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Directorate-General for Trade

Directorate D - Co-ordination of WTO and OECD matters Trade questions relating to GATT, services, dispute settlement, Trade Barriers Regulation
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NOTE FOR THE ATTENTION OF MEMBERS OF THE 133 COMMITTEE (DEPUTIES)

Subject : **Information material for EU Member-States and accession countries for the Cancun Ministerial meeting**

Origin: **DG Trade D.1 - Mauro Petriccione/Matthias Jørgensen**

Purpose: **For information.**

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MARKET ACCESS FOR NON-AGRICULTURAL PRODUCTS

1. STATUS OF WORK

Discussions in the Negotiating Group on Market Access (NG) have been constructive and all Members have positively contributed to the texts submitted by the Chair by exposing and explaining their different points of view. As a result, the text which has been included in Amb. Perez de Castillo's text as Annex B reflects the work by the NG. In fact, apart from a few minor details, it is the text that Amb. Girard, Chair of the NG, had finally proposed to Members as draft for the Ministerial Declaration.

Even though negotiations on non-agricultural products started after Doha, the level of detail contained in Annex B is comparable to that contained in Annex A devoted to agriculture and for which negotiations did start much earlier. In this respect, Annex B can be seen as the tangible demonstration of the significance that all Members attach to market access for non-agricultural goods under the Doha Development Agenda.

2. ANNEX B

Further to the invitations addressed by other WTO Members, the EU and US stepped up their co-operation on both agricultural and non-agricultural issues. For the latter they presented a joint text (co-sponsored by Canada), which received support from both developed and developing Members. Strongly supported by Japan and welcomed by all other DCs, the paper was crucial in the establishment of Perez de Castillo's text.

Although Annex B is an improvement on the first proposals that had been made by the Chair of the NG, the EU still feels that the text presents two types of imbalance that should be redressed in Cancun.

The first imbalance is of a general nature and concerns the ambition that is contained in the agricultural framework under Annex A as against the one that Annex B contains for non-agricultural products. Even if the veritable level of ambition depends on the figures that will finally be agreed, the level of ambition in Annex B should be much higher to match that of Annex A.

The second imbalance is specific and concerns the different elements in the Annex B. Whilst the text in paragraph 7 relating to special and differential treatment is very detailed and even contains figures in brackets, the texts under paragraph 3 and 6 are less precise and present no specific figures at all. The EU, alongside with other Members,considers that such imbalance should be eliminated by describing the formula with a finer degree of accuracy (i.e. " a simple, single Swiss formula applied on a line-by-line basis"). The EU supports such a single Swiss formula integrated by a system of credits to accommodate objective differences in the economic situation of WTO members and offering flexibility for developing countries, always bearing in mind the priorities that the EU has in market access for non-agricultural products.

As regards paragraph 6 devoted to sectors, it is clear that sectoral initiatives will need to be mandatory if we want sectors of value to all Members, but in particular to DCs, to be on the table. In general sectors of interest to some Members tend to be sensitive sectors for others. Therefore, unless sectoral initiatives are mandatory for all Members, there will be little if no incentive for any Member to put its sensitive sectors on the table.

More fundamentally, such imbalance risks undermining the EU's objective of sustainable development through improvements in South-South trade. Access to developing countries markets is increasingly important for developing country exporters. In a situation where protection in some developing countries is significantly higher than in other developing or developed countries at a comparable level of development, the imbalance between paragraph 7 on the one hand and paragraphs 3 and 6 on the other risks to worsen distortions much to the detriment of the most vulnerable developing and least developed Members.

Although sectoral initiatives have been interpreted by the Chair as a way to fulfil that part of the mandate that refers to elimination of duties, the EU considers that they should not exclude harmonisation which can be an equally important goal and which could be of greater interest to DCs. For the EU, moreover, it is important that such initiatives be accompanied by determined action against non-tariff barriers affecting the sectors chosen. This is the reason why the EU maintains that tariff cuts for textiles, clothing and footwear are linked to the elimination of export taxes affecting inputs for these sectors.

3. EU'S OVERALL APPROACH TO MARKET ACCESS

It should be stressed that the EU's approach to market access negotiations under the Doha Development Agenda is characterised by three main objectives:

(1) Achievement of genuine liberalisation (traditional GATT objective) with reciprocity in some sectors;

(2) Support to sustainable development (the new DDA developmental dimension);

(3) Maintenance of the single undertaking (no backsliding or two-tier Membership).

The EU attaches great importance to the achievement of effective market access in conjunction with an improved rules-based system where all Members will be equally empowered within the WTO institutional set-up. In other words, special and differential treatment should allow DCs to participate fully in the system rather than be interpreted as an opt out from the system.

The benefits that all Members will reap in market access negotiations need to be seen in conjunction with the benefits that will accrue to Members from the outcome of negotiations on other issues such as trade facilitation, competition, investment and transparency in government procurement.

4 September, 2003

General Brief on Agriculture
Cancun
4 September 2003

The agriculture text is at a more advanced state than could have been expected after the long months of impasse that was only broken a few weeks ago with the EU/US agreement. A reassuring quantity of this text finds its way unchanged into the Perez de Castillo's (PDC) paper. However parts of the text are still unacceptable to the EU and mean an unbalanced amount of effort from the contracting parties. It can be genuinely said that the EU and US have moved the process forward in a way that causes substantial problems for both of us. However, these positive movements are simply pocketed and that new demands are piled on.

The briefing is confined to the text that forms the basis of the Cancun Ministerial.

General

- the references to non trade concerns should be reinforced.

Domestic Support

The EU/US proposal on the blue box, and the 5% in particular, constitute a major movement. The major problem with this section is the further subsequent reduction of the Blue box. Further reduction in the blue box is inconsistent with continued CAP reform.

On domestic support, the US is more demandeur than the EC with predictable opposition from developing countries and Cairns

Market Access

The major problem with market access is that it sets up different formulae for developed and DCs which is in contradiction with the EC/US joint paper of having one formula for all countries but with the necessary S&D provisions built in for DCs.

The EC/US text called for a blended approach (some tariff lines Uruguay Round, some Swiss and some duty free) with TRQ making up for lines where tariffs were reduced minimally. For DCs, S&D was proposed. Eventually it was accepted that for certain tariff lines the concept of special products could be used. However the PdC text has a now hybrid, ultra-blended approach for developing countries is i) that it would made it very difficult to compare its effect with that of the formula applicable to developed countries, ii) that its level of ambition is much lower than our joint expressing willingness to fully incorporate SDT and, iii) all developing countries, irrespective of their level of development, would be treated alike, allowing major, super-competitive substantial net exporters to escape from any significant market opening commitments.

The EC has substantial bilateral access agreements that need to be recognised when the EC's market access commitments are taken into account.

Generally the EC wishes to see more market access for DCs alongside taking some account of sensitive products. The EC believes that DC should take on more market access commitments as the main beneficiaries are generally other DCs. However it does not agree with the self serving approach to of the US and the Cairns on the Market Access issue.

Export Competition

The major problem with this text is that for it accepts as a forgone conclusion that there will be an end date for elimination of all forms of export subsidies. Furthermore, there is only a very weak reference to STEs. On the positive side, the idea of parallelism is maintained as regards export credits and export refunds.

The question of the end date for phasing out of all forms of export subsidies remains under negotiation. The EC has never conceded that the total elimination of export refunds is a matter for negotiations in this round.

The EC proposal of elimination for XS of most interest to DCs and further substantial reductions is taken for granted and the outcome of what we fully expect to be a further Ministerial level attempt by some at complete elimination is anticipated in the text. We cannot prevent some Ministers to try this on in Cancun but the DDA mandate does not authorise a reading which would allow for the inclusion of elimination in this text.

The text on STE is diluted. Cairns group countries, including in particular those with huge STE operations, are among the main demandeurs for the Agriculture negotiations. Why should they not contribute as well. They focused only on the part of interest for them while forgetting to discipline their own policies. We are also concerned with the weakening of export credits disciplines introduced through the reference to possible negative effects on developing countries of the new disciplines: why treat export credits more leniently that export refunds? They have the same effect on the interest of the importing countries.

Other issues

There is a blanket reference to Stuart Harbinson's report to the TNC as Rev. 1 annexed to it. The issues of Domestic Support and market Access are comprehensively dealt with in the framework text. We should not leave open the possibility of additional constraints via paragraph 6 of the agriculture text which refers in particular to specific commitments on domestic support, terms of expansion/opening of TRQs, in-quota tariff rates. The issue of single desk export privileges should be dealt with in the main body of the framework agreement.

Finally, the reference to NTC, despite its reappearance in the chapeau goes into virtual oblivion; this is not in conformity with the DDA, it is against the deeply convictions of a large part of the membership.

Owen Jones, TRADE C2, 04/09/03

DEVELOPMENT ISSUES

1. Issue

In addition to the work on Implementation and Special and Differential Treatment, and to the emphasis put on development in all areas of the negotiations, it was agreed at Doha to launch several work programmes concerning specific development issues:

The work programme on **Small Economies** aims at finding responses to the issues linked to the fuller integration of small, vulnerable economies into the multilateral trading system.

The work programme on **Trade, Debt and Finance** is considering possible steps that might be taken to enhance the capacity of the multilateral trading system to contribute to a durable solution to the external indebtedness of developing countries, and to strengthen the coherence of the international trade and financial policies.

The work programme on **Trade and Transfer of Technology** is examining possible steps within the mandate of the WTO to increase flows of technology to developing countries.

The work programme on **Least Developed Countries** (LDCs) includes a number of initiatives aiming at the successful integration of LDCs in the Multilateral Trading System, such as: the objective of duty- and quota-free access for LDC products, the facilitated and accelerated accession of LDCs to the WTO, and the Integrated Framework for Trade-Related Technical Assistance for LDCs.

2. State of play of negotiation process

The dedicated session of the Committee on Trade and Development on Small Economies as well as the working groups on Trade, Debt and Finance and on Transfer of Technology submitted reports to the General Council in July. Work undertaken hitherto allowed to identify possible avenues for further work after Cancun, although it was not possible to reach consensus on possible concrete recommendations.

A Decision on an accelerated and facilitated accession procedure for LDCs was agreed in December 2002. This Decision allowed to make substantial progress in on-going negotiations with 10 LDCs. The two first LDCs since 1995 should join the WTO at Cancun (Cambodia and Nepal). The current SDT package includes many measures benefiting LDCs, including on the objective of duty- and quota-free access. The recently agreed modalities for LDCs in the negotiations on Services will also ensure that special priority is given to providing effective market access in sectors and modes of supply of export interest to LDCs, notably the temporary movement of natural persons supplying services (« Mode 4 »).

The Heads of World Bank and IMF sent a letter on 20 August to WTO DG Supachai to express support for a succesful outcome of the DDA and readiness to work out concrete measures to help developing countries implement the result of the DDA as well as adjust to a more liberal trade environment.

Some East African countries (Kenya, Uganda and Tanzania) presented a proposal to launch a new work programme to address the problems faced by developing countries that are dependent on a few commodities, notably the long-term declines and sharp fluctuations in the prices of these commodities.

3. EU position

The EU welcomes the fact that issues of key concern for developing countries are being addressed in the work programmes on Small Economies, Trade, Debt and Finance, Technology Transfer, and LDCs. The EU remains committed to cooperate constructively with other WTO Members, in particular the LDCs and countries with small and vulnerable economies, to make progress in this respect. We can therefore support the proposed way forward on these work programmes in the Draft Ministerial text as part of an overall satisfactory outcome of Cancun.

Post-Cancun we consider it important to further engage Small Economies in a discussion of what concrete actions could be helpful. We can show sympathy with a number of ideas tabled by the Small Economies, in particular on regional approaches on Anti-Dumping, Subsidies, SPS and TBT (administrative pooling of resources). While they are useful exercises to better understand some problems faced by developing countries, the work programmes on Trade, Debt and Finance, and Technology Transfer raise issues that are not exclusively in the remits of the WTO, and it remains still unclear what the concrete outcome of these programmes could be. The EU will continue to support actively progress in the implementation of the work programme on LDCs, notably concerning duty- and quota-free access for LDC products and the Integrated Framework for Trade-Related Technical Assistance for LDCs.

The EU very much welcomes IMF and World Bank support to the DDA. We encourage the BWI to improve their diagnosis of the potential and perceived costs and concerns related to trade liberalization, and to sharpen their policy advice and instruments to tackle specific issues. The Bretton Woods institution have a crucial role to play to help developing countries implement and benefit from the DDA by : (a) providing technical assistance for the implementation of WTO rules, (b) accompanying the macro-economic adjustment process to trade liberalization, and (c) supporting supply response to new trade opportunities. The IMF and World Bank also have a central role to play in mobilizing and co-ordinating assistance from other bilateral and multilateral donors. The EU will use its own instruments to back this up.

While market access for commodities is already addressed in ongoing negotiations and other aspects of the problem are outside the remits of the WTO, the EU could support the launch of a new work programme on commodities in order to better understand the specific problems faced by commodity-dependent developing countries and to contribute to a co-ordinated response by development partners such as the UNCTAD or the Common Fund for Commodities.

The EU has provided almost twice as much Trade Related Assistance as the USA in the period 2001–2002. Commitments by the Commission on TRA in the period 1996-2000 amounted to 640 million. In the period 2001-2003 the EC committed more than 2 billion for Trade Related Assistance. For the period 2002-2006 an indicative envelope of 2 billion has been earmarked for TRA. *(see also separate brief on Trade Related Assistance).*

SUBSIDIES, including Fisheries Subsidies

1. The issue

Negotiations on the Agreement on Subsidies and Countervailing Measures cover both general subsidy disciplines (except agriculture) and subsidies in the area of fisheries, the latter being specifically mentioned in the Doha mandate. The negotiations are being held in the Negotiating Group on Rules which also deals with the negotiations on the Antidumping Agreement and Regional Trade Agreements.

2. State of play of negotiation process

According to the Doha mandate, the rules negotiations follow a 2-step approach. In a first phase, WTO Members identify issues and provisions of the ASCM which they want to negotiate, and, in the subsequent phase, solutions are proposed. On general subsidy disciplines, the first phase is virtually completed. The main proponents of the negotiations were, among developed countries, Australia, Canada, the EC and the US, while Brazil and India were most vocal among the developing countries. Many developed countries argued for stronger disciplines on subsidies with increased transparency while developing countries pushed for more special and differential treatment in this area, in particular in the area of subsidies for development and export financing.

With regard to fisheries subsidies, two main camps emerged. On the one side, the "Friends of Fish" (Australian, Iceland, United States, Chile and several other developing countries) who strongly argue for a prohibition on subsidies to the fisheries sector, arguing that they cause overfishing and trade distortions. This argument is rejected by Japan and Korea who deny that subsidies to fisheries warrant any special treatment under WTO rules. The fisheries subsidies negotiations are already rather advanced and Members have already started to propose solutions to the issues which have been identified.

No explicit decisions are required on the subsidies negotiations at Cancun. The transition from the first to the second phase of the negotiation is considered a "seamless" one.

3. EU position/Line to take

The EC position on general subsidies as set out in its proposal to Rules Group (November 2002) is focused on enhancing the transparency (enforcing the notification obligation) and addressing the hidden types of subsidies currently escaping the subsidy disciplines (disguised R&D subsidies, state-controlled entities and certain local content subsidies). Concerning developing countries, the EC indicated its willingness to consider a well-defined S&D package to accommodate legitimate development needs of DCs.

With regard to fisheries subsidies, the EC has made a far-reaching proposal inspired by its own recent reform of the Common Fisheries Policy. Under this approach, subsidies

which contribute to overfishing by enhancing vessel capacity should be outright prohibited while subsidies which mitigate against the social and environmental effects of such a prohibition (such as re-training of fishermen) should be non-actionable. This proposal was considered a major step towards ensuring sustainable development in the highly sensitive fisheries sector.

In conclusion, EC position will be that Ministers should decide to continue the work in the Rules Group on subsidies through a seamless transition from a phase of issue-identification to working on concrete solutions. The Chair's draft achieves this and no amendment is needed.

DSU NEGOTIATIONS

1. DRAFT TEXT

We take note of the progress that has been made in the negotiations on dispute settlement. We renew our determination to pursue these negotiations with the aim of completing them not later than May 2004. Further negotiations shall be carried out on the basis of work done thus far, including the Chairman's text of 28 May 2003 and other proposals by participants.

The EC can agree on the proposed draft text.

2. STATE OF PLAY OF NEGOTIATION PROCESS

According to Paragraph 30 of the DDA, the DSU negotiations should have aimed "*to agree on improvements and clarifications not later than May 2003*".

No agreement was reached by this deadline.

On 28 May, the Chair of the negotiating group (Ambassador Balas, Hungary) presented to the TNC a text under his own responsibility, noting that, while some sections enjoyed a wide support by the Membership, no consensus could be reached on it. Amb. Balas also noted that there was a general support to the idea of pursuing negotiations after Cancun.

The TNC charged Ambassador Perez Del Castillo, Chair of the General Council, with the task of sounding Members' opinions on the modalities for the continuation of the negotiating exercise.

The discussions carried forward by Perez Del Castillo led him to conclude that a consensus was possible on extending the deadline until May 2004, without touching the mandate, in order to allow Members to continue negotiating on the Chair's text and on all proposals already on the table. He submitted this proposal to the General Council, which endorsed it on 24-25 July 2003.

Accordingly, no substantial decision should be taken in Cancun, other than, where necessary, rubber-stamping the consensus already expressed by the GC.

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Cancun Ministerial

DDA/Environment

THE ISSUES

- DDA 31 (ii) MEA/observership: (paragraph 9 of the Cancun text)

In February the WTO reached a decision to allow ad hoc presence of a number of key MEAs[1] and UNEP at the WTO negotiations on trade and environment. Since then, the Community has been working for a decision in Cancun, to consolidate the February decision and grant permanent observer status to MEAs and UNEP to the CTE SS negotiations, irrespective of the problems to solve the more difficult issue of observer status in the WTO as a whole.

- DDA 32 (iii) Eco-labelling: (paragraph 20 of the Cancun text)

Our objective on eco-labelling is to ensure that recent work in ISO on labelling is accepted as a basis for labelling in WTO. This should be of great interest to all WTO members which are increasingly setting up their own labelling systems, and which have supported the work in the ISO on eco-labelling.

- DDA 31 (iii) Environmental goods and services (paragraph 5 of the Cancun text)

The EC would like to se a reference to negotiations on EGS (DDA 31 iii) into the NAMA-section of the text.

STATE OF PLAY

Negotiations on the environment issues in Geneva, in the last few weeks, have not been easy. There is still a resistance from many countries to an inclusion, in any form, of ECs proposals into the Cancun text. The EC has shown large flexibility in an attempt to increase the acceptability of the proposals.

MEA/observership

The EC tabled a proposal for a decision at Cancun by Ministers in the CTESS in July 2003, according to which UNEP, UNCTAD and those MEAs which have participated so far in MEA information sessions or which express an interest in participating as observers in the CTE Special session (13 MEAs), should be invited to participate in the CTE Special Session as observers as long as the DDA negotiations are ongoing.

The EC is no longer insisting on a separate Ministerial decision on the issue, but our ambition is preserved through a substantial text proposal to para 9. Our proposal for para 9, reduces the originally proposed 13 MEAs to 6, but otherwise conserves the important idea of making the observership "permanent" as opposed to "ad-hoc".

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[1] Convention on Biodiversity, the United Nations Framework Convention on Climate Change, the Basel Convention on Hazardous Waste, the Montreal Protocol on Substances that deplete the Ozone Layer, the Convention on International Trade in Endangered Species, and the International Tropical Timber Organisation

Eco-labelling

In June 2003, the EC submitted a proposal for Ministerial recommendations be adopted at Cancun on labelling, according to which the CTE should hold three "dedicated sessions" to engage in a positive dialogue on voluntary eco-labelling schemes. On the basis of these sessions, the CTE should make recommendations for further action to the Ministerial Conference.

Strong objections in Geneva to our proposed "dedicated sessions". Many countries, notably DCs, fear that this is a Trojan horse by which we want to bring in ppms (as part of the life cycle approach) into the WTO.

As in the case of para 9, the EC has shown flexibility not to insist on a separate Ministerial decision on three dedicated sessions. We are however pushing for a reference to the 'WTO Labelling Learning Event' of October 2003", as a way to give additional emphasise to labelling in the declaration.

Relationship between the WTO and MEAs: DDA paragraph 31 (i)

This issue is not on the Cancun agenda, but some of the major NGOs are now arguing against further work on the relationship between WTO and MEAs, DDA 31 (i) and some are even requesting a decision in Cancun to stop these negotiations in WTO and move them to UNEP.

The Commission has worked with NGOs in particular on this first point arguing that it would be not credible to stop work in WTO on an issue which NGOs had advocated for years and that we do believe that there is scope for progress in the mandate.

EU POSITION/LINE TO TAKE

MEA-observership

There are many reasons why a decision on MEA-observerstatus in Cancun is needed;

◊ The need for political recognition: A Ministerial decision, codifying the ad-hoc decision, would imply an important step forward for international governance as the WTO must co-operate with those organisations that are concerned by its decision making, such as UNEP and the MEAs.

◊ The granting of observerstatus to the CTE SS would still send an important signal to the outside world that we are ready to respond to the misperception that the WTO is a closed body that is working in "clinical isolation".

◊ Having the MEAs in the room would help CTE SS advance negotiations on 31 (i) and would not contribute to changing the existing format of the WTO.

◊ Making the observerstatus permanent would avoid the CTESS spending valuable time on ad-hoc decisions and make MEA presence more predictable.

Labelling

The EC will continue to push for the acceptance of the reference to the labelling in the Cancun text as;

- Many WTO-members have realised that the labelling issue is becoming increasingly important and that a clarification in the WTO would be helpful. Despite this, not much work

has been done on it neither in the TBT nor in the CTE. The EC objective is to give some impetus to this work, to the benefit of all.

- Long standing debate in the CTE and TBT Committee has not made much progress so far. The EC has an interest in moving the debate forward.

JOB(03)/150/Rev.1 24 August 2003

Preparations for the Fifth Session of the Ministerial Conference

Draft Cancún Ministerial Text

Revision

The attached revised draft Cancún Ministerial Text is being circulated by the Chairman of the General Council on his own responsibility, in close cooperation with the Director-General. The Text will be taken up for discussion at a meeting of the General Council scheduled for the week of 25 August, which will be preceded by an informal meeting of Heads of Delegations. The Text does not purport to be agreed in any part at this stage, and is without prejudice to any delegation's position on any issue.

Draft Cancún Ministerial Text

1. We reaffirm our Declarations made at Doha and the decisions we took there. We take note of the progress that has been made towards carrying out the Work Programme agreed at Doha, and recommit ourselves to completing it fully. We also renew our determination to conclude the negotiations launched at Doha successfully by the agreed date of 1 January 2005.

2. In pursuance of these objectives, we agree as follows:

TRIPS & Public Health

3. We welcome the decision on implementation of paragraph 6 of the Doha Declaration on the TRIPS Agreement and Public Health set out in document [...].

Agriculture negotiations

4. We reaffirm our commitment to the mandate on agriculture as set out in paragraph 13 of the Doha Ministerial Declaration. We take note of the progress made by the Special Session of the Committee on Agriculture in this regard and agree to intensify work to translate the Doha objectives into reform modalities. To this end, we adopt the framework set out in Annex A to this document concerning the further commitments and related disciplines on key outstanding issues on market access, export competition and domestic support as the basis for concluding the work in these areas. We direct the Special Session of the Committee on Agriculture to conclude its work on establishing modalities for the further commitments, including provisions for special and differential treatment, by [...]. We agree that participants will submit their comprehensive draft Schedules based on these modalities no later than [...] and confirm that the negotiations, including with respect to rules and disciplines and related legal texts, shall be concluded as part and at the date of conclusion of the negotiating agenda as a whole.

NAMA negotiations

5. We reaffirm our commitment to the mandate for negotiations on market access for non-agricultural products as set out in paragraph 16 of the Doha Ministerial Declaration. We take note of the progress made by the Negotiating Group on Market Access in this regard and agree to intensify work to translate the Doha objectives into modalities for these negotiations. To this end, we adopt the framework for modalities for negotiations on non-agricultural products set out in Annex B to this document. We direct the Negotiating Group to conclude its work on establishing modalities by [...] and to take the necessary further steps to ensure the conclusion of negotiations by the agreed date.

Services negotiations

6. We are committed to intensifying our efforts to bring the negotiations on specific commitments to conclusion. We stress the importance of full engagement by all participants, *inter alia* through the continuous exchange of requests and offers. With a view to providing effective market access to all Members, due regard shall be given to the quality of offers, particularly in sectors and modes of supply of export interest to developing countries. We call upon those participants who have not yet submitted their initial offers to do so as soon as possible. Improved offers should be submitted by [...]. We are also committed to intensifying our efforts to conclude the negotiations on rule-making under GATS Articles VI:4, X, XIII, and XV in accordance with their respective mandates and deadlines, noting the deadline of 15 March 2004 for emergency safeguard measures. The Special Session of the Council for Trade in Services shall review progress in these negotiations by 31 March 2004. We reaffirm that the negotiations shall aim to achieve progressively higher levels of liberalization with no *a priori* exclusion of any service sector or mode of supply and shall give special attention to sectors and modes of supply of

export interest to developing countries. We note the interest of developing countries, as well as other Members, in Mode 4. In accordance with GATS provisions, there shall be due respect for the right of Members to regulate and to introduce new regulations in pursuance of national policy objectives.
Text to be added on modalities for the special treatment of least-developed country Members depending on the outcome of the ongoing consultations.

Rules negotiations

7. We instruct the Negotiating Group on Rules to accelerate its work on anti-dumping and subsidies and countervailing measures, including fisheries subsidies, with a view to shifting its emphasis from identifying issues to seeking solutions. We note the progress that has been made in the negotiations on improving transparency in Regional Trade Agreements and encourage the Group to reach a provisional decision soon on its work on transparency and to accelerate its work on the clarification and improvement of RTA disciplines under existing WTO provisions, taking into account the developmental aspects of RTAs.

TRIPS negotiations

8. We take note of the progress made in the negotiations on the establishment of a multilateral system of notification and registration of geographical indications for wines and spirits and instruct the Special Session of the Council for TRIPS to continue the work as mandated in Article 23.4 of the TRIPS Agreement and paragraph 18 of the Doha Ministerial Declaration. We agree that the negotiations shall be completed by [...].

Environment negotiations

9. We take note of the progress made by the Special Session of the Committee on Trade and Environment in developing a common understanding of the concepts contained in its mandate in paragraph 31 of the Doha Ministerial Declaration. We reaffirm our commitment to these negotiations.

DSU negotiations

10. We take note of the progress that has been made in the negotiations on dispute settlement. We renew our determination to pursue these negotiations with the aim of completing them not later than May 2004. Further negotiations shall be carried out on the basis of work done thus far, including the Chairman's text of 28 May 2003 and other proposals by participants.

S&D treatment

11. We reaffirm that provisions for special and differential treatment are an integral part of WTO Agreements. We recall our decision in Doha to review special and differential treatment provisions with a view to strengthening and making them more precise, effective and operational. We note the progress that has been made towards meeting these objectives and adopt the decisions in Annex C to this document. We instruct the General Council to continue to monitor closely work on the proposals referred to negotiating groups and other WTO bodies, and direct these bodies to report to the General Council no later than [...]. We instruct the Committee on Trade and Development in Special Session to pursue expeditiously, within the parameters of the Doha mandate, the work on remaining agreement-specific proposals and other outstanding issues referred to in TN/CTD/7 and report with recommendations, as appropriate, to the General Council by [...]. The General Council shall submit a report on all these issues to our next Session.

Implementation

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 [...].

Investment

13. [Taking note of the work done by the Working Group on the Relationship between Trade and Investment under the mandate in paragraphs 20-22 of the Doha Ministerial Declaration, we decide to commence negotiations on the basis of the modalities set out in Annex D to this document.]

[We take note of the discussions that have taken place in the Working Group on the Relationship between Trade and Investment since the Fourth Ministerial Conference. The situation does not provide a basis for the commencement of negotiations in this area. Accordingly, we decide that further clarification of the issues be undertaken in the Working Group.]

Competition

14. [Taking note of the work done by the Working Group on the Interaction between Trade and Competition Policy under the mandate in paragraphs 23-25 of the Doha Ministerial Declaration, we decide to commence negotiations on the basis of the modalities set out in Annex E to this document.]

[We take note of the discussions that have taken place in the Working Group on the Interaction between Trade and Competition Policy since the Fourth Ministerial Conference. The situation does not provide a basis for the commencement of negotiations in this area. Accordingly, we decide that further clarification of the issues be undertaken in the Working Group.]

Government Procurement

15. [Taking note of the work done by the Working Group on Transparency in Government Procurement under the mandate in paragraph 26 of the Doha Ministerial Declaration, we decide to commence negotiations on the basis of the modalities set out in Annex F to this document.]

[We take note of the discussions that have taken place in the Working Group on Transparency in Government Procurement since the Fourth Ministerial Conference. The situation does not provide a basis for the commencement of negotiations in this area. Accordingly, we decide that further clarification of the issues be undertaken in the Working Group.]

Trade Facilitation

16. [Taking note of the work done on trade facilitation by the Council for Trade in Goods under the mandate in paragraph 27 of the Doha Ministerial Declaration, we decide to commence negotiations on the basis of the modalities set out in Annex G to this document.]

[We take note of the discussions that have taken place on Trade Facilitation in the Council for Trade in Goods since the Fourth Ministerial Conference. The situation does not provide a basis for the commencement of negotiations in this area. Accordingly, we decide that further clarification of the issues be undertaken in the Council for Trade in Goods.]

Small Economies

17. We reaffirm our commitment to the Work Programme on Small Economies and urge Members to adopt specific measures that would facilitate the fuller integration of small, vulnerable economies into the multilateral trading system. We take note of the report of the Committee on Trade and Development in Dedicated

Session on the Work Programme on Small Economies to the General Council and the recommendations made therein. We instruct the Committee on Trade and Development, under the overall responsibility of the General Council, to continue the work in the dedicated sessions with the aim of completing it as soon as possible but no later than 1 January 2005. We instruct the General Council to report on progress and action taken, together with any further recommendations as appropriate, to our next Session.

Trade, Debt & Finance

18. We take note of the report transmitted by the General Council on progress in the examination of the relationship between trade, debt and finance and agree that this work shall continue on the basis of the mandate contained in paragraph 36 of the Doha Ministerial Declaration and the progress made in the Working Group to date. The General Council shall report further to our next Session.

Trade & Transfer of Technology

19. We take note of the report transmitted by the General Council on progress in the examination of the relationship between trade and transfer of technology and agree that this work shall continue on the basis of the mandate contained in paragraph 37 of the Doha Ministerial Declaration and the progress made in the Working Group to date. The General Council shall report further to our next Session.

CTE report

20. We take note of the report transmitted by the General Council on the work undertaken by the Committee on Trade and Environment pursuant to paragraphs 32 and 33 of the Doha Ministerial Declaration. We agree that this work shall continue on the basis of the progress made thus far and instruct the General Council to report to our next Session.

TRIPS non-violation

21. We take note of the work done by the Council for Trade-Related Aspects of Intellectual Property Rights pursuant to paragraph 11.1 of the Doha Decision on Implementation-Related Issues and Concerns and direct it to continue its examination of the scope and modalities for complaints of the types provided for under subparagraphs 1(b) and 1(c) of Article XXIII of GATT 1994 and make recommendations by [...]. It is agreed that, in the meantime, Members will not initiate such complaints under the TRIPS Agreement.

E-commerce

22. We take note of the reports from the General Council and subsidiary bodies on the Work Programme on Electronic Commerce, and agree to continue the examination of issues under that ongoing Work Programme, with the current institutional arrangements. We instruct the General Council to report on further progress to our next Session. We declare that Members will maintain their current practice of not imposing customs duties on electronic transmissions until that Session.

Technical Cooperation

23. We welcome the report by the Director-General on the implementation and adequacy of the commitments on technical cooperation and capacity building we made in our Doha Ministerial Declaration and request him to report further to our next Session. We note with satisfaction the establishment of the Doha Development Agenda Global Trust Fund since our last meeting and encourage Members to ensure adequate financing for future technical cooperation and capacity building programmes. We direct that in the planning of such programmes, consultations should be undertaken with beneficiary countries and priority given to their individual needs through both regional and national activities. We welcome the improved collaboration and coordination with other agencies, including under the Integrated Framework for Trade-Related Technical Assistance for the Least-Developed

Countries and Joint Integrated Technical Assistance Programme. We commend the work undertaken in this respect by the Director-General and the Secretariat, and encourage the continuation of these and other efforts so as to facilitate the greater participation of developing countries in the multilateral trading system.

LDCs

24. We welcome the report by the Director-General on issues affecting Least-Developed Countries (LDCs). We reaffirm our commitment to effectively integrate LDCs into the multilateral trading system. In this regard, we acknowledge the seriousness of the concerns of the LDCs, as expressed in the Dhaka Declaration, adopted by their Ministers in June 2003. We take note that issues of interest to LDCs are being addressed in all areas of the negotiations. Building upon our commitment in the Doha Declaration we shall continue to expeditiously pursue the objective of duty-free and quota-free market access for products originating from LDCs. We urge Members to adopt and implement rules of origin so as to facilitate exports from LDCs. In this regard, we appreciate the improved market access measures adopted by several Members. Furthermore, in accordance with our commitment in the Doha Ministerial Declaration, we shall take additional measures for progressive improvements in market access, both at the border and otherwise. In services, we [shall give priority to the sectors and modes of supply of export interest to LDCs, particularly in regard to movement of service providers under Mode 4.] We further commit ourselves to provide effective trade-related technical assistance and capacity building to LDCs on a priority basis in helping to overcome their weak human, institutional and trade-related capacity. In this regard, we reiterate our endorsement of the Integrated Framework (IF) and agree that it can truly become a viable model for LDCs' trade development if it effectively contributes to reducing supply-side constraints including through mainstreaming trade into their national development and poverty reduction strategies. We welcome the joint communiqué adopted by the six IF core agencies at their Third Heads of Agency meeting and urge them to intensify their assistance in trade-related infrastructure, private sector development and institution building to help countries expand and diversify their export base. We also urge cooperation with other bilateral and multilateral development partners. We request the Director-General to report to our next Session on further developments.

Sectoral Initiative on Cotton

25. We take note of the proposal by Burkina Faso, Benin, Chad and Mali entitled "Poverty Reduction: Sectoral Initiative in Favour of Cotton" and agree that [...].

Commodity Issues

26. Taking into account the dependence of many developing countries on a few commodities and the problems created by long-term declines and sharp fluctuations in the prices of these commodities, we instruct the Committee on Trade and Development, within its mandate, to continue with its work on this issue in cooperation with other relevant international organizations and report on progress to the General Council before our next Session. We recognize also that various trade-related aspects of this issue could be addressed in the ongoing negotiations, particularly in the framework of the negotiations on agriculture and non-agricultural market access.

Coherence

27. We appreciate the efforts that have been made by the Director-General to strengthen the WTO's collaboration with the IMF and the World Bank in the context of our Marrakesh mandate on achieving greater coherence in global economic policy-making. We encourage the Director-General and the General Council to follow-up on the General Council meeting on Coherence that was held in May 2003. We particularly welcome the statement of support from the Executive Heads of the

IMF and the World Bank, contained in their letter to the Director-General of 20 August 2003, to work with the WTO to address problems that some developing-country Members may encounter in adjusting to a more liberal trade environment, through preference erosion, loss of tariff revenue, or other factors. We invite the Director-General to report to us at our next Session on initiatives that have been taken in this area.

Accessions

28. We note with particular satisfaction that this Conference has completed the accession procedures for Cambodia and Nepal. This marks the entry of the first two LDCs into the WTO under Article XII of the WTO Agreement. In this regard, we take the opportunity to reaffirm our commitment to the Guidelines on the Accession of LDCs adopted by the General Council on 10 December 2002, and to facilitate and accelerate their accession. We also welcome Armenia and the Former Yugoslav Republic of Macedonia as new Members since our last Session. We confirm that these accessions, as those of the 25 governments now negotiating accession, will greatly strengthen our multilateral trading system. We shall therefore continue to give our attention and priority to concluding the ongoing accession proceedings as rapidly as possible.

Annex A

Framework for Establishing Modalities in Agriculture

Participants reaffirm their commitment to the mandate on agriculture as set out in paragraph 13 of the Doha Ministerial Declaration. Participants recognize that reforms in all areas of the negotiations are inter-related and agree to conclude the work to establish modalities for the further commitments, including provisions for special and differential treatment, within the timeframe specified in paragraph 4 of the Cancún Ministerial Text, on the basis of the following framework:

Domestic Support

1. The Doha Ministerial Declaration calls for "substantial reductions in trade-distorting domestic support". All developed countries shall achieve reductions in trade-distorting support significantly larger than in the Uruguay Round, that will result in Members having the higher trade-distorting subsidies making greater efforts.

Reductions shall take place under the following parameters:

1.1. Reduce the Final Bound Total AMS in the range of [...]% - [...]%.

1.2 Reduce *de minimis* by [...]%.

1.3 Article 6.5 of the Agreement on Agriculture will be modified so as Members may have recourse to the following measures:

(i) direct payments if:
- such payments are based on fixed areas and yields; or
- such payments are made on 85% or less of the base level of production; or
- livestock payments are made on a fixed number of head.

(ii) support under 1.3(i) shall not exceed 5% of the total value of agriculture production in the 2000-2002 period by [...]. Subsequently, such support shall be subject to an annual linear reduction of [...]% for a further period of [...] years.

1.4 The sum of allowed support under the AMS, support under paragraph 1.3(i) and *de minimis* shall be reduced in the first period referred to in paragraph 1.3(ii) so that it is significantly less than the sum of *de minimis*, payments under Article 6.5, and the final bound AMS level, in 2000.

1.5 Green Box criteria remain under negotiation.

Special and differential treatment

1.6 Having regard to their development, food security and/or livelihood security needs, developing countries shall benefit from special and differential treatment, including lower reductions of trade-distorting domestic support under paragraphs 1.1, 1.3 and 1.4 above, longer implementation periods and with respect to the provisions of Article 6.2 of the Agreement on Agriculture and of the Green Box.

1.7 Developing countries shall be exempt from the requirement to reduce *de minimis* trade-distorting domestic support.

Market Access

2. The Doha Ministerial Declaration calls for "substantial improvements in market access." Negotiations should therefore provide increased access opportunities for all and in particular for the developing countries. To achieve this, commitments shall be based on the following parameters:

2.1 The formula applicable for tariff reduction by developed countries shall be a blended formula under which each element will contribute to substantial improvement in market access. The formula shall be as follows:

(i) [...]% of tariff lines shall be subject to a [...]% average tariff cut and a minimum of [...]%; for these import-sensitive tariff lines market access increase will result from a combination of tariff cuts and TRQs.
(ii) [...]% of tariff lines shall be subject to a Swiss formula coefficient [...].
(iii) [...]% of tariff lines shall be duty-free.

2.2 For the tariff lines that exceed a maximum of [...]% developed-country participants shall either reduce them to that maximum, or ensure effective additional market access in these or other areas through a request-offer process that could include TRQs.

2.3 The issue of tariff escalation will be effectively addressed.

2.4 The use and duration of the special agricultural safeguard (SSG) remains under negotiation.

Special and differential treatment

2.5 Having regard to their development, food security and/or livelihood security needs, developing countries shall benefit from special and differential treatment, including lower tariff reductions and longer implementation periods.

2.6 The formula applicable for tariff reductions by developing countries shall be as follows:

(i) [...]% of tariff lines shall be subject to a [...]% average tariff cut and a minimum of [...]%; for these import-sensitive tariff lines market access increase will result from a combination of tariff cuts and TRQs. Within this category, developing countries shall have additional flexibility under conditions to be determined to designate Special Products (SP) which would only be subject to a linear cut of a minimum of [...]% and no new commitments regarding TRQs.
(ii) [...]% of tariff lines shall be subject to [...]% average tariff cut and a minimum of [...]%.
(iii) [...]% of tariff lines shall be subject to [...]% average tariff cut and a minimum of [...]%.

or in place of (ii) and (iii) above

(ii) [...]% of tariff lines shall be subject to a Swiss formula coefficient of [...].

2.7 The applicability and/or extent of the provisions of paragraph 2.2 above to developing countries remain under negotiation, taking into account their development needs.

2.8 A special agricultural safeguard (SSM) shall be established for use by developing countries subject to conditions and for products to be determined.

2.9 All developed countries will seek to provide duty-free access for at least [...]% of imports

from developing countries through a combination of MFN and preferential access.

2.10 Participants undertake to take account of the importance of preferential access for developing countries.

Export Competition

3. The Doha Ministerial Declaration calls for "reductions of, with a view to phasing out, all forms of export subsidies." To achieve this, disciplines shall be established on export subsidies, export credits, export state trading enterprises, and food aid programs. Reduction commitments shall be applied in a parallel manner according to the following parameters:

3.1 With regard to export subsidies:

- Members shall commit to eliminate over a [...] year period export subsidies for the following products of particular interest to developing countries [...];
- for the remaining products, Members shall commit to reduce, with a view to phasing out, budgetary and quantity allowances for export subsidies.

3.2 With regard to export credits:

- Members shall commit to eliminate, over the same period as in the first indent of paragraph 3.1 the trade-distorting element of export credits through disciplines that reduce the repayment terms to commercial practice ([...] months), for the same products in the second indent of paragraph 3.1 in a manner that is equivalent in effect;
- for the remaining products, a reduction effort, with a view to phasing out, that is parallel to the reduction in the second indent of paragraph 3.1 in its equivalent effect for export credits shall be undertaken.

3.3. Without prejudging the outcome of the negotiations, reductions of, with a view to phasing out, all forms of export subsidies mentioned in paragraphs 3.1 and 3.2 will occur on a schedule that is parallel in its equivalence of effect on export subsidies and export credits.

3.4 The provisions related to the reductions of, with a view to phasing out, all forms of export subsidies under paragraphs 3.1, 3.2 and 3.3 above shall apply equally to all forms of export subsidies related to or provided, directly or indirectly, to, by or through export state trading enterprises.

3.5 Additional disciplines shall be agreed in order to prevent commercial displacement through food aid operations.

3.6 The question of the end date for phasing out of all forms of export subsidies remains under negotiation.

3.7 Strengthening of Article 12 of the Agreement on Agriculture on export prohibitions and export restrictions will be addressed in the negotiations.

Special and differential treatment

3.8 Developing countries shall benefit from longer implementation periods for reductions of, with a view to phasing out, all forms of export subsidies.

3.9 Until such time as the phasing out of all forms of export subsidies is completed, developing countries shall continue to benefit from the special and differential treatment provisions of Article 9.4 of the Agreement on Agriculture.

3.10 Participants shall ensure that the disciplines on export credits to be agreed shall make appropriate provision for differential treatment in favour of least-developed and net food-importing developing countries as provided for in paragraph 4 of the Decision on Measures Concerning the Possible Negative Effects of the Reform Programme on Least-Developed and Net Food-Importing Developing Countries.

Other

4. Least-developed countries shall be exempt from reduction commitments. The objective of duty-free and quota-free market access for products originating from least-developed countries shall be expeditiously pursued.

5. The particular concerns of recently acceded Members shall be effectively addressed.

6. Subject to the provisions of the framework set out in paragraphs 1 to 5 above, relevant parts of the Revised First Draft of Modalities and the related questions specified in the report of the Chairman of the Committee on Agriculture Special Session to the TNC (TN/AG/10 refers) will serve as reference documents for the further work on modalities, including with respect to the following issues of interest but not agreed: product-specific commitments in domestic support, terms of expansion/opening of TRQs, in-quota tariff rates, single desk export privileges, export taxes, proposals for flexibility for certain groupings, certain non-trade concerns, implementation period, sectoral initiatives, inter-pillar linkages, peace clause, continuation clause, GIs, and other detailed rules.

Annex B

Framework for Establishing Modalities in Market Access for Non-Agricultural Products

1. We reaffirm that negotiations on market access for non-agricultural products shall aim to reduce or as appropriate eliminate tariffs, including the reduction or elimination of tariff peaks, high tariffs, and tariff escalation, as well as non-tariff barriers, in particular on products of export interest to developing countries. We also reaffirm the importance of special and differential treatment and less than full reciprocity in reduction commitments as integral parts of the modalities.

2. We acknowledge the substantial work undertaken by the Negotiating Group on Market Access and the progress towards achieving an agreement on negotiating modalities. We take note of the constructive dialogue on the Chair's Draft Elements of Modalities (TN/MA/W/35/Rev.1) and confirm our intention to use this document as a reference for the future work of the Negotiating Group. We instruct the Negotiating Group to continue its work, as mandated by paragraph 16 of the Doha Ministerial Declaration with its corresponding references to the relevant provisions of Article XXVIII *bis* of GATT 1994 and to the provisions cited in paragraph 50 of the Doha Ministerial Declaration, on the basis set out below.

3. We recognize that a formula approach is key to reducing tariffs, and reducing or eliminating tariff peaks, high tariffs, and tariff escalation. We agree that the Negotiating Group should continue its work on a non-linear formula applied on a line-by-line basis which shall take fully into account the special needs and interests of developing and least-developed country participants, including through less than full reciprocity in reduction commitments.

4. We further agree on the following elements regarding the formula:

- product coverage shall be comprehensive without *a priori* exclusions;
- tariff reductions or elimination shall commence from the bound rates after full implementation of current concessions; however, for unbound tariff lines, the basis for commencing the tariff reductions shall be [two] times the MFN applied rate in the base year;
- the base year for MFN applied tariff rates shall be 2001 (applicable rates on 14 November);
- credit shall be given for autonomous liberalization provided that the tariff lines were bound on an MFN basis in the WTO since the conclusion of the Uruguay Round;
- all non-*ad valorem* duties shall be converted to *ad valorem* equivalents on the basis of a methodology to be determined and bound in *ad valorem* terms;
- negotiations shall commence on the basis of the HS96 or HS2002 nomenclature, with the results of the negotiations to be finalized in HS2002 nomenclature;
- the reference period for import data shall be 1999-2001.

5. We furthermore agree that, as an exception, participants with a binding coverage of non-agricultural tariff lines of less than [35] percent would be exempt from making tariff reductions through the formula. Instead, we expect them to bind [100] percent of non-agricultural tariff lines at an average level that does not exceed the overall average of bound tariffs for all developing countries after full implementation of current concessions.

6. We recognize that a sectorial tariff component, aiming at elimination or harmonization is another key element to achieving the objectives of paragraph 16 of the Doha Ministerial Declaration with regard to the reduction or elimination of tariffs, in particular on products of export interest to developing countries. We recognise that participation by all participants will be important to that effect. We therefore encourage the Negotiating Group to pursue its discussions on such a component, which includes adequate provisions of flexibility for developing-country participants.

7. We agree that developing-country participants shall have longer implementation periods for tariff reductions. In addition, they would be given the flexibility of keeping tariff lines unbound, as an exception, or not applying formula cuts, for up to [5] percent of tariff lines provided they do not exceed [5] percent of the total value of a Member's imports. We furthermore agree that this flexibility could not be used to exclude entire HS Chapters.

8. We agree that least-developed country participants shall not be required to apply the formula nor participate in the sectorial approach, however, as part of their contribution to this round of negotiations, they are expected to substantially increase their level of binding commitments. Furthermore, in recognition of the need to enhance the integration of least-developed countries into the multilateral trading system and support the diversification of their production and export base, we call upon developed-country participants and other participants who so decide, to grant on an autonomous basis duty-free and quota-free market access for non-agricultural products originating from least-developed countries by the year [...].

9. We recognize that newly acceded Members shall have recourse to special provisions for tariff reductions in order to take into account their extensive market access commitments undertaken as part of their accession and that staged tariff reductions are still being implemented in many cases. We instruct the Negotiating Group to further elaborate on such provisions.

10. We agree that pending agreement on core modalities for tariffs, the possibilities of supplementary modalities such as zero-for-zero sector elimination, sectorial harmonization, and request & offer, should be kept open. In addition, we ask participants to consider the elimination of low duties.

11. We recognize that NTBs are an integral part of these negotiations and request participants to intensify their work on NTBs. In particular, we encourage all participants to make notifications on NTBs by 31 October 2003 and to proceed with identification, examination, categorization, and ultimately negotiations on NTBs. We take note that the modalities for addressing NTBs in these negotiations could include request/offer, horizontal, or vertical approaches; and should fully take into account the principle of special and differential treatment for developing and least-developed country participants.

12. We recognize that appropriate studies and capacity building measures shall be an integral part of the modalities to be agreed. We also recognize the work that has already been undertaken in these areas and ask participants to continue to identify such issues to improve participation in the negotiations.

13. The following issues of importance shall be further considered: non-reciprocal preference erosion and high tariff revenue dependency.

Annex C

Special and Differential Treatment

GATT 1994 - Article XVIII:C

"The General Council instructs the Council on Trade in Goods to develop and adopt procedures for recourse to Article XVIII:C. The concerns raised by developing countries, especially the least-developed countries, including those related to the suspension of concessions or other obligations under Article XVIII:C, shall be addressed."

GATT 1994 - Article XXXVI

"The General Council agrees that the Committee on Trade and Development shall annually review the implementation of Article XXXVI of GATT 1994, and report to the General Council with concrete recommendations, as agreed, no later than the last General Council of each year."

GATT 1994 - Article XXXVII

"The General Council agrees that any Member may initiate discussions in the Committee on Trade and Development on the basis of Article XXXVII and decides that a Member shall, upon request, provide a detailed explanation to matters raised in regard to the provisions under paragraph 1, with a view to reaching a solution that is satisfactory to all Members concerned."

GATT 1994 - Article XXXVIII

"The General Council instructs the Director-General to pursue and conclude cooperation arrangements as may be necessary to further the objectives set forth in Article XXXVI of the GATT 1994. The General Council further instructs the Committee on Trade and Development to receive studies and reports from relevant international agencies and organizations that may assist Members in analyzing the development plans and policies of individual developing and least-developed country Members, export potential and market prospects over the short and medium terms, measures that could be taken in the WTO framework and by other international agencies and organizations as well as the assistance required by developing and least-developed country Members to help achieve their respective development goals."

Understanding on the Interpretation of Article XVII of the GATT 1994

"While acknowledging that the provisions of Article XVII of the GATT 1994 apply to all Members, Members recognize that state trading enterprises may have a significant role to play in promoting and protecting public policy objectives in developing and least-developed country Members."

Understanding on Balance-of-Payments Provisions of the GATT 1994 –Paragraph 8

"The General Council mandates the Committee on Balance-of-Payments Restrictions to examine ways and means of simplifying the administrative requirements within the full consultation procedures."

Enabling Clause

"The General Council confirms that the terms and conditions of the Enabling Clause shall apply when action is taken by Members under the provisions of this Clause."

Agreement on Agriculture – Article 15.2

"The General Council confirms that least-developed country Members remain exempt from reduction commitments, as provided in Article 15.2, unless decided otherwise by consensus."

PSI Agreement - Article 3.3

"(a) The General Council agrees that technical assistance for purposes of the Agreement on Preshipment Inspection shall address the concerns of developing and least-developed country Members relating among others to:

(i) training customs and revenue officials to promote and achieve the objectives of the Agreement on Preshipment Inspection through the activities defined in Article 1.3 of the Agreement, in order to ensure the proper inspection of consignments to be exported to the user Member, and the prevention of false declaration, wrong classification and any fraud;

(ii) regulation of preshipment entities.

(b) The General Council further agrees that customs authorities of Members shall, in accordance with paragraph 8.3 of the Decision on Implementation-Related Issues and Concerns, closely cooperate in the context of the Agreement on Customs Valuation, and of the Decision Regarding Cases where Customs Administrations Have Reasons to Doubt the Truth or Accuracy of the Declared Value."

Agreement on Rules of Origin

"In regard to preferential rules of origin under the Common Declaration in Annex II to the Agreement, the General Council agrees that in their arrangements for mutual reduction or elimination of tariff or non-tariff barriers, developing and least-developed country Members shall have the right to adopt preferential rules of origin designed to achieve trade policy objectives relating to their rapid economic development, particularly through generating regional trade.

Furthermore, the General Council instructs the Director-General to take action to facilitate the increased participation of developing and least-developed country Members in the activities of the Technical Committee on Rules of Origin of the World Customs Organisation as well as to coordinate with this organization in identifying technical and financial assistance needs of developing and least-developed country Members, and report to the Committee on Rules of Origin and the Council for Trade in Goods periodically, and the General Council as appropriate."

Agreement on Import Licensing Procedures – Article 1.2

"It is understood that the requirement to take into account the "development purposes and financial and trade needs of developing country Members" in Article 1.2 of the Agreement means that the burden of the administrative procedures used to implement import licensing regimes shall be further reduced in order to facilitate trade of developing country Members and minimize possible adverse effects to their trade, including by making import licensing procedures as expeditious as possible."

GATS – Article IV

"Pursuant to Article IV.3 of the GATS, in all services negotiations, whether broad-based rounds of negotiations or separate negotiations on specific sectors, modalities shall be developed in order to allow the priorities of least-developed country Members to be presented and duly taken into account."

GATS - Article IV.3

"The General Council agrees that the information to be provided by Members shall indicate how the requirement that special priority be given to least-developed country Members in the implementation of paragraphs 1 and 2 of Article IV is being met, and that contact points, in this context, shall provide information of particular interest to services suppliers from least-developed country Members."

GATS – Article XXV

"The General Council instructs the WTO Secretariat to pursue with a view to concluding arrangements with relevant international institutions that have the technical assistance capacity to assist developing and least-developed country Members in addressing their supply-side and infrastructural constraints and their development needs in the services sector. This shall be without prejudice to the prerogative of the Council for Trade in Services to decide upon technical assistance to developing countries which shall be provided at the multilateral level by the Secretariat, in accordance with Article XXV.2."

GATS, Annex on Telecommunications – Paragraph 6

"The General Council instructs the Council for Trade in Services to put in place arrangements for prompt notification of any measures taken with regard to the implementation of subparagraphs (a) to (d) of paragraph 6 of the Annex on Telecommunications."

TRIPS Agreement – Article 66.2

"Members, having regard to Article 66.2 of the Agreement on Trade-Related Aspects of Intellectual Property Rights, and having regard to the decision of the TRIPS Council of 19 February 2003, contained in document IP/C/28, reaffirm that this decision be expeditiously implemented in a way that ensures the monitoring and full implementation of the obligations in Article 66.2."

TRIPS Agreement – Article 67

"The General Council agrees that technical and financial cooperation, in accordance with Article 67, shall be provided on request and on mutually agreed terms and conditions, with due consideration given to comprehensive programmes comprising such components as improving the relevant legal framework in line with the general obligations of the Agreement, enhancing enforcement mechanisms, increasing training of personnel at the various levels, assisting in the preparation of laws and procedures in an effort to encourage and monitor technology transfer, making use of the rights and policy flexibility in the Agreement, and strengthening or establishing coordination between intellectual property rights, investment and competition authorities.

The General Council instructs the Council for Trade-Related Aspects of Intellectual Property Rights to annually review the state of implementation of the Agreement between the World Intellectual Property Organization and the World Trade Organisation, taking into account opportunities for technical assistance as provided for in the Agreement."

TRIPS Agreement – Article 70.9

"For purposes of the requirement to grant exclusive marketing rights during transition periods, it is understood that there is a clear distinction between "patent rights" on the one hand and "exclusive marketing rights" on the other. Patent rights are set out in Article 28 of the TRIPS Agreement. Exclusive marketing rights are not the same as patent rights. Members have the right to define exclusive marketing rights, so long as the definition accords with the meaning of the term in the TRIPS Agreement as interpreted under the rules of public international law. There is no requirement to grant exclusive marketing rights unless marketing approval is granted in that WTO Member for which exclusive marketing rights is sought."

Understanding on Rules and Procedures Governing the Settlement of Disputes – Article 8.10

"Pursuant to Article 8.10 of the DSU, the General Council agrees that in disputes between a developing country Member and a developed-country Member, at least one panellist shall be from a developing country Member, unless the developing country Member party to the dispute waives this right."

Decision on Measures in Favour of Least-Developed Countries – Paragraph 2 (v)

"The General Council agrees that the WTO through its participation in the Integrated Framework and JITAP and other relevant institutions will work to ensure that supply-side constraints of the LDCs are identified in the Diagnostic Trade Integration Studies (DTIS) and are addressed in the implementation and follow-up taking into account the specific circumstances of each beneficiary country. The General Council also instructs the Sub-Committee of the LDCs to undertake a biennial review of the implementation of the DTIS and to monitor the possible impact of assistance that is targeted towards the diversification of exports from LDCs, including through comparing the composition and concentration of LDCs' export structures over time and across LDCs and through the establishment of other relevant indicators."

Rules Relating to Notification Procedures

"Recognizing the practical difficulties faced by least-developed country Members in abiding fully by their notification obligations, the General Council instructs the Sub-Committee on Least-Developed Countries to examine possible improvements to the notification procedures for least-developed country Members, taking into account the experience regarding Secretariat produced reports that helped fulfil some of these requirements. In conducting its examination, the Sub-Committee shall seek the input of relevant WTO bodies, which may be in a position to advise on practical means for improving the notification procedures in relation to least-developed country Members, for example the possibility of longer timeframes, specified exemptions and simplified procedures for notifications, and cross-notifications. The Committee on Trade and Development shall forward the Sub-Committee's report to the General Council by 31 December 2003 for appropriate action."

Enabling Clause [1]

"The General Council agrees that in formulating schemes under paragraph 2(a), (b) and (c) of the Enabling Clause, and in furtherance of paragraph 3 thereof, developed-country Members will take into account, among other factors, the needs of developing and least-developed country Members [and consult with them] with a view to ensuring that their products of export interest are accorded meaningful market access. The Committee on Trade and Development will annually review the progress made in this regard and report to the General Council with recommendations, if any."

[Review of Progress on Market Access for Least-Developed Countries] [1]

"We recall paragraph 2(d) of the Decision on Differential and More Favourable Treatment, Reciprocity and Fuller Participation of Developing Countries, and Members' commitment to the objective of duty-free, quota-free market access for products originating from least-developed countries, as contained in paragraph 42 of the Doha Ministerial Declaration. The General Council agrees to review the progress made in providing access to the least-developed countries on the above basis."

Decision on Measures in Favour of Least-Developed Countries – Paragraph 2 (ii) [1]

"Without prejudice to the binding commitments that may result from work under Paragraphs 13, 16 and 42 of the Doha Ministerial Declaration, and building upon our commitment in the Doha Ministerial Declaration, Members shall continue to expeditiously pursue the objective of duty-free and quota-free market access for products originating from [all] least-developed countries in a manner that ensures security and predictability. We urge Members to adopt and implement rules of origin so as to facilitate exports from least-developed countries."

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[1] These proposals have been agreed to *ad referendum*.

Annex D

Relationship between Trade and Investment

1. The objective of the negotiations shall be to establish an agreement to secure transparent, stable and predictable conditions for [long term cross-border investment, particularly foreign direct investment][foreign direct investment], that will contribute to the expansion of trade, and the need for enhanced technical assistance and capacity-building in this area. Any agreement will reflect in a balanced manner the interests of home and host countries, and take due account of the development policies and objectives of the host government as well as their right to regulate in the public interest.

2. Paragraphs 45-51 of the Doha Ministerial Declaration shall apply to these negotiations.

3. The Chair of the Negotiating Group on Investment shall hold the Group's first meeting within one month from the date of this decision. The Chair of the Negotiating Group shall conduct the negotiations with a view to presenting a draft text by no later than [30 June 2004].

4. On the basis of paragraph 22 of the Doha Ministerial Declaration and the work done thus far under the Working Group on the Relationship between Trade and Investment, the multilateral framework shall include the following elements:

- Scope and Definition ([long-term cross-border investment, particularly FDI][Foreign Direct Investment]);
- Transparency;
- Non-discrimination (MFN and NT with limited exceptions);
- Pre-establishment commitments based on a GATS-type, positive list approach;
- Exceptions and balance-of-payments safeguards;
- Consultations and the settlement of disputes between Members (investor to state dispute settlement mechanisms shall not be included);
- Special and Differential Treatment for developing and least-developed country Members including flexibility regarding transparency obligations, commitments (NT, MFN and pre-establishment commitments) and transition periods, as necessary;
- Provisions as necessary to clarify the relationship between this Agreement and relevant WTO provisions;
- Provisions to clarify the relationship between this Agreement and existing bilateral and regional arrangements on investment;
- Other issues that participants may wish to put forward.

5. Recognizing the needs of developing and least-developed countries for enhanced support for technical assistance and capacity building, including policy analysis and development so that they may better evaluate the implications of closer multilateral cooperation for their development policies and objectives, and human and institutional development, we shall work in cooperation with other relevant intergovernmental organizations, including UNCTAD, and through appropriate regional and bilateral channels, to continue to provide strengthened and adequately resourced technical assistance and capacity building to respond to these needs during the negotiations and after their conclusion.

Annex E

Interaction between Trade and Competition Policy

1. Negotiations on a multilateral agreement on trade and competition policy shall be based on the elements contained in paragraph 25 of the Doha Ministerial Declaration and on the work undertaken in the Working Group on the Interaction between Trade and Competition Policy. The objective of the negotiations shall be to establish an agreement to secure better and more equitable conditions for international trade, by facilitating effective voluntary cooperation on anti-competitive practices which adversely affect international trade, in particular hardcore cartels which have an impact on developing and least-developed countries' economies, and assisting WTO Members in the establishment, implementation and enforcement of competition rules within their respective jurisdictions. The negotiations will not deal with state-to-state arrangements that limit competition or with practices implemented pursuant to such arrangements.

2. The provisions of the agreement will be drafted in such a way that individual decisions of national competition authorities shall not be subject to challenge or recommendations under the WTO dispute settlement system. The principle of non-discrimination will apply only to laws, regulations and guidelines of general application. The principle of procedural fairness will respect the legal and judicial systems of each WTO Member. Consideration shall also be given to the inclusion of a possible peer review mechanism.

3. We reaffirm that full account shall be taken of the industrial policy, social policy and other needs of developing and least-developed country participants and appropriate flexibility provided to address them. The right of all Members to implement exceptions or exclusions from the application of national competition laws on the basis of transparent domestic legal processes will be safeguarded. Transition periods for implementation of the agreement by developing countries and least-developed countries shall apply.

4. Recognizing the needs of developing and least-developed countries for improved support for technical assistance and capacity building, we shall continue to work to provide adequate technical assistance and capacity building during the negotiations and after their conclusion. In this respect, no later than the end of 2003, a meeting will be convened to start a collaborative effort with other international organizations, including UNCTAD, the World Bank, the OECD and others, in order to begin to identify and assess needs related to capacity building to assist in the implementation of the results of the negotiations.

5. Paragraphs 45-51 of the Doha Ministerial Declaration shall apply to these negotiations. At its first meeting after this Session of the Ministerial Conference, the Trade Negotiations Committee shall establish a Negotiating Group on Trade and Competition Policy and appoint its Chair. The first meeting of the Negotiating Group shall agree on a work plan and schedule of meetings.

Annex F

Transparency in Government Procurement

1. The objective of the negotiations will be to establish a multilateral agreement on transparency in government procurement. Negotiations will be based on paragraph 26 of the Doha Ministerial Declaration and will build on the progress made in the Working Group on Transparency in Government Procurement, in particular the 12 issues identified by the Chair.

2. Negotiations shall be limited to transparency only and will include special and differential treatment for developing and least-developed country Members, including flexibility regarding the extent of commitments and transitional periods as necessary.

3. Paragraphs 45-51 of the Doha Ministerial Declaration shall apply to these negotiations. At its first meeting after this Session of the Ministerial Conference, the Trade Negotiations Committee shall establish a Negotiating Group on Transparency in Government Procurement and appoint its Chair. The first meeting of the Negotiating Group shall agree on a work plan and schedule of meetings.

4. Participants shall submit their initial negotiating proposals for transparency in government procurement by [31 January 2004]. The Chair of the Negotiating Group shall conduct the negotiations with a view to presenting a draft text by no later than [30 June 2004]. Other organizational issues, including the number and timing of meetings of the Negotiating Group, shall be determined at its first meeting or as necessary thereafter.

5. Recognizing the needs of developing and least-developed countries for improved support for technical assistance and capacity building, we shall continue to work to provide adequate technical assistance and capacity building during the negotiations and after their conclusion.

6. No later than the end of 2003, WTO Members will convene a meeting devoted to starting a collaborative effort with other international organizations, including the World Bank, UNCTAD, and others, in order to begin to identify and assess needs related to capacity building to assist the implementation of the results of the negotiations.

Annex G

Trade Facilitation

1. Negotiations shall aim, by clarifying and improving relevant aspects of GATT Articles V, VIII and X of the GATT 1994, at the establishment of an agreement to further expedite the movement, release and clearance of goods, including goods in transit.

2. In the case of developing and least-developed countries, it is agreed that their implementation capacities shall be an important factor to take into account in the negotiations. The negotiations shall also take fully into account the principle of special and differential treatment for developing and least-developed countries.

3. Recognizing the needs of developing and least-developed countries for enhanced technical assistance and capacity building in this area, Members commit themselves to ensuring adequate technical assistance and support for capacity building in this area both during the negotiations and after their conclusion.

4. In order to make the process of identification and assessment of needs related to technical assistance and capacity building effective and operational and to ensure better coherence, a collaborative effort shall be undertaken with other international organizations, including the World Bank, IMF, UNCTAD and the WCO, in this regard.

5. Due account shall be taken of the relevant work undertaken by other international organizations in this area.

6. Paragraphs 45-51 of the Doha Ministerial Declaration shall apply to these negotiations. At its first meeting after this Session of the Ministerial Conference, the Trade Negotiations Committee shall establish a Negotiating Group on Trade Facilitation and appoint its Chair. The first meeting of the Negotiating Group shall agree on a work plan and schedule of meetings.

JOB(03)/150/Rev.1/Corr.1 26 August 2003

Preparations for the Fifth Session of the Ministerial Conference

Draft Cancún Ministerial Text

Corrigendum

Annex A, page A-1, chapeau text

The second sentence should read as follows:

> "Participants recognize that reforms in all areas of the negotiations are inter-related and agree to conclude the work to establish modalities for the further commitments, including provisions for special and differential treatment and taking into account non-trade concerns as provided for in the Agreement on Agriculture, within the timeframe specified in paragraph 4 of the Cancún Ministerial Text, on the basis of the following framework:"

IP/03/

Brussels, [ ] 2003

WTO Cancun: EU determined to make trade work for all – a stronger multilateral trading system at hand

On 10 September 2003 the World Trade Organisation will open its 5th Ministerial Conference in Cancun. This meeting is an important staging post on the road to a successful conclusion by end 2004 of the Doha Development Agenda (DDA), the round of trade negotiations launched two years ago in Qatar. The DDA is crucial for bolstering international economic growth, and helping developing countries integrate into the global economy. So it is critical that Cancun is a success, and the EU has pushed hard for progress on the outstanding issues. But all WTO members must do their part, to ensure that progress is maintained on market access issues (agriculture, industrial tariff negotiations and services), as well as on global rule-making in areas such as trade and environment, investment, competition, trade facilitation and government procurement and that the all-important development dimension of the negotiations is respected in full.

Before leaving for Cancun, EU Trade Commissioner Pascal Lamy said: "The DDA is about making trade work for all, and delivering o growth and development. The Cancun Ministerial meeting must move the negotiating process into a decisive phase, if we are to meet the end 2004 deadline. The timely conclusion of the round will bring good news to a world economy in need of stimulus. Europe is willing to take its responsibilities but we cannot do it alone. If we want this round to be successful, we will all have to shoulder the burden, and to show a willingness to compromise, a determination to succeed."

EU Farm Commissioner Franz Fischler added: "Europe is going to Cancún with one clear objective: We want to make the Doha Development Agenda a success. In order to do so, we have to continue the reform of the rules for international farm trade, which was started in the Uruguay Round. And I can promise that Europe will play ball. But if we want to move the talks forward, all WTO members have to make an effort, not just Europe. The EU has shown a lot of flexibility in the last weeks. We have moved from our starting position, because we think that the time of rhetoric is over and we have to start converging. Look at our improved offers to do more on opening markets, to do more in terms of reducing trade distorting farm support, to do more in reducing export subsidies. Unfortunately, I have not seen the same flexibility in other camps so far. In fact, I have seen no flexibility on the part of those who shout loudest."

Since the negotiations were launched in Doha in November 2001, a very substantial amount of work has been done. WTO members now need, at the Fifth Ministerial

Conference in Cancun on 10-14 September 2003, to take a number of key decisions to achieve real progress both in the market access areas and in the rule-making areas of the negotiations, to fulfil the development aspirations of the round.

The outcome of Cancun will be measured in terms of how successful it will be in moving the negotiations into their next phase so that conclusion of the round can by achieved by the agreed date of the end of 2004. To achieve this goal, Ministers in Cancun must take the necessary substantive decisions and provide political impetus for the whole of the DDA. It must remain clear that the DDA's final result remains an indivisible package in the form of a Single Undertaking for all WTO members: nothing is agreed until everything is agreed.

In preparation of Cancun, a revised draft Cancun Ministerial text - following a first draft of the end of July - was tabled on 24 August by the Chairman of the General Council of the WTO, Mr. Perez de Castillo. He did this on his own responsibility, but following a process of extensive consultations with WTO members. This draft declaration will serve be the basis for the discussion and negotiation in Cancun. It reflects many areas of agreement but also indicates the substantial differences remaining between WTO members that must be resolved by Ministers in Cancun.

For the EU, the text should form the basis for discussions in Cancun, even though we are very concerned that the text is not balanced in some areas (notably in agriculture), insufficiently ambitious in others (for example in industrial tariffs and geographical indications or presents a step down in ambition (e.g. on Environment) The text also fails to provide an unequivocal decision on the launch of the negotiations on the Singapore issues. Ministers now have the task to to balance this text in Cancun and this is why the EU will work constructively with other WTO partners towards this goal.

Paving the way for Cancún, an agreement has recently been reached on the issue of access to generics for developing countries with no production capacity. This is a clear example that the WTO can respond flexibly and pragmatically to the concerns of developing countries, and the EU strongly welcomes the deal.

Key areas for decision in Cancun

- On agriculture, Cancun is not the end point of the farm trade talks, it is the mid-point. The EU will be striving to get agreement on a framework on how to cut trade distorting farm subsidies, export subsidisation and tariffs and how to give developing countries a more beneficial deal. The exact figures and the related rules and disciplines will then be negotiated later, in time to wrap up the entire Doha Development Agenda, including agriculture, in the end of 2004. The Ministers will also need to lay down the timetable for the adoption of the modalities as well as for the submission of schedules based on the latter. The EU underlines the need for a balanced outcome in agriculture. All participants have to make an effort.

- On non-agricultural market access (industrial products), Cancun should establish the framework for the reduction of tariffs and non tariff barriers ("modalities") and set the timetable for the remainder of the negotiations.

  A good deal of progress has been made, but we need to make sure that the proposals to open trade by reducing barriers are ambitious, not only for developed countries but also for developing ones. Industrial goods represent around 90% of world trade and 70% of trade by developing countries takes place with other developing countries. A high level of ambition is therefore essential to boost trade.

- On Services (GATS), Ministers should urge those that may not already have done so to submit initial offers, encourage improvements to existing offers, and establish a clear roadmap for completing the negotiations.

  Services represent between half and two thirds of both developed and developing countries. 15 of the world's 40 leading service exporters are from developing countries. Opening trade in services such as telecoms, banking, distribution or tourism, as well as the temporary entry of foreign professionals are thus key to modern and efficient economies. But further opening trade in services must not undermine the provision of public services. The EU's position on education, health and culture is particularly firm in this respect.

- On the Singapore issues - investment, competition, trade facilitation and transparency in government procurement - WTO members need to take decisions on the negotiating modalities for each of the four issues, so that negotiations can start immediately after Cancun. Negotiations should end successfully by the end of 2004 along with the other issues in the DDA, in line with the concept of the single undertaking.

  Singapore issues key to ensure that the benefits from trade opening are spread evenly among all WTO members. The EU seeks to establish clear, transparent and predictable rules that will ensure a level playing field. On Geographical Indications (GIs), Cancun should advance in the creation of a multilateral register for wines and spirits, whose GIs are already recognised by the WTO. It should also mark progress in the extension of GI protection to products other than wines and spirits. Finally, in the context of the agriculture negotiations the EU seeks to ensure that a number of EU GIs currently used in other countries are reserved for the exclusive use of European producers, thus protecting against pirating.

- On Special and Differential Treatment (SDT) and implementation issues, WTO members should at Cancun decide on a package of measures with real value added for developing countries, especially the least developed, and if necessary decide to continue work after Cancun. Significant progress on this has been achieved in Geneva over the last couple of months.

- Cancun should witness WTO accession of new Members, notably Least Developed Countries. Work is on track to allow accession by Cambodia and Nepal at the Conference. This would be the first accession of an LDC country since the creation of the WTO in 1995.

- On trade and the environment, in Cancun we should agree to give the UN Environmental Program (UNEP) and of the Secretariats of Multilateral Environmental Agreements (MEA) observership status at the WTO Trade and Environment negotiations and to intensify work on environmental labelling. It should also agree on a framework to reduce unsustainable fisheries subsidies.

- On trade related assistance (TRA), Cancun should welcome the progress made and underline the continued commitment of WTO members to improve the quality, quantity and co-ordination of TRA as key to underpin the negotiations and their implementation.

  The EU is committed to providing TRA. From 2001-2003 we have committed 2 billion Euro and have set aside for the next 4-5 years again an amount of 2 billion Euro.

WTO Members must reaffirm their determination to continue and improve transparency, dialogue with the broader public, and coherence with other international organisations.

The importance the EU attaches to the Cancun conference is underscored by the European Parliament Resolution of 3 July and the Council conclusions of 21 July 2003, which renews the support for the Commission's approach and demonstrates to other WTO partners the EU's political commitment.

Support for a successful Cancun conference and for a comprehensive and ambitious outcome of the DDA continues to grow among WTO members. Traditional partners such as Japan and the US are firmly in support of the Cancun conference but an increasing number of developing countries - whose importance and weight in the WTO continue to grow and now represent over 2/3 of membership - are putting their full weight behind the process. This adds significantly to the overall momentum behind the DDA.

In this final phase towards Cancun, EU will continue to build alliances and work together with a very broad range of both developed and developing countries and take initiatives with key partners. Cancun will only be a success if it meets the expectations of all WTO members.

Internally within the EU, the Commission will, in the final run-up to Cancun and during the Conference itself, continue to consult Member States, and the Council of Ministers will meet *sur place*. It will keep the European Parliament fully abreast of developments and maintain a structured dialogue with civil society. As is the custom, the Commission will include members of the EP and representatives of civil society as advisers in the EU delegation to Cancun.

For more information:
http://europa.eu.int/comm/trade/issues/newround/doha_da/cancun/index_en.htm
http://europa.eu.int/comm/agriculture/external/wto/cancun/index_en.htm

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Briefing Cancun ministerial declaration: Anti-dumping

1. The issue

Rules : Anti-Dumping

In Doha, Ministers decided that the Anti-Dumping Agreement ("ADA") was in need of reform. Consequently, it was agreed at the 4th Ministerial Conference to start negotiations aimed at clarifying and improving disciplines under the ADA, while preserving the basic concepts, principles and effectiveness of this agreement and taking into account the needs of developing and least-developed participants. The negotiations are being held in the Negotiating Group on Rules which also deals with the negotiations on Subsidies and Countervailing Measures and Regional Trade Agreements.

2. State of play of negotiation process

The Doha mandate structures the process into two phases. In the first phase, WTO members identify issues and provisions of the ADA on which they want to negotiate. In a second phase of "real negotiations", solutions are sought.
The issue identification phase with nine meetings of the Rules Group is virtually completed. It has been very constructive and productive with over 90 papers by more than 30 Members and was characterised by a large spectrum of positions going from a request for a wholesale renegotiation of AD Agreement to a rejection of any substantial change.
The chair aims at a **"seamless transition" to the second phase**, while keeping the door formally open for new proposals (reflected in draft text below). So far there is widespread support for this approach. In fact, the transition to the second phase has already started: AD negotiations cover already at this stage both identification of issues and solutions.

Draft text:
We instruct the Negotiating Group on Rules to accelerate its work on anti-dumping and subsidies and countervailing measures, including fisheries subsidies, with a view to shifting its emphasis from identifying issues to seeking solutions.

3. EU position/Line to take

Draft text
The text is fine for EC. It adequately reflects the state of play in the Rules group and the general views of the group.

Background
EU is open to broad negotiations and has actively participated in the negotiations so far, which were very constructive. In its concept paper (July 2002) EU has set out its priorities for the negotiations:

- Strengthening the current disciplines, e.g. introduce lesser duty rule and public interest test, improve transparency, reduce the costs of investigations, make initiations subject to a swift control mechanism. On the last two elements EU already submitted concrete proposals;
- Preserve the effectiveness of the anti-dumping instrument and its objectives;
- Simplify and clarify certain provisions;
- Take into account the needs of developing countries.

These positions reflect largely opinions expressed by civil society and by the associations representing the various economic operators.

Our three papers received support and led to interesting discussions in the Rules Group. We are confident that the topics we identified will play an important role in the further negotiations.

Author: Adinda Sinnaeve

NG Rules : regional trade agreements

1. Brief description of the issue

The negotiating group is examining ways of clarifying and improving the existing WTO rules and procedures relevant to regional trade agreements (RTAs), and has focused on the scope for procedural changes to improve transparency about RTAs. Less attention has been given to possible clarifications of the relevant legal provisions of the WTO Agreements, which will only come into focus after the Cancun Ministerial.

No decision needs to be taken – ministers are expected to note the progress made and agree on language for inclusion in para 7 of the ministerial text.

2. State of play of negotiation process

The ministerial is not expected to take decisions on this subject but instead to note the progress made and underline need to pursue work on transparency and on the clarification and improvement of RTA disciplines under WTO provisions.

Negotiations on these issues are to be pursued after Cancun. In general terms, positions of WTO partners vary between those seeking a strengthening and tightening of WTO provisions, whereas others, including the EU, argue that there is still a general interest in improving the clarity of existing WTO rules and the operation of procedures, short of questioning the basic right of Members to enter into FTAs. The developing countries have divided views, ranging from support to the developmental role of North-South agreements such as Cotonou to favouring stronger MFN-based disciplines, while seeking to maintain broad exemptions for partial tariff agreements justified on "development" grounds.

3. EU position/Line to take

The draft ministerial text on the table is acceptable to the EU.

In more general terms, and not the focus of discussions for Cancun, the EU's interests lie in a clarification of existing rules in order to achieve greater legal certainty rather than in either stricter or more lenient rules.

SUBSIDIES, including Fisheries Subsidies

1. The issue

Negotiations on the Agreement on Subsidies and Countervailing Measures cover both general subsidy disciplines (except agriculture) and subsidies in the area of fisheries, the latter being specifically mentioned in the Doha mandate. The negotiations are being held in the Negotiating Group on Rules which also deals with the negotiations on the Antidumping Agreement and Regional Trade Agreements.

2. State of play of negotiation process

According to the Doha mandate, the rules negotiations follow a 2-step approach. In a first phase, WTO Members identify issues and provisions of the ASCM which they want to negotiate, and, in the subsequent phase, solutions are proposed. On general subsidy disciplines, the first phase is virtually completed. The main proponents of the negotiations were, among developed countries, Australia, Canada, the EC and the US, while Brazil and India were most vocal among the developing countries. Many developed countries argued for stronger disciplines on subsidies with increased transparency while developing countries pushed for more special and differential treatment in this area, in particular in the area of subsidies for development and export financing.

With regard to fisheries subsidies, two main camps emerged. On the one side, the "Friends of Fish" (Australian, Iceland, United States, Chile and several other developing countries) who strongly argue for a prohibition on subsidies to the fisheries sector, arguing that they cause overfishing and trade distortions. This argument is rejected by Japan and Korea who deny that subsidies to fisheries warrant any special treatment under WTO rules. The fisheries subsidies negotiations are already rather advanced and Members have already started to propose solutions to the issues which have been identified.

No explicit decisions are required on the subsidies negotiations at Cancun. The transition from the first to the second phase of the negotiation is considered a "seamless" one.

3. EU position/Line to take

The EC position on general subsidies as set out in its proposal to Rules Group (November 2002) is focused on enhancing the transparency (enforcing the notification obligation) and addressing the hidden types of subsidies currently escaping the subsidy disciplines (disguised R&D subsidies, state-controlled entities and certain local content subsidies). Concerning developing countries, the EC indicated its willingness to consider a well-defined S&D package to accommodate legitimate development needs of DCs.

With regard to fisheries subsidies, the EC has made a far-reaching proposal inspired by its own recent reform of the Common Fisheries Policy. Under this approach, subsidies

which contribute to overfishing by enhancing vessel capacity should be outright prohibited while subsidies which mitigate against the social and environmental effects of such a prohibition (such as re-training of fishermen) should be non-actionable. This proposal was considered a major step towards ensuring sustainable development in the highly sensitive fisheries sector.

In conclusion, EC position will be that Ministers should decide to continue the work in the Rules Group on subsidies through a seamless transition from a phase of issue-identification to working on concrete solutions. The Chair's draft achieves this and no amendment is needed.

SPECIAL AND DIFFERENTIAL TREATMENT

1. Issue

In response to the concerns expressed by developing countries regarding the operation of Special and Differential Treatment (SDT) provisions, a work programme was launched at Doha on SDT as an integral part of the DDA. At Doha, Ministers agreed to review SDT provisions with a view to strengthen them and to consider other means of improving developing country use of these provisions (enhanced information flows, monitoring mechanism,...). It was also noted that some developing countries proposed a Framework agreement on SDT.

2. State of play of the negotiation process

After several months of standstill due to divergences of view between WTO Members on the procedure to follow, the Chairman of the General Council (Ambassador Perez del Castillo) was succesful in relaunching the process along a three-pronged approach.
- 38 proposals on which Members have agreed in principle (package of 12 measures submitted to the GC in February) and proposals on which agreement is near or which have a particular developmental value were examined in the General Council (« Category I »).
- 38 proposals made in areas on which mandated negotiations or work programmes are ongoing were considered in the respective WTO bodies. (« Category II »)
- Members were also given the opportunity to look again at 12 proposals which would be very difficult to accept in their present form (« Category III »).

Out of the 88 proposals tabled on SDT, it was hitherto possible to reach consensus in Geneva on a list of 24 measures that still need to be formally adopted. This substantial package contains concrete and precise guidelines on the implementation of important SDT provisions in all WTO agreements (Enabling Clause, GATT, Agriculture, GATS, TRIPS, Pre-Shipment Inspection, Rules of Origin, Import Licensing, DSU,...). Many of these decisions should be read in cunjunction with SDT to be provided in modalities of on-going negotiations.

3. EU position

Objective is to ensure that this package is adopted and that this "early harvest" will be complemented through further work on remaining issues. If necessary, EU is open to add a few more decisions to current draft package of 24 tobe adopted in Cancun.

The SDT provisions should help the progressive integration of developing countries in the Multilateral Trading System, i.e. they should, among other things, be a step towards the implementation of common rules rather than a parallel set of rules, they should be transitory rather than permanent, and they should be trade enhancing rather than trade restricting.

IMPLEMENTATION

(see also separate briefs on GIs and on Biodiversity)

1. Issue

Since the Ministerial conference in Seattle (1999) Developing Countries raised a number of issues related to the Implementation of WTO agreements in various areas : Biodiversity, protection of Geographical Indications, Customs Valuation, Anti-Dumping, Balance of Payments (BoP) Safeguards, Technical Barriers to Trade (TBT), Trade Related Investment Measures (TRIMs), etc... The issue of extension of protection for Geographical Indications to other products than wines and spirits is both of great importance for developing countries and the EU.

Participants at Doha recognised the importance of Implementation issues by making them an integral part of the overall DDA Work Programme. The Doha Declaration and the Decision on implementation-related issues and concerns codified these issues, settled a number of them by taking appropriate decisions, and gave the further procedure to follow for outstanding issues (issues were either referred to negotiating bodies or to the various responsible standing WTO bodies, all reporting to the Trade Negotiating Committee, TNC).

2. State of play of negotiating process

While some progress has been made since Doha, a number of the issues and concerns raised in this context remain outstanding, most of which are part of the negotiations mandate on Rules or on-going work programmes such as the Triennal review of the TBT agreement due to be completed by the end of 2003. Further to the informal consultation he conducted on 23 outstanding issues (re GI extension, BOP, TBT, TRIMs, Customs Valuation, Safeguards, TRIPs, Market Access), DG Supachai suggested, where deemed useful, to refer some of these issues to regular Committees that should report back to the TNC. Consensus had still to be reached on this issue inter alia because India continues to insist that the issues be treated directy at the TNC.

India also recently blocked the adoption of a report recommending a solution to the issue of assistance from the customs administration of an exporting Member in cases of doubt as to the truth or accuracy of the declared customs value (Customs Valuation, para 8.3 of Doha Decision on Implementation). This draft solution, which would enable exchange of data between customs authorities in narrowly drawn circumstances, is the result of intense work and intended to address a concern that is of increasing political prominence in India.

3. EU position

The EU position is that all still outstanding implementation issues, including GI extension, are to be negotiated in line with paragraph 12 of the Doha Ministerial Declaration.

The EU will continue to show as much flexibility as possible in order to find solutions to individual issues. It is in particular committed to finding a solution to the Customs Valuation issue that will address India's concern and be possible to implement by its customs administration. The current draft decision is a good basis for this and should be adopted.

BRIEFING FOR

CANCUN MINISTERIAL - SEPTEMBER 2003

SERVICES NEGOTIATIONS

1. Brief description of the issue

Services play an increasingly central role in the global economy, but their strong and growing role is still not reflected in its share of world trade. Various entry barriers still hamper trade in services and act as a brake on economic growth. In virtually every country the performance of the service sector can make the difference between rapid and sluggish growth, as services constitute essential inputs in the production of goods and other services, which is why these negotiations are so important.

The services negotiations under the General Agreement on Trade in Services (GATS) are about opening up services trade. They are not about deregulation of services, many of which are closely regulated for very good reasons, such as ensuring quality and equal access to public services, social and territorial cohesion.

2. State of play of negotiation process

a) Market Access.

Trade Ministers agreed in Doha on a timetable for the ongoing negotiations on services under the GATS. The Doha Declaration calls as far as services is concerned for the completion of negotiations within the timeframe set of the overall round, namely by 1 January 2005. In accordance with the Doha mandate, participants in the services negotiations have been exchanging initial requests and offers since 30 June 2002.

Overall the services negotiations are on track but there is no room for complacency and there is a need for more ambition and active involvement from all members. First, a number of key members have yet to submit their initial offers. Second, the quality of many of the offers currently on the table needs to be considerably improved. The current imbalance between the quality of offers on table is not sustainable.

Consequently, at Cancun Ministers need to give clear directions for the remainder of the negotiations. This will have to include:

- the process for increasing the number of offers and
- the process for improving these from Cancun until the end of the negotiations.

The draft of **Cancun declaration** is broadly speaking acceptable to the EU as far as services are concerned and addresses these points. In order to steer the process on market access, the draft calls for submission of offers by

Members that have not done so as soon as possible, and foresees a deadline for the tabling of improved offers by all Members. The date has been left blank and will be settled in Cancun. However, we would have liked to see the inclusion of an additional goalpost for the tabling of draft final schedules so as to help steer the negotiations towards a successful conclusion.

b) Rules

On the rules side four main issues are being pursued under the work programme, namely negotiations on safeguards under GATS Article X; negotiations on subsidies under GATS Article XV; negotiations on government procurement under GATS Article XIII; domestic regulation under GATS Article VI:4. The EU has and will continue to engage constructively in the discussions regarding all rules issues but is eking more constructive engagement from others on Government Procurement of Services.

As regards **safeguards** (GATS article X) some developing countries (DCs) have been pushing for an emergency safeguard mechanism (ESM) in services. However, far from all DCs are interested in an ESM fearing among other things its potential application in mode 4 and some serious questions about desirability and feasibility of a safeguard in services remain unanswered (definition of national industry, measuring injury due to lack of statistics, protection of acquired rights, ...). As a result, little progress has been made for a number of years and the deadline for concluding negotiations has been extended several times (current mandate expires in March 2004). In this context, the EU, as many other WTO Members, is sceptical about the need to introduce a safeguard mechanism in GATS as it is already a very flexible agreement. The EU, however, participates actively in the discussion of all the technical issues related to the feasibility and desirability of ESM

Subsidies is an area where the negotiations have been relatively dormant. Only a few DCs have shown some interest, but have not put forward any proposal for disciplines. The few contributions that are on the table only deal with the need to reach common definitions and to exchange information on subsidies related to trade in services. Key industrialised countries oppose the development of disciplines and have not engaged in the exchange of information. The EU, without being a proponent for disciplines, is among the few Members that has contributed to the exercise by sharing information on its system of State aid control.

The EU continues its efforts to move the work on a framework for rules on **Government procurement** in services forward and have tabled several proposals. Some DCs have been reluctant and see the GATS Article XIII mandate as limited to transparency issues. There is however a clear mandate in GATS for such work, and government procurement is of great importance in many service sectors (e.g. more than 50 % of constructions services are accounted for by government procurement). The EU would like to see more constructive engagement from other member on this issue and any discussion and/or progress on other GATS Rules negotiations (safeguards and subsidies) must be matched by parallel discussion and progress on Government procurement,.

Work on disciplines on **domestic regulation** under Article VI:4 GATS is also underway. Over the last years, the discussions have dealt with issues related to the mandate (transparency, necessity, equivalence, international standards, but discussions have in the last year moved to a more concrete phase, concentrating on what kind of regulatory measures Article VI:4 disciplines would need to address, to complement Market Access commitments. The current negotiations are clearly confined to measures in certain specified areas (qualification and licensing requirements and procedures, technical standards), and will in no way affect Members' right to pursue the regulatory objectives they deem appropriate within their jurisdiction.

c) Special treatment for LDCs

Pursuant to GATS article XIX, modalities are to be established for the treatment of liberalisation undertaken autonomously by all Members since previous negotiations (agreed in March 2003), as well as for the special treatment for LDCs.

Discussions on the draft modalities for LDCs are currently taking place in Geneva. Given the EU's political commitment towards LDCs, we have played a constructive role in these negotiations and are open to finding a reasonable solution.

3. EU position/Line to take

- The draft of Cancun declaration (para. 6) is broadly speaking acceptable to the EU as far as services are concerned:
  - the draft calls for submission of offers by Members that have not done so as soon as possible, and foresees a deadline for the tabling of improved offers by all Members. The date has been left blank and should remain so until Cancun so that it is aligned with the deadlines for agriculture and NAMA to ensure coherence.
  - It calls on Members to complete the work on rules negotiations.
  - However, we would have liked to see the inclusion of an additional goalpost for the tabling of draft final schedules so as to help steer the negotiations towards a successful conclusion.

TRADE AND COMPETITION

The issue

Since 1997, the WTO Working Group on the Interaction between Trade and Competition policy (WGTCP) has been discussing issues such as the contribution of competition law and policy to sustainable economic growth and the impact of anti-competitive practices on international trade flows.

At the Doha Ministerial Conference Ministers agreed on a more narrow focus for the work of the WGTCP (see DDA para. 25), namely the clarification of the possible elements of a multilateral framework agreement on competition.

The elements listed in para. 25 are : « core principles, including transparency, non-discrimination and procedural fairness, and provisions on hardcore cartels; modalities for voluntary cooperation; and support for progressive reinforcement of competition institutions in developing countries through capacity building ». Para. 25 further states that : « Full account shall be taken of the needs of developing and least-developed country participants and appropriate flexibility provided to address them. »

The WGTCP has not only conducted detailed and constructive discussions on the elements listed in para. 25, but has also discussed the possible application of a « peer review» mechanism and the WTO dispute settlement mechanism, as well as the need for flexibility and progressivity, especially as regards developing and least developed WTO members.

To give just one example of anti-competitive practices which adversely affeect international trade flows, « hard core cartels » (price-ficxing, bid-rigging, output restrictions and market allocation schemes) are illustrative. Such cartels operate globally in products consumed globally – both by intermediate and by final consumers – and often direct their activities at jurisdictions with limited or no competition enforcement. A background paper for the 2001 World Bank World Development Report by M. Levenstein and V. Suslow shows that in 1997 DCs imported USD 81,1 billion of goods from industries which had seen a price-fixing conspiracy during the 1990s. Those imports represented 6,7 % of imports and 1,2% of GDP in DCs (and an even larger fraction of trade for the poorest DCs for whom the sixteen products in question represented 8,8% of imports. Given the considerable overcharges in all these cartels, the cost for and adverse impact on DCs and LDC economies is obvious.

A WTO agreement based on the elements listed in DDA para. 25 would not constitute a harmonisation of domestic competition laws, but would rather set out a limited number of basic elements which would be reflected in such laws, just as it would establish modalities for international cooperation between competition authorities to which developing and least developed countries have so far not been parties. In addition to this, an agreement would support and reinforce recently established competition agencies – would help DC officials establish valuable contacts – and would facilitate exchanges of experience thereby offering a valuable learning tool. This could all save scarce time and money in the introduction of competition law and policy in DCs.

State of play

Para. 14 of the draft Cancun Ministerial text (JOB(03)/150/Rev.1) drafted by the Chair of the WTO General Council sets out a clear choice for Ministers at Cancun, namely a choice between; (1) the launch of negotiations on the basis of the work of the WGTCP (cf. Annex E), or, (2) no negotiations and a continuation of the clarification phase in the WGTCP. These two options (broadly) reflect the positions taken by WTO members during discussions in Geneva on the modalities for possible negotiations.

The EC and Member States position

At Doha, Ministers agreed that negotiations on competition (as well as the remaining 3 Singapore Issues) would start after the 5th Ministerial (Cancun) and that the sole issue to be decided upon by Ministers there would be that of the actual modalities for negotiations.

The clarification work referred to above (along with the previous 4 years of detailed discussions in the WGTCP) has properly prepared the ground for negotiations and allowed all WTO members to understand the issues at stake and the potential benefits for all members stemming from a WTO competition agreement. It should also be noted that the draft modalities contained in Annex E contain a number of important safeguards and assurances offered to those WTO members who may still harbour some hesitations about the launch of negotiations and the possible implications of a WTO agreement. Examples are the explicit exclusion of the application of the WTO dispute settlement mechanism to individual decisions by competition agencies ; the limitation of non-discrimination to laws, regulations and guidelines of general application only (as opposed their actual application) ; and ; the reaffirmation that industrial, social and other needs of developing and least developed countries will be accommodated under a WTO agreement.

The EC and Member States have been the chief advocates of negotiations on competition within the WTO since 1997 and continue to be so. Consequently, the EC and Member States clearly favour option 1, i.e. the launch of negotiations.

Stefan AMARASINHA
DG TRADE, D.1
28 August 2003

BRIEFING FOR
CANCUN WTO MINISTERIAL

SUBJECT: INVESTMENT

1. DESCRIPTION OF THE ISSUE

International investment rules have largely developed at the bilateral and regional level. More than 2,100 bilateral investment treaties have been concluded among developed and developing countries. Moreover, the GATS covers FDI in the services sectors (through mode 3, provision of services through "commercial presence"). However, there is no multilateral framework covering FDI as such.

The Cancun Ministerial Conference needs to take a decision by explicit consensus on the modalities for negotiation of a multilateral framework on investment, in accordance with par. 20 of the Doha declaration.

The WTO working group on trade and investment has discussed a number of relevant issues, as mandated by par.22 of the Doha declaration, in particular: scope and definition, transparency, non-discrimination, pre-establishment commitments, development provisions, consultation and dispute settlement among members, exceptions and balance of payments safeguards. 56 written submissions have been presented and discussed in the working group between March 2002 and June 2003. Moreover, the working group has been analysing these and other issues relevant to international investment rules since 1997.

As regards technical assistance, in accordance with par.21 of the Doha declaration, more than 40 events have taken place (regional, national seminars, training courses and workshops) aimed at building the capacity of developing country to negotiate investment rules.

2. STATE OF PLAY OF NEGOTIATION PROCESS

Chairman Perez del Castillo has presented a draft Declaration for Cancun including 2 stark alternatives. The first option foresees the launch of negotiations, taking note of the work carried out in the working group and on the basis of a negotiating agenda set in Annex D. The second option considers that the situation does not provide a basis for the launch of negotiations and that clarification work of the working group should continue.

As it stands, Option A (launch of negotiations) is supported by the EC, Japan, and other countries such as Korea, Switzerland, Chinese Taipei, Norway, Hungary and others. US and Canada also support the launch of negotiations at Cancun

Other countries, such as India, Malaysia, Indonesia, Kenya, LDCs, recently joined by Argentina, Brazil and China, for different reasons, favour Option B (no negotiations, continuation of clarification phase).

Others have recently raised the possibility of an intermediate option (postponing decision on modalities, or other soft mechanisms).

3. EU POSITION / LINE TO TAKE

EU considers that the time has come to launch negotiations on FDI, as part of the DDA single undertaking. Hence, Option A responds to our expectations and provides an adequate negotiating mandate (Annex D). The negotiating mandate in Annex D is not overly ambitious. It contains all the flexibility that developing countries need (FDI not portfolio, GATS type approach, no Investor-State DS, SDT, etc.) and would not constrain any country's ability to regulate or to pursue its domestic policies.

Option B is not consistent with the Doha mandate which states that Ministers should decide at Cancun on the « negotiating modalities » (i.e. *how* the negotiations are to be conducted and not *if*).

We are open to clarify many of the issues raised in doc. WT/GC/W/514 by Bangladesh, Botswana, China, Cuba, Egypt, India, Indonesia, Kenya, Malaysia, Nigeria, Philippines, Tanzania, Uganda, Venezuela, Zambia and Zimbabwe.
Each of these issues has been discussed in more or less detail for over 7 years in the working group, as well as in a number of specific regional and national workshops since Doha. Moreover, almost every developing country has concluded dozens of bilateral investment treaties (India has around 70, China has 105) that include several of the concepts under discussion. The argument that these issues are too complex for developing countries and still need to be understood is simply not credible and no longer acceptable.

The EU has tried to be as clear as possible in every forum about how the concerns of developing countries can be addressed in a multilateral investment framework[1] . We should be ready, once more, to give a constructive response to this request for clarification, underlining that a consensus on each of the answers to the questions posed by India and the other countries can only be reached in the course of the negotiations.

Carlo Pettinato
DG Trade F-2
02 September 2003

[1] See, for instance, our paper on "Policy space for development", doc. WT/WGTI/W/154, of 7 April 2003.

Trade facilitation

1. THE ISSUE

An agreement on trade facilitation is important because customs and other bureaucratic procedures represent significant delays and costs, whether at import and export. There is therefore a strong case for trying to reduce and simplify customs and other documents and data and introduce more simple border procedures so as to speed up the movement and release of goods (including goods in transit, a problem area for many developing countries). Excessive border procedures and excessive documentation tend to create bigger problems for smaller companies: these are deadweight costs which represent proportionally a greater amount of SMEs turnover, and SMEs also do not have staff resources to deal with this. Burdensome procedures are also very problematic for companies in landlocked countries, and in developing countries more generally.

Burdensome procedures can also become non-tariff barriers. If we look ahead to a trading system where we will have lower tariffs, removal of quotas on textiles and clothing, and more disciplines on anti dumping and NTBs, then there is a real risk that customs procedures will be used more readily as barriers unless they are disciplined. Of the 900 NTBs notified to the negotiating group on Market Access, nearly 50% relate to TF/customs procedures. That shows the tip of a big iceberg.

It is therefore high time to negotiate in WTO a set of simple rules that will ensure that all governments reduce as far as possible the burden of customs and other import/export checks, and base their procedures on GATT principles of non discrimination, transparency, proportionality and use of international standards. Calculations by international organisations suggest that one can reduce the costs of doing business by 2-3% which would add up to around 300 billion dollars a year – this is an enormous saving at no cost for business and all those who buy these goods, be they business, private citizens or governments, while simpler procedures also save government money through more efficient use of resources, while leading to improvements in tariff collection.

2. STATE OF PLAY OF NEGOTIATION PROCESS

There was convergence already at Seattle on a mandate for negotiations that all Members could accept. Since then, the scope of possible negotiations has been exhaustively explored and narrowed in the process. The contours of a possible agreement are clear. The post Doha phase, based on a narrow and precise mandate, has seen GATT Articles V (on transit), VIII (on fees and formalities connected with import and export) and X (on publication and administration of trade regulations) extensively clarified and the proposals of the proponents for rules have been made clear through numerous WTO submissions. There was agreement among WTO members in the Working group that the scope for discussions in the WTO, which are not of a "negotiations character" has been exhausted. Cancun now needs to launch the formal negotiations on the basis of explicit consensus on the modalities for negotiations.

Now, before Cancun, a large coalition of developed and developing countries, the so-called "Colorado group" strongly support negotiations for a WTO agreement on trade

facilitation to be given the green light. A large number of developing countries can agree to such negotiations depending on an overall satisfactory course on other issues in the DDA negotiations. A number of developing countries oppose negotiations on the reasons that countries should have more pressing WTO or development concerns; concern over potential high costs of TF measures; fear of binding rules subject to DSU, even if the country is too poor to implement the rules; belief that TF measures being good for one, will in any case be implemented autonomously; a view that the case has not been made for improving the relevant WTO rules, which work well and don't need changing.

Note that the business communities in nearly all WTO Member support negotiations, e.g. the official position of the International Chamber of Commerce (and its country members), and is held by both goods and services sectors and by multinationals and SMEs.

3. EU POSITION/LINE TO TAKE

The thrust of the EU reply to the concerns of developing countries opposing negotiations are:

- Trade facilitation has support from countries at various levels of development and is certainly not a "North/South" issue.

- All WTO Members –developed and developing - agreed at Doha to start negotiations on trade facilitation after Cancun, subject to a fresh decision on the modalities.

- The WTO is the right place to negotiate Trade Facilitation. Import and export procedures, are by definition trade related. The existing GATT Articles V, VIII and X address requirements relating to trade in goods.

- The coverage of GATT Articles V, VIII and X and thus the scope of work in trade facilitation goes well beyond customs. They include for example transparency of trade regulations in general, the question of fees and charges levied on trade in goods, non-discrimination and proportionality of procedures, and co-ordination of border controls by agencies other than customs. So the World Customs Organisation (WCO) is not enough. WCO itself recognises this.

- No risk for duplication of WTO rules with the work of WCO and possibly other international organisations. WTO would set basic rules and that for the detailed implementation of them, WCO standards (or UN standards) would be preferred means to implement the rules. This is a familiar approach used in other WTO agreements.

- No one has suggested harmonisation of standards and procedures to developed country standards, but instead a framework of broad commitments for each country to develop an implementation roadmap reflecting its current situation. TF commitments is about the journey, not the destination.

- No unconditional surrender of policy space. Possible to find a balance between guarding policy space – particularly for DCs - and multilateral commitments if commitments are not too prescriptive and if time is given to implement.

- Autonomous reform measures are not an alternative to multilateral action. First, some countries will autonomously choose to do nothing. Secondly, what happens if different countries autonomously implement incompatible rules and standards for border crossing trade?

- All WTO Members agree that any trade facilitation provisions in WTO must not compromise legitimate control and other customs' functions. In today's security conscious environment TF is a must to ensure that security is maintained or increased at minimum disruption to trade. By introducing measures of simplification and facilitation, you actually improve the controls by customs and lead to higher rates of revenue collection due to better identification and prevention of fraud.

- Not only do TF measures increase revenue collection but it does so in a 1-2 year timeframe, judging from the experience of e.g. Chile, Bolivia, Sri Lanka, Morocco, Barbados, Peru and others

- The costs have been exaggerated. Developing countries can, in many cases, leap the technology gap and introduce cheap IT solutions whereas industrialised countries have to carry out more comprehensive programmes of modernisation on the back of now antiquated technology.

- Many of the simplification measures proposed in the WTO will actually save government resources and money e.g. reduction of documentary requirements, alignment of documents to a single template based on UN formats, co-ordination of controls at the border, etc.

- Binding WTO rules on trade facilitation are crucial. Guidelines will not do. WTO rules is to give predictability to traders, and remove the risk of protectionist or trade restrictive action being taken by one country against another's goods. Remember pre-Uruguay Round, when there was little restraint on the unilateral behaviour of countries and where the law of the jungle, rather than the rule of law, applied. Binding commitments on trade facilitation will reduce the risk that border fees and formalities, or transit requirements, become unnecessary barriers to trade. In a situation where traditional trade barriers are being reduced (e.g. tariffs, quotas, anti dumping provisions)

- Rules in WTO also ensure that improvements in customs procedures are locked into place and irreversible and defend against pressure from companies – domestic or foreign – who will put pressure on the government to use customs in a protectionist way. Non binding guidelines do not offer these guarantees – we already have non binding guidelines for trade facilitation (e.g. the UNCTAD Columbus Declaration) but it has not led to a facilitating environment for business.

- WTO rules establish minimum requirements or standards that all WTO Members will work towards, thus reducing the risk of different countries adopting conflicting or incompatible approaches to trade regulation.

- DSU would not be a suitable avenue in cases where a country were unable to comply with a WTO commitment due to capacity constraints. We can design arrangements to ensure this does not happen. In the WTO there has been a useful suggestion that in any dispute involving a developing country, before proceeding to the DSU, some form of

mediation should take place to see if the problem is linked to capacity constraints – and if so alternative courses of action would be taken. EU supports this.

- TF will have real impact in eliminating barriers to trade. More than 400 NTB customs notifications. Those relating to Trade Facilitation matters have been identified by many delegations as the single most important subject. This proves the importance of the matter and underlines the necessity to deal with it.

- Current rules are not sufficient. The existing GATT Articles are just not operational - it is not even a best endeavour!. These are just about the only GATT Articles that have not been re-evaluated for 50 years.

5th WTO Ministerial meeting

Cancún, September 2003

Subject : Singapore issues : Transparency in Government Procurement (TGP)

1. THE ISSUE

Transparency means ensuring that information about the procurement regime and individual procurement opportunities are made available to all interested parties (and particularly to potential suppliers and service providers). It means the right of access to that information. It also means ensuring that procurement policies and practices are seen to be transparent and that information provided is respected by all, providing confidence and legal certainty.

2. STATE OF PLAY OF NEGOTIATION PROCESS

It was agreed at the WTO Ministerial meeting in Singapore in 1996 to "study the elements for a future Agreement" on transparency in government procurement. The Seattle Ministerial Conference failed to make progress in this area. In Doha there was agreement to launch negotiations but subject to a decision on modalities. The scope of the future negotiations excluded any reference to market access and guaranteed the maintain of domestic preferences and development priorities.

Since 1997 a WTO Working Group has examined all elements related to TGP and Members had the opportunity to show their thoughts. An important number of countries are still opposed to negotiate because: governments want to preserve full control on (often discretionary) procurement decisions; procurement is often used for developing economic sectors or protecting local industry instead of providing best value for money to tax payers and reducing budget expenditure; many WTO Members oppose to these negotiations for tactical (WTO negotiations) reasons; finally, corruption is often linked to public procurement and corrupt governments try to avoid WTO interference in these undesirable practises.

3. EU POSITION/LINE TO TAKE

The EC seeks to open negotiations for a multilateral agreement on transparency in government procurement (covering all goods, services and construction) to be concluded by the 6th Ministerial Conference. Transparency *per se* will facilitate a better knowledge of procurement regimes and will increase interests and opportunities for foreign bidders. More competition improves efficiency amongst bidders, provides better value for money, reduces budget expenditure, promote economic partnership between national and foreign bidders. Finally, as corruption and bribery in the public sector operates in opacity, transparency in public procurement is one of the best instruments to fight these undesirable practises.

For historical reasons, TGP is part of the "Singapore issues" together with investment, competition and trade facilitation. The Doha Ministerial Conference agreed to launch negotiations on all of them but subject to a decision on modalities. The EC has proposed

a set of modalities for the four SI putting the emphasis on the organisational aspects (timing, organisation of meetings) but also making commitments on assistance and capacity building as well as providing some flexibility on the level of commitments. In particular, the EC proposes a flexible approach, i.e. the agreement would only apply to tenders above a certain contract value (threshold) which would be higher for developing countries and even higher for LDCs.

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DG Trade F1
Phone 60513
Brussels, 02/09/2003

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WTO Ministerial Conference
Cancun, 10-14 September 2003

Trade Related Assistance (TRA)

Background Note

(a) The EC has provided itself with *a coherent policy framework* for Trade Related Assistance (TRA) with the *Communication on "Trade and Development: assisting developing countries benefiting from trade"* (18/09/02), endorsed by the Council
(b) The EU is the largest donor and a big supporter of global TRA initiatives such as the *Integrated Framework for LDCs* and the *DDA Global Trust Fund*
(c) The EC is by far *the largest supplier of TRA*: in the period 2001-2003 more than 2 billion have been committed (against 640 million for the previous period 1996-2000) as detailed reporting to the Doha Data Base indicates;
(d) It is difficult to know exactly what are the *results of TRA delivery on the* ground, the situation varies one country from another; nevertheless a recent brochure issued by the EC provides examples (10 cases) where the impact can be measured on the ground

EC Trade Related Assistance (TRA): a coherent policy framework

- On 18/09/02 the EC has adopted a *Communication on "Trade and Development: assisting developing countries benefiting from trade"* which spells out the way the EU can fulfil its global commitments in support of the efforts of developing countries to better reap the benefits of trade and investment
- This Communication follows directly on the year 2000 Communication on "The European Community's Development Policy", in which Trade Related Assistance was recognised as one of the 6 priority areas for development policy;
- The Communication on Trade and Development also builds on commitments made at the LDC Conference in Brussels in May 2001, in Doha Declaration, at the Monterrey conference on Financing for Development of March 2002, and at the World Summit on Sustainable Development in Johannesburg in September 2002, all of which highlighted the need to support developing countries in their efforts to integrate effectively into the global trading system.
- The Communication confirms the political willingness of the EU to be pro-active in this area. The main policy prescriptions of the Communication are based on:
  - ✓ the fact that trade can foster growth and poverty reduction and be an important catalyst for sustainable development.

- ✓ The recognition that the essential elements to ensure a better contribution of trade to economic growth and sustainable development through the integration of trade and development strategies are: (i) sound macro-economic policies, effective economic and social governance, and human capital development, including the promotion of core labour standards; (ii) better market access and balanced trade rules to underpin domestic reform; (iii) trade-related assistance and capacity building to help developing countries with these tasks.
- ✓ the DDA, in the framework of which the Commission will work to achieve an outcome that is development friendly .

– The Communication identifies the main areas for the EU to concentrate its assistance for trade capacity building, which include:
  (a) *assistance for WTO accession* and multilateral trade negotiations,
  (b) *support for the implementation of existing and future WTO agreements*,
  (c) *support for policy reforms and investments* necessary to enhance economic efficiency and to ensure greater participation in the world economy

– Country Strategy Papers and Regional Strategy Papers are the key vehicles for translating EU policy dialogue into concrete assistance programmes and the Communication stresses the importance of emphasising trade issues at each stage of their preparation and review.
– The Commission works with each country or region to assess its future TRA-needs against the background of past and present TA activities, with the objective of earmarking a specific sum for trade-related assistance. The funding for trade-related assistance will be adjusted as necessary in the mid-term review of the CSP / RSP to be launched in 2003, following discussion with partner countries.

– The Communication contains concrete proposals for action:
  (a) <u>Intensification of dialogue with partner countries</u>
    - stronger emphasis on trade issues in the dialogue on Poverty Reduction Strategy Papers (PRSPs)
    - ensure that funding for this new priority, trade-related assistance, is adjusted as necessary in the review of the Country Strategy Papers and Regional Strategy Papers
  (b) <u>Enhanced effectiveness of EU support</u>
    - reinforce trade component in the programming exercise in EU development assistance
    - pay particular attention to the least developed countries and other low income countries
    - examine the scope for funding horizontal trade-related assistance initiatives, including bilateral, regional and multilateral initiatives
    - increase EU ability to design and deliver training programmes for negotiators and administrators, and establish networks in higher education institutions
    - provide technical assistance for sustainability impact assessments

- reinforce efforts to improve developing country capacity in the Sanitary and Phytosanitary field

(c) Contributing to international effectiveness

- ensure that policy coherence between the EU's multilateral and bilateral/regional trade agendas produces adequate synergies in the provision of trade related assistance.
- review existing mechanisms for co-ordination of Member States, and promote "best practices"
- co-operate more efficiently with other international organisations
- continue to advocate the Integrated Framework for Least Developed Countries, and participate actively in governing bodies of the IF
- encourage Regional Development Banks to pursue trade capacity building
- support the WTO Secretariat on WTO Technical Assistance, and continue to contribute to the DDA Global Trust Fund.

The Communication on Trade and Development has received a very positive feedback from EU Member States and the European Parliament. The General Affairs/External Relations Council has endorsed the findings and conclusions of the Communication.

Supporting global TRA initiatives: the Integrated Framework (IF) for LDCs and the DDA Global Trust Fund

- The EU (EC + Member States) are by far the largest contributors to the DDA Global Trust Fund and the IF Trust Fund providing roughly 60% of the pledges;
- The EC is a very active supporter of the Integrated Framework: in view of its solid methodology and the ownership by the LDCs the IF constitutes an important tool to mainstream trade into the national economic and development policies of the LDCs.
- The EC has allocated substantial human and financial resources in shaping IF decision-making, and for support and implementation on the ground. Together with Canada the EC is donor-representative in the IF Working Group and is playing the role of IF Facilitator in three IF countries, namely Mauritania, Senegal and Ethiopia.

Case reports of EU trade development projects around the world

In order to demonstrate that the Commission is not only producing policy papers, and talking about trade related assistance, a brochure with some ten concrete examples was published in the beginning of 2003.

Of course it is not an exhaustive record, nor is it a record of unmitigated, instant, success stories. But it is a selection of things that have actually happened, in the real world, and which don't just exist on paper. The accounts show that in some cases (for instance in the cases of Egypt and Cap Verde) it was not all plain sailing and that problems had to be overcome.

The case reports show that investing in trade and development is not a fast track to economic success for the developing world, but that, in combination with other sound policies, it does provide one of the most sustainable roads to stronger economic performance.

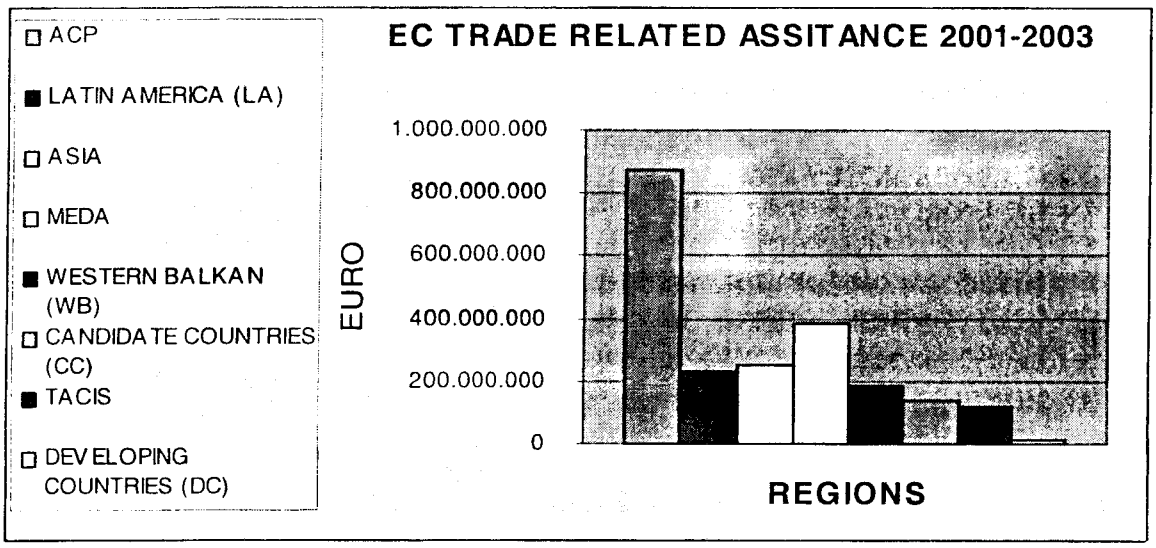
The examples range from the vanilla sector in Madagascar, to Vietnamese preparations for WTO accession, to the raising of hygiene standards in Cap Verde's fisheries to allow them to meet EU health standards.

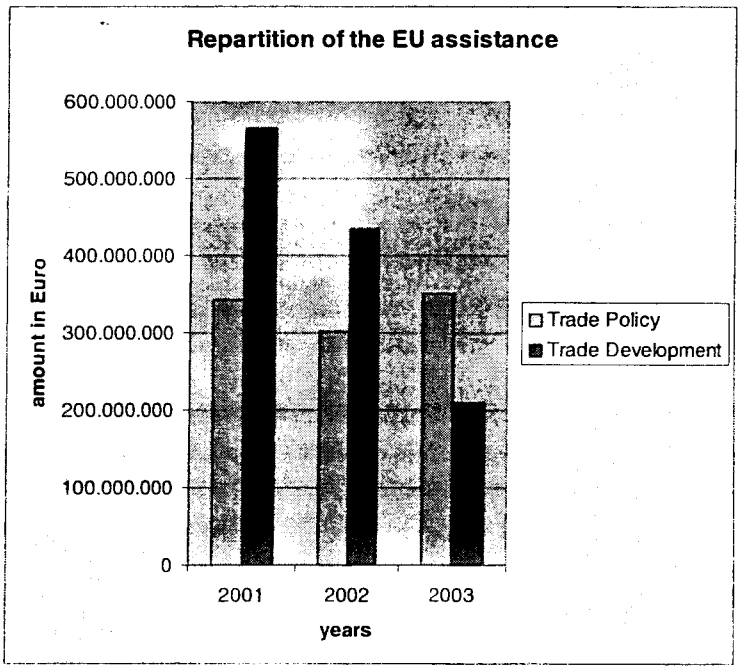
EC Trade Related Assistance: some figures

- The notion of Trade Related Assistance is a rather recent concept and many donors have encountered problems in defining exactly what should be considered and what should be excluded as TRA. Activities that encourage trade are often a component of an overall sector programme, such as transport or agriculture, hence the difficulty of drawing a clear line.
- In order to come up with a clearer and harmonised definition WTO Members have agreed to create the Doha Development Agenda Trade Capacity Building Database (TCBDB) where the data reported by all the main donors can be found for the period starting from 2001 onward. The TCBDB splits activities in two main groups: trade policy and trade development. A summary of the data can be found at the end of this note;
- Following the choice of trade related assistance as one the 6 priority areas for community development assistance in 2000[1] and as a result of the new commitments stated in the Doha Declaration in 2001, the EC has scaled up considerably its commitments for TRA in recent years;
- Trade related projects were carried out in the period 1996-2000 to a value of around 640 million. In the period 2001-2003 the EC has committed more than 2 billion for Trade Related Assistance. For the period 2002-2006 an indicative envelope of 2 billion has been earmarked for the same objective;
- In absolute terms the ACP group is the largest beneficiary, followed by the Mediterranean region, Asia and the Latin America region;
- TRA counts under two basic headings: support for *trade policy and regulatory issues*, and support for *trade development. Trade policy and regulations* covers support to aid recipients' effective participation in multilateral trade negotiations, analysis and implementation of multilateral trade agreements, trade-related legislation and regulatory reforms, trade facilitation including tariff structures and customs regimes, support to regional trade arrangements. *Trade development* covers business development and activities aimed at improving the business climate, access to trade finance, and trade promotion and market development in the productive and services sectors, including at the institutional and enterprise level. The EC provides support to both trade policy and trade development.

[1] Commission Communication on "The European Community's Development Policy", COM (2000) 212 final, of 26 April 2000, and Joint Council-Commission Statement on the European Union's Development Policy, 10 November 2000.

- To be noted however if *trade policy* commitments overall show an upward trend, the data for trade development would seem to indicate a downward trend in commitments between 2001 and 2003. This is explained by the fact that in 2001 trade development commitments for ACP countries have been unusually high due to the approval of some very large operations such as PRO INVEST (110 million), Caribbean Rhum (70 million), special framework for assistance for banana (44 million) the pesticides initiative (30 million). Such large projects do distort the figures for they are not running for only one year but for several years. Thus, while in terms of commitments they appear to belong to 2001, in terms of expenditure and effects on the ground they have an impact over several years.





The Doha Data Base

The DDA Trade Capacity Building Data Base (TCBDB) was updated in July 2003 for the years 2001 and 2002 (see Report by WTO Director-General Supachai and OECD Secretary-General Johnston of 18 August). It shows that in money terms the Commission and the EU are the most important providers of TRA (figures in millions of US$):

	2001	2002	Total
EC	817	712	1,529 (36%)
Member States	197	313	510 (12%)
EU	1,014	1,025	2,039 (48%)
USA	556	615	1,171 (27%)
IDA/WB	321	117	438 (10%)
Others	268	338	607 (15%)
All donors	2,159	2,095	4,255 (100%)

In conclusion: During the period 2001-2002 the EU has provided almost half of all TRA, and almost twice as much as the USA.

WTO Ministerial Conference
Cancun, 10-14 September

Trade Related Assistance[1]

Introduction

The expectations with regard to Trade Related Assistance, and what it could do for the DDA were very high, both on the side of the developing countries as well as on the part of the developed members of the WTO. Presented as a panacea for all ailments it has proven to be a great challenge to all involved, and has inevitably lead to disappointments.

In many instances developing countries found themselves unable to define what their needs were, while donors lacked the experience and institutional set-up to respond to requests for support. This can to a great extent be explained by the fact that the nature of trade related assistance (which was of course also provided before Doha) has changed from classic trade and export promotion projects, to include now projects and programmes focussing more and more on the WTO agenda and the capacity to implement and apply the Agreements. In short these projects aim to address the legal, regulatory, judicial and institutional environment of developing countries with the objective of creating a business environment that is attractive for investors (national, regional and international), and conducive to triggering a supply response.

Assistance for negotiations

Short term assistance, in particular for increasing the negotiating capacity of developing countries, also suffered from overblown expectations. Training highly qualified trade negotiators within a couple of months is an illusion, and activities in this area have therefore had limited effect. What is important, however, is that many technical assistance and training activities have been undertaken since Doha. Most of the activities were undertaken by the WTO Secretariat, while other International Agencies and bilateral donors also were active in this area. In April 2003 the European Commission organised, through the European Institute of Public Administration in Maastricht, Netherlands, a four-week training course for negotiators and administrators from 19 different countries. The Commission also funded the creation of an ACP Antenna in Geneva.

Much can be improved in this area and Dr. Supachai acknowledges this in his recent paragraph 41 report: "the challenges for the Secretariat in the area of technical co-operation and training were unprecedented", and that the Secretariat is as a result "continuously adapting the range of TA and training products".

[1] A much more detailed background note on Trade Related Assistance is attached

Medium and long term assistance

Looking back, the European Commission has been one of the more active and generous providers of TRA. The EU was one of the first to get its policy framework in place. Based on the 2000 Communication on the Community's Development Policy, the Commission adopted in September 2002 the Communication on Trade and Development, both times followed shortly by Council Conclusions. These policy documents have proven to be extremely helpful in focussing the minds of the Commission's and the Member States development community on the trade agenda.
For the Commission this has resulted in significant earmarking for future Trade Related Assistance. Most non-ACP Country Strategy Papers and all Regional Strategy Papers have chapters on trade and development, and the resulting pipeline amounts to over 2 billion for the next four to five years. During the period 2001 to 2003 a similar amount was committed. Compared to the 1996-2000 period, during which 640 million was committed to trade related projects, this is a significant increase.

The DDA Trade Capacity Building Data Base (TCBDB)

The Doha Data Base, created early 2002, and recently updated (Report by Supachai and Johnston of 18 August), shows that in money terms the EU is the most important provider of TRA: US$ 2,039 million, or 48% of the total for the two years, compared to US$ 1,171 million, or 27% for the USA.

In other words, in 2001-2002 the EU provided almost half of all TRA, almost twice as much as the US.

The Integrated Framework

One of the more promising developments since Doha relates to the Integrated Framework. Since its "revamping" in early 2001 more than 10 Diagnostic Trade Integration Studies have been finalised and in half of the cases this has resulted in action on the ground. One of the most important elements of the IF is that it leaves the responsibility for policy measures and the identification of priorities fair and square with the developing countries. One of the main objectives of the IF is to ensure that trade becomes part and parcel of the national development policies and strategies, and plays its due role in the countries' poverty reduction strategies. The Commission has contributed 200,000 to the IF Trust Fund in 2002, and will contribute another 750,000 from the EDF in 2003. The most important contribution of the Commission to the IF concerns its role, since July 2002, as one of the two donor representatives (with Canada) in the "board" of the IF, the Integrated Framework Working Group (IFWG).

GEOGRAPHICAL INDICATIONS (GIs)

1. BRIEF DESCRIPTION OF THE ISSUE

(1) Multilateral Register (paragraph 8)

A GI adds value to a product because it is seen as conferring a special quality which derives from the product's geographical origin. Since consumers are often ready to pay more for such a product, people from outside the region may be tempted to appropriate the GI for their own products. This not only misleads consumers, but it undermines the GI and lowers its value. Hence the need for effective protection. Achieving this objective will be greatly facilitated by the establishment of a multilateral register.

The WTO TRIPs Agreement provides for protection but this is only effective in part. Under the Agreement, protecting your GI at home does not automatically mean that you are protected elsewhere. If you want to protect your GI abroad, you have to register it first in every WTO Member country- a costly process. In addition, if your name is already being usurped, you have no choice but to resort to expensive and uncertain litigation.

Costly and burdensome administrative procedures, and unpredictable judicial decisions, are bad for trade. They discourage producers from making investment decisions or launching expensive marketing campaigns. All this contributes to slow down trade flows.

Doha confirmed the mandate already enshrined in the TRIPs Agreement for there to be negotiations on the establishment of a world-wide register for GIs. The EC believes that such a register would be valuable for producers, consumers and administrations alike. A few countries, such as the US, only want a web-site of names for information purposes. This is much less useful, and it would not provide any more certainty and transparency with respect to the protection than is available at the moment. This is why the Cancun declaration should clarify that such register should (1) have legal effects and (2) be truly multilateral (cover all WTO Members)

(2) "Extension" (paragraph 12)

In addition, under the TRIPs Agreement, GIs for most products are only entitled to a minimum level of protection. This has not proved sufficient to preserve that value. Wines & spirits enjoy *additional* protection, which is not available for other products, even if they correspond to the GI definition under TRIPs.

This is clearly discriminatory. There is no reason why wines & spirits should be singled out. There is nothing intrinsic to these products which merits their special protection. Furthermore, this state of affairs discriminates against countries with little or no production of wines & spirits, such as most developing countries. Moreover, under the TRIPs Agreement, trademarks, patents and designs, for example, do give the same protection to *all* products alike, guaranteeing that right holders benefit from their investment and intellectual effort. For example, the Agreement would forbid the use of terms such as "Coca-Cola made by Anheuser-Busch". But when it comes to GIs (for products other than wines & spirits), the Agreement allows them to be used by others so long as the consumer is not "misled" as to the true origin of the product. For example, it would allow the use of names such as "Basmati Rice" by companies in Australia. This is clearly not fair.

The EU seeks that the "extra" protection for wines and spirits (i.e., explicit prohibitions of use of GIs in translation (e.g., Parmesan for Parmigiano Reggiano), with a de-localiser (e.g., Roquefort of Australia) or accompanied by "style", "imitation" and the like (e.g., style of Manchego) is extended to GIs to all other products.

However, based on the ambiguity of the Doha mandate, some WTO Members (US, Australia, Argentina, Chile) deny that the "extension" is the object of "real" negotiations. The Cancun declaration should resolve this ambiguity.

(3) AGRI "claw back" list (Annex A – paragraph 6)

Many GI products face *de facto* market access obstacles in countries where there are cheaper goods on sale using a GI name which is taken as a generic locally. Consumers are led to believe that they are buying a genuine product with specific qualities and reputation associated with a certain geographical origin and are therefore reluctant to pay extra for the original. In reality, they get a different product that makes use of the same name. Indeed, the reputation of those products is so eroded because of the presence of lower quality imitations, that the genuine premium products finds it de facto impossible to gain a tangible market share in third countries.

To make matters worse, in many cases, such names have been registered as trademarks with exclusive effect, thus preventing the original right-holders from using their GIs in the countries concerned. This can prevent right-holders from successfully marketing goods under their 'real' names, forcing them to re-brand to establish themselves on the market. This is the case of "Parma Ham" that can only be sold in Canada as the "N. 1 ham" because a local company has trademarked the term "Parma Ham".

We therefore believe that a list of selected names currently used by producers other than the right-holders in the country of origin should be established so as to prohibit such uses.

This approach is clearly different from the objectives pursued under the TRIPS Agreement. The latter is future-oriented and does therefore not seek to eliminate the "sins of the past". The objective in agriculture is precisely to remedy the past and re-establish full GI protection for a limited number of names.

2. STATE OF PLAY

The three distinct negotiations on GIs are all subject to various degrees of ***paralysis***.

(1) Multilateral Register:

The fact that this issue is subject to negotiations is undisputed. However, progress has not been made possible given that the Doha mandate was ambiguous as to whether the registration should: (1) trigger automatic legal protection for GIs [EU:yes; US: no], and (2) require protection in all WTO members [EU:yes; US:no]. Clarification on these two issues is crucial. It should be noted that these negotiations were already mandated by the TRIPs Agreement and that negotiations started in 1997. Since then, the EU has made two proposals but there has been no move on the other side.

(2) "Extension"

Progress on this question was not only held-up because of disagreement in substance, but also because the US and the Cairns group denied that Doha had given a "real" negotiating mandate. This is a shared problem with other implementation issues

given that paragraphs 18 and 12 (b) of the Doha Ministerial declaration spoke of "work" rather than "negotiations". Therefore, the main added-value that Cancun could bring along is a clarification that "extension" is the object of real negotiations.

(3) AGRI "claw back" list

This list has just been agreed upon with the EU MS. This demand for absolute protection is, seen from a third country perspective, the most damaging short-term EC proposal on GIs. However, Cancun should at least bring an agreement to negotiate this matter.

3. LINE TO TAKE

(1) Multilateral Register

We want a new mandate for a register clarifying that such register shall be (i) legally binding and (ii) multilateral.

(2) Extension

We want "extension" to be the object of real negotiations.

(3) AGRI "claw back" list

We want the AGRI "claw back" list to be the object of negotiations.

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TRIPs and biodiversity

1. Issue

This issue is about the relationship between the TRIPs Agreement (which allows patents on biotech inventions) and the Convention on Biological Diversity, which establishes a right for States to control access to their genetic resources (which serve as a basis for biotech inventions) and to share into the benefits of their use.

Paragraph 19 of the Doha Ministerial declaration instructs the TRIPs Council to continue the review of Article 27.3(b)TRIPs (which deals with the patentability of "life forms") and to examine the relationship between the TRIPs and the Convention on Biological Diversity and the protection traditional knowledge. In addition, several TRIPs/CBD-related issues are on the list of "outstanding implementation issues" (JOB(01)/139/Rev. 1) : their fate will depend on what is decided on implementation at large (*i.e.* para 12 of the draft Declaration).

2. State of play of negotiation process

Only little progress has been made, because of wide divergence of views among Members. Wide gap between positions by African Group (calling for a ban on patents on "life forms") on the one hand, and US, on the other hand. Concrete proposals were made by Brazil, India and China and others in view of amending the TRIPs Agreement to include a requirement for patent holders to disclose source or origin of genetic resources and traditional knowledge used in an invention. As a result, the only issue on the table in Cancun is the further procedure.

3. EU position

On procedure :

1) The mandate of para. 19 of the Doha Ministerial Declaration remains valid.

2) The EU takes the view that we need clear commitment to negotiations on all Outstanding Implementation Issues under the auspices of Trade Negotiating Committee (TNC) with a precise deadline and as part of the Single Undertaking (SU). As far as TRIPs/biodiversity is concerned, the outstanding implementation issues are drafted in rather vague terms, and deserve further clarification. The only issue that is, at this stage, sufficiently clear to be seriously considered as a sufficient basis for negotiation is disclosure of origin of genetic resources used in patent applications, as it has been elaborated in detail by Brazil, India and China in a proposal of June 2002.

On substance :

The EU's point of view is laid down in a Communication to the WTO of 17 October 2002 (IP/C/W/383). The EU is willing to develop positions and actions that are genuinely responsive to developing country concerns, while maintaining an adequate level of protection for biotech inventions. The approach can be summarised as :

1) Make full use of the flexibility available under the TRIPs Agreement : As regards the patentability of biotechnological inventions, the degree of flexibility offered by the TRIPs Agreement is in fact considerable. This flexibility resides not only in Article 27.3(b). For instance, the interpretation of the patentability criteria under Article 27.1 may differ from Member to Member, which may lead to certain nuances in approach, for instance when distinguishing between an invention and a discovery. Each Member is free to use these flexibilities, while taking into account its needs in terms of biotech research.

Other issues where TRIPs offers a significant degree of flexibility are **plant variety rights** and **farmers' exemptions**. The absence of a definition of the term "effective sui generis protection" means that Members have a considerable room of manoeuvre to design a protection regime for plant varieties that is appropriate to their specific national situation. The UPOV Convention offers a useful standard and has important advantages (such as free access to new varieties for further breeding), but other systems can be envisaged.

Also, specific exemptions allowing subsistence farmers and small farmers in developing countries to save, use or exchange seeds of protected varieties can be perfectly justified under Articles 27.3(b) and 30 of the TRIPS Agreement.

2) Use all available means to ensure a mutually supportive implementation of the TRIPs Agreement and the Convention on Biological Diversity (CBD) : Even in the absence of legal incompatibility between TRIPs and CBD, there is a considerable *interaction* between both agreements. Specific measures need to be made to ensure that they are implemented in a mutually supportive way. Therefore, the TRIPS Council should focus on ways and means of doing this.

The CBD (and related instruments, e.g. the Bonn Guidelines) must be fully implemented at national level. Sound regulation of access to genetic resources and benefit sharing is paramount to create legal security and to protect the rights of providers of genetic resources. Contractual approaches alone are not sufficient. At the same time, the TRIPs Agreement must be enforced in a way that supports the objectives of the CBD. The point is that intellectual property systems can and must be used to prevent misappropriation of genetic resources and to ensure appropriate benefit sharing, as patent protection can act as an effective trigger for benefit sharing.

3) Examine new concepts and approaches : Ensuring an optimal degree of mutual supportiveness between the TRIPs Agreement and the CBD may also require the examination of new mechanisms. A number of WTO Members have proposed to create a direct interface between the TRIPS Agreement and the CBD by incorporating a requirement into the TRIPS Agreement that patent applicants should disclose, inter alia, the geographical source and origin of the genetic material and the related traditional knowledge used. The EC is prepared to enter into a negotiations on this issue, while having its own views on substance.

J.C. Van Eeckhaute
Trade F.1

TRIPs and Public Health

1. Issue / State of play

At Cancun, the Ministers will welcome and endorse the Decision taken on 30 August 2003 by the General Council on the Implementation of Paragraph 6 of the Declaration on the TRIPs Agreement and Public Health (also referred to as "Perez Motta text").

The Perez Motta text, named after the former Chairman of the TRIPs Council, now allows countries to export patented medicines to third countries with no manufacturing capacity in the pharmaceutical sector, by making use of compulsory licences[1]. It includes substantial safeguards against trade diversion and rules to ensure transparency. The Decision also contains provisions on transfer of technology and regional cooperation.

Legally, the decision takes the form of a provisional "waiver", but provides for its replacement by an amendment to Article 31 of the WTO Agreement on Trade-Related Intellectual Property Rights (TRIPs Agreement), on which work will have to be completed by mid 2004. Further to this amendment, the TRIPs Agreement will effectively allow Members to issue compulsory licences for export of medicines to countries without manufacturing capacity for such products.

Doing this, this Decision fulfils the mandate given by the Doha Declaration on the TRIPs Agreement and Public Health. This Declaration clarified the relationship between the TRIPs Agreement and public health policies, notably by confirming the WTO Members' right to issue compulsory licences for public health purposes. However, recognising that the use of compulsory licences remained problematic for countries with insufficient or no manufacturing capacities in the pharmaceutical sector, the TRIPS Council was instructed to find an expeditious solution to this problem by end 2002.

All WTO Members have now agreed to the compromise Decision which had already been presented to the WTO in December 2002, where it was adopted by all WTO Members, except for the United States. Under strong pressure of its pharmaceutical industry, the latter refused to adhere to the text because, in its view, its wide coverage in terms of diseases would have opened the way for abuses.

Over the last two months, the US has shown more flexibility, and finally declared its readiness to adhere to the Perez Motta text, provided it was accompanied by a Statement where WTO Members would confirm their intention not to abuse the system for commercial purposes. Further to this positive signal, the current Chairman of the TRIPS Council held talks with the US government and a number of key developing countries in order to bridge the confidence gap.

It resulted in a Statement, which was read out by the Chairman of the WTO General Council just before the adoption of the Decision. It confirms the common

[1] A compulsory licence is an authorisation granted by government to an economic operator to use a patent protected technology, without authorisation of the right holder.

understanding of all WTO Members that the primary objective of the Perez Motta text is to protect public health and that it should be used in good faith. It stresses the need to ensure that medicines reach populations in need and that they should not be diverted from the markets for which they are intended. The statement is wholly complementary to the Perez Motta text and does not change it in any respect.

In order to make sure that the system would be aimed at relieving the neediest, developed country Members of the WTO (among which all EU Members) have taken the commitment not to use the system as *im*porters. High income developing country Members have made a statement that they would not use the system except in exceptional circumstances. The accession countries of the first wave have made a similar statement. Once they have joined the EU, they will not use the system as importers at all. All WTO Members have the right to act as *ex*porters.

2. EU position

The EU agreed to the Perez Motta text in December 2002. It therefore welcomes its adoption by the General Council and notes with satisfaction that it remains unaffected. The Perez Motta text provides for a fair, balanced and flexible framework that can be effectively implemented in view of providing low priced medicines to countries in need.

The EU has been one of the driving forces behind the WTO debate on TRIPs and Public Health, and has sought throughout to find a compromise solution to this difficult question. The EU will continue its work to make sure that the deal is effectively implemented in a full and timely fashion in order to make it work to the benefit of those who need access to affordable drugs.

The solution found constitutes a key element in the fight against communicable diseases. However, it is only part of the solution, as measures to make drugs available must work in conjunction with other elements such as stable and functioning healthcare systems or better public awareness via education.

Q&A on the Perez Motta text

- **Which countries will benefit from the system?**

Developing and least developed WTO Members will be entitled to import pharmaceutical products under this mechanism, provided they have no or insufficient manufacturing capacity for the product in question. Any country with manufacturing capacities is allowed to export these products.

Countries which do dispose of sufficient capacity can not use this system as importers. Moreover, in order to ensure that no resources would be diverted away from those countries which really need it, developed countries have announced that they will not use the system as importers[2], while high income developing country Members[3] (such as for instance Hong Kong, Singapore, Kuwait or the United Arab Emirates) have made a statement that they would not use the system except in exceptional circumstances. The ten countries which will join the EU in May 2004[4] have made a similar statement. Once they have joined the EU, they will not use the system as importers at all.

- **Which products are covered by this system? What about vaccines?**

The system applies to "products from the pharmaceutical sector", including pharmaceuticals, active ingredients for their production, diagnostic kits needed for their use and, in the EC's view, vaccines as well.

- **What is the disease scope?**

The compromise text recalls the scope already agreed in the Doha Declaration on the TRIPs Agreement and Public Health of November 2001, *i.e.* "public health problems afflicting many developing and least-developed countries".

- **Which legal mechanism will be used to implement the system? Why a temporary waiver?**

The chair compromise text will, in time, result in an amendment of Article 31(f) of the TRIPs Agreement. Pending the adoption and entry into force of this amendment, the Decision immediately introduces a waiver, as a transitory and provisional measure.

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[2] They are mentioned in a footnote to paragraph 1(b) of the Decision: Australia, Austria, Belgium, Canada, Denmark, Finland, France, Germany, Greece, Iceland, Ireland, Italy, Japan, Luxembourg, Netherlands, New Zealand, Norway, Portugal, Spain, Sweden, Switzerland, United Kingdom and United States of America.

[3] Taiwan ("Chinese Taipei), Hong Kong, Israel, Korea, Kuwait, Macao, Mexico, Qatar, Singapore, Turkey and the United Arab Emirates.

[4] Turkey, Slovenia, Estonia, Lithuania, Latvia, Hungary, Slovakia, Czech republic, Poland, Malta, Cyprus,

Further work shall be undertaken in due course in order to transpose the waiver into a definitive amendment of the TRIPs Agreement. This process will have to be concluded within 6 months after its initiation.

- **Which safeguards against trade diversion are envisaged? Will they be costly and burdensome to developing countries?**

As far as importing countries are concerned, they will indeed have to take measures to prevent re-exportation, but the Decision specifies that these measures must be "reasonable", "within their means" and "proportionate to their administrative capacities and to the risk of trade diversion". These conditions are designed to avoid imposing conditions that developing or least developed countries can not meet, while incentivising them to take their responsibility to make sure that the medicines reach their destinatories.

As far as exporting countries are concerned, they must oblige the beneficiary company of the compulsory licence 1) to export their entire production under the compulsory licence to the country(ies) in need; and 2) to clearly identify the products through labelling or marking and though special colouring or shaping of the products themselves.

Moreover, the system requires prior notification to the TRIPs Council. Constant monitoring by the TRIPs Council is guaranteed. This will result in full transparency - the best guarantee against diversion.

- **What does the Chair declaration add to this ? How do both texts relate ?**

The Perez Motta text makes the law: it determines how the mechanism is to be applied and under which conditions. The Perez Motta text remains unaffected. The declaration adds the last missing piece of the jigsaw by restoring the confidence among Members through a firm declaration of intent by the entire Membership to use the Perez Motta text in good faith.

- **Will beneficiary countries need authorisation from the WTO to use the system?**

No, they won't. For the sake of transparency and information, importing and exporting Members will be required to notify the WTO regarding the use of the system. However, such notification does not amount to an authorisation request : beneficiary countries will not need to be approved by any WTO body in order to be able to use the system set out in this decision. WTO Members can automatically use the system once they have established that they have no manufacturing capacity and have notified this to the WTO.

- **In those cases where the product is patented in the importing country, two compulsory licences will have to be issued (one in the exporting country, one in the importing country). Does that mean that the right holder will be granted double remuneration? Is the granting of two compulsory licences not too burdensome?**

Firstly, there would be no double remuneration. The text expressly states that no remuneration will have to be paid in the importing country. The remuneration for a compulsory licence shall only be paid in the exporting country. It will have to be calculated on the basis of its economic value in the importing country.

Secondly, procedures to grant compulsory licences under Article 31 are minimal and flexible, and also provide for a fast track procedure for situations of extreme urgency or national emergency (which covers, in any event, AIDS, TB and malaria but also potentially a range of other situations or diseases). What matters is that the procedure be transparent and the rights of defence of the right holder be guaranteed. It is therefore a question of ensuring that national legislation is effective. This falls under the responsibility of those Members wishing to apply the system. The fact that, in certain cases, two compulsory licences would have to be issued, should not in itself be a problem. It is mainly a question of matching and co-ordinating procedures in the producing and importing country (or countries).

Finally, a system based on compulsory licensing will be most instrumental in guaranteeing legal and economic certainty of all parties involved. The use of the system will first and foremost depend on the willingness of a generic pharmaceutical company to engage into manufacture. Generic manufacturers certainly prefer to manufacture under a compulsory licence (*i.e.* a formal guarantee by the government that they can legally engage into production) than under an open-ended exception under the patent law.

Subject: Non-Violation Complaints under the TRIPs Agreement

(1) Brief description of the issue

Article 64 of the TRIPs Agreement foresees the possibility of bringing non-violation complaints under Art XXIII GATT 1994. However, it has foreseen a moratorium of 5 years during which the TRIPs Council should discuss scope and modalities of such complaints and submit its recommendations to the Ministerial Conference for approval.

The deadline lapsed on 1.1.2000 without any recommendations having been submitted. Subsequently, the question whether the moratorium was still in force became itself a matter of debate. However, upon a proposal initiated by the EC, the TRIPs Council decided to examine the scope and modalities of possible NVCs.

The Doha Ministerial Conference addressed the issue as follows:

"The TRIPS Council is directed to continue its examination of the scope and modalities for complaints of the types provided for under subparagraphs 1(b) and 1(c) of Article XXIII of GATT 1994 and make recommendations to the Fifth Session of the Ministerial Conference. It is agreed that, in the meantime, Members will not initiate such complaints under the TRIPS Agreement."

(2) State of play of negotiation process

A common view among WTO members on scope and modalities for NVCs under TRIPOs has so far not been found. **The EU has joined in with developing countries saying that NVCs should be declared in applicable to TRIPs.** The US and Switzerland argue in favor of applying NVCs to TRIPs. While EU and DCs see no scope for NVCs under TRIPs, the US contend that the lapse of the deadline set in Doha would mean that NVCs apply automatically.

In view of the Cancun MC, a possible compromise has emerged: the deadline for the TRIPs Council to examine scope and modalities of NVCs is going to be extended. This has found general support, but what remains to be decided is the new time frame:

- The Chair proposed that the TRIPs Council should make its recommendation to the 6th MC.

- DCs have expressed concern that this deadline would be too close. They argue that the deadline should be set at the 7th MC, or that there should be no deadline at all. The US, Switzerland and Japan opposed this suggestion. Canada, Australia and the EC showed some flexibility on this issue.

- The Chairman then proposed the date of 1 January 2005. This new proposal is accepted by the US and Switzerland but developing countries

indicated that this could raise legal difficulties if there is no Ministerial Conference at that date.

- A final suggestion was made by Peru: to extend the deadline until "the 6th Ministerial Conference or, in any event, not later than the Ministerial Conference concluding the negotiations pursued under the terms of the Doha Ministerial Declaration". This suggestion met large support among participants. The US did not react negatively.

(3) EU position/Line to take

Concerning the substantial issue, the EC pronounced the following position: since it is clear that delegations will never conclude that NVCs are applicable to TRIPs, it is not worth to continue working on scope and modalities. **In view of the large consensus among WTO members, it would have been our preferred option to declare NVCs inapplicable to TRIPs now. However, in a spirit of compromise, we are ready to go along with the suggested prolongation of the examination of scope and modalities.**

The non-application of NVCs is supported by the following arguments:

i) The concern of unclearness and uncertainty: the IPR area requires clear and predictable provisions, not the vagaries of NVC.

ii) The NVC remedy may make other Members extremely reluctant to engage in further extensions of TRIPs.

iii) TRIPs is a sector *sui generis*: its objective is not market access / tariff concessions, but it obliges Members to put in place clearly described legislation, and to enforce it. A failure to comply with these obligations can be directly addressed as violation of TRIPs.

iv) Any behaviour that restricts market access or impairs benefits under tariff concessions could be addressed under GATT/GATS.

v) As a matter of consequence, there seems little practical scope for NVCs under TRIPs.

vi) There hardly seems to be a practical interest for the EC in applying the NVC remedy to TRIPs. Industry has not given much input.