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GENERAL COUNCIL

Implementation-Related Issues and Concerns

Compilation of Outstanding Issues

Working Paper by the Secretariat

This paper has been produced by the Secretariat, as requested by the Chairman of the General Council at the December 2000 Special Session, to assist delegations by bringing together in one document implementation issues raised by Members in line with the General Council Decision on Implementation-Related Issues of 3 May 2000 and the work programme adopted on 22 June 2000 which remain to be addressed by the General Council in its continuing work in this area.

The issues are listed in the order of the Agreements under which they were raised, and under appropriate headings with regard to paragraphs 21 and 22 of the draft Ministerial text of 19 October 1999 (Job(99)/5868/Rev.1). Other issues raised in line with the May 2000 Decision and the June 2000 work programme are listed under the heading "Other". This ordering is, of course, without prejudice to the General Council's treatment of the issues or the position of any Member.

GATT 1994

Paragraph 21 (j) - Balance-of-Payments Provisions of GATT 1994

- Only the Committee on Balance-of-Payments shall have the authority to examine the overall justification of BOP measures.
- The Committee shall keep in view that Article XVIII is a special provision for developing countries and shall ensure that Article XVIII does not become more onerous than Article XII.

Paragraph 22 (i) - Article XVIII of GATT 1994

- A complete review of Article XVIII shall be undertaken with a view to ensure that it subserves the original objective of facilitating the progressive development of economies in developing countries and to allow them to implement programmes and policies of economic development designed to raise the general standard of living of their people.

Other

Issue raised by Saint Lucia, 15 December 2000

- The phrase "substantial supplier" appearing in Article XIII of the GATT 1994 should be defined in a manner which 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.

Agreement on Agriculture

Paragraph 21 (k)

- Developing countries with predominately rural agrarian economies shall have sufficient flexibility in the green box to adequately address their non-trade concerns, such as food security and rural employment.
- If in the calculation of the AMS, domestic support prices are lower than the external reference price (so as to ensure access of poor households to basic foodstuffs), thereby resulting in negative product specific support, then Members shall be allowed to increase their non-product specific support by an equivalent amount.
- The Marrakesh Ministerial Decision on Measures Concerning the Possible Negative Effects of the Reform Programme on Least-Developed and Net Food-Importing Developing Countries (NFIDCs) shall be revised, before 1 January 2001, in order to ensure its effective implementation.
  Note: Issue refered to the Committee on Agriculture on 15 December 2000.
- [The full and timely implementation of Article 10.2 of the Agreement on Agriculture is of utmost importance to prevent the circumvention of export subsidies commitments. We thus recognize that agricultural export credits, export credit guarantees and insurance programmes must be brought under effective international disciplines by the end of the year 2000 with a view to ending government subsidization of such credits.] [We agree to complete work by 31 July 2000 on the development of internationally agreed disciplines to govern the provision of export credits, export credit guarantees or insurance programmes in accordance with Article 10.2 of the Agreement on Agriculture, and to implement such disciplines.]
  Note: Issue refered to the Committee on Agriculture on 18 October 2000; report issued in document G/AG/6, dated 28 November 2000.

Agreement on the Application of SPS Measures

Paragraph 21 (c)

- The provisions in Article 10 shall be made mandatory, including that if an SPS measure creates a problem for more than one developing country, then the country which has adopted it shall withdraw it.
- Article 10:2 provision shall be made mandatory for developed countries to provide a time period of at least 12 months from the date of notification for compliance of new SPS measures for products from developing countries.
- The provisions of paragraph 2 of Annex B shall made mandatory, and a "reasonable interval" shall mean not less than 12 months.
- Article 4 shall be clarified so that developing countries can enter into equivalency agreements.
  Note: Issue refered to the SPS Committee on 18 October 2000; report issued in document G/L/423, dated 29 November 2000.

Paragraph 22 (d)

- Though the SPS Agreement encourages Members to enter into MRAs, developing countries have not so far been included in such agreements. In this context, it is suggested that MRAs are developed in a transparent way and they should be open to parties that may wish to join them at a later stage.
- The definition of an international standard, guideline and recommendation (paragraph 3 of Annex A) needs to be revised so that a differentiation is introduced

between mandatory international standards and voluntary international guidelines/recommendations.

- Article 12:7 provides for a review of the operation and implementation of the Agreement three years after the date of entry into force of the Agreement. This review shall be carried out once every two years.

Agreement on Textiles and Clothing

Paragraph 21 (e)

- [Importing] [Developed] [Restraining] countries shall, on the first day of the 85th month that the WTO Agreement is in effect, integrate products which accounted for not less than 50 per cent of the total volume of the Member's 1990 imports.
- The importing countries to apply growth-on-growth for stage 3 with effect from 1 January 2000 instead of 1 January 2002.
- A moratorium shall be applied by importing countries on anti-dumping actions until two years after the entire textiles and clothing sector is integrated into the GATT.
- Any change in rules of origin shall be examined in the CTG for its possible impact on market access of exporting countries, before it is applied.
- The growth rate in quotas for small suppliers shall be substantially increased.
- The restraining countries should apply the methodology employed by the EU in implementing the growth-on-growth for small suppliers and extend the same treatment to least-developed countries.
- Any resulting growth rates lower than 6 per cent should be increased to that percentage.
- In order to avoid double jeopardy to the exporting countries concerned, restraining Members should agree not to initiate anti-dumping actions against products under quota restrictions. And to lend certainty to trade, they should not take such action during a period of two years after the elimination of the quota.

Other

Issues raised by Hong Kong, China on behalf of members of the ITCB which are also Members or Observers of the WTO, 6 July 2000 (WT/GC/W/406)

- The restraining WTO Members, should ensure that at least 50 per cent of the volume of 1990 imports of products, that were under specific quota limits, shall have been liberalized by the start of the next stage of implementation of the ATC on 1 January 2002.
- The restraining countries should: (i) apply the methodology employed by the EU in implementing the growth-on-growth for small suppliers and extend the same treatment to least-developed countries; (ii) advance the implementation of the growth-on-growth for stage 3 to 1 January 2000 (from 1 January 2002); and (iii) increase any resulting growth rates lower than 6 per cent to that percentage.
- The Members that have long maintained restrictions under the MFA and have, therefore, had sufficient experience of assessing the validity of transitional safeguard actions should promptly remove the measure and compensate for loss of trade, in cases in which the recourse to safeguard actions is subsequently found by the TMB/Panel to be unjustified.
- In order to avoid double jeopardy to the exporting countries concerned, restraining Members should agree not to initiate anti-dumping actions against products under

quota restrictions. And to lend certainty to trade, they should not take such action during a period of two years after the elimination of the quota.

- With a view to ensuring that administrative procedures do not operate as disguised protection by the restraining Members, the TMB may be invited to examine these measures.
- With a view to ensuring that the balance of rights and obligations embodied in the Agreement is restored, the TMB/CTG may examine the impact of changes in rules of origin by the restraining Members on the rights of the exporting Members concerned and make recommendations for multilateral consideration.
- In order to ensure the conformity, with the ATC, of the measures taken with respect to products covered by the ATC:
  - The restraining Members should notify each measure together with its justification to the TMB within 30 days from the date that it is adopted.
  - The TMB should examine the measure within 30 days and submit its findings to the CTG for its recommendation.

Agreement on Technical Barriers to Trade

Paragraph 21 (d)

- A specific mandate shall be given to the TBT Committee as part of its triennial work programme to address the problems faced by developing countries in both international standards and conformity assessment.
  Note: Issue refered to the TBT Committee on 18 October 2000; report issued in document G/L/422, dated 29 November 2000.

Paragraph 22 (e)

- Means have to be found to ensure effective participation of developing countries in setting of standards by international standard-setting organizations.
- Article 11 shall be made obligatory so that technical assistance and cooperation is provided to developing countries.
- Acceptance by developed-country importers of self-declaration regarding adherence to standards by developing-country exporters. This provision should be introduced in Article 12.
- A specific provision to be introduced in Article 12 that developing countries shall be given a longer time-frame to comply with measures regarding products of export interest to them. Furthermore, if a measure brought forward by a developed country creates difficulties for developing countries, then the measure should be reconsidered.

Agreement on TRIMs

Paragraph 21 (f)

- The transition period mentioned in Article 5 paragraph 2 shall be extended [until such time that their development needs demand] [for a further period of five years].
- Developing countries shall have another opportunity to notify existing TRIMs measures which they would be then allowed to maintain till the end of the new transition period.

Paragraph 22 (f)

- The provisions of Article 5.3 must be suitably amended and made mandatory.
- Developing countries shall be exempted from the disciplines on the application of domestic content requirement by providing for an enabling provision in Articles 2 and 4 to this effect.
- Specific provisions shall be included in the Agreement to provide developing countries the necessary flexibility to implement development policies (intended to address, among others, social, regional, economic, and technological concerns) that may help reduce the disparities they face *vis-à-vis* developed countries.

Agreement on Anti-Dumping

Paragraph 21 (a)

- No investigation shall be initiated for a period of 365 days from the date of finalization of a previous investigation for the same product.
- Under Article 9.1 the lesser duty rule shall be made mandatory.
- Article 2.2 shall be clarified in order to make appropriate comparison with respect to the margin of dumping.

Paragraph 22 (a)

- Provisions of the Agreement shall be improved with a view to prevent the imposition of arbitrary or primarily protectionist measures. The provisions to be revisited should include, *inter alia*, (i) the criteria, methodology, and procedures of the reviews specified in the Agreement (expeditious review for new exporters, final review, reviews upon request), (ii) the definition of the product motivating the investigation, (iii) the determination of the margin of dumping, (iv) the imposition and collection of duties, (v) the "cumulation" clauses.
- The provisions of Article 15 need to be operationalized and made mandatory.
- The existing de minimis dumping margin of 2 per cent of export price below which no anti-dumping duty can be imposed (Article 5.8), needs to be raised to 5 per cent for developing countries.
- The proposed de minimis dumping margin of 5 per cent is applied not only in new cases but also in refund and review cases.
- The threshold volume of dumped imports which shall normally be regarded as negligible (Article 5.8) should be increased from the existing 3 per cent to [5 per cent] [7 per cent] for imports from developing countries.
- Article 5.8 shall be also clarified with regard to the time-frame to be used in determining the volume of the dumped imports.
- The substantial quantities test should be increased from the present threshold of 20 per cent to at least 40 per cent.
- Article 2.4.1 shall include details of dealing with foreign exchange rate fluctuations during the process of dumping.
- Article 3 shall contain a detailed provision dealing with the determination of the material retardation of the establishment of a domestic industry as stipulated in footnote 9.

- There should be a provision in the Agreement, which provides a presumption of dumping of imports from developed countries into developing countries, provided certain conditions are met.
- Article 17 should be suitably modified so that the general standard of review laid down in the WTO dispute settlement mechanism applies equally and totally to disputes in the anti-dumping area.
- Article 18.6 must be appropriately amended to ensure that the annual reviews are meaningful and play a role in reducing the possible abuse of the Anti-Dumping Agreement.

Agreement on Implementation of Article VII of GATT 1994 (Customs Valuation)

Paragraph 21 (h)

- A multilateral solution that enables customs administrations of importing countries to seek and obtain information on export values in a time-bound manner, in doubtful cases, shall be included in the Agreement.
  Note: Issue refered to the Customs Valuation Committee on 18 October 2000; report issued in document G/VAL/36, dated 7 December 2000.
- The addition of cost of services such as engineering, development, and design work, which are supplied directly or indirectly by the buyer free of charge or at reduced cost for the production of goods under import, shall be included in Article 8:1(b)(iv).
  Note: Issue refered to the Customs Valuation Committee on 18 October 2000; report issued in document G/VAL/36, dated 7 December 2000.
- The residual method of determining customs value under Article 7 shall be inclusive of all residual eventualities, thus allowing valuation based on domestic market price or export price in a third country with appropriate adjustments.
  Note: Issue refered to the Customs Valuation Committee on 18 October 2000; report issued in document G/VAL/36, dated 7 December 2000.

Paragraph 22 (h)

- The Agreement should be amended to provide for the highest value when more than one transaction value of identical or similar goods is found.
- Buying commissions should be taken into account in the determination of customs value of imported goods as it forms a legitimate component of the landed cost of imported goods.
- Persons associated with each other as sole agents, sole distributors, and sole concessionaires, howsoever described, should automatically be deemed "related".

Agreement on Rules of Origin

Paragraph 21 (i)

- The CRO shall complete its remaining work on harmonizing non-preferential rules of origin by 31 July 2000.
  Note: Issue refered to the Committee on Rules of Origin on 15 December 2000.
- [No new interim arrangements shall be introduced.] Further, any interim arrangements introduced by any Member with effect from 1 January 1995 or any subsequent date shall be suspended with effect from 4 December 1999.

Agreement on Subsidies and Countervailing Measures

Paragraph 21 (b)

- Article 8:1 of the Subsidies Agreement dealing with non-actionable subsidies shall be expanded to include subsidies referred to in Article 3:1 of the Agreement when such subsidies are provided by developing country Members.
- Export credits given by developing countries shall not be considered as subsidies so long as the rates at which they are extended are above LIBOR.
- Any countervailing duties shall be restricted only to that amount by which the subsidy exceeds the de minimis level.
- Annex VII of the Agreement shall be modified to read as follows:

  The developing-country Members not subject to the provisions of paragraph 1(a) of Article 3 under the terms of paragraph 2(a) of Article 27 are:

  (i) The developing countries, including the least-developed countries, Members of the WTO that are included in the Low and Middle Income Category of the World Bank;

  (ii) Countries indicated in paragraph (i) above will be excluded from this Annex if their GNP per capita has exceeded the top level of the Middle Income Category of the World Bank. They will be automatically included in this Annex, if their GNP per capita falls at or under the top level of the Lower-Middle Income Category of the World Bank.

  Note: See also the issues raised by Indonesia and Jamaica, listed below.
- The prohibition on using export subsidies under Article 27:6 shall be applicable to a developing country only after its export levels in a product have remained over 3.25 per cent of world trade continuously for a period of five years.
  Note: Issue refered to the Subsidies Committee on 15 December 2000.
- Article 8 shall include, as non-actionable subsidies, measures implemented by developing countries with a view to achieve legitimate development goals, such as regional growth, technology research and development funding, production diversification, development and implementation of environmentally sound methods of production, and manufacture of high technology and value added goods.
- Article 27.2 shall be amended so that the Article 3.1(a) prohibition does not apply to export subsidies granted by developing countries where they account for less than 5 per cent of the f.o.b. value of the product.
- Countervailing measures shall not be imposed in the case of imports from developing countries where the total volume of imports is negligible, i.e. 7 per cent of total imports.

Paragraph 22 (b)

- Aggregate and generalized rates of duty rate remission should be allowed in case of developing countries even though the individual units may not be able to establish the source of their inputs.
  Note: Issue refered to the Subsidies Committee on 15 December 2000.
- Developing countries should be allowed to neutralize the cost escalating effect of taxes.
- Article 11:9 should be modified to provide an additional dispensation for developing countries, in as much as that any subsidy investigation shall be immediately terminated in cases.
- The present de minimis level of 3 per cent below which countervailing duties may not be imposed for developing countries, needs to be increased (Article 27:11).

- There should be a clarification in Article 27:3 that it is applicable notwithstanding the provisions of any other agreement.
- The definition of "inputs consumed in the production process" (footnote 61) needs to be expanded to include all inputs, not just physical inputs, which may have contributed to the determination of the final cost price of the exported product.
  Note: Issue refered to the Subsidies Committee on 15 December 2000.
- Annex I of the Agreement shall be amended to provide developing countries the flexibility to finance their exporters, consistent with their developmental objectives.
- The provisions of Article 27 shall be re-evaluated so as to address, under a permanent and more adequate framework, the needs and specificities of developing countries concerning incentives and subsidies.
- The language of the Agreement regarding investigation procedures shall be further clarified, incorporating provisions that improve its disciplines regarding, *inter alia*, review procedures, facts available, sampling, significant volumes, calculation of amount of a subsidy, and impositions and collection of a countervailing duty.
- The language of Annex I of the Agreement, particularly item 'k', shall be reviewed to permit developing countries to provide competitive export financing *vis-à-vis* the conditions found in the international market or those offered by the credit agencies of developed countries (controlled by and or acting under the authorities of the governments).

Other

Issue raised by Indonesia, 6 December 2000

- If a Member listed in Annex VII(b) is excluded from the application of Article 27.2(a) on account of its GNP per capita exceeding US$ 1000, that Member would become re-eligible automatically if its GNP per capita falls at or below US$ 1000.

Issue raised by Jamaica, 6 December 2000

- The SCM Committee shall review the threshold of US$ 1000 in Annex VII (b) and examine the possibility of including in Annex VII, Members in the low and lower-middle income categories as classified by the World Bank. The SCM Committee shall examine additional possibilities for granting flexibility to developing countries such as threshold limits relating to percentage share of exports in import markets and in global trade

Agreement on Safeguards

Paragraph 22 (c)

- Article 9.1 shall be amended so that safeguard measures are not applied to imports from developing countries which individually account for less than 7 per cent of total imports.

General Agreement on Trade in Services

Paragraph 21 (l)

- Developed countries shall fully implement commitments undertaken by them in Mode 4.

- A monitoring and notification mechanism shall be established to ensure effective implementation of Article IV of the GATS.

Agreement on Trade-Related Aspects of Intellectual Property Rights

Paragraph 21 (g)

- In the light of provisions contained in Articles 23 and 24 of the TRIPS Agreement, additional protection for geographical indications shall be extended for products other than wines and spirits.
- A clear understanding in the interim that patents inconsistent with Article 15 of the CBD shall not be granted.
  Note: Issue refered to the TRIPS Council on 18 October 2000; report issued in document IP/C/21, dated 4 December 2000.
- [Article 64, paragraph 2 shall be modified so as to make it clear that subparagraphs (b) and (c) of Article XXIII of GATT 1994 shall not apply to the TRIPS Agreement.] [The TRIPS Council shall take an appropriate period of time to examine the scope and modalities for complaints of the type provided for under sub-paragraph 1(b) and 1(c) of Article XXIII of GATT 1994 made pursuant to the TRIPS Agreement, and submit its recommendations to the Ministerial Conference for approval. Any decision of the Ministerial Conference to approve such recommendations or to extend the period above shall be made only by consensus, and approved recommendations shall be effective for all Members without further formal acceptance process.]
- The provisions of Article 66.2 shall be made obligatory and shall be subject to periodical notification.
  Note: Issue refered to the TRIPS Council on 18 October 2000; report issued in document IP/C/21, dated 4 December 2000.
- The period given for implementation of the provisions of Article 27.3(b) shall be five years from the date the review is completed.
- [The list of exceptions to patentability in Article 27.3(b) of the TRIPS Agreement shall include the list of essential drugs of the World Health Organization.] [The TRIPS Agreement shall be understood not to prevent developing countries from issuing compulsory licenses for drugs listed by the World Health Organization as essential in the interests of their supply at reasonable prices.]
- The transitional period for developing countries provided for in Article 65.2 shall be extended.

Paragraph 22 (g)

- Articles 7 and 8 of the TRIPS Agreement to be operationalized by providing for transfer of technology on fair and mutually advantageous terms.
- [Article 27.3(b) to be amended in light of the provisions of the Convention on Biological Diversity and the International Undertaking. Also, clarify artificial distinctions between biological and microbiological organisms and process; ensure the continuation of the traditional farming practices including the right to save, exchange and save seeds, and sell their harvest; and prevent anti-competitive practices which will threaten food sovereignty of people in developing countries, as permitted by Article 31 of the TRIPS Agreement.] [Article 27.3(b) should be amended to take into account the Convention on Biological Diversity and the International Undertaking on Plant Genetic Resources. The amendments should clarify and satisfactorily resolve the analytical distinctions between biological and microbiological organisms and processed; that all living organisms and their parts cannot be patented; and those natural processes that produce living organisms should

not be patentable. The amendments should ensure the protection of innovations of indigenous and local farming communities; the continuation of traditional farming processes including the right to use, exchange and save seeds, and promote food security.]

Cross-cutting issues

Paragraph 21 (m) - Special and Differential Treatment

- All S&D provisions shall be converted into concrete commitments, especially to address the constraints on the supply side of developing countries.
- Preferential treatment by developed countries in favour of developing countries shall, in accordance with the Enabling Clause, be implemented in a manner which is generalized, non-discriminatory, and non-reciprocal.
- Having regard to the significant role played by preferential trading agreements between developing and developed countries, Members agree to consider favourably, as appropriate, the granting or extension of waivers to Article I of GATT 1994 covering such agreements.

Other

Issue raised by Saint Lucia, 15 December 2000

- The General Council shall adopt measures designed to secure a redistribution of negotiating rights in favour of small and medium-sized exporting Members in trade negotiations.