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AN INVESTMENT FRAMEWORK FOR DEVELOPMENT NEEDS : THE WTO CONTRIBUTION

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I. WTO/investment: towards a rules-based system

- **Investment, development and trade** are inextricably linked. They have to be dealt with in a more integrated way. We are therefore convinced that there is a need for an Investment for Development Framework in the WTO. This is a need for investors and for Developing Countries. A rules-based system would assist us in harnessing globalisation, as the follow-up of the Johannesburg WSSD requires us to.

- This framework should ensure **transparency, stability, predictability and non-discrimination**, in a manner that would not harm the **right of countries to regulate**, and that would allow for progressive liberalisation, in a gradual process, as in the General Agreement on Trade in Services (**GATS**).

- A balanced framework of rules on Foreign Direct Investment would be in the interest of **developing countries**, as a **rules-based system** will make it easier to attract investment in these countries. Domestic reforms are more credible if backed by multilateral commitments.

- The **Doha** Declaration gave the WTO Working Group on Trade and Investment a clear mandate to **clarify some issues** fundamental for any future negotiations on a multilateral framework on Foreign Direct Investment. EU is fully committed to this process and has been proactive in the clarification process by presenting concept papers on the seven topics requiring clarification. Constructive debate started in Geneva and all Members are addressing the options available. At this stage, the aim is to reach common understanding and set grounds for negotiations.

- The WTO process has **taken stock of the 1998 OECD failure**. What we try to do in WTO takes account of the weaknesses that existed in that draft MAI, but also takes into account the needs of Developing Countries. Our agenda is flexible and integrates the possibilities for each country to liberalise at its pace, while having a general framework that goes in the right direction in order to create an enabling environment that will foster investment.

II. The global investment context is wider: CSR contribution

- Globalisation raises new challenges regarding how to develop trading relationships that support the UN's Millennium goals of reducing poverty and ensuring greater environmental security. All our policies and especially trade policy **must be supportive of and lead to Sustainable Development. Corporate Social Responsibility can contribute to reach these ambitious goals**.

- In a broader context, CSR can also be supportive of our agenda in the **Doha Development round**, in particular regarding **investment**. Indeed, we are of the opinion that **companies will, through these negotiations, enjoy better conditions to invest abroad, and thus they have also to accept some principles of good behaviour.** Moreover, some countries, mainly developing countries, are still reluctant to admit dealing with this topic in the WTO framework. Giving CSR greater visibility and credibility and stronger accountability may help face this opposition and rally these opponents to WTO-Investment negotiations.

- The debate has now moved on from a too simple dichotomy between voluntary versus binding instruments, towards the **more challenging objective of effective implementation of commitments** and **verifications mechanisms** in order to ensure compliance. All stakeholders are now waiting for acts to confirm the words. Companies can play a major role in this confidence-building exercise, by endorsing CSR practices especially where they operate in developing countries.

- We are of the opinion that WTO is not the best forum to address investors' obligations. Creating a WTO Code of Conduct for investors would (a) limit States' ability to regulate in this field; (b) not lead to standards that would be high enough, and (c) endanger the whole process because a number of States and stakeholders would be reluctant to engage in it.

- Instead of this, we think that investors' obligations should be addressed by domestic legislation. Multinational Enterprises should comply with high voluntary standards of conduct wherever they operate.

- That's why we are supporting the adherence to **OECD Guidelines**, because they cover 90% of FDI outflows, in particular ensuring that companies from adhering countries (OECD plus Baltic States, South America, Slovenia and Israel at this stage) commit to high standards of behaviour wherever they operate, including in Developing Countries. The Guidelines also set standards of compliance that are high enough to ensure Sustainable Development.

- Raising the level of awareness of the Guidelines in Developing Countries is also essential: Developing Countries can use them in their legislation and network with

National Contact Points. They can even set up their own “NCPs”that can provide for a place of constructive dialogue between public authorities, business, trade unions and NGOs.

III. The caveats of this approach: action is required to remain credible

- **At international level, the WSSD** has recognised the growing importance of CSR. The “Plan of Implementation” (§ 17) calls for enhancing:

  “corporate environmental and social responsibility and accountability” : Actions would be required to:

  a) Encourage industry to improve social and environmental performance through voluntary initiatives, including (…) certification and public reporting on environmental and social issues, taking into account such initiatives as (…) the Global Reporting Initiative guidelines on sustainability reporting;

  b) Encourage dialogue between enterprises and the communities in which they operate and other stakeholders; (…).

- These two aspects, external verification of implementation of CSR commitments, and dialogue with local stakeholders, are particularly important to us.

- We call on companies for demonstrating their lead and advance in these areas, by inter alia, committing to respect the **Global Reporting Initiatives Guidelines** when drafting their reports, and to set up **stakeholder dialogue** with local stakeholders, especially **for those companies which operate in developing countries**. Indeed, an improved communication can contribute to a better insertion of the foreign company in its local environment, thus maximising positive outcomes and minimising possible detrimental effects.

- **At OECD level, we think the Guidelines process started well**: by consulting largely with civil society during the 2000 review, the Guidelines text encompasses the best multilaterally agreed “checklist” of good corporate behaviour available in town. It also has a universal coverage, since government recommend their MNEs to implement them “wherever they operate” and also because accession to the Declaration is open to non-OECD countries. Lastly, it has an implementation mechanism with the National Contact Points.

- **That is where we are all expected to deliver**, as public authorities, as business, as trade unions, as NGOs: on the concrete and “specific instances” that are foreseen in the Guidelines implementation procedures, accepted at Ministerial level in 2000.

- Unfortunately, **only too few NCPs are really committed to a real-time *bona fide* process** as has been agreed at the highest political level, when it comes to the facts. It is true that a complaint can raise difficult internal procedures in administration, painful reflection on investment of domestic companies abroad, or possible legal questions that relate to other government activities. It is however not a pretext for inaction: NCPs must be committed to action, it is the only way forward to demonstrate that they can bridge a gap in the dialogue among stakeholders, before matters get worse and come to the courts. It is the ultimate objective of the Guidelines: an advance or early warning system, that can help mediate flexibly with stakeholders in order to find ways out of problems that might otherwise grow further and create a conflict situation. **Guidelines are about "conflict prevention"**, about addressing the issues in a flexible an open manner, under the auspices of forthcoming public authorities that serve all their constituencies: citizens, NGOs, trade unions, businesses, local authorities, foreign counterparts.

- It is thus of the utmost importance that CIME moves on with its work in order to have NCPs work better, to re-establish the balance between confidentiality and transparency as stated in the implementation Decision of 2000, and also to reaffirm the relevance of the Guidelines as concerns supply-chain issues, which are inextricably linked with the Sustainable Development dimension that we are mandated to push forward in all *fora*.

- **At European level**, we have also undertaken major initiatives in the field of CSR. The recent Commission Communication: **"Corporate social responsibility: a business contribution to sustainable development** (2 July 2002), has established **a European Multi-Stakeholder Forum** on CSR and specific thematic roundtables will meet till spring 2004. The trade and international dimension of CSR will be an important part of the agenda.

- External Trade and cooperation relations of the EU with Third countries also encompass a CSR dimension. For example, the **Association Agreement between the EU and Chile**, concluded during the second EU-Latin America & Caribbean Summit held in Madrid on 16, 17 and 18 May 2002, refers to the Guidelines[1]. In the near future, we plan to **insert CSR issues and the promotion of OECD Guidelines in our external trade relations** (such as the Future EU-ACP Economic Partnership Agreements in the framework of the Cotonou cooperation, etc…). We also think that public schemes that grant public funding to private sector firms can ask from recipients to abide by higher environmental and social standards, such as embedded in the Guidelines, as is already done in the Netherlands.

- However, investment and CSR are not enough. We realise this. That's why the EC provides funds for **CB/TA** to improve the capacity of Developing Countries to attract and to benefit from FDI. This is for instance the case in bilateral agreements of the EC, or in the Cotonou process.

- In conclusion, in **WTO**, Dr Supachai called for a new thinking on CSR, and we surely concur with this analysis. This is a cross-cutting issue on a number of WTO aspects, that goes along with new thinking and action on voluntary "vs." mandatory requirements: keeping the competitive edge is part of the CSR objective, together with Sustainable Development. Doing more and better can make your business more competitive and your country a more attractive place to set up a business and to work.

[1] A **"Joint Declaration"** will indicate that: "The Community and its Member States and Chile jointly remind their multinational enterprises of their recommendation to observe the OECD Guidelines for Multinational Enterprises, wherever they operate."