SwissHoldings

ECONOMICS DEPARTMENT

Contact **Denise Laufer** Head Economics & Member Executive Committee

denise.laufer@swissholdings.ch

+41 (0)76 407 02 48

Trade and Investment Policy

Bilateral Relations between Switzerland and the EU

Executive Summary

Switzerland has a dense network of bilateral agreements with the EU. By updating five existing agreements with two new internal market agreements and based on cooperation in research, education, and health, the Swiss-EU relationship is to be further developed and stabilized. However, the EU has linked this further development of the network of agreements to a clarification of the institutional framework. The package approach is now to be used for this purpose. Instead of regulating institutional issues as a whole in a horizontal agreement, these issues are now to be resolved individually in each agreement on a sector-specific basis. SwissHoldings welcomes the Federal Council's efforts, based on a new package of agreements with the EU ("Bilaterals III"), to put existing relations on a solid and lasting footing. At the same time, the association believes it is important to work towards an even better understanding of the longer-term effects of the dynamic adoption of legislation on Switzerland as a business location before concluding an agreement with the EU.

Stance

At the end of December 2023, the Federal Council adopted the draft negotiating mandate with the EU for the so-called "Bilaterals III" and submitted it for domestic political consultation. At the heart of this mandate is a package approach. Instead of regulating institutional issues as a whole in a horizontal agreement, these issues are now to be resolved individually in each agreement on a sector-specific basis. SwissHoldings participated in the consultation process with its own submission. On Friday, March 8, 2024, the Federal Council formally adopted the final mandate for the EU negotiations.

Position

SwissHoldings welcomes the Federal Council's efforts to continue to place existing relations on a solid and lasting footing based on a new package of agreements with the EU ("Bilaterals III"). The bilateral treaty relations between Switzerland and the EU, along with their significant achievements, have proven their worth for both sides. The conclusion of the planned negotiation package should have a direct positive impact on SwissHoldings member companies in various ways. The existing market access agreements can be consolidated and further developed, and new market access agreements can be concluded.

The dynamic adoption of evolving EU law, in combination with the introduction of an institutionally anchored dispute resolution mechanism,

creates reliable and predictable framework conditions for Swiss companies but may also entail further integration steps for Switzerland. However, there is a lack of reliable scenario analysis to assess how the newly planned institutional elements will affect the future shape of Swiss economic policy in general; also in the context of expected developments at a higher political level. SwissHoldings would welcome it if the Federal Council could present a corresponding report at the start of the negotiations to conduct the negotiations with a view to the longer-term effects on Switzerland's competitiveness as a business location.
The assessment of the benefits of the treaty package must also take into account the necessary domestic political concessions.

Free Trade Agreement

Executive Summary

The Swiss economy has a strong international focus and engages in extensive cross-border trade and investment activities. Therefore, improving access to foreign markets, especially through free trade agreements, is a central focus of Swiss foreign policy.

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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. The latest breakthrough after 16 years in the negotiations for an FTA with India is particularly pleasing. The signing of the agreement on March 10, 2024 in Delhi between the EFTA states (Switzerland, Iceland, Liechtenstein and Norway) and India is a significant milestone in Swiss trade policy. China and Switzerland recently agreed to start talks on expanding their free trade agreement. Economics Minister Guy Parmelin emphasized the importance of free trade, while Switzerland exported goods worth CHF 40.6 billion to China in 2023.

Stance

The Swiss economy has a strong international focus and maintains extensive cross-border trade and investment activities. A central focus of Swiss foreign policy is to improve access to foreign markets through Free Trade Agreements. In addition to the EFTA Convention and the Agreement with the EU, Switzerland has 33 Free Trade Agreements with 43 partners worldwide. Switzerland is currently negotiating with six new partners, including Kosovo, Malaysia, Mercosur, Thailand, and Vietnam, and is modernizing existing agreements, such as those with Chile, Mexico, and the South African Customs Union. China and Switzerland have also agreed to expand their Free Trade Agreement.

Position

Particularly against the backdrop of growing trade conflicts worldwide, the declining influence of the World Trade Organization (WTO), and growing protectionism in general, the expansion of the network of Free Trade Agreements is extremely important for the export-oriented Swiss economy and, thus, also for the member companies of SwissHoldings.

Investment Controls

Executive Summary

The introduction of an investment review is intended to prevent takeovers of domestic companies by foreign investors if they endanger public safety. The WAK-N adopted the draft by 18 votes to 6 and made adjustments to sector-specific thresholds.

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The introduction of an investment review is intended to prevent takeovers of domestic companies by foreign investors if these takeovers endanger or threaten public order or security in Switzerland. To this end, takeovers of domestic companies operating in a particularly critical area by foreign state-controlled investors will be subject to an approval requirement. These areas include military equipment and goods for civilian and military use, electricity grids and production, water supply facilities and healthcare, telecommunications and transportation infrastructure. Small companies are generally exempt from the provisions. The WAK-N adopted the draft by 18 votes to 6 and made adjustments to sector-specific thresholds in order to increase legal certainty.

Stance

At its meeting on May 18, 2022, the Federal Council published the preliminary draft for a new Investment Control Act and subsequently submitted it for consultation. Parliament had previously called for a corresponding legal basis by adopting Motion 18.3021 Rieder. The proposal is to introduce 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 attention of Parliament. The draft bill was discussed by the WAK-N and adopted in the overall vote on June 24/25, 2024, which was then published on July 8, 2024.

Position

Foreign direct investment is of central importance for Switzerland, as it significantly promotes prosperity and competitiveness in our small and open economy. SwissHoldings advocates for a lean law that minimizes the burden on investors, while enabling the necessary controls to ensure integration into global markets. As part of the consultation process, the Federal Council presented a regulatory impact assessment on the preliminary draft, which reveals an unfavorable cost-benefit ratio for a new law. 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 across the board 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 monitors developments regarding investment agreements and underscores their significant importance for Switzerland as a business hub. With over 111 bilateral investment protection agreements, Switzerland boasts the world's

third-largest network of such agreements. Following a shift in practice by the Federal Council, International Investment Agreements (IIAs) are now also subject to an Optional State Treaty Referendum, alongside Free Trade Agreements. The initial IIA undergoing consultation is the new agreement with Indonesia.

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Switzerland has a network of 111 bilateral investment protection agreements (BITs). According to UNCTAD, this makes Switzerland the third-largest network of such agreements in the world after Germany and China. By concluding ISAs, Switzerland improves the framework conditions and thus its attractiveness as a location for international investments.

Stance

Due to a change in practice by the Federal Council, ISAs are now also subject to an optional state treaty referendum in addition to Free Trade Agreements. The first ISA to be subject to consultation is the new ISA with Indonesia. The agreement closes the contractual gap that has existed since the previous agreement expired in 2016. SwissHoldings remains vigilant in monitoring the regulatory landscape concerning investment agreements, emphasizing the significant role of IIAs and international arbitration in bolstering Swiss companies and Switzerland as a business destination.

Position

Direct investments are pivotal for Switzerland, as the prosperity of its populace and the competitiveness of its businesses in the small and open economy are directly contingent upon 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 all the more important.

Efficient investment protection necessitates an investor-state arbitration mechanism: Investor-State Dispute Settlement (ISDS) procedures have demonstrated their efficacy for both Switzerland and Swiss enterprises. 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 rejection of the Responsible Business Initiative occurred via ballot on November 29, 2020, consequently ushering in the enforcement of the indirect counter-proposal. Swiss entities will commence reporting under the new regulations for the first time in 2024, covering the 2023 financial year. Furthermore, the Federal Council has disclosed its intention to explore adjustments to the legislation that align with the European Union's updated

regulatory strategies concerning sustainability reporting and due diligence.

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Developments worldwide (e.g., within the OECD), particularly in the EU, have progressed in recent years both in the areas of non-financial reporting and—after fierce political wrangling—in the area of due diligence obligations. The EU has adopted numerous regulations as part of its Green Deal, also with the aim of establishing itself as a global standard setter. There is a close connection between the OECD's new MNE Guidelines and the EU Supply Chain Regulation (CSDDD). The OECD had already drawn up far-reaching recommendations before the EU, which the EU is now implementing in a legally binding manner and with bureaucratic additions, including a supervisory authority at the EU member state level. This race for leadership in regulatory standard setting is also reflected in the strong extraterritorial focus of EU regulations: Swiss companies are directly and indirectly affected by the rules.

Stance

At the end of June, the Federal Council opened the consultation on the expansion of sustainability reporting rules in Switzerland (see also Link to the press release and the documents). The consultation will last until October 17, 2024. As part of the preparation of the preliminary draft, the Federal Administration examined several options for this expansion of the rules: 1. "Full implementation" of the new *EU Corporate Sustainability Reporting Directive* (CSRD), 2. "Partial implementation" of the CSRD and 3. maintaining the "status quo" - whereby the committee opted for the option of "partial implementation" of the EU directive and proposed this accordingly in the preliminary draft. At the same time, the Federal Council also published an update on its strategy regarding the new EU due diligence directive (CSDDD). It emphasized that it would like to have the impact on Swiss companies assessed by an external study by autumn 2024 and then determine the next steps.

Position

Many Swiss companies have recently made considerable efforts to implement the new due diligence and reporting obligations set out in the counter-proposal to the Responsible Business Initiative. The first reports will be published by these companies this year. The business community would like to see the Federal Government coordinate closely across departments with regard to the upcoming further work in this area and, in particular, not overburden companies. The review of an adjustment as a result of new regulatory projects at the EU level should always be carried out based on established practice, including a careful assessment of the cost consequences for companies. Last but not least, it should also be borne in mind that developments in the area of ESG regulation are very dynamic outside the EU as well. The Swiss economy has a broad global base, with just over 50 percent of its exports currently going to countries outside the European Union. To avoid duplication, close coordination with the globally applicable ESG standards is also required, although neither Switzerland nor other jurisdictions outside the EU are familiar with the centralist, or to some extent even planned economy, approach pursued by the EU Green Deal. Furthermore, there are even opposing trends in some cases. For example, the U.S. Securities and Exchange Commission (SEC) recently delayed a further expansion of the climate reporting rules for listed companies. To avoid duplication, it is crucial that coordination is not carried out exclusively with the new EU rules but rather with the globally applicable approaches and standards. In addition, it remains to be seen what impact the new strategic priorities agreed at the EU level will have on the implementation of the new directive in the member states and whether the EU will even partially recalibrate the EU Green Deal.

Collective Legal Protection

Executive Summary

Switzerland is currently examining at a political level whether it should expand its existing range of collective redress instruments. In December 2021, the Federal Council adopted the corresponding dispatch for the attention of Parliament. The business community is critical of these efforts. The Federal Council views dispute resolution from too limited a perspective and focuses exclusively on a specific instrument in Procedural Law in its proposal. It does not take into account the developments abroad in recent years, the new technological possibilities, and possible alternatives to class actions before the courts.

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According to the Federal Council's dispatch, the Class Action bill provides for the existing Class Action to be expanded, a new Class Action to be created to assert claims for compensation and a new option for settlements declared binding by the courts.

Stance

The introduction of Class Actions has been under discussion in Switzerland for over ten years. The National Council's Legal Affairs Committee has been discussing the introduction of extended Class Actions and group settlements for two years. This week, the committee once again failed to act on the bill. Instead, it has tasked the administration with clarifying how the bill should be viewed in light of the ECtHR ruling in favor of the Swiss "climate senior citizens" (see also press release from the Committee on Legal Affairs). The bill will therefore not be discussed by the National Council until the fall session at the earliest.

Position

The business community clearly rejects the Federal Council's proposal for the introduction of extended representative Actions and Class settlements. This was also evident from the recently published survey conducted by the Sotomo Research Center under the direction of renowned political geographer Michael Hermann. It is unnecessary and dangerous. A look abroad confirms this. There is no reason to follow such undesirable developments in Switzerland. The proposal should therefore no longer be pursued. Efficient dispute resolution instruments exist for the efficient settlement of collective claims outside of civil proceedings and therefore outside of courtrooms. Especially in the wake of current technological developments, solutions are possible here, which are significantly superior to the Federal Council's ten-year-old proposal. Switzerland would do well to focus on the right technology instead of introducing outdated and obsolete instruments into our legal system.

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.

Content

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, the International Accounting Standards Board (i.e. the Board that issues the financial standards) and the ISSB, International Sustainability Standards Board (i.e. the Board that issues the 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

Initial Situation of Switzerland as a Financial Center

Executive Summary

The merger between Credit Suisse and UBS, which was agreed upon in March last year, has changed the competitive situation in the Swiss financial center. The merger of the two largest players

in the market was likely acceptable in view of the crisis situation. Conversely, it would not be in the interests of Swiss companies or the economy as a whole if this concentration now led to market distortions or to a poorer or more expensive range of financial services, where competition may no longer play a role.

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FINMA had already informed the Competition Commission (COMCO) prior to the publication of the merger of the two banks that it would claim responsibility for the Competition Law assessment, as provided for by law. However, it subsequently invited COMCO to issue a statement in which it evaluated the impact of the merger on the effectiveness of competition based on market clarifications and statements from competitors, associations, and specific clients.

Stance

FINMA communicated in mid-June 2024 that it had concluded the antitrust control proceedings on the merger between UBS and Credit Suisse without any conditions, requirements or further reviews. (Link to the statement) In its review proceedings, the authority came to the conclusion that the merger between UBS and Credit Suisse would not eliminate effective competition in any market segment, even if UBS was able to strengthen its market position in certain sub-segments. The legal requirements for merger control are therefore not met.

Position

Our association has dealt intensively with the effects of the merger between Credit Suisse and UBS on the Swiss financial market. The office sought an early exchange with members in order to understand how they view the new competitive situation in the Swiss financial center and whether they suspect future gaps in certain services or business areas. This was done in parallel with the COMCO proceedings, which in turn identified various challenges. Nevertheless, it should be noted that developments are dynamic: The integration of the two big banks is still in its infancy - until recently, the two banks (UBS and Credit Suisse) have largely appeared on the market as two different banks. In addition, it is currently unclear to what extent foreign banks can and want to establish themselves on the Swiss market.