WORLD TRADE ORGANIZATION

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PREPARATIONS FOR THE 1999 MINISTERIAL CONFERENCE

Implementation Issues to be Addressed in the First Year of Negotiations

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. Article 15 of the Agreement on Implementation of Article VI is only a best-endeavour clause. Consequently, Members have rarely, if at all, explored the possibility of constructive remedies before applying anti-dumping duties against exports from developing countries. Hence, the provisions of Article 15 need to be operationalized and made mandatory.

2. 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, so as to reflect the inherent advantages that the industries in these countries enjoy *vis-à-vis* comparable production in developed countries.

3. The major users have so far applied this prescribed de minimis only in newly initiated cases, not in review and refund cases. It is imperative that the proposed de minimis dumping margin of 5 per cent is applied not only in new cases but also in refund and review cases.

4. 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 for imports from developing countries. Moreover, the stipulation that anti-dumping action can still be taken even if the volume of imports is below this threshold level, provided countries which individually account for less than the threshold volume, collectively account for more than 7 per cent of the imports, should be deleted. Article 5.8 should also be clarified with regard to the time-frame to be used in determining the volume of the dumped imports.

5. The definition of "substantial quantities" as provided for in Article 2.2.1 (footnote 5) is still very restrictive and permits unreasonable findings of dumping. The substantial quantities test should be increased from the present threshold of 20 per cent to at least 40 per cent.

6. Article 2.4.1 shall include details of dealing with foreign exchange rate fluctuations during the process of dumping.

7. 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.

8. As developing countries liberalize, the incidence of dumping in to these countries is likely to increase. It is important to address this concern, since otherwise the momentum of import liberalisation in developing countries may suffer. There should therefore 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. Presently there is a different and more restrictive standard of review pertaining to adjudication in anti-dumping cases. There is no reason why there should be such discrimination for anti-dumping investigations. Hence, 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.

9. The annual review provided under Article 18.6 has remained a proforma exercise and has not provided adequate opportunity for Members to address the issue of increasing anti-dumping measures and instances of abuse of the Agreement to accommodate protectionist pressures. This Article 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.

Subsidies Agreement

10. 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.

11. Developing countries should be allowed to neutralize the cost-escalating effect of taxes collected by government authorities at different levels i.e. the taxes such as sales tax, octroi, cess, etc. which are not refunded, without these being termed as subsidies.

12. 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 where the subsidy being provided by a developing country is less than 2.5 per cent ad valorem, instead of the existing de minimis of 1 per cent presently applicable to all Members.

13. 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). Countervailing duty investigations should not be initiated or, if initiated, should be terminated, when imports from developing counties are less than 7 per cent of the total imports irrespective of the cumulative volume of imports of the like products from all developing countries.

14. Article 27:3 of the Agreement allows a developing country to grant a subsidy for the use of domestic products in preference to imported products (defined in Article 3:1(b) of the Agreement). There should be a clarification in Article 27:3 that it is applicable notwithstanding the provisions of any other agreement.

15. 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.

16. Annex I of the Agreement shall be amended to provide developing countries the flexibility to finance their exporters, consistent with their developmental objectives. Annex I shall clarify that developing countries shall not be compelled to conform to any undertaking or arrangement designed

for developed countries which proves to be unrealistic given the difficulties and constraints confronted by developing countries.

Sanitary and Phytosanitary Measures

17. Though the SPS Agreement encourages Members to enter into MRAs, so far developing countries have not been included into such agreements. It is suggested that: (i) MRAs are developed in a transparent way; (ii) they should be open to parties that may wish to join them at a later stage; and (iii) they should contain rules of origin which allow all products which pass the conformity assessment procedures to benefit from the MRA.

18. 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.

19. 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 and thereafter as the need arises. This review shall be carried out once every two years.

Technical Barriers to Trade

20. The triennial work programme of the TBT Committee shall as a matter of priority address the following issues and find solutions:

21. Means have to be found to ensure effective participation of developing countries in setting of standards by international standard-setting organizations. It shall be obligatory for international standardizing bodies to ensure the presence of developing countries in the different phases of standard setting. Moreover, a clear provision that the international standardizing bodies must comply with the Code of Good Practice.

22. Article 11 shall be made obligatory so that technical assistance and cooperation is provided to developing countries for upgrading conformity assessment procedures.

23. Acceptance by developed-country importers of self-declaration regarding adherence to standards by developing-country exporters and acceptance of certification procedure adopted by developing country certification bodies based on international standards. Such a provision to be introduced in Article 12.

24. 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 to export of interest to them. Furthermore, a specific provision in Article 12 that if a measure brought forward by a developed country creates difficulties for developing countries, then the measure should be reconsidered.

Trade-Related Investment Measures

25. Article 5.3, which recognises the importance of taking account of the development, financial and trade needs of developing-countries while dealing with trade-related investment measures, has remained inoperative and ineffectual. The provisions of this Article must therefore be suitably amended and made mandatory.

26. 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.

Trade-Related Aspects of Intellectual Property Rights

27. Article 7 and 8 of the TRIPS Agreement to be operationalized by providing for transfer of technology on fair and mutually advantageous terms.

28. Article 27.3(b) be amended in light of the provisions of the Convention on Biological Diversity and the International Undertaking, in which the conservation and sustainable use of biological diversity, the protection of the rights and knowledge of indigenous and local communities, and the promotion of farmers' rights, are fully taken into account.

29. Further, the review of the substantive provisions of Article 27.3(b) should:

- clarify artificial distinctions between biological and microbiological organisms and processes;

- 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.

Agreement on Implementation of Article VII of the GATT 1994

30. In order to avoid manipulation of import prices and enable a better approximation of 'transaction value', the Agreement should be amended to provide for the highest value when more than one transaction value of identical or similar goods is found.

31. In order to address the problem of manipulation through artificially reduced re-invoice prices, mainly under-invoicing and the artificial splitting of value, especially when purchases are first made by buying agents and are re-invoiced to the importer, for the purposes of Article 8 of the Agreement, 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.

32. For the purposes of valuation of imports by sole agents, sole distributors, and sole concessionaires of large corporations, including trans-national corporations, under Article 15.5 of the Agreement, and in order to shift the burden of proving that the prices quoted are not influenced by the relationship to the agents, distributors or concessionaires, as the case may be, persons associated with each other as sole agents, sole distributors, and sole concessionaires, howsoever described, should automatically be deemed 'related'.

Article XVIII of the GATT 1994

33. 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.

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