

PREPARATIONS FOR THE 1999 MINISTERIAL CONFERENCE

Implementation Issues to be Addressed Before/At Seattle

Communication from Cuba, Dominican Republic, Egypt, El Salvador, Honduras, India, Indonesia, Malaysia, Nigeria, Pakistan, Sri Lanka and Uganda

The following communication, dated 1 October 1999, has been received from the Permanent Mission of India.

Anti-Dumping

1. In order to restrict the initiation of back-to-back investigations, no investigation shall be initiated for a period of 365 days from the date of finalization of a previous investigation for the same product resulting in non-imposition of duties.
2. The lesser duty rule shall be mandatory while imposing an anti-dumping duty against a developing-country Member by any developed-country Member. There shall be an undertaking to this effect under Article 9.1.
3. Article 2.2 shall be clarified so that where sales on the domestic market do not permit a proper comparison, the margin of dumping is determined by comparison with the export price to a third country, and only where this is not representative should the export price be determined on the basis of the constructed value of the cost of the product in the country of origin.

Subsidies Agreement

4. Subsidies used by developing countries for development, diversification and up-gradation of their industry and agriculture are actionable under the Agreement. 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, so that action cannot be taken against them either through the dispute settlement route or through the countervailing duty route.
5. 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.
6. Any countervailing duties shall be restricted only to that amount by which the subsidy exceeds the de minimis level, when action is being contemplated in case of products from developing countries.

7. 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 (a) 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 Middle Income Category of the World Bank.

8. The prohibition of 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. Furthermore, an automatic inclusion provision shall be added in Article 27:6 to enable developing countries to reintroduce export subsidies if the share of their export of a product decreases to a level below 3.25 per cent of world trade.

Sanitary and Phytosanitary Measures

9. Though Article 10:1 of the SPS Agreement provides that in the preparation and application of SPS measures Members shall take account of the special needs of the developing-countries, this has rarely been done. 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.

10. Similarly Article 10:2 which provides for longer time-frames for compliance on products of interest to developing-country Members has only been followed in the breach. This provision shall be made mandatory for developed countries to provide a time period of at least 12 month from the date of notification for compliance of new SPS measures for products from developing countries.

11. International standard-setting organizations shall ensure the presence of countries at different levels of development and from all geographical regions, throughout all phases of standard-setting. In the formulation of such standards, the specific conditions prevailing in developing countries shall be taken into account. Only standards formulated in such a manner shall be recognized as "international standards". International standard-setting organizations with observer status in the SPS Committee shall periodically report on the participation of developing countries in standardizing activities.

12. Paragraph 2 of Annex B of the Agreement stipulates that Members shall allow a reasonable interval between publication of a sanitary or phytosanitary regulation and its entry into force in order to allow producers, particularly in developing countries, to adapt their products and methods of production to the new requirements. This has rarely been done. The provisions of paragraph 2 of Annex B shall be made mandatory, and a "reasonable interval" shall mean not less than 12 months.

13. Though Article 4 of the SPS Agreement encourages equivalency, this principle is invariably interpreted as meaning "sameness". Article 4 shall be clarified so that developing countries can enter into equivalency agreements.

Technical Barriers to Trade

14. International standard-setting organizations shall ensure the presence of countries at different levels of development and from all geographical regions, throughout at all phases of standard-setting. In the formulation of such standards, the specific conditions prevailing in developing countries shall be taken into account. Only standards formulated in such a manner shall be recognized as "international standards". International standard setting organizations with observer status in the TBT Committee shall periodically report on the participation of developing countries in standardizing activities.

15. 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 and strengthen the provisions of Article 12 of the TBT Agreement.

Textiles

16. Since Articles 2:10 and 2:15 of the Agreement on Textiles and Clothing allow a Member for advancing the integration of products, importing 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 of the products in the Annex to the ATC.

17. The importing countries to apply growth-on-growth for stage 3 with effect from 1 January 2000 instead of 1 January 2002.

18. 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 GATT.

19. Any change in rules or origin shall be examined in the CTG for its possible impact on market access of exporting countries, before it is applied.

Trade Related Investment Measures

20. The provisions in the Agreement relating to local-content requirements shall be revised to allow for accelerating the industrialization process in developing countries and enable these countries to maintain balance-of-payments stability. With a view to ensuring that these instruments can be maintained by developing countries, the transition period mentioned in Article 5 paragraph 2 shall be extended until such time that their development needs demand.

21. 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.

Trade Related Aspects of Intellectual Property Rights

22. In the light of provisions contained in Article 23 and 24 of the TRIPS Agreement, additional protection for geographical indications shall be extended for products other than wines and spirits.

23. It is widely agreed that the TRIPS Agreement is incompatible with the Convention on Bio-Diversity. Pending a thorough examination of this issue, a clear understanding in the interim that patents inconsistent with Article 15 of the CBD shall not be granted.

24. 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.

25. The provisions of Article 66.2 shall be made obligatory and shall be subject to periodical notification, in order to monitor their effective implementation. Guidelines on categories of incentives shall also be established. The application of this Article shall be extended to all developing countries.

26. The period given for implementation of the provisions of Article 27.3(b) shall be five years from the date the review is completed.

27. 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.

Agreement on Implementation of Article VII of the GATT 1994

28. A multilateral solution, that enables customs administrations of importing countries to seek and obtain information on export values contained in the export declaration to the customs administrations of exporting countries, in a time-bound manner, in doubtful cases, shall be included in the Agreement.

29. 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), in the valuation of imported goods irrespective of whether the services were undertaken in the country of importation.

30. In order to ensure that due cognisance is taken of the domestic price and export price in a third country as is done in the Agreement on Anti-Dumping, 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.

Agreement on Rules of Origin

31. Noting that the Committee on Rules of Origin, which was mandated to complete the work programme on harmonizing non-preferential rules of origin by 20 July 1998, has not completed its work despite periodic extensions of the deadline, and that the interim arrangements are creating restrictive, distortive and disruptive effects on the trade, in particular, of developing country Members, the CRO shall complete its remaining work on harmonizing non-preferential rules of origin by 31 July 2000. In the meanwhile, 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.

Balance of Payments Provisions of the GATT 1994

32. Article XVIII shall be clarified to the effect that only the Committee on Balance of Payments shall have the authority to examine the overall justification of BOP measures. While examining the overall justification 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.

Agriculture

33. Developing countries with predominantly 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. Support provided by developing countries for non-trade concerns, even if outside the ambit of the green box, shall be exempt from the AMS.

34. 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. A suitable methodology shall be adopted for taking into account the high levels of inflation while making the domestic support notification.

35. TRQ administration shall be made transparent, equitable and non-discriminatory, in order to allow new/small-scale developing country exporters to obtain market access. Imports by developed countries under TRQs shall not be made conditional to absorption of domestic production. To this end, notifications submitted to the Committee on Agriculture shall include also details on guidelines and procedures of allotment of TRQ.

36. 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 through the incorporation of concrete, operational and contractual measures, including provisions for technical and financial assistance, that are both effective and responsive to the special needs of LDCs and NFIDCs.

Services

37. Developed countries shall fully implement commitments undertaken by them in Mode 4. In regard to mode 4 commitments: (a) there shall be no application of the economic needs test; (b) there shall be automatic issuance of visas and exemption from work permit/residency requirements for short periods of presence, for the sectors where commitments have been undertaken by developed country Members.

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

Special and Differential Treatment

39. In many areas of the WTO provisions, special and differential provisions are phrased only as best endeavour clauses, the implementation of which has remained ineffectual and has therefore been difficult to assess. All S&D provisions shall be converted into concrete commitments, specially to address the constraints on the supply side of developing countries.
