

**Draft Decision on Implementation-Related Issues and Concerns****3 October 2001/Fourth Session of the Ministerial Conference**

The attached draft Decision on implementation-related issues and concerns is submitted for the consideration of delegations by the Chairman of the General Council and the Director-General. It represents their best judgement of the possible basis at this time for reaching agreement to address the outstanding implementation-related issues and concerns in pursuance of the General Council's Decision of 3 May 2000. By taking action on the proposals outlined in this draft Decision, Members would be addressing elements of more than 40 tirets in addition to the dozen or so previously addressed in one way or another.

The Chairman and the Director-General believe that this draft represents a credible effort to move the implementation debate to a new level of understanding. The elements included in this draft Decision draw upon important and valuable contributions provided by developing countries, the "G-7" countries<sup>1</sup> and, more recently, by some developed countries. They also take into account the work on-going in the subsidiary bodies on issues referred to them. The Chairman and the Director-General also wish to acknowledge the value of the contributions by these bodies and their Chairpersons.

As reflected in the draft Decision, further action is proposed both now and at the Ministerial Conference in areas such as sanitary and phytosanitary measures, subsidies and countervailing measures, anti-dumping and textiles. In addition, it is proposed that remaining implementation issues be addressed in the context of the future work programme to be decided on by Ministers at the Fourth Ministerial Conference.

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<sup>1</sup> Argentina, Morocco, New Zealand, Norway, Switzerland, Thailand and Uruguay.



## **Implementation-Related Issues and Concerns**

### **Draft Decision**

The General Council,

*Having regard to* Articles IV.1, IV.2, IV.5, IX.1 and IX.2 of the Marrakesh Agreement Establishing the World Trade Organization (WTO);

*Mindful* of the importance that Members attach to the increased participation of developing countries in the multilateral trading system, and of the need to ensure that the system responds fully to the needs and interests of all participants;

*Determined* to take concrete action to address issues and concerns that have been raised by many developing-country Members regarding the implementation of some WTO Agreements and Decisions, including the difficulties and resource constraints that have been encountered in the implementation of obligations in various areas;

*Recalling* its Decision of 3 May 2000 to meet in special sessions to address outstanding implementation issues, and to assess the existing difficulties, identify ways needed to resolve them, and take decisions for appropriate action not later than the Fourth Session of the Ministerial Conference;

*Noting* the actions taken by the General Council in pursuance of this mandate at its Special Sessions in October and December 2000 (WT/L/384), as well as the review and further discussion undertaken at the Special Sessions held in April and July 2001, including the referral of additional issues to relevant WTO bodies or their chairpersons for further work;

*Noting also* the reports on the issues referred to them from subsidiary bodies and their chairpersons and from the Director-General, and the discussions as well as the clarifications provided and understandings reached on implementation issues in the intensive informal and formal meetings held under this process since May 2000;

*Decides* as follows:

(i) to take immediate action, as set out in Annex I, to address the implementation difficulties encountered by developing countries in a number of areas;

(ii) to develop recommendations for Ministers, based on the proposals set out in Annex II, for decision at the Fourth Session of the Ministerial Conference;

(iii) to recommend to Ministers, meeting on the occasion of the Fourth Session of the Ministerial Conference to address other implementation issues in the course of the future work programme of the WTO as provided for in the draft Ministerial Declaration; and

(iv) to request the Director-General, consistent with the relevant provisions of the draft Ministerial Declaration, to ensure that WTO technical assistance focuses, on a priority basis, on assisting developing countries to implement existing WTO obligations as well as on increasing their capacity to participate more effectively in future multilateral trade negotiations. In carrying out this mandate, we stress the need for the WTO Secretariat to cooperate more closely with international and regional intergovernmental organisations so as to increase efficiency and synergies and avoid duplication of programmes.

## Annex I

### 1. General Agreement on Tariffs and Trade 1994

#### - Tired 2

"The General Council reaffirms that Article XVIII of the GATT 1994 is a special and differential treatment provision for developing countries and that recourse to it should be less onerous than to Article XII of the GATT 1994."

#### - Tired 4

"Noting the issues raised in the report of the Committee on Market Access concerning the meaning to be given to the phrase "substantial supplier" in Article XIII of the GATT 1994, the Committee is directed to give further consideration to the issue and make recommendations to the General Council as expeditiously as possible but in any event no later than the Fifth Ministerial Conference."

### 2. Agreement on Agriculture

#### - Tariff Rate Quotas

"The General Council takes note of the Committee on Agriculture's report on the administration of tariff rate quotas and the submission by Members of addenda to their notifications and endorses the decision by the Committee to keep this matter under review."

#### - Tired 5

"The General Council urges Members to exercise restraint in challenging measures notified under the green box by developing countries to promote rural development and adequately address food security concerns."

### 3. Agreement on Sanitary and Phytosanitary Measures

#### - Tireds 9 and 10

"Where the appropriate level of sanitary and phytosanitary protection allows scope for the phased introduction of new sanitary and phytosanitary measures, the phrase "longer time-frame for compliance" referred to in Article 10.2 of the Agreement on the Application of Sanitary and Phytosanitary Measures, shall be understood to mean normally a period of not less than 6 months. Where the appropriate level of sanitary and phytosanitary protection does not allow scope for the phased introduction of a new measure, but specific problems are identified by a Member, the Member applying the measure shall upon request enter into consultations with the country with a view to finding a mutually satisfactory solution to the problem while continuing to achieve the importing Member's appropriate level of protection."

#### - Tired 11

"Subject to the conditions specified in paragraph 2 of Annex B to the Agreement on the Application of Sanitary and Phytosanitary Measures, the phrase "reasonable interval" shall be understood to mean normally a period of not less than 6 months. It is understood that timeframes for specific measures have to be considered in the

context of the particular circumstances of the measure, actions necessary to implement the measure, and the fact that SPS measures can contribute to trade liberalization."

- Tired 12

*[Action to be taken in the light of the work of the Committee on Sanitary and Phytosanitary Measures.]*

- Tired 15

"Pursuant to the provisions of Article 12.7 of the Agreement on the Application of Sanitary and Phytosanitary Measures, the Committee on Sanitary and Phytosanitary Measures is instructed to review the operation and implementation of the Agreement on Sanitary and Phytosanitary Measures at least once every four years."

- International standard setting organisations

"The General Council notes with satisfaction the actions taken to date by the Director-General to facilitate the increased participation of Members at different levels of development in the work of the relevant international standard setting organizations, as well as to coordinate efforts with these organizations and financial institutions to identify SPS-related technical assistance needs and how best to address them. The General Council urges the Director-General to continue his cooperative efforts with these organizations and institutions in that regard."

#### 4. Agreement on Technical Barriers to Trade

- Tireds 31&32

"The General Council confirms the approach to technical assistance being developed by the Committee on Technical Barriers to Trade, reflecting the results of the triennial review work in this area, and mandates this work to continue."

- Tired 35

"Subject to the conditions specified in paragraph 12 of Article 2 of the Agreement on Technical Barriers to Trade, the phrase "reasonable interval" shall be understood to mean normally a period of not less than 6 months, except when this would be ineffective in fulfilling the legitimate objectives pursued."

- International standard setting organisations

"The General Council notes with satisfaction the actions taken to date by the Director-General to facilitate the increased participation of Members at different levels of development in the work of the relevant international standard setting organizations, as well as to coordinate efforts with these organizations and financial institutions to identify TBT-related technical assistance needs and how best to address them. The General Council urges the Director-General to continue his cooperative efforts with these organizations and institutions in that regard."

5. Agreement on Trade-Related Investment Measures

- Tired 36

"The General Council notes with satisfaction the actions taken by the Council for Trade in Goods in regard to requests from some developing-country Members for the extension of the five-year transitional period provided for in Article 5.2 of Agreement on Trade-Related Investment Measures."

6. Agreement on the Implementation of Article VII of the General Agreement on Tariffs and Trade 1994

- Article 20.1

"The General Council notes with satisfaction the actions taken by the Committee on Customs Valuation in regard to the requests from a number of developing-country Members for the extension of the five-year transitional period provided for in Article 20.1 of Agreement on the Implementation of Article VII of the General Agreement on Tariffs and Trade 1994."

- Article 20.3

"The General Council endorses the comprehensive approach to technical assistance developed by the Committee on Customs Valuation and mandates the Committee to continue this work."

7. Agreement on Subsidies and Countervailing Measures

- Tireds 67, 82 and 83

"The General Council agrees that if a Member has been excluded from Annex VII to the Agreement on Subsidies and Countervailing Measures, it nevertheless shall be re-included in it if its GNP per capita falls back below US\$ 1,000."

"The General Council agrees that Annex VII(b) to the Agreement on Subsidies and Countervailing Measures includes the Members that are listed therein until their GNP per capita reaches US\$ 1,000 in constant 1990 dollars for three consecutive years."

*[Action to be taken in the light of the report of the Committee on Subsidies and Countervailing Measures on the implementation of Article 27 as it relates to particular issues concerning developing-country Members with a small percentage share of exports in import markets and in global trade.]*

- Tired 80

"The General Council instructs the Committee on Subsidies and Countervailing Measures to review the provisions of the Agreement on Subsidies and Countervailing Measures regarding countervailing duty investigations, and to report it by the Fourth Ministerial Conference."

8. General Agreement on Trade in Services (GATS)

- Tired 85

"Recalling and reaffirming the provisions of the General Agreement on Trade in Services, the General Council notes that Members agree that administrative practices should not impede full and faithful implementation of their commitments under the General Agreement on Trade in Services, particularly as regards the supply of services under Mode 4."

9. TRIPS Agreement

- Tired 90

"With a view to facilitating the implementation of the TRIPS Agreement, the General Council requests Members to submit to the TRIPS Council information regarding measures implementing Article 66.2. These submissions shall be subject to a review in the TRIPS Council, and serve as reference in drawing up an illustrative list of incentives. This information shall be updated by Members annually thereafter."

10. Cross-cutting Issues

- Tired 97

"The General Council reaffirms that preferences granted to developing countries pursuant to the "Enabling Clause" should be generalised, non-reciprocal and non-discriminatory."

## Annex II

### 1. Agreement on Agriculture

- Tired 7

*[Action to be taken on implementation of the Decision on Measures Concerning the Possible Negative Effects of the Reform Programme on Least-Developed and Net Food-Importing Developing Countries in the light of the report of the Committee on Agriculture expected on 28 September 2001.]*

- Tired 8

*[Action on the implementation of Article 10.2 of the Agreement on Agriculture to be taken in the light of the report of the Committee on Agriculture expected on 28 September 2001.]*

### 2. Agreement on Textiles and Clothing

"Recalling the Ministerial Declarations of Singapore and Geneva under which Members reaffirmed their commitment to full and faithful implementation of the Agreement on Textiles and Clothing, the Ministerial Conference agrees:"

- Tireds 16 & 24

"that the provisions of the Agreement relating to the early integration of products and the elimination of quota restrictions should be effectively utilised."

- Tireds 20, 21 & 25

"to calculate the quota levels for small suppliers for the remaining years of the Agreement by applying the most favourable methodology available in respect of those Members under the growth-on-growth provisions from the beginning of the implementation period; to extend the same treatment to least developed countries; and, where possible, to eliminate quota restrictions on imports of such Members."

- Tireds 17 & 22

"to calculate the quota levels for the remaining years of the Agreement with respect to other restrained Members as if implementation of the growth-on-growth provision for stage 3 had been advanced to 1 January 2000."

- Tireds 18, 23, 26 & 27

"to exercise particular consideration and restraint before initiating investigations in the context of contingent trade remedies on textile and clothing exports from developing countries."

- Tireds 19 & 29

"that Members, without prejudice to their rights and obligations, shall notify any changes in their rules of origin concerning products falling under the coverage of the



Agreement to the Committee on Rules of Origin which may examine them before they are applied."

3. Agreement on the Implementation of Article VI of the General Agreement on Tariffs and Trade 1994

- Tired 41

The Ministerial Conference agrees that investigating authorities shall examine with special care any application for the initiation of an anti-dumping investigation where an investigation of the same product from the same Member resulted in a negative finding within the 365 days prior to the filing of the application. Unless this pre-initiation examination indicates that circumstances have changed, the investigation shall not proceed.

- Tired 45

The Ministerial Conference recognizes that, while Article 15 of the Agreement on the Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 is a mandatory provision, the modalities for its application would benefit from clarification. Accordingly, the Committee on Anti-Dumping Practices is instructed, through its working group on Implementation, to examine this issue and to draw up appropriate recommendations within twelve months on how to operationalize this provision.

- Tired 49

The Ministerial Conference notes that Article 5.8 of the Agreement on the Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 does not specify the time-frame to be used in determining the volume of dumped imports, and that this lack of specificity creates uncertainties in the implementation of the provision. The Committee on Anti-Dumping Practices is instructed, through its working group on Implementation, to study this issue and draw up recommendations within 12 months, with a view to ensuring the maximum possible predictability and objectivity in the application of time frames.

- Tired 55

The Ministerial Conference notes that Article 18.6 of the Agreement on the Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 requires the Committee on Anti-Dumping Practices to review annually the implementation and operation of the Agreement taking into account the objectives thereof. The Committee on Anti-dumping Practices is requested to draw up guidelines for the improvement of annual reviews, and to report its views and recommendations to the General Council for subsequent decision within 12 months.

4. Agreement on the Implementation of Article VII of the General Agreement on Tariffs and Trade 1994

- Tired 56

"The General Council agrees that when the Customs Administration of an importing Member has reasonable grounds to doubt the accuracy of the value declared, it may seek assistance from the Customs Administration of an exporting Member on the value of the good imported. In that case the exporting Member should offer cooperation and assistance, including information on the export value of the goods imported if available. Any information provided in this context shall be treated in accordance with the provisions of Article 10 of the Agreement on the Implementation of Article VII of the GATT 1994."

5. Agreement on Rules of Origin

- Tired 63

"The Ministerial Conference agrees that any interim arrangements on rules of origin implemented by Members in the transitional period before the entry into force of the results of the harmonisation work programme shall be consistent with the Agreement on Rules of Origin, particularly Articles 2 and 5 thereof. Without prejudice to Members' rights and obligations, such arrangements may be examined by the Committee on Rules of Origin."

6. Agreement on Subsidies and Countervailing Measures

- Article 27.4

*[Finalization of the Annex I decision on Article 27.4 in the light of the work of the Committee on Subsidies and Countervailing Measures.]*

- Tired 68

*[Decision to be taken in the light of the work of the Committee on Subsidies and Countervailing Measures.]*

- Tireds 74 &75

"The Ministerial Conference urges Members to apply, where possible, a higher *de minimis* level in countervailing duty investigations of products originating in developing country Members, than the levels set forth in Articles 27.10 and 27.11 of the Agreement on Subsidies and Countervailing Measures."

7. TRIPS Agreement

- Tired 89

"The Ministerial Conference directs the TRIPS Council to continue its examination of the scope and modalities for complaints of the types provided for under subparagraphs 1(b) and 1(c) of Article XXIII of GATT 1994 and make

recommendations to the Fifth Session of the Ministerial Conference. The Ministerial Conference agrees that Members, in the meantime, will not initiate such complaints."

8. Cross-cutting Issues

- Tired 96

*[Action to be taken in light of the report of the Committee on Trade and Development due on 28 September. This issue is also referred to in the Draft Ministerial Declaration].*

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