

5 December 2003

**UNICE: POST-CANCUN TRADE AND INVESTMENT STRATEGY***Summary*

1. UNICE's overall trade and investment objective is to foster European business competitiveness in the new international trade environment. Therefore, UNICE looks for improved market access for goods, services and investments; non-discriminatory and effective protection of EU investment abroad; competition conditions for European companies similar to those enjoyed by their non-EU competitors and the active defence of European business interests when third countries do not respect their international, regional or bilateral commitments.
2. To achieve these objectives, UNICE supports a pragmatic approach that combines, within a coherent EU international economic policy, multilateral and bilateral/regional approaches in a complementary way.
3. The multilateral trade route must be pursued as a priority. There is no satisfactory alternative to a strengthened WTO rules-based multilateral trading system.
4. Regional/bilateral agreements can only be complementary to the multilateral approach. They can be, however, a useful means for liberalisation provided they meet specific economic and WTO conditions. At the EU level, priority should be given to agreements that promise large volume of trade and significant market access for European companies. UNICE supports the pursuit of negotiations under way between the EU and its trading partners. South-South trade and cooperation should also be strongly encouraged. A review of existing GATT/WTO disciplines on free-trade areas should be undertaken.
5. In that context, UNICE strongly supports the resumption of the Doha Development Agenda negotiations (DDA), as soon as possible, on the basis of a balanced agenda. All WTO Members should re-engage in the negotiating process and show determination to achieve results by being flexible and making commitments according to their level of development.
6. Following the Cancun failure UNICE's DDA priorities are focused on:
  - market access: reduction of tariffs and non tariff barriers;
  - services liberalisation;
  - starting negotiations on trade facilitation.
7. Agricultural trade reform and liberalisation, which are of crucial importance in the DDA negotiations, should be actively pursued. All WTO Members should intensify efforts to agree rapidly on a framework, which will lead to an agreement on the modalities for the negotiations. A solution on cotton should also be a priority of the agricultural negotiations.
8. UNICE also supports negotiations on the improvement of WTO existing agreements with two priorities: harmonisation of the implementation of the Anti-dumping Agreement by all WTO Members and improving the effectiveness of the Dispute Settlement Understanding while avoiding innocent parties paying the price for government's failure to comply with the rules.

9. UNICE considers that each Singapore issue should be dealt with on its own merits. It supports a binding multilateral agreement within the single undertaking for trade facilitation. For transparency in government procurement, UNICE prefers a multilateral agreement. Investment remains an important issue for European companies whose objective remains negotiations of an ambitious high-level agreement. Considering the existing differences of opinion UNICE supports a pragmatic approach, the plurilateral option seems the most feasible. Regarding competition, UNICE is prepared to contribute to any work plan/negotiating process which might be agreed among WTO Members.
  10. UNICE supports the further integration of developing countries into the global economy. The WTO cannot however assume responsibilities beyond what it was created for, make up for deficiencies in development policies or replace internal structural reforms in developing countries. Exemption from WTO rules is not the solution to development. Instead, for each area of the negotiations, special and differential treatment provisions and technical assistance should be adapted to the different level of economic development and competitiveness of the developing countries concerned. To address the concerns raised by the beneficiaries of the EU generalised system of preferences and by the Africa, Caribbean and Pacific (ACP) countries in Cancun, the EU should engage in a serious review of its trade preference system.
  11. Fundamental reform of the WTO is inappropriate in the short term. There is a need, however, for organisational and procedural improvements, in parallel to the negotiating process and within the existing framework, to avoid the pitfalls encountered at several Ministerial Conferences and to facilitate decision-making.
  12. UNICE also supports WTO accession negotiations with countries that are not yet WTO Members as a means of fostering trade liberalisation from the beginning of WTO membership.
  13. A coherent and integrated EU international economic policy along the lines of what is mentioned above is necessary to promote the competitiveness of European companies abroad. However, internal EU policies should not undermine this competitiveness. UNICE would therefore like to see the EU systematically carry out, as part of the business impact assessment of new EU legislation, a trade impact assessment to give policy- and decision-makers more economic evidence and to ensure that the latter fully understand the implications of proposed legislation on the competitiveness of EU firms.
  14. On the basis of this strategy UNICE will pursue its action at EU and WTO levels and with EU trade partners. It will strengthen cooperation with partner business organisations from developed and developing countries and continue to participate actively in civil society dialogues in order to improve mutual understanding and to contribute to the development of a forward-looking and realistic EU trade and investment policy.
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**UNICE: POST-CANCUN TRADE AND INVESTMENT STRATEGY****INTRODUCTION**

Considering the serious breakdown of the WTO Ministerial Conference in Cancun in September 2003, the rise in power of the big emerging countries on the international scene and the medium and long-term market growth opportunities for European companies, UNICE has reviewed its trade and investment strategy and its WTO Doha development round priorities to promote the interests and competitiveness of European companies effectively and efficiently in the new international trade environment.

This paper establishes a framework and general guidelines for UNICE action in the months ahead in the trade and investment fields.

This strategy will be subject to further consideration as the positions of EU trade partners and debate/negotiations in the WTO evolve. It will be also complemented in due course by detailed positions on specific trade policy or negotiating issues.

**I. EU TRADE AND INVESTMENT POLICY****I.1. UNICE trade and investment objectives**

European companies have the following main objectives:

- better and further **market access** for goods, services and investments in non-EU countries;
- **non-discriminatory and national treatment** and effective protection of their investments abroad;
- **similar competition conditions** to those enjoyed by their non-EU competitors (level playing field);
- **active defence of European business interests** when EU trade partners do not respect their WTO and/or EU bilateral/regional trade and investment obligations and commitments.

**I.2. UNICE trade and investment strategy**

To achieve the European business trade and investment objectives set out above, UNICE supports a **pragmatic approach** which combines multilateral and bilateral/regional approaches in a complementary way.

### ***1.2.1. Priority to the multilateral approach***

UNICE is a strong **supporter** of the WTO rules-based multilateral trading system and would like to see that system strengthened. There is no satisfactory alternative **to multilateral rulemaking**. The multilateral approach is the preferred and best route for producing:

- the significant results that European companies expect in terms of trade and investment liberalisation, which is necessary for the development of their activities and strengthening of their competitiveness;
- sustainable solutions to the challenges that globalisation poses in terms of trade and investment through a framework of clear, transparent and enforceable rules agreed jointly by all WTO Members.

The multilateral route for trade liberalisation must therefore be pursued as a priority, vigorously and with all the necessary resources.

### ***1.2.2. Bilateral/regional agreements only as complementary to the multilateral approach***

UNICE is concerned by an excessive proliferation of free-trade arrangements without a multilateral counterbalance. Notwithstanding the existence of many bilateral agreements it should be noted that they can:

- lead to very complex relationships between countries;
- create new sources of conflicts between members and non-members;
- carry the risk of conflicting requirements (e.g. in rules of origin) and excessive administrative burdens being imposed on exporters or investors;

At the same time negotiations of bilateral/regional agreements may bring benefits by fostering regional cooperation and trade and investment liberalisation. For example, more liberalised South-South trade should be encouraged and promoted. Such liberalisation will create growth and opportunities and will enable the participating countries to prepare their industries for a future worldwide free trade system.

UNICE therefore supports the negotiation of bilateral/regional agreements between the EU and its trading partners provided they meet the following **conditions**

- i. they are based on clear economic and not purely political considerations;
- ii. they build on and/or complement the multilateral trading system;
- iii. they are fully compatible with GATT article XXIV and WTO criteria in terms of coverage and reciprocity;

**Priority** should be given to achievable agreements which promise **large volume of trade, significant market access benefits** (goods, services and investment) through removal of high and peak tariffs and non-tariff barriers, impediments to service trade and/or investors as well as the protection of intellectual property. These agreements also need to tackle the issue of regulatory barriers which, in a free trade zone, are the real barriers for business. An overall assessment of the implications of these agreements for the competitiveness of European companies should be carried out.

If these criteria cannot be met, free-trade agreements (FTAs) will not be appropriate, and the EU should consider other forms of economic cooperation agreements. In order to enhance the competitiveness of European business new forms of economic cooperation with big trading partners, going beyond what exists already, should be actively explored. The EU cannot remain inactive when other trade partners are gaining market shares via bilateral agreements. In that context, an overall **review of the EU's policy for bilateral agreements** should be conducted.

UNICE considers it also essential to **monitor initiatives** for the establishment of regional or bilateral free trade arrangements to which the EU is not a party. All such agreements should comply fully with WTO provisions.

### **I.2.3 Integrated and coherent EU policies**

EU trade/investment and development policies should be fully supportive and integrated in EU global policy objectives. UNICE is concerned that the existing **EU trade preferences** given to EU partner developing countries and ACP countries in particular:

- acted as a deterrent in Cancun to further multilateral liberalisation and, paradoxically, fuelled resistance to progress in the Doha Development Agenda negotiations whose main focus is development;
- raise questions about whether the incentive clauses (environmental, social and drug) included in the EU general System of Preferences (GSP) are WTO-compatible. Such clauses also impose too much bureaucracy on the importer;
- are not extensively used by those poor countries and small companies which are supposed to be the main beneficiaries because of the complexity of the system and the bureaucracy it entails;
- continue to be granted to countries which have achieved substantial levels of development, such as certain OECD countries, or have developed massive trade surplus with the EU.

UNICE would like therefore the **EU to engage in a serious review of the existing EU trade preference system** with the countries concerned to consider the possible options to respond adequately to their specific needs in a non-trade distorting and fully WTO-compatible way. WTO members cannot continue to refuse to engage in further trade liberalisation because of an alleged “erosion of preferences”. To address this issue, emerging market countries could also consider providing tariff preferences to the least developed countries – many of which are from the same region.

EU international economic relations should not be considered as a self-contained policy and tackled in isolation. **Internal EU regulations should not negatively affect the global competitiveness** of European companies in third-country market. To avoid this type of situation, UNICE would like to see the EU systematically carry out, as part of the business impact assessment of any new EU legislation, a **trade impact assessment** to give policy- and decision-makers more economic evidence and ensure that they fully understand the implications of the proposed legislation on the competitiveness of EU firms in the global market.

### **I.3 UNICE recommendations:**

Considering the above-mentioned principles/considerations and the new trade policy environment **UNICE supports**

- the **resumption of the Doha Development Agenda negotiations**, as soon as possible, on the basis of a balanced agenda likely to produce concrete growth enhancement results within the shortest timeframe possible (see point II);
- **WTO accession negotiations** with those countries not yet WTO-member as a means to foster trade liberalisation possibilities right from the beginning of a WTO membership;
- the **pursuit of the bilateral and regional negotiations** between the European Union and its other trading partners (see point I.2.2);
- the review **of existing GATT/WTO disciplines on free-trade areas** as provided in the Doha mandate.

## II. DOHA DEVELOPMENT AGENDA: UNICE STRATEGY TO RESTART THE DDA

### II.1. Overall approach

#### *II.1.1. Focus on generating economic growth*

After Cancun, WTO activities must refocus on the primary objective of the organisation, i.e. trade liberalisation and facilitation. The negotiations should therefore concentrate on the pursuit of **market liberalisation** (industrial and agricultural products, services) in order to release new sources of economic growth for the benefit of all Members and on the **good functioning and consolidation/clarification of existing agreements**.

#### *II.1.2. Full acceptance of negotiating rules/balanced commitments*

Success however, will depend on the general acceptance by all WTO Members of the actual rules and principles of the negotiations, namely the exchange of concessions which, when put together at the end of the negotiations in a final package, become sufficiently attractive for all Members. All negotiators around the negotiating table should be fully prepared, in due course, to accept commitments which reflect their level of development. This was certainly not the case in Cancun, and resulted in the bitter failure of the Conference, despite the interesting perspectives that were starting to emerge.

With that in mind, **UNICE calls on EU negotiators to engage fully in the negotiations** on the understanding that:

- EU trading partners, and notably the emerging economies, also need to make commitments recognising their level of development. A higher level of development should be reflected in a higher level of commitment;
- EU industrial interests (goods and/or services) are not sacrificed because of rigidities, at European level, on the agriculture dossier or other objectives which would not have a direct impact on economic growth.

#### *II.1.3. The single undertaking remains the preferred approach*

**The ultimate UNICE objective**, at the end of the negotiations, remains adoption by the whole WTO membership of a **package of multilateral agreements** with, where appropriate, specific conditions and technical assistance programmes for those developing countries which are truly in need so as to give them the resources and the time necessary to adapt to the new rules.

While UNICE continues to believe in the concept of **single undertaking**, it recognises, after Cancun, that for some new rules issues on the DDA (investment and competition) flexibility is necessary to get the negotiations moving and find the necessary compromises. Each issue should, however, be addressed on its own merit.

Should the **plurilateral approach** be chosen by WTO Members, “optional participation”<sup>1</sup>, “ITA-model”<sup>2</sup> or any other possible formula, UNICE would request that the following **conditions** are attached:

- the plurilateral approach should be strictly limited to the most controversial Singapore issues, investment and competition;
- the plurilateral approach should not result in a lowering of the Doha mandate and European Union’s ambitions. On the contrary, the results of such negotiations should be more ambitious.
- the negotiations on these subjects, to be concluded outside of the single undertaking, should involve the largest number of WTO members and in particular all the developed and emerging countries;
- any “opt-out”<sup>3</sup> option, should be open exclusively to least developed and developing countries which expressly so request it, with a clause for review in the next round of negotiations;
- “opt-in”<sup>4</sup> should be possible at any time;
- a critical mass of countries should sign the agreement. The critical mass should be established for each agreement on its own merit.

## II.2. New UNICE priorities for the DDA negotiations

UNICE’s priorities are refocused on:

- subjects capable of **generating economic growth** for developed and developing countries;
- **improvement of existing agreements** and building on/complementing them.

### II.2.1. Focus on market access

UNICE priorities are:

- **market access: tariffs and greater emphasis on non-tariff barriers.**
- **services;**
- **trade facilitation which fits within the core objectives of the WTO.**

### II.2.2. Clarification of existing rules to prevent disputes between members

Regarding existing rules, UNICE’s two priorities are:

- the **Anti-Dumping Agreement**, in order to harmonise its implementation by all WTO Members,
- the **Dispute Settlement Understanding**, to improve its effectiveness while avoiding innocent parties paying the price for government’s failure to comply with the rules.

UNICE’s pre-Cancun positions on these priorities are still valid<sup>5</sup>. They will be complemented, in due course, as the process evolves in Geneva. UNICE considers that the proposals on the table regarding market access for non-agricultural goods (NAMA) are far below EU business expectations (too many exceptions and flexibilities for developing and emerging countries in the 13 September draft Cancun Ministerial declaration). UNICE looks for a formula which would result in a maximum tariff level of 15%. For services, the quality and the number of offers tabled so far by the EU’s trading partners are highly insufficient. It calls on EU negotiators to continue to **press for ambitious and significant results** in these areas.

The other issues on the DDA should be pursued according to the lines agreed in Doha.

<sup>1</sup> “Optional participation”: all WTO Members participate in the negotiations. Possibility at the end of them to subscribe or not to the results.

<sup>2</sup> “ITA-model”: only interested WTO Members participate in the negotiations. Possibility for other Members to join later and subscribe if they so wish to the results.

<sup>3</sup> “opt-out”: option not to subscribe to an agreement

<sup>4</sup> “opt-in”: option to subscribe to an agreement

<sup>5</sup> For more details please consult UNICE’s WTO website: <http://wto.unice.org>

### II.3. Agriculture

#### ***The agricultural trade reform and liberalisation process should be actively pursued***

Agricultural negotiations are of **crucial importance for trade negotiations**. However, the dominant role played by the agricultural dossier contrasts with the relatively small share of trade in agricultural products even for developing countries. Thus, trade, growth and development opportunities cannot be missed because of all sorts of agricultural trade restrictions and distortions. For the DDA negotiations to progress, all WTO Members should therefore engage seriously and realistically in the agricultural negotiations and contribute to the liberalisation process by making meaningful and balanced commitments in the three pillars of the DDA negotiations, market access, export support and trade-distorting domestic support.

All WTO Members should therefore, building on the work done before and in Cancun, intensify their efforts to **agree rapidly on a framework** which would lead to an agreement on the modalities for the negotiations. Both the developed countries (especially the EU, the US, Japan, Korea and the EFTA countries) and developing countries should engage fully in the negotiations and make substantial commitments without further delay.

A solution on **cotton** should also be a priority of the agricultural negotiations.

### II.4. Singapore Issues

UNICE considers that the four Singapore issues, investment, competition, trade facilitation and transparency in government procurement are important and essential to release new market opportunities for companies of all sizes around the world. However, considering the positions expressed in Cancun and the need to overcome the current deadlock in the DDA UNICE has reviewed its position. It considers that each issue should be dealt with on its own merits. UNICE's preferred options, without excluding other possible options and in accordance with the set of criteria provided in paragraph II.1.3 above, are:

#### ***II.4.1. Trade facilitation: support for a binding multilateral agreement within the single undertaking***

For UNICE, trade facilitation is a priority as trade procedures represent as much as 4-5% of trade transactions costs. All WTO Members stand to gain from harmonised and simplified transport and trade control procedures and increased import and export automation.

#### ***II.4.2. Transparency in government procurement: preference for a binding multilateral agreement within the single undertaking***

A binding multilateral agreement would certainly contribute to more economic efficiency, reduce government expenditures and improve global governance. It should however be considered only as a small step towards market liberalisation at a later stage.

#### ***II.4.3. Investment: support for a strong and substantial agreement***

Investment remains important for European companies. Most of the issues have been thoroughly discussed in the WTO Working Group on Trade and Investment but there is still work to be done to clarify respective positions/questions/concerns, examining the various possible options and defining the modalities of negotiations. UNICE's objective remains negotiations of an ambitious high-level agreement, providing for full protection of foreign direct investment and a mechanism for progressive market access liberalisation. Considering the existing differences of opinion on this issue, UNICE supports a pragmatic approach. A plurilateral approach meeting the conditions enumerated under point II.1. 3 seems the most feasible<sup>6</sup>.

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<sup>6</sup> MEDEF is in favour of investment negotiations as part of the single undertaking.



In parallel, the EU must consider all the other alternatives to improve access and investment protection for EU investors. Efforts should be intensified to negotiate such provisions in current and future bilateral/regional trade negotiations.

#### **II.4.4. Competition**

UNICE stands ready to contribute to any work plan/negotiating process which might be agreed among interested WTO Members. In the meantime, UNICE would welcome new capacity building initiatives for countries without competition laws.

#### **II.5. Development: *differentiation between developing countries to be enhanced***

UNICE considers it essential that developing countries are more fully integrated into the global economy so that they can reap the benefits of trade and investment liberalisation. However, the **WTO cannot take responsibilities beyond what it was created for** or make up for deficiencies in development policies or internal structural reforms in developing countries. The WTO's key contribution to development is through improved market access for goods and services and by establishing clear rules for economic activity.

Problems have arisen from the **lack of sufficient distinction** between developing countries. UNICE believes that exemption from WTO rules is not the solution to help developing countries achieve their development objectives. Instead they should be given more time, flexibility and technical assistance to implement their WTO obligations with a specific consideration for the least developed countries whose challenges cannot be overlooked.

The existing and foreseen special and differential treatment provisions (**SDT should be further specified**). For each area of the negotiations, they should distinguish between developing countries according to their different level of economic development and competitiveness of their specific sectors.

Technical assistance should focus on **capacity building** and facilitating the full participation of developing, least developed countries and small developing economies in the negotiating process. Efforts should also be enhanced to increase synergies and efficiency between the existing assistance programmes.

#### **II.6. WTO reform: *in the short term, focus on the organisational and procedural deficiencies of the WTO***

UNICE acknowledges fully the WTO's limits in terms of organisation and capacity to reach decisions. However, it considers that the fundamental principles and rules on which the Organisation is based are its strength and have demonstrated their full value for trade development, a source of economic growth at the global level. It would therefore be inappropriate to question them, under pressure from the failure of Cancun, with the risk of definitively compromising any chance of successful conclusion of the round of negotiations launched in Doha in 2001 and which is already well advanced.

However, **improvements are needed, in parallel to the negotiating process and within the existing framework**, in order to facilitate the negotiating process, avoid the pitfalls which several Ministerial Conferences have encountered in the past and facilitate decision-making in full respect of transparency rules and involvement of all WTO Members.

Useful proposals have already been made in this direction concerning the organisation and the chairmanship of Ministerial Conferences, the prerogatives of the Director General and the negotiating process. These and other proposals should be examined in Geneva and decisions taken by the General Council at the earliest opportunity.

Considering the fact that the negotiating process is disrupted by the interference of some NGOs, the relationship with the NGO community and the question of accountability, transparency and responsibility should also be addressed.

Yet, if such improvements are necessary, they will be no more than a stopgap if WTO Members as a body do not confirm their commitment to the negotiating process, at the highest level, and fail to demonstrate their **determination to achieve results** by showing flexibility in their negotiating positions.

A more far-reaching reform of WTO, seeking to adapt WTO to the new international economic context, should not be ruled out however. It should nevertheless only be addressed once confidence and a constructive approach between Members have been restored.

### **UNICE: THE WAY FORWARD**

On the basis of this strategy UNICE will pursue its action at EU and WTO levels and with the EU's trade partners. It will strengthen cooperation with partner organisations from developed and developing countries and continue to participate actively in the civil society dialogue in order to improve mutual understanding and contribute to the development of a forward-looking and realistic EU trade and investment policy.

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