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Swiss-US Foreign Investments: The 'Bedrock' of any Free Trade Agreement

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Federation of Swiss Industrial Holding Companies

Any Swiss-US free trade agreement should have an investment chapter because bilateral foreign investment is the bedrock of Swiss-US commercial relations. A closer look at investment policies and other issues relevant for investors reveals the value-added of an investment chapter. The mutual benefits of an investment chapter flow from high standards of investment protection, a standstill in discrimination at the sub-federal level, and zero tariffs on imports. Investment protection would be improved by access to the international investor-to-state dispute settlement system of ICSID. An appellate mechanism for this dispute settlement system would not be necessary. An investment chapter and investment-related disciplines with high standards would bring positive welfare effects for both economies in the longer run.

Keywords: Foreign direkt Investment, Free trade agreement, Switzerland, USA
JEL-Codes: F02, F13

1 Introduction

1.1 The value added of an investment chapter

Given the high volume and quality of bilateral flows of foreign direct investments (FDI) between the USA and Switzerland, the question of whether a bilateral investment chapter could add value is not a trivial one. This question is particularly pertinent as investment chapters are more common in free trade agreements between industrialised and emerging or developing countries. Moreover, the 2400 existing bilateral investment treaties (BITs) are typically signed by OECD countries and developing countries. Furthermore, the high level of FDI between the USA and Switzerland could indicate that no substantial barriers and problems exist. Thus, neither basic investor protection nor the principle of market access provide immediately obvious rationales for an investment chapter in this case. A closer look at investment policies and the other issues relevant for investors reveals the value added of an investment chapter. The HUF-

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BAUER/BALDWIN Report¹ stresses that: „It is no exaggeration to say that investment provides the bedrock for Swiss-US commercial relations.”² Following this line of argument, HUFBAUER and BALDWIN highlight the positive link between investment and trade and demonstrate that there is still room for substantial improvement in the already very good Swiss-US commercial relationship.³

This short contribution puts the issue of an investment chapter in the wider context of recent developments in international investment law and the Swiss and US policies in that area. It then elaborates on the bilateral FDI-related issues that might be integrated in a FTA investment chapter. The concluding remarks include an overall assessment of the potential contents and impact of an investment chapter.

1.2 International investment law: Falling behind the learning curve of the latest phase of globalisation

Since the failure to negotiate a Multilateral Agreement on Investment (MAI) in 1998 the OECD has not modernised its investment policy instruments, that were already perceived as outdated at the beginning of the 1990s. The WTO failed to start the negotiations on a General Agreement on Investment although investment was part of the original 2001 Doha declaration. Both failures resulted from politics and not from any new insights into the evolving needs of the growing world economy.

While globalisation was originally driven by FDI whose strategic goal was market access, recently globalisation is more and more driven by the establishment of global supply chains. Global supply chains have additional requirements for international investment law and policy. Legal security, predictability of policy including prior notice, protection of intellectual property, low or no tariff barriers, efficient custom clearance, sound competition laws, and high cross-border mobility of employees have become even more important and have to be added to the traditional concerns about market access. Modern bilateral investment treaties should encompass high standards in these areas.⁴

1 HUFBAUER and BALDWIN 2005.

2 HUFBAUER and BALDWIN 2005, p 24.

3 HUFBAUER and BALDWIN 2005, p. 24.

4 Bilateral investment treaties have experienced a high growth in number during the last ten years. But bilateralism does not solve all issues and can have disadvantages. With the rapid proliferation of BITs, it is difficult for governments to have an overview on their international obligations. Although most

1.3 Swiss-US terms of investment: High standards to reflect the recent learning curve

It would be an exaggeration to state that the USA or Switzerland have major problems in the areas mentioned above. However, as multilateral investment rules lag further behind the needs of a rapidly globalising world economy, the more important it becomes for countries like the USA and Switzerland to lock-in the highest possible standards in a FTA investment chapter. High standards in international investment law include free access of investors to all sectors, a broad definition of investment, national treatment for pre- and post-establishment, investment protection, and provisions for an efficient investor to state dispute settlement. Such a bilateral 'lock-in strategy' of high standard terms of investment between two OECD countries does not only increase the attractiveness for investors from both partner countries, but it is also a signal to other industrialised countries to rethink their position as regards the OECD's work programme on investment policy.⁵

1.4 The US perspective: The increasing importance of free trade agreements

Four main factors are increasing the importance of free trade agreements which include investment chapters for the USA. First, since the creation of WTO more than ten years ago and the failure of the OECD MAI initiative there have been no substantial liberalisations of market access at

OECD countries have model BITs, every signed BIT has particular elements as a result of negotiations with the partner country. Then, there exist several generations of BITs with differences in content and terminology. And as investors do have complex crossborder structures, many investments are controlled through entities in third countries. 'BIT shopping' for the home country with the best BIT with a given host country is always possible. This can lead to spillovers with the same effects as most favoured nation clauses. Another issue relates to the policies of subfederal governmental agencies. Domestic constitutional structures can limit the scope of BITs and the international obligations therein and local authorities are not complying with international investment law. The rapid rise of disputes that are submitted to IC-SID is another sign that the terms of investment are not always sufficiently clear and that a growing number of governments fail to meet their international obligations as laid down in bilateral treaties. This non-exhaustive list of imperfections of today's international investment law shows that it does not sufficiently reflect the requirements of recent trends in globalisation; it has fallen below the learning curve. Ultimately, this situation tends to reduce legal security for FDI and increases the costs of capital. Unclear terms of investment do not fit into competitive world markets with global supply chains or high growth rates of technology.

- 5 After the collapsed MAI negotiations, the OECD investment policy work concentrated on outreach activities with non OECD countries. This important dialogue on investment policy includes Brazil, Russia, India, and China. It is expected that the dialogue with these 'BRIC' countries will intensify once the OECD has finalised the 'Policy Framework for Investment' as its newest outreach instrument by mid 2006.

the multilateral level. Moreover, since the start of the Doha Round the prospects for liberalisation have eroded from Ministerial Conference to Ministerial Conference. Secondly, the US has such a large and attractive market for foreign direct investors that it has sufficient weight to further its economic interests bilaterally with any partner country or region. Thirdly, the US is following a liberal policy regarding inflows of foreign investment, both direct and indirect in the form of portfolio investments, which contributes to its structural domestic savings gap. In sum, investment chapters with a high standard for market access and investment protection are fully in line with the interests of the US economy. The fourth factor relates to the increasing economic weight of the European Union. Certainly, the US and the EU do have a common interest in promoting freer trade and investment, but both economic powers are competitors regarding market access to third countries as well. Thus, the US has an interest in deepening its economic relations with third countries, such as Switzerland, and arguably has been doing so with other countries in recent years. For example, the US negotiated a free trade agreement with Australia in 2004 (that came into force in 2005).

1.5 The Swiss perspective: That of a large international investor

As an integral part of its economic policy, Switzerland has a relatively large net of bilateral investment treaties⁶ and is active in concluding bilateral and plurilateral free trade agreements with investment chapters. This activist policy is based on the fact that Switzerland, compared to its peers, is the home country of a significant number of multinational enterprises. The Swiss National Bank counts more than 4'500 Swiss enterprises with direct investments abroad. In total, Switzerland is among the biggest foreign direct investors worldwide (currently ranked number 13). Although most Swiss FDI is traditionally located in the neighbouring EU countries, rapid growth in Swiss FDI has been recorded in North and South America, as well as in Asia. At the same time, Switzerland is also host country for foreign investment. Small and open, the Swiss economy is increasingly integrating into world markets, making high standards of investment protection and of market access an important factor for the future growth potential of the Swiss economy.

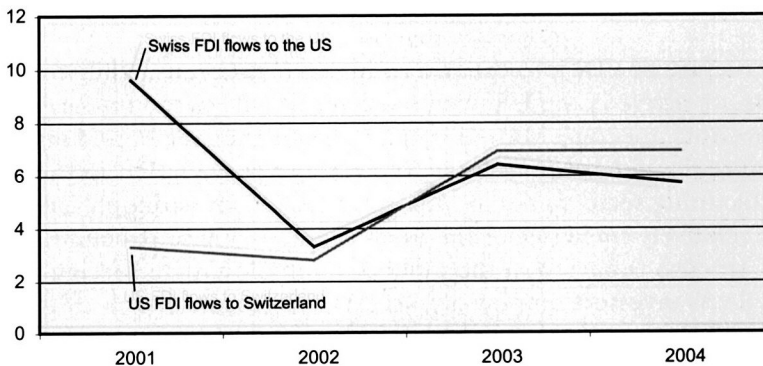
6 Switzerland has 107 Bilateral Investment Treaties (as per 19 December 2005).

In general, a free trade agreement with the USA is beneficial for the Swiss economy because it would improve market access to the important US market and increase protection against future discrimination in certain areas. The more the USA concludes bilateral and regional free trade agreements, the higher the potential of discrimination against Swiss companies in the USA over the medium to long term. The areas for potential future discrimination include procurement and licensing of local authorities, mutual recognition agreements, and custom clearance. In particular, as Switzerland is not an EU member, it can not rely on the same political back-up as many other European countries do.

1.6 Investment statistics: 'Bedrock of Swiss-US commercial relations'

Switzerland and the USA have experienced substantial flows of FDI between each other for many years resulting in high FDI stocks (see graphs below). In fact, the USA is the most important host country for Swiss direct investments with a total stock of 86 bio. Swiss Francs⁷ in 2004. Switzerland ranks among the top investors in the USA, being number six in recent years. In turn, Switzerland is the fourth most important host country for US investors, with a total FDI stock of 89 bio. Swiss Francs in 2004.

Figure 1 FDI Flows between Switzerland and the United States 2001–2004

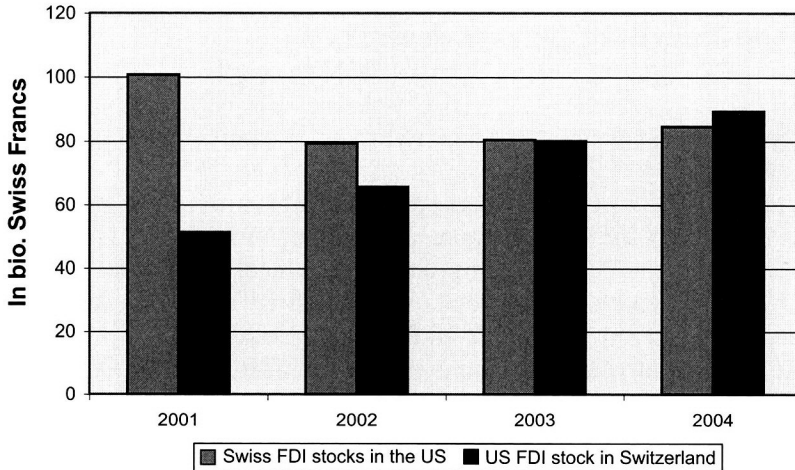


Source: SWISS NATIONAL BANK (2005)

7 Source: SWISS NATIONAL BANK (2004). The presented numbers do differ significantly in size from the HUFBAUER/BALDWIN report because the sources of the statistics use different methodologies and different definitions of investor's home countries.

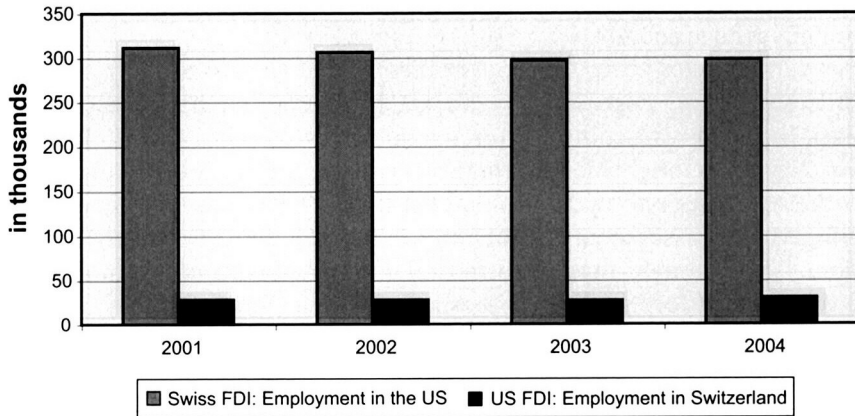
The statistics show a peak of Swiss FDI flows and stocks in 2000 and 2001 and this is related to large acquisitions by Swiss companies in the US financial sector. The flow of Swiss FDI to the USA declined substantially in 2002 as a result of problems with acquired assets and has recovered since. US FDI flows to Switzerland did not experience such a setback and show a steady increase.

Figure 2 Swiss-US FDI Stocks 2001–2004



Source: SWISS NATIONAL BANK (2005)

The structure of FDI into the two countries is different. While Swiss investors are active in the US manufacturing as well as the finance sector, US investors are concentrated in the Swiss finance sector and maintain several regional headquarters in Switzerland as well. FDI in the Swiss manufacturing sector is not as important for US investors, probably due to the relatively small size of the Swiss economy. These structural differences are also reflected in the number of employees in foreign owned firms. Swiss investors employ almost 300'000 persons in the USA, compared to 30'000 persons employed in Switzerland by US investors. It is interesting to note that Swiss-owned companies in the US pay above average compensation per employee (2004: 64'000 USD compared to 53'000 USD average US compensation, according to HUFBAUER and BALDWIN, Chapter 8). Presumably, these data indicate that Swiss-owned companies in the US tend to concentrate in activities with high productivity.

Figure 3 Swiss-US Employment 2001–2004

Source: SWISS NATIONAL BANK (2005)

2 Improving the framework for foreign investment

2.1 The definition of investment

As the United States and Switzerland both promote a broad definition of investment in their bilateral treaties, the scope of any investment chapter would probably encompass all the main forms of investment. In addition to foreign direct investment, this would include portfolio investment as well as other forms of investment in financial assets and liabilities. The definition should include enterprises, debt, concessions, contracts, and intellectual property. This is important because it reflects today's reality whereby foreign investors already have market access to both countries.⁸

2.2 Market access for Swiss FDI in the USA

Today, however, some discrimination still exists against Swiss investors in the USA. At the federal level, restricted market access for all foreign investors exists in mobile phone networks and radio stations. At the sub-federal level more discrimination against foreign investors occurs. For ex-

⁸ This paper does not treat portfolio investments because there are no significant barriers to crossborder portfolio investments between the USA and Switzerland.

ample, during the Holocaust debate in the late 1990s some local authorities temporarily discriminated against Swiss companies in the field of government procurement.

During the MAI negotiations, every OECD country had to submit a 'black list' with restrictions for foreign direct investments. The US list was over 270 pages long. This list remains classified and was never published. As there has been no update to that list since 1998, some items may have changed.⁹ An assessment of this unpublished list has not been undertaken.¹⁰ It is thought that a substantial number of restrictions might not be relevant for foreign investors, especially where they relate to hunting or to the wholesale of alcoholic beverages. In any event, a standstill clause that protects Swiss direct investors from additional restrictions in the future would be valuable and appropriate to include in an investment chapter.

2.3 Commission on Foreign Investment in the USA

The Commission on Foreign Investment in the United States (CFIUS) has the task of screening acquisitions by foreign investors that might affect US national security. Based on recent experience the following can be noted:

1. The CFIUS does seem to concentrate on areas that affect national security. For example, there is no evidence that yoghurt is seen as relevant for national security. Such a 'yoghurt doctrine', which appears to be important to certain other OECD governments, would conflict with the US policy of open markets for foreign investors.
2. As regards Swiss investors there are no known problems with the CFIUS. Switzerland is considered as a 'friendly country' in this respect. However, it is possible that Swiss mergers and acquisitions with American companies may be reviewed in the future.

The investment chapter of a Swiss-US FTA would definitely gain substance if the non-discriminatory nature of CFIUS were confirmed. Furthermore, provisions for an inter-governmental consultation mechanism for bilateral CFIUS cases could be added as well.

⁹ Some restrictions will have been changed since 1998 because of GATS obligations.

¹⁰ HUFBAUER and BALDWIN (2005) do not refer to this list either.

2.4 Market access for US direct investment in Switzerland

Switzerland has only a few discriminatory provisions against foreign direct investors. FDI is restricted in railroads, postal services, some specified insurance services, and alcoholic beverages. There exist restrictions for temporary employees but a reduction in these restrictions is planned. Furthermore, restrictions in some branches and professions exist, especially in banking and insurance, staffing services, hotels, solicitors, and accountants.¹¹ Switzerland does not have a screening mechanism for foreign investments in sectors that are potentially sensitive for national security.

2.5 Investment protection and investor-state dispute settlement

Investor-to-state disputes in OECD countries are normally treated in the national court systems. A free trade agreement offers the possibility of giving investors access to international arbitration as an alternative. One such arbitration system is the International Center for the Settlement of Investment Disputes – ICSID. ICSID is part of the World Bank group and has 142 members.¹² An estimated 1800 regional and bilateral investment treaties refer to ICSID for dispute settlement. Generally, ICSID has proven to be an efficient dispute settlement mechanism, because it is politically independent, has relatively fast procedures, and an award is directly enforceable (i.e. compensation payments for direct or indirect expropriation). This makes ICSID attractive for both the investors and governments, in comparison to national judicial procedures that are time-consuming, have several appellate mechanisms, and typically result in higher costs.

2.6 A bilateral appellate mechanism: Added value for lawyers?

The US Trade Promotion Act (TPA) includes language advocating the establishment of an appellate mechanism in all international investment treaties signed by the United States. Such mechanisms are a negotiating objective and are therefore not a legally binding pre-requisite for any

11 Many professions have admission procedures for foreigners. I.e. the new audit legislation will have admission rules and procedures for auditors of listed companies. US-certified auditors from other countries will be not discriminated and have to prove sufficient knowledge of Swiss company law.

12 USA and Switzerland have both signed the 1965 ICSID convention. As per May 25, 2005, 142 States have deposited their instruments of ratification. 155 states have signed the Convention.

Swiss-US investment chapter. As a matter of fact, the USA tried in 2004 to introduce an appellate mechanism in ICSID. This initiative was described in an official ICSID working paper, together with other changes to ICSID. Because no other country supported the establishment of an ICSID appellate mechanism, it was dropped from the ICSID reform agenda. Even so, the US is expected to continue to negotiate for appellate provisions. Interestingly, the HUFBAUER/BALDWIN report mentions an appellate clause as a possible part of the investment chapter of the Swiss-US free trade agreement.

From the investor's perspective such a clause has to be carefully evaluated. It is possible that governments could use any appellate mechanism to prolong the settlement of a dispute, even in clear cases of compensation for expropriation. Having said that, an appellate mechanism would increase the costs of enforcing international obligations on a government. This is the main reason why most governments and investors do not support appellate mechanisms in this area. The USA has not been very successful in selling the idea of an appellate mechanism. For example, the CAFTA regional free trade agreement just foresees that its appellate system will be reviewed after three years.

Technically, it is unclear whether the ICSID convention in its present form allows the introduction of a bilaterally agreed appellate mechanism, as it explicitly denies an appellate possibility against an ICSID award. ICSID only employs an annulment procedure in extreme situations (including corruption and abuse of power). Therefore, a bilateral appellate provision would likely contradict the legal obligations of the ICSID convention. It would risk undermining the integrity of ICSID as one of the most important instrument in the area of international investment law, which is not in the interest of Switzerland (which has one of the best BIT-nets¹³) nor the USA (which seeks the highest standards for investment protection.)

This assessment of appellate mechanisms might change over the longer run. Until now, ICSID has enjoyed a high reputation in international in-

13 The ICSID convention has never been changed since 1965 and the introduction of an appellate mechanism would need an unanimous agreement of all ICSID states. The ICSID regulations and rules have been adapted on the basis of the majority of the administrative Council of ICSID. During the discussion of a appellate mechanism most experts noted that the ICSID regulations and rules could not introduce an appellate system that is in conflict of the ICSID convention. Therefore, the project to introduce an appellate mechanism was dropped but other changes to improve the transparency of ICSID are expected to enter the final stage of decision process early in 2006.

vestment arbitration. The quality of ICSID decisions is seen as very good. Furthermore, as long as no principle-based global investment framework exists, each ICSID case has to be decided on its own merits taking into account the specific provisions of the relevant treaty and circumstances. Appellate mechanisms will become more important should the present quality of ICSID deliberations fall or if international investment law becomes more standardised (so requiring greater consistency in ICSID decisions.)

2.7 Visa

Improvements in the area of visas, i.e. for cross-border temporary employment, would definitely be in the mutual interest of US and Swiss investors. The focus here is on the highly qualified part of the workforce. But as the legislation and the management of visas are part of the US national security system, no big changes in this area are to be expected in the near future. As an alternative, a review clause in any future free trade agreement could provide for a reassessment of the situation after a few years and would be beneficial for both sides.

3 Investment-related Matters

3.1 Tariffs

U.S. import tariffs on industrial goods are 3.5 percent on average. Generally, zero tariffs should be introduced in a Swiss-US free trade agreement to the benefit of both sides. This would include processed agricultural products, such as chocolate. The abolition of tariffs would be one of the main advantages of such a free trade agreement. In particular, producers of watches, industrial equipment and goods, and chocolate would gain from duty-free access to the US market. Exporters as well as subsidiaries would become more competitive in each respective host country. Direct investors have large shares of the recorded trade volumes because of transactions among entities within a multinational group. A benchmark for the tariff reductions in any Swiss-US FTA could be the U.S. treaties with Singapore and Australia which include duty-free access for 92 and 99 percent, respectively, of all manufactured products.

3.2 Customs clearance – prior notice

Custom clearance in the USA has become more burdensome in the wake of the events of 11 September 2001 including, for example, prior notice. The costs incurred can be substantial. The chances are slim that customs procedures will be eased in the short term. However, some improvements might be expected in administrative procedures. From the business perspective, a review clause with a provision for a regular reassessment of the situation should be included in any free trade agreement. In addition, a Most Favoured Nation (MFN) clause should be part of the free trade agreement. A MFN clause would automatically bring improvements for Swiss exporters as soon as the USA improves custom procedures with a third country.

3.3 Intellectual Property Rights (IPRs)

There exist differences between the USA and Switzerland in the area of intellectual property rights. The US copyright is 70 years in length and the USA has its own patent law. Swiss patent law is based on the European patent system. Experts believe that issues arising from these differences can be solved as, in general, intellectual property rights are promoted by the policies of both countries. In addition, measures to improve the enforcement of IPRs should be part of any FTA negotiations.

3.4 Mutual Recognition Agreements

Industries on both sides have an interest in facilitating admission rules and procedures for goods (i.e. pharmaceuticals, implants, etc.) by partial or full recognition of administrative decisions, quality control, manufacturing practices, etc. of the competent national agencies. This could take the form of mutual recognition agreements (MRA). Both countries have a strong interest in a MRA covering the pharmaceutical industry.¹⁴ However, MRAs are normally not part of a free trade agreement as the relevant governmental agencies have their own competences in this field. Therefore, it would be beneficial for the two countries to analyse the possibilities for some general provisions regarding MRAs in any Swiss-US

¹⁴ There already exists a Swiss-US Memorandum of Understanding (22.9.2003) on Good Manufacturing Practice (GMP) of pharmaceutical products.

FTA. General provisions could also mandate the competent authorities to negotiate bilateral MRAs on, for example, for pharmaceutical products.

3.5 Services including financial sector

In general, the USA as well as Switzerland have open markets for services and for financial intermediaries and services in particular. From the Swiss issuers perspective, further facilitation in the US capital market would definitely be beneficial (including registration, de-registration and bridging IAS/IFRS to US GAAP¹⁵). However, at present no preferential system exists on the US side. The US Securities and Exchange Commission (SEC) issues *erga omnes* rules as regards the treatment of issuers from third countries. Maybe this will change in the future. The SEC and the European Commission announced plans to mutually recognise financial reporting standards by 2009 at the latest. Being a general announcement, it is not clear if this mutual recognition will also include issuers from third countries, i.e. from Switzerland. Therefore, it would be of utmost importance that any free trade agreement include a most favoured nation clause that covers the regulatory framework for Swiss issuers. The same is true for financial services. Both countries are home and host countries for financial intermediaries and offer the whole range of modern financial services. Facilitation of prudential financial markets supervision could improve these systems and reduce the compliance costs at the same time.

4 Carve outs: Taxation and exchange of information

Substantial issues exist in the area of taxation. The most important is the remaining double taxation of transfers of dividend payments (within a corporate group). A 'unitary tax system' is mentioned as an issue in the BALDWIN/HUFBAUER paper but it does not seem to be a problem anymore.¹⁶ In general, tax issues are to be dealt with in the double taxation agreement between Switzerland and the USA. Also, the sensitive question of the exchange of information between tax authorities is unlikely to be part of a free trade agreement.

15 IFRS: International Financial Reporting Standards; US GAAP: United States Generally Accepted Accounting Practices.

16 Namely California does no longer have a provision to collect corporate taxes for local entities that are based on worldwide profits of the parent group.

5 Welfare Effects: FDI, competitiveness and technology

The economic effects of a Swiss-US Free Trade Agreement on FDI depend on following factors: the improvements in policies resulting from the provisions in any investment chapter, indirect effects from other parts of the FTA, and the development of investment agreements with third countries.

The HUFBAUER/BALDWIN study reports large expected increases of bilateral FDI as a result of implementing a Swiss-US FTA. US FDI stock in Switzerland might increase by 40 percent which, in turn, would create a 'pull' with an increase of US exports of manufactures to Switzerland by 24 percent.¹⁷ Swiss FDI stock and exports to the USA are expected to see smaller increases. The view of HUBAUER/BALDWIN that such quantitative estimations are highly speculative and this should be noted.

If the investment chapter encompasses significant improvements for investors, the structure of FDI is likely to change. For example, better market access for services will trigger additional FDI in that sector. Or, zero tariffs for manufactured goods will make it easier for companies to integrate into supply chains with partners from the other country. This is especially relevant in markets with high growth rates and tough competition. Integration into cross-border supply chains will also lead to more FDI where parts of the production must be done close to the customers. Market integration through trade and FDI have a positive effect on the economies of scale of domestic manufacturers which will bring increases in productivity of capital and of human resources. Better integration of companies into the manufacturing and service sectors of both countries will yield substantial welfare gains for both countries. Complex products, such as cars or aircrafts, would gain from reduced tariff and non-tariff barriers for components.

Another expected structural consequence arises from investors in technology-driven industries. If a Swiss-US FTA results in top standards for investors and duty-free market access for most imports, more relatively small companies might enter the partner's markets because the risks and costs are lower. This will bring an added value to new technologies with highly specialised and small entities. Regional clusters in both countries would benefit and attain higher growth rates. The relative importance of

17 HUFBAUER and BALDWIN 2005, Chapter 8, pp 6–10.

such effects is not to be overlooked as both countries have sectors that experience fast rate of innovation and technical progress. Better bilateral integration of these sectors would increase global competitiveness and increase positive spillovers to other sectors in both economies. As economic growth is to a large extent technology driven, the long term welfare effects of a Swiss-US FTA might be higher than presently expected. Certain investment-related areas of a FTA, such as less burdensome visa procedures for highly qualified workforce and MRAs, could also significantly contribute to technological cooperation between the two countries.

The development of investment agreements with third countries would only have an effect inasmuch they would also set similar high standards. The higher the standard of the investment chapter and investment-related areas, the longer it will take third countries to catch up. This will allow the Swiss and US economy to further deepen commercial relations in the meantime.

6 Politics and the Swiss-US free trade agreement

6.1 Agriculture as the stumbling block

On both sides agriculture has proven to be the critical part of the pre-negotiation for the FTA. The USA has pursued a free trade approach for the majority of agricultural products in recent bilateral free trade agreements. Switzerland continues to defend protectionism for agricultural products in regional and bilateral negotiations. This includes the bilateral treaties with the European Union that do not establish free trade in agriculture.

There might have been some flexibility on the US-side because Switzerland will remain a small market for US farming products even if protectionism were further reduced in Switzerland. Furthermore, Switzerland is continuously reducing the level of its protectionism in agriculture. The main problem of Swiss agricultural policy is that for many decades protectionism discouraged the Swiss farming sector from increasing its productivity. The recent dramatic and painful structural change is the result and will take some more years – and therefore some may feel that it is not likely that politicians will open borders to more agricultural imports.

Both sides will have to evaluate the importance of agriculture in comparison to substantial benefits in all the other fields of mutual interest. The decision of the Swiss Government in January 2006 not to engage into negotiations that include substantial liberalisations for agricultural products proves that this sector is the stumbling block. Ironically, it remains to be seen if this decision really helps Swiss farmers in the long run. Structural change will continue in any case and already in a few years, a modernised Swiss agricultural sector that specializes in high quality products might depend on access to export markets, such as the USA.

6.2 Overall assessment

This article has identified the types of potential benefits that might flow from an investment chapter, and these include improved investment protection, a standstill of discrimination by sub-federal authorities, and zero tariffs on goods. This would significantly contribute to the further development of Swiss-US commercial relations. An advantage would also arise from Most Favour Nation clauses that protect both sides from future discrimination. Such a bilateral MFN clause seems to be stronger than the one that is included in WTO agreements. Review clauses would allow further future steps in economic cooperation. A third area of benefits from an investment chapter between Switzerland and the USA would be at the OECD. Such a chapter would signal to the OECD the highest possible standards on cooperation on international investment policy.

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