

PREPARATIONS FOR THE 1999 MINISTERIAL CONFERENCE

EC Approach to Trade and Investment

Communication from the European Communities

The following communication, dated 8 July 1999, has been received from the Permanent Delegation of the European Commission.

Introduction

1. The European Community and its member States believe that the time has come for the WTO to establish a multilateral framework of rules governing international investment, with the objective of securing a stable and predictable climate for foreign direct investment world-wide. Notwithstanding the difficulty of drawing precise distinctions in this area, such a framework should focus on FDI, to the exclusion of short-term capital movements. Moreover, it should preserve the ability of host countries to regulate the activity of investors (whether foreign or domestic) on their respective territories, taking also into account the concerns expressed by civil society in many WTO Members, including those regarding investors' responsibilities.

The WTO as a negotiating forum and the application of WTO principles

2. International investment flows take place in a variety of different situations. Traditionally, developed countries have been home and host countries in comparable proportions, whereas developing countries have been mostly in the role of host countries, but FDI flows between developing countries, as well as those from developing to developed countries, have been growing. Thus, the WTO appears as the only multilateral forum that can fully take into account the interests of both developed and developing countries in their position as home and/or host countries to international investors.

3. The WTO also has the undeniable advantage of a well-established institutional framework (including the Dispute Settlement Understanding) and of tried and tested basic non-discrimination principles. Indeed, the EC and its member States consider that non-discrimination is the linchpin of an open and efficient investment regime. In this respect, it should not be forgotten that existing WTO agreements, e.g. GATS, contain provisions on investment.

Access to investment opportunities and non-discrimination

4. The present situation as to the openness of countries' domestic markets to foreign direct investment differs greatly among WTO Members. In the member States of the EC the policy of welcoming foreign investment is actively pursued, generally on the basis of the national treatment

principle (with some justified exceptions). The European experience of openness towards foreign investors is positive. Thus, an approach along the lines of the GATS model, based on commitments undertaken by each Member, is the way to allow for the flexibility that many WTO Members require.

Protection of investment and right to regulate

5. International rules on foreign direct investment protection contribute to create a favourable investment climate that benefits both international investors and host countries.

6. Further reflection is needed on the question of investment protection rules. Rules of this kind are enshrined in many bilateral or regional investment treaties, but in some cases they have been subject to unexpected and controversial interpretations. Thus, international rules on FDI, while aimed at encouraging FDI flows, should preserve the ability of all host countries to regulate, in accordance with basic WTO principles, the exercise of economic activity on their territory.

7. These rules must respond to the concerns expressed by civil society concerning their impact on the environment and labour conditions.

8. Developing WTO Members have the additional concern of ensuring the compatibility of the activities of foreign investors with their developmental policies and objectives.

Sustainable development

9. The potential of FDI to contribute significantly to economic growth in both home and host countries is being increasingly recognized. This is not necessarily the case, however, of any investment under any circumstances. A framework of multilateral rules for FDI should ensure the right conditions for international investment to be conducive to sustainable development. Quite naturally, this aspect is of even greater importance for developing WTO Members.

10. In this respect, traditional provisions on special and differential treatment for developing countries may no longer suffice. Rather, the dimension of sustainable development should be built into the basic rules themselves, which should be such that they can be implemented by all WTO Members.

Stable and transparent business climate

11. One of the keys to attracting long term FDI is to ensure that the treatment of established investors is predictable. Accordingly, changes in applicable domestic laws and regulations should be brought about in as transparent a manner as possible. Difficulties in establishing knowledge of the laws and regulations of the host country have been identified by international investors as an important brake to their propensity to invest abroad.
