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Cancun Update

The International Centre for Trade and Sustainable Development (ICTSD) and the International Institute for Sustainable Development (IISD)

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Doha Mandate

"We attach the utmost importance to the implementation-related issues and concerns raised by Members and are determined to find appropriate solutions to them. In this connection, and having regard to the General Council Decisions of 3 May and 15 December 2000, we further adopt the Decision on Implementation- Related Issues and Concerns in document WT/MIN(01)/W/10 to address a number of implementation problems faced by Members. We agree that negotiations on outstanding implementation issues shall be an integral part of the Work Programme we are establishing, and that agreements reached at an early stage in these negotiations shall be treated in accordance with the provisions of paragraph 47 below. In this regard, we shall proceed as follows: (a) where we provide a specific negotiating mandate in this Declaration, the relevant implementation issues shall be addressed under that mandate; (b) the other outstanding implementation issues shall be addressed as a matter of priority by the relevant WTO bodies, which shall report to the Trade Negotiations Committee, established under paragraph 46 below, by the end of 2002 for appropriate action."

(Paragraph 12 of the Doha Ministerial Declaration)

Implementation-related Issues and Concerns

Prospects for Cancun

The importance most developing countries ascribe to implementation issues ensures that these will play a significant role in the next 'bargain' to be struck in the multilateral trading system – one that will undoubtedly be shaped in part by Cancun. A look at the stumbling blocks encountered since before Doha confirms, much to the chagrin of developing countries, that implementation issues are likely to form an integral part of the *new* negotiations – the implication being that trade-offs will almost surely be sought in return for meaningful progress.

Cancun's role in addressing these systemic imbalances, as well as refraining from introducing new ones, is as yet unknown. Based on the initial draft Declaration, Members will merely request a "redoubling of efforts" and a report to the sixth Ministerial. Should developing countries be forced to pay again to secure a new deadline, the risk of these costs outweigh the gains is clear and present. In many ways, a significant portion of the *'development'* agenda hangs in the balance. In this context, many fear that a possible last minute deal on further agriculture liberalisation may overshadow once again the critical importance of implementation issues and postpone addressing the imbalances in the WTO, with dangerous consequences for the system.

Background

Implementation issues have historically referred to compliance with one's negotiated obligations. In the lead-up to the 1999 Seattle Ministerial Conference, developing countries began to view implementation issues in terms of addressing imbalances in the Uruguay Round Agreements, which they felt had hindered the realisation of meaningful gains from the new system of rules. Such imbalances included developed countries' failure to implement certain commitments (including for special and differential treatment, Doha Round Brief No. 13) as well as difficulties encountered by developing countries as a result of implementing their new obligations.

Loud calls were voiced once again in the run-up to the Doha Ministerial for negotiations to address the imbalances on a *separate* and expedited track. Developing countries felt they should not have to 'pay again' in a new round of negotiations (in terms of making further trade-offs) for shortcomings in the anticipated gains from the trade-offs made during the Uruguay Round. Developed countries argued that the changes sought would alter Members' 'rights and obligations', requiring the renegotiation of certain Agreements, and thus compensatory concessions would be necessary. Many trade and development experts contended that rectifying imbalances should be viewed as dealing with systemic shortcomings, and not as changing particular rights or obligations – and thus should not be governed by the rule of reciprocity (i.e. the exchange of comparable concessions). In spite of this, the outcome from Doha demonstrated that developing countries would likely have to make concessions in return.

Interpreting the mandate

Coming into the second half of the round, a clear grasp of the mandate on implementation issues remains elusive. Two interpretations generally come to the fore, with the first arguing that all implementation issues — including those listed in the Compilation of Implementation Issues Raised by Members (Job(01)/152/Rev.1) — are subject to negotiations, and the second maintaining that this is the case only for the issues for which the Doha Ministerial Declaration provides a specific negotiating mandate.

The foundation of the first, pro-development interpretation stems from paragraph 12 of the Doha Declaration - dealing with implementation issues - which states that "[w]e agree that negotiations on *outstanding implementation issues* shall be an integral part of the Work Programme we are establishing [...]" (italics added).

Members holding that all issues contained in both the Decision on Implementation and the Compilation document are under negotiation also point out that by adopting the Decision on Implementation, Ministers included the Compilation by extension, as paragraph 13 of the Decision provides that the *outstanding implementation issues* found in the Compilation "shall be addressed in accordance with paragraph 12" of the Declaration. Paragraph 12, this interpretation continues, also provides two procedural tracks for dealing with the negotiations. The first, based on 12 (a), stipulates that when a specific negotiating mandate is given in the Declaration, that item shall be addressed in the relevant negotiating body established by the Trade Negotiations Committee (TNC).

The second procedural track, based on 12 (b), provides for other *outstanding implementation issues* – i.e. those referenced in paragraph 13 of the Decision on Implementation and those without a specific negotiating mandate in the Declaration. On this track, relevant WTO bodies are to address these issues as a matter of priority and report to the TNC (the body overseeing the *negotiations*) by the end of 2002.

The second, less development-friendly, interpretation seeks to delineate two separate mandates in paragraph 12 of the Declaration, and thus relegate some implementation issues to a lower level of importance. This reading holds that 12 (a) provides a negotiating mandate for those implementation issues that have a specific mandate in the Declaration, which will be dealt with in the relevant negotiating bodies, while 12 (b) provides an avenue to address other 'outstanding implementation issues' — through discussions rather than negotiations — in regular WTO bodies.

With the lead on implementation issues being taken over in early 2003 by the TNC, many developing countries, as well as the EC, feel this reinforces the former interpretation. Debates between WTO Members continue to reflect, however, a clear divergence of opinions.

Mandated Deadlines

Unless otherwise noted, the following deadlines are provided for in the Decision on Implementation (paragraph number in brackets). Most deadlines have been missed and/or postponed due to a lack of consensus (see relevant sections).

The Committee on Rules of Origin was "urged" to complete its work on harmonisation by the end of 2001.

31 July 2002 – the following bodies were to report to the General Council:

- The Council for Trade in Goods on the examination of the methodology used to calculate the growth of textile quotas (paras. 4.4 & 4.5);
- The Committee on Subsidies and Countervailing Measures (SCM) on its review of the provisions of the SCM Agreement related to countervailing duty investigations (para. 10.3); and
- The Committee on Trade and Development was to present "clear recommendations for a decision" on items within its mandate to review "all special and differential treatment provisions [...] with a view to strengthening them and making them more precise, effective and operational" (Ministerial Declaration para. 44). Specifically, it was to report on, *inter alia,* the work of converting non-binding provisions into mandatory ones (para. 12.1; Doha Round Brief No. 13).

Mid-November 2002, the Committee on Anti-dumping Practices was to:

- draw up recommendations on the more effective use of Article 15 of the Agreement on Anti-dumping (ADA), which deals with the special treatment that developed countries are to show developing countries before imposing anti-dumping duties (para. 7.2);
- draw up recommendations on Article 5.8 of the ADA to ensure maximum predictability and objectivity in the application of time frames used in determining whether the volume of dumped imports are so low and the amount of duties so small that antidumping duties would not apply (para. 7.3); and
- report its views and recommendations to the General Council for a decision on the drawing up of guidelines for the improvement of its annual reviews (para. 7.4).

15 December 2002, the Committee on SCM was to grant extensions for calendar year 2003 for export subsidy programmes notified by developing countries pursuant to the procedures outlined in G/SCM/39. (para. 10.4)

No later than the end of 2002:

- The Committee on Customs Valuation was to report to the General Council on practical means to address the "legitimate concerns" of customs administrations on the accuracy of the declared value of imports (para. 8.3);
- The Committee on Market Access was to report to the General Council on the further consideration of the meaning given to the phrase 'substantial interest' in para. 2(d) of GATT 1994, Article XIII (para. 1.2);
- The TRIPs[1] Council was to put in place a mechanism for ensuring the monitoring and full implementation of Article 66.2 (transfer of technology), and developed countries were to submit reports by end-2002 on the practical functioning of the relevant incentives provided to their enterprises (para. 11.2); and
- Relevant WTO bodies were to report "for appropriate action" to the TNC on other "outstanding implementation issues" (Ministerial Declaration para. 12 (b)). These included, *inter alia,* Article XVIII of GATT 1994, Balance-of-Payments, TBT[2], TRIMs[3], Safeguards, SPS[4], Customs Valuation, Market Access, and TRIPs.

January 2003, the SCM Committee was to reach consensus on the appropriate methodology for calculating constant 1990 dollars (para. 10.1).

At the Fifth Ministerial Conference, the TRIPs Council is to make recommendations based on its examination of the scope and modalities for complaints of the type provided for under sub-paragraphs 1(b) & (c) of Article XXIII of GATT 1994 ('non-violation complaints', para. 11.1).

The SPS Committee is to develop expeditiously (no deadline) the specific programme to further the implementation of Article 4 of the SPS Agreement (on equivalence).

Current State of Play

Out of approximately 95 points raised by Members in the lead-up to the Seattle Ministerial, roughly 40 are touched upon in the Decision on Implementation and nearly 50 in the Compilation on Outstanding Implementation Issues (another is found in the TRIPs & Public Health Declaration and a handful have disappeared altogether). Despite claims by the WTO[5] that the Decision 'settled' more than 40 implementation concerns for 'immediate delivery', a quick glance at the above deadlines demonstrates that in relation to the Decision alone, a great deal of work remains in the post-Doha work programme (the argument can be made in fact that only five such decisions were taken: three related to SPS & TBT and two related to SCM). Analysis of the Decision generally accepts that in the short-term, it does little significant from a development perspective.

As was the case at the end of 2002, by August 2003, few of the implementation issues to be resolved post-Doha had seen any forward movement. Most deadlines have either been postponed or missed outright. All but one of the items addressed since Doha under paragraph 12 (b) of the Declaration have resulted in a stalemate, and more than half the items targeted for resolution in the Decision itself have suffered the same fate so far. In most of these cases,

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no guidance is even offered on how to proceed. On textiles, for example, Members were so far apart that they could not even agree on a factual report outlining the differences in positions, let alone make a recommendation.

As a result of this deadlock at the end of 2002 – aggravated by the EC's push to have the extension of geographical indications take priority in the implementation consultations – the job of finding a way around the impasse was given to the TNC and its Chair, WTO Director-General Supachai Panitchpakdi. Following an informal Heads of Delegations meeting on 7 July 2003, Supachai announced that discussions on certain implementation issues would resume, with some continuing under the auspices of the TNC and others returning to subsidiary bodies for further technical work.

What follows is a review of key implementation issues found in the Decision, as well as some included in the Compilation document.

Rules of Origin

The work programme to harmonise rules of origin (the criteria needed to determine the national origin of a product) has been underway since the Uruguay Round negotiations, and was envisaged to end by 1998. As this was not possible, the Decision at Doha "urged" completion by the end of 2001.

Identifying the need for further technical work, the deadline was postponed again to end-2002, and once more to July 2003. It was recently postponed yet again to July 2004.

Textiles

Discussions have highlighted a stark difference in the interpretation of the Agreement on Textiles & Clothing (ATC), resulting in a deadlock in July 2002. Members have yet to resume talks.

Textiles discussions in the WTO generally pit the major developing country exporters, most of which are members of the International Textiles and Clothing Bureau (ITCB) — such as Hong Kong, India, Pakistan and Brazil — against Canada, the EC and the US (the major developed country importers). The post-Doha implementation proposals concerned the use of the most favourable methodology for calculating the expansion of textile quotas for small suppliers and least-developed countries (LDCs), as well as advancing quota expansion for all developing countries.

In earlier drafts of the Decision, the two proposals were slated for 'immediate' acceptance, however the final document left it to the Council for Trade in Goods to make recommendations "for appropriate action" by 31 July 2002.

Despite extensive consultations, Members were unable to bridge the cavernous gaps between their positions. The ITCB Members argued that developed countries had failed to progressively increase growth rates for textile quotas to allow for meaningful access to their textiles markets (G/C/W/368). Developed countries maintained that they had adhered to the transitional process under the ATC — which aims to bring textiles trade under normal GATT rules by 1 January 2005 — and had already provided exporters with meaningful market access, carrying out considerable adjustment domestically.

When the Chair attempted to craft a report to the General Council in July 2002 simply outlining the differences between Members, the two sides could not agree on how to represent them. As a result, the Chair was unable to submit even a factual report.

Special and Differential Treatment

While special and differential treatment (S&D) is dealt with explicitly in Doha Round Brief No. 13, it is useful to note that by 31 July 2002, the Committee on Trade and Development was unable to report "with clear recommendations for a decision" on the mandated elements of its review of all S&D provisions. The deadline was postponed initially to 31 December 2002 (TN/CTD/3), and again to February 2003. Come February however, little new ground could be found and the process was put on hold to allow the new General Council Chair, Ambassador Perez del Castillo (Uruguay) to undertake consultations (this after a failed attempt by the Committee on Trade and Development to have the General Council clarify the mandate; see TN/CTD/7). As of end-July 2003, the 88 proposals were being dealt with in three categories: those for agreement before/at Cancun; those reverted to subsidiary bodies; and those subject to wide divergences.

Subsidies & Countervailing Measures

The Decision on Implementation and the Compilation document touched on the Agreement on Subsidies and Countervailing Measures (SCM) more than any other single item (totalling 26 paragraphs in both). The deadlines for two items, on countervailing duties and transition periods, fell in 2002; that for a third, on calculating 1990 dollars, in 2003. Another item, on non-actionable subsidies (i.e. those not subject to countervailing duties due to negligible trade impact) was being dealt with in the rules group (Doha Round Brief No. 7).

Countervailing duties: Pre-Doha, both Brazil and India (initially in G/SCM/W/462 & W/464 respectively) made a number of submissions on the review of countervailing duty investigations. These proposals formed the basis for a long and rather heated debate primarily between the two submitting countries and the EC and the US. In his 30 July 2002 report submitted to the General Council "on [his] own responsibility", SCM Chair Milan Hovorka (Czech Republic) announced that he had not been able "to identify any significant basis for a consensus on any specific suggestion by the Committee […]" (G/SCM/45). He concluded that "in the context of the Committee, the discussions of these issues have been taken as far as possible", alluding to the fact that this matter would likely be addressed again in the Negotiating Group on Rules.

While Brazil and India expressed disappointment with this result, the EC and the US made it clear that they considered the Doha mandate fulfilled – as the Committee had continued the review of countervailing duties and reported to the General Council.

The disagreements covered issues relating to the methodology of calculating subsidies and their benefit; the use of facts available; the use of a de minimis principle (i.e. forgoing countervailing duties if the level of subsidisation is below a certain threshold); review procedures; and issues surrounding the definition of domestic industry and injury analysis.

Transition periods: Members were able to agree on 21[6] out of 29 requests to extend the transition period for subsidy programs provided for in Article 27.4 of the SCM Agreement. This Article provides that certain developing countries (LDCs and those with less than US$1,000 per capita GNP as listed in Annex VII of the Agreement) automatically have eight years after entry into the WTO to phase out export subsidies, but may request an extension. At Doha, Members adopted procedures for granting these extensions (G/SCM/39), giving the Committee until 15 December 2002 to grant the extensions to qualified programmes.

Calculating 1990 dollars: As no submissions were made prior to the 1 January 2003 deadline on calculating constant 1990 dollars, the methodology given in G/SCM/38, Appendix 2 was applied and the provision in paragraph 10.1 of the Decision came into effect.

Anti-dumping

While negotiations on anti-dumping fall under the rubric of WTO rules, and are thus being dealt with primarily in the rules group (Doha Round Brief No. 7), developing country Members were keen to have particular items resolved in the Anti-dumping Committee's Working Group on Implementation so as to avoid having them subject to trade-offs in the

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broader context of negotiations. One item, on Article 15, was also discussed in the context of the Committee on Trade and Development's review of all S&D provisions (Doha Round Brief No. 13).

Members reached agreement on two of three items, related to Articles 5.8 and 18 (G/ADP/10 & 9), in November 2002. Consensus, however, proved impossible on Article 15, which pertains to the 'special regard' that developed country Members 'must' give to the situation of developing countries when considering the application of anti-dumping measures.

Article 15: The Chair of the Anti-dumping Committee, Cristian Espinosa Cañizares (Ecuador), reported to the General Council at the end of 2002 that Members' positions were "substantially divergent" and that he was "unable to identify any significant basis for consensus on a recommendation [...]" (G/ADP/11). While the issues "may yet form the basis for further discussion, should any Member submit proposals concerning them for discussion in an appropriate forum," he concluded that in the context of the mandate from Ministers to the Committee, the discussions of these issues "have been taken as far as is possible." This language pointed to the proposal being sent to the bodies dealing with S&D and/or rules. With select S&D proposals being sent to subsidiary bodies in May 2003 (Doha Round Brief No. 13), it would appear that this proposal would be dealt with in the rules group at least for the time being.

The primary cause for the impasse was a disagreement between Brazil and the US over what exactly to include in the recommendation on the issue of price undertakings (agreements to raise prices on the products under investigation rather than applying anti-dumping duties). The US sought a provision allowing all interested parties (including domestic producers) the opportunity to comment on any price undertaking proposal. Some developing country Members pointed out that the rules on price undertakings contained no such obligation, which could work against them. Brazil, for its part, sought a commitment that developed countries would "favourably consider" price undertaking offers from developing countries, but the US was unwilling to accept such language.

Article 5.8: Concerning ways to provide maximum predictability and objectivity in the application of time frames to be used when determining if the volume of imports from developing countries was negligible (under three percent of total imports) and thus excluded from dumping duties, Members agreed that they would notify within 60 days which of the three methodologies they would use for *all* investigations thereafter. The options included (i) the period of data collection for the dumping investigation; (ii) the most recent 12 consecutive months prior to initiation for which data are available; or (iii) the most recent 12 consecutive months prior to the date on which the application was filed, for which data are available, provided that the lapse of time between the filing of the application and the initiation of the investigation is no longer than 90 days (G/ADP/10). It was also agreed, however, that if in any investigation the chosen methodology was *not* used, the Member must simply provide an explanation in the public notice or separate public report of that investigation — but not explicitly to the WTO (as proposed in earlier drafts of the recommendation). According to one former developing country delegate, this latter clause essentially nullifies the achievement of "maximum possible predictability and objectivity", as the investigating Member can still effectively choose whatever time period is most likely to produce the result it seeks.

Article 18: On this item, relating to guidelines for the improvement of annual reviews of the Agreement, Members agreed that information shall be included concerning, *inter alia*, the number of anti-dumping revocations reported by Members and a comparison of the number of preliminary and final actions reported by Members on an *ad hoc* basis and in their semi-annual reports. As well, the recommendation states that developed country Members shall include in their semi-annual reports the manner in which the obligations of Article 15 of the Agreement have been fulfilled. This will be compiled and included in a table in the Committee's annual report.

Customs Valuation

Looking for practical means to address the "legitimate concerns" of Members' importing authorities over the accuracy of the declared value of imported goods, the Committee on Customs Valuation was to report to the General Council by end-2002 (para. 8.3). The report (G/VAL/50) requested more time for input from the Technical Committee, setting a deadline of 15 May 2003. The response from the Technical Committee (G/VAL/54) was discussed in late-May 2003, however Members decided to suspend the issue to allow the incoming Chair to hold consultations on how to proceed.

Pursuant to paragraph 12 (b) of the Ministerial Declaration, four additional items related to customs valuation were found in the Compilation document. The Committee met numerous times between late-February 2002 and December 2002 to deal with these issues – related mainly to the composition of the figures used for calculating values of imported goods. Citing a lack of consensus, the Committee, in its report to the TNC (G/VAL/49) in December 2002, indicated that it was not able to suggest a course of action on any of the issues. Discussions in 2003 have been unable to make any headway.

Market Access

The Committee on Market Access met eight times in 2002 in an attempt to complete its mandate to report to the General Council by the end of 2002 on the further consideration of the meaning of 'substantial interest' in paragraph 2 (d) of Article XIII of the GATT 1994, which establishes how a quota should be allocated among countries that have a 'substantial interest' in supplying a good under quota. This paragraph does not, however, define what constitutes a 'substantial' interest, and some Members maintain that the considerable jurisprudence / practice regarding 'substantial interest' developed during fifty years of GATT application does not adequately take their particular circumstances into account.

The Committee's December 2002 report (G/MA/119) recognised the lack of consensus on the recommendations to be made and referred the matter to the General Council for consideration. Since then, no further progress has been achieved.

Proponents of clarifying the term are mainly small economies, which are not usually considered to have a 'substantial interest' in supplying a good under quota (if defined in terms of the percentage of the total imports for that good), but - due to their heavy dependence on the product in question - feel they should be considered to have a substantial interest. Members, such as St. Lucia, are asking for the term to be defined in a way that would ensure security and predictability of market access for traditional small suppliers taking into account factors such as the importance of the product to the exporting Member as opposed to the percentage share in the importing market. A fair amount of the work done on this issue pre-Doha is well summarised in the document WT/GC/50.

Numerous Members have acknowledged that small and medium-sized economies face difficulties on this matter. Some, however — and Ecuador in particular — insist that WTO jurisprudence in the banana case has already interpreted paragraph 2 (d) in a way that leaves small economies with few if any quota rights, and that any revision of this interpretation would alter the balance of rights and obligations. Members appear to be battling over whether and/or how to give greater consideration to this matter,

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without providing undue favours to some at the expense of others.

See also the implementation section in Doha Round Brief No. 4 on Market Access.

Trade-related Aspects of Intellectual Property Rights

A key TRIPs-related item found in the Implementation Decision deals with developed country obligations under paragraph 66.2 of the TRIPs Agreement to provide incentives for the transfer of technology to LDCs. Specifically, the mandate from the Decision was for developed countries to submit reports (updated annually) on the practical functioning of the incentives provided.

On 19 February 2003, the TRIPs Council adopted a decision (IP/C/28) aimed at putting in place a mechanism for ensuring the monitoring and full implementation of the obligations in Article 66.2. It also sets out the arrangements for the annual reports on activities by developed country Members and their review by the TRIPs Council.

The decision outlines, *inter alia*, that new detailed reports are required every third year, with updates in the intervening years. Submissions are to be reviewed by the Council, with an opportunity for Members to pose questions, request additional information, and discuss the effectiveness of the incentives provided.

As of year-end 2002, Australia, Canada, Japan, New Zealand, Norway, Switzerland, the US, and the EC had submitted reports (IP/C/W/388 and addenda). As of August 2003, the only additional Member to file was the Czech Republic.

The other TRIPs item in the Decision deals with Article 64, 'non-violation' complaints (where a Member brings a dispute claiming that a measure by another Member has impacted it negatively even though no WTO rule has been violated). Consultations throughout 2002 and early 2003 appeared close to deciding that non-violation should not apply in TRIPs. However, Switzerland and the US blocked the agreement. The Chair is currently undertaking consultations in hopes of finding some consensus on the way forward prior to the reporting deadline in Cancun.

See Doha Round Brief No. 5 on Intellectual Property Rights and No. 11 on Trade and Transfer of Technology.

Committee on Trade and Development – Article XVIII

The Committee on Trade and Development, under the mandate of paragraph 12 (b) of the Declaration, took up most elements of the review of Article XVIII outlined in tiret three of the Compilation document.

Article XVIII, entitled *Governmental Assistance to Economic Development,* recognises that it may be necessary and justifiable for Members whose economies are in the early stages of development and can only support low standards of living, to take measures affecting imports in order to implement programmes of economic development designed to raise the general standard of living. It deals with the mechanisms for modifying or withdrawing concessions (part A), limiting imports due to balance-of-payment difficulties (part B), and other measures relating to governmental assistance to establish an industry (part C).

While the issue of the proper forum for these discussions did arise early on, Members agreed to examine the relevant elements of tiret three in the Committee, but only on condition of not prejudging the work of other bodies on this Article (see below).

In keeping with the general trend for items falling within the purview of paragraph 12 (b), Members were unable to find consensus on the issue. Most developing countries expressed their belief that the various provisions in the Article were not serving their original objective. In support, they noted the rare use of certain sections of the Article, especially Section C, and outlined (or re-outlined in India's case, see WT/GC/W/363) the need to make the Article more 'user-friendly'. In that regard, the Secretariat circulated two papers (WT/ COMTD/W/ 39 and 39/Add.1).

The Committee's end-2002 report to the Trade Negotiations Committee (WT/ COMTD/45) provided no guidance on how to take the issue forward, and it was not addressed at all in the July 2003 report to the General Council (WT/ COMTD/46).

Balance-of-Payments

The Committee on Balance-of-Payments (BOP), also under the mandate of paragraph 12 (b) of the Declaration, met five times since Doha (all in 2002) to take up tiret one and the remainder of tiret three from the Compilation document (WT/ BOP/R/66). Tiret one refers to the jurisdiction for examining the justification of BOP measures. Under tiret three, Members took up GATT Article XVIII:B, which deals with Members using import restrictions as a BOP measure to manage instabilities in their terms of trade (i.e. the relative price of a country's exports compared to its imports).

As above, the last report to the TNC highlighted a divergence in Members' positions on both tirets and offered no guidance on the way forward. As the BOP Committee has not met in 2003, the issue has not been revisited.

On tiret one, one view held that Members needed to clarify the relationship between Article XVIII:B and the use of the dispute settlement system with a view to confirming that only the Committee on BOP Restrictions shall have the authority to examine the overall justification of BOP measures. The other view was that WTO jurisprudence has already settled the issue in various rulings (see WT/DS34/R) and that there was nothing more to discuss.

On tiret three, some Members thought there was a need to ensure that Article XVIII:B served the objective of facilitating economic development. Others maintained that this Article functioned fine, and that no review was needed. A further issue brought up in the debate was the role of the IMF— with some Members expressing concern that the IMF was encroaching on the Committee's work by offering increasingly prescriptive rather than analytical views.

Technical Barriers to Trade (TBT)

Little progress was made on the two TBT-related implementation issues in 2002 (G/TBT/W/191), leaving another implementation issue at a standoff. Following a Heads of Delegation meeting on 7 July 2003 however, Members agreed to send tirets 33 and 34 back to TBT Committee for further work.

Tiret 33 refers to the request for mandatory technical assistance and cooperation for developing countries to meet and enforce TBT requirements. Tiret 34 deals with self-declaration of adherence to TBT standards in developed-country export markets.

Trade-Related Investment Measures

In May 2002, the Council for Trade in Goods assigned the work pursuant to paragraph 12 (b) of the Declaration on tirets 37-40 of the Compilation document to the TRIMs Committee. The Committee's 2002 and 2003 meetings showed that perspectives diverged widely. By the end of 2002, this issue was at a standstill. Informal consultations continued and following a 7 July 2003 Heads of Delegation meeting, Members agreed to restart the process on this matter in the TNC. Substantive positions, however, remain firmly in place.

In particular, it was agreed that tiret 40 sufficiently comprised all the elements of the other tirets, and would now serve as the focal point for future work along with a proposal by India and Brazil (G/TRIMS/ W/25) that seeks to re-open spaces for developing countries to use certain TRIMs in their development strategies.

The procedural fault lines of the deadlock revolve around the interpretation of the implementation mandate (see 'Interpreting the Mandate' above). As

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developed countries generally view the proposals as involving a renegotiation of the Agreement, and thus as stepping beyond the scope of the Doha implementation mandate, any such move would require new negotiations (being open to trade-offs elsewhere). Most developing countries see all 'outstanding implementation issues' as under negotiation, and therefore feel a mandate to rectify the imbalances in the Agreement exists (and being a systemic issue, is not open to reciprocity).

At the substantive heart of the debate is the definition of 'trade restriction' and 'trade distortion'. Developing countries argue that the embedded review mechanism in the Agreement was included in recognition of the fact that the scope of the final agreement exceeded that of the Uruguay Round mandate, i.e. to examine relevant GATT disciplines and come up with provisions to augment them in order to deal with identified trade restrictive and distorting effects of investment measures. Countries such as India and Brazil insist that instead of directly addressing alleged adverse trade effects of TRIMs, the Agreement has simply prohibited some measures presumed to be inconsistent with Articles III and XI of GATT 1994 (i.e. the principles of 'National Treatment' and 'Prohibition of Quotas'). In doing so, they argue, it has greatly limited their spaces for investment measures in development policies. Most developed countries counter that the review was put in place explicitly for the consideration of investment and competition policy.

Safeguards

The Committee on Safeguards considered, under the mandate of 12 (b) of the Declaration, tiret 84 of the Compilation document on four occasions in 2002. In their January 2003 report (G/SG/59), the Committee indicated that they "are not able to suggest a course of action […] due to a lack of consensus."

Tiret 84 would change the de minimis (i.e. level upon which no action could be taken) for safeguard measures applied to imports from developing countries from three percent individual or nine percent collectively to seven and fifteen percent respectively of imports.

Sanitary and Phytosanitary Measures

The equivalence of different food safety and animal and plant health measures (e.g. mutual acceptance of another Member's risk-minimising measures that may differ in process but have an equivalent effect under Article 4 of the SPS Agreement) is one implementation issue generally considered settled. Ministers in Doha (para. 3.3) noted the decision on the matter (G/SPS/19), and instructed the Committee to continue its work to further its implementation. In that regard, the Committee indicated in December 2002 (G/SPS/24) that continued work was underway, as part of its 'Programme for Further Work' (G/SPS/20). The most recent report (G/SPS/27) indicates that work is proceeding as envisaged. No deadline exists for this item.

An SPS item contained in the Compilation document deals with a proposal by Brazil regarding prior notification of new SPS measures (Article 7). At its March 2002 meeting, the Committee agreed to revise the recommended procedures (G/SPS/7/Rev.2) for implementing the transparency provisions of the SPS Agreement. In doing so, it resolved the only implementation issue operating under the 12 (b) track to date.

Other Implementation related Issues

Issues related to special and differential treatment and other implementation concerns regarding agriculture, services, TRIPs, WTO rules and dispute settlement are covered as part of the Doha Round Briefs dealing with those areas.

Endnotes

1 Trade-related Aspects of Intellectual Property Rights

2 Technical Barriers to Trade

3 Trade-related Investment Measures

4 Sanitary and Phytosanitary measures

5 http://www.wto.org/english/tratop_e/dda_e/implem_explained_e.htm

6 Antigua and Barbuda, Barbados, Belize, Colombia, Costa Rica, Dominica, Dominican Republic, El Salvador, Grenada, Guatemala, Jamaica, Jordan, Mauritius, Panama, Papua New Guinea, St. Kitts and Nevis, St. Lucia, St. Vincent and Grenadines, Thailand and Uruguay.

Most submissions are available at http://docsonline.wto.org, using the document symbols below. Using the full text search criteria can help narrow down the results.

Anti-Dumping: G/L/581; G/ADP/*; TN/RL/*

Balance of Payments: WT/BOP/*

Customs Valuation: G/L/590; G/VAL/*

Market Access: G/L/582; G/MA/*

Rules of Origin: G/RO/*

Safeguards: G/SG/*

SPS: G/SPS/*

Subsidies and Countervailing Measures: G/L/585; G/SCM/*; TN/RL/*

TBT: G/TBT/W/191

Textiles: G/L/595

Trade and Development: WT/COMTD/W/* and TN/CTD/*

TRIMs: G/L/588; G/TRIMS/W/25

TRIPs: IP/C/28; IP/C/W/388; IP/C/W/394

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