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## **UNICE INITIAL VIEWS ON A WTO PROBLEM-SOLVING MECHANISM FOR IMPLEMENTATION RELATED NON TARIFF BARRIERS**

Summary: The draft paper proposes the creation of a mediation mechanism in the WTO to facilitate the removal of non tariff barriers in a constructive, effective, rapid and non-confrontational manner.

### **A PROBLEM SOLVING APPROACH TO NON TARIFF BARRIERS (NTBs)**

#### **Introduction**

Substantially improved market access for industrial goods (NAMA) remains one of UNICE's three priorities in the DDA negotiations – along with Services and Trade Facilitation. While vitally important, reductions and, where appropriate, elimination of tariffs will be insufficient to achieve ambitious trade liberalising objectives. Consequently, UNICE has repeatedly called for progress in the negotiations on non tariff barriers.<sup>1</sup>

UNICE is very concerned about the lack of progress in the DDA NTB negotiations. Although the WTO membership has listed a huge volume (some 2000) of NTBs, most of the citations concern areas where there are already WTO rules, including problems arising from a lack of implementation of existing WTO agreements. Given the difficulty of dealing with these issues one-by-one in the DDA negotiations, UNICE believes that the WTO could benefit from creating an NTB problem-solving mechanism, including national contact points, to enable companies to bring their NTB problems to a more rapid and effective solution within the existing legal framework.

#### **1. The functioning of an NTB problem-solving mechanism at the WTO**

The WTO system already has a number of possibilities to deal with NTBs. The Trade Policy Review Mechanism provides membership with the opportunity to question WTO Members on NTBs. The TBT and SPS agreements afford the opportunity for the membership to raise concerns over and consult on new regulations. The Dispute Settlement Mechanism gives membership the right to challenge the compatibility of national (or EU) regulations and thus seek enforcement of WTO rules. An NTB problem-solving mechanism would complement the WTO institutional framework by being far less complicated than a fully fledged WTO dispute but more constraining than a notification procedure.

UNICE believes that the mechanism should function on a voluntary basis for all parties - like a mediation. Recourse to the mechanism could be triggered by a request from a

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<sup>1</sup> See: 20 October 2002: [Doha Development Agenda: UNICE position on non-agricultural market access negotiations](#) . 2 July 2003: [UNICE comments on non-tariff barriers to trade: technical barriers to trade](#). For UNICE Hong Kong Fact sheets: <http://212.3.246.118/content/default.asp?PageId=381>

WTO Member<sup>2</sup> to another WTO Member to the responsible WTO body. Based on that request, the “offending” WTO Member could choose to participate in the mediation within a clear timetable (e.g. 30 days). Once both parties agree to have recourse to the mechanism, the WTO could be called upon to nominate a mediator (a recognised expert in the issue, including from a relevant international organisation).

The mediation procedure should last no more than three months to ensure that NTBs are rapidly dealt with based on the following timetable.

- One month for the Members to indicate their willingness to seek mediation and to submit views on the issue.
- One month for the mediator to reflect on a solution in consultation with both parties.
- One month for the mediator to make a final proposal and to help both parties reach a satisfactory solution.

The final proposal of the mediator should reflect the letter and spirit of relevant WTO rules and be based on key WTO principles such as non-discrimination, proportionality and least-trade restrictiveness.

To ensure that poor countries with limited resources can also take advantage of an NTB problem solving mechanism, costs should be kept to a minimum. Deliberations should focus on clarification of the national measures and regulations applicable in the case in question, whether they are implemented correctly and whether it is possible to find an equitable solution based on relevant WTO rules, which could offer guidance on how to minimise trade distorting effects from relevant measures and regulations.

Regarding transparency of procedures, UNICE believes that the mediation process should be limited to participation by the two WTO Members concerned to reduce costs and delays and to avoid politicisation. However, other WTO Members should be kept informed of the proceedings and the conclusions of the mediation process<sup>3</sup> should be publicly available and compiled by the WTO so as to create a useful database for problem solving.

To protect the rights of WTO Members, the mechanism should not have any impact or prevent recourse to the dispute settlement mechanism. In other words, the mechanism should not be seen as an enforcement instrument but as a problem-solving tool.

## **2. The coverage of an NTB problem solving mechanism**

The mechanism should not aim to replace the dispute settlement mechanism which reviews the WTO compatibility of national legislation or law. Rather, the NTB mechanism should examine the implementation of regulations and administrative procedures to find solutions to NTBs and to reduce the trade distorting effects of certain measures. This mechanism should be designed to avoid politicisation and to focus on problem solving.

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<sup>2</sup> Based on a complaint by a company or industry organisation to its national contact point. However, this mechanism should be a “state-to-state” instrument. In the proceedings, the affected company should be represented by its government representative.

<sup>3</sup> With due respect for confidential information.

UNICE believes that the coverage of an NTB mechanism should be as broad as possible. Therefore the coverage should include the main NTB-related rules and agreements such as the GATT, Agriculture, SPS, TBT, Customs Valuation, Import Licensing agreements. In addition, such a mechanism would be ideally suited to address new WTO agreements being negotiated in the DDA such as Trade Facilitation.

### **3. The added-value of an NTB problem solving mechanism**

The creation of a new NTB mechanism would require a new means of problem-solving in the WTO system. However, this would be largely justified by the advantages of such a system.

First, by removing trade barriers in an efficient and non-adversarial manner and by making WTO rules more effective, the mechanism would make WTO agreements much more accustomed to the realities of business which sees new NTBs cropping up daily and effectively hindering international trade.

Second, the mechanism would help WTO Members seek practical solutions to implementation related concerns rather than simply listing (and complaining about) them at the WTO.

Third, the mechanism would address one of the main concerns of developing countries which often feel that they are excluded from developed country markets due to burdensome regulations. Indeed, the mechanism would be a useful tool to help them find solutions to their market access problems.<sup>4</sup>

Fourth, the mechanism could address a number of “grey zone” areas of WTO rules by clarifying, on a case-by-case basis, ways to implement them in the most trade liberalising fashion.

Fifth, the mechanism would provide a much simpler and less politicised approach to resolving minor trade hindrances which have extremely negative impacts on importers and exporters.

### **Conclusion**

UNICE strongly supports the establishment of a WTO NTB problem solving mechanism to ensure that all WTO Members can take advantage of the market access opportunities generated by existing and future WTO agreements. It urges the EU to rapidly pursue this issue with its trading partners in the context of the DDA negotiations. UNICE will amend or review these initial views as and when the debate develops.

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<sup>4</sup> In the case of the EU, the mechanism could be linked to the « Expanding Exports Helpdesk » to find solutions to developing country market access problems.