

UNICE

THE VOICE OF BUSINESS IN EUROPE

Mr Mogens Peter Carl
Director General of DG Trade
European Commission
Rue de Genève
B-1049

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THE SECRETARY GENERAL

Dear Mr. Carl,

UNICE has learned that the Commission will discuss shortly with the Member States a proposal for a new submission to the WTO on "Market Access for Environmental Goods". This is an issue on which UNICE has expressed a European business position on several occasions and an interest to pursue the dialogue with the Commission and other interested parties. Since the discussion schedule in the 133 Committee appears, according to our information, very tight, UNICE would like to give you its preliminary reaction on the new Commission proposals while reserving the right to make further contributions on specific items after full consultation with its membership.

UNICE, which supports sustainable development, understands that the Commission initiative on environmental goods must be considered against the political commitment to sustainable development as embodied in the WTO Charter, reaffirmed by the DDA negotiating mandate, the World Summit on Sustainable Development and the Millennium Development Goals. It considers however that the Commission's conclusion and the suggested path forward are fundamentally flawed. The WTO contribution to sustainable development must preserve the basic principles and further the objectives underlying the multilateral trading system. In other words, there must be a clear distinction between what the WTO can and should do and what other international organisations and all the sovereign nations should do in order to promote sustainable development.

UNICE believes that the best approach to address environmental goods, for which no agreed definition exists, is to support an ambitious result of the DDA NAMA negotiations. It would like therefore to see industrial tariffs considerably reduced or where appropriate, eliminated. Given that industrial tariffs in the European Union are low (on average 3.9%, compared to an average of 30% or more in India or Brazil), the more the tariffs will be reduced and harmonized through an ambitious compression formula, the less necessary a separate approach for environmental goods will be. UNICE therefore would like the EU to concentrate its efforts, first and foremost, on an ambitious overall tariff reduction objective. Over the past two years, UNICE has expressed concerns about the lack of ambition of many WTO members, in particular the emerging countries. It still expects that industrial tariffs will be considerably reduced or eliminated as a result of the negotiations. UNICE therefore supports any initiative taken to achieve this goal, provided that it does not put into question the fundamental principles of the WTO or stand in the way of an overall ambitious NAMA agreement.

However, UNICE cannot remain complacent when discrimination between products is at stake. It considers that the Commission proposals, in particular section III.2 of the paper, are tantamount to discrimination and ignore the fundamental principles of the WTO. The Commission proposals would introduce the concept of "good" and "bad" products into the tariff schedule which, as a matter of principle, UNICE cannot support.

The section "Guiding Principles" of the Commission paper is a demonstration of the complexity of the issue. There will not and cannot be an objective definition of an environmental good. Hence the paper runs into all sorts of definitional, nomenclature and classification problems and contradictions. The Commission proposal would result in making the tariff system and tariff administration complicated and bureaucratic since a tariff for a specific product would be applied according to the environmental use of such a product. UNICE has clearly stated, in its position on the Reduction and/or Elimination of Tariffs and Non-Tariff Barriers to Environmental Goods of 23 January 2003 (at annex) that it opposes such a distinction. It fears that the result of the Commission's proposal would be trade complication not trade facilitation.

UNICE reserves the right to comment on the section "goods used in pollution control and resource management". It can see the merits of this approach although it has numerous questions on how goods that are used for pollution control would be covered. If a product is classified as environmental only when its sole use is environmental, the discriminatory nature of the Commission proposal becomes apparent. The chemical industry for example produces many products without which meaningful environmental protection would be impossible. Yet these products are not included in the Commission proposal. Should there be a strong interest of WTO members to work on such a list, UNICE suggests that input should be made in the most pragmatic and least discriminatory way.

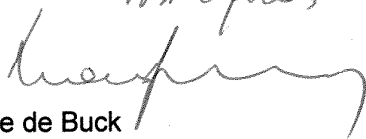
UNICE has very strong concerns with the section "goods that have a high environmental performance or low environmental impact". It questions why the Commission proposes to introduce the hotly debated and controversial PPM issue that would allow a WTO Member to distinguish at the border between products on the basis of their non-product related process and production measures. UNICE can only repeat what it has said for the past two years. UNICE believes that an issue which the majority of the WTO membership rejects to discuss, let alone negotiate, should not be introduced through the "NAMA backdoor" into the negotiations. The Commission should also explain, for example, why insulation panels made of polystyrene should be treated differently from a tariff point of view than insulation panels produced from vegetable fiber. Both panels serve an environmental purpose, namely to insulate.

UNICE's biggest concern with this section and with the proposal to extend the tariff discrimination to environmental labeling has to do with classification. Tariff classification is a criterion for the definition of "like product" under GATT Article III. Different tariff classification can lead to the conclusion that two products are not like. In such a situation, a country can legally distinguish between the different products at the border and could possibly prohibit one whilst allowing the other. UNICE has suggested that the WTO should negotiate the issue of labeling, in particular environmental labeling. Its position has however been fundamentally clear with respect to one issue: the labeling requirement cannot and should not be considered as changing the tariff classification of the product. Identical products should be like and be treated alike, if the difference for granting the label lies in the production process only.

Finally, with regard to the modalities for the reduction/elimination of tariffs on an eventual non-discriminatory list of "environmental goods", UNICE has argued that all WTO Members can and should do the utmost to protect the environment. There should be no country exceptions in these negotiations. Therefore, UNICE does not share the Commission view that the least developed countries should be exempted from tariff liberalisation/elimination measures, which could offer them concrete environmental and developmental benefits.

UNICE is of the view that the conceptual concerns with respect to environmental goods should be solved before any proposal is tabled. It looks forward to being associated in the dialogue on this important issue.

Yours sincerely,

Best regards


Philippe de Buck