

THE NEW BILATERAL TRADE AGENDA OF THE EUROPEAN UNION:

Position Paper by the Austrian Federal Chamber of Labour

Authors:

Elisabeth Beer
Éva Dessewffy
Werner Raza
Norbert Templ
Valentin Wedl

Austrian Federal Chamber of Labour

Prinz Eugen Straße 20-22, A-1040 Vienna, Austria

Tel: ++43 1 50165-2388

Fax: ++43 1 50165-2199

www.arbeiterkammer.at

www.akeu.at

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Summary and demands of the BAK

With the strategy paper „Global Europe – Competing in the World“, dated October 2006, the European Union presents a reorientation of the Common Commercial Policy. It moves the accent away from the multilateral WTO negotiations to the bilateral approach. The Federal Chamber of Labour (BAK) on the other hand prefers multilateral negotiations compared to bilateral ones, as bilateral free trade agreements undermine WTO negotiations. The BAK looks favorably upon focusing on sustainable development and the establishment of minimum labor- and environmental standards. If the EU should decide on the negotiation of bilateral free trade agreements with the countries listed in the strategy paper, the following demands should be taken into consideration from the view of the BAK:

Sustainable development: Establishing binding social and environmental standards

- In terms of sustainable development, future free trade agreements must **equally** take into account social and ecological targets as well as economic interests. By all means, regulations as to the implementation of and **compliance with Core Labour Standards (CLS) by the International Labor Organization (ILO)** should become an integral part of future bilateral trade agreements. By independent **monitoring and the possibility of imposing sanctions** the compliance with these norms is ensured. Market access for products from countries in which the CLS violated must be prevented by the EU.
- Establishing **formal participation structures** for regular evaluation of the agreements under integration of the employer associations, employee organizations and civil society. Furthermore trade and employment questions are to be discussed so that emerging problems can be comprehensively examined and solved.
- The BAK demands an explicit ban on **export production zones**. The non-compliance with CLS applies particularly to so-called export production zones; These virtually represent an unlegislated area with respect to a national labor law.
- **Sustainability Impact Assessments (SIA) should be taken seriously:** SIAs should offer a decision-making basis concerning the entering of negotiations. Their results should be presented before negotiations, be carried out by independent institutes and also implemented by the EU.

Stronger consideration of the development level of the trade partners

- With regard to tariff reductions and reductions of quantitative import restriction the EU should waive **reciprocity** concerning developing countries. At any event should the development status of the trading partners be taken into account when considering requests for tariff reduction.
- Provision of **financial means** for the compensation of reduced tariff revenues and for the modernization of the tax systems in the partner countries. Organizational and

technical know-how is to be promoted so that the EU's existing preferences relating to trade can be utilized more efficiently.

- Establishment of institutionalized **monitoring and control mechanisms** so that the negative consequences of the trade opening on the economic structures can be identified on time. Establishment of **safeguard- and revision mechanisms** in order to adjust negative developments.

Trade in Goods

- **Manufactured goods: No tariff reductions for textiles, clothes and shoes**

In the face of the expired WTO textiles agreement and the resulting elimination of quantity restrictions since 2005, further concessions with regard to access to the European market are to be ruled out.

- **Trade defense and anti-dumping provisions**

It must be guaranteed that existing trade-defense instruments are applied if unfair trade practices or grave structural problems are detected in a certain line of business.

- **The withdrawal of preferential duties in case of failure to comply with human rights, minimum labor- and environmental norms must be possible.** The autonomous possibility of the EU to withdraw preferences when human-rights, labor- and environmental standards are violated, needs to be maintained.

- **Support of fair trade**

The BAK demands that products which comply with social and ecological minimum standards are imported into the EU free of duty.

- **Agriculture:** scope for tariff-reduction

Sensitive products (beef, butter, milk and sugar) which enjoy internal and export subsidies, should not additionally be protected by high tariffs.

Securing services of public interest

- **No further liberalizations of public services**

In the framework of bilateral trade policy, the BAK also decidedly rejects a further liberalization of public services such as water supply and disposal, health and social services, education, audio-visual and cultural services and public transport. The European Commission must not offer market liberalization for these essential elements of the European social model. The BAK also rejects requests to other countries regarding market liberalizations in these areas.

Investment/Establishment

- The BAK rejects a **shift of competence** to the EU level concerning investment
- **Exceptions to free market access and national treatment** in order to safeguard national policy objectives need to continue to be possible.
- The agreement of a comprehensive **most-favored-nation clause** in support of EU investors is rejected by the BAK. Instead we suggest a contractual review mechanism in order to be able to correct discrimination of EU companies.

Public procurement

- **Existing social and ecological standards need to be maintained**
The BAK demands that the Austrian regulations as to the consideration of social and ecological issues definitely need to be maintained in the context of international public tenders. The state must continue to act as a role-model.
- **Exceptions to market access and national treatment for developing countries should be possible**
The BAK also argues for the EU to allow exceptions to free market access and national treatment regarding tendering procedures of their trading partners for reasons of development and regional policy.

I. INTRODUCTION

With the communication "Global Europe: Competing in the World", dated October 2006, the Commission performs a shift in direction of their trade policy from multilateral to an enforced use of bilateral agreements. The new type of bilateral agreement is essentially based on two aims: On the one hand liberalization should be possible beyond WTO obligations respectively obligations from existing agreements (WTO+ agreement). Economic potential (size and growth) and extent of existing trade barriers towards the EU are criteria, which were exclusively relevant for the selection of ASEAN countries (Brunei, Indonesia, Cambodia, Laos, Malaysia, Myanmar, the Philippines, Thailand, Singapore, Vietnam), India and South Korea as well as the Andean Community of Nations and Central America as future partner countries. The current negotiations with the ACP-States, which will be concluded at the beginning of 2008, play another important role. Furthermore, negotiations with the Mediterranean countries (Euromed-countries) regarding market liberalization for European service providers and investors are on-going.

On the other hand sustainable development is to be granted an important place. Improved environmental protection and decent labor conditions are mentioned as the goals which are to be achieved by the "promotion of compliance" with international environmental and social standards. Trade Commissioner Peter Mandelson and also the Commission-President Barroso have publicly argued for the integration of labor standards into the new bilateral agreements in an out of the ordinary distinctiveness.

The BAK takes a critical approach to the commercial policy which is based on the neo-liberal world economic model. Empiricism proves, that market liberalization and market deregulation do not necessarily lead to more prosperity and economic growth, but are responsible for structural problems and the resulting rise of unemployment, greater poverty, etc. unless these are accompanied by redistribution measures. Decades of protectionist investment- and economic policy have been a decisive factor for the development of the social welfare state of European design. Only that way can stable domestic economic structures develop. This promising development should also be granted to today's developing countries and emerging markets. In this respect we express our disapproval with demanding concessions from third countries with regard to market access for European countries for short-term profits. The economic strength of the EU brings disproportionate negotiating power compared to the countries in Latin America, Asia or Africa. Thus, the internationalized European economy can generate large profits and win market shares on the basis of these imbalances in power. The advantages are not so clearly obvious, however, for workers in the European Union. Possible trade increases, for example with the Asian countries, are set off by negative effects due to shutdowns or relocations of companies in the EU and Austria. Recent experiences gained after the phase-out of the WTO textile & clothing agreement have clearly shown this.

For Austria foreign trade is undoubtedly an increasingly important economic sector. The Austrian foreign trade for example with Asia has developed very dynamically in the last years. Above average export increases of more than 30% in the year 2006 were generated in this region. The export volumes with the trading partners of the new bilateral EU trade agenda, are consistently low though. The most important markets China and India constitute 1,6% of the overall Austrian exports (2005). The most important Austrian export categories are machines and vehicles. On the other hand, the import increases from these regions can be

considerable: They range between 20 and 30 % and as is the case in Malaysia they can exceed 65 %. Imports from Asia vary considerably, the dominating products also being machines and vehicles. In some lines of business, such as was the case in the textiles- and garment manufacturing industry last year, excessive imports can lead to big problems. In total Austrian foreign trade which is affected by the planned bilateral agreements amounts to 3,4 % of the exports, respectively 5,3 % of the imports (2005). Of these, the lion's share, 3,2 % respectively 5 % are accounted for by the Asian countries China, India, Korea and the ASEAN states. The Austrian trade relations with the Andean Community of Nations and the Central American states which can also be found on the bilateral agenda, are more or less insignificant. So the export- respectively import quota of the Andean Community of Nations in Austrian foreign trade is at 0,1 % respectively 0,2 %, those of the Central American states range between 0,06 % respectively 0,08 %.

The negotiation mandates for the next bilateral agreements are to be decided on by the Council in March. According to the plan the negotiations should commence in spring 2007 if possible and not take longer than two years.

The new trade strategy towards more bilateral free trade agreements quite obviously is an answer to the pressure of the economy and is primarily geared to the foreign trade interests of the European enterprises. Among other things this is reflected by the planned contents: Investment and public procurement, topics which were removed from the WTO agenda four years ago, are to be taken up again in the bilateral agreements. But the liberalization of goods and services shall also be promoted and trade barriers in the broadest sense are to be dismantled.

The BAK considers fundamental reflections regarding the orientation of EU trade policies as very important, particularly if it is all about reconsidering the contents of future free trade agreements. In this respect we also welcome the significance assigned to the topics CLS,, employment and environment. Ultimately however, the binding character of the regulations in the free trade agreements is the decisive factor.

In our opinion, the WTO process should nevertheless remain the trade policy priority of the EU and not be additionally impeded by further bilateral free trade agreements. The increasing number of bilateral agreements leads to the discrimination of those countries which are not covered by these. Especially in the present situation – in which all efforts have been made to resume negotiations since the suspension of the Doha round in July last year – it would be a counterproductive move to conclude the new bilateral trade strategy of the EU. This surely would send out wrong signals to the WTO trading partners.

Sustainable development: Enforcing compliance with minimum labor- and environmental standards

The BAK fully supports the explanations of the European Commission with regard to the responsibility of the European Union towards their trading partners. It is indeed in the well-understood self-interest of the EU to promote a sustainable economic development in the emerging markets and the less economically developed regions. On the one hand, Europe profits from it with regard to security policy and social issues. On the other hand, the European export industry directly profits from growing foreign markets.

The BAK agrees with the commission, that better labor conditions and wages shall not remain merely a moral appeal: We would like to find this as a leitmotif in the planned trade agreements. In terms of sustainable development, future free trade agreements should take into account **social and ecological objectives on a par with economic interests**.

In any case the **obligatory implementation and compliance with the CLS** of the International Labor Organization (ILO) is to be integrated into future bilateral trade agreements. Especially with regard to the goal of creating fair competitive conditions and jobs, the EU should work towards minimum labor and environmental standards with its future trading partners, so that a "Race to the Bottom" (competition for the lowest social- and environmental standards) is to be prevented.

We support the multiple commitments and obligations to labor and environmental standards, the IAO initiative for decent work and full employment. In the mandates however binding mechanisms which would ensure the compliance with these norms are missing. Regulations and mechanisms are announced which shall merely "support and promote" the compliance with these mechanisms. Even if the agreements provide for the observation and assessment through monitoring, the implementation of incentive systems and cooperations with the responsible international forums, it cannot be inferred that minimum labor and environmental standards will be complied with.

The BAK therefore demands that the CLS of the ILO are integrated into the bilateral free trade agreements by legally binding regulations. It is also essential that these elementary worker rights are sanctionable in the case of violations. Market access must be made dependent on compliance with internationally recognized worker rights for all producers.

The BAK demands an express ban on export production zones

The non-compliance with minimum labor standards applies particularly to so-called export production zones (EPZ) and the agricultural sector which is the greatest employer world-wide. EPZs virtually constitute unlegislated areas with respect to national labor law and taxes. The already very low labor standards in these zones are further undermined, to make the location even more attractive. 30 million people – among them 15 million children – work in EPZs which are mainly located in developing countries. A ban on this form of export production zone is therefore necessary.

Creation of formal consultation structures with representation of workers

It is important that a genuine view of the respective national situation of the employees is ensured during and after the negotiations about free trade agreements. This should be provided by the national trade unions respectively by the international trade unions federation. The better part of the future partner countries of the EU has not completely ratified the CLS yet and only few have implemented these. To this day, trade unionists are not legally permitted or even persecuted in some countries. The aim is to discuss trade and employment questions between governments, employers, trade unions and non-governmental organisations so that problems which should arise can be portrayed and solved as comprehensively as possible.

Taking sustainability impact assessments seriously

Sustainability impact assessments (SIA) are announced parallel to the negotiations in the mandates presented by the commission. For obvious reasons, SIAs should offer a decision base for beginning negotiations and therefore be consulted before negotiations are entered. Anyway the results, which have been gathered by independent and reputed institutes, should be taken seriously and considered in the agreements. SIAs could serve as an excellent tool to establish the effects of trade liberalizations on different sectors, employment, environment and development both in the EU and in developing countries.

Stronger consideration of the development standards of the negotiating partners

It is the aim of the suggested trade strategy to attain maximum market access for industrial and agricultural goods with future trading partners by a liberalization which is progressive and based on reciprocity. The free trade agreements should comprise all goods and prohibit trade barriers and restrictions or if this should not be possible transform these into tariffs by so-called tariffication. The number of sensitive goods subjected to tariff burdens is to be minimized. Particularly the suggested elimination of all export restrictions (quantitative export restrictions, export tariffs, export taxes etc.) has to be analyzed critically. Especially in developing countries these often constitute important **regulatory instruments**, which on the one hand serve to set up important industries or protect the domestic supply situation.

Against the background that almost all trading partners – from the Central American to the ASEAN states – often show a very low stage of development, the planned market liberalization strategy is particularly problematic. Under reference to article XXIV GATT and article V GATS respectively, the EU makes very far-reaching market liberalization requests on the trading partners. The EU is only willing to grant a more differentiated approach to a very limited extent: Essentially longer transition periods and exceptions to tariff reductions for about 10% of the products in the agricultural and industrial sectors, respectively. Particularly in the negotiations on investment liberalization/establishment, protection of intellectual property rights, public procurement as well as services trade liberalization, the EU embarks on a policy which demands full reciprocity from the trading partners.

This course of action ignores important findings of the more recent discussion in development economics. The latter emphasizes the significance of the application of a wide range of instruments pertaining to economic and industrial policy - also of a discriminatory nature - for successful strategies of late (industrial) development¹. Tariff protection can also provide an essential contribution to the construction of infant industries in certain economic sectors. In the present form, the requests of the EU concerning market access, non-discrimination or regulatory harmonization threaten to undermine development potential..

The most important aim of the Cotonou agreement to which the planned economic partnership agreements (EPAs) with the AKP states refer to, is the alleviation and the elimination of poverty and the realization of a sustainable development. The commission itself demands that the EPAs must serve this purpose "**and therefore they are primarily a development tool**"². Against this background **political coherence in the interest of development**, to which the EU has committed itself³ and which is part of the "European

¹ cp especially the papers by Ha-Joon Chang and Dani Rodrik

² SEK(2002) 351, April 9th, .2002

³ KOM(2005) 134, 12.4.2005

consensus on development aid" (2006), should be a matter of a serious consideration. This means that the EU has to take into account the aims of the development cooperation⁴ in all its political areas which can touch the developing countries. From the point of view of the commission, trade is explicitly mentioned as a priority area with regard to synergy effects with development policy.

It is beyond argument that there is a wealth of examples for incoherence, especially in the trade relations between the EU and the developing countries. Moreover, there meanwhile is sufficient empirical data which proves that trade liberalization is not directly an instrument suitable in the fight against poverty. The EPAs could prove themselves to be another example for a lack of coherence, if a course of action which is more ideally tailored to the development standards of countries is not taken. To this aim, the following measures are of particular relevance:

- A **more flexible interpretation** of the provisions of the articles XXIV GATT and V GATS concerning the scope of the market access obligations demanded by developing countries.
- Flanking financial measures to deal with the adjustment costs arising on the part of the countries concerned (for example budgetary aid to **compensate for lower tariff revenues**, which amount to 20-40 % of the public revenues in many developing countries).
- Provision of financial means and organizational/technical **know-how** for the promotion of the productive capacities of the countries concerned, so that existing trade political preferences of the EU can be better utilized.
- Support in the **construction and expansion of the physical and social infrastructure** in the partner countries by the EU development fund as well as by the bilateral development cooperations of the EU member states.
- Establishment of institutionalized **monitoring and control mechanisms** so that negative consequences of market liberalization can be identified in due time.
- Contractual commitment for **safeguard- and revision mechanisms** in order to account for potential negative developments in the future.
- Establishment of **participatory structures** for the periodic evaluation of the agreements with the active participation of employers associations (especially of SMEs), worker organisations and civil society.

II. TRADE IN GOODS

Agriculture: Scope for tariff reductions, promotion of fair trade

The BAK sees the greatest scope for tariff reductions with agricultural products. In our opinion, **sensitive products** (beef, butter, milk, sugar) which already enjoy domestic support and export subsidies within the EU, should not be subjected to additional tariffs.

The possibility to promote trade with commodities which comply with social and ecological minimum standards, would support sustainable methods of production. The BAK demands an

⁴ It is a priority objective of the EU development cooperation to eliminate poverty in the context of a sustainable development of which the pursuit of Millennium Development Goals is a part.

elimination of all tariffs for products meeting fair production and fair trade requirements. Preferential treatment of such goods on the one hand brings incentives to comply with and extend social and ecological criteria in the developing countries, on the other hand the financial burden on consumers of these products would be reduced.

Manufactured goods: No tariff reductions for textiles, clothes and shoes

In the face of the expired WTO textile agreement and the thereby eliminated quantity restrictions since 2005, further concessions with regard to access to the European market are to be ruled out. An import surge regarding textiles and clothes on the European market has given rise to the reintroduction of quotas for 10 textile and clothing categories. The EU had to take anti-subsidy measures with regard to quite a number of shoe categories. The EU already has relatively low average tariffs in these areas anyway.

With this in mind the BAK takes a reserved view concerning the targeted changes regarding **trade-defense and anti-dumping measures**. By no means should these restrictions be eased. On the contrary, it should remain guaranteed, that existing trade-defense instruments are applied in case of unfair trade practices or when grave structural problems are reported in an industry. It is the BAK's determined position to support the preservation of existing European production sites, should a clash of interests between trade and production arise.

Although the EU has already reached relatively low average tariffs of about 4% in the manufactured goods area, there are of course isolated cases of high tariffs. Demands for tariff reductions to the EU are to be examined from the perspective of the so-called **tariff escalation** (goods become more expensive with increasing processing stage). These tariff structures prevent sustainable development as they promote the export of raw materials and basically unprocessed goods.

The withdrawal of preferential tariffs in case of non-compliance with human rights, minimum labor and environmental standards must continue to be possible

According to the commission's suggestion for the negotiation mandates, tariff preferences for the developing countries should be adopted from the Generalised System of Preferences to the new free trade agreements. The question arises, how special preferences from the so-called GSP-plus, which are mainly used by the Central American partner countries, are to be dealt with. In principle, the EU grants special preferences to developing countries, if certain international conventions on human rights-, labor and environmental standards are ratified and implemented by these countries. Although experience so far has shown that none of the preferential countries can meet all of these conventions, the possibility that the EU will unilaterally withdraw tariff preferences in case of violations still exists. The BAK demands that this so far unique possibility to sanction violations of internationally recognized human rights-, minimum labor- and environmental standards, also remains valid in bilateral free trade agreements.

III. SERVICES TRADE LIBERALIZATION: DIFFERENTIATED APPROACH NECESSARY

In the context of its bilateral trade strategy, the EU pursues an aggressive market liberalization approach for service sectors of interest to EU enterprises. This continues the approach taken in the WTO-GATS negotiations in a more extreme form. Moreover, the EU also plans to achieve a regulatory harmonization in strategic sectors (such as financial services, Telekom, postal services) respectively with regard to professional qualifications, market access regulations, licensing procedures, or the like, which takes the respective EU regulations as reference frameworks. The question arises if the rules favored by the EU necessarily correspond to the socio-cultural and economic needs of the partner countries. The regulatory approach favored by the EU commission however does not recognize, that regulation always needs to be adjusted to the economic and socio-cultural situation. The way markets work is also subjected to different kinds of control mechanisms in different societies. One size fits all therefore does not apply to the regulation of services. The liberalization requests presented to the partner countries by the EU need to increasingly take into account their economic and socio-cultural characteristics. The EU will not be in a position to credibly advocate that e.g. Services of General Interest are an integral part of the European social model, if it requests the enforced liberalization of these services in other countries at the same time.

Binding exemption of public services from the negotiations

Similar to the GATS-negotiations in the WTO, there is also the danger of a liberalization of public services in the bilateral negotiations. This is especially true for those public services, which are rendered in a "mixed form" (education, health...), which means that public and private providers are involved. Thus those service sectors which constitute an integral part of the services of general interest must be excluded from the negotiation mandate of the EU commission from the outset. These include education, health and social services, audiovisual and cultural services, water supply, postal services, public transport. Exempting these areas from the negotiations not only prevents that liberalization demands will be made to the EU, but also guarantees that demands on the part of the liberalization proponents (especially the corporate lobbies in the EU) towards other countries will not be successful.

Furthermore the BAK regards it as essential,

- to apply the **horizontal reservation** for "Public utilities" according to the EU 25 GATS list of commitments.
- **not to enter into liberalisation commitments for sectors, which are subject to ongoing autonomous liberalization processes.** (especially energy, postal services, traffic). Before entering such obligations, the finalization of the liberalization process within the EU is to be awaited, so that efficient framework regulations which are geared towards the national policy objectives of each Member State can be effectively implemented. . Entering commitments prematurely, might restrict the Austrian freedom of action with regard to the regulation of liberalized sectors and could complicate or render subsequent modifications which prove to be necessary impossible.

A liberalization of the freedom of movement for workers (presence of natural persons, Mode 4) beyond the level of existing GATS-commitments should be avoided.

- In accordance with the European Trade Union Congress (ETUC), the 136th BAK plenary meeting has demanded the inclusion of **ILO Core Labor Standards** in international trade agreements.
- Furthermore we demand that no liberalization commitments are entered for **contractual service suppliers** and **self-employed persons** (independent professionals) which exceed the present level of the GATS commitments.
- In any case the BAK decidedly rejects liberalization commitments for **workers of middle and low qualification levels**.
- The BAK argues against exceptions for Mode 4-workers from **the obligation to pay taxes, duties and social security contributions** in the EU and Austria, respectively.
- If workers are transferred, the **country of destination-principle** is to be applied unconditionally with regard to the labor-, social- and taxation law regulations and collective wage agreements, respectively.
- The BAK approves of **temporary stays of persons from third countries for the purpose of professional education and training**, if these take place in the framework of development cooperation projects and suitable measures are scheduled, which ensure the prevention of competition of the local workforce and which guarantee that these persons return to their native country after completion of the scheduled job.

IV. INVESTMENT AND ESTABLISHMENT OF ENTERPRISES

The BAK is convinced that a fair investment regime, which renders a self-determined, sustainable development possible, can be negotiated only at a multilateral level. Austria should therefore primarily lobby for a procedure where talks in the context of the WTO regarding investment regulations for the pre-investment phase, which allow for obligatory labor and environmental standards for foreign investors, are promoted. In order for this to be successful, it is necessary that a willingness to compromise with regard to the legitimate concerns of the emerging markets and developing countries is shown and investment regulations are discussed independently of other WTO issues.

The failed negotiations on investments in the context of the WTO (Working Group on Trade and Investment) as well as – dating back even longer- the OECD (Multilateral Agreement on Investment) have made it clear how sensitive granting market access for foreign investors is for the emerging markets. The Austrian as well as European investment policy have to take these experiences into account.

The BAK therefore argues against the new trade political strategy of the Union which reduces investment agreements to a progressive, reciprocal liberalization of the markets and turns these into an integral part of bilateral Free Trade Agreements (FTA) and Partnership and Cooperation Agreements (PCA).

We advocate that a sustainable future at the global level should not remain a merely moral appeal, but that it should become the guiding principle in investment agreements. The chapter on “investment”/“establishment” in the Free Trade Agreements and Partnership- and Cooperation Agreements (PCA) of the “new generation” should be subordinated to **this overarching goal and take into account social as well as ecological targets on a par with economic interests**. Market access liberalizations and deregulations, which are at odds with meeting the “Millennium Development Goals” (fight against poverty, protection of natural resources, socio-economic development through CLS and improvement with regard to employment and environmental rights etc.), are categorically rejected by the BAK, as they usually only generate short-term profits for a small economic elite.

EU-framework for investments (minimum platform on investments for EU FTAs)

The model text which was agreed to by the EU-Member States serves as basis for negotiations on the chapter “Establishment, Services and Electronic Commerce” in FTAs and PCAs. It constitutes the minimum consensus between the member states on the contents of such an agreement regarding investment regulations and exclusively refers to market access of European companies in third party states. The model text stringently adheres to the approach of progressive liberalization of individual markets. Non-discrimination- as well as the most-favored-nation clauses are the instruments for market liberalization.

The BAK has promoted the following positions in the negotiations for the “**minimum platform**”, which are still valid:

- We are opposing a shift of **competences** regarding the negotiations of international or also bilateral investment agreements. In the course of the new trade policy of the union it is to be feared that there will be an implicit shift of competence in favor of the Commission. To counteract this foreseeable development, the Member States have to present the Commission with an explicit and clearly defined negotiating mandate and furthermore conduct the negotiations (in mixed competence) together with the European Commission.
- **Services** of general interest and services of general economic interest have to be exempted from the coverage of the agreement.
- We criticize that investors are to be granted **rights** to market access, without at the same time imposing **responsibilities** with regard to the compliance of universal labor and environmental standards.
- The principles Market Access and National Treatment substantially limit the policy space of national economic policies; measures for the support of **self-determined development strategies** must continue to be possible - even if they are discriminatory in nature.
- The BAK argues in favor of a **review clause** instead of the suggested Most-Favored-Nation clause (MFN). The implicit automatism of the MFN clause triggers the propagation of bilateral negotiation concessions/-results to other third party states. In some circumstances this can very well have unwanted and unassessable consequences. This makes the negotiations for all FTA- and PCA-partners complicated, if not unmanageable. The benefits of the MFN-clause, namely establishing a “level playing field” for all foreign investors in the pre-investment phase, are thus possibly nullified. Hence we fear that the automatism of the MFN clause also has implications for other areas.

- Currently, the "**non lowering of standards**" clause is only intended for the preamble. We demand an inclusion in the binding provisions of the agreements, which make it clear that Core Labor Standards as well as environment regulations are to be implemented by the contracting parties. Furthermore, contractually enforceable sanctioning mechanisms are to be provided in case of violation.

The "bottom up"-approach chosen for sectoral market liberalization certainly offers a somewhat more moderate pace compared to the "top-down"-approach favored by some EU-Member Countries. Nevertheless there is also the danger, that the negotiating parties will give away sensitive areas which are substantial for sustainable economic development. On the one hand the developing countries feel pressured by the existing north-south divide. On the other hand only profitable sectors respectively areas of basic services with low price elasticity of demand are of interest to foreign investors. The interests of multinational companies are often opposed to the self-determined sustainable economic development in a region or a country. In the negotiations the EU therefore should not exclusively follow economic interests but should act according to its own well-documented political commitments in terms of sustainable global development.

Suggestions by the EU negotiating partners are to be taken seriously

The present drafts of the country group CARIFORUM⁵ and the Pacific region confirm, that the negotiating parties want to conclude investment agreements which support sustainable development. They strive for a balanced relationship between rights and responsibilities of the investors, target countries and countries of origin. Furthermore constructive institutional suggestions are put forward. The BAK considers the approaches of the two country groups to be a good basis for discussion for negotiations about a fair investment regime between the EU and less economically developed regions - notwithstanding the development aid measures that need to be taken.

Austrian foreign direct investments: hardly any regional interests

Austrian foreign direct investments mainly focus on **Central and Eastern Europe**, the European Union and the USA. Local enterprises have only transacted about 27% of their foreign investments in countries with which free trade agreements (FTA) respectively PCAs shall be negotiated. This share shows a stagnant tendency. This proves that economic relations of the internationalized Austrian economy with the states targeted by the EU's bilateral trade agenda are relatively moderate and the investment agreements aimed at by the EU are of little significance. We therefore challenge, whether the pre-dominant small and medium-sized Austrian economy can benefit from bilateral investment regimes to the same extent as other Member States. The consideration of a number of different FTAs and PCAs constitutes an enormous **administrative effort** for the small Austrian businesses and therefore provides a competitive disadvantage for them.

⁵ Antigua und Barbuda, the Bahamas, Barbados, Belize, the Commonwealth Dominica, Dominican Republic, Grenada, Guyana, Haiti, Jamaica, St. Kitts and Nevis, St. Lucia, St. Vincent and the Grenadines, Suriname as well as Trinidad and Tobago

V. PUBLIC PROCUREMENT

The Commission strives for binding commitments particularly for the opening of the procurement markets, with a particular focus on procedural transparency. The liberalization should also extend to the local level and even to "public utilities", which presumably applies to service contracts in specific areas of public service provision. "Non-discrimination" as well as "national treatment" are mentioned as relevant standards for the regulations in question.

The BAK meanwhile takes a critical position towards a further opening of procurement markets. On the one hand it is to be feared that the **relatively high European standards with regard to labor-, social- and environment regulations** will prove to be a disadvantage to European, especially Austrian, suppliers in a globalized competition. Furthermore, such agreements without the supporting protective measures hardly ever foster the improvement of world-wide labor-, social and environmental standards. In this context, we also want to bring to mind the fact that the state should lead by example in matters of sustainable economic management. Against this background it appears to be more than inappropriate if the Republic of Austria, due to international obligations, were to be required to have for example their police uniforms manufactured in so-called "sweat-shops".

In order to avoid such irritations it is imperative in social terms as well as with regard to competition policy to integrate the so-called **Core Labor Standards** of the relevant ILO-agreements nos 29, 87, 98, 100, 105 111, 138 and 182 into trade agreements. Furthermore one has to make sure that the Austrian regulations with regard to the consideration of social as well as ecological matters can be upheld in international procurement procedure against competitive pressures as well as the strict regulations for the **inspection of professional reliability or restrictions in sub-contracting**.

With regard to the procurement of services, interactions with those problem areas are to be taken into account which have been specified in the chapter dealing with **services**. Based on the fact, that trade in the services area also seems to include the rendering of services by means of the presence of **individual persons** in the sovereign territory of another member country (so-called "Mode 4"), a liberalization of the procurement markets could lead to the following paradox. Based on an agreement with regard to procurement systems, member states could be obliged to consider enterprises from the contracting state in the context of public orders (for example in building contracts). Due to a lack of corresponding regulations in the services sector (to Mode 4), this enterprise would not be allowed to use their own personnel in the execution of the order (posting of construction workers). It is to fear that such a contradiction would lead to two different kinds of dissolution options. Either such restrictions to mode 4 stipulated in the services chapter of the FTA would a priori be disregarded from a legal point of view in the case of public procurement. Or at least this would lead to substantial political pressure to increase market liberalization in mode 4 at the expense of the labor market of the EU.

The BAK also takes a cautious approach vis a vis the liberalization of particularly sensitive services, especially **public services**. For this reason we plead for an exclusion of public services from the coverage of various agreements on public procurement

With regard to development policies, granting **less developed countries** a national provision in favor of the local economy, should be considered under certain conditions. This for example could be arranged, by awarding public contracts to companies in a developing country, if the conditions of the offer for a public contract are only insignificantly worse than that of the best international competitor.

VI. TRADE AND COMPETITION

The chapter regarding competition law regulations contained in the negotiating mandates seem ambitious at first sight. As is the case with Community law, certain anti-competitive practices are to be identified, which are not compatible with the smooth functioning of the respective trade agreement (cartel agreements, market abuse, mergers and government subsidies). The mandates remain relatively unclear about the further steps, though. The BAK particularly considers a more strongly institutionalized **cooperation between the competition authorities** of the contracting states in question a sensible measure.

VII. PROTECTION OF INTELLECTUAL PROPERTY RIGHTS

Comprehensive access to essential pharmaceuticals

In the context of ongoing WTO-agreements, the EU has taken an open-minded attitude with regard to low-cost access to patent protected vital pharmaceuticals which provide effective treatment against epidemic diseases. Quite a number of trading partners, with which the EU is presently preparing or negotiating bilateral agreements, are developing countries or least developed countries⁶. The EU should accommodate the needs of these countries with regard to access to important pharmaceuticals for the treatment of e.g. HIV/AIDS or other epidemic illnesses to a greater extent. This requires measures for the transfer of know-how and the promotion of joint ventures between European pharmaceutical companies and local enterprise of the trading partners as well as the licensing agreements for the production on generics promoted by the EU.

Geographical Indications

The protection of geographical indications propagated by the EU is not received enthusiastically by many trading partners as these have negative consequences for their like-products produced locally. Measures for the protection of geographical indications are not rejected by the BAK on principle for reasons of consumer protection and product transparency, respectively. For historical reasons, the interests of the trading partners are however to be considered as in part justified. From the point of view of the BAK no objection should be raised against allowing for a common geographical indication for a certain product, if it is obvious, that the products in question are different and from two different regions (for example Rioja wine from Spain and Rioja wine from Argentina).

Preventing product counterfeiting

The increase of the illegal reproduction of protected products (fashion goods, clothes, but also machines, technical equipment or cosmetics and pharmaceuticals) without doubt represents a considerable commercial damage for the European economy. The BAK argues that the EU should exercise unlimited import bans with regard to counterfeit products, whose consumption constitutes a health hazard or causes other serious damages to consumers. The existing

customs examination capacities should be expanded and in the context of bilateral negotiations with the countries of origin, the EU should press for an effective prohibition of the production of these goods.