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UNICE comments on the communication from the European Commission to the Council and to the European Parliament "The EU Approach to the Millennium Round"**I. Introduction**

UNICE broadly supports the thrust of the 8 July 1999 European Commission communication on the EU Approach to the Millennium Round. It is pleased to see that the Commission positions are in line with most of its own positions for the Millennium Round Agenda. Like the Commission, UNICE believes that the challenges to the multilateral system can best be met through a new comprehensive round of trade negotiations.

A comprehensive round will help WTO live up to the challenges created by rapid and far-reaching economic change, and help meet the concerns expressed by some developing countries and part of public opinion regarding market liberalisation. UNICE also supports a round that should aim to last no more than three years. It shares the Commission's views on the single undertaking, however with some flexibility. It believes that the round should allow for early balanced agreements on a provisional basis provided the support of a critical mass of WTO members is reached and, at the end of the Round, all of the results are adopted in their entirety by all WTO members.

To promote its position and improve mutual understanding on trade and investment issues, through transparency and dialogue, UNICE has actively participated and will continue to participate, in the run-up to Seattle and during the round, in meetings with civil society representatives organised notably by the Commission and WTO. Its member federations have participated in similar meetings at national level. Experience shows that these meetings help to forge consensus when participation is based on co-operation and experience-sharing while avoiding politicised rhetorical exchanges. These meetings should in no way exclude or replace separate consultations with business, labour unions and other components of civil society.

UNICE welcomes the Community proposals to improve the transparency of WTO itself through early derestriction of documents and minutes of meetings. These measures will contribute notably to increasing public opinion awareness of WTO and hence to building stronger and broader support for the multilateral liberalisation process.

With this position UNICE would like to comment briefly on the different issues detailed by the Commission in its communication and further explain, where appropriate, its priorities and concerns so that the objectives of forthcoming WTO negotiations are realistic and forward-looking.

II. General remarks

- UNICE supports the Commission's view that trade and investment liberalisation should be conducted in a manner conducive to sustainable development and take account of the capacities and constraints of developing countries. It is, however, concerned that the Commission has failed to define "sustainability" clearly in its overall objectives for a comprehensive round. It is only in the context of the specific chapters relating to "Trade and Environment" and "The New Round and Development" that it refers respectively to economic development and the interdependence of economic development, social development and environmental protection and states that they are mutually reinforcing components of sustainable development.

UNICE would like the EU to seek, in the Seattle Ministerial Declaration, a definition of the principle of "sustainable development" which would apply to all WTO agreements and explicitly include economic sustainability with social and environmental sustainability. Such a definition should also clearly state that national treatment (NT), most favoured nation treatment (MFN) and regulatory stability are necessary conditions for sustainable development.

- WTO's contribution to improving living and working conditions world-wide is to make sure that trade liberalisation and other environmental, social, development and consumer objectives are mutually supportive and benefits of growth are evenly shared between all WTO Members. It would, however, be wrong to believe that the multilateral trading system is the appropriate forum to find answers to human rights abuses, non respect of core labour standards or environmental problems. These important issues should be specifically addressed in the specialised international agencies.
- It is a long-standing UNICE position to request increased co-operation between WTO, IMF and the World Bank to ensure greater coherence between their respective policies to promote sustainable development and in particular help developing countries to benefit fully from further trade liberalisation. It is pleased to see that a similar proposal is among the Commission's proposals for adoption at the Seattle ministerial conference.

III. Comparison of Commission proposals and specific UNICE positions

A. UNICE priorities

1. Investment

- In its communication the Commission supports the launch of negotiations in the WTO for the establishment of a multilateral framework of rules governing international investment, with the objective of securing a stable and predictable climate for investment world-wide. It emphasises the non-discrimination principle as the linchpin of an open and efficient investment regime and the host country's right to regulate the activity of investors (whether foreign or domestic) on their respective territory, for achievement of legitimate policy objectives. The Commission also insists on access to investment opportunities based on commitments made by each Member and transparency regarding changes in applicable laws and regulations.
- UNICE welcomes the Commission proposals which are centred around the principles of non-discrimination and national treatment. It would like also to add the principle of transparency which should bind all WTO Members. UNICE supports the right of all WTO Members to regulate economic activity on their territory, however it insists that this right should be based explicitly on the principles of NT, MFN and transparency and that a clause be developed stipulating that no lowering of standards should be applied by governments to attract FDI. In addition the concept of sustainable development should be clearly defined in the investment agreement and specifically include economic sustainability together with social and environmental development.
- While UNICE attaches great importance to transparency, it also looks for an agreement which would provide a basis for removal, or at least reduction, of inhibitions to investment flows. UNICE shares the bottom-up approach proposed by the Commission for market access as a realistic way of handling the pre-investment phase (the right of establishment) for non-TRIMS issues, but this approach should not be used to define the extent of post-investment protection, which should be unequivocally non-discriminatory and transparent.
- The Commission proposes that a multilateral agreement on investment should focus on FDI and exclude short-term capital movements. UNICE fully agrees that, in some respects, short-term capital movements require a differentiated treatment from FDI, however it suggests that the

possibility of covering them should be examined and business should be closely consulted on this matter. In the areas of repatriation of funds and protection against direct and indirect expropriation no distinction should be made between the different forms of investment.

- Regarding dispute settlement arrangements, clarification is needed especially regarding "investor-to-state" disputes. The right for companies to lodge complaints against treatment at variance with published policies of the host state concerned should be recognised and not be subject to derogations for developing countries.

2. Services

- The Commission aims at comprehensive negotiations with a view to obtaining more and better commitments from all WTO members on market access, most favoured nation and national treatment.
- UNICE shares the Commission objectives on services. It strongly supports liberalisation of services markets throughout the world going beyond standstill commitments in order progressively to remove barriers to trade and investment. UNICE also underlines the need for regulatory authorities to commit to pro-competitive principles.
- Negotiations of rules and disciplines regarding government procurement of services, subsidies and emergency safeguard measures should be part of the new round. UNICE's preferred method of scheduling would be a requirement that countries state all the restrictions in force affecting market access and national treatment, sector by sector.

3. Trade Facilitation

- In this field UNICE has put forward a number of specific proposals in order to simplify, harmonise and automate procedures. It has notably called for co-operation between operators and customs which should evolve towards true partnership, delegation of controls through «One-Stop Clearance», processing of administrative formalities in the field of transport, technical controls and means of payments.
- The Commission communication is broadly in line with UNICE's proposals. It advocates a set of WTO commitments to simplify and harmonise trade procedures. It suggests in particular provisions to facilitate convergence of official controls and simplified procedures to reduce red tape and documentation.
- UNICE welcomes Commission proposal to involve the private sector in co-ordinated, long-term capacity-building.
- While UNICE recognises the specific difficulties some developing countries might have with rapid introduction of specific commitments in the area of trade facilitation, it is concerned by the general Commission proposal that "countries should where necessary be given not only support but also time to introduce commitments". Such a provision should be more narrowly defined in order to prevent abusive postponement of trade and customs regulatory changes. It should be clearly underlined that trade facilitation is an issue in which all gain.

4. Market Access

- On this issue UNICE, in its 9 June position, concentrates more on the objectives to be achieved than on the specific method to achieve them. European business looks for improved market access commitments covering simultaneous reduction of non-tariff barriers and tariffs. It calls in particular for: full and effective implementation of UR agreements, a comprehensive approach

covering all sectors, a 15% tariff peak maximum and the dismantling of all tariffs for industrial imports from least developed countries, defined as such by the UN, by all developed WTO members and significant contributions from the most advanced (emerging) developing countries. These two categories of countries should be clearly defined. It strongly opposes the automatic elimination of tariffs below certain limits. It also suggests immediate binding of all applied tariffs by all WTO members. Sectoral initiatives should be possible provided they are balanced, involve a critical mass of WTO Members and they become part of the single undertaking at the end of the round.

- UNICE shares the Commission's objective aiming at harmonising the tariff structures of all Members across all non-agricultural products, without exceptions. It welcomes the recognition that credible market access negotiations must be accompanied by a comprehensive non-tariff initiative. The two negotiations should be linked together in practice.
- The Commission communication differs, however, with UNICE's views notably on the following: it gives no maximum figures for tariff peaks (UNICE proposes 15%); the tariff band approach implies the automatic elimination of tariffs below a certain level (UNICE opposes the automaticity of the process); Commission proposals on binding are less ambitious than UNICE would like (UNICE proposes binding of all applied rates).
- The proposed reduction of tariff differentiation to the six-digit HS level does not take sufficient account of the specific sensitivity of individual items. A number of sector associations have reserved their positions on this approach and UNICE wishes to await further consultation before taking a final position.

5. Government Procurement

- Even if the Commission communication underlines that work already carried out notably on transparency in procurement, review of GPA and GATS work on services procurement, should be brought to a successful conclusion within the WTO framework, the text makes no reference to scope and coverage and remains rather vague, without concrete proposals. It nevertheless presses for a high degree of transparency coupled with a phased programme of gradual market opening.
- UNICE strongly supports liberalisation and increased transparency of government procurement markets for goods and services. It would also like, as a long-term objective, to see a truly multilateral set of rules based on national treatment and reciprocity of access.
- Specifically, UNICE calls for a widening of GPA in terms of countries and sectors covered and improvements on coverage of the sub-federal level. It also calls for definition of a workable set of transparency principles as bidding procedures, evaluation criteria, dispute settlement mechanism, etc. UNICE agrees with the Commission that an agreement on transparency should be combined with an agreement to pursue negotiations progressively to liberalise the government procurement markets.

6. Trade and Environment

- Above-mentioned UNICE's comments on sustainable development are also valid for trade and environment. UNICE shares the Commission's approach and priorities for action particularly regarding MEAs, non-product related PPM and environmental labelling, and stronger co-operation with other relevant international bodies. In addition UNICE would like WTO members to reaffirm their support for the present definition of like products.
- Regarding the work of CTE, it should deal only with horizontal issues such as the relationship between trade measures contained in MEAs and WTO. All the other subjects should be dealt with by the individual negotiating groups which will be set up in the context of the new round.

- On the Precautionary Principle, UNICE supports correct application of this principle within the context of sustainable development. The principle cannot and should not be misconstrued to be an absolute standard, overriding all others. UNICE opposes any interpretation of the Precautionary Principle that does not rely on a risk-based, science-justified approach. Such an approach is embodied in the WTO Sanitary and Phyto-Sanitary Agreement. UNICE urges Ministers to reaffirm WTO's commitment to sound science criteria. One way to avoid divergent interpretation of the precautionary approach lies in improved exchange of scientific information and in better government-to-government consultations in the early stages of legislation.

7. Electronic Commerce

- UNICE urges governments to enhance constraint-free electronic commerce transactions. It agrees with the Commission that decisions on electronic commerce have to be taken on the basis of the balanced results of the work programme adopted at the 1998 Geneva WTO ministerial meeting.
- No negotiating group on electronic commerce should be set up in WTO. WTO is not the right platform for drafting rules on domestic regulation. However, WTO could also give useful guidance on how electronic commerce should be supported within individual economies.

B. Other issues

1. Intellectual Property

- UNICE believes that the right strategy that will allow the building-up of strong and harmonised intellectual property protection is to concentrate for the time being on injecting life into the provisions of the agreement at worldwide level by proper implementation, enforcement and assistance to those countries which need it.
- Discussions in the field of intellectual property should therefore be limited to ensuring effective and timely implementation of the TRIPs agreement and pursuing the work programme embodied in the built-in agenda. Once the agreement has been consolidated and more widely implemented, further negotiations could then be considered.
- In this context, UNICE welcomes the Commission's statement, in line with its own position, that any initiative for future negotiations should not lead to a lowering of standards or affect ongoing work in the TRIPs Council under the so-called built-in agenda". It is also UNICE's position that the present achievements and the current transition periods must not be re-opened in new negotiations.

2. Dispute Settlement

- Although the Commission communication provides a number of improvements to DSU before Seattle, the text does not go into detail and it is not a separate item in the EU communication.
- UNICE supports clarification and improvement of some of the provisions of DSU which have led to trade disputes, and looks for greater transparency in the panel process and greater access to non-confidential information and reports.

3. Agriculture

- On this issue the Commission's view is that negotiations should be pursued on continuation of the reform process in agriculture. In approaching the negotiations, the EU will have in mind the need to maintain a number of existing provisions in the Agreement (maintenance of the blue box, renewal of the peace clause and the special safeguard clause), the need for improvements,

particularly regarding access to third country markets and the need to ensure the compatibility of certain rural and environmental policies, through a recognition of the «multifunctional» role of agriculture.

- UNICE supports the gradual opening up of agriculture to market forces. However, the changes must proceed step by step with time to enable the agricultural sector and the industries close to it to embrace the necessary structural adjustments.
- Considering the sensitivity of the agricultural negotiations and the fact that progress on other issues of the negotiations, essential for business and further market liberation, runs the risk of being linked to progress in agricultural negotiations, UNICE calls on the EU to implement the first step of the CAP reform in the agreed timeframe. This would allow the EU to adopt a constructive approach while avoiding being forced into a defensive position in the negotiations. Besides, the EU should request that the measures of other trade partners which are trade-distortive should also be abolished at the same time. From this point of view the EU also has to adopt an offensive position regarding agricultural subsidy practices of third countries.

4. Trade and Competition

- The Commission supports negotiations within WTO, as part of a new comprehensive round, on a binding framework of multilateral rules on competition which would include core principles and common rules relating to the adoption of a competition law, common approaches on anticompetitive practices with significant impact on international trade and investment, provisions on international co-operation, and dispute settlement arrangements.
- UNICE does not support the Commission position in favour of a binding multilateral agreement on specific competition rules, but it would welcome a WTO agreement on objectives for competition rules directed to what is necessary to prevent foreclosure of markets. UNICE believes that competition rules and their enforcement should be based on core principles of efficiency, transparency and non-discrimination. Multilaterally agreed objectives for competition rules should not frustrate the effective working of the market mechanism or slow down commerce. Such a framework should reduce administrative burdens, enhance legal certainty on a global scale and solve competing claims for jurisdiction, issues concerning claims of extraterritoriality and multiple parallel proceedings.
- UNICE welcomes Commission's statement, in line with its position, that, regarding dispute settlement, "In any event, there should be no review of individual decisions".
- UNICE regrets that the Commission's proposals do not specifically refer to the need to ensure adequate protection of confidential business information and to the necessary consent of the parties concerned before any exchange of such information between competition authorities.

5. Labour Standards

- The Commission rightly points out that the worst abuses of core labour standards most often take place in sectors of the economy not exposed to international trade. Thus the Commission recognises that these abuses are not caused by trade liberalisation.
- It also rightly recognises that there is no consensus to establish a WTO working group on trade and labour standards. UNICE welcomes the realistic and pragmatic approach taken by the Commission. Like the Commission, UNICE firmly believes that ILO is the best-placed organisation to assume the lead in world-wide improvement of labour standards.

- The Commission rightly acknowledges substantial progress achieved by the ILO in this area. UNICE therefore reiterates its support to the approach decided at the 1996 WTO Ministerial Conference in Singapore.
- UNICE also wants to underline the importance of pursuing co-operation between the ILO and WTO Secretariats, the practicalities of which will need to be clearly defined among all the interested parties. The shared objective of this co-operation should be to promote further trade liberalisation as an important prerequisite for improvement of living and working conditions, and to help member countries to take full advantage of the benefits of trade liberalisation.

IV. Issues not covered by specific UNICE positions

1. The New Round and Development

- UNICE shares the Commission's views that the specific needs and problems of developing countries should be fully taken into account. While it supports special and differentiated treatment to facilitate their integration in the world economy so that they benefit fully from liberalisation, a distinction should however be clearly made between developing countries and the least developed countries, as defined in the UN, which require special attention. Derogations to the WTO rules should be limited in time in order to maintain sufficient incentives to make the changes necessary to adapt their economies to the new challenges of economic interdependence.
- As stated in the above-mentioned "market access" chapter, UNICE supports the dismantling of all tariffs for industrial imports from least developed countries by all developed WTO members and significant contributions from the most advanced developing countries. It hopes that such a decision, will be taken at the Seattle Ministerial Conference. UNICE also urges that such proposals be accompanied by the strengthening of administrative co-operation and promotion of trade facilitation. European companies are prepared to work to that end with their partners.
- UNICE supports proposals to strengthen capacity building and assistance programmes in developing countries, however progress cannot be achieved without appropriate regulatory reforms in the countries concerned.

2. Technical Barriers to Trade

- In this field, the Commission communication underlines that the new round provides an ideal opportunity to strengthen existing provisions, clarifies a number of issues and expand the scope of certain provisions in the TBT Agreement. It should notably promote regulatory co-operation and include more explicit guidance on good regulatory practice. It is important to clarify the essential criteria that characterise standards as international, and incentives to take up international standards should be reinforced. Finally further international harmonisation of conformity assessment procedures should be addressed.
- UNICE strongly supports the Commission approach to strengthening, clarifying and expanding the scope of the TBT Agreement. Moreover, it would like the WTO to play a more important role in dismantling barriers and promoting harmonisation in the regulatory, standards and conformity assessment areas. Improving the implementation and operation of both the Agreement and Standards Code is in this case imperative.
- Other important steps for industry, mentioned in the communication, would be regulating only essential requirements, leaving technical details to international standards, and promoting self-certification. UNICE is planning to produce a detailed position paper in this area to be issued in the first half of October 1999.

3. Trade defence instruments

- UNICE shares the Commission's view that the anti-dumping agreement is the result of a very extensive negotiation and constitutes a carefully negotiated balance of often conflicting interests. Therefore, it does not support the reopening of the discussion on the basic notions and provisions of the agreement in the new round. However, UNICE would welcome initiatives to enhance transparency in the interpretation and implementation of anti-dumping procedures by WTO. Members the objectives being to avoid discriminatory treatment and procedural harassment for the companies involved.
- Regarding subsidies, UNICE supports the extension of Articles 6.1 (subsidies which give rise to a presumption of serious prejudice), 8 and 9 (authorised subsidies) of the Agreement on Subsidies and Countervailing Measures without changes for a further period. If negotiations are to take place which could affect the rights and obligations of WTO Members under the Subsidies Agreement, these negotiations should form part of the new round of trade negotiations and should not be conducted separately from them. UNICE would also like to have clarification of the proposals, referred to in the Commission communication, to make the Subsidies agreement better support the development objectives of developing countries. While UNICE can accept the case for special and differential treatment for developing countries in appropriate circumstances, this should not mean that all subsidies granted by developing countries should be automatically green-lighted, in particular export and other subsidies which would lead to distortion of world competition in certain sectors (for example those creating production over-capacity).
- UNICE does not support the reopening of the Safeguard agreement. It shares the Commission's view that the Community interest is to ensure that the use of safeguard measures is kept within narrow, clearly defined and, above all, practical limits.

V. Conclusions

UNICE believes that the WTO Seattle Ministerial Conference is a unique opportunity not to be missed for further liberalisation of world markets. It looks to the conference to agree to launch a new comprehensive round of multilateral trade negotiations to stimulate trade, investment and growth, in the framework of multilaterally agreed rules.

UNICE will continue its action in the coming months to support such an outcome. As final "users" of the WTO multilateral system, it looks forward to continuing the dialogue with all the EU institutions on WTO matters. It pursues similar objectives in the various business dialogues it is involved in such as TABD, MEBF, etc. A UNICE delegation will also be present in Seattle during the ministerial conference.

The full set of UNICE positions for the Millennium round (September compendium) is available on request from the UNICE Secretariat (rex@unice.be). UNICE may review or add to its priorities as governments' positions develop and discussions progress in the run-up to Seattle.