SwissHoldings

ECONOMICS DEPARTMENT

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Trade and Investment Policy

Bilateral Relations between Switzerland and the EU

Executive Summary

Switzerland boasts an extensive web of Bilateral Agreements with the European Union (EU). The objective is to enhance and solidify the relationship between Switzerland and the EU through the revision of five existing agreements, alongside the incorporation of two novel internal market agreements and collaboration in the realms of research, education, and health. However, the EU has tethered this progress in the agreement network to the clarification of the Institutional Framework. To achieve this and further develop and stabilize the relationship between Switzerland and the EU, a package approach is now employed. Instead of addressing institutional matters comprehensively in a horizontal agreement, these issues are now individually addressed in each sector-specific agreement.

Stance

At its session on June 9, 2023, the Federal Council officially endorsed the long-awaited report on the assessment of relations between Switzerland and the European Union (EU). The evaluation confirmed the continued viability of the existing bilateral approach as the most advantageous solution for Switzerland. Shortly thereafter, during its sessions on June 21, 2023, The Federal Council established the key parameters for a negotiating mandate between Switzerland and the EU. These parameters serve as the foundational framework for subsequent negotiations with the EU. Subsequent to exploratory discussions with the EU, the Federal Council, in its session on November 8, 2023. On December 15, 2023, the Federal Council adopted a preliminary negotiating mandate concerning the so-called Bilaterals III. Concurrently, during the same session, the Federal Council granted approval and released the report documenting the outcomes of the exploratory discussions with the EU. An overview detailing the components of the package approach is available for reference here. In the following phase, the draft mandate will undergo a consultation process with the Foreign Affairs Committees of the Federal Assembly (FAC) and the Conference of Cantonal Governments (CCG). The Federal Council's objective is to commence negotiations with the EU expeditiously, considering the upcoming European elections in the summer of 2024, with the aim of avoiding unnecessary delays.

Position

The establishment of orderly and secure relations between Switzerland and the European Union (EU) is imperative for the mutual benefit of both entities. The EU member states retain significant importance as

trading partners for Switzerland, given its heavily export-oriented economy. Consequently, maintaining the successful trajectory of Bilateral Relations must remain a paramount objective. SwissHoldings acknowledges and appreciates the Federal Council's efforts to sustain the application of bilateral agreements with minimal disruptions.
In the perspective of the association, it is crucial to explore all unilateral measures within Switzerland's purview to enhance the framework conditions, thereby securing the competitiveness of our nation. This proactive approach aligns with the overarching goal of ensuring the continued success and effectiveness of the bilateral path.

Free Trade Agreement

Executive Summary

In addition to regulated trade relations, the strongly export-oriented Swiss economy also relies on a broad network of Free Trade Agreements (FTAs). Switzerland has succeeded in continuously expanding this network in recent years. It is particularly pleasing in this respect that the Federal Council recently achieved a breakthrough in the negotiations for an FTA with India at the beginning of the year after 16 years. This successful negotiation is of great strategic importance for the Swiss economy. Switzerland is also negotiating further agreements with Vietnam, Mercosur, Malaysia, Thailand, and Kosovo. It is also working on modernizing existing agreements.

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The Swiss economy maintains a strong international focus, engaging in extensive cross-border trade and investment activities. In light of this context, Switzerland's foreign policy emphasizes the continual enhancement of access to foreign markets. This objective is realized, among other measures, through the negotiation and conclusion of Free Trade Agreements with third countries.

Stance

In addition to the EFTA Convention and the Free Trade Agreement with the European Union, Switzerland has a network of 33 Free Trade Agreements with 43 partners worldwide. Together with the other EFTA states, Switzerland is currently negotiating Free Trade Agreements with six new partner states, namely India, Kosovo, Malaysia, Mercosur, Thailand, and Vietnam, and is investing in the modernization of various existing agreements such as those with Chile, Mexico, and the South African Customs Union.

Position

The expansion of the network of Free Trade Agreements holds significance for the export-oriented Swiss economy and, consequently, for the member companies of SwissHoldings. This is especially pertinent amid the backdrop of escalating trade conflicts globally, a diminishing influence of the World Trade Organization (WTO), and a rise in general protectionism.

Investment Controls

Executive Summary

The implementation of an Investment Review aims to forestall the acquisition of domestic companies by foreign investors, especially when such takeovers pose a threat to public order or security in Switzerland. In pursuance of this objective, the Federal Council endorsed the dispatch for an investment screening act on December 15, 2023. The primary focus of the investment review will be on investors under state control and domestic companies operating in particularly critical sectors. The Committee of the First Council will address this matter in the upcoming year.

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The implementation of an Investment Review is designed to forestall the acquisition of domestic companies by foreign investors, particularly if such takeovers jeopardize public order or security in Switzerland. Consequently, takeovers of domestic companies operating in particularly critical sectors by foreign, state-controlled investors are subject to an approval requirement. These critical sectors encompass armaments and goods for civilian and military use, electricity grids and production, water supply, as well as healthcare, telecommunications, and transportation infrastructure. Generally, small companies are exempt from these provisions.

Stance

At its meeting on May 18, 2022, the Federal Council published the preliminary draft for a new Investment Control Act and submitted it for consultation. Parliament had previously called for a corresponding legal basis by adopting Motion 18.3021 Rieder, proposing the introduction of a notification and approval requirement for certain takeovers of domestic companies. At its meeting on December 15, 2023, the Federal Council adopted the dispatch on the matter for the Parliament.

Position

Foreign Direct Investment (FDI) holds significant importance for Switzerland. In the small and open Swiss economy, the prosperity of the population and the competitiveness of companies depend directly on their integration into global value chains. Given that Swiss companies themselves are among the largest direct investors abroad, Switzerland has a particular interest in ensuring that access to international investment markets is as non-discriminatory and transparent as possible. This goal is most likely to be achieved if Switzerland remains open to foreign investment.

- As part of the consultation process, the Federal Council presented a Regulatory Impact Assessment (RIA) on the preliminary draft. The RIA concludes that the cost-benefit ratio of such a new law is unfavorable; for this reason, the committee continues to oppose the introduction of an investment review, deeming the existing legal framework sufficient. SwissHoldings supports this position.
- However, the question of whether Switzerland should introduce an investment review cannot be assessed in isolation from

international developments. If restrictions on certain foreign investments are introduced universally by OECD member states, this must be taken into account when assessing the Swiss regulatory approach, not least to prevent a pull effect on the Swiss economy.

Investment Protection Agreements

Executive Summary

SwissHoldings closely follows the developments surrounding the investment agreements and emphasises the great importance of these agreements for Switzerland as a business location. With over 111 Bilateral Investment Protection Agreements (BITs), Switzerland boasts the third-largest network of such agreements globally. These agreements serve as a crucial pillar in enhancing Switzerland's appeal as a business location. Currently, an agreement is being formulated with Indonesia, and SwissHoldings is actively monitoring the developments surrounding these investment agreements, emphasizing their significant importance for Switzerland as a business destination.

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Switzerland maintains a network of 111 Bilateral Investment Protection Agreements (BITs), positioning it as the third-largest global network after Germany and China, according to UNCTAD. By entering into Investment Protection Agreements (IPAs), Switzerland enhances the regulatory framework, thereby augmenting its attractiveness as an international investment destination.

Stance

With a change in practice by the Federal Council, Investment Protection Agreements (IPAs) are now subject to an optional state treaty referendum, in addition to free trade agreements. The first IPA undergoing consultation is the new agreement with Indonesia, addressing the contractual gap that emerged since the expiration of the previous agreement in 2016.

Position

Direct investments are key for Switzerland: the prosperity of the population and the competitiveness of companies in the small and open Swiss economy depend directly on their integration into global value chains. Investment promotion and protection agreements play an essential role here: foreign investments not only entail economic risks for companies, but also political risks. This makes treaties between states to protect and promote foreign investment activity even more important.

Effective investment protection requires an investor-state arbitration mechanism: investor-state dispute settlement procedures have proven their worth both for Switzerland and for Swiss companies. They build on existing international structures (ICSID, UNCITRAL) and enable disputes to be resolved in a relatively timely, objective and politically independent manner.

Corporate Social Responsibility

Corporate Responsibility

Executive Summary

The Responsible Business Initiative faced rejection at the ballot box on November 29, 2020, leading to the enactment of the indirect counter-proposal. Swiss companies are set to adhere to the new regulations for the first time in 2024, covering the 2023 financial year. Additionally, the Federal Council has indicated its intention to review the adaptation of laws in alignment with the EU's evolving regulatory approaches in the realms of sustainability reporting and due diligence. A consultation draft on reporting is slated for release at the beginning of June.

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The emerging regulatory approaches in sustainability aim to embed Prof. John Ruggie's three-pillar principle to promote compliance with human rights and environmental regulations in the value chains of globally active companies, including legislative considerations.

Stance

In the aftermath of the Responsible Business Initiative's rejection, the indirect counter-proposal, primarily modeled on the corresponding regulatory approaches of the EU in sustainable corporate governance, has been enacted. Given the EU's continuous expansion of provisions in this domain, Switzerland is currently evaluating potential amendments to relevant laws. A consultation draft on Environmental, Social, and Governance (ESG) reporting is expected in early June.

Position

Many Swiss companies have recently invested substantial efforts in complying with the new due diligence and reporting obligations in Switzerland. The first reports are anticipated next year. The business community urges the Federal Government to coordinate extensively across departments for upcoming tasks in this domain and to avoid overburdening companies. Any adjustments resulting from new regulatory projects should adhere to established practices, including a careful assessment of cost implications for companies. Importantly, the dynamic nature of ESG regulation outside the EU must be considered, given the broad global base of the Swiss economy. Over 50 percent of its exports presently go to countries outside the European Union. To prevent duplication, close coordination with globally applicable ESG standards is essential.

Collective Legal Protection

Executive Summary

Switzerland is presently undergoing political deliberations on the potential expansion of its existing array of collective redress instruments. In December 2021, the Federal Council issued the corresponding dispatch for parliamentary consideration. However, from the business community's perspective, the bill is not ripe for parliamentary discussion. The Federal Council's proposal is criticized for approaching dispute resolution from a limited perspective, exclusively focusing on a specific procedural law instrument.

It fails to consider international developments in recent years, new technological possibilities, and potential alternatives to court-based class actions.

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The proposed class action bill entails the expansion of the existing class action, the creation of a new class action for pursuing compensation claims, and a novel option for settlements declared binding by the courts.

Stance

In December 2021, the Federal Council presented the dispatch on the class action bill and forwarded it to Parliament. Last June, the National Council's Legal Affairs Committee (RK-N) commenced its deliberations on the matter, expressing reservations about the Federal Council's proposal. Consequently, the committee opted not to take a stance on the bill at the moment and tasked the Federal Office of Justice (FOJ) with conducting extensive further investigations. However, the audit reports from the administration, now available (see also the media release from the RK-N) only minimally address the committee's valid fundamental concerns regarding the introduction of class action instruments. This stands in stark contrast to ongoing discussions at the EU level, where comprehensive "safeguard" measures to mitigate potential risks of abuse of these instruments are being considered. Such measures include a fundamental ban on commercial litigation funding or a general restriction on access to ordinary civil proceedings through a preliminary examination clause. Consequently, the Commission decided at the beginning of July, during its last deliberation, that an extended examination of security measures and validation of the existing RFA report through direct interviews with companies is necessary before deciding on further proceedings. The Commission is expected to resume its deliberations in the first quarter of 2024.

Position

For the economy, the emphasis lies in efficiently balancing the interests of various parties. Various instruments serve this purpose, with international developments indicating the empirical superiority of certain instruments over others. Therefore, it is crucial that the discussion takes place at an appropriate level. The Federal Council's assertion of the need for action in the dispatch at the civil proceedings level means that significant alternatives are excluded from the outset. This exclusion must be countered by the analyses commissioned by the Commission. The investigations by the Federal Administration aim to demonstrate how other countries are addressing tensions arising from the phenomenon of mass and scattered damages. Notably, the promising model in Scandinavian countries deserves special attention, given the overwhelmingly positive experiences with this approach in Scandinavia.

Accounting and reporting

IFRS Standardization

Executive Summary

SwissHoldings diligently monitors developments in the realm of IFRS standardization. For its globally engaged members, the presence of a universally recognized reporting standard holds pivotal significance as the foundation for their own reporting. Following the convergence process with the US standard US GAAP, the evolution of standards has somewhat stabilized. Additionally, the IFRS Foundation's newfound focus on ESG reporting is progressively assuming a more prominent role in the organization's undertakings.

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The IFRS Foundation functions as a non-profit foundation, aiming to formulate high-quality global accounting standards, promote the utilization and implementation of these standards, and facilitate the alignment of national accounting standards with its global counterparts. The Foundation supervises the activities of both the IASB (International Accounting Standards Board), responsible for financial standards, and the ISSB (International Sustainability Standards Board), responsible for non-financial standards.

Stance

In the recent period, the IASB concluded two projects: "Business Combinations under Common Control" and "Extractive Industries." Additionally, work on the IAS 32 project (Classification as Equity or Liabilities) continued. Simultaneously, the ISSB, the collaborating standard-setting partner, is making progress in the realm of sustainability reporting. In recent weeks, the ISSB released the initial two standards (S 1 and S 2). S 1 pertains to the overarching level, delineating principles for presenting sustainability-related opportunities and risks in a comprehensive manner. On the other hand, S 2 specifically addresses climate-related reporting. SwissHoldings remains actively engaged in monitoring the activities of the IFRS Foundation and contributing to pertinent consultations on behalf of its members.

Position

The detailed positions are shown in the association's statements.

Capital Markets

Monetary Policy SNB

Executive Summary

In these unprecedented times, the Swiss National Bank (SNB) is increasingly drawing attention. Several motions have been addressed at the parliamentary level, aiming to link the SNB's distributions to specific purposes. Additionally, recent proposals have surfaced advocating for a reform of the SNB's governance structure. Ensuring the bank's ability to operate independently of political interests is of paramount importance. The Swiss National Bank (SNB) operates under a distinct mandate: to uphold price stability, a critical factor in our prosperity.

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Stance

SwissHoldings will diligently monitor ongoing developments. From the association's standpoint, the SNB's current trajectory has proven effective. The organization is wary of any potential "politicization" or additional earmarking of the SNB's profits.