



EUROPEAN COMMISSION
Directorate-General for Trade

Brussels, 30 October 2003
Ref. 514/03

[Limited]

Singapore Issues – Options post-Cancun

NOTE TO THE 133 COMMITTEE

Subject: Singapore Issues – options post-Cancun

1. Introduction

The negotiation in the WTO of multilateral agreements on the so-called Singapore issues – investment, competition, transparency in government procurement and trade facilitation - has been a long-standing objective of the EU. Multilateral rules in these fields are essential to underpin effective economic governance in WTO Members, being an important part of the necessary mix between market access and better regulation and transparency, and key to the development dimension of the agenda agreed at Doha. At Doha, Ministers agreed to begin such negotiations following the fifth Ministerial in Cancun, on the basis of modalities of such negotiations to be adopted on that occasion, by “explicit” consensus. Notwithstanding this, both before and at Cancun a significant part of the WTO Membership failed to participate constructively in the preparatory work, continued to deny that any commitment to negotiate had been taken, and, in the end, some simply refused to agree to possible modalities. This problem was compounded by the absence of response from other members to the very high degree of flexibility the EU showed during the two years of discussions following Doha, all the way through Cancun, but particularly at the end, where in an effort to forge consensus on the Doha agenda the EU was ready to envisage that negotiations would not be launched on some of the Singapore issues as part of the Single Undertaking. Even this, however, was rejected.

In these circumstances, we have to ask ourselves **why** the Singapore issues were rejected by some after having accepted their inclusion at Doha. Setting aside the question of tactics for the moment, the objections seemed to centre on three areas:

- (1) the reluctance of some developing countries to enter into binding international commitments that could restrict their “policy space”;
- (2) apparent absence of negotiating capacity, for some developing countries;
- (3) the reluctance of some developed countries to tie their hands to a multilateral rather than a bilateral or a unilateral approach to investment and competition.

These problems remain unsolved, despite our efforts to address them creatively before and at Cancun.

Since no outcome was reached at Cancun on any question, the offers made by various members during this meeting are off the table and consequently the Doha declaration remains the only Ministerial declaration relevant to the Singapore issues. This in turn means that all four issues remain part of the Doha work programme and await a decision on modalities of negotiations.

However, given what happened in Cancun and the refusal of some WTO members to follow through on the commitment made at Doha to launch negotiations, this paper considers what alternative approaches may be available for each of the Singapore issues.

Questions to address include whether to remove these issues entirely from the WTO, whether to insist on pursuing negotiations on any or all of the four issues in WTO and if so, whether this should be within the Single Undertaking. Finally, whether - in the case that negotiations were to take place in the WTO - such negotiations should involve the whole Membership or not. This paper does not address the issue of whether and how these issues could also be dealt with elsewhere than in the WTO, such as on a regional or a bilateral basis, although that is obviously a relevant question. Suggestions have also been made by NGOs and others that the issues could be considered in other multilateral fora.

As to the underlying substance, we see no reason to put in doubt the continued importance of these issues for purposes of international rule making. The EU should therefore continue to support negotiations on these issues. We must, however, break out of the trap of false mercantilist logic according to which we are “demandeurs” and therefore have to “pay”. These issues are systemic rule-making issues for which neither the EU nor any other WTO Member should “pay”. The question is whether there are possibilities, within the overall context of a relaunch of the DDA, to address them differently and successfully.

Whatever decision is taken by WTO Members on the future of the Singapore issues, it is clear that this decision can only be taken as part and parcel of the decisions to be taken across the whole scope of the Doha Development Agenda. The Singapore issues form an integral part of the balance of the agenda agreed at Doha, which should now be reassessed in its entirety, in the wake of the Cancun failure. The EU could only go along with re-launch on a basis that satisfactorily addresses all issues, including how to deal with the Singapore Issues.

The purpose of this paper is to help us to define an approach that will enable us to do so, by setting out a number of options in relation to possible future work in WTO on the Singapore issues.

2. Available options for future WTO work on the Singapore issues

The first question WTO Members need to address is whether or not they should definitely abandon the search for multi - or plurilateral agreement on any or all of the four Singapore issues within the framework and architecture of the WTO.

If the answer to the first question is negative and WTO members agree that the Singapore issues should indeed continue to be pursued within the WTO, the second question is whether such negotiations should be kept as an integral part of the DDA Single Undertaking or whether they should be withdrawn from it. The DDA Single Undertaking means that all issues under the DDA were launched at the same time, that all issues need to progress in a comparable fashion all along the process and that the final result will be agreed upon and subscribed to by all WTO members in the form of one indivisible package of commitments.

In this respect, it needs to be recognised that the question whether or not the Singapore issues were to be addressed within the Single Undertaking turned out to be an important distraction from substance in Cancun. Following Cancun, it would clear the air and allow the WTO to move forward on these issues rapidly, if the EU confirmed that it no longer insisted on this for any of the Singapore issues. If WTO Members, in the context of a resumption of work on the DDA, nevertheless, wish to address one or another Singapore issue in the Single Undertaking, this would of course be acceptable to EU, but it is not something that we should demand.

It is, however, doubtful that this would suffice. After all, “simply” taking these issues out of the Single Undertaking still carries with it a commitment for all WTO members to participate in negotiations and conclude WTO agreements on all four issues at some future stage. As we saw during the period between Doha and Cancun, some Members ignored the formal commitments entered into in Doha and pretended that there had been no mandate at all to negotiate the Singapore issues. Some members might still be reluctant again to respect their commitments at the possible end of such a negotiation. We would be again in a situation similar to Cancun, with some Members potentially renegeing on their commitments, with all the damaging consequences this has had on the WTO system and for the relationship of trust between Members. It should also be kept in mind that, given the position of certain WTO members, on the level of ambition of agreements on the Singapore issues, such a model for negotiations might also contain risks in terms of achieving the appropriate level of ambition. Therefore, one lesson to be learned from Cancun may be that it is not possible to maintain the Singapore issues as a part of the whole indivisible package of other issues (agriculture, services, NAMA, anti-dumping, subsidies, etc) which make up the DDA. In this case, negotiations and conclusion of agreements would, however, still be fully multilateral, even though the scope of the DDA Single Undertaking would be significantly reduced.

This inevitably leads to a third question, that of what approach should the EU support that would tap into the considerable reservoir of interest in the Singapore issues that the Working Groups have shown to exist but that failed to translate into consensus in Cancun. There seem to be two basic options in this respect:

- *"Optional Participation"*: Negotiations that would from the very start involve all WTO members in the actual negotiations but where, at a later point in time - a date that would be determined at the outset, and would logically be at or near the end of the negotiations - WTO Members would indicate whether they would subscribe to the results, or whether they would prefer to stay on the outside of what would then be an agreement only among the consenting parties. This "GATS" type of process would have one major advantage for many Members, namely that all WTO members could participate in and influence the negotiating phase while at the same time not being obliged to sign up to the end-result - allowing maximum flexibility and openness. It would, however, of course also allow members to participate and to try to influence the result in one or the other direction, while not signing up at the end
- *ITA - model*: Negotiations that would see a limited participation of WTO members from the outset, based on the ITA precedent¹. The result would be that negotiations would be launched only amongst interested Members, committed to a positive result and with the possibility for other WTO members joining along the way, as they see the shape and benefits of an agreement. The advantage of this approach is that it would

¹ During the Singapore Ministerial Conference of the WTO, a proposal for the expansion of world trade in information technology products was adopted via the "**Ministerial Declaration on Trade in Information Technology Products**" dated 13th December 1996. The declaration was adopted by 14 parties including the EU, USA, Canada, Japan, Singapore and Hong Kong representing about 80% of the trade in these products. The agreement became effective once the number of countries joining the agreement represent 90% of the trade in information technology products. Other WTO Members could opt to join the agreement as a participant. In the ensuing months after the Singapore Ministerial and leading up to 1 April 1997, a number of other countries expressed an interest in becoming participants in the ITA and notified their acceptance. Thus, the 90 percent criteria had been met and the ITA entered into force with the first staged reduction in tariffs occurring on 1 July 1997. Following Bahrain's accession to the ITA in July 2003, there is currently 60 participants to the ITA.

increase the possibility of maintaining the preferred level of ambition and a high level of pro-development approaches, especially on issues like investment and competition. This approach does, of course, offer no guarantee regarding the final level of participation.

The discussions in the Singapore Issues Working Groups have shown that there is a majority of Members whose misgivings related more to the need to see more clearly the possible shape of a final agreement than to the principle of negotiations in these areas as such. Either of the two approaches described above would cater to the needs of this large group of Members. If, at the end of the negotiations, some Members would still prefer not to sign up to an agreement, this would have to be a plurilateral agreement in the sense of Annex IV to the WTO Agreement.

A new consensus on how to deal with these issues would also have another very useful consequence. It would put the final nail in the coffin of the myth of the EU - or indeed any other WTO member - being demandeur or having to pay for negotiations on any of the Singapore issues. An agreement by all WTO-members on the modalities on how to move forward would make clear, once and for all, that the Singapore issues are of systemic value and of interest to all participants. By allowing those WTO members who have a positive interest (because they know it will be of benefit to their economic growth, improve their competitiveness and increase their possibilities to trade, etc.) to pursue the negotiation and conclusion of agreements outside the Single Undertaking and without any obligations falling on non-participants, the rationale for any member having to "pay" for this negotiation simply disappears.

Finally, if a majority of the WTO Membership would take the view that WTO should not negotiate rules on the Singapore issues at all, a subsidiary question would arise, of whether some kind of soft law or non-binding guidelines on these subjects in the WTO would be appropriate instead. The Commission remains of the view that any alternative to the negotiation in WTO of binding rules would represent little, if at all any, value added.

3. Treatment of each Singapore issue

None of the four issues, even if different in substance, are by now in any way "new" to the WTO. The amount of preparatory work that has been carried out on them since Singapore, as well as the discussions on them in the run up to Cancun and at Cancun itself, demonstrate that for the vast majority of delegations the issues in question are understood and familiar, although for the poorer developing countries there are some real apprehensions about the policy and resource implications. Nevertheless, in substance these issues are certainly no more complex – probably less so – than many of the other issues on the DDA negotiating agenda. Nevertheless, a convenient myth has been propagated that they are too complex, therefore need more time, more resources etc. A cursory glance at the texts proposed for the negotiations on, agriculture, for example, demonstrates that those negotiations are vastly more complex, technically and politically, than, for example, negotiations on competition and investment. But as many myths, this is a tenacious (and convenient) one.

The agreement reached in Doha dealt with the four issues on the same procedural basis, despite the fact that they are not at all comparable in substance. Trade facilitation and government procurement are classical GATT issues and aim to strengthen existing basic GATT provisions (with a similar aim as negotiations on anti-dumping, anti-subsidies and RTAs) in order to reduce bureaucratic obstacles to trade and introduce a minimum of visibility into public procurement processes. Investment and competition are both key

issues in modern economic policy making, have strong development aspects, and have been promoted by several WTO Members as an alternative to the law of the jungle which currently prevails on these issues and which benefits the larger Members only. The basic question is whether WTO members are content with a rule-book for international economic relations that was written over a decade ago (or in the case of trade facilitation 55 years ago), and whether they think that WTO members have no or little role in setting rules in these areas.

Notwithstanding this, given that there are differences between the four issues in respect of their substance and, just as important, differences in terms of the level of support among WTO members for negotiations on one or the other issue, it is not obvious that it is preferable to envisage a single approach to the four issues "en bloc". In fact, it would seem more sensible for WTO members now to take decisions on each Singapore issue on the basis of the merits of each issue.

4. Approach to take on the Individual Singapore issues

Whichever of the above routes are taken, for each of the issues the question of whether an agreement with less than full participation will be worth the effort will depend on whether a sufficient number of WTO members would be covered. This assessment will have to be made according to the issue and the scope of any agreement and would need to be assessed throughout the negotiation process and at the end.

Taking now each individual Singapore issue in turn, in the light of the foregoing analysis:

On investment, while we see little prospect for negotiating this subject within the Single Undertaking, there continues to be a strong case for defining rules at the global level, comparable to those that exist already in the GATS. We believe there is continued interest in a WTO agreement, among several WTO members. It should be possible to achieve a critical mass encompassing the EU, Japan, some smaller industrialised countries, and several developing countries which would be interested in negotiating what could, with such participation, be a balanced and pro-development set of investment commitments. Even an agreement with less than full participation (i.e. the ITA model) would be useful if it introduced less discrimination and more transparency and, above all, predictability in the area of Foreign Direct Investment.

On competition, as with investment, while we see little prospect for negotiating this subject within the Single Undertaking, again there continues to be a strong case for defining rules at the global level, including a ban on hard core cartels and agreement on core principles (transparency, non-discrimination and procedural fairness) and modalities for voluntary co-operation. Negotiations on competition rules in the WTO could be pursued e.g. via the modality of "optional participation" outlined above. An alternative approach could be that of a negotiation starting from the outset with less than full WTO participation along the lines of the ITA model. These two options raise complex questions regarding their respective added value (including the question of the relationship between such approaches and other international initiatives) and should therefore be discussed in the 133 Committee.

On Transparency in government procurement, the merit of an agreement in which not all WTO members would take part would, due to the fact that the plurilateral GPA already exists, depend on the scope and number of new participants. For such an agreement to be worthwhile, in genuinely bringing transparency to procurement activities worldwide, it would need to include several WTO Members currently not participating in the GPA but who collectively represent a sizeable portion of world trade. Since

transparency is already one of the basic principles of the GATT and WTO system, and accepted as such by all Members, it would be logical to extend that principle to procurement through a fully multilateral agreement (although that logic is not shared by all).

On **Trade Facilitation**, the indications from other WTO Members have generally been that this is the least contested of the four Singapore issues. In view of this, and given that the issue involves the strengthening of existing GATT rules to which all Members already adhere, the likelihood of negotiations being launched on a standard multilateral basis and perhaps even regarded as part of the Single Undertaking is, like government procurement, greater. The case for multilateral rules in what no one denies is a classic area of the GATT is a strong one. However, we may be wrong on this and WTO Members as a whole will have to take a view and a decision on it. We should keep an open mind. If the conclusion of Members were to exclude it from the Single Undertaking then a negotiation with optional participation would seem to be viable. Trade will of course then expand more between those Members who decide to reduce red tape between themselves, and this should then attract others.

5. Conclusion and Summary

To conclude, Members of the 133 Committee are invited to focus on the following questions:

- 1) Should the EU definitively abandon the search for any kind of agreement on any or all of the four Singapore issues?
- 2) If not, should the EU agree to these questions being withdrawn from the single undertaking?
- 3) If this does not suffice to create definitive consensus on the negotiations, would these be facilitated, for one or other of the four issues, by the following:
 - a) an approach that would allow all Members to participate while leaving them free to decide at the end if they were to participate in the adoption of the results? (“optional participation”); or
 - b) an approach that would include from the outset only those members basically committed to the principle and objectives of such negotiations and which would implement the results only between themselves.