

23 April 1998

Preliminary UNICE comments on the Commission communication concerning creation of a New Transatlantic Marketplace (COM(1998) 125 final)

A. General comments

1. For European companies, the US market is of vital importance. It is both the largest outlet for their products and services, and the largest supplier of the goods and services they use (in 1996 the level of trade in goods and services was ECU 355 billion). Europeans have invested around ECU 372 billion in the United States and Americans around ECU 348 billion in the European Union. More than 3 million European jobs depend on US investments in Europe, to which can be added the jobs linked directly or indirectly to economic activities developed with the United States. In the aftermath of the financial crisis in Asia, these already very dynamic relations are intensifying yet further and new prospects for transatlantic co-operation are opening up.
2. In this context, UNICE firmly supports:
 - a strengthening and deepening of economic, financial and political relations between the European Union and the United States;
 - an improvement in the economic environment in which companies operate, notably through progressive elimination of the remaining barriers to trade and investment between them;
 - initiatives which seek to prevent and reduce bilateral economic and commercial conflicts, and deter protectionist and unilateralist tendencies;
 - the EU and US working together to achieve multilateral trade and investment liberalisation;
 - development of industrial co-operation between European and US companies, with particular focus on small and medium-sized enterprises.

In addition, the imminent introduction of the Euro should help to develop monetary co-operation between two important actors within the international monetary system.

3. To realise these objectives, UNICE has been actively engaged in the Transatlantic Business Dialogue (TABD). It considers that this unique process of dialogue between the European and US business communities and their respective administrations has produced encouraging results. It must therefore resolutely pursue its action, and implementation of its recommendations must be followed up with determination by the administrations on both sides of the Atlantic.

4. However, UNICE recognises that, in order to secure the results expected on a number of TABD dossiers, notably in the area of regulatory convergence, and to settle sensitive dossiers between the two partners, a new political initiative, which would completely engage states at sub-federal level and establish a more binding reference framework than the New Transatlantic Agenda (NTA), could be useful.

Against this background, UNICE broadly welcomes the Commission's communication and the proposal to develop with the United States a New Transatlantic Marketplace Agreement (NTMA) covering trade in goods and services, but also investment and other areas of economic activity. It backs the Commission's proposal for a single global and balanced agreement which would give effective access to each other's markets while respecting WTO multilateral rules.

5. UNICE fully shares the conditions that the Commission has attached to the proposal for a New Transatlantic Marketplace. It considers that they should be fully met before negotiations are formally launched.

UNICE supports an ambitious approach, going beyond a simple commercial policy, but pragmatic and realistic and which would not impede the further development of the Community acquis.

6. UNICE accords great priority to launch of a new global round of negotiations starting in the year 2000. Therefore, it attaches great importance, as does the Commission, to the full conformity of NTMA with EU commitments in the framework of WTO and with the objective of pushing forward the process of multilateral liberalisation via this initiative. Thus, it is essential for the proposed new Transatlantic Market initiative:

- to contribute to development of the consensus needed for the launch of such negotiations and preparation of an ambitious negotiating programme;
- not to lead to creation of new obstacles vis-à-vis the rest of the world.

7. In order to remove all ambiguity and reassure their trading partners which may have doubts about this bilateral initiative, UNICE recommends that the EU and US should take the opportunity of the forthcoming WTO Ministerial Conference, to be held in Geneva on 18-20 May, to reaffirm their commitment to the WTO multilateral system and the next round of negotiations.
8. A broad information campaign will be necessary to win over public opinion, whose support is indispensable to ensure the success of this initiative, regarding its validity and the benefits which will flow on from it in terms of growth, jobs, consumer health and safety, and sustainable development. To that end, UNICE strongly recommends publication of macro-economic studies and impact studies referred to in the Commission's Communication.
9. Considering the importance, in transatlantic relations, of application by the United States of trade sanctions with extra-territorial effect at federal level (Helms-Burton and d'Amato Acts) or sub-federal level (a total of 27 acts/bills have been catalogued), UNICE urges an early settlement to the present conflicts, once and for all and in a manner acceptable to both parties, and which deters the development of such measures in the future. Not solving them rapidly can only exacerbate tension and complicate the debate on NTMA.
10. Bearing in mind its political, economic and financial reach, the Commission's New Transatlantic Marketplace proposal raises, among European business, a number of specific questions which are set out below in part B and summarised at annex.

UNICE urges the Commission to open rapidly an in-depth dialogue with European business on all these questions. It would also like it to be fully involved in the final definition of the EU proposal for a new transatlantic initiative considering that many of the likely components of such initiative have been identified jointly by European and US companies, and are the object of work in the framework of TABD. It might also intensify its contacts on this theme with US business organisations in order to take joint action, as and when appropriate, to complement TABD action.

11. UNICE looks forward with great interest to the US response to the Commission's proposal. It asks for this response to be widely communicated by the Commission to the parties concerned by a new transatlantic initiative before a final decision is taken.

UNICE's preliminary comments developed in this document may be supplemented/reviewed as the present debate unfolds within Europe or between Europeans and Americans, and as the Commission's proposal evolves accordingly.

It considers it essential that Council, when developing a negotiating mandate for the Commission, should take fully into account European business views. Such a mandate should be comprehensive. The new framework to be developed for transatlantic relations should combine realism and vision and help to promote effectively the interests of European companies and their competitiveness.

B. Specific comments

12. UNICE's comments are based on the two strands of European companies' experience, on the US market and with TABD. They are limited to dossiers which affect business directly.

- **Four main pillars of the New Transatlantic Marketplace proposal**

- a. *Far-reaching elimination of technical barriers to trade*

13. UNICE shares the Commission's opinion that regulatory problems are among the most serious problems which hamper transatlantic trade and investment, notably because of the sophistication of the goods and services traded and the general reduction of product life spans. Given this situation, NTMA must seek to create conditions in which goods and services traded on the territory of one of the parties can also be traded on the territory of the other without additional obligations or formalities.
14. Experience with TABD in this area is significant and has demonstrated that:
 - the approach involving mutual recognition agreements is useful but insufficient;
 - it is important to pursue convergence of European and US regulation jointly. This bilateral convergence should make a positive contribution to global convergence which is the ultimate objective of the process;
 - a structured framework is needed to allow work to move forward.
15. It has also made it clear that:
 - emphasis must also be placed on:
 - . effective implementation of the WTO agreement on technical barriers to trade (TBT) and

- recent agreements on telecommunications and financial services;
 - . recourse whenever possible to international standards as the basis for technical rules;
- procedures for conformity assessment should not be a source of discrimination between trading partners.
16. Preservation of the high level of health protection, consumer safety and environmental protection in force in Europe is an objective which UNICE fully shares. It therefore considers it essential for NTMA to maintain this high level of protection and ensure compatibility with WTO rules. For application of sanitary and phytosanitary measures at a higher level than that of international sanitary standards, UNICE urges that the EU and the U.S. should scrupulously observe the provisions on transparency, non-discrimination and reference to scientific evidence contained in the relevant WTO agreement.
17. TABD has so far identified the following sectors which are interested in long-term mutual recognition strategies and convergence and/or legislative and regulatory harmonisation:
- agri-food biotechnology;
 - automotive;
 - chemicals;
 - cosmetics;
 - electrical, electronic, telecommunications and information technology (EETIS);
 - heavy equipment industries;
 - medical devices;
 - pharmaceuticals;
 - recreational marine;
 - telecommunications;
 - tyres.

These sectors and the TABD recommendations should find a place in any transatlantic agreement.

New sectors are continuously asking to participate in the process.

b. Elimination of duty on industrial products

18. In the area of tariff negotiations, UNICE:
- resolutely supports the multilateral approach;
 - generally opposes sectoral negotiations unless, as with the Information Technology Agreement (ITA):
 - . the specific sectors concerned agree;
 - . the sector is sufficiently wide to arrive at internal balances;
 - . all major trading partners participate and make commitments.
 - does not favour negotiations being conducted independently of other essential elements of market access such as non-tariff barriers, intellectual property, investment.
19. Thus, UNICE appreciates the fact that the approach advanced by the Commission in its NTMA proposal meets these conditions. This approach must be maintained for the forthcoming global round of negotiations.

20. UNICE would like specific criteria to be developed, in co-operation with the business circles concerned, in order to define the "critical mass" needed for agreement.
21. Elimination of bound customs duty will also reduce the preferential treatment that the European Union grants to some developing countries. To prevent these countries from reacting negatively to the proposal to eliminate duty, the Commission should specify its ideas for offsetting these losses of advantage.
22. Assuming that the conditions set out above are met, the date of 2010 seems a reasonable target for bound elimination of duty.

c. Transatlantic free-trade area for services

23. UNICE supports global liberalisation of services sector. It therefore believes it essential that the Commission's transatlantic free-trade proposal in this sector should not hold back the multilateral liberalisation process due to start by the year 2000 at the latest. The advantages for Europeans of such bilateral liberalisation, as announced in the Commission communication, should be confirmed by the sectors concerned and placed in perspective with the objectives being pursued at multilateral level.
24. UNICE shares the objectives put forward by the Commission concerning:
 - elimination of restrictions on market access and national treatment;
 - mutual recognition of regulatory standards and prudential rules.
25. The parameters of these negotiations must be clearly and precisely defined before they commence, particularly regarding:
 - sectors that might be excluded in conformity with GATS rules;
 - level of liberalisation pursued for each sector covered and depending on the method of supply;
 - any transition periods that prove necessary;
 - binding nature of commitments at sub-federal level;
 - adoption of the "negative" list for the negotiations, i.e. everything is liberalised except what is expressly excluded in a list. UNICE already supported this approach for the GATS negotiations;
 - specific timetable for the negotiations. This should take account of the timetable for the multilateral liberalisation negotiations which are to start by 1 January 2000 at the latest.

To that end and to be effective, as the recent negotiations on financial services have demonstrated, close consultation/co-operation with the sectors concerned must be developed rapidly.

26. The Commission considers that the dynamic engendered by the transatlantic free-trade agreement will stimulate third countries to align themselves on the European and US commitments thus contracted. This assumption deserves to be further developed and confirmed by facts.

d. Public procurement, intellectual property, investment

27. UNICE very much welcomes the Commission's proposals concerning access to US *public procurement*. There are still too many obstacles to the participation of European companies in these contracts. Of particular importance to UNICE are completing entity coverage and elimination of "Buy American" preferences at all levels of government.

Joint efforts should also be made to:

- fully implement the existing WTO public procurement agreement and agree on the principles for its present review;
- develop joint measures in the area of public procurement in the electronic commerce sector;
- improve convergence between the procedures in force on either side of the Atlantic and thereby facilitate SME participation in tender calls.

Work on this subject is in progress in TABD.

28. UNICE also supports all the Commission's proposals regarding *intellectual property*. Many other issues have also been clearly defined in the framework of TABD and specific proposals for action have been developed. NTMA should provide the necessary structure for implementation of all the TABD proposals. In particular, UNICE underlines that the United States should abandon the first-to-invent principle on which agreement was reached between US and European business at the TABD Conference in Chicago.

In the context of intellectual property, while UNICE agrees with the suggestion made elsewhere that the US should ratify the Rio Convention on biological diversity, it would nevertheless suggest that ratification should be subject to adoption of an interpretative statement similar to that adopted by the EU Member States.

29. Development of a global regime to liberalise and protect *foreign investment* is among UNICE's main priorities. To that end, it has supported the launch of work on this subject in WTO and OECD negotiations on a Multilateral Agreement on Investment (MAI) as a useful contribution to the goal of a global regime.

Mainly due to a lack of agreement between the U.S. and the EU on a number of key provisions of this agreement, it will not now be concluded as originally planned at the April OECD ministerial meeting. On 23 March UNICE launched a fresh appeal to the governments concerned that further efforts should be made to reach a satisfactory conclusion of the negotiations before the end of 1998.

Given this situation, UNICE points out that the investment pillar of the proposed NTMA can only be decided in the light of decisions to be taken at the April OECD meeting and the political will of Europeans and Americans to drive this dossier forward in the international bodies which are already examining it.

- **Other possible aspects**

30. **Trade and employment:** For UNICE, the competent organisation to tackle social questions at international level is ILO, whose tripartite composition allows inclusion of the interested parties in the debate. The WTO Ministerial Conference in Singapore confirmed this same approach and:

- restated the commitment of WTO members to observe internationally recognised basic labour standards;
- firmly rejected the use of labour standards for protectionist purposes;
- strengthened co-operation between WTO and ILO.

UNICE actively supports the work under way in ILO with a view to its June 1998 annual conference. Concertation between European and US employers already exists. It takes place directly between the organisations involved in these debates or in existing business organisations: International Organisation of Employers (IOE) and Business Industry Advisory Committee (BIAC). UNICE therefore has reservations about the proposal to create a new social dialogue forum in the framework of NTMA.

31. ***SMEs and enterprise policy:*** UNICE firmly supports a strengthening of partnership between European and US small and medium-sized enterprises. In the framework of TABD recommendations have been developed on this subject. Henceforth, the emphasis must be placed on their implementation.
32. ***Electronic commerce:*** UNICE shares the Commission's assertion and the need to strengthen regulatory convergence in this area. Work on electronic commerce is currently under way in UNICE and in the framework of TABD. It is essential to ensure that any work developed on this subject in the framework of NTMA takes on board their recommendations in this area.
33. ***Data protection:*** UNICE shares the Commission's proposal seeking to specify the nature of the guarantees needed to ensure a sufficient level of protection. The dialogue under way on this subject should be pursued while ensuring maintenance of the entire Community acquis.
34. ***Competition:*** UNICE shares the Commission's proposal that EU-US co-operation on antitrust legislation will be developed outside NTMA, at its own speed and on its own merits. Concerning state aid, if discussions were launched to examine the usefulness of negotiating with the United States in the framework of NTMA, rules for direct and indirect state aid as an element likely to generate distortions of competition, UNICE would like to be closely involved.
35. ***Taxation:*** Thoughts about the Commission's proposals on this subject deserve to be fleshed out before any decision is taken to tackle this dossier in NTMA. TABD recommendations on the matter should have priority.

- **Other aspects of the initiative**

36. ***Environment:*** UNICE shares the Commission's considerations on this subject in the communication. It is essential that all commitments under NTMA guarantee a high level of health, safety and environmental protection, not hamper the further development of the acquis in this area and ensure compatibility with WTO rules. Concerning the exception clause that might be developed, it is essential for it to be precisely defined in order to prevent any misuse for protectionist ends.

To avoid distortion of competition, UNICE considers it essential that the US ratifies the Basle Convention and the Kyoto Protocol under the Climate Change Convention.

37. ***Institutional aspects:*** UNICE's concern relates more particularly to dispute prevention. It considers this to be a fundamental point of the New Transatlantic Marketplace initiative and, like

the Commission, believes that "one of the objectives of the NTM is to prevent trade disputes from occurring". With that in mind, it shares the proposals made in the communication to improve transparency and co-operation on regulatory matters. Such a co-operation should involve the Member States and business representatives.

Concerning establishment of a bilateral dispute settlement mechanism, UNICE considers that the Commission's proposal merits serious study before a decision is taken. UNICE considers that WTO dispute settlement mechanism to be one of the most important results of the Uruguay Round, and is therefore concerned by any initiative which might weaken it.

Accordingly, it calls on the Commission to specify rapidly the competence, rules of operation, procedures of the bilateral mechanism it envisages and its relationship with the WTO one in order to permit an assessment as to whether it will be really effective in solving disputes and whether it will in fact ensure, as the Commission claims, "the continued integrity and effectiveness of the WTO dispute settlement mechanism". Such a mechanism should apply to the Federation as well as the States.

- **Other questions**

38. UNICE would like the Commission to specify what bilateral commitments will have to be extended to the countries of NAFTA (Mexico and Canada) because of specific agreements between the United States and those countries. "Free-riding" should be avoided. It is essential not to disable leverage necessary for multilateral liberalisation.

Implications for EFTA/EEA countries and candidate countries to EU membership should also be specified.

39. Bearing in mind that differences in application of anti-dumping procedures on either side of the Atlantic are significantly at the expense of EU business interests, discussions should be launched on this issue in the framework of the proposed NTMA to find solutions while fully respecting WTO rules.
40. Lastly, an analysis of the political situation in the United States, notably the prospects for President Clinton being given "fast-track" authority and Congress's preliminary reaction to the NTMA proposal, would usefully complement the statistics and economic data in the Commission's communication.

C. Conclusions

41. UNICE generally supports the approach developed in the Commission's proposal for a New Transatlantic Marketplace Agreement, as defined on 11 March. This proposal is a serious basis for developing a new and ambitious reference framework which would strengthen and deepen transatlantic economic relations while reaffirming the primacy of the WTO multilateral system.
42. UNICE would like to pursue the debate with the Community institutions on this proposal.
43. In the light of the awaited US proposal and the clarification expected from the Commission on the issues listed at annex, UNICE may wish to add to/revise its preliminary comments contained in this document.

Commission proposal for a New Transatlantic Marketplace Agreement

List of the main issues raised in UNICE preliminary comments on NTMA to be clarified by the Commission

General conditions

- the NTMA should completely engage the states at the sub-federal level;
- evidence of the fulfilment of the nine conditions attached to NTMA listed in the Commission communication;
- full conformity with the EU commitments in the WTO and the objective of pushing forward the process of multilateral liberalisation;
- early settlement of the "extra-territoriality" conflict
- which NTMA bilateral commitments should be extended to NAFTA?

TABD

- specific role of TABD in NTMA and confirmation of continuous support from the administrations for the TABD process and commitment to pursue resolutely implementation of TABD recommendations.

Specific NTMA components

- elimination of technical barriers to trade: differences with the TABD process?
- tariff elimination:
 - how to ensure that tariffs will not be dealt with separately from the other elements making market access effective such as: non-tariff measures, investment, intellectual property?
 - definition of the "critical mass".
- free trade in services:
 - definition of the parameters of the negotiations;
 - compatibility of bilateral and multilateral timetables.
- investment:
 - definition of what could be done bilaterally;
 - what would be the added value of a bilateral deal?

Transparency

- launch of an in-depth consultation of European business covering: the Commission's proposals, the US response to the Commission proposal, definition of a possible new EU proposal and final deal;
- publication of macro-economic and impact studies;
- launch of information campaign

Institutional / political aspects

- competence, coverage, rules of operation and procedures of a bilateral dispute settlement mechanism and relationship with the WTO one;
- prospects of the discussions with the Member States;

- prospects of President Clinton obtaining "fast track" and Congress support.
