

**IMPLEMENTATION-RELATED ISSUES AND CONCERNS:
THE WAY FORWARD AFTER CUNCUN***

TABLE OF CONTENTS

I. INTRODUCTION	1
II. ADDRESSING IMPLEMENTATION ISSUES IN THE POST-DOHA PERIOD (JANUARY 2002 TO JULY 2003)	4
A. Implementation Issues Referred to Regular WTO Bodies by the Doha Implementation Decision and Reporting to the General Council	4
B. Outstanding Implementation Issues Referred to WTO Bodies With Negotiating Mandates and Reporting to the Trade Negotiations Committee Under Paragraph 12(a) DMD	5
C. Outstanding Implementation Issues Referred to Regular WTO Bodies and Reporting to the Trade Negotiations Committee Under Paragraph 12(b) DMD	5
III. ADDRESSING IMPLEMENTATION ISSUES FOR THE CUNCUN MINISTERIAL CONFERENCE (JULY TO SEPTEMBER 2003)	8
A. Debating the Implementation Issues Paragraph in the Draft Cancun Ministerial Text	8
B. Addressing Implementation Issues During the Cancun Ministerial Conference	12
IV. ADDRESSING IMPLEMENTATION ISSUES IN THE POST-CUNCUN PERIOD (OCTOBER 2003 TO FEBRUARY 2004)	14
V. THE WAY FORWARD FOR IMPLEMENTATION ISSUES: A NEW NEGOTIATING GROUP? ..	17
VI. RECOMMENDATIONS AND CONCLUSION	19
ANNEX I: OVERVIEW MATRIX OF THE CURRENT STATUS OF IMPLEMENTATION-RELATED ISSUES	22

I. INTRODUCTION

1. This paper looks primarily at the history of implementation issues in the WTO since the 2001 Doha Ministerial Conference, and at some of the major initiatives that developing countries have suggested in order to push the negotiations on implementation issues forward. In the concluding section, it suggests some

* This paper is prepared by South Centre staff on the basis of WTO documents and other documentary sources available in the public domain. The contents of this paper do not purport to represent nor prejudice in any way the views or positions of any WTO Member cited or quoted herein. All errors or omissions are the sole responsibility of the author.

options that developing countries might wish to consider as they strategize about the way forward for implementation issues.

2. Negotiations on implementation-related issues at the WTO from Doha up to and after Cancun have not resulted, for the most part, in any positive progress. The resolution of implementation issues has been on the agenda of most developing countries ever since the early 1980s up to the present. They were first raised in order to address the difficulties and imbalances that developing countries were already facing in the global trading system by the 1970s as well as in terms of the implementation of the GATT during the November 1982 GATT (1947) ministerial meeting. At that meeting, GATT Contracting Parties agreed in a ministerial declaration¹ to a “GATT 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.”² 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 Clause³ and Part IV of the GATT 1947,⁴ and to improve market access for products of particular export interest to developing countries such as agricultural products, tropical products, and textiles and clothing.
3. Implementation issues also continued to be raised in the run-up to the Uruguay Round, such that the 1986 Punta del Este Declaration that launched the Uruguay Round reflected some of the implementation issues previously raised by developing countries as major elements for the negotiations. These included:
 - the application of special and differential treatment and the operationalization of Part IV of the GATT 1947 and the 1979 Enabling Clause;⁵
 - the standstill and rollback of protectionist measures;⁶ 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 were (and still are) sectors of major export interest to developing

¹ 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.

² Chakravarthi Raghavan, *South-North Development Monitor (SUNS)*, 20 Nov. 1982, at <http://www.sunsonline.org>.

³ 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.

⁴ GATT, *1982 Ministerial Declaration*, supra note 1, at 7.

⁵ Part I:B(iv), (v), (vi), and (vii), *GATT Punta del Este Declaration*, Special Session of the GATT Contracting Parties, 20 September 1986, at http://www.sice.oas.org/trade/Punta_e.asp.

⁶ *Id.*, Part I:C.

countries and the liberalization of which were also major implementation issues.⁷

4. In the context of the WTO after its establishment on 1 January 1995, implementation issues were accorded prominent mention by the WTO Ministerial Conference in 1996 and 1998. As a result of pressure from developing countries, a negotiating mandate was finally put in place for implementation issues pursuant to Paragraph 12 of the Doha Ministerial Declaration (DMD) and the Doha Decision on Implementation-Related Issues and Concerns⁸ (hereafter “Implementation Decision”) in November 2001.
5. Implementation issues under the Doha mandate can be classified into three categories:⁹
 - (i) those implementation issues referred to various WTO bodies under the Doha Implementation Decision;
 - (ii) those outstanding implementation issues listed in the Compilation attached to the Doha Implementation Decision under Paragraph 13 thereof and referred to various WTO bodies with negotiating mandates operating under the TNC pursuant to Paragraph 12(a) DMD; and
 - (iii) those outstanding implementation issues listed in the Compilation attached to the Doha Implementation Decision under Paragraph 13 thereof and referred to various regular WTO bodies but reporting to the TNC pursuant to Paragraph 12(b) DMD.
6. Thus, over the course of 2002, pursuant to the Implementation Decision and Paragraph 12(a) and (b) of the DMD, implementation issues were addressed and looked at in various WTO bodies.
7. For the most part, however, by the end of 2002 when these WTO bodies were supposed to submit their reports to the General Council and to the Trade Negotiations Committee (TNC), they were not able to develop any consensus agreement among Members that would resolve the issues that they were addressing. Of the almost 90 issues touched upon by the Implementation Decision and the Compilation of Outstanding Implementation Issues¹⁰ (hereafter “Compilation”), only five issues have been definitively resolved,¹¹ and one issue

⁷ Id., Part I:D.

⁸ WTO, *Ministerial Conference: Decision on Implementation-Related Issues and Concerns*, WT/MIN(01)/17, 20 November 2001.

⁹ See Annex I.

¹⁰ WTO, *Secretariat: Compilation of Outstanding Implementation Issues Raised by Members – Revision*, JOB(01)/152/Rev.1, 27 October 2001.

¹¹ These include agreements relating to information requirements under Arts. 5.8 of the Anti-Dumping Agreement; notification requirements under Art. 18.6 of the Anti-Dumping Agreement; establishment of a monitoring mechanism on the implementation of TRIPS Art. 66.2; equivalence of SPS measures; and prior notification of SPS measures. (See Annex I).

was settled as a result of non-action by Members.¹² In addition, the great majority of the transition period extension requests under the SCM Agreement were approved.¹³ By the beginning of 2003, Members were struggling with the issue of how to move the negotiations on implementation issues forward from the stalemate that occurred in 2002.

II. ADDRESSING IMPLEMENTATION ISSUES IN THE POST-DOHA PERIOD (JANUARY 2002 TO JULY 2003)

A. Implementation Issues Referred to Regular WTO Bodies by the Doha Implementation Decision and Reporting to the General Council¹⁴

8. By the end of 2002, most of these issues had ended in a deadlock, with virtually no consensus on almost all of the issues under consideration in the various bodies. This situation continued for most of the early part of 2003, as General Council Chair Perez del Castillo undertook informal consultations with Members to try to move these issues forward.
9. However, during the 15 May 2003 meeting of the General Council, aware that progress had also not yet been made on implementation issues referred to various WTO bodies under the Doha Implementation Decision, India finally stated that with respect to the implementation issues on which no decision had been possible in the WTO bodies to which they had been referred under the Implementation Decision, it had two suggestions:

“First, Members could pool these issues with outstanding issues under paragraph 12(b) of the Doha Declaration so that the consultations by the TNC Chairman could deal with these issues as well. Second, Members should draw up a specific timetable for work on implementation issues up to Cancun, in order to ensure the maximum possible results before that Ministerial Conference.”¹⁵

10. India’s suggestions were supported by many developing countries, such as Tanzania, Cuba, Botswana (on behalf of the ACP), Kenya, Senegal, Zambia,

¹² This refers to the issue of the method to be used for calculating 1990 dollars for purposes of Annex VII(b) of the SCM Agreement. Since no Member submitted any alternative proposal for the methodology to be used, Paragraph 10.1 of the Implementation Decision took effect, which required Members to adopt the methodology specified in WTO Doc. No. G/SCM/38, Appendix 2, effective on 1 January 2003. (see Annex I).

¹³ Twenty-one out of 29 extension requests were approved by the Council for Trade in Goods upon the recommendation of the SCM Committee. (See Annex I).

¹⁴ See Annex I:A.

¹⁵ WTO, *General Council: Minutes of the Meeting of 15 May 2003*, WT/GC/M/80, 18 July 2003, para. 70.

Brazil, Indonesia, Uganda, Djibouti, Malaysia, Philippines, Barbados, Thailand, and Paraguay.¹⁶

B. Outstanding Implementation Issues Referred to WTO Bodies With Negotiating Mandates and Reporting to the Trade Negotiations Committee Under Paragraph 12(a) DMD¹⁷

11. None of the implementation issues listed in the Compilation and which were referred to various WTO negotiating bodies pursuant to Paragraph 12(a) DMD have been definitely resolved. These include issues that fall within the mandate of the agriculture negotiations, the services negotiations, and the negotiations on WTO rules.
12. In the case of the agriculture-related outstanding implementation issues assigned to the Committee on Agriculture in Special Session (CoASS), the negotiations on these issues have been subsumed as part of the negotiations relating to Amber Box disciplines and LDC-specific provisions. The stalemate that has occurred in the agriculture negotiations has therefore also affected any progress in the negotiations on the agriculture-related implementation issues in the CoASS.
13. The Council for Trade in Services in Special Session (CTSSS) was tasked, under Paragraph 12(a) DMD, to undertake an assessment of the GATS and to review the extent to which the objectives of Art. IV of the GATS has been met. However, since the start of the Doha mandate, there has not been any specific focus in the CTSSS negotiations on the GATS Art. IV review, and neither has the CTSSS undertaken a substantive and effective GATS assessment process to date.
14. There are also some outstanding implementation issues relating to anti-dumping and subsidies that, pursuant to Paragraph 12(a) DMD, fall within the scope of the WTO rules negotiations. Thus far, however, the Negotiating Group on Rules (NGR) have not yet undertaken any substantive negotiations, but rather has focused on identifying the issues that would be the subject of negotiations. Hence, there has not yet been any substantive progress made in the NGR in terms of effectively addressing the implementation issues within its remit.

C. Outstanding Implementation Issues Referred to Regular WTO Bodies and Reporting to the Trade Negotiations Committee Under Paragraph 12(b) DMD¹⁸

15. Most of the outstanding implementation issues referred to regular WTO bodies under Paragraph 12(b) DMD have also not been definitively resolved. This led to many developing countries over the course of 2003 pressing for the TNC to take

¹⁶ Id., various paragraphs.

¹⁷ See Annex I:B.1.

¹⁸ See Annex I:B.2.

greater role in addressing these issues and moving these forward to an early and satisfactory resolution.

16. During the 4-6 December 2002 meeting of the TNC, in reaction to the failure of Members to reach agreement on solutions on most of the implementation issues that they were dealing with under Paragraph 12(b) DMD, TNC Chair Supachai suggested that “the possible courses of action for any given issue included:
- resolving the issue;
 - agreeing that no further action was needed on the issue;
 - referring the issue to a negotiating body;
 - continuing work in the relevant subsidiary body under enhanced supervision by the TNC and with a clear deadline, perhaps June 2003; and
 - undertaking further work at the level of the TNC.”¹⁹

There was no consensus, however, on any of the options that he outlined.

17. However, in the early part of 2003, Paragraph 12(b) DMD implementation issues were being handled at the TNC-level by TNC Chair Supachai conducting informal consultations among Members with the assistance of the various WTO Deputy Director-Generals and the committee and council chairs whose bodies had been previously tasked with negotiations on the Paragraph 12(b) DMD issues. TNC Chair Supachai stressed, during the 4-5 February 2003 TNC meeting, that he believed that “all Members agreed that those bodies should not undertake further work on the paragraph 12(b) issues while his consultations were continuing.”²⁰
18. During the 4 March 2003 TNC meeting, TNC Chair Supachai reported that there was no consensus on how the Paragraph 12(b) DMD issues should be addressed – e.g. which of the five options he laid out in December 2002 should be taken up for each particular issue.²¹ TNC Chair Supachai then suggested a process to be followed for some of the issues while leaving the process to be followed for the other issues for subsequent discussion.²²
19. In response, Egypt reiterated the proposal that it made during the December 2002 TNC meeting that the TNC take charge of all outstanding implementation issues so that the TNC can “operationalize its supervisory role and provide the necessary guide to achieve progress on these issues.”²³ The TNC could do this, Egypt

¹⁹ WTO, *Trade Negotiations Committee: Minutes of the Meeting of 4-6 December 2002*, TN/C/M/5, 4 February 2003, para. 310.

²⁰ WTO, *Trade Negotiations Committee: Minutes of the Meeting of 4-5 February 2003*, TN/C/M/6, 20 March 2003, para. 153. Bulgaria, however, disputed this assertion. See *id.*, para. 157.

²¹ WTO, *Trade Negotiations Committee: Minutes of the Meeting of 4 March 2003*, TN/C/M/7, 29 April 2003, para. 113.

²² *Id.*, paras. 117 and 118.

²³ *Id.*, para. 120.

- suggested, through a dedicated session of the TNC.²⁴ India supported Egypt, stressing that it had “considerable discomfort with the idea of sending these issues back to the committees concerned ... Progress could be achieved very well within the TNC or through informal consultations under the Chairman’s leadership ... It would be better to try to focus on these issues, and then find a solution, in the TNC.”²⁵ In reaction, the European Community (EC) that it “was willing to discuss these issues at the level of the TNC ... in Dedicated Sessions of the TNC or under Friends of the Chair ...”²⁶ These suggestions to have the TNC handle implementation issues directly through a dedicated session or through a Friends of the TNC Chair process were also supported by other Members such as Cuba, Lesotho, Hungary, Bulgaria, and China, while those that were in favor of TNC Chair Supachai’s proposal were the United States, Malaysia, New Zealand, Australia, Norway, Chile, and Argentina.²⁷
20. During the 4 April 2003 meeting of the TNC, many developing countries – e.g. Philippines, Bangladesh (on behalf of LDCs), South Africa, Nigeria, Ecuador, Bulgaria, China, Barbados, Cuba, Colombia, and Venezuela – expressed their frustration at seeing implementation issues being effectively dropped from the agenda or called for a greater focus be given by the TNC to these issues.²⁸ At the 9 May 2003 TNC meeting, while TNC Chair Supachai stressed that he was continuing his consultations on implementation issues,²⁹ developing countries such as Nigeria, India, Brazil, Thailand, Cuba, Uganda, China, and Colombia, continued to stress the importance and priority that they place on having implementation issues be substantively addressed by the WTO Membership.³⁰
21. At an informal Heads of Delegation meeting on 14 May 2003, Members arrived at a procedural understanding that allowed TNC Chair Supachai to focus his consultations on the geographical indications issue in his capacity as the WTO Director-General.³¹ But it was not possible to reach agreement on the proposals arising from such consultations that he made at the 14-15 July 2003 meeting of the TNC.³² During the 23 July 2003 meeting of the General Council, TNC Chair Supachai stated that the informal consultations on implementation at the TNC-level that he had conducted had failed to have any results “due to procedural

²⁴ Id.

²⁵ Id., para. 124.

²⁶ Id., para. 128.

²⁷ Id., various paragraphs from pp. 22-33.

²⁸ WTO, *Trade Negotiations Committee: Minutes of the Meeting of 4 April 2003*, TN/C/M/8, 6 June 2003, various paragraphs.

²⁹ WTO, *Trade Negotiations Committee: Minutes of the Meeting of 9 May 2003*, TN/C/M/9, 24 July 2003, paras. 6 and 230.

³⁰ Id., various paragraphs.

³¹ WTO, *Trade Negotiations Committee: Report by the Chairman of the Trade Negotiations Committee to the General Council*, TN/C/3, 23 July 2003, para.54.

³² Id., para. 55.

difficulties related to the issue of the extension of the protection of geographical indications.”³³

III. ADDRESSING IMPLEMENTATION ISSUES FOR THE CANCUN MINISTERIAL CONFERENCE (JULY TO SEPTEMBER 2003)

22. Thus, by the middle of 2003, virtually all work on all non-resolved implementation issues in all three major categories above had bogged down in a stalemate, with Members continuing to have divergent views and the General Council and TNC Chairs’ efforts not bearing any fruit. The preparations for the Cancun Ministerial Conference continued to show evidence of the deadlock. It was during these preparations that some developing countries first broached the idea of establishing a new negotiating group on implementation issues under the auspices of the TNC, and pushed for such negotiations on implementation issues to be subject to a clear and early deadline.

A. Debating the Implementation Issues Paragraph in the Draft Cancun Ministerial Text

23. The first (18 July 2003) version of the draft Cancun Ministerial Declaration stated that:

“12. We note that, while progress has been made under the mandate we gave at Doha concerning Implementation-Related Issues and Concerns, a number of the issues and concerns raised in this context remain outstanding. We instruct the WTO bodies concerned to redouble their efforts to resolve these issues and instruct the General Council to report on progress to our next Session.”³⁴

24. During the General Council’s discussion of the 18 July 2003 draft text during its 24-25 July 2003 meeting, many developing countries stated their frustration at the continued lack of substantive progress on implementation issues and suggested that the draft Cancun ministerial text should clearly recognize such failure.³⁵ India, for example, stated that “there was now the impression that Members were losing their way in addressing this important set of issues. The management of implementation issues – the way they had been tossed among the TNC, regular

³³ Id., para. 53. According to Bulgaria, reacting to TNC Chair Supachai’s report, the procedural difficulties “probably referred to the position of the opponents of extension” considering that none of the proponents for extension had made progress on the other implementation issues dependent on progress in GI extension. See WT/GC/M/81, 28 August 2003, para. 300.

³⁴ WTO, *Secretariat: Draft Cancun Ministerial Text*, JOB(03/150, 18 July 2003, para. 12.

³⁵ WTO, *General Council: Minutes of the Meeting of 24-25 July 2003*, WT/GC/M/81, 28 August 2003, various paragraphs.

bodies and Friends of the Chair – failed to give his delegation confidence in the ability of the system to deliver meaningful results. There was a need for some solutions before Cancun and for a clear way forward thereafter. This should cover all issues under paragraph 12 of the Doha Declaration as well as residual issues arising from the Decision on Implementation-Related Issues and Concerns. ... Paragraph 12 of the draft Ministerial text should reflect clearly the current state of play on all aspects of implementation issues and should suggest an effective way to move forward with a clear deadline.”³⁶ Indonesia stressed that it wanted to have “a prompt solution on implementation issues before Cancun.”³⁷ Members that were pushing for the extension of geographical indications to products other than wines and spirits also agitated for the draft ministerial text to make specific mention of such issue as part of implementation issues.³⁸

25. In a submission dated 19 August 2003, Cuba, Egypt, India, Indonesia, Jamaica, Kenya, Malaysia, Pakistan, Sri Lanka, Tanzania, Uganda, and Zimbabwe suggested that the text of Paragraph 12 of the draft Cancun text be amended to read:

“We reaffirm that negotiations on outstanding implementation issues shall be an integral part of the Doha Work Programme. Despite the mandate from the Doha Ministerial that implementation issues were of ‘utmost importance’ we note there has not been much progress. We direct the negotiating groups to address, as a matter of priority, implementation issues being dealt with by them. We direct the TNC to set up a negotiating group under its auspices to address all the remaining outstanding implementation issues contained in Job(01)/152/Rev.1 as a matter of priority and to put forward decisions for adoption by March, 2004. We further instruct that the General Council monitors and addresses the outstanding issues arising from the Decision on Implementation-Related Issues and Concerns with a view to adopt decisions by March 2004. The agreement reached at an early stage in these negotiations shall be treated in accordance with the provisions of paragraph 47 of the Doha Ministerial Declaration.”³⁹

26. The submission above was the first formal submission from developing countries for the creation of a new negotiating group operating under the TNC and specifically mandated to address implementation issues. The submission

³⁶ Id., para. 262.

³⁷ Id., para. 339.

³⁸ Id., various paragraphs.

³⁹ WTO, *Cuba, Egypt, India, Indonesia, Jamaica, Kenya, Malaysia, Pakistan, Sri Lanka, Tanzania, Uganda, and Zimbabwe: Paragraph 12 of the Draft Ministerial Text (JOB(03)/150) Drafting Suggestions*, JOB(03)/179, 28 August 2003.

- essentially sought to: (i) require the highest-level political bodies of the WTO (i.e. the TNC and the General Council) to prioritize the early and effective resolution of implementation issues falling within their respective areas; (ii) specify a deadline (i.e. March 2004) for such resolution; and (iii) have any agreements reached on these issues be immediately implemented on a “provisional or definitive basis” under Paragraph 47 DMD.
27. As a result of the discussions in the July 2003 General Council meeting, the developing countries’ submission above, and the subsequent informal consultations conducted by General Council Chair Perez del Castillo and the Director-General thereafter among Members, the revised 24 August 2003 text⁴⁰ of the draft Cancun Ministerial Declaration reflected a substantial revision of the original text of Paragraph 12, thus:

“12. We note that, while some progress has been made under the mandates we gave at Doha concerning implementation-related issues and concerns, a number of the issues and concerns raised in this context remain outstanding. We reaffirm the mandates we gave in paragraph 12 of our Doha Ministerial Declaration and our Decision on Implementation-Related Issues and Concerns, and we renew our determination to find appropriate solutions to these issues. We instruct the Trade Negotiations Committee, negotiating bodies, and other WTO bodies concerned to redouble their efforts to find appropriate solutions as a priority, and we request the Director-General to continue the consultations he has undertaken on certain issues, including issues related to the extension of the protection of geographical indications provided for in Article 23 of the TRIPS Agreement to products other than wines and spirits. The General Council shall review progress and take any appropriate action no later than [...]”

28. The revised draft text on Paragraph 12 did not, however, reflect the developing countries’ suggestion for the creation of a new negotiating group on implementation issues under the TNC. During the General Council’s meeting on 25, 26, and 30 August 2003, India stressed that “it was necessary to put in place a suitable mechanism to address all the remaining outstanding implementation issues and to report by a specified deadline, with recommendations for decision.”⁴¹ This suggestion was supported by other developing countries such as Bulgaria, Indonesia, Ecuador, Kenya,⁴² while other developing countries such as

⁴⁰ WTO, *Secretariat: Draft Cancun Ministerial Text -- Revision*, JOB(03/150/Rev.1, 24 August 2003.

⁴¹ WTO, *General Council: Minutes of the Meeting of 25, 26, and 30 August 2003*, WT/GC/M/82, 13 November 2003, para. 154.

⁴² *Id.*, paras. 146, 161, 167, and 192. However, Bulgaria also pushed hard for the inclusion of language on GIs extension, while Indonesia and Ecuador opposed GIs extension.

- Barbados and Cuba⁴³ reiterated the importance that they attached to an early and effective resolution of implementation issues. The EC also supported the proposal to create a new negotiating group on implementation issues (as well as supporting GIs extension negotiations).⁴⁴
29. Some other countries, on the other hand, such as Argentina, Australia, and Guatemala, stressed that the original formulation of Paragraph 12 should be retained, in reaction to the explicit reference to GIs extension in the revised version.⁴⁵ Brazil and Chinese Taipei also questioned the singling out of GIs extension in the revised Paragraph 12.⁴⁶ The US, however, supported the 24 August 2003 revised version of Paragraph 12.⁴⁷
30. Despite many suggestions and much criticism from Members at that meeting regarding various aspects of the 24 August 2003 revised draft Cancun Ministerial Declaration, the Chair of the General Council declared that “the difficult exercise of reconciling ... divergent positions, endeavouring to incorporate some and necessarily leaving out others, would increase the level of complexity of this work and would create a serious risk of making the work of Ministers in Cancun more difficult ... He believed that neither Members nor he as Chairman of the General Council should assume this risk. Therefore, he did not intend to continue revising the text and ... he had no other possibility than to submit the text to Ministers under his own responsibility ... It was therefore his intention to submit this text to Ministers on his own responsibility and based on his task as Chairman of the General Council.” The Chair also noted that he intended to also submit a letter accompanying the draft text to be submitted to Ministers in which “he would indicate clearly that the text did not represent an agreed text in any of its sections, or as a whole, and that it was being presented without prejudice to the position any country might have on any of the issues mentioned in the text. He would also indicate clearly that the text did not reflect many of the proposals presented by Members.”⁴⁸

⁴³ Id., paras. 260 and 266.

⁴⁴ Id., at 132. Switzerland also supported GIs extension. Id., at 165.

⁴⁵ Id., at 129, 138, and 158.

⁴⁶ Id., at 146 and 165.

⁴⁷ Id., at 143.

⁴⁸ Id., paras. 290 and 291. On this note, Brazil stressed that it “neither approved nor endorsed the text as the basis for Ministers to discuss in Cancun” and that “there were other proposals on that table that should be at the disposal of Ministers.” Id., para. 292 and 293. Brazil’s statement was supported by India. Id., para. 296. Some developed countries, on the other hand, such as Japan, Norway, Canada, the EC, and the US, saw the Chair’s draft text as the basis, though not endorsed by the General Council, on which Ministers at Cancun could begin their work. Id., paras. 295, 299, 302-305, and 308-310. In closing, the Chair reiterated that “in his opinion the draft text was an adequate and manageable basis for Ministers to continue the work in Cancun.” Id., para. 324.

B. Addressing Implementation Issues During the Cancun Ministerial Conference

31. During the 10-14 September 2003 meeting of the Ministerial Conference in Cancun, the fate of implementation issues (in general) were discussed in the “Development Issues” working group (facilitated by Minister Mukhisa Kituyi of Kenya). This working group was one of the five set up by Minister Derbez of Mexico (as the Conference Chair). The other four working groups were Agriculture (facilitated by Singapore Minister George Yeo Yong-Bon), Non-agricultural market access (NAMA) (facilitated by Hong Kong Ministers Henry Tang Ying-yen) and Singapore issues⁴⁹ (facilitated by Canadian Minister Pierre Pettigrew) and “Other Issues” (facilitated by Guyana Minister Clement Rohee). An additional negotiating group, facilitated by WTO Director-General Supachai, was created in the evening of the first day of the conference to deal with the sectoral initiative on cotton issue raised by some West and Central African cotton-producing states.
32. The Ministers’ negotiations in the “Development Issues” working group covered special and differential treatment (S&D); implementation; technical assistance; LDCs; commodity issues; small economies; trade, debt and finance; and trade and technology transfer. Many developing countries raised proposals with respect to changes in the 24 August draft text, including, *inter alia*, the creation of a negotiating group to focus on implementation issues. This particular proposal was opposed by many developed countries (although this was supported by the EC). While differences were narrowed with respect to the text on LDCs, small economies, and commodity policy, by the third day (12 September) of the conference, significant gaps still remained with respect to how to treat issues relating to implementation, S&D, and the extension of protection of geographical indications to products other than wines and spirits. In the end, with respect to implementation issues, the facilitator could not report any consensus on how to address these in the draft ministerial text.
33. On 13 September 2003, Conference Chair Derbez issued his Chair’s draft ministerial text (the “Derbez text”). Implementation issues became Paragraph 13 of the Derbez text, which simply reproduced, word for word, Paragraph 12 of the 24 August draft text of the Ministerial Declaration prepared by General Council Chair Perez del Castillo.

⁴⁹ “Singapore issues” refer to the proposed negotiations for WTO agreements that would fall within the scope of the WTO’s existing dispute settlement mechanism and which would: (i) curb the ability of governments to regulate and direct foreign investments (*trade and investment*); (ii) prevent governments from supporting domestic enterprises to enable them to compete effectively against foreign competitors (*trade and competition policy*); (iii) require governments to undertake binding obligations for costly changes in government procurement procedures to eliminate any advantages that local firms might have in the bidding process and open up bidding procedures to foreign scrutiny and possible disputes (*transparency in government procurement*); and (iv) require governments to undertake binding obligations to effect costly changes in domestic procedures for the release of traded goods (*trade facilitation*).

34. In an informal meeting of the Heads of Delegations (HOD) beginning at 7 pm of 13 September and concluding at 1 am of 14 September, most ministers criticized various parts of the revised draft text. For most developing countries, the major points of criticism revolved around:
- (i) the lack of ambition seen in the text with respect to the elimination of agricultural subsidies vis-à-vis the commitments on market access that would be imposed on developing countries;
 - (ii) the explicit launch of negotiations on transparency in government procurement, trade facilitation, and trade and investment, and the acceleration of the process for launching negotiations on trade and competition policy, even though a majority of Members had expressed their opposition to negotiations on all four issues;
 - (iii) the high level of ambition seen in the text on NAMA with respect to the tariff cutting formula used and the extent of commitments to sectoral initiatives.
35. In addition, African countries criticized the revised text for not reflecting their proposal to phase out cotton subsidies and for the provision of transitional compensation to African cotton producers during such phase out, in favor of adopting the US approach to linking the elimination of cotton subsidies to non-cotton-related issues such as trade in textiles and synthetic fibers. Finally, many African and Caribbean countries said that too little ambition was reflected in the revised draft text in terms of operationalizing special and differential treatment. There was also some disagreement with the idea of institutionalizing the invitation extended to selected MEAs, UNEP, and UNCTAD to participate as “invitees” in the negotiations being conducted in the special sessions of the CTE.
36. Following the close of the informal HOD that ran from 7 pm, 13 September, to 1 am, 14 September, a small “green room” meeting attended by nine ministers (from the US, EU, Mexico, Brazil, China, India, Malaysia, Kenya, and South Africa) was convened by the Conference Chair from 1 to 3 am, 14 September, to discuss Singapore issues and try to move the opposing views closer together. However, no consensus was reached. Then for virtually the entire morning and early afternoon of 14 September (from around 8.30 am to 1.30 pm), a bigger “green room” meeting attended by around 30 ministers (including the US, EC, Brazil, China, India, Mexico, Malaysia, Kenya, Philippines, South Africa, Botswana, Bangladesh, Indonesia, Canada, Japan, Korea, Australia, Switzerland, and several others) was held at the WTO Secretariat’s offices in the Convention Centre. The meeting was chaired by Conference Chair Derbez and the discussions focused on how to deal with the text’s paragraphs on Singapore issues. No consensus was again reached, and this led Conference Chair Derbez to conclude that without such consensus, there could not be consensus on any of the other issues – i.e. agriculture, NAMA, trade and environment, implementation, special and differential treatment, cotton – that still remained on the Conference’s agenda

to be discussed. He then decided to close the “green room” meeting and to also close the Conference without any agreement in the form of an agreed-upon Ministerial Declaration. The “green room” meeting adjourned at about 2.30 pm, 14 September 2003.

37. The final informal meeting of the HOD was finally convened at around 4 pm of 14 September 2003 so that Minister Derbez could informally report to the other heads of delegation the results of the “green room” process and informally present a six-paragraph Ministerial Statement that he had prepared to be submitted to the formal plenary of the Conference for adoption. Shortly thereafter, at around 5.30 pm, the formal closing plenary session of the Conference was convened.
38. The 6-paragraph Ministerial Statement prepared by Minister Derbez was formally approved by the Conference in plenary session at around 6 pm.⁵⁰ It instructed Members’ officials “to continue working on outstanding issues with a renewed sense of urgency and purpose and taking fully into account all the views we have expressed in this Conference” and called for the convening of a General Council meeting at senior officials’ level no later than 15 December 2003 to take any further necessary action “to move towards a successful and timely conclusion of the negotiations.”⁵¹ More importantly, the Cancun Ministerial Statement stated that Ministers reaffirmed “all our Doha Declarations and Decisions and recommit ourselves to working to implement them fully and faithfully.”⁵² No decisions were taken by the Ministerial Conference with respect to any of the issues that had been put before it at the start. Even Hong Kong’s offer to host the next session of the Ministerial Conference was not discussed and agreed upon.⁵³

IV. ADDRESSING IMPLEMENTATION ISSUES IN THE POST-CANCUN PERIOD (OCTOBER 2003 TO FEBRUARY 2004)

39. As far as implementation issues are concerned, therefore, the Cancun Ministerial Conference ended without resulting in any new mandate for the creation of a new negotiating group, operating under the TNC, to focus on these issues as a matter of priority and with a specific deadline. It can be said, however, that the Doha mandates with respect to implementation issues continue to stand, insofar as they have been reaffirmed by the Ministerial Conference in its Cancun Ministerial Statement. But the question that existed with respect to implementation issues before the Cancun Ministerial Conference continues to persist thereafter – i.e. how should implementation issues be dealt with and addressed, both substantively

⁵⁰ See WTO, *Ministerial Conference: Cancun Ministerial Statement*, WT/MIN(03)/20, 23 September 2003.

⁵¹ *Id.*, para. 4.

⁵² *Id.*, para. 6.

⁵³ Hong Kong’s offer to host the Sixth Session of the Ministerial Conference was subsequently accepted by the General Council during its meeting on 21 October 2003. See WTO, *General Council: Minutes of the Meeting of 21 October 2003*, WT/GC/M/83, 17 November 2003, paras. 18 and 19.

and procedurally, by Members in view of the stalemate that has ensued among Members on these issues since the end of 2002?

40. At the 14 October 2003 informal meeting of the General Council in Geneva, the work of all negotiating bodies operating under the TNC, with the exception of the DSU negotiations, was suspended, although General Council Chair Perez del Castillo, together with WTO Director-General Supachai, would undertake informal consultations in the key negotiating areas during the period that these negotiating bodies' work would be suspended.⁵⁴ At the 21 October 2003 regular meeting of the General Council, Members agreed that the chairpersons of the various WTO bodies under the TNC, however, were to continue in office until the first meeting in 2004 of the General Council.⁵⁵ However, while General Council Chair Perez del Castillo had stated that he would focus his informal consultations on the "key negotiating areas", those areas were limited only to the Singapore issues, agriculture, NAMA, and cotton.⁵⁶
41. The 15-16 December 2003 meeting of the General Council continued to show no real changes in the positions of Members, to the extent that General Council Chair Perez del Castillo was moved to state that he "did not see at this meeting the closing of the gap between expressions of flexibility, commitment and engagement and a translation of these into new negotiating positions that would allow us to look for common ground or to accommodate the position of others."⁵⁷ On the other hand, there was "a willingness to restart the work of the negotiating groups as well as other bodies which have to deal with the Doha agenda, on the understanding that restarting this work does not in any way mean losing an overview of the process or a sense of the horizontal integration of issues."⁵⁸ During this meeting of the General Council, some developing countries once again reiterated that implementation issues needed to be addressed and were of

⁵⁴ Id., para. 10.

⁵⁵ Id., para. 14.

⁵⁶ See e.g. Kanaga Raja, *WTO General Council Chair Reports on his first consultations on four key issues, and starts second round*, South-North Development Monitor (SUNS), 19 November 2003, at <http://www.sunsonline.org>.

⁵⁷ WTO, *Closing Remarks of the General Council Chair at the General Council Meeting of 15-16 December 2003*, at http://www.wto.org/english/news_e/news03_e/stat_gc_chair_16dec03_e.htm. See also Richard Waddington, *World trade talks struggle as deadline looms*, Reuters News Service, 2 December 2003; ICTSD, *Doha Round: Talks Stall, Negotiating Groups Resume in 2004*, 7:21 BRIDGES Weekly Trade News Digest, 11 December 2003, at <http://www.ictsd.org>; Martin Khor, *WTO General Council convenes, with little progress and wide gaps*, TWN InfoService on WTO Issues, 15 December 2003, at <http://www.twinside.org.sg>; Martin Khor, *General Council meeting ends with no breakthrough*, TWN InfoService on WTO Issues, 17 December 2003, at <http://www.twinside.org.sg>; Alexandra Strickner, *Trade Talks remain stalled as major powers show no flexibility, Trade negotiating bodies to be reestablished early next year*, TIP/IATP, 18 December 2003, at <http://www.iatp.org>; *WTO Members agree to resume round; decision on deadline by summer*, Inside US Trade, 19 December 2003, at <http://www.insidetrade.com>;

⁵⁸ Id.

paramount importance to them.⁵⁹ India and Kenya reiterated the call for the creation of a new negotiating group for implementation issues under the auspices of the TNC or the General Council.⁶⁰

42. Work on implementation issues continued to remain at a standstill going into 2004, as General Council Chair Perez del Castillo and WTO Director-General Supachai focused their energies on informal consultations on the other key issues, as well as on the selection of the new chairpersons for the various WTO bodies. On 11 February 2004, at its first meeting for 2004, the General Council appointed the chairpersons for the various WTO bodies, to wit:⁶¹

Chairpersons of Regular WTO Bodies — 2004

General Council	Amb. Shotaro OSHIMA (Japan)
Dispute Settlement Body	Amb. Amina MOHAMED (Kenya)
Trade Policy Review Body	Amb. Puangrat ASAVAPISIT (Thailand)
Council for Trade in Goods	Amb. Alfredo CHIARADIA (Argentina)
Council for Trade in Services	Amb. Peter BRNO (Slovak Republic)
Council for TRIPS	Mr. Joshua LAW (Hong Kong, China)
Committee on Trade and Environment	Amb. Naéla GABR (Egypt)
Committee on Trade and Development	Amb. Trevor CLARKE (Barbados)
Committee on Balance-of Payments Restrictions	Mr. Giulio TONINI (Italy)
Committee on Regional Trade Agreements	Amb. Ronald SABORÍO SOTO (Costa Rica)
Committee on Budget, Finance and Administration	Amb. Henrik Rée IVERSEN (Denmark)
Working Group on Trade and Transfer of Technology	Amb. Jaynarain MEETOO (Mauritius)
Working Group on Trade, Debt and Finance	Amb. Péter BALÁS (Hungary)

Chairpersons of WTO Bodies

Established under the Trade Negotiations Committee — 2004

(To serve until the 6th Session of the Ministerial Conference – date to be determined)

Negotiating Group on Market Access	Amb. Stefán JÓHANNESON (Iceland)
Negotiating Group on Rules	Amb. Eduardo PÉREZ MOTTA (Mexico)
Special Session of the Council for Trade in Services	Amb. Alejandro JARA (Chile)
Special Session of the Council for TRIPS	Amb. Manzoor AHMAD (Pakistan)
Special Session of the Dispute Settlement Body	Amb. David SPENCER (Australia)
Special Session of the Committee on Agriculture	Amb. Tim GROSER (New Zealand)
Special Session of the Committee on Trade and Environment	Amb. Toufiq ALI (Bangladesh)
Special Session of the Committee on Trade and	Mr. Faizel ISMAIL (South Africa)

⁵⁹ These included Botswana (on behalf of the Africa, Caribbean, and Pacific Group), Nigeria, India, and Kenya. See e.g. Martin Khor, *General Council meeting ends with no breakthrough*, TWN InfoService on WTO Issues, 17 December 2003, at <http://www.twinside.org.sg>.

⁶⁰ Id.

⁶¹ WTO, *Secretariat: WTO Chairpersons for 2004*, Press/371, 11 February 2003, at <http://www.wto.org>.

Development	
-------------	--

43. An important omission in the appointment of chairpersons for the various WTO bodies above is the absence of chairpersons for the three Singapore issues for which working groups were set up as a result of the 1996 Singapore Ministerial Conference – i.e. trade and investment, trade and competition policy, and transparency in government procurement. However, according to General Council Chair Perez del Castillo, the non-appointment of chairs to these Singapore issue working groups was “without prejudice to these working groups or to the member countries’ positions on this question”, that the work that has started on Singapore issues such as trade facilitation and transparency in government procurement since Cancun will continue in the General Council with the assistance of WTO Director-General Supachai and his deputies, and that future consultations on Singapore issues could take up the question of how the investment and competition policy issues can be tackled in the future.⁶²
44. Another important omission, of course, is the fact that the General Council failed to act on the proposal of developing countries for the creation of a new negotiating group on implementation issues.

V. THE WAY FORWARD FOR IMPLEMENTATION ISSUES: A NEW NEGOTIATING GROUP?

45. One of the major new initiatives that have arisen since the end of the Doha Ministerial Conference with respect to the treatment of implementation issues has been the proposal by several developing countries for the creation of a new negotiating group under the auspices of the TNC to handle these issues, rather than to have them remain scattered among the various WTO bodies. As pointed out above, implementation issues are now de facto being handled by the General Council and TNC Chairs directly, on an informal basis, although they have not undertaken any further consultations with Members thereon since the end of the Cancun Ministerial Conference.
46. However, much of the analytical and theoretical work has already been done by their respective developing country proponents with respect to many, if not most, of the implementation issues and should not be wasted by simply dropping implementation issues off the WTO agenda. Of course, much more analytical work remains still to be done, but the fact remains that the Doha mandate with respect to these issues still stands and has been reaffirmed by the adopted Cancun Ministerial Statement.⁶³

⁶² See Martin Khor, *Singapore issues downgraded at WTO?*, TWN InfoService on WTO Issues, 17 February 2004, at <http://www.twinside.org.sg>.

⁶³ DMD, para. 12; and Cancun Ministerial Statement, para. 6.

47. In short, the legal basis for continuing negotiations on implementation issues continue to exist, notwithstanding the failure of the Cancun Ministerial Conference to provide political guidance on how to address these issues in the post-Cancun period. In this context, therefore, the proposal to create a new negotiating group on implementation issues needs to be looked at carefully to see if it could advance developing countries' negotiating interests effectively.
48. Among the benefits that creating such a negotiating group might give could be the following:
- it could help regenerate new interest among developing countries, in the backdrop of the current impasse in the agriculture negotiations, for effectively and substantively dealing with implementation issues as "early harvest" issues;
 - it could allow developing countries to pool resources and jointly negotiate on implementation issues in the content of just one negotiating group, rather than spreading themselves out among various WTO bodies;
 - it might provide the venue for more focused negotiations and discussions on implementation issues; and
 - it emphasizes that the mandate for implementation issues under the Doha Ministerial Declaration is a negotiating mandate on same footing as those for the other negotiating areas (e.g. agriculture, services, NAMA, trade and environment, WTO rules).
49. On the other hand, the downside of creating such a negotiating group could be the following:
- it could focus attention on the negotiations in the new negotiating group as the sole "development"-oriented negotiating group to the detriment of development-related issues in other negotiating groups such as agriculture, services, and NAMA;
 - it could force resource-deficient developing country missions to stretch their resources even further in order to participate in the new negotiating group effectively;
 - it could make it easier for developed countries to stall resolution of implementation issues by simply not actively participating in the new negotiating group;
 - the possibility exist is that developing countries may have to make concessions in other negotiating areas in order to have the new negotiating group established in the first place; and

- it could result in developing countries having to identify and prioritize implementation issues that they wish the new negotiating group to focus and negotiate on (resulting in the development of splits within developing countries arising from differing perceptions about which issues to prioritize).

VI. RECOMMENDATIONS AND CONCLUSION

50. The current state of affairs in the Doha-mandated negotiations, coupled with the focus given to agriculture, NAMA, cotton, and Singapore issues in the immediate post-Cancun period, seem to indicate that work on implementation issues have been relegated to the negotiating sidelines. This is notwithstanding the fact, as well, that even though implementation issues were supposed to have been addressed “as a matter of priority”, the treatment of implementation issues were also among the most contentious issues that were left unresolved by the Cancun Ministerial Conference.
51. However, achieving an early and satisfactory resolution of implementation issues, with perhaps the exception of the issue of the extension of the protection of geographical indications to products other than wines and spirits, seems to enjoy a wide and deep level of support and commitment from most developing countries. There also seems to be broad support among developing countries for the creation of a new negotiating group operating under the TNC’s auspices that would focus solely on negotiating appropriate solutions to implementation issues and whose work would be subject to a clear deadline. The EC, of course, is also on record as being supportive of this initiative – but mostly because of its own agenda with respect to the extension of GI protection.
52. Developing countries need to insist that, in line with the reaffirmed Doha mandate on implementation issues and consistent with the long-standing priority and importance that they have placed on finding solutions to these implementation issues, negotiations on these issues be immediately resumed and concluded “as a matter of priority” and on the basis of a clearly specified deadline with the objective of satisfactorily addressing the concerns of developing countries. To this end, the presentation of a broad and united front by developing countries, especially through those groups that played major parts in the Cancun Ministerial Conference (e.g. the ACP-LDC-AU alliance, the G-20, the G-90), in favor of the re-starting of substantive negotiations on implementation issues may be the only stimulus that can get this process going.
53. On their part, perhaps it is also now time for developing countries to also review their own implementation issues proposals and undertake a prioritization exercise to identify those issues that are of the most importance for them for purposes of the negotiations. One way of going about the prioritization exercise above could

be for the proponents of the various implementation issues to list down their priority issues and compile these into a common priority list. These issues in the list can be those which would provide the most benefits in terms of:

- (i) providing and maintaining policy space and flexibility for developing countries; and
- (ii) immediate and long-term economic and developmental gains.

54. Finally, in view of the above, developing countries might take into consideration the following options as they search for the most viable way forward for implementation issues:

First, after considering all the positive and negative aspects of the proposal, developing countries might wish to jointly re-submit the previous proposal to **establish a new negotiating group on implementation issues under the TNC's auspices**, possibly to be chaired by the TNC Chair, with the objective of developing appropriate solutions to these issues that satisfactorily address developing country concerns no later than the end of 2004. This could prove, in the end, to be the stimulus needed to re-start negotiations on implementation issues, and move these issues forward to a satisfactory conclusion.

Second, should the establishment of a new negotiating group as suggested above be rendered impossible as a result of opposition from other Members, developing countries might then wish to opt for a **TNC Chair-led single-track approach**. Developing countries might wish to request new General Council Chair Oshima to transfer to the TNC the implementation issues referred to regular WTO bodies under the Doha Implementation Decision and, further, to request TNC Chair Supachai to oversee and *immediately* re-start negotiations among Members on implementation issues as a matter of priority with respect to issues falling under the Doha Implementation Decision and Paragraph 12(b) DMD (but not those falling within the mandates of the WTO negotiating bodies under Paragraph 12(a) DMD), and for TNC Chair Supachai to report at each regular meeting of the General Council on the progress of the negotiations with appropriate recommendations for solutions to these issues that satisfactorily address developing country concerns, and for negotiations on these issues to be concluded no later than the end of 2004.

Finally, should either of the first two options above not be feasible, then developing countries might wish to consider a **multiple forums, multi-track approach**. They could request new General Council Chair Oshima and TNC Chair Supachai to instruct the chairs of the various WTO bodies handling implementation issues in 2002 to *immediately* resume their work on these issues as a matter of priority, and for them to report to the TNC

- and the General Council no later than May 2004 with appropriate recommendations for solutions to these issues that satisfactorily address developing country concerns, and for work on these issues to be concluded no later than the end of 2004. This approach would be similar to the approach used in 2002, but with a proviso that the re-started negotiations must be focused on coming up with concrete solutions to the issues being raised.
55. Regardless of the action that developing countries may take with respect to implementation issues in the post-Cancun period, one thing is clear – these issues have been on the GATT and WTO agenda since the early 1980s. Hence, it is now about time that developing countries press hard to ensure that developed countries live up to their commitments to create a fair and equitable economic playing field in which developing countries would be able to enjoy the benefits of economic growth and development that is sustainable and consistent with their development priorities and policies.

**ANNEX I: OVERVIEW MATRIX OF THE CURRENT STATUS OF IMPLEMENTATION-RELATED ISSUES
(as of 18 February 2004)**

A. Issues Referred to Regular WTO Bodies Reporting to the General Council (Under the Doha Decision on Implementation-Related Issues and Concerns)				
Topic	Issue	WTO Body	Status	
			Resolution	Non-Resolution
Agriculture	Restraint in challenging Green Box measures of developing countries to promote rural development and adequately address food security concerns	Committee on Agriculture	Approved by Ministerial Conference under Para. 2.1 Implementation Decision in a non-mandatory manner	
	Implementation of Art. 10.2 AoA on disciplines on export credits, export credit guarantees or insurance programs	Committee on Agriculture	Committee recommendations in G/AG/11 approved by Ministerial Conference under Para. 2.3 Implementation Decision	
	Improving effectiveness of the implementation of the Marrakesh NFIDC Decision	Committee on Agriculture	Committee recommendations in G/AG/11 approved by Ministerial Conference under Para. 2.2 Implementation Decision	
	Submission of tariff rate quota notification addenda	Committee on Agriculture	Committee decision in G/AG/11 endorsed by Ministerial Conference under Para. 2.4 Implementation	

South Centre Analytical Note

February 2004

SC/TADP/AN/IRI/2

			Decision	
Market Access	Definition of “substantial interest” in GATT 1994 Art. XIII:2(d)	Market Access Committee		Deadlock by December 2002, issue now at GC-level, no further progress to date (G/MA/119, WT/GC/W/500, WT/GC/M/77, paras. 140 and 144)
Textiles and Clothing	Interpretation of ATC provisions with respect to methodology for calculations of quota levels, etc.	Council for Trade in Goods		Deadlock in July 2002, issue now at GC-level, no further progress to date (WT/GC/M/75, WT/GC/W/500)
Anti-Dumping	Information requirements for improving annual reviews of the Anti-Dumping Agreement under ADA Art. 18.6	Committee on Anti-Dumping Practices	Agreement reached in December 2002 (G/ADP/9, WT/GC/M/77, WT/GC/W/500)	
	Notification requirement with respect to investigation methodologies to be used under ADA Art. 5.8	Committee on Anti-Dumping Practices	Agreement reached December 2002 (G/ADP/10, WT/GC/M/77, WT/GC/W/500)	
	Development of modalities for application of ADA Art. 15	Committee on Anti-Dumping Practices		Deadlock at the end of 2002 with chair saying that the committee had fulfilled its Doha mandate, issue now at GC-level, with no further progress to date (G/ADP/11, WT/GC/W/500, WT/GC/M/77, para. 125)
Customs Valuation	Accuracy of declared value of imports under Art. 10 CVA	Customs Valuation Committee		Committee discussions suspended in late May 2003, with committee unable to report consensus in July 2003. Committee mandate extended by GC in July 2003, no further progress to date (G/VAL/50, G/VAL/54, WT/GC/W/500, WT/GC/M/77,

				para. 148, WT/GC/M/81, paras. 186-187)
SCM	Review of SCM Agreement provisions regarding countervailing duties investigations	SCM Committee		Deadlock by July 2002, issue now at GC-level, no further progress to date (G/SCM/45, WT/GC/M/75, WT/GC/W/500)
	Extensions of transition periods	SCM Committee	CTG agreed to 21 out of 29 extension requests upon SCM Committee recommendation, which had taken decision on all the fast-track extension requests (WT/GC/M/77, para. 99)	
	Method for calculating 1990 dollars for purposes of SCM Agreement Annex VII(b)	SCM Committee	Para. 10.1 of the Doha Implementation Decision comes into force, adopting methodology in G/SCM/38, Appendix 2, on 1 January 2003 (WT/GC/W/500)	
S&D	Operationalization of S&D provisions	Committee on Trade and Development in Special Session		Discussions put on hold Feb 2003 after CTDSS Chair request for GC clarification of DMD mandate on S&D blocked, informal discussions led by GC Chair since then, no further progress to date (except for agreement reached on 31 July 2002 to create S&D implementation monitoring mechanism (TN/CTD/3, WT/GC/M/75)). For reports from various negotiating bodies on S&D issues, see WT/GC/M/81, paras. 96-97 (COASS), 98-99 (DSBSS), 100 (CTSSS), 101 (NGR), 102

				(TRIPS), 103 (COA), 104 (Safeguards), 105-106 (SPS), 107 (TRIMS). See also WT/GC/W/500.
Rules of Origin	Completion of the harmonization work program with respect to rules of origin under the Agreement on Rules of Origin	Committee on Rules of Origin		Deadline for completion of the work program postponed to July 2004 (from original end-2001 deadline, and after 2 prior postponements to end-2002 and July 2003), issue still at CRO-level, no further progress to date (WT/GC/M/81, para. 183, and WT/GC/W/500)
TRIPS	Monitoring of implementation of TRIPS Art. 66.2 as a mandatory provision with respect to transfer of technology from developed country Members	TRIPS Council	Decision adopted February 2003 affirming mandatory nature of provision and adopting arrangements to implement it (IP/C/28, WT/GC/W/500)	
B. Outstanding Implementation-Related Issues Subject to Negotiations (JOB(01)/152/Rev.1)				
(Under Paragraph 13 of the Doha Implementation Decision and Paragraph 12 of the DMD)				
<i>1. Outstanding Issues Dealt with by WTO Bodies with Negotiating Mandates Reporting to the TNC (Para. 12(a) DMD)</i>				
Topic	Issue	WTO Body	Status	
			Resolution	Non-Resolution
Agriculture	Increasing non-product-specific AMS up to the level of the external reference price (ERP) in event that domestic support prices are lower than the ERP	Committee on Agriculture in Special Session		Discussions on-going in the COASS as part of the agriculture negotiations in relation to Amber Box disciplines and LDC-specific provisions, no further progress to date (TN/AG/6)
	Review of implementation of GATS Art. IV	Council for Trade in Services in Special Session		No specific focus on and progress in GATS Art. IV review in the CTSSS negotiations, no further

Services				progress to date (TN/S/4, TN/S/14)
	GATS assessment	Council for Trade in Services in Special Session		Discussions on GATS assessment process on-going, but no substantive agreement reached on how to undertake it, no further progress to date (TN/S/4, TN/S/14)
Anti-Dumping	Changes in ADA Art. 5.8 such as increasing de minimis dumping margins, enhancing the negligible volume level, removing the cumulation requirement, and mandatory application of the lesser duty rule while taking anti-dumping actions against developing country products	Negotiating Group on Rules		Negotiating Group on Rules still at the first phase (issue identification by Members), with no actual negotiations yet being conducted on the issues identified (TN/RL/W/4, TN/RL/W/7, TN/RL/6)
	Improvement of provisions of the ADA with respect to anti-dumping review procedures, definition of products under investigation, determination of dumping margins, imposition of duties on products within de minimis dumping margins	Negotiating Group on Rules		Negotiating Group on Rules still at the first phase (issue identification by Members), with no actual negotiations yet being conducted on the issues identified (TN/RL/W/7, TN/RL/6)
	Review of ADA provisions regarding the initiation of anti-dumping investigations	Negotiating Group on Rules		Negotiating Group on Rules still at the first phase (issue identification by Members), with no actual negotiations yet being conducted on the issues identified (TN/RL/W/48/Rev.1, TN/RL/6)
	Changes in SCM Agreement Art. 27 to make it easier for developing countries to provide subsidies without being subjected to countervailing duty actions	Negotiating Group on Rules		Negotiating Group on Rules still at the first phase (issue identification by Members), with no actual negotiations yet being conducted on the issues identified

SCM	Review of SCM Agreement Annex I(j) and (k) to permit developing countries to provide competitive export financing, export credits, and export insurance and guarantee programs	Negotiating Group on Rules	(TN/RL/W/4, TN/RL/6)
	Improving the SCM Agreement (especially Art. 8) to address and provide for subsidies can be considered as non-actionable subsidies in support of developing countries' development goals	Negotiating Group on Rules	Negotiating Group on Rules still at the first phase (issue identification by Members), with no actual negotiations yet being conducted on the issues identified (TN/RL/W/5, TN/RL/W/7, TN/RL/6)
2. Outstanding Issues Dealt With by Regular WTO Bodies as Matter of Priority and Reporting to TNC (Under Paragraph 12(b) DMD)			
TRIPS	TRIPS Art. 64 on non-violation complaints	TRIPS Council	Deadlock in May 2003, issue is now at the TNC-level but no further progress to date (TN/C/M/5, para. 313, and JOB(02)/199). The TRIPS Council was mandated to address this issue under Para. 11.1 Implementation Decision.
	Geographical indications extension to products other than wines and spirits under TRIPS Art. 23 and 24	TRIPS Council	Deadlock by end 2002, issue is now at the TNC-level but no further progress to date (TN/C/M/5, para. 313, and JOB(02)/199)
	TRIPS Art. 27.3(b), biodiversity and Traditional Knowledge – e.g. non-grant of patents inconsistent		Negotiations at TRIPS Council

	with the CBD; and amendment of TRIPS Art. 27.3(b) in light of CBD and International Undertaking on Plant Genetic Resources to clarify distinctions between biological and microbiological organisms and processes, ensure the continuation of traditional farming practices and seed saving, food sovereignty and food security, and patenting of living organisms	TRIPS Council		deadlocked by end 2002, issue is now at the TNC-level but no further progress to date (TN/C/M/5, para. 313, and JOB(02)/199). Under Para. 19 DMD, the TRIPS Council is also mandated to discuss this issue as part of the mandated reviews under TRIPS Art. 27.3(b) or TRIPS Art. 71.1.
	Extension of TRIPS Art. 27.3(b) period for implementation to 5 years beyond completion of review	TRIPS Council		Not yet addressed by TRIPS Council to date (TN/C/M/5, para. 313, and JOB(02)/199)
	Extension of transitional period for TRIPS implementation under TRIPS Art. 65.2	TRIPS Council		Not yet addressed by TRIPS Council to date (TN/C/M/5, para. 313, and JOB(02)/199)
	TRIPS Art. 7 and 8 (transfer of technology) operationalisation on fair and mutually advantageous terms	TRIPS Council		Not yet addressed by TRIPS Council to date (TN/C/M/5, para. 313, and JOB(02)/199)
BOP	Jurisdiction of BOP Committee for examining justification of BOP measures	BOP Committee		Deadlock in end 2002, issue is now at the TNC-level but no further progress to date (WT/BOP/R/66, JOB(03)121)
	Use of import restrictions as BOP measures	BOP Committee		Deadlock in end 2002, issue is now at the TNC-level but no further progress to date (WT/BOP/R/66, JOB(03)121)
	Mandatory TA/CB for developing countries to meet and enforce TBT requirements	TBT Committee		Deadlock by end of 2002, issue sent back to TBT Committee in July 2003 for further discussion, no further progress to date

TBT				(G/TBT/W/191, JOB(03)121)
	Self-declaration of adherence to TBT standards in developed country export markets	TBT Committee		Deadlock by end of 2002, issue sent back to TBT Committee in July 2003 for further discussion, no further progress to date (G/TBT/W/191, JOB(03)121)
TRIMS	Extent of the review of the TRIMS Agreement, including issues on establishing a new period for TRIMS notification and the extension of TRIMS transition periods; making the provisions of TRIMS Art. 5.3 mandatory; exempting developing countries from disciplines on domestic content requirements by amending TRIMS Arts. 2 and 4; and including new provisions in TRIMS to provide developing countries with flexibility to implement development policies	TRIMS Committee		Deadlock by end 2002 at TRIMS Committee, process restarted in July 2003 at TNC-level, no further progress to date (G/L/588, JOB(03)121)
Safeguards	Changing the de minimis trigger levels applicable for safeguard actions under Art. 9.1 of the Safeguards Agreement	Safeguards Committee		Deadlock by end 2002, issue is now at the TNC-level but no further progress to date (G/SG/59, JOB(03)121)
GATT 1994	Review of GATT Art. XVIII:A, C, D	Committee on Trade and Development		Deadlock by end 2002, issue is now at the TNC-level but no further progress to date (WT/COMTD/45, JOB(03)121)
	Interpretation of CVA Art. 8.1(b)(iv)	Customs Valuation Committee		Deadlock by end 2002, issue is now at the TNC-level but no further progress to date (G/VAL/49, JOB(03)121)

Customs Valuation	Methodology to be used for determining customs value under CVA Art. 7.1	Customs Valuation Committee		Deadlock by end 2002, issue is now at the TNC-level but no further progress to date (G/VAL/49, JOB(03)121)
	Amendment of CVA Art. 2.3 and 3.3 in order to provide for use of the highest value of identical or similar goods	Customs Valuation Committee		Deadlock by end 2002, issue is now at the TNC-level but no further progress to date (G/VAL/49, JOB(03)121)
	Amendment of CVA Art. 8.1(a)(i) to include buying commissions in customs value	Customs Valuation Committee		Deadlock by end 2002, issue is now at the TNC-level but no further progress to date (G/VAL/49, JOB(03)121)
	Determination of business relationship under CVA Art. 15.4 and 15.5	Customs Valuation Committee		Deadlock by end 2002, issue is now at the TNC-level but no further progress to date (G/VAL/49, JOB(03)121)
GATT 1994	Measures designed to secure a redistribution of negotiating rights in favor of small and medium-sized exporting members in trade negotiations in light of GATT Art. XXVIII	Market Access Committee		Deadlock by end 2002, issue is now at the TNC-level but no further progress to date (G/MA/118, JOB(03)121)
SPS	Equivalence of SPS measures	SPS Committee	Agreement was reached before Doha (G/SPS/19) and work ongoing to implement it (G/SPS/24). See also TN/C/M/5 and WT/GC/W/500	
	Prior notification of new SPS measures	SPS Committee	Agreement reached in March 2002 to revise recommended procedures (G/SPS/7/Rev.1) to implement SPS Agreement transparency provisions (G/SPS/24)	

Note:

- See also the following documents:
 - WTO, *Secretariat: Implementation Issues Referred to WTO Bodies under the Doha Ministerial Decision on Implementation-Related Issues and Concerns*, WT/GC/W/500, 8 July 2003
 - WTO, *Secretariat: List of Outstanding Implementation Issues under Paragraph 12(b) of the Doha Ministerial Declaration*, JOB(03)121, 24 June 2003
-



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>