

TRADE HOT TOPICS

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Attitude of Developed WTO Member Countries to the Draft Decision of 26 September 2001 on Implementation-related Issues and Concerns¹

Developed country members of the World Trade Organization recognize that many points in the Uruguay Round Agreements are unclear, or involve difficulties of administration for the developing countries.

These concerns fall broadly into two types. First, there are instances where the actual provisions of Agreements have turned out to be imprecise. These cases can be dealt with either by agreement of WTO members on how to interpret the provisions concerned, or if necessary by fresh negotiations to amend and clarify the wording. Second, there are cases where there is no dispute about the meaning of a provision but where compliance places on developing countries, particularly the least-developed, an administrative burden which is beyond their current resources. In these cases it may be necessary to look for operational solutions, including increased technical assistance.

It is important for all WTO members that the Agreements should be clear, and be consistently implemented. In the preparations for new global negotiations the developed countries have therefore been prepared to address many of the concerns raised by the developing countries. Several years of consultations on a wide range of "implementation-related" issues have not yet produced consensus on what operational or textual adjustments need to be made. However enough progress has been made for the Chairman of the WTO General Council and the Director-General to be able to submit to the General Council a *Draft Decision on Implementation-Related Issues and Concerns* in preparation for the Fourth Session of the Ministerial Conference to be held at Doha in November 2001. This document, dated 26 September 2001, is based on a paper prepared for the WTO General Council last March which comprised almost 100 "tires" or points proposed for action. It has been circulated under the reference JOB(01)139.

The Draft Decision consists of four elements. Two of these are Annexes containing specific proposals. Annex I comprises points for immediate action by the General Council, ie. which do not require formal amendment to the texts of the relevant Agreements and so can be implemented without the need to wait for a decision by the Conference. Annex II contains proposals on the basis of which the General Council would develop recommendations for decision by the Conference.

As a third point the Draft Decision would recommend to the Conference that other implementation issues should be pursued under the WTO future work programme. Finally, the General Council would mandate the WTO Secretariat as a priority to focus its technical assistance 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.

The effect of the Draft Decision would be twofold: to break the logjam on as many as possible of the detailed implementation issues which have been on the WTO's table for some time; and to establish problems of implementation as a regular and valid topic in the WTO's work programme. Inevitably the Draft Decision is a compromise text. While some developed countries would be prepared to agree to the transfer of uncontentious points from Annex II to Annex I, or even to contemplate action on a longer list

¹ This brief, prepared from a developed country perspective, has been commissioned by the Commonwealth Secretariat in order to assist member countries in analysing positions in the run-up to the Doha Ministerial Conference of the WTO. A second brief on implementation issues, from the perspective of developing countries, will be published shortly. The views expressed in this brief are those of the consultant and do not necessarily represent the views of the Commonwealth Secretariat or its member governments.

of implementation problems, some of the points in the current Annexes still raise real technical or political difficulties.

Annex I

This Annex contains points of interpretation and/or procedure, including a number which would formalize what is already the *de facto* position. In general they are acceptable to developed countries. One or two of these points amount only to an agreement to continue consideration or a review which is already in hand. These points are not separately discussed below, since developed countries would not be prepared to prejudice the outcome of such study.

The substantive issues which are raised in Annex I are the following:

- *GATT 1994 Article XVIII (Tiret 2)*: This Article provides for a number of concessions to developing countries, particularly the least-developed, in that it permits them, with the agreement of other WTO members, to raise tariffs or take other trade action to help develop their own industries, and to impose trade restrictions if necessary to safeguard the balance of payments. The point at issue is the balance of payments element. The proposed text reaffirms the current understanding according to which developing countries can have recourse to restrictions for balance of payments purposes more easily under this Article than under Article XII (which provides a general right to introduce restrictions to safeguard the balance of payments, but subject to strict criteria and regular scrutiny designed to prevent the use of the provision for protectionist purposes).
- *Agreement on Agriculture (Tiret 5)*: The General Council would urge WTO members to exercise restraint in challenging measures of agricultural support to promote rural development and food security which developing countries have notified as falling within the "green box" (permissible) category of subsidies. There is no argument about the legal situation. The policy point at issue is that developed countries should not strain to exclude developing countries' measures which might be regarded as borderline "green box" cases. In fact developed countries have generally not done that, and the proposed declaration should not cause problems for them.
- *Agreement on Sanitary and Phytosanitary Measures (Tirets 9, 10, 11 and 15)*: It is proposed that where the Agreement permits developing countries a "longer time-frame" or a "reasonable interval" for the introduction of new sanitary and phytosanitary measures, these terms should be understood to mean normally a period of not less than 6 months. Where no provision is made for phased introduction but an exporting WTO member nevertheless encounters problems with the introduction of a new measure by an importer, the importer should be willing to agree to consultations

on the problem. It is further proposed that the Committee on Sanitary and Phytosanitary measures be instructed to review the Agreement at least once every four years. All these proposals are reasonable and acceptable to developed country members.

The General Council is also invited to urge the Director-General to continue the Secretariat's work of assisting developing country members in the operations of international standards setting organizations. This declaration would simply confirm the position that already exists.

- *Agreement on Technical Barriers to Trade (Tirets 31, 32 and 35)*: The General Council is invited to agree to two points which are on the same lines as points raised in regard to the Agreement on Sanitary and Phytosanitary Measures, namely that the Director-General should continue to assist developing country members in the operations of international standards setting organizations; and that where a "reasonable interval" is allowed for the entry into force of new technical regulations, this should 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"). These declarations should similarly be acceptable to developed countries.

The General Council is invited to confirm and mandate continuance of the approach to technical assistance being developed by the Committee on Technical Barriers to Trade. Such a declaration should equally be unexceptionable.

- *Agreement on Trade-Related Investment Measures (TRIMs) (Tiret 36)*: The General Council is invited to endorse the decision taken in July 2001 by the Council for Trade in Goods, as requested by some developing countries, to extend the 5-year period for elimination of TRIMs which have been notified to the WTO as not complying with the Agreement. On one level this proposal appears unexceptionable, since it merely notes what has already happened. On the other hand, developed country members attach particular importance to the unimpeded flow of investment. They will be anxious to avoid any risk of undermining what is already a very limited Agreement by endorsing the continuance for any substantial time of TRIMs which should have been eliminated.
- *Agreement on the Implementation of Article VII of GATT 1994 (Customs Valuation)*: The General Council is invited to endorse two practical actions which have already been agreed, namely the extension for certain developing country members of the 5-year transitional period which is generally allowed to developing countries for implementation of this Agreement; and a comprehensive approach to technical assistance developed by the Committee on Customs Valuation.
- *Agreement on Subsidies and Countervailing Measures (Tirets 67, 80, 82 and 83)*: Subsidies contingent upon export performance are *per se* prohibited by

Article 3.1(a) of the Agreement, except that under Annex VII paragraph (a) least-developed countries are exempt from the ban. Under paragraph (b) a number of listed developing countries are also exempt, so long as their GNP per capita remains below US \$1,000 p.a. In relation to Annex VII(b) the General Council is invited, first, to agree that a country listed should not be made subject to the ban until its GNP per capita has exceeded \$1,000 for three years in a row; and second, that a country which has been excluded from VII (b) should be reincluded if its GNP subsequently falls back below \$1,000. Both these are reasonable glosses on the terms of the Agreement which should present no difficulties for developed countries.

It is also proposed that the General Council instruct the Committee on Subsidies and Countervailing Measures to review the provisions relating to countervailing duty investigations and to report by the Ministerial Conference. This appears an acceptable procedural proposal, given that the Agreement already contains provisions for reviews after the first five years of operation of the concept of "serious prejudice" caused by export-related subsidies, of the identification of non-actionable subsidies, and of the provisions for consultations and authorized remedies. Developed countries would however be wary of agreeing to a proposal whose effect was to give the developing countries a more general exemption from the requirements of the Agreement.

- *General Agreement on Trade in Services (GATS) (Tiret 85)*: The General Council is invited to record its agreement that WTO members should not allow their administrative practices to impede the full and faithful implementation of their GATS commitments (particularly in relation to Mode 4 – movement of personnel). This is a restatement of a fundamental GATS principle.
- *TRIPs Agreement (Tiret 90)*: Article 66(2) of the Agreement requires developed country members to provide incentives to enterprises and institutions to encourage technology transfer to least-developed country members. The General Council is now invited to request members to submit to the TRIPs Council information regarding measures taken to implement this obligation. The aim is to permit a review of the current situation and preparation of an illustrative list of relevant incentives, with annual updating thereafter. This proposal is acceptable to developed countries, some of which are already providing such information.
- *Cross-cutting issues: preferences (Tiret 97)*: The General Council is invited to reaffirm that preferences granted to developing countries pursuant to the "Enabling Clause" of 1979 should be generalised, non-reciprocal and non-discriminatory. Developed countries, who are already providing extensive trade preferences to developing countries, should have no difficulty with this restatement of a fundamental principle.

Annex II

It is more difficult to forecast the approach of developed country members to the proposals in Annex II since the points to be submitted to the Ministerial Council have still to be finalised by the General Council. In particular, the Annex presupposes that action will be taken on certain points which arise under the Agreement on Agriculture, but at the time of writing no proposed texts were available. Otherwise Annex II covers the following issues:

- *Agreement on Textiles and Clothing (Tirets 16-27 and 29)*: The ATC is a point of particular sensitivity for both developing and developed country members. Developing countries regard the Agreement as one of the most tangible benefits which they got out of the Uruguay Round, and as a continuing test of the willingness of developed countries to open their markets. Developed country governments understand these concerns, but are under continuing pressure from their own hard-pressed textile sectors even as regards their implementation of the timetable for removing textile quotas under the ATC. Generally, developed countries consider that they can hold a balance between these competing pressures only through strict adherence to the existing terms of the ATC, and they will resist proposals for rewriting the Agreement itself.

Annex II includes a number of operational proposals for consideration by the Conference. These call for full and faithful implementation of the Agreement, including its provisions for early elimination of textile quotas; for use of the most favourable possible methodology for calculation of quota levels for small members during the remaining years of the Agreement; for members to exercise "particular consideration and restraint" before initiating procedures for trade action against textiles exported by developing countries; and for prior notification to the WTO Committee on Rules of Origin of any changes to rules of origin for relevant textile products. Most of these proposals are likely to be acceptable to at least some developed country members, though others may remain suspicious of what they see as concealed attempts to reopen substantial elements of the ATC.

- *Agreement on the Implementation of Article VI of GATT 1994 (Anti-dumping) (Tirets 41, 45, 49 and 55)*: The Conference is invited to agree that there should be a bar on opening a new anti-dumping investigation within one year of a negative finding on the same product; that Article 15 of the Agreement (special regard to be given to the situation of developing countries when anti-dumping measures are considered) needs review and clarification; and that the terms of Article 5.8 (termination of investigations if there is no absence of dumping or injury, or if the margin of dumping found is *de minimis*) needs to be clarified as to the time-frame for determining the volume of dumped imports. Developed countries are likely to agree to

these requests, though the proposal for a bar on opening a new investigation for one year after a negative finding requires amendments to the text of the Agreement which would be acceptable only as part of a global negotiation.

- *Agreement on the Implementation of Article VII of GATT 1994 (Tiret 56)*: It is proposed that where a Customs Administration doubts the value declared for an imported good, it may seek assistance in confidence from the Customs Administration of the exporting member country. This proposal looks sensible, but it would fall foul of the domestic legislation of at least some member countries, which requires commercial information gathered by governments for specific purposes such as the internal operations of their own Customs services to be restricted to those purposes only. Developed countries may be prepared to recognize the problem raised in this proposal, and to look for ways of offering co-operation consistent with their own confidentiality laws.
- *Agreement on Rules of Origin (Tiret 63)*: Under the existing Agreement a work programme for harmonization of rules of origin is under way. This proposal would require that any interim arrangements on rules of origin which are implemented by members during the transitional period before completion and full implementation of harmonization should be consistent with the existing Agreement. This sensible though limited clarification seems likely to be acceptable to developed countries.
- *Agreement on Subsidies and Countervailing Measures (Tirets 74 and 75)*: Article 27.10 of the Agreement provides for certain *de minimis* levels, respectively for subsidy (2% of value) and for the percentage of volume of total imports of a good, below which a countervailing duty investigation shall not proceed. Article 27.11 provides that for developing countries the 2% figure is increased to 3% provided that they do not grant export subsidies. The proposal urges the Council to apply unspecified higher *de minimis* levels in the case of countervailing duty investigations of products exported from developing countries. The proposal may be acceptable in principle, but developed countries will want to consider carefully any proposals for specific new limits.
- *TRIPs Agreement (Tiret 89)*: There is an existing moratorium on the raising by members of "non-violation" complaints under GATT Article

XXIII.1(b) and (c) pending completion of an examination by the TRIPs Council of how non-violation complaints might work in the TRIPs context. The proposal invites the Conference to mandate the continuation both of this review and, for the duration, of the moratorium. This proposed restriction on use of the dispute settlement mechanism in the sensitive TRIPs context would probably be more theoretical than real, but it is still likely to prove controversial for at least some developed country members.

Final remarks

Some developing countries argue that the Uruguay Round Agreements brought them only limited improvements in access to developed country markets, and that all the problems of implementation should be dealt with before further global liberalisation negotiations are launched. Developed member countries reply that developing countries actually benefited very widely under the Uruguay Round, namely from improved access to developed markets (reduced tariffs and stronger disciplines over non-tariff barriers); from getting trade in agriculture for the first time firmly within WTO disciplines; from the elimination, albeit over 10 years, of the Multifibre Arrangement; from more extensive agreement, in the interests of all WTO members, on many technical issues related to trade; and from effective access (which many developing countries have used) to the WTO disputes system. In addition, the WTO Agreements provide at many points for special and differential treatment, including less demanding implementation deadlines, for developing countries. The Generalised Systems of Preferences and other preferential trade access offered by developed markets are permitted by the WTO.

Developed countries are ready to deal with the operational problems that arise in implementing the WTO Agreements. At a meeting in Geneva early in October 2001 they indicated willingness, subject to a number of difficulties which still remain, to accept the great majority of the proposals in the Draft Decision. Many developed countries also provide extensive programmes of WTO-related technical assistance to developing countries. In their view implementation problems need to be tackled in the ordinary course of WTO business. These problems cannot justify any attempt to delay the launch of new global negotiations which are needed to clarify and further improve the WTO Agreements.



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