

**BACKGROUND NOTE ON IMPLEMENTATION-RELATED ISSUES:
HISTORY, IMPLEMENTATION, AND NEGOTIATING STRATEGY FOR
DEVELOPING COUNTRIES***

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I. INTRODUCTION

1. For the purposes of this paper, the phrases “implementation-related issues” or “implementation issues” refer to the issues and concerns raised by developing countries with respect to the implementation of the GATT ((1947)) and/or the WTO Agreement and its annexed trade agreements and relevant decisions and understandings. Among others, these include:

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- the implementation by developed countries of their trade commitments and obligations under the GATT system;
 - imbalances in rights and obligations contained in the texts of the WTO agreements;
 - non-receipt of expected benefits arising from participation in the multilateral trade system under the WTO, especially in the areas of export interest to developing countries such as agriculture and textiles and clothing;
 - operationalization of GATT/WTO provisions on special and differential treatment for developing countries; and
 - difficulties in and flexibility for the implementation of commitments and obligations by developing countries.
2. These issues and concerns also include those addressed in the 2001 Doha Ministerial Declaration¹ (hereafter DMD), the WTO Ministerial Conference Decision of 14 November 2001 on Implementation-related Issues and Concerns² (hereafter Doha Implementation Decision), as well as those issues listed in the 27 October 2001 revision of the Compilation of Outstanding Implementation Issues Raised by Members³ (hereafter Implementation Issues Compilation).
3. After this introduction, Part II of this paper will look at the history of implementation issues in the GATT/WTO system, and how such issues were dealt with up to the conclusion of the Uruguay Round. Then the paper will look at the implementation issues that have been raised as a result of the implementation of the Uruguay Round agreements and how these were addressed in the WTO up to the 2001 Fourth WTO Ministerial Conference in Doha, Qatar. In Part III of the paper, we shall discuss and interpret, from a legal analytical standpoint, the mandate on implementation issues as expressed in the DMD, the Doha Implementation Decision, and the Implementation Issues Compilation. Part IV concludes the paper and tries to identify ways in which implementation-related issues can be used as part of an over-all negotiating strategy in the Doha work program for developing countries.

II. HISTORY OF IMPLEMENTATION ISSUES IN THE GATT/WTO SYSTEM

A. Pre-Uruguay Round: 1981-1986

4. Implementation issues were first officially raised as major issues for developing countries during the November 1982 GATT ((1947)) ministerial meeting. At that meeting, GATT Contracting Parties agreed in a ministerial declaration⁴ to a “GATT

¹ WTO Doc. Ref. WT/MIN(01)/DEC/1, 20 November 2001.

² WTO Doc. Ref. WT/MIN(01)/17, 20 November 2001.

³ WTO Doc. Ref. Job(01)/152/Rev.1, 27 October 2001.

⁴ General Agreement on Tariffs and Trade (GATT), Ministerial Declaration of the Thirty-Eighth Session of the GATT Contracting Parties, GATT Doc. Ref. W.38/4, 29 November 1982. (hereafter 1982 Ministerial Declaration)

work program for the 1980s.” This, among others, committed the GATT Contracting Parties to “ensure effective implementation of GATT rules and provisions, and specifically those concerning the developing countries” and to “ensure special treatment for LDCs in the context of differential and more favourable treatment to developing countries.”⁵ The GATT work program also urged Contracting Parties to implement “more effectively” the provision of special and differential treatment to developing countries under the 1979 Enabling Clause⁶ and Part IV of the GATT ((1947)),⁷ and to improve market access for products of particular export interest to developing countries such as agricultural products, tropical products, and textiles and clothing.

5. Developed country initiatives beginning in 1983 for the launch of a new round of trade negotiations prompted Uruguay, on behalf of developing countries, to submit to the 15 May 1984 meeting of the GATT Council a joint position paper.⁸ It called for the implementation of past commitments undertaken by developed countries in the GATT and for the completion of the 1982 GATT work program, rather for the launch of a new round.⁹ It stated that developed countries in the GATT should individually:

- (i) Implement promptly their undertaking to lift any measures inconsistent with GATT, or not based on specific GATT disciplines, which restrict or have the effect of restricting exports of developing countries to their markets, and refrain from introducing new ones;¹⁰
- (ii) Abstain from applying to imports from developing countries any safeguard measure inconsistent with Article XIX of the GATT;
- (iii) Abstain from invoking the provisions of the Subsidies Code regarding the effect of subsidization by developing countries of their exports to third world markets;
- (iv) Exercise utmost restraint in countervailing and anti-dumping procedures against imports from developing countries, fully utilize executive powers to dismiss, suspend or revoke actions, as well as refrain from initiating new procedures.¹¹

6. In the area of multilateral actions, the joint paper called upon developed countries to:

- (i) Take immediate steps to liberalise their import regimes for textiles and clothing, having in mind that the Multifibre Arrangement constitutes a major derogation from the rules of GATT, and work out a time-frame for the return of trade in this sector to the GATT disciplines. In the interim the new protectionist measures recently introduced should be promptly rolled-back;
- (ii) Agree to engage in a serious effort, on a priority basis, to implement all other aspects of the current GATT Work Programme of particular interest to the trade of the developing countries, starting with the implementation of the commitments contained

⁵ Chakravarthi Raghavan, South-North Development Monitor (SUNS), 20 Nov. 1982, at www.sunsonline.org.

⁶ General Agreement on Tariffs and Trade (GATT), Decision on Differential and More Favorable Treatment, Reciprocity and Fuller Participation of Developing Countries, 28 November 1979, GATT Doc. Ref. L/4903, at http://www.wto.org/english/tratop_e/region_e/regenb_e.htm

⁷ GATT, 1982 Ministerial Declaration, supra note 4, at 7.

⁸ GATT, *Uruguay (on behalf of developing countries) – Improvement of World Trade Relations Through the Implementation of the Work Program of GATT*, GATT Doc. Ref. L/5647, 4 May 1985. (hereafter 1984 Uruguay Implementation Paper)

⁹ *Id.*, para. 6.

¹⁰ These are what were commonly referred to as the “standstill and rollback” commitments under the GATT.

¹¹ 1984 Uruguay Implementation Paper, supra note 8, para. 3.

- in paragraphs 6 and 7 of the Ministerial Declaration of 1982 [on standstill and rollback] and particularly immediate measures to eliminate quantitative restrictions and other non-tariff measures as well as barriers to their exports of agricultural and tropical products;
- (iii) Give special attention to the particular situation and problems of the least developed among the developing countries and to ensure that these countries receive special treatment in the context of any general and specific measures taken in favour of the developing countries.¹²
7. Subsequent meetings of key GATT decision-making bodies such as the Consultative Group of 18 (CG-18) and the GATT Council failed to decisively discuss and deal with the proposals made in the joint paper.¹³
8. In November 1984, in a joint statement to the 26-29 November 1984 annual meeting of the GATT Contracting Parties, India, on behalf of an informal group of developing countries, stressed that implementation of prior commitments by developed countries needed to be undertaken.¹⁴ It also stressed that before “specific [trade] negotiations envisaged by [developing countries] could be launched”, GATT Contracting Parties (especially developed countries) must commit to undertake individual measures to stop and reverse protectionism – i.e. standstill and rollback – and undertake multilateral action on areas of special interest to developing countries such as textiles and clothing, tropical products, subsidies, countervailing and anti-dumping procedures against developing country exports, safeguard measures, dispute settlement, and special and differential treatment.¹⁵
9. Over a series of high-level meetings at the GATT throughout 1985, developed countries led by the US, Japan, and the European Union, continued to push for a new and comprehensive round of trade negotiations that would include services, investment, and other new issues.
10. The result of this pressure was evident in the outcome of the November 1985 meeting of the GATT Contracting Parties, which set up a Preparatory Committee “to determine the objectives, subject matter, modalities for and participation in the Multilateral Trade Negotiations (MTNS).” Among other issues, the Preparatory Committee was expected to first discuss some of the implementation issues that had been previously raised by developing countries, such as those relating to “standstill and rollback of protectionism” by developed countries, as well as the 1982 GATT Work Program.¹⁶
11. On 20 September 1986, the Uruguay Round was launched. The Punta del Este Declaration reflected some of the implementation issues previously raised by developing countries as major elements in the Uruguay Round of negotiations. These included:

¹² Id., para. 4.

¹³ See C. Raghavan, SUNS, 3 and 9 November 1984, at www.sunsonline.org.

¹⁴ GATT, *India (on behalf of developing countries) – Improvement of World Trade Relations Through the Implementation of the Work Programme of the GATT*, GATT Doc. Ref. L/5744, 23 November 1984, para. 2. (hereafter 1984 India Implementation Paper).

¹⁵ Id., para. 8:A to C.

¹⁶ C. Raghavan, SUNS, 25 January 1986, at www.sunsonline.org.

- the application of special and differential treatment and the operationalization of Part IV of the GATT ((1947)) and the 1979 Enabling Clause;¹⁷
 - the standstill and rollback of protectionist measures;¹⁸ and
 - the launch of negotiations on the liberalization of trade in tropical products, natural resource-based products, agriculture, and textiles and clothing – all of which are sectors of major export interest to developing countries and the liberalization of which were also major implementation issues.¹⁹
12. However, negotiations on the implementation issues above were to be done as part of a “single undertaking,”²⁰ at the same time as negotiations on trade-related aspects of intellectual property rights²¹, trade-related investment measures²², and trade in services²³.
13. The implementation of the text of the Punta del Este Declaration with respect to the implementation issues included therein was not satisfactory, either during the course of the Uruguay Round or upon its conclusion.

B. Implementation Issues Outcomes of the Uruguay Round

14. The Uruguay Round resulted in the following:

- establishment of the World Trade Organization (WTO) as the international intergovernmental governing mechanism for global trade;²⁴
- the incorporation of the GATT (1947) system and disciplines into the WTO’s institutional structure, and the binding of trade in goods commitments by WTO Members;²⁵
- an increase in the number of agreements establishing rules relating to trade in goods²⁶ – including new agreements relating to trade in agriculture²⁷ and trade in textiles and clothing²⁸;

¹⁷ Part I:B(iv), (v), (vi), and (vii), GATT Punta del Este Declaration, Special Session of the GATT Contracting Parties, 20 September 1986, at www.sice.oas.org/trade/Punta_e.asp (hereafter Punta del Este Declaration)

¹⁸ Id., Part I:C.

¹⁹ Id., Part I:D.

²⁰ Id., Part I:B(ii).

²¹ Id., Part I:D.

²² Id.

²³ Id., Part II.

²⁴ Agreement Establishing the World Trade Organization (hereafter WTO Agreement). Creation of the WTO was not originally on the negotiating agenda of the Uruguay Round. The idea for converting the GATT into the International Trade Organization (ITO), later on called the WTO, was first raised by the European Commission in early 1990 and was included in the negotiating agenda after the 1990 Brussels GATT ministerial conference.

²⁵ WTO Agreement, Annex 1A: General Agreement on Tariffs and Trade 1994 (GATT 1994).

²⁶ TO Agreement, Annex 1A: various agreements.

²⁷ WTO Agreement, Annex 1A: Agreement on Agriculture (AoA).

²⁸ WTO Agreement, Annex 1A: Agreement on Textiles and Clothing (ATC).

- the creation of new agreements relating to trade in services²⁹ and trade-related intellectual property rights³⁰;
- the creation of a uniform and enforceable dispute settlement mechanism for trade disputes;³¹
- a trade policy review mechanism;³² and
- plurilateral agreements on other sectors of trade interest such as civil aircraft, bovine meat, dairy, and government procurement.³³

15. When assessed in terms of the outcomes of the Uruguay Round, the implementation issues raised by developing countries before and during the Round, and reflected in the 1986 Punta del Este Declaration, were not fully reflected in the results of the Round.

1. Standstill on and Rollback of Protectionist Trade Measures

16. The commitments of developed countries to “standstill and rollback” their GATT-inconsistent trade measures, pursuant to the 1982 GATT Work Program and the 1986 Punta del Este Declaration, were not complied with. Even towards the end of the Uruguay Round negotiations, the Uruguay Round Surveillance Body was still receiving notifications from various countries, especially developing countries, regarding violations of the standstill and rollback commitments undertaken under the Punta del Este Declaration.³⁴

2. Textiles and Clothing

17. One of the results of the Uruguay Round was the WTO Agreement on Textiles and Clothing (ATC), which put in place a transition process under which import quotas established by WTO Members (such as the EU, US, Canada, and Norway) under the MFA would be increased and eventually eliminated through integration into the GATT 1994 framework. However, during the 1998 and 2001 reviews conducted by the WTO Council for Trade in Goods on the implementation of the ATC, developing country Members of the WTO raised concerns regarding what they viewed to be the failure on the part of some developed country Members to fully comply with their ATC obligations.³⁵

²⁹ WTO Agreement, Annex 1B: General Agreement on Trade in Services (GATS).

³⁰ WTO Agreement, Annex 1C: Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS).

³¹ WTO Agreement, Annex 2: Understanding on Rules and Procedures Governing the Settlement of Disputes (DSU).

³² WTO Agreement, Annex 3: Trade Policy Review Mechanism (TPRM).

³³ WTO Agreement, Annex 4: Plurilateral Trade Agreements.

³⁴ See, inter alia, GATT, *Uruguay Round Surveillance Body – List of Notifications and Communications on Standstill and Rollback*, GATT Doc. Ref. MTN.SB/W/3/Rev.1 to Rev.14. The Surveillance Body was established by the Uruguay Round Trade Negotiations Committee pursuant to the 1986 Punta del Este Declaration to monitor the implementation by GATT Contracting Parties of their standstill and rollback commitments.

³⁵ See, inter alia, WTO Council for Trade in Goods, *Report on the Major Review of the Implementation of the Agreement on Textiles and Clothing in the First Stage of the Integration Process* (adopted 16 February 1998),

3. Agriculture

18. The integration of trade in agriculture into GATT disciplines was also one of the major implementation issues raised by many developing countries. The WTO Agreement on Agriculture (AoA) was one of the major outcomes of the Uruguay Round. However, the impact of the implementation of the AoA, from the perspective of many developing countries, has not provided the benefits promised during the Uruguay Round negotiations. The AoA's rules have contributed to negative growth in the agricultural sectors of many developing countries, and increased the access of agricultural exports from developed to developing countries.³⁶ Implementation of the AoA's rules have contributed to an increased "state of imbalance" in which developing countries are at the losing end.³⁷

4. Tropical Products³⁸ Trade Liberalization

19. Despite the mandate in the 1986 Punta del Este Declaration, increased effective market access for tropical product exports – especially processed tropical products – of developing countries to developed countries did not come about as a result of the Uruguay Round. Many developing countries, both during and at the conclusion of the Uruguay Round, expressed their disappointment at the failure of developed countries to provide significant trade liberalization in the tropical products of export interest to developing countries.³⁹ Many developing countries have called for the

WTO Doc. Ref. G/L/224 (19 February 1998), Paras. 10-11; and WTO Council for Trade in Goods, *Report on the Major Review of the Implementation of the Agreement on Textiles and Clothing in the Second Stage of the Integration Process* (adopted 23 July 2002), WTO Doc. Ref. G/L/556 (26 July 2002), paras. 7-12.

³⁶ See, inter alia, WTO Committee on Agriculture Special Session, *Cuba and 11 other developing countries – Market Access*, WTO Doc. Ref. G/AG/NG/W/37, 28 September 2000. (hereafter 2000 LMG Market Access paper)

³⁷ See, inter alia, BHAGIRATH LAL DAS, WTO AGREEMENT ON AGRICULTURE: DEFICIENCIES AND PROPOSALS FOR CHANGE (2001) for a discussion of the major deficiencies of the AoA from a developing country perspective.

³⁸ The term "tropical products" refers to "agricultural and other products exported by developing countries in tropical climates. In the Uruguay Round, tropical products included the following product sectors: tropical beverages; spices, flowers and plants, planting products, etc.; certain oilseeds, vegetable oils and products thereof; tropical roots, rice and tobacco; tropical nuts and fruits; rubber and tropical wood; and just and hard fibres." See WTO, *Secretariat – Note on the Integrated Data Base (IDB) User Reference Manual: Part II – Glossary of Terms*, WTO Doc. Ref. IDB/URM/2, 15 February 1996, at 24. (hereafter WTO Glossary)

³⁹ See, inter alia, GATT, *Secretariat – Note on the Fourth Meeting of the Negotiating Group on Market Access on 30 October 1991*, GATT Doc. Ref. MTN.GNG/MA/4, 26 November 1991, para. 4; GATT, *Secretariat – Note on the Fifth Meeting of the Negotiating Group on Market Access on 22 November 1991*, GATT Doc. Ref. MTN.GNG/MA/5, 13 January 1992, para. 4; GATT, *Chile (on behalf of the Group of Rio) – Communication on the 1993 Montevideo Ministerial Declaration of the Group of Rio*, GATT Doc. Ref. MTN.TNC/W/115, 27 September 1993, para. 5; GATT, *Tunisia (on behalf of African Ministers of Trade) – Communication on the Tunis Declaration on the Uruguay Round of Multilateral Trade Negotiations by African Trade Ministers*, GATT Doc. Ref. MTN.TNC/W/118, 29 October 1993, paras. 3 and 10; and GATT, *Secretariat – Note on the Joint Meeting of the Trade Negotiations Committee and Group on Negotiations on Goods on 3 December 1993*, GATT Doc. Refs. MTN.TNC/39 and MTN.GNG/27, 21 December 1993, para. 9.

current agriculture negotiations to likewise focus on trade liberalization in tropical products.

5. *Natural Resource-Based Products*⁴⁰ *Trade Liberalization*

20. The negotiations for liberalization of trade in natural resource-based products were incorporated into the negotiations on trade in goods. However, initial developed country offers with respect to natural-resource based products “were either minimal or non-existent,” and neither did the final market access commitments sufficiently reflect the objective of fullest liberalization in trade in this product area of export interest to developing countries.⁴¹

6. *Special and Differential Treatment*

21. The concept of providing “special and differential treatment” (SDT) for developing countries – i.e. of having special trade rules and providing more trade flexibility for developing countries in order to support their development efforts – has a long history in the GATT/WTO system⁴².

⁴⁰ The term “natural resource-based products” are “traditionally defined as fishery products, forestry products and non-ferrous metals and minerals.” See WTO Glossary, *supra* note 28, at 18. See also GATT, *Secretariat – Minutes of First Negotiating Group on Natural Resource-Based Products Meeting on 11 February 1987*, GATT Doc. Ref. MTN.GNG/NG3/1, 27 February 1987, para. 6. There were also proposals to extend the coverage of “natural resource-based products” to cover energy and energy-related products. See GATT, *Secretariat – Note on Status of Work in the Negotiating Groups on Market Access*, GATT Doc. Refs. MTN/GNG/NG1/W/45, MTN.GNG/NG2/W/74, MTN.GNG/NG3/W/41, MTN.NGN/NG4/W/48, 14 September 1990, para. 11.

⁴¹ See, *inter alia*, GATT, *Secretariat – Note on the Fourth Meeting of the Negotiating Group on Market Access on 30 October 1991*, GATT Doc. Ref. MTN.GNG/MA/4, 26 November 1991, para. 4; GATT, *Secretariat – Note on the Fifth Meeting of the Negotiating Group on Market Access on 22 November 1991*, GATT Doc. Ref. MTN.GNG/MA/5, 13 January 1992, para. 4; GATT, *Chile (on behalf of the Group of Rio) – Communication on the 1993 Montevideo Ministerial Declaration of the Group of Rio*, GATT Doc. Ref. MTN.TNC/W/115, 27 September 1993, para. 5; and GATT, *Tunisia (on behalf of African Ministers of Trade) – Communication on the Tunis Declaration of the Uruguay Round of Multilateral Trade Negotiations by African Trade Ministers*, GATT Doc. Ref. MTN.TNC/W/118, 29 October 1993, paras. 3 and 10; GATT, *Secretariat – Note on the Joint Meeting of the Trade Negotiations Committee and Group on Negotiations on Goods on 3 December 1993*, GATT Doc. Refs. MTN.TNC/39 and MTN.GNG/27, 21 December 1993, para. 9.

⁴² For overviews of the history of SDT in the GATT/WTO system, see, *inter alia*, Murray Gibbs, *Special and Differential Treatment in the Context of Globalization: Note Presented to the G15 Symposium on Special and Differential Treatment in the WTO Agreements*, 10 December 1998 (hereafter Gibbs); Constantine Michalopoulos, *The Role of Special and Differential Treatment for Developing Countries in GATT and the World Trade Organization* (World Bank Development Research Group Policy Research Working Paper No. 2388, July 2000) (hereafter Michalopoulos); and Hesham Youssef, *Special and Differential Treatment for Developing Countries in the WTO* (South Centre Trade-Related Agenda, Development and Equity Working Paper No. 2, June 1999) (hereafter Youssef). See also WTO General Council, *Egypt – Special and Differential Treatment for Developing Countries in the Multilateral Trading System*, WTO Doc. Ref. WT/GC/W/109 and WT/COMTD/W/49, 5 November 1998 (hereafter Egypt SDT paper).

22. At present, there are 145 provisions relating to SDT in the various Uruguay Round agreements relating to trade in goods, the GATS, TRIPS, DSU, and various Ministerial decisions.⁴³ These provisions can be classed as follows⁴⁴:

- (i) provisions aimed at increasing the trade opportunities of developing country Members – twelve provisions in four WTO agreements and one decision: GATT 1994 (Arts. XXXVI-XXXVIII), AoA, ATC, GATS, and the 1979 Enabling Clause;
- (ii) provisions under which WTO Members should safeguard the interests of developing country Members – forty-nine provisions in thirteen WTO Agreements and two decisions: GATT 1994 (Part IV), Sanitary and Phytosanitary (SPS) Agreement, ATC, Technical Barriers to Trade (TBT) Agreement, Implementation of Article VI of GATT 1994 (Anti-Dumping), Implementation of Article VII of GATT 1994 (Customs Valuation), Import Licensing Procedures Agreement, Subsidies and Countervailing Measures (SCM) Agreement, Safeguards Agreement, GATS, TRIPS, DSU, NFIDC Decision, and the Decision on Texts Relating to Minimum Values and Imports by Sole Agents, Sole Distributors and Sole Concessionaires;
- (iii) flexibility of commitments, of action, and use of policy instruments – thirty provisions in eight WTO agreements: GATT 1994 (Arts. XVIII and XXXVI), AoA, TBT, Trade-Related Investment Measures (TRIMS) Agreement, SCM, GATS, DSU, and 1979 Enabling Clause;
- (iv) longer transitional or allowable extensions of time periods for exemptions from trade disciplines – eighteen provisions in eight WTO agreements: AoA, SPS, TBT, TRIMS, Customs Valuation, Import Licensing Procedures, SCM, and Safeguards;
- (v) provision of technical assistance – fourteen provisions in six WTO agreements and one decision: SPS, TBT, Customs Valuation, GATS, TRIPS, DSU, and the NFIDC Decision;
- (vi) provisions relating to least-developed country Members – twenty-two provisions in seven WTO agreements and three decisions: AoA, ATC, TBT, TRIMS, GATS, TRIPS, DSU, 1979 Enabling Clause, Decision on Measures in Favour of Least-Developed Countries (LDC Decision), and the Waiver for Preferential Market Access for LDCs.

23. However, implementation of these WTO SDT provisions since the establishment of the WTO has not been very effective from the perspective of many developing countries.

C. Implementation Issues in the WTO: 1995-2002

24. The results of the Uruguay Round vis-à-vis the implementation issues that were raised before and during the negotiations therein were, for many developing

⁴³ WTO Committee on Trade and Development, *Secretariat – Note on Implementation of Special and Differential Treatment Provisions in WTO Agreements and Decisions*, para. 2, WTO Doc. Ref. WT/COMTD/W/77, 25 October 2000.

⁴⁴ See, inter alia, id., paras. 3 and 8-17.

countries, very disappointing. There were still issues of standstill and rollback, operationalization of special and differential treatment, and increased market access for products of export interest to developing countries, and the overall imbalance of global trade against developing countries, that had not been effectively redressed by the Uruguay Round.

25. Implementation by developed countries of their WTO obligations in trade-distorting or protectionist ways also became the source of concern among developing countries, as the perception grew that the WTO agreements merely institutionalized existing global trade imbalances. Furthermore, the establishment of the WTO and the large increase in the number of binding and enforceable trade rules, obligations, and disciplines in the various annexed agreements meant a heavier implementation burden on the scarce economic, technical and human resources of most developing countries.

1. First WTO Ministerial Conference – Singapore (1996)

26. The First WTO Ministerial Conference in Singapore in 1996 came out with a ministerial declaration in which implementation issues were mentioned. It stressed that the implementation of WTO agreements had been “generally satisfactory, although some Members have expressed dissatisfaction with some aspects” and that “further effort in this area is required.”⁴⁵ The declaration, however, other than recognizing the existence of provisions in the WTO agreements relating to special and differential treatment for developing countries, did not specifically mandate the operationalization of these provisions.⁴⁶ The declaration also called for “full and faithful implementation” of the ATC and for WTO Members to use safeguard measures sparingly and to “abide by GATT 1994 rules and disciplines so as to achieve improved market access for textiles and clothing products.”⁴⁷

2. Second WTO Ministerial Conference – Geneva (1998)

27. During the ministerial conference itself, developing countries identified the following as implementation areas that needed to be addressed⁴⁸:

- implementation of the ATC, especially with respect to liberalization that would enable increased exports by developing countries;
- the introduction of new barriers to developing country exports through implementation by developed countries of the provisions of the TBT, SPS, and Rules of Origin Agreements; and
- problems relating to the implementation of the TRIPS Agreement.

⁴⁵ WTO Ministerial Conference, 1996 Singapore Ministerial Declaration, WTO Doc. Ref. WT/MIN(96)/DEC, 13 December 1996, para. 10.

⁴⁶ Id., para. 13.

⁴⁷ Id., para. 15.

⁴⁸ C. Raghavan, SUNS, 20 May 1998, at www.sunsonline.org.

28. The 1998 Ministerial Declaration confirmed that “full and faithful implementation of the WTO Agreement and Ministerial Decisions is imperative.”⁴⁹ It established a process for the evaluation by the WTO General Council, by the Third Ministerial Conference, of the implementation of the WTO agreements, the problems encountered, their impact on the trade and development prospects of Members, and the realization of their objectives.⁵⁰

3. Third WTO Ministerial Conference – Seattle (1999)

29. In the interval between the second and third WTO ministerial conferences, developing countries submitted many proposals and suggestions that identified and discussed, in more detail, their issues and concerns with respect to implementation (see Annex I). These can be classed into the following broad categories:⁵¹

- those relating to the problems of implementation of the various Uruguay Round agreements vis-à-vis:
 - (i) difficulties in implementation faced by developing country Members; and
 - (ii) the manner in which developed countries implement some of the Uruguay Round agreements to the detriment of developing countries; and
- those relating to the asymmetries and imbalances found in the texts of the Uruguay Round agreements themselves that go against the stated objective of mutuality of benefits.

30. Negotiations on implementation issues during the Third Ministerial Conference in Seattle in 1999, however, proved difficult. Developed countries – such as the developed Cairns Group members, the US, and the EU – were initially not willing to effectively respond to and address any of the implementation issues and concerns raised by developing countries.⁵² As part of the preparations for the Seattle Ministerial Conference, the implementation-related issues and concerns raised by developing countries were consolidated and incorporated as Paragraphs 21 and 22 of the 19 October 1999 draft Ministerial Declaration that was forwarded by the

⁴⁹ WTO Ministerial Conference, 1998 Geneva Ministerial Declaration, WTO Doc. Ref. WT/MIN(98)/DEC/, 20 May 1998, para. 8.

⁵⁰ *Id.*

⁵¹ A more detailed categorization of the post-Uruguay Round implementation issues was made by Egypt. See WTO, *Egypt – Issues Pertaining to the September 1998 Special Session of the General Council*, WTO Doc. Ref. WT/GC/W/96, 3 August 1998. The issues listed include: (a) difficulties facing developing countries in implementing various agreements; (b) imbalances in some agreements; (c) lack of implementation by developed countries of a number of obligations; (d) implementation of SDT provisions; (e) market access problems for products of export interest to developing countries; (f) analysis of the distribution of the benefits of the multilateral trade system; (g) evaluation of the adequacy of technical assistance to developing countries; (h) evaluation of the extent to which implementation issues can be addressed in the built-in agenda; and (i) effective follow-up of the outcome High Level Meeting for LDCs.

⁵² See ICTSD, *Daily Update on the Third Ministerial Conference*, Bridges Issue No. 2, 30 November 1999, at www.ictsd.org/ministerial/seattle/wto_daily/991130_eng.htm.

General Council to the Ministerial Conference.⁵³ The Third Ministerial Conference, however, failed to come up with a final ministerial declaration and package of decisions.

4. Fourth WTO Ministerial Conference – Doha (2001)

31. After intensive consultations conducted by then-WTO Director General Moore among Members during the early months of 2000, the WTO General Council decided on 3 May 2000 to begin a series of special sessions of the General Council as the procedural mechanism through which implementation issues can be addressed effectively and substantively.⁵⁴
32. Many developed country Members of the WTO (and a few developing country Members) had stated that implementation issues would best be addressed in the context of the launch of a new round of comprehensive and broad-based negotiations,⁵⁵ so that concessions by developed countries on implementation-related issues could be “balanced” with concessions made by developing countries with respect to other issues in the negotiating package that are of interest to developed countries.
33. This was also basically the same line of reasoning used by developed countries before the launch of the Uruguay Round to push the inclusion of negotiations on intellectual property rights, services, non-agricultural goods, and TRIMS in the Uruguay Round negotiating package. That negotiating package had included negotiations on issues of interest to developing countries such as agriculture, textiles and clothing, tropical products, natural resource-based products, and other general implementation-related issues such as standstill and rollback of protectionist trade measures and operationalization of the special and differential treatment provisions in the GATT and the 1979 Enabling Clause.
34. During the special sessions of the General Council on implementation issues, implementation-related issues were raised and discussed with respect to almost all of the major WTO agreements such as:⁵⁶

- GATT 1994
 - Balance of payments provisions
 - Paragraph 3 of GATT 1994

⁵³ See WTO General Council, *Ministerial Declaration: Revised Draft – Preparations for the 1999 Ministerial Conference*, WTO Doc. Ref. JOB(99)/5868/Rev.1, 19 October 1999, paras. 21-22. This document may be downloaded from www.ictsd.org/English/Declaration3.pdf. There were ninety-three (93) tirets listed under Paragraphs 21 and 22 of this draft ministerial declaration.

⁵⁴ See WTO General Council, Decision on Implementation-Related Issues of 3 May 2000, in *Minutes of the Meeting of 3 and 8 May 2000*, WTO Doc. Ref. WT/GC/M/55, 14 June 2000, paras. 130-182 and Annex I. (hereafter May 2000 General Council Meeting)

⁵⁵ These were, inter alia, the European Communities, Japan, Poland, Czech Republic, Hungary, Slovak Republic, Canada, Korea, Costa Rica, New Zealand, Switzerland, and Norway. See, e.g., See WTO General Council, *Minutes of the Meeting of 22 June and 3 July 2000*, WTO Doc. Ref. WT/GC/M/56, 12 September 2000, paras. 7, 8, 11, 14, 19, 23, 25, 26, and 27.

⁵⁶ *Id.*, paras. 35-213.

- 1979 Enabling Clause
- Agreement on Agriculture
- SPS Agreement
- Agreement on Textiles and Clothing
- TBT Agreement
- TRIMS Agreement
- Anti-Dumping Agreement
- Customs Valuation Agreement
- Rules of Origin Agreement SCM Agreement
- Safeguards Agreement
- GATS
- TRIPS
- Dispute Settlement Understanding
- Special and Differential Treatment provisions

35. By mid-December 2000, the WTO General Council issued a decision that resolved a few of the implementation issues that had been raised vis-à-vis some WTO agreements (see Annex II).⁵⁷ Many WTO Members (especially developing countries) expressed only minimal satisfaction, or outright disappointment, at this initial output of the General Council's work program on implementation issues.⁵⁸

36. Very little progress was achieved in the informal consultations and meetings that took place during the first half of 2001 in finding solutions to the other implementation issues not covered by the 15 December 2000 General Council decision. In late September 2001, the General Council Chair circulated a draft ministerial decision on implementation-related issues to the Members.⁵⁹ Effectively, the draft decision on implementation-related issues sought to integrate the resolution of outstanding implementation issues into the entire negotiating package being presented for adoption by ministers at the Fourth WTO Ministerial Conference in Doha, Qatar.

37. The Fourth WTO Ministerial Conference, held in Doha, Qatar, from 9 to 13 November 2001, adopted the 2001 Implementation Decision together with the referenced Implementation Issues Compilation, as an integral part of the negotiating package under the DMD. The 2001 Implementation Decision incorporated agreements among Members on various implementation issues relating to the following WTO agreements:⁶⁰

- GATT 1994
- Agreement on Agriculture

⁵⁷ See *Id.*, paras. 15 and 16; and WTO General Council, Decision on Implementation-Related Issues and Concerns of 15 December 2000, WTO Doc. Ref. WT/L/384, 19 December 2000. (hereafter December 2000 Implementation Decision).

⁵⁸ See e.g. December 2000 General Council Meeting, *supra* note 57, paras. 19, 21-29, 31-33, 36, 38-47, 49, 51, 53. These included Colombia, India, Brazil, Poland, Bulgaria, Croatia, Czech Republic, Estonia, Hungary, Latvia, Slovak Republic, Egypt, Uganda, Pakistan, Hong Kong (China), Thailand, Jamaica, Indonesia, El Salvador, Bolivia, South Africa, Philippines, Malaysia, Venezuela, Zimbabwe, Nigeria, Ecuador, European Communities, Barbados, Paraguay, Guatemala, Japan.

⁵⁹ WTO Doc. Ref. Job(01)/139/Rev.1, 26 October 2001. This document can be downloaded from www.ictsd.org/ministerial/doha/docs/Implem27otc.pdf.

⁶⁰ 2001 Implementation Decision, *supra* note 2, paras. 1-12.

- SPS Agreement
- Agreement on Textiles and Clothing
- TBT Agreement
- TRIMS Agreement
- Anti-Dumping Agreement
- Customs Valuation Agreement
- Rules of Origin Agreement
- SCM Agreement
- TRIPS Agreement
- Special and Differential Treatment

38. Of the 93 tirets in the 1999 draft ministerial text, thirty-nine (39) were made the subject of immediate action through direct reference in the text of the 2001 Implementation Decision, while forty-eight (48) were made subject to negotiations pursuant to Paragraph 13 of the 2001 Implementation Decision and Paragraph 12 of the DMD. One (1) tiret – on TRIPS and public health – was covered by the 2001 Ministerial Declaration on the TRIPS Agreement and Public Health.⁶¹

39. However, five (5) of the tirets in the 1999 draft text are no longer reflected in the 2001 Implementation Decision or in the referenced Implementation Issues Compilation. These are tirets that relate to textiles and clothing, services, SPS measures, and TBTs (see Annex III for the text of these paragraphs).⁶² This means that these issues no longer form part of the body of implementation-related issues that are subject to negotiations under the DMD and the 2001 Implementation Decision.

40. The 2001 Implementation Decision also required that outstanding implementation issues listed in the Implementation Issues Compilation “be addressed in accordance with paragraph 12” of the DMD.⁶³ It finally requested the WTO Director General “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.”⁶⁴

41. The DMD adopted a “single undertaking”⁶⁵ approach to the Doha negotiating package. Negotiations on implementation-related issues are part and parcel of the negotiating package.⁶⁶ Negotiations were also launched, but outside of the “single undertaking”, on improvements and clarifications of the Dispute Settlement Understanding.⁶⁷

42. Furthermore, Paragraph 12.1 of the 2001 Implementation Decision, relating to the cross-cutting implementation-related issue of “special and differential treatment”,

⁶¹ WTO Doc. Ref. WT/MIN(01)/DEC/2, 20 November 2001.

⁶² These are Paragraphs 21(e) and (l), and 22(d) and (e), of the 19 October 1999 draft ministerial declaration text, WTO Doc. Ref. Job(99)/5868/Rev.1.

⁶³ 2001 Implementation Decision, supra note 2, para. 13.

⁶⁴ Id., para. 14.

⁶⁵ DMD, supra note 1, para. 47.

⁶⁶ Id., para. 12.

⁶⁷ Id., paras. 30 and 47.

can be said to have also mandated negotiations thereon under the Special Session of the Committee on Trade and Development (CTD). Such negotiations on “special and differential treatment” in the CTD has been explicitly stated as being “without prejudice to work in respect of implementation of WTO Agreements in the General Council and in other Councils and Committees.” This means that negotiations in the CTD Special Session on “special and differential treatment” are separate and distinct from the negotiations on other implementation-related issues that should take place under Paragraph 12 of the DMD and Paragraph 13 of the 2001 Implementation Decision. Any issues raised in the CTD negotiations regarding “special and differential treatment” cannot and should not be linked or referred to the other implementation-related negotiations in other WTO bodies.

43. The “single undertaking” negotiating approach implies that the negotiations in the different negotiating areas above should be considered as part of a single negotiating package, especially with respect to the “conduct, conclusion and entry into force” of the outcomes of the negotiations. All this means is that: (i) all the negotiations in the various negotiating areas should be conducted at the same time and in parallel with each other; (ii) the negotiations in all the various negotiating areas should officially conclude at the same time – even if “early agreements” are achieved in some areas; and (iii) all of the agreements that result as outcomes of the negotiations should enter into force at the same time.
44. The “single undertaking” negotiating approach reflected in Paragraph 47 of the DMD does not, *per se*, require nor imply that Members must agree to adopt all the results of the negotiations in all of the negotiating areas – i.e. the “all or nothing” approach – as a single package. The decision on whether or not to adopt an “all or nothing” single package approach to adoption and implementation of the outcomes of the negotiations has been explicitly reserved to the Special Session of the Ministerial Conference that will be held when the results of the negotiations in all areas have been established.⁶⁸ Paragraph 45 of the DMD states that:

45. The negotiations to be pursued under the terms of this declaration shall be concluded not later than 1 January 2005. The Fifth Session of the Ministerial Conference will take stock of progress in the negotiations, provide any necessary political guidance, and take decisions as necessary. When the results of the negotiations in all areas have been established, a Special Session of the Ministerial Conference will be held to take decisions regarding the adoption and implementation of those results.” (emphasis added)

45. Paragraph 45 of the DMD also has to be read in conjunction with Paragraphs 49 and 50 of the DMD. These latter paragraphs require that the conduct of the negotiations must be with “a view to ensuring benefits to all participants and to achieving an overall balance in the outcome of the negotiations”⁶⁹ and must “take fully into account the principle of special and differential treatment for developing and least-developed countries.”⁷⁰ These two paragraphs provide the legal and textual basis for asserting that developing countries should benefit from the principle of non-

⁶⁸ Id., para. 45.

⁶⁹ Id., para. 49.

⁷⁰ Id., para. 50.

reciprocity, or less than full reciprocity, in making concessions or trade-offs in the Doha negotiations, for so long as implementation-related issues have not been satisfactorily addressed. It is only when negotiations on implementation-related issues under Paragraph 12 of the DMD and Paragraph 13 of the 2001 Implementation Decision are prioritized before negotiations on other issues in the DMD, with a view to achieving “early harvests,” that Paragraphs 49 and 50 of the DMD can be effectively complied with. Hence, unless the Special Session of the Ministerial Conference decides to adopt an “all or nothing approach”, developing countries can choose to opt in or opt out of any negotiating outcomes that do not provide for benefits to them; nor achieve an overall balance in the WTO system between developed and developing countries; nor reflect the principle of special and differential treatment.

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46. Despite the mandate for the conduct of negotiations on outstanding implementation-related issues in the DMD, there was not much substantive movement on implementation-related issues after the Doha Ministerial Conference.
47. The TNC formally assigned the responsibility for the conduct of negotiations on implementation-related issues under Paragraph 12 of the DMD to the relevant bodies in February 2002.⁷¹ Over the course of 2002, some proposals were submitted by some developing countries in some of the negotiating bodies, and some of the negotiating bodies undertook work on their referred issues (see Annex IV).

III. LEGAL ANALYSIS OF IMPLEMENTATION-RELATED PROVISIONS IN THE DOHA TEXTS

48. Paragraph 12 of the DMD is at the core of the negotiating mandate on implementation-related issues under the Doha work program. It provides as follows:

Implementation-related issues and concerns

12. We attach the utmost importance to the implementation-related issues and concerns raised by members and are determined to find appropriate solutions to them. In this connection, and having regard to the General Council Decisions of 3 May and 15 December 2000, we further adopt the Decision on Implementation-Related Issues and Concerns in document WT/MIN(01)/17 to address a number of implementation problems faced by members. We agree that negotiations on outstanding implementation issues shall be an integral part of the Work Programme we are establishing, and that agreements reached at an early stage in these negotiations shall be treated in accordance with the provisions of paragraph 47 below. In this regard, we shall proceed as follows: (a) where we provide a specific negotiating mandate in this declaration, the relevant implementation issues shall be addressed under that mandate; (b) the other outstanding implementation issues shall be addressed as a matter of priority by the relevant WTO bodies, which shall report to the Trade Negotiations

⁷¹ See WTO General Council, Statement of the Chair of the General Council to the Trade Negotiations Committee, WTO Doc. Ref. TN/C/1, 4 February 2002, and WTO General Council, *Minutes of the Meeting of 28 January and 1 February 2002*, WTO Doc. Ref. TN/C/M/1, 14 February 2002.

Committee, established under paragraph 46 below, by the end of 2002 for appropriate action.

49. The first sentence of Paragraph 12 of the DMD above indicates the level of political will on the part of the Ministerial Conference to effectively address implementation-related issues. The second sentence of the paragraph provides the legal basis for the adoption of the 2001 Implementation Decision. The third and fourth sentences of the paragraph provide the legal and political mandate for the launch and conduct of negotiations on outstanding implementation-related issues listed in the Implementation Issues Compilation as integral parts of the Doha work program.⁷²
50. The issues dealt with in the 2001 Implementation Decision are covered by two negotiating mandates:
- (1) Negotiations on the tirets (other than Paragraph 10.2) specifically dealt with by or subject to specific WTO bodies and/or timeframes within the text of the 2001 Implementation Decision itself; and
 - (2) Negotiations on those tirets that are to be dealt with under Paragraph 13 of the 2001 Implementation Decision and under Paragraph 12 of the DMD – i.e. Paragraph 10.2 on non-actionable subsidies for developing countries, Paragraph 19 on TRIPS and the CBD, and Paragraph 13 itself relating to outstanding implementation issues listed in the Implementation Issues Compilation.
51. The negotiating mandate covered under the first kind above would include: (i) the conduct of negotiations under Paragraph 12.1 of the 2001 Implementation Decision, relating to the cross-cutting implementation-related issue of “special and differential treatment, in the Special Session of the Committee on Trade and Development (CTD); and (ii) the conduct of negotiations under Paragraph 4.4 and 4.5 of the 2001 Implementation Decision, relating to the effective and accelerated implementation of the ATC, in the Council for Trade in Goods.

⁷² See, e.g., David Vivas and Sisule Mungo, *Background Note: The Negotiations on Implementation Issues and the Work Programme of the TRIPS Council in the Context of Paragraph 12 of the Doha Ministerial Declaration* (South Centre and CIEL, October 2002), paras. 7-13. Even then-General Council Chair Stuart Harbinson’s statement of 1 February 2002 to the General Council regarding the structure for the negotiations did not make any distinctions with respect to two (2) separate classes of outstanding implementation issues – i.e. those that were subject to negotiations and those that were not. Rather, his statement explicitly recognized that “negotiations on outstanding implementation issues will take place in the relevant bodies in accordance with the provisions of paragraph 12 of the Doha Ministerial Declaration and of the Decision on Implementation-Related Issues and Concerns of 14 November 2001.” (emphasis added). This clearly indicates that all outstanding issues are therefore the subject of negotiations. See WTO General Council, Statement of the Chair of the General Council to the Trade Negotiations Committee, WTO Doc. Ref. TN/C/1, 4 February 2002, and WTO General Council, *Minutes of the Meeting of 28 January and 1 February 2002*, WTO Doc. Ref. TN/C/M/1, 14 February 2002. Furthermore, the conclusion that negotiations on all outstanding implementation issues are contemplated by the DMD can also be inferred from the fact that the evolution of the final text of Paragraph 12 of the DMD evolved from language that contained no mention of negotiations (in Paragraph 10 of the 26 September 2001 draft (Job(01)/140)) to one that explicitly mentions negotiations (in common Paragraph 12 of the 27 October 2001 (Job(01)/140/Rev.1) draft, 13 November 2001 (Job(01)/140/Rev.1) draft, and the final 14 November 2001 (WT/MIN(01)/DEC/1) texts).

52. The second negotiating mandate for implementation-related issues is covered in the third and fourth sentences of Paragraph 12 of the DMD. In this regard, it must be noted that a key customary international law rule in treaty interpretation, recognized by the WTO Appellate Body⁷³ and which should be applied by analogy to the DMD and the 2001 Implementation Decision, is that all the terms of the treaty must be “interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose,”⁷⁴ and that none of the treaty’s terms should be considered as superfluous or redundant.

53. The fourth sentence of Paragraph 12 of the DMD should be read together with the third sentence, such that when the fourth sentence says “*in this regard*”, it is referring to the conduct of negotiations on outstanding implementation issues referred to in the previous sentence. Hence, Paragraph 12’s last sentence should be read as simply identifying the bodies under which negotiations on outstanding implementation-related issues referred to under Paragraph 13 of the 2001 Implementation Decision are to take place, to wit:

- (1) the negotiating bodies established by the Trade Negotiations Committee (TNC) for negotiating areas specifically mandated under the DMD work program – for the negotiation of outstanding implementation issues that are relevant to such specific mandated negotiating areas; and
- (2) existing relevant WTO bodies (i.e. the existing councils or committees) – for the negotiation of outstanding implementation issues that do not fall within the scope of negotiations in negotiating areas for which special negotiating bodies were established by the TNC.

54. Only four (4) of the eleven (11) paragraphs in the Implementation Issues Compilation that list specific turrets of outstanding implementation issues will be negotiated in the negotiating bodies established by the TNC. All other paragraphs (inclusive of their respective turrets) have to be addressed by, and negotiated in, relevant WTO bodies “as a matter of priority” and these bodies will then have to report to the TNC by end of 2002 “for appropriate action” thereon.

55. The following table identifies the relevant negotiating bodies for the various implementation issues identified in the 2001 Implementation Decision and the Implementation Issues Compilation:

Negotiating Bodies	Implementation Issues
<i>Negotiations in TNC-Established Special Negotiating Bodies</i>	
Committee on Agriculture Special Session	Paragraph 2, Turret 6, Job(01)/152/Rev.1
Negotiating Group on WTO Rules on Subsidies, Anti-Dumping and Countervailing Measures	Paragraph 6, all turrets, Job(01)/152/Rev.1 Paragraph 8, all turrets, Job(01)/152/Rev.1 Paragraph 10.2, 2001 Implementation Decision

⁷³ See, e.g., WTO Appellate Body, *United States – Standards for Reformulated and Conventional Gasoline*, WTO Doc. Ref. WT/DS2/AB/R, 29 April 1996, at 17 and 23 to 24, citing and applying Article 31(1) of the 1969 Vienna Convention on the Law of Treaties.

⁷⁴ 1969 Vienna Convention on the Law of Treaties, art. 31(1).

Committee on Trade and Development Special Session	Paragraph 12.1, 2001 Implementation Decision
<i>Negotiations in Regular WTO Bodies</i>	
Balance of Payments Committee	Paragraph 1, all tirets, Job(01)/152/Rev.1
Council for Trade in Goods	Paragraph 11, Tiret 98, Job(01)/152/Rev.1 Paragraph 4.4 and 4.5, 2001 Implementation Decision
SPS Committee	Paragraph 3, all tirets, Job(01)/152/Rev.1
TBT Committee	Paragraph 4, all tirets, Job(01)/152/Rev.1
TRIMS Committee	Paragraph 5, all tirets, Job(01)/152/Rev.1
Customs Valuation Committee	Paragraph 7, all tirets, Job(01)/152/Rev.1
Safeguards Committee	Paragraph 9, all tirets, Job(01)/152/Rev.1
TRIPS Council	Paragraph 10, all tirets, Job(01)/152/Rev.1 Paragraph 19, 2001 Implementation Decision
General Council	Paragraph 11, Tiret 99, Job(01)/152/Rev.1

IV. CONCLUSION

56. The explicit inclusion of implementation-related issues within the Doha work program, as well as the creation of the working groups on trade and transfer of technology and on trade, debt and finance, can be seen as gains achieved by developing countries, in general, during the Doha Ministerial Conference. As such, developing countries should capitalize on these gains and use these consistently as negotiating leverage points in the context of the current Doha work program.
57. Paragraph 12 of the DMD requires the bodies under which outstanding implementation-related issues are supposed to be negotiated to report to the TNC “by the end of 2002 for appropriate action.” Under the revised timeline suggested by the Chair of the TNC, WTO Director General Supachai Panitchpakdi, in his statement to the TNC on 3 October 2002, such bodies are to report to the TNC on the status of their negotiations on implementation issues during the TNC meeting on 4 to 6 December 2002.
58. This December 2002 reportorial requirement should be used by developing countries to insist that the reports should raise and highlight the importance of implementation-related issues as part of the negotiating issues that the bodies are supposed to deal with under the Doha work program. Developing countries should stress that the reports state that the negotiating mandate for these issues has not been effectively and fully complied with. Members should, therefore, engage in negotiations on implementation issues in good faith as mandated under the DMD in the run-up to Cancun.
59. In the run-up to the Cancun Ministerial Conference, negotiating proposals should be submitted in the various negotiating bodies for implementation-related issues that would further detail the tirets listed in the Implementation Issues Compilation. This should have the effect of pushing developed countries to respond to these proposals.

60. The early and prior conclusion of negotiations on implementation-related issues under the Doha work program should be seen as:

- a means of addressing the existing imbalances in WTO agreements;
- a way through which developing countries can obtain “early harvests” from the Doha negotiating package;
- a primary mechanism through which the final results of the Doha negotiating package would be balanced and of benefit to developing countries, in particular; and, most importantly
- a defensive negotiating strategy through which any expansion of the Doha negotiating agenda can be opposed.

61. The early and prior resolution of the negotiations on outstanding implementation-related issues, among others, should be included in the package of negotiating outcomes that developing countries should push for in the Doha work program. Given the current state-of-play in the Doha-mandated negotiations – especially with respect to agriculture – it seems likely that increased developing country pressure on implementation-related issues may result in at least some positive outcomes, either in terms of non-expansion of the negotiating agenda or actual progress in some of the implementation issues. The early and prior resolution of the outstanding implementation-related issues can be used as an essential precondition before developing countries consider – but not necessarily agree to – further movement on other parts of the Doha work program that is not of interest to them.

62. Among the major areas of implementation-related issues that would be most useful for purposes of embarking on a defensive negotiating strategy vis-à-vis any expansion of the Doha negotiating package would be:

- **textiles and clothing under Paragraph 4.4 and 4.5 of the 2001 Implementation Decision** – there has not been much actual work done by the Council for Trade in Goods to implement the negotiating mandate in this area . Hence, developing countries (especially the members of the ITCB) should insist that there should first be real progress in such negotiations. An early resolution to the implementation issues raised in relation to textiles and clothing under Paragraph 4.4 and 4.5 of the 2001 Implementation Decision would be of immediate economic benefit to textile and clothing-exporting developing countries. However, these issues can also be useful for purposes of the Doha negotiations because early effective implementation of the ATC, as an implementation issue, can be “traded off” by developing countries in exchange for gains in other negotiating areas of interest to developing countries. This is because full integration of textiles and clothing – including progressive elimination of all import restrictions on the remaining 49% of textile and clothing sectors still under restrictions – is due to take place by 1 January 2005. Any negotiations that result in an outcome promising early effective implementation of the ATC might not be of much increased value when viewed in the context of the fast-approaching final integration period under the ATC;

- **TRIPS Article 27.3(b) and the Convention on Biological Diversity under paragraph 19 of the 2001 Implementation Decision and Paragraph 10 of the Implementation Issues Compilation** – the TRIPS Council has not progressed far in terms of actually implementing the negotiating mandate on these issues. Because of the economic interests involved, especially from developed country (particularly US) biotechnology and pharmaceutical industries, substantive negotiating progress on these issues seems to be unlikely. However, these issues can still be used by developing countries as a means to either advance or block progress on other negotiating areas in the Doha work program (depending on where developing country interests lie). For example, the lack of progress in the TRIPS Council on these issues can be used to block any further expansion of the Doha negotiating agenda to other new issues, with developing countries saying that early substantive and positive outcomes on the TRIPS and CBD-related implementation issues are necessary for them to be placed in a position under which they can then consider discussing other new issues in the Doha work program. Since such early substantive and positive outcomes in this area are unlikely to occur, TRIPS and CBD-related implementation issues can possibly be effective in terms of blocking new issues. On the other hand, substantive and positive resolution of the TRIPS and CBD issue in favor of developing countries would be a major gain in terms of changing the TRIPS Agreement and making it amenable to providing benefits to developing countries;
- **rules on subsidies, countervailing measures, and anti-dumping under Paragraphs 6 and 8 of the Implementation Issues Compilation and Paragraph 10.2 of the 2001 Implementation Decision** – as pointed out above, only two negotiating proposals relating to implementation-related issues in these areas have thus far been tabled in the Negotiating Group on Rules – one by India and the other one by Brazil. The Negotiating Group has so far been focusing simply on identifying the issues to be addressed by the Group. Actual substantive negotiations on specific details of, for example, rules-related implementation issues have not yet been undertaken. This could, hence, be a good opportunity for developing countries to increase pressure and focus attention on rules-related implementation issues in the Group. Early substantive and positive resolution of negotiations on these issues will provide substantial gains for developing countries. However, the proposals for increased flexibility for developing countries and for more restrictive disciplines on the adoption of subsidies, anti-dumping, or countervailing measures, are likely to be met with intense opposition from developed countries, and would result in little positive movement in the negotiations. Because of the likelihood of opposition from developed countries on developing country implementation-related proposals in the rules area, developing countries might be able to use their existing rules-related implementation issues as a defensive negotiating tool, such that further movement on other issues in the Doha negotiating package would be conditioned on the prior and satisfactory conclusion of rules-related implementation issues by the Negotiating Group on Rules. This is actually implicit in the requirement in Paragraph 47 of the DMD for the negotiations to be balanced;

- **special and differential treatment under Paragraph 12.1 of the 2001 Implementation Decision** – to date, none of the mandated negotiations on special and differential treatment provisions have progressed in the special sessions of the Committee on Trade and Development (CTD). In fact, Members are still debating whether Paragraph 12.1 of the 2001 Implementation Decision does in fact provide a negotiating mandate for these issues. Developing countries have argued, and should continue to argue, that such a negotiating mandate does exist under the paragraph. Many developed countries continue to refuse to engage in good faith negotiations on these issues in order to come up with early substantive outcomes. Again, opposition to negotiations on special and differential treatment in the CTD special sessions have been, and should be used, by developing countries as an argument for likewise refusing to move forward on discussions to include other new issues in the Doha negotiating package. On the other hand, any early and substantive positive outcomes from negotiations on special and differential treatment will most likely provide positive net gains for developing countries in terms of greater flexibility in implementing their WTO obligations.

63. The use of implementation-related issues as a defensive negotiating strategy vis-à-vis any expansion of the Doha negotiating agenda into areas of interest to developed countries must, however, be complemented by a proactive negotiating strategy on the part of developing countries. Such proactive negotiating strategy could include, among other things:

- pushing hard for the continuation of the working groups on trade and transfer of technology and on trade, debt, and finance, and the possible future conversion of these groups' mandates from an educative one to an actual negotiating mandate;
- challenging the assumption that the "single undertaking" approach to the conduct of negotiations in Paragraph 47 of the DMD implies that Members have already decided that the adoption and implementation of the outcomes of the negotiations must be made on an "all or nothing" basis;
- insisting on changes in the over-all negotiating process, especially with respect to coming up with clear negotiating and decision-making guidelines to be used not only in the negotiations but also in the over-all functioning of the WTO;
- focusing market access negotiations, in the agricultural, non-agricultural, and services negotiations, on areas of export and/or developmental interest to developing countries.

64. Of course, developing countries will also have to assess, from the perspective of both their common and individual national interests, whether gains that they obtain on implementation-related issues would be quantitatively or qualitatively equivalent or better than possible concessions or trade-offs for such gains that they have to give in other areas of the Doha work program.

ANNEX I: SUBMISSIONS BY DEVELOPING COUNTRIES ON IMPLEMENTATION-RELATED ISSUES OF WTO AGREEMENTS FOR THE THIRD MINISTERIAL CONFERENCE

Developing country WTO Member submissions dealt with implementation issues on most of the substantive Uruguay Round agreements. Among the agreements and the countries that made submissions raising issues thereon were:

- **Agreement on Agriculture** – Barbados, Cuba, Dominica, Dominican Republic, Egypt, El Salvador, Fiji, Grenada, Jamaica, Kenya, Honduras, India, Lesotho, Mauritius, Pakistan, Papua New Guinea, Saint Lucia, Solomon Islands, Sri Lanka, Trinidad and Tobago, Uganda, Zimbabwe;⁷⁵
- **Agreement on Textiles and Clothing** – Argentina, Bangladesh, Barbados, Brazil, China, Colombia, Costa Rica, Dominica, Egypt, El Salvador, Fiji, Grenada, Guatemala, Honduras, Hong Kong (China), India, Indonesia, Jamaica, Kenya, Korea, Lesotho, Macau, Maldives, Mauritius, Mexico, Pakistan, Papua New Guinea, Paraguay, Peru, Solomon Islands, Sri Lanka, Saint Lucia, Thailand, Trinidad and Tobago, Uruguay;⁷⁶
- **Anti-Dumping Agreement** – Brazil, Brunei, Chile, Cuba, Dominican Republic, Egypt, El Salvador, Honduras, India, Indonesia, Jamaica, Kenya, Malaysia, Myanmar, Nigeria, Pakistan, Philippines, Sri Lanka, Singapore, Thailand, Uganda;⁷⁷

⁷⁵ See WTO, *Dominican Republic (on behalf of 7 other developing countries) – Proposal under Paragraphs 9(a)(i) and 9(a)(ii) of the Geneva Ministerial Declaration*, WTO Doc. Ref. WT/GC/W/374, 15 October 1999; *Pakistan – Communication on the Agreement on Agriculture*, WTO Doc. Ref. WT/GC/W/161, 1 April 1999; *Mauritius (on behalf of 10 other developing countries) – Proposals for Addressing Concerns on Marginalization of Certain Small Economies*, WTO Doc. Ref. WT/GC/W/361, 12 October 1999; *Kenya – Contribution to the Preparatory Process*, WTO Doc. Ref. WT/GC/W/233, 5 July 1999; *India – Statement to the General Council*, WTO Doc. Ref. WT/GC/W/114, 18 November 1998; *Jamaica – Statement at the Special Session of the General Council on 24-25 September 1998*, WTO Doc. Ref. WT/GC/W/105, 14 October 1998.

⁷⁶ See WTO, *Mauritius (on behalf of 10 other developing countries) – Proposals for Addressing Concerns on Marginalization of Certain Small Economies*, WTO Doc. Ref. WT/GC/W/361, 12 October 1999; *Hong Kong, China (on behalf of the ITCB) – Communication on the Agreement on Textiles and Clothing: Suggestions for Improved Implementation*, WTO Doc. Ref. WT/GC/W/357, 12 October 1999; *India – Proposals Regarding the Agreement on Textiles and Clothing in Terms of Paragraph 9(a)(i) of the Geneva Ministerial Declaration*, WTO Doc. Ref. WT/GC/W/226, 2 July 1999; *Pakistan – Textiles: Some Elements of Implementation of the ATC*, WTO Doc. Ref. WT/GC/W/159, 1 April 1999; *India – Statement to the General Council*, WTO Doc. Ref. WT/GC/W/114, 18 November 1998; *Kenya – Contribution to the Preparatory Process*, WTO Doc. Ref. WT/GC/W/233, 5 July 1999.

⁷⁷ See WTO, *Jamaica – Statement at the Special Session of the General Council on 24-25 September 1998*, WTO Doc. Ref. WT/GC/W/105, 14 October 1998; *Kenya – Contribution to the Preparatory Process*, WTO Doc. Ref. WT/GC/W/233, 5 July 1999; *India – Statement to the General Council*, WTO Doc. Ref. WT/GC/W/114, 18 November 1998; *India – Proposals Regarding the Anti-Dumping Agreement in Terms of Paragraph 9(a)(i) of the Geneva Ministerial Declaration*, WTO Doc. Ref. WT/GC/W/200, 14 June 1999; *Brazil – Communication on the Anti-Dumping Agreement*, WTO Doc. Ref. WT/GC/W/269, 26 July 1999; *Chile – Proposal on Anti-Dumping Measures*, WTO Doc. Ref. WT/GC/W/366, 12 October 1999; *Egypt – Communication on the Agreement on Anti-Dumping*, WTO Doc. Ref. WT/GC/W/324, 20 September 1999; *Malaysia (on behalf of ASEAN) – Agreement on Implementation of Article VI of GATT 1994: Proposal Under Paragraph 9(a)(i) of the Geneva Ministerial Declaration*, WTO Doc. Ref. WT/GC/W/205, 14 June 1999; *India (on behalf of 12 other developing countries) – Implementation Issues to be Addressed in the First Year of Negotiations*, WTO Doc. Ref. WT/GC/W/355, 11 October 1999.

- **SPS Agreement** – Cuba, Dominican Republic, Egypt, El Salvador, Honduras, India, Indonesia, Jamaica, Kenya, Malaysia, Nigeria, Pakistan, Sri Lanka, Uganda;⁷⁸
- **TRIPS Agreement** – Angola, Benin, Botswana, Burkina Faso, Burundi, Cameroon, Central African Republic, Chad, Congo, Congo (Democratic Republic), Côte d'Ivoire, Cuba, Djibouti, Dominican Republic, Egypt, El Salvador, Gabon, The Gambia, Ghana, Guinea, Guinea Bissau, Honduras, India, Indonesia, Jamaica, Kenya, Lesotho, Madagascar, Malaysia, Malawi, Mali, Mauritania, Mauritius, Morocco, Mozambique, Namibia, Niger, Nigeria, Pakistan, Rwanda, Senegal, Sierra Leone, South Africa, Sri Lanka, Swaziland, Tanzania, Togo, Tunisia, Uganda, Zambia, Zimbabwe;⁷⁹
- **GATS** – Barbados, Dominica, Fiji, Grenada, India, Jamaica, Kenya, Lesotho, Mauritius, Papua New Guinea, Solomon Islands, Saint Lucia, Trinidad and Tobago;⁸⁰
- **Customs Valuation Agreement** – Angola, Benin, Botswana, Burkina Faso, Burundi, Cameroon, Central African Republic, Chad, Congo, Congo (Democratic Republic), Côte d'Ivoire, Cuba, Djibouti, Dominican Republic, Egypt, El Salvador, Gabon, The Gambia, Ghana, Guinea, Guinea Bissau, Honduras, India, Indonesia, Jamaica, Kenya, Lesotho, Madagascar, Malaysia, Malawi, Mali, Mauritania, Mauritius, Morocco, Mozambique, Namibia, Niger, Nigeria, Pakistan, Rwanda, Senegal, Sierra Leone, South Africa, Sri Lanka, Swaziland, Tanzania, Togo, Tunisia, Uganda, Zambia, Zimbabwe;⁸¹
- **TRIMS Agreement** – Brazil, Cuba, Dominican Republic, Egypt, El Salvador, Honduras, India, Indonesia, Kenya, Malaysia, Nigeria, Pakistan, Sri Lanka, Uganda;⁸²

⁷⁸ See WTO, *Jamaica – Statement at the Special Session of the General Council on 24-25 September 1998*, WTO Doc. Ref. WT/GC/W/105, 14 October 1998; *Kenya – Contribution to the Preparatory Process*, WTO Doc. Ref. WT/GC/W/233, 5 July 1999; *India – Proposals Regarding the Agreement on Sanitary and Phytosanitary Measures in Terms of Paragraph 9(a)(i) of the Geneva Ministerial Declaration*, WTO Doc. Ref. WT/GC/W/202, 14 June 1999; *Jamaica – Communication on the Agreement on the Application of Sanitary and Phytosanitary Measures*, WTO Doc. Ref. WT/GC/W/371, 13 October 1999; *India (on behalf of 12 other developing countries) – Implementation Issues to be Addressed in the First Year of Negotiations*, WTO Doc. Ref. WT/GC/W/355, 11 October 1999.

⁷⁹ See WTO, *India – Statement to the General Council*, WTO Doc. Ref. WT/GC/W/114, 18 November 1998; *India (on behalf of 12 other developing countries) – Implementation Issues to be Addressed in the First Year of Negotiations*, WTO Doc. Ref. WT/GC/W/355, 11 October 1999; *Kenya – Contribution to the Preparatory Process*, WTO Doc. Ref. WT/GC/W/233, 5 July 1999; *Jamaica – Statement at the Special Session of the General Council on 24-25 September 1998*, WTO Doc. Ref. WT/GC/W/105, 14 October 1998; *India – Proposals on IPR Issues*, WTO Doc. Ref. WT/GC/W/147, 18 February 1999; *Kenya (on behalf of the African Group) – The TRIPS Agreement*, WTO Doc. Ref. WT/GC/W/302, 6 August 1999.

⁸⁰ See WTO, *Kenya – Contribution to the Preparatory Process*, WTO Doc. Ref. WT/GC/W/233, 5 July 1999; *Mauritius (on behalf of 10 other developing countries) – Proposals for Addressing Concerns on Marginalization of Certain Small Economies*, WTO Doc. Ref. WT/GC/W/361, 12 October 1999; *India – Proposals Regarding the GATS Agreement in Terms of Paragraph 9(a)(i) of the Geneva Ministerial Declaration*, WTO Doc. Ref. WT/GC/W/224, 2 July 1999.

⁸¹ See WTO, *India – Proposals Regarding the Implementation of the Agreement on Implementation of Article VII of the GATT 1994 in Terms of Paragraph 9(a)(i) of the Geneva Ministerial Declaration*, WTO Doc. Ref. WT/GC/W/227, 5 July 1999; *Kenya (on behalf of the African Group) – Communication on the Customs Valuation Agreement*, WTO Doc. Ref. WT/GC/W/301, 6 August 1999; *Kenya – Contribution to the Preparatory Process*, WTO Doc. Ref. WT/GC/W/233, 5 July 1999; *India – Statement to the General Council*, WTO Doc. Ref. WT/GC/W/114, 18 November 1998; *India (on behalf of 12 other developing countries) – Implementation Issues to be Addressed in the First Year of Negotiations*, WTO Doc. Ref. WT/GC/W/355, 11 October 1999.

⁸² See WTO, *Brazil – The Agreement on Trade-Related Investment Measures (TRIMS)*, WTO Doc. Ref. WT/GC/W/271, 26 July 1999; *Kenya – Contribution to the Preparatory Process*, WTO Doc. Ref.

- **TBT Agreement** – Cuba, Dominican Republic, Egypt, El Salvador, Honduras, India, Indonesia, Jamaica, Kenya, Malaysia, Nigeria, Pakistan, Sri Lanka, Uganda;⁸³
- **BOP Agreement** – Cuba, Dominican Republic, Egypt, El Salvador, Honduras, India, Indonesia, Jamaica, Malaysia, Nigeria, Pakistan, Sri Lanka, Uganda;⁸⁴
- **SCM Agreement** – Barbados, Cuba, Dominica, Dominican Republic, Fiji, Grenada, Egypt, El Salvador, Honduras, India, Indonesia, Jamaica, Kenya, Lesotho, Malaysia, Mauritius, Nigeria, Pakistan, Papua New Guinea, Saint Lucia, Solomon Islands, Sri Lanka, Trinidad and Tobago, Uganda;⁸⁵
- **SDT provisions in Uruguay Round agreements** – Barbados, Cuba, Dominica, Fiji, Grenada, India, Indonesia, Jamaica, Kenya, Lesotho, Malaysia, Mauritius, Papua New Guinea, Philippines, Saint Lucia, Solomon Islands, Thailand, Trinidad and Tobago, Venezuela;⁸⁶

Implementation-related concerns were also raised with respect to the implementation of waivers, technology transfer, technical assistance, rules of origin, preshipment inspection, and other issues.

WT/GC/W/233, 5 July 1999; *India (on behalf of 12 other developing countries) – Implementation Issues to be Addressed in the First Year of Negotiations*, WTO Doc. Ref. WT/GC/W/355, 11 October 1999.

⁸³ See WTO, *India (on behalf of 12 other developing countries) – Implementation Issues to be Addressed in the First Year of Negotiations*, WTO Doc. Ref. WT/GC/W/355, 11 October 1999; *Kenya – Contribution to the Preparatory Process*, WTO Doc. Ref. WT/GC/W/233, 5 July 1999; *Jamaica – Statement at the Special Session of the General Council on 24-25 September 1998*, WTO Doc. Ref. WT/GC/W/105, 14 October 1998.

⁸⁴ See WTO, *India (on behalf of 12 other developing countries) – Implementation Issues to be Addressed in the First Year of Negotiations*, WTO Doc. Ref. WT/GC/W/355, 11 October 1999; *India – Proposals Regarding the Balance-of-Payments Provisions of the General Agreement on Tariffs and Trade 1994 in Terms of Paragraph 9(a)(i) of the Geneva Ministerial Declaration*, WTO Doc. Ref. WT/GC/W/364, 12 October 1999.

⁸⁵ See WTO, *India (on behalf of 12 other developing countries) – Implementation Issues to be Addressed in the First Year of Negotiations*, WTO Doc. Ref. WT/GC/W/355, 11 October 1999; *Kenya – Contribution to the Preparatory Process*, WTO Doc. Ref. WT/GC/W/233, 5 July 1999; *Mauritius (on behalf of 10 other developing countries) – Proposals for Addressing Concerns on Marginalization of Certain Small Economies*, WTO Doc. Ref. WT/GC/W/361, 12 October 1999.

⁸⁶ See WTO, *Philippines – Proposal for a Declaration on Developing Countries*, WTO Doc. WT/GC/W/393, 25 November 1999; *Cuba – Implementation of Existing Agreements and Decisions GATT 1994*, WTO Doc. Ref. WT/GC/W/388, 15 November 1999; *India – Concerns Regarding Implementation of Provisions Relating to Differential and More Favourable Treatment of Developing and Least-Developed Countries in Various WTO Agreements*, WTO Doc. Ref. WT/GC/W/108, 13 November 1998; *Venezuela – Special and Differential Treatment and the Spaces for Policies in WTO: Two Elements of the Development Dimension in the Multilateral Trading System*, WTO Doc. Ref. WT/GC/W/279, 29 July 1999; *Kenya – Contribution to the Preparatory Process*, WTO Doc. Ref. WT/GC/W/233, 5 July 1999; *Philippines (on behalf of Indonesia, Malaysia, Philippines, and Thailand) – Special and Differential Treatment for Developing Countries in World Agricultural Trade and the Mandated Negotiations*, WTO Doc. Ref. WT/GC/W/331, 23 September 1999; *Mauritius (on behalf of 10 other developing countries) – Proposals for Addressing Concerns on Marginalization of Certain Small Economies*, WTO Doc. Ref. WT/GC/W/361, 12 October 1999.

ANNEX II: SUMMARY OF THE WTO GENERAL COUNCIL DECISION ON IMPLEMENTATION-RELATED ISSUES AND CONCERNS OF 15 DECEMBER 2000
(WT/L/384, 19 December 2000)

Paragraphs 1 to 6 of the General Council's 15 December 2000 Decision on Implementation-Related Issues and Concerns contained resolutions on some implementation-related issues concerning the following WTO agreements:

- **Agreement on Agriculture** – requiring AoA notifications to include detailed on guidelines and procedures on the allotment of tariff rate quotas; and finding ways to improve the effective of the implementation of the NFIDC Decision;
- **SPS and TBT Agreements** – urging international standard-setting bodies to ensure the participation of WTO Members at different levels of development and from all geographic regions in all phases of standards development;
- **Customs Valuation Agreement** – continuation of the work of the Customs Valuation Committee in examining and approving individually-requested extensions of the five-year delay period for implementation of the agreement;
- **Rules of Origin Agreement** – expediting work on the harmonization of non-preferential rules of origin so as to complete it by the 4th Ministerial Conference or the end of 2001;
- **SCM Agreement** – allowing Honduras to be included in the list of Annex VII(b) countries; requiring the SCM Committee to examine the possibility to establish export competitiveness (under Art. 27.5 and 27.6) on the basis of a period longer than 2 years; and requiring the SCM Committee to examine the issues of “aggregate and generalized remission of import duties and of the definition of ‘inputs consumed in the production process.’”

ANNEX III: THE MISSING IMPLEMENTATION-RELATED ISSUES TIRETS

**(Tirets from the 19 October 1999
Draft Ministerial Declaration Text [Job(99)/5868/Rev.1]
Not Reflected in the 2001 Implementation Decision or
in the Implementation Issues Compilation)**

Paragraph 21 of the 19 October 1999 draft ministerial declaration text (JOB(99)/5868/Rev.1)

(e) Textiles

- Any resulting growth rates lower than 6 per cent should be increased to that percentage.

(l) Services

- 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

Paragraph 22 of the 19 October 1999 draft ministerial declaration text (JOB(99)/5868/Rev.1)

(d) Sanitary and Phytosanitary Measures

- 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.

(e) Technical Barriers to Trade

- 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.

ANNEX IV: DEVELOPING COUNTRY SUBMISSIONS ON IMPLEMENTATION-RELATED ISSUES UNDER THE DOHA WORK PROGRAM*

Brazil – *IMPLEMENTATION-RELATED ISSUES*, WTO Doc. Ref. TN/RL/W/7, submitted to the Negotiating Group on Rules;

Brazil – *IMPLEMENTATION RELATED ISSUES REFERRED TO THE COMMITTEE BY MINISTERS*, WTO Doc. Ref. G/SCM/W/518, submitted to the Committee on Subsidies and Countervailing Measures;

Brazil – *IMPLEMENTATION RELATED ISSUES REFERRED TO THE COMMITTEE BY MINISTERS: TIRET 80*, WTO Doc. Ref. G/SCM/W/513 and Corr.1, submitted to the Committee on Subsidies and Countervailing Measures;

Brazil – *IMPLEMENTATION-RELATED ISSUES REFERRED TO THE COMMITTEE ON ANTI-DUMPING PRACTICES AND ITS WORKING GROUP ON IMPLEMENTATION*, WTO Doc. Ref. G/ADP/AHG/W/127, submitted to the Committee on Anti-Dumping Practices Ad Hoc Group on Implementation;

Ecuador – *IMPLEMENTATION-RELATED ISSUES AND CONCERNS: MEANING TO BE GIVEN TO THE PHRASE "SUBSTANTIAL INTEREST" IN PARAGRAPH 2(d) OF ARTICLE XIII OF GATT 1994*, WTO Doc. Ref. G/MA/W/32, submitted to the Committee on Market Access;

Hong Kong, China (on behalf of the members of the ITCB) – *DOHA MINISTERIAL DECISION ON IMPLEMENTATION-RELATED ISSUES AND CONCERNS: CTG EXAMINATION OF PROPOSALS CONTAINED IN PARAGRAPHS 4.4 AND 4.5 RELATING TO THE AGREEMENT ON TEXTILES AND CLOTHING*, WTO Doc. Ref. G/C/W/368, submitted to the Council for Trade in Goods;

Hong Kong (China) – *DOHA MINISTERIAL DECISION ON IMPLEMENTATION-RELATED ISSUES AND CONCERNS: CTG EXAMINATION OF PROPOSALS CONTAINED IN PARAGRAPHS 4.4 AND 4.5 RELATING TO THE AGREEMENT ON TEXTILES AND CLOTHING*, WTO Doc. Ref. G/C/W/404, submitted to the Council for Trade in Goods;

India – *PROPOSALS ON IMPLEMENTATION-RELATED ISSUES AND CONCERNS – AGREEMENT ON SUBSIDIES AND COUNTERVAILING MEASURES/ANTI-DUMPING AGREEMENT*, WTO Doc. Ref. TN/RL/W/4, submitted to the Negotiating Group on Rules;

India – *STATEMENT ON IMPLEMENTATION-RELATED ISSUES TO THE BOP COMMITTEE*, WTO Doc. Ref. WT/BOP/R/61, submitted to the BOP Committee;

India – *SECOND SUBMISSION OF INDIA (ANTI-DUMPING AGREEMENT)*, WTO Doc. Ref. TN/RL/W/26, submitted to the Negotiating Group on Rules;

India – *IMPLEMENTATION OF DOHA MINISTERIAL DECISION CONCERNING EXCHANGE OF INFORMATION UNDER THE CUSTOMS VALUATION AGREEMENT*, WTO Doc. Ref. G/VAL/W/102, submitted to the Committee on Customs Valuation;

India – *SPECIAL AND DIFFERENTIAL TREATMENT PROVISIONS*, WTO Doc. Ref. TN/CTD/W/6, submitted to the Committee on Trade and Development Special Session;

India – *IMPLEMENTATION-RELATED ISSUES REFERRED TO THE COMMITTEE ON ANTI-DUMPING PRACTICES AND ITS WORKING GROUP ON IMPLEMENTATION*, WTO Doc. Ref. G/ADP/AHG/W/128, submitted to the Committee on Anti-Dumping Practices Ad Hoc Group on Implementation;

India – *PARAGRAPH 12 OF THE DOHA MINISTERIAL DECLARATION: IMPLEMENTATION-RELATED ISSUES*, WTO Doc. Ref. G/VAL/W/101, submitted to the Committee on Customs Valuation;

* This list may not be complete. Only derestricted documents obtained from the WTO website for the period 1 January to 14 November 2002 are included.

Indonesia – *IMPLEMENTATION-RELATED ISSUES REFERRED TO THE COMMITTEE ON ANTI-DUMPING PRACTICES AND ITS WORKING GROUP ON IMPLEMENTATION*, WTO Doc. Ref. G/ADP/AHG/W/126, submitted to the Committee on Anti-Dumping Practices Ad Hoc Group on Implementation;

Pakistan – *DOHA MINISTERIAL DECISION ON IMPLEMENTATION-RELATED ISSUES AND CONCERNS: CTG EXAMINATION OF PROPOSALS CONTAINED IN PARAGRAPHS 4.4 AND 4.5 RELATING TO THE AGREEMENT ON TEXTILES AND CLOTHING*, WTO Doc. Ref. G/C/W/405, submitted to the Council for Trade in Goods;

Paraguay – *ORGANIZATION OF WORK (OF THE CTD SPECIAL SESSIONS ON SPECIAL AND DIFFERENTIAL TREATMENT)*, WTO Doc. Ref. TN/CTD/W/15, submitted to the Committee on Trade and Development Special Session;

Saint Lucia – *IMPLEMENTATION-RELATED ISSUES AND CONCERNS: MEANING TO BE GIVEN TO THE PHRASE “SUBSTANTIAL INTEREST” IN PARAGRAPH 2(D) OF ARTICLE XIII OF GATT 1994*, WTO Doc. Ref. G/MA/W/30 and G/MA/W/30/Add.1, submitted to the Committee on Market Access;

Uganda (on behalf of Least-Developed Countries) – *MECHANISM FOR ENSURING THE MONITORING AND FULL IMPLEMENTATION OF THE OBLIGATIONS UNDER ARTICLE 66.2 OF THE TRIPS AGREEMENT IN ACCORDANCE WITH PARAGRAPH 11.2 OF THE DOHA DECISION ON IMPLEMENTATION-RELATED ISSUES AND CONCERNS*, WTO Doc. Ref. IP/C/W/357, submitted to the TRIPS Council;

Argentina, Bolivia, Brazil, Colombia, Cuba, Ecuador, Egypt, India, Kenya, Malaysia, Pakistan, Peru, Sri Lanka and Venezuela – *NON-VIOLATION AND SITUATION NULLIFICATION OR IMPAIRMENT UNDER THE TRIPS AGREEMENT*, WTO Doc. Ref. IP/C/W/385, submitted to the TRIPS Council;

Bangladesh, Cuba, Egypt, Jordan, Kenya and Sri Lanka (behalf of the NFIDCs and LDC Group of the WTO) – *PROPOSAL FOR FOLLOW-UP TO THE RECOMMENDATION OF THE INTER-AGENCY PANEL ON EXAMINING THE FEASIBILITY OF THE REVOLVING FUND OPERATING AS AN EX-ANTE FINANCING MECHANISM*, WTO Doc. Ref. G/AG/W/58, submitted to the Committee on Agriculture;

Bolivia, Brazil, Cuba, China, Dominican Republic, Ecuador, India, Indonesia, Pakistan, Peru, Sri Lanka, Thailand and Venezuela – *PARAGRAPH 6 OF THE MINISTERIAL DECLARATION ON THE TRIPS AGREEMENT AND PUBLIC HEALTH*, WTO Doc. Ref. IP/C/W/355, submitted to the TRIPS Council;

Brazil, China, Cuba, Dominican Republic, Ecuador, India, Pakistan, Thailand, Venezuela, Zambia, Zimbabwe – *THE RELATIONSHIP BETWEEN THE TRIPS AGREEMENT AND THE CONVENTION ON BIOLOGICAL DIVERSITY AND THE PROTECTION OF TRADITIONAL KNOWLEDGE*, WTO Doc. Ref. IP/C/W/356, submitted to the TRIPS Council;

Brazil and India – *THE MANDATED REVIEW OF THE TRIMS AGREEMENT PARAGRAPH 12(B) OF THE DOHA MINISTERIAL DECLARATION IMPLEMENTATION-RELATED ISSUES AND CONCERNS (TIRET 40)*, WTO Doc. Ref. G/C/W/428 and G/TRIMS/W/25, submitted to the Council for Trade in Goods and the Committee on Trade-Related Investment Measures; and

Cuba, Dominican Republic, Egypt, Honduras, India, Indonesia, Kenya, Mauritius, Pakistan, Sri Lanka, Tanzania and Zimbabwe – *SPECIAL AND DIFFERENTIAL TREATMENT PROVISIONS*, WTO Doc. Ref. TN/CTD/W/2, submitted to the Committee on Trade and Development Special Session



Chemin du Champ d'Anier 17
Case postale 228, 1211 Geneva 19
Switzerland

Telephone : (41 22) 791 8050

Fax : (41 22) 798 8531

Email : south@southcentre.org

Website:

<http://www.southcentre.org>