DOHA ROUND BRIEFING SERIES

Developments Since the Fourth WTO Ministerial Conference

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

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Doha Mandates

"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

Background

Implementation issues usually refer to compliance with one's negotiated obligations. In the lead-up to the Seattle Ministerial Conference in 1999, however, developing countries began to view implementation 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 include the lack of implementation of certain commitments and obligations on the part of developed countries (including special and differential treatment provisions, see Doha Round Briefing No. 13) as well as difficulties encountered by developing countries in implementing their new obligations.

Loud calls were heard again in the run-up to the Doha Ministerial for addressing the imbalances on a separate and expedited track. Developing countries felt they should not have to 'pay again' (in terms of making further trade-offs) for shortcomings in the anticipated gains from the trade-offs they made during the Uruguay Round. Developed countries argued that the changes sought would have repercussions on Members' 'rights and obligations', requiring the re-negotiation of certain Agreements, and thus concessions would have to be made elsewhere in compensation. While many trade and development experts agree that rectifying imbalances should be viewed as dealing with systemic shortcomings, and not as changing particular rights or obligations, the outcome from Doha does indeed make implementation issues a part of the new negotiations — and thus likely to be subject to trade-offs in other areas.

Interpreting the mandate

Exactly how implementation issues fit into the broader round of negotiations remains widely disputed. 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 those issues where the Doha Ministerial Declaration provides a specific negotiating mandate.

The first interpretation stems from the fact that implementation issues is the first item in the work programme of the Declaration and that the first sentence of paragraph 12 explicitly recognises the "utmost importance" attached to them. It is based first and foremost on the third sentence, which states that "[w]e agree that negotiations on outstanding implementation issues shall be an integral part of the Work Programme we are establishing [...]."

Members holding that all issues contained in both the Decision on Implementation and the Compilation document are under negotiations 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. The fourth sentence, this interpretation continues, provides two procedural tracks for dealing with the negotiations. The first is based on para. 12 (a) of the Ministerial Declaration, which 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, 12 (b), provides the track for items referenced in paragraph 13 of the Decision on Implementation, the 'outstanding implementation issues', which regular WTO bodies were to address as a matter of priority and report the results to the TNC (the body overseeing the *negotiations*) by the end of 2002.

The second, more restrictive, 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 on par with other items, while 12 (b) provides an avenue to address other 'outstanding implementation issues' — through discussions rather than negotiations — in regular WTO bodies.

Mandated Deadlines

Unless otherwise noted, the following deadlines are provided for in the Decision on Implementation (paragraph number in brackets).

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 on its review of countervailing duty investigations in the provisions of the Agreement on Subsidies and Countervailing Measures (para. 10.3); and
- The Committee on Trade and Development was to present "clear recommendations for action" on certain items of its mandate to review "all special and differential treatment provisions [...] with a view to strengthening them and making them more precise, effective and operational." In particular, it was to report on the work of identifying which provisions are mandatory, considering the legal and practical implications of converting non-binding provisions into mandatory ones, and identifying those that Members consider should be made mandatory. In addition, it was to report on additional ways to make special and differential treatment provisions more effective (paras. 12.1 (i) & (ii); and Ministerial Declaration para. 44).

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, 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 Agreement on Anti-Dumping 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 anti-dumping duties would not apply (para. 7.3); and
- report its views and recommendations to the General Council for subsequent decision on the drawing up of guidelines for the improvement of its annual reviews (para. 7.4).

15 December 2002, the Committee on Subsidies and Countervailing Measures 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.

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 being given to the phrase 'substantial interest' in paragraph 2(d) of Article XIII of the GATT 1994 (para. 1.2).
- The TRIPs Council was to to receive from developed country Members reports on the functioning in practice of the incentives provided to their enterprises for the transfer of technology (para. 11.2).
- Relevant WTO bodies were to report "for appropriate action" to the Trade Negotiations Committee on "other outstanding implementation issues" (Ministerial Declaration para. 12 (b)).
- January 2003, the Committee on Subsidies and Countervailing Measures was to reach consensus on the appropriate methodology for calculating constant 1990 dollars (para 10.1).
- At the Fifth WTO Ministerial Conference (10-14 September in Cancun, Mexico), 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 (commonly called 'non-violation complaints, para 11.1).

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 on the WTO website[1] that the Decision on Implementation 'settled' more than 40 implementation concerns for immediate delivery, a quick glance at the deadlines above shows that in relation to the Decision on Implementation alone, a great deal of work remained in the post-Doha work programme (the argument can be made that in fact the Decision only takes five mandatory and concrete decisions that address the concerns raised by developing country Members, three related to sanitary and technical matters and two related to subsidies and countervailing duties).

Few of the implementation issues that were to be resolved post-Doha have seen any forward movement. Numerous deadlines have been postponed, while others have been missed outright. Indeed, almost all items under paragraph 12 (b) of the Doha Declaration that were in fact addressed by a committee in 2002 ended with no consensus and no procedures on the way forward. On textiles, for example, WTO Members were so much at odds that the Chair of the Council for Trade in Goods could not even present a report outlining the differences in positions to the General Council in July 2002.

What follows is generally a deadline-based review of most of the key implementation issues found in the Decision, including those in the Compilation document that have seen airtime in the various 'relevant' bodies. The aim is to highlight the major points of agreement and/or disagreement and the various positions taken by Members.

Textiles

Textiles discussions in the WTO generally pit the major developing country exporters, most of whom are members of the International Textiles and Clothing Bureau (ITCB) — such as Hong Kong, India, Pakistan, Indonesia and Brazil — against Canada, the EU 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.

Although the two proposals were slated for 'immediate' decision in the various drafts of the Decision on Implementation, the final document adopted by ministers left it to the Council for Trade in Goods to make recommendations "for appropriate action" by 31 July 2002 (Decision paras 4.4 & 4.5).

Despite extensive informal and formal discussions, the Chair of the Council for Trade in Goods, Ambassador Supperamaniam (Malaysia), was unable to bridge the cavernous gaps that remained between Members. 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 Agreement on Textiles and Clothing — which aims to bring textiles trade under normal GATT rules by 1 January 2005 — and had already provided meaningful market access to developing countries, with considerable adjustment being undertaken by their domestic textile producers.

When Ambassador Supperamaniam attempted to craft a report outlining the differences between Members to present to the General Council (without any recommendations), the two sides could not agree how to represent them. As a result, the Chair was unable to submit even a factual report. The issue ultimately went nowhere, leaving the process in a procedural limbo. Delegates have suggested that the General Council will probably have to take it up at a later date. This has not yet happened.

Special and Differential Treatment

While special and differential treatment (S&D) is dealt with explicitly in Doha Round Briefing No. 13 it is useful to note here that by 31 July, the Committee on Trade and Development was unable to report "with clear recommendations for action" on the mandated elements of its review of all S&D provisions. The deadline was postponed to 31 December 2002 (see TN/CTD/3), but the final session of the General Council for 2002 (20 December) found Members still unable to agree on how to carry out the mandate on special and differential treatment. As a result, the reporting deadline was pushed even further back, this time to the 10-11 February 2003 General Council Meeting. Members continued to meet feverishly through to the end of January, but as of mid-February, little movement appeared visible from what seem to be firmly entrenched positions.

Subsidies & Countervailing Measures

The Decision on Implementation and the Compilation document touched on the Agreement on Subsidies and Countervailing Measures more than any other single item (totalling 26 paragraphs in both). Two of the items in the Decision itself fell under a deadline during 2002. The first of these came in the context of the review of countervailing duty investigations and the second came via the decision to consider applications for the extension of transition periods under Article 27.4 of the Agreement. A third, falling under a deadline of January 2003, was to agree on a methodology for calculating constant 1990 dollars (with regard to the US$1,000 threshold for being except from certain subsidy reduction commitments).

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 duties. These proposals formed the basis for a long and rather heated debate primarily between the two submitting countries and the EU and the US in the Committee on Subsidies and Countervailing Measures. In the 30 July 2002 report submitted by the SCM Committee Chair to the General Council "on [his] own responsibility", Ambassador 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 in terms of the substantive aspects of the review or with respect to any next step" (G/SCM/45). He concluded by saying that "in the context of the Committee, the discussions of these issues have been taken as far as possible", most likely alluding to the fact that most developed country Members expressed a preference for dealing with this issue in the Negotiating Group on Rules (see Doha Round Briefing No. 7).

While Brazil and India expressed disappointment with this result, the EU and the US made it clear that they considered that the Doha mandate had been carried out 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[2] out of 29 requests to extend the transition period for subsidy programs provided for in Article 27.4 of the Agreement on Subsidies and Countervailing Measures. 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) have eight years (i.e. until end-2002) to phase out export subsidies but may request an extension of this period. At Doha,

Members agreed on procedures for granting these extensions (G/SCM/39), giving the Committee until 15 December 2002 to grant the extensions to qualified programmes.

Programmes eligible for extension pursuant to the procedures outlined in G/SCM/39 are export subsidy programmes (i) in the form of full or partial exemptions from import duties and internal taxes, (ii) which were in existence not later than 1 September 2001, and (iii) which are provided by developing country Members (iv) whose share of world merchandise export trade was not greater than 0.10 percent, (v) whose total Gross National Income for the year 2000 as published by the World Bank was at or below US$20 billion, and (vi) who are otherwise eligible to request an extension pursuant to Article 27.4.

Of note, Colombia, which — based on the criteria above — would not have been eligible to apply for the subsidy programme extension — was able to secure language in paragraph 10.6 of the Doha Implementation Decision that allowed it to obtain an initial two year extension on two subsidy programmes within its export processing zones. This results from the language that directs the Committee to take into account "the relative competitiveness" of an extension application in relation to other developing country Members who have requested extension of the transition period, so as to "avoid that Members at similar stages of development and having a similar order of magnitude of share in world trade are treated differently in terms of receiving such extensions for the same eligible programmes and the length of such extensions."

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 shall be applied and the provision in paragraph 10.1 of the Decision will consequently come into effect.

Anti-dumping

In the Decision on Implementation, ministers gave the Committee on Anti-Dumping Practices three items on which it was to draw up recommendations within 12 months: (i) how to ensure the maximum possible predictability and objectivity in the application of time frames with regard to dumping investigations, in particular in the determination of whether the volume of imports was negligible (Article 5.8); (ii) how to operationalise Article 15 (taking special regard for developing countries in applying anti-dumping measures); and (iii) guidelines for the improvement of annual reviews of the Anti-dumping Agreement (Article 18).

While anti-dumping falls under the rubric of WTO rules, and is thus being dealt with primarily in the Negotiating Group on Rules (Doha Round Briefing No. 7), developing country Members were keen to have these three items resolved in the Anti-dumping Committee's Working Group on Implementation so as to avoid having them subject to trade-offs in the broader context of negotiations. Article 15 was also discussed in the context of the Committee on Trade and Development's review of all S&D provisions (Doha Round Briefing No. 13).

While Members reached agreement on two of the three items at their 27 November 2002 session, related to Articles 5.8 and 18 (G/ADP/9), consensus 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 under the Agreement.

Article 15: The Chair of the Anti-dumping Committee, Mr. Cristian Espinosa Cañizares (Ecuador), reported to the General Council 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 raised in discussions "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 of ministers to the Committee and its Working Group, the discussions of these issues "have been taken as far as possible." This formulation points to the Article 15 proposals heading for either (or both) the Special Sessions of the Committee on Trade and Development and the Negotiating Group on Rules, although some discussion could conceivably remain in the Working Group.

The main reason for the deadlock 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 wanted the recommendation to include 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 (found in Article 8) 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. It remains to be seen how this issue will be picked up in 2003.

Article 5.8: Concerning ways to provide maximum possible predictability and objectivity in the application of time frames to be used when determining if imports from developing countries are negligible (under three percent) and thus excluded from dumping duties, Members agreed that they would notify within 60 days which of the following three methodologies they would use for *all* investigations thereafter. The options provided include (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 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: 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, after which such information will be compiled and included in a table in the Committee's annual report, including noting where Members have not provided such information.

Customs Valuation

Paragraph 8.3 of the Decision on Implementation directed the Committee on Customs Valuation to report to the General Council by the end of 2002 on practical means to address the "legitimate concerns" of Members' importing authorities over the accuracy of the declared value of imported goods — and thus the amount of tariff revenue collected from the import. According to its submission to the General Council (G/VAL/50), the Committee was unable to report on means to address the

concerns, but requested more time for input from the Technical Committee. To this end, it requested the endorsement of terms of reference for the technical input, which is to be completed by 15 May 2003. It concluded by asking the General Council to establish an appropriate time for future reporting on the matter.

Another set of related implementation issues, pursuant to paragraph 12(b) of the Ministerial Declaration, dealt with five tirets (57-61) of the Compilation Document. The Committee on Customs Valuation met seven times since the end of February 2002 to deal with these issues, mainly related to the composition of the values used for calculating values of goods imported. Citing a lack of consensus, the Committee, in its report to the TNC (G/VAL/49), indicated that it was not able to suggest a course of action on any of the issues.

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 end-of-year 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.

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 little 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 greater consideration could be given in this regard without providing undue favour to some at the expense of others.

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

Trade-related Aspects of Intellectual Property Rights

The initial TRIPs item found in the Decision on Implementation-related Issues and Concerns 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.

After two non-papers circulated by the TRIPs Council, the Council requested developed country Members to make such information available for the November 2002 meeting. As outlined in the Council's year-end report (IP/C/27), as of 6 December, information had been received and circulated (under IP/C/W/388 and addenda) by Australia, Canada, Japan, New Zealand, Norway, Switzerland, as well as the EU and its member states.

The Council suspended its November meeting and agreed to revert to this item later in the course of the meeting.

The second TRIPs item in the Decision, dealing with the extension of the five-year transition period in Article 64.2, which has a deadline of making recommendations to the fifth Ministerial Conference (10-14 September 2003), has seen little movement in 2002. The Council decided in September 2002, with the aid of an annotated Chair's agenda, that the first meeting of 2003 would take this matter up more concretely. The Secretariat has prepared a note summarising the points raised on this issue so far (IP/C/W/349).

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

Balance-of-Payments

The Committee on Balance-of-Payments, under the mandate of paragraph 12 (b) of the Declaration, met five times in 2002 to take up tiret one and part of tiret three of the Compilation document (see the Committee's report, WT/BOP/R/66). Tiret one refers to the jurisdiction over examining the justification of balance-of-payment (BOP) measures, and tiret three refers to the undertaking of a "complete" review of Article XVIII of GATT 1994 — entitled *Governmental Assistance to Economic Development*. The reason for the Committee on Balance-of-Payments taking up part of Article XVIII, while the Committee on Trade and Development takes up the rest, is that Article XVIII:B 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). Such instabilities could possibly affect governmental assistance to development. Members could not come to consensus on either tiret and the Committee's report provides no guidance on the way forward.

On tiret one, one view held that WTO 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 Balance-of-Payments 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 subserved 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.

Committee on Trade and Development – Article XVIII

The Committee on Trade and Development (CTD) dealt with the remaining elements of Article XVIII pursuant to paragraph 12 (b) of the Declaration, i.e. sections A, C, & D. The Article recognises that it may be necessary and justifiable for those Members whose economies can only support low standards of living and are in the early stages of development to take protective or other measures affecting imports in order to implement programmes and policies of economic development designed to raise the general standard of living.

While the issue of the proper forum for these discussions did arise, Members agreed to examine the remaining elements of tiret three in the CTD, but

only on condition of not prejudging the work of other bodies on this Article.

In keeping with the general trend for items falling within the purview of paragraph 12 (b) of the Declaration, 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 usage 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 on the usage of XVIII:C (WT/COMTD/W/39 & 39/Add.1).

The CTD's report to the Trade Negotiations Committee (WR/COMTD/45) provides no guidance on how to take this issue forward.

Trade-Related Investment Measures

In early May 2002, the Council for Trade in Goods (CTG) assigned the work to be carried out pursuant to paragraph 12 (b) of the Declaration on tirets 37-40 of the Compilation document to the Committee on Trade-Related Investment Measures (TRIMs). The Committee's three meetings since made it quite clear that perspectives on the issue diverged widely. In general, most developed countries felt that the substance of the tirets involved a re-negotiation of the TRIMs Agreement and thus was not within the scope of the Doha implementation mandate. Developing countries, for their part, reiterated their belief that all 'outstanding implementation issues', including in particular those contained in the Compilation document, were under negotiation (see 'Interpreting the Mandate' above). Clearly, there was no consensus amongst Members.

At the heart of this debate are the definitions of 'trade restriction' and 'trade distortion'. Developing countries essentially argue that the embedded review mechanism in the Agreement was included in recognition of the fact that the scope of the final agreement exceeded the mandate given to it when the Uruguay Round was launched in 1986, 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. Some, such as India and Brazil in their lone proposal on these matters (G/TRIMS/W/25), insist that instead of addressing directly alleged adverse effects of TRIMs on trade, the TRIMs Agreement has simply prohibited some investment measures presumed to be inconsistent with Articles III and XI of GATT 1994 (i.e. the principles of 'National Treatment' and 'Prohibition of Quotas') — and in doing so has greatly limited their scope to use investment measures in their development strategies. Most developed countries counter that the review was put in place explicitly for the consideration of investment and competition policy.

Other Implementation-related Issues

Issues related to special and differential treatment and other implementation concerns regarding agriculture, services, additional TRIPs provisions, dispute settlement proceedings and technical assistance are covered as part of the Doha Round Briefings dealing with those areas.

Endnotes

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

2 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 & Grenadines, Thailand and Uruguay.

Most submissions on implementation issues can be found via http://docsonline.wto.org, using the document symbols below. Including 'implementation' in the full text search criteria can help to narrow down the results. The G/L documents represent reports made to the General Council for these issue areas and include comments on the implementation-related issues.

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

Committee on Trade and Development: WT/COMTD/W

Balance of Payments: WT/BOP/

Customs Valuation: G/L/590; G/VAL/50; G/VAL/49

Subsidies and Countervailing Measures: G/L/585; G/SCM/45; G/SCM/; TN/RL

Anti-Dumping: G/ADP/11; G/L/581; TN/RL

Textiles: G/L/595

TRIMs: G/L/588; G/L/595; G/TRIMS/W/25

TRIPs: IP/C/27; IP/C/W/388; IP/C/W/394

The Compilation of Outstanding Implementation Issues Raised by Members JOB(01)/152/Rev.1 can be downloaded from http://www.ictsd.org/ministerial/doha/docs/imp_iss.pdf.

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