 and directly supports more than 4.3 million jobs in Europe.

* * *

20 October 2015

Introduction

The American Chamber of Commerce to the EU (AmCham EU) supports the European Commission's initiative to update the European Union's (EU's) trade and investment strategy to meet the needs of the 21st century. **According to the European Commission, 31 million jobs in the EU depend on trade and 1 in 7 jobs depend on exports.** The right regulatory framework for trade, and inward and outward investment is a critical component in the quest to enhance jobs and growth in the EU. AmCham EU would like to highlight that in order to be successful and have a meaningful impact for EU citizens and businesses, the EU's trade strategy should:

- Take into account the new challenges and opportunities presented by global trade, such as the increasing complexity of global value chains, digitalisation, and technical barriers to trade.
- Ensure clear leadership and increased resources in order to tackle these challenges head-on, seize opportunities to the benefit of EU citizens and business and deliver on the new trade strategy.
- Build awareness, understanding, engagement and support from all EU institutions, Member States and stakeholders. While the European Commissioner for Trade and the Directorate-General (DG) for Trade should lead, all have a role to play in shaping and successfully executing the EU's trade policy.
- Aim to conclude the Doha Development Agenda negotiations at the WTO Ministerial Conference in December 2015 and pave the way towards progress on other trade liberalisation initiatives within a strengthened WTO.
- Advance and intensify trade negotiations with the EU's key trade partners with a view to comprehensive and ambitious new market opening.
- Accelerate the implementation of agreed trade agreements and strengthen ongoing cooperation mechanisms.
- Include ambitious investment provisions in all EU trade and investment agreements.
- Develop effective methods for regulatory cooperation with our trading partners, notably to avoid duplication of processes and create synergies and efficiencies between competent authorities that have equivalent regulatory objectives.

New challenges and opportunities of global trade

Increasingly sophisticated global supply and value chains, digitalisation, servicification, new means of communication, transportation and infrastructure have dramatically changed the way in which products are made and delivered. Indeed any single product is likely to include physical and service components from multiple countries around the globe. Unfortunately, out-dated regulations and behind-the-border barriers, forced localisation requirements, or unnecessarily divergent standards, in addition to tariffs, undermine the benefits of such developments. These dynamics underline the need for new or updated trade rulebooks and related policy reforms.

Clear leadership and increased resources

The Lisbon Treaty granted increasing powers to the European Commission and the European Parliament. Once a mandate has been given to the European Commission, all players should constructively play their roles as foreseen in the EU treaties. The European Commission must ensure that EU Member States, the European Parliament and civil society are adequately and sufficiently

informed and involved throughout the process of trade negotiations, to allow for democratic scrutiny as negotiated in the EU treaties.

The proliferation of trade negotiations and increased complexity of the issues covered also mean that significantly more resources need to be allocated, particularly to DG Trade, but also to other DGs and agencies involved in various aspects of trade and investment negotiations. Furthermore, as future trade policy will increasingly have to tackle non-tariff barriers and aim at achieving greater regulatory cooperation between trading partners, there is a clear need to enhance and streamline coordination among different Commission DGs involved. Finally, leadership by the European Commissioner for Trade, supported by the DG Trade, is essential to having a unified and common European approach to trade policy.

Transparency, communication and engagement

The Transatlantic Trade and Investment Partnership (TTIP) negotiations have highlighted the need for governments to communicate more effectively on trade policy, raising the threshold for transparency of negotiations and active engagement with all members of civil society before, during and following the negotiation process itself. AmCham EU supports a high level of transparency for all trade agreements, and appreciates the exemplary efforts made so far by the European Commission in the context of TTIP. In order to ensure meaningful results, AmCham EU nevertheless recognises the need in any negotiation to maintain confidentiality on certain critical elements.

It is important that the EU trade strategy acknowledges the evolving role of communication in the context of trade policy, and commits to a renewed effort to communicate the processes and facts related to all trade agreements. Such a strategy cannot be developed and implemented by the negotiators alone, but must include strong engagement and commitment from the European Commission as a whole, the European Parliament and EU Member States.

Reinvigoration of the WTO

AmCham EU continues to be a strong supporter of the multilateral trading system. The WTO is the centrepiece of the multilateral system, and its operational capability has been demonstrated - not only, but especially - via its dispute settlement system.

AmCham EU believes that it is time to bring the Doha Development Agenda (DDA) negotiations to a conclusion at the Nairobi WTO Ministerial Conference in December 2015. A crucial component of this will be the swift implementation of the Trade Facilitation Agreement, a deal which holds the potential to modernise the customs capabilities of numerous countries, provide technical assistance to those customs authorities in need, and facilitate the movement of goods across multiple trade networks, enabling less developed countries to establish and strengthen their role in global value chains. AmCham EU recognizes the instrumental role of the European Commission in encouraging WTO members to ratify the agreement in a timely manner.

A conclusion of the DDA should free the way to move ahead on other trade liberalisation initiatives and strengthening of the WTO. Future trade liberalization initiatives could for example include negotiation of sectoral agreements such as for machinery or chemicals. AmCham EU supports the contribution of plurilateral and sector-specific trade initiatives, provided that they bring about trade liberalisation, have gained sufficient backing of WTO members, and do not weaken the WTO as an institution. Special focus should be given to the negotiations for a Trade in Services Agreement

(TiSA) and Environmental Goods Agreement (EGA). Furthermore, AmCham EU welcomes the agreement recently achieved on the Information Technology Agreement (ITA).

Turning towards the future of the multilateral trading system, there is a clear need to review the WTO's approach to trade negotiations and update parts of its governance structure. For example, this could include a strengthened role for the WTO Secretariat, enabling it to take a stronger position in the negotiations. It could also include a reconsideration of negotiating principles, such as the single undertaking. Additionally, there should be means to have WTO members undertake commitments according to their actual economic weight and level of competitiveness. Finally, the WTO's future work programme must include additional issues that impact global trade today, such as investment, competition, subsidies, digital economy, and access to raw materials or energy.

Advancing trade negotiations with key partners

The aim of any trade negotiations is to facilitate access to markets and create jobs by eliminating existing trade barriers and preventing the emergence of potential future obstacles. The existing WTO rulebook clearly identifies certain areas to be addressed in trade negotiations, notably market access for agricultural and non-agricultural goods, services trade liberalisation, rules on trade facilitation, regulatory issues (technical barriers to trade, sanitary and phytosanitary measures), intellectual property rights, investment, competition issues and dispute settlement provisions. AmCham EU fully supports a comprehensive and inclusive trade policy approach.

Modern 21st century trade and investment agreements should include provisions enabling cross-border data flows and preventing the introduction of forced data localisation requirements. The liberalisation of data flows is essential for digital trade but is also underpinning other sectors that rely increasingly on such data flows to grow and develop. It is clear to AmCham EU that the immediate elimination of restrictions to data flows should happen with respect to current and future EU data protection rules, which fall outside of the scope of trade agreements.

AmCham EU supports the inclusion of sustainable development chapters in all free trade agreement, recognising that trade negotiations should complement rather than duplicate the work of specialised bodies and processes, such as the International Labour Organisation.

There is not a 'one size fits all' solution for the EU relationship with its different trade partners. AmCham EU supports individual approaches, taking into account existing specificities and hence leading to the development of the most appropriate and applicable formulae for each trading partner. For the EU's major trading partners, AmCham EU recommends:

- United States: continue comprehensive TTIP negotiations on ambitious terms, including a strong chapter on regulatory cooperation;
- Japan: continue FTA/EPA negotiations on ambitious terms, with a focus on the removal of non-tariff barriers;
- China: continue bilateral investment agreement (BIA) negotiations on ambitious terms, and – conditionally to the successful BIA conclusion and implementation – investigate the launch of FTA negotiations;
- Russia: make all efforts to achieve a normalisation of the bilateral relationship;
- Mercosur: make a thorough assessment of the state of play, and consider a parallel negotiation track with Brazil if appropriate;
- India: make a thorough assessment of the state of play, and adapt approach if necessary.

- Neighbourhood: enhancing trade and investment with Mediterranean, Eastern European and Middle Eastern countries should be part of the process of building political and economic stability in these regions.

Existing trade relationships, such as the FTA with Mexico or the EU-Turkey Customs Union, should be updated. When appropriate and feasible, the EU might consider opening up existing bilateral trade and investment agreements to further trade partners.

AmCham EU remains in favour of further trade liberalisation, and supports the consideration of the EU to launch other FTA negotiations (e.g. Australia, New Zealand) – provided this makes sense economically and such negotiations have the potential to be concluded successfully within a reasonable timeframe.

Speeding up implementation of agreements and strengthening ongoing cooperation mechanisms

The EU should work towards rapid ratification of finalised negotiations (Canada, Singapore, Vietnam, Ecuador and Economic Partnership Agreements with ACP countries). Extra resources need to be allocated to legal scrubbing and translation processes so that the benefits of such agreements can come into effect without delay.

In this context, AmCham EU supports the Commission's work to implement the EU-Ukraine DCFTA, expected to enter into force as of January 2016.

The EU trade policy must also give special attention to the implementation of FTAs. Sufficient resources have to be put in place to ensure follow up after an FTA has entered in force at technical and political level. Ongoing dialogue to address specific obstacles to trade and develop regulatory cooperation is essential in our globally integrated world.

In the absence of trade or investment negotiations, the EU should increase its efforts to make use of the EU's existing Market Access Strategy to ensure that market access and investment barriers are effectively removed. Such a strategy can only be successful with adequate resources, strong cooperation between EU and national level, and close engagement with the business community.

Supporting investment

Over recent decades, the world has witnessed a multiplication of foreign direct investments across the globe. AmCham EU supports the negotiation of ambitious investment provisions in all EU trade and investment agreements. These provisions should cover both market access and investment protection. A relaunch of negotiations for multilateral pre- and post-establishment investment rules would be the most effective means to achieve a global standard in this area.

AmCham EU recognises that some stakeholders have raised concerns about how investment protection provisions operate in practice. AmCham EU looks forward to constructively participating in the debate on the Investor-to-State Dispute Settlement (ISDS) system to ensure that investment provisions in FTAs meet the needs of business and society.

Improving Regulatory cooperation

In order to be comprehensive, free trade negotiations in the 21st century should go beyond the classical approach of removing tariffs to agricultural and non-agricultural goods, and barriers to trade in services. Strong chapters on regulatory cooperation, both for existing and on future regulations, bring major benefits for consumers and businesses alike. The main goal is to avoid duplication of processes and create synergies and efficiencies between competent authorities with equivalent regulatory objectives. In practical terms this may include:

- mutual recognition of standards when considered as equivalent;
- promotion and implementation of international standards;
- alignment – or harmonisation, if possible – of regulations;
- development of new joint standards;
- good regulatory practices,
- rules on transparency;
- stakeholder consultations;
- mutual recognition of test procedures and results once considered equivalent; and
- streamlining of regulatory cooperation processes, for example via establishment of annual regulatory cooperation programmes or by creating a political oversight body for regulatory cooperation.

Regulatory cooperation does not restrict a country's right to regulate, nor does it undermine the authority of democratically elected legislators to retain, adopt and apply laws they deem necessary in areas such as consumer protection, environment, health, and safety. Between like-minded trading partners, all efforts should be made to resolve current differences, avoid future ones, share information and cooperate on new technology. Cooperation between regulators should always be facilitated, without necessarily relying on regulatory solutions.
