



FOREIGN TRADE ASSOCIATION

**FTA Position
on the 5th WTO Ministerial Meeting
in Cancun**

FTA POSITION ON THE 5th WTO MINISTERIAL MEETING IN CANCUN

The 5th Ministerial Meeting of the World Trade Organisation in Cancun is approaching. In September 2003, the WTO-members are to assess the achievements of the past two years within the Doha-Development-Agenda.

The differences between industrialized and developing countries have proved to be substantial. Poor willingness for compromises and consensus have led to the missing of past deadlines, future deadlines are in danger. Differing positions on 'agriculture' and 'access to medicine' had a negative impact on the progress of other, less problematic trade issues. Trade disputes between the USA and the EU caused some atmospheric disturbances.

Multilateral trade needs a perspective, a medium-term stimulation of the worldwide economy by facing improved market-access and more predictable rules regarding trade and investment. The success of this round will be particularly significant for European trading companies, considering the range of issues with immediate effect on their scope of action. This will on the one hand encourage investments and long-term commitments abroad to the benefit of developing countries, whose participation in multilateral trade has increased by 6% between 1990 and 2001. European Trade on the other hand will – like other sectors – be able to contribute to stability and growth in Europe, which is especially important in the present weak domestic and global economic climate.

Cancun offers the opportunity to take the multilateral trading system another step forward. The failure of the WTO Ministerial in Seattle is not forgotten and the reasons for the failure have been frequently analysed. It has become evident, that the interests of the developing countries were not sufficiently recognized within the WTO process and that these countries need to be accepted as adequate negotiating partners. The failure of Seattle must not be repeated. The interests of the developing countries have to be taken into due account. It is necessary to come to fair terms in all those areas where their vital interests are at stake (e.g. agriculture and textile). The Foreign Trade Association encourages all parties involved to respect the timetable of deadlines in order to complete the DDA by January 1st 2005.

The FTA would like to take the 5th Ministerial Meeting as an opportunity to make its position on trade policy clear in order to push ahead the further negotiating process.

FTA EXPECTATIONS FOR THE DDA

Further Development and Strengthening of the WTO Rules

With international economic relations growing closer and more complex, the requirements for a further development of multilateral rules have grown. Therefore it is necessary to further expand and strengthen the fundamental principles such as non-discrimination and the most favoured nation principle in all WTO agreements.

More than that, the new topics of trade policy - in particular investment, trade facilitation and competition (Singapore-Issues) - should be negotiated in Cancun.

Regarding the increasing number of bilateral free trade agreements and regional economic agreements, the question arises, whether and how these agreements comply with the multilateral trading system. Often described as a kind of insurance to fall back on, in case the multilateral process should fail, they should not serve as an alternative to WTO-agreements. Otherwise, ambitions to conclude the multinational negotiations within set deadlines will fade. Competitive disadvantages will lead to uneven development in developing countries and LDCs, a differing process of liberalisation would be detrimental to the development aspect of the DDA.

Improved Market-Access for Non-Agricultural Products

The partly prohibitively high tariff rates in several newly industrializing and developing countries lead to a closure of potential markets thus obstructing an overall economically useful extension of world trade. Against this background, the FTA advocates to use a general formula covering all goods as basis for further negotiations on market access.

From the point of view of the FTA, the tariff reduction formula suggested by the EU-Commission in form of a so-called 'compression mechanism' complies in principle with all demands, trade has on an improved reciprocal market access: thus, high tariff rates will decrease to a bigger extent than low tariffs, the 15 per cent threshold will no more be exceeded. Minor tariff rates should be completely abolished. The FTA promotes a limit of 3 % instead of the 2 % as proposed by the EU-Commission. Moreover, we welcome the proposal to reduce tariffs for textile and clothing products as well as footwear even beyond the formula in order to meet the specific requirements of the developing countries. A freezing of textile and clothing tariffs on the present level as requested by some parties should be refused. Besides tariff reductions on the textile and clothing sector, a harmonisation of the tariff rates is desirable.

Although the proposal submitted by the USA -concerning a step by step abolition of all tariffs for industrial products until the year 2015- goes far beyond the approach of the Commission, it has hardly a chance to be put into practice, since already the EU approach is met with scepticism by many developing countries, that are hesitant to open up their markets. In this respect it should be considered, that too ambitious tariff reductions can be counterproductive regarding an increasing readiness to close up markets by non-tariff trade barriers and an increasing number of safeguard clause proceedings, above all vis-à-vis the PR China. In these cases the predictability of trade relations could suffer a negative impact.

Further Reduction of Non-Tariff Trade Barriers

Amongst other things, requirements regarding product quality, rules for product labelling as well as national examinations and certifications still prove to be non-tariff trade barriers. Therefore a harmonisation of technical rules, respectively the implementation of the principle of mutual recognition, is imperative.

International harmonisation of standards as well as mutual recognition of the results of international procedures for conformity investigations is not mandatory. The Agreement on Technical Barriers to Trade,

which should lead to more transparency of national rules and multilateral dispute settlement procedures, must be further developed according to the actual needs. The scope of application must be widened.

Reforming the Anti-Dumping Agreement

If internationally recognised rules of competition were agreed upon, trade defence instruments would be considerably weakened. As the FTA does not expect any such agreement in the next trade round, it calls for a reform of the Agreement on Implementation of Article VI of the GATT 1994. European importers as well as the developing countries are demanding stricter rules for the initiation of anti-dumping proceedings in the future. The WTO should act as a watchdog and strengthen its surveillance of the use of trade defence instruments, in order to prevent the misuse of anti-dumping measures for protectionist purposes.

The FTA also calls for more transparency in anti-dumping proceedings. For European trade to be able to take part in such proceedings more easily, all parties should be obliged to submit a non-confidential version of their documents at the opening of proceedings. It is imperative that the same information be available to all parties at the same point of time. In addition, there should be standardised questionnaires as well as harmonised criteria and methods to compensate the very different ways of implementing the agreement. The trade sector in particular is in need of a unified system, since it is often involved in several anti-dumping proceedings at the same time. Since the developing countries are often not in the position to properly defend themselves against anti-dumping, greater knowledge of the impact of dumping would lead to more legal security for exporters as well as importers. This better developed know-how would have as a consequence a decrease of anti-dumping cases.

Trade in Services/GATS

Trade in services must be further liberalized. The service sector contributes more to economic growth and the creation of jobs than any other sector of the economy. The rules for the distribution sector are of particular importance to European trade.

In April 2003 the EU has tabled a far-reaching offer regarding liberalization in the distribution sector. Now other WTO members should follow. The market access in industrialized and developing countries must be improved, economic needs tests must be abolished or follow the principle of national treatment. The purchase of real estate, as one important aspect of FDI, should not be impeded by unnecessary bureaucratic procedures or discriminatory national rules.

The GATS-provisions regarding mode 4 should enable any service supplier to move qualified personal, i.e. managers, for a period of several months between the WTO member states. Especially the distribution sector is highly interested in improved flexibility, as the successful implementation of warehouses and stores abroad depends to a large extent on company know-how, corporate design and corporate philosophy.

Furthermore, mode 4 should provide for free movement of business related services. This would not only be for the benefit of the domestic European markets, but would also provide for a big variety of service offers, accompanying FDI in third countries. Further liberalisation is especially necessary in air traffic and maritime transport to realise more favourable freight tariffs worldwide.

The FTA is strictly against the implementation of specific safeguard-measures in the GATS-Treaty, as requested from the ASEAN-countries. It would be detrimental to the companies' need for investment protection. Trade in services cannot be compared to trade in goods that can be stopped at the frontier. The export of trade in services in the distribution sector always includes a long-term commitment. Safeguard-measures with retroactive effects must be prevented by all means, safe-guard-measures for the future must at least be limited to a certain period of time in order to prevent unfair competition. A member state should only have the right to make use of a safeguard-measure, if it has preserved this right within the commitments. This will provide a realistic risk assessment for investors, before stepping abroad.

The protection of investments provided for by GATS has to be reformed and extended. Since it only refers to business by "commercial presence", i.e. through a business branch in a foreign country (so-called mode 3), it does not cover the services sector adequately. The agreement on services contains neither any rules on international capital transfers nor on expropriation or compensation.

Trade and Investment

The worldwide investment activities of companies do not only play a decisive role in globalisation, they also stimulate economic growth, employment and technical progress in non-EU host countries. European trade is increasingly involved in many markets - also in terms of sales activities. Therefore the WTO framework has to provide for multilateral rules for foreign investments, which include national treatment and the most-favoured-nation principle. An investment regime -recognised multilaterally- will serve the purpose of reducing foreign investment risks, thus making developing countries in particular more attractive locations for investments.

Following principles would meet the needs of European Traders:

An asset-based definition of 'investment' would provide legal security for the different types of financial flow. This seems to be in the interest of all parties involved, as most of the BITs in force follow this principle.

One of the first questions an investor will check before stepping abroad will be, whether he runs a risk of being expropriated. A WTO Investment Agreement should deal with this worst-case scenario and provide strong and effective protection against any kind of expropriation or instruments with the same effect. They must be categorised as a rare exception to the rules, acceptable only under narrow conditions (for public purpose only, guarantees of prompt, adequate and effective compensation, paid in freely convertible currencies). Additionally, this agreement would offer the chance to provide a clear definition of expropriation and instruments with a similar effect.

A negative-list approach regarding the pre-establishment conditions would meet the interests of European traders best.

But discussions in the past have shown, that this approach causes major problems to the developing countries and has a negative impact on the negotiations. With a positive-list-approach, DCs and LDCs would be able to open up their markets following their needs without losing control or influence.

As foreign investments will benefit the host markets by providing cash flow, infrastructure, working places and technical help, the countries now hesitant will soon open up the different sectors to foreign investment

in order to participate in the world trading system. Therefore, a positive-list-approach would be acceptable for European Traders, if the negotiations risk to fail because of this item.

Transparency, non-discrimination and MFN-treatment should be overall principles of a WTO-Investment-Agreement. Further provisions should foresee the free transfer of all funds related with an 'investment' and the full extension of the WTO dispute settlement procedure on all provisions.

The most important target in Cancun should be the launch of negotiations and a willing for compromise regarding the details of the agreement. Once the DCs and LDCs have realised, that this agreement will also cover the increasing number of south-south-investments, which at present are hardly regulated, they will find a more positive approach towards this agreement.

Trade and Competition

With a view to the considerable differences amongst the rules of competition in the different contracting states, and even the complete lack of competition regulation in about 60 states, new trade distortions and restraints of market access come to the fore. The FTA therefore considers the WTO an appropriate forum for reaching a consensus on basic principles of competition policy and for increasing international co-operation.

■ However, this is not a matter of creating international competition legislation or a supra-national supervisory authority, but of restricting anti-competitive conduct by way of introducing fundamental principles and procedures for national competition legislation. Moreover, it would be possible to extend the routine inspections of trade practices of the Member states agreed upon within the framework of the WTO and to systematically include in these inspections competition rules and company practices of market access importance.

■ But here too - as is true for trade and investments – there should be a flexible attitude towards the time schedule. In order to prevent blockades, one should consider the possibility of a plurilateral agreement.

Trade Facilitation

Despite numerous international initiatives aimed at facilitating cross-border trade (ICC, UN Trade Facilitation programme), in practise there seems to be little reduction of procedural barriers. On the contrary, the more tariffs are cut, the more such barriers increase or at least no serious efforts are being undertaken to abolish them. Examples of such barriers are the following:

- Delays in customs clearance of imports for no apparent reason.
- Procedures for granting export and/or import licenses without any practical relevance.
- Arbitrary determination of product tariffs by inclusion of irrelevant elements.
- Complicated documentation of the product origin because of complicated preferential product origin rules, especially in the textiles sector.
- Varying interpretations of tariff categorisation of products.
- Complicated procedures for safeguarding the identity of packed goods or containers.
- A requirement to provide a great number of statistical data, often seemingly irrelevant.

These barriers not only complicate and slow down the foreign trade procedures, but also make these more expensive, counteracting possible tariff benefits. Therefore the FTA considers it necessary for the abolition of procedural barriers to be given higher priority within the WTO-negotiations.

The creation of a multilateral agreement concerning the regulation of minimum standards as suggested by the EU and other industrial countries would mainly affect the export industry, but such an agreement might also be of importance for the European importing trade. The customs clearance in the EU doubtlessly meets the minimum standards, however, not the requirements indicated in the EU papers concerning a consequent use of information technology. If the ambitious project pursued by the EU concerning the harmonisation and computerisation of customs procedures would be laid down in the WTO, progress in this sector would become easier to realise. However, in order to bring the developing countries to this level, financial and technical support by the industrial countries is essential. At present, many developing countries are not in a position to comply with the demands of the modern customs clearance.

Dispute Settlement

Although the current Dispute Settlement Understanding (DSU) has significantly developed the system for settlement of trade disputes, the FTA believes that a number of changes should be made to the agreement in order to strengthen it further.

An important step would be to increase the transparency of the proceedings. The public should have access to all substantive panel, Appellate Body and arbitration meetings and documents, with specific exceptions being made for confidential information.

More steps should also be taken to limit the damage of illegal measures and increase the efficiency of the agreement. Currently, rulings only have prospective effect. If retroactivity was introduced, WTO members would be able to benefit fully from the concessions and rights obtained in the Uruguay Round, and the effects of this *de facto* waiver would be eradicated. Interim measures should also be introduced, as the system would benefit from the possibility of taking precautions when a measure causes damage that is difficult to repair. The interim measures could either consist of a right to request suspension of a challenged measure or a right to take preventive measures.

The system must also adapt to the constant rise of the amount of cases before the WTO. The DSB should keep members' implementation of adopted recommendations or rulings under strict surveillance. As not only the number of panels is increasing, but also the duration and complexity of each case, the FTA proposes that the numbers of members in a panel should be increased, rather than to move to a system of permanent panelists.

To date, no least developed country (LDC) has sought to resolve a trade dispute through the WTO dispute settlement system. The FTA firmly believes that considerable efforts must be made to facilitate and support the full participation of LDC in dispute settlement, as the lack of utilization may well be due to the complexities of the DS system in itself.

Trade and Environment

Free trade and environmental protection can no longer be kept separate from one another. The FTA calls for solutions to ensure that the trade limitations laid down in multilateral environmental agreements (MEAs) will be in line with the basic rules of the WTO.

The ad-hoc observer status of some MEA secretariats in the special sessions of the WTO Committee on Trade and Environment are a first step. The FTA supports the EU-proposal, to grant the MEA secretariats and UNEP (which acts as the secretariat for certain MEAs) a permanent observer status.

Furthermore, the European trade industry is interested in agreements preventing a protectionist misuse of eco-labelling.

Agriculture

The agricultural markets belong to the most distorted markets worldwide. The special agreement on agriculture achieved in the Uruguay Round stipulates, that all existing quantitative restrictions have to be changed into tariffs and then be abolished step by step. The subsidies for growing and exporting agricultural products must also be reduced.

In fact, the rigorous segregation of this market has not changed much since. This is especially true for the EU with its agricultural markets more strongly protected than any other worldwide. As with trade in textiles it will be difficult to reach an agreement on liberalisation of other trade sectors, as long as the EU refuses to abolish its restraints on market access and subsidised surplus exports. Opening up agricultural markets will indeed require considerable structural adaptations by European agriculture, but in the long term it will lead to greater success and higher profits than the policy of segregation. The recently achieved agreement regarding the future EU agriculture policy is doubtless a step into the right direction.

The agriculture negotiations should focus on the abolition of trade influencing instruments like export subsidies and import duties. Animal welfare and similar issues should be discussed at a later stage. The special needs of the developing countries should be taken into better consideration by providing a regime of special and differential treatment and foreseeing a safeguard measure with a time limit.

TRIPS / Access to medicines

The problematic access to medicines in developing and least developed countries should be facilitated without touching intellectual property rights. These rights must be protected, if parties do not want to destroy the basis for research activities in industrialized countries

If compulsory licensing should turn out to be inevitable, this should only apply to clearly defined pharmaceutical products. Safeguards should be implemented to protect the rights of the innovator: re-exportation must be prevented by all means, in case a re-exportation is proved. The duration of compulsory licenses should be limited and periodically reviewed by a special TRIPS council.