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To:	All Members of the Working Group on Implementation and Rules	Fax No:	
From:	Minister Pierre S. Pettigrew Chairman Working Group on Implementation and Rules	Date:	1 December 1999
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Further to our constructive exchange of views today in the Working Group, it has come to my attention, and was mentioned by a number of delegations in our discussions, that several interested delegations have been engaged, over the last several weeks, in the development of a draft on implementation for the Declaration.

The attached Non-Paper, updated today to better reflect views expressed this morning, is the product of their work. I consider it to be a most constructive contribution to our deliberations and thus wish to make it available to all delegations for your further consideration.

Pierre S. Pettigrew
Chairman

Working Group on Implementation and Rules

IMPLEMENTATION OF EXISTING AGREEMENTS AND DECISIONS

14. As we agreed at Geneva in May 1998, we have further pursued our evaluation of the implementation of individual agreements and the realization of their objectives. In so doing we have considered, *inter alia*, the problems encountered in implementation and the consequent impact on the trade and development prospects of Members.

15. While the process of implementation has been satisfactory in many respects, this evaluation has also revealed serious concerns among many Members, especially developing countries, about the implementation of the results of the Uruguay Round. Particular areas of concern include textiles and clothing, agriculture, anti-dumping, subsidies, technical barriers to trade, customs valuation, sanitary and phytosanitary measures, intellectual property rights, trade-related investment measures and services.

16. We have taken note of the concerns expressed by many developing country Members regarding non-realization of anticipated benefits, perceived imbalances between rights and obligations, practical difficulties and resource constraints encountered in the implementation of various obligations and the non-operational nature of several provisions on special and differential treatment.

17. [We confirm our commitment to full and faithful implementation of the Agreement on Textiles and Clothing (ATC). The integration of the ATC into GATT 1994 is now at the mid-point. We note the concern, expressed by many developing exporting Members, over the unsatisfactory progress in the implementation of the ATC. Committed liberalization by restraining importing Members has not materialized: only a few quota restrictions have actually been liberalized. Additional quota access granted by the restraining importing Members has not resulted in any lessening in the restrictive nature of quotas. Exporting Members including small suppliers and least-developed Members have not received meaningful increases in their access possibilities. Thus, the process of liberalization has failed to be progressive in character. Moreover, developed importing Members have made few efforts to facilitate increased competition in their markets. On the other hand, major importing Members have resorted to a number of restrictive measures, including safeguard actions which were subsequently found unjustified; changes in rules of origin; tightening of customs and administrative procedures and anti-dumping actions targeting products that are already under quota restrictions.]

18. To alleviate the problems of developing countries we have taken the decisions listed in Annex I to this Declaration.

19. Apart from the immediate decisions referred to in the previous paragraph we have agreed to address the remaining issues relating to the implementation of the existing WTO Agreements and Decisions, which have been raised during the course of preparations for the Third Session of the Ministerial Conference and which are enumerated in Annex II* to this Declaration [, as well as other related concerns raised [during the discussions on implementation]]. To this end, we have decided to establish a Special Mechanism under the General Council, composed of representatives of all the Members. This process will be completed as far as possible within one year and in any case by the Fourth Session which shall, along with the mid-term review of the negotiations opened by this Declaration, take appropriate decisions by consensus on issues remaining unresolved at that time based on the recommendations received from the General Council to resolve these implementation issues [with no obligation for reciprocity from the developing countries]. [If a [developing country Member] [Member] so requests, unresolved implementation issues will be incorporated into the negotiating agenda.] [This is without prejudice to the rights and obligations of Members with regard to recourse to dispute settlement procedures.]

* Note to delegations: Annex II will contain items in paragraph 22 of the draft Ministerial text of 19 October (JOB(99)/5868/Rev.1) as well as items in paragraph 21 of that text which remain unresolved at Seattle.

20. Furthermore, we resolve that in the multilateral negotiations we are inaugurating here, development objectives will be given a high priority in keeping with our commitment to ensuring that the benefits of the multilateral trading system are extended as widely as possible and distributed in a fair and equitable manner.

[Annex I][Possible Decisions at Seattle on Implementation]

[(a) Anti-Dumping]

Ministers

note that the issues relating to anti-dumping identified in [paragraph 21 of the draft Ministerial Declaration][document] reflect serious concerns on the part of developing country Members, and *agree* to seek resolution of these issues in an appropriate post-Seattle process.

agree that investigating authorities should examine with particular care any application for the initiation of an anti-dumping investigation where an investigation of the same product resulted in the closure of the investigation without the imposition of final measures within the 365 days prior to the filing of the application.]

[(b) Subsidies]

Ministers

agree not to invoke WTO dispute settlement procedures in respect of claims under Article 3.1(a) of the SCM Agreement against a developing country Member listed in Annex VII(b) of that Agreement whose GNP per capita per annum has reached US\$1000 in current dollars unless that Member's GNP per capita per annum as expressed in constant 1990 dollars reaches US\$1000 for three consecutive years.

agree not to invoke WTO dispute settlement procedures in respect of claims under Article 3.1(a) of the SCM Agreement against a developing country Member listed in Annex VII(b) whose GNP per capita per annum as expressed in constant 1990 dollars has reached US\$1000 for three consecutive years if that Member's GNP per capita per annum falls back below that level.

[*agree* that the threshold of US\$1000 in Annex VII(b) to the SCM Agreement shall be reviewed with a view to considering the possibility of including in Annex VII Members in the low and lower-middle income categories as classified by the World Bank.]

[*agree* to instruct the Committee on Subsidies and Countervailing Measures to extend the application of the provisions of Articles 6.1, 8 and 9 of the Agreement on Subsidies and Countervailing Measures until the end of the Fourth Session of the Ministerial Conference, on the understanding that, during the extended period of application, Article 8 will be reviewed with a view to considering the possibility of including as non-actionable subsidy measures implemented by developing country Members in the furtherance of legitimate development objectives.]]

(c) Sanitary and Phytosanitary Measures

Ministers

urge the relevant international standard-setting organizations to ensure that they are organized and operated in a way which facilitates effective participation of Members at different levels of development and from all geographical regions, throughout all phases of standard-development.

request the Director-General to explore with the relevant international standard-setting organizations and relevant intergovernmental organizations financial and technical mechanisms and means to ensure the participation of representatives of developing countries in standard-setting activities.

instruct the SPS Committee to consider the means to assist developing country Members to fully and effectively benefit from the provisions of Article 4, taking into account the work being done by the relevant international standard-setting organizations.

agree that regulatory authorities of the Members, subject to the conditions set out in Article 10.2, should observe a longer time-frame accorded for compliance with a new measure on products of interest to developing country Members of normally at least 6 months following notification of the measure in accordance with Article 7 and Annex B.

instruct the Committee on Sanitary and Phytosanitary measures to grant to the least-developed country Members, in conformity with Article 10(3) of the Agreement, a delay in application of the provisions of the Agreement, other than paragraph 8 of Article 5 and Article 7, by a further period of three years with respect to their existing sanitary or phytosanitary measures affecting importation or imported products, where such application is prevented by a lack of technical expertise, technical infrastructure or resources.

request the Director-General to coordinate efforts with the relevant international standard-setting organizations to identify SPS-related technical assistance needs and how best to address these, taking into consideration the importance of bilateral and regional technical assistance in this domain.

(d) Technical Barriers to Trade

Ministers

urge international standardizing bodies to ensure that they are organized and operated in a way which facilitates effective participation of Members at different levels of development and from all geographical regions, throughout all phases of standard-development.

request the Director-General to explore with international standardizing bodies and relevant intergovernmental organizations financial and technical mechanisms and means to ensure the participation of relevant bodies from developing countries in standard-setting activities.

instruct the Committee on Technical Barriers to Trade, as part of its triennial work programme, to address the problems faced by Members, particularly the developing country Members, in both international standards and conformity assessment.

(e) Textiles

[Ministers

recognize the importance of trade in textiles and clothing for the economies of many developing countries and take note of the concerns which they have expressed with respect to the implementation process of the Agreement on Textiles and Clothing. They agree to give consideration to these concerns, in particular for small suppliers and least-developed countries.

reconfirm, accordingly, their commitment to full and faithful implementation of the provisions of the Agreement on Textiles and Clothing.]

(f) Trade-Related Investment Measures

Ministers

[*instruct* the Council for Trade in Goods to consider requests received before [31 January 2000][29 February 2000] from developing country Members under Article 5.3 of the Agreement on

Trade-Related Investment Measures for an extension of the transition period provided for in Article 5.2;

agree not to invoke WTO dispute settlement procedures until [31 March 2000][end of the round] in respect of measures covered by such requests;

instruct the Council for Trade in Goods to accord sympathetic consideration to requests for an extension of the transition period [and to complete the process by 31 March 2000].

[Paragraph 2 above shall also apply to TRIMs not previously notified that were introduced not later than [...] and that are notified to the Council for Trade in Goods by 29 February 2000. The Members concerned may request an appropriate period in which to eliminate the notified measures.]

OR

[Paragraphs 1,2 and 3 above shall also apply to TRIMs not previously notified that were introduced not later than [...] and that are notified to the Council for Trade in Goods by 29 February 2000.]]

(g) Trade-Related Aspects of Intellectual Property Rights

Ministers

instruct the Council for TRIPS to prepare a recommendation, pursuant to Article 64.3 of the TRIPS Agreement, to extend the period referred to in Article 64.2, until the end of [2000][2002] [, in order to permit the Council for TRIPS to examine fully the scope and modalities for complaints of the type provided for under subparagraphs 1(b) and 1(c) of Article XXIII of GATT 1994]. This recommendation shall be submitted to the General Council, conducting the functions of the Ministerial Conference, in time for adoption by the General Council before the end of 1999.]

(h) Agreement on Implementation of Article VII of GATT 1994

Ministers

agree that, when the Customs Administration of an importing Member has reasonable grounds to doubt the accuracy of the value declared, it may seek assistance from the Customs Administration of an exporting Member on the value of the good imported. In that case the exporting Member shall, [subject to its domestic laws][unless prohibited by domestic laws, regulations or other commitments], furnish information on the value of the exports.

instruct the Committee on Customs Valuation to grant, in accordance with Annex III, paragraph 1 of the Agreement, an extension of the transition period provided for in Article 20:1 of the Agreement for a period of three years to [developing country] [least-developed country] Members once they:

- (a) Make an application before [...]; and
- (b) With their application submit a detailed work programme, involving the relevant ministries and agencies, to enable the elaboration and approval of its legislation on the completion of its domestic administrative and legal procedures, including training, dissemination of information and other actions, for implementing and applying the Agreement.

(i) Agreement on Rules of Origin

Ministers

agree that the Committee on Rules of Origin shall complete its remaining work on harmonizing non-preferential rules of origin by [31 July 2000][31 December 2000][the Fourth Session of the Ministerial Conference].

(k) Agriculture

Ministers

agree that, in order to facilitate access of developing countries to tariff quotas, Members shall include details on guidelines and procedures for allocating such quotas in their notifications submitted to the Committee on Agriculture on the administration of these quotas (Table MA:1)

agree that work on the development of internationally-agreed disciplines to govern the provision of export credits, credit guarantees or insurance programmes in accordance with Article 10.2 of the Agreement on Agriculture shall be completed before the end of the year 2000.

agree that Members, in the framework of Article 18.4 of the Agreement on Agriculture, shall give the fullest consideration to the influence of excessive rates of inflation on the ability of a developing country Member to abide by its domestic support commitments. To this end a developing country Member shall have the flexibility to notify relevant data, for the purposes of demonstrating compliance with its domestic support commitments, in terms of a selected and consistently applied unit of account other than its own domestic currency [, in conjunction with notification of such data in its domestic currency].

instruct the Special Mechanism under the General Council to work out recommendations designed to improve the effectiveness of implementation of the Marrakesh Ministerial Decision on Measures Concerning the Possible Negative Effects of the Reform Programme on Least-Developed and Net Food-Importing Developing Countries. These recommendations should be acted upon by the General Council before 1 January 2001.

(l) Services

Ministers

instruct the Council for Trade in Services to review the operation of contact points established pursuant to paragraph 2 of Article IV of GATS with a view to assessing their effectiveness in promoting the participation of developing countries in services trade.

(m) Special and Differential Treatment

Ministers

instruct the Committee on Trade and Development to examine all S&D provisions before 31 December 2000 with a view to making such provisions more operational [and, where appropriate, legally binding] to effectively meet developing countries' needs, having regard to the specificities of each WTO Agreement or Decision;

reaffirm the importance of generalized, non-reciprocal and non-discriminatory preferences in favour of developing countries, as encompassed in the Enabling Clause;

recognizing the significant role played by existing preferential trading agreements and arrangements between developed and developing countries in fostering the phased and balanced integration of developing countries into the multilateral trading system, Ministers *agree* to give favourable consideration, as appropriate, to the granting or extension of waivers covering these and other such agreements or arrangements.

Annex II*

The issues enumerated below have been identified in the course of the preparatory process for the Third Session. Consideration of these issues will be concluded as far as possible within one year and in any case by the Fourth Session of the Ministerial Conference.

(a) Anti-Dumping

- Provisions of the Agreement shall be improved with a view to prevent the imposition of arbitrary or primarily protectionist measures. The provisions to be revisited should include, *inter alia*, (i) the criteria, methodology, and procedures of the reviews specified in the Agreement (expeditious review for new exporters, final review, reviews upon request), (ii) the definition of the product motivating the investigation, (iii) the determination of the margin of dumping, (iv) the imposition and collection of duties, (v) the "cumulation" clauses.
- The provisions of Article 15 need to be operationalized and made mandatory.
- The existing de minimis dumping margin of 2 per cent of export price below which no anti-dumping duty can be imposed (Article 5.8), needs to be raised to 5 per cent for developing countries.
- The proposed de minimis dumping margin of 5 per cent is applied not only in new cases but also in refund and review cases.
- The threshold volume of dumped imports which shall normally be regarded as negligible (Article 5.8) should be increased from the existing 3 per cent to [5 per cent][7 per cent] for imports from developing countries.
- Article 5.8 shall be also clarified with regard to the time-frame to be used in determining the volume of the dumped imports.
- The substantial quantities test should be increased from the present threshold of 20 per cent to at least 40 per cent.
- Article 2.4.1 shall include details of dealing with foreign exchange rate fluctuations during the process of dumping.
- Article 3 shall contain a detailed provision dealing with the determination of the material retardation of the establishment of a domestic industry as stipulated in footnote 9.
- There should be a provision in the Agreement, which provides a presumption of dumping of imports from developed countries into developing countries, provided certain conditions are met.
- Article 17 should be suitably modified so that the general standard of review laid down in the WTO dispute settlement mechanism applies equally and totally to disputes in the anti-dumping area.
- Article 18.6 must be appropriately amended to ensure that the annual reviews are meaningful and play a role in reducing the possible abuse of the Anti-Dumping Agreement.

* Note to delegations: this Annex will contain items in paragraph 22 of the draft Ministerial text of 19 October (JOB(99)/5868/Rev.1) as well as items in paragraph 21 of that text which remain unresolved at Seattle.

(b) Subsidies Agreement

- Aggregate and generalized rates of duty rate remission should be allowed in case of developing countries even though the individual units may not be able to establish the source of their inputs.
- Developing countries should be allowed to neutralize the cost escalating effect of taxes.
- Article 11:9 should be modified to provide an additional dispensation for developing countries, in as much as that any subsidy investigation shall be immediately terminated in cases.
- The present de minimis level of 3 per cent below which countervailing duties may not be imposed for developing countries, needs to be increased (Article 27:11).
- There should be a clarification in Article 27:3 that it is applicable notwithstanding the provisions of any other agreement.
- The definition of "inputs consumed in the production process" (footnote 61) needs to be expanded to include all inputs, not just physical inputs, which may have contributed to the determination of the final cost price of the exported product.
- Annex I of the Agreement shall be amended to provide developing countries the flexibility to finance their exporters, consistent with their developmental objectives.
- The provisions of Article 27 shall be re-evaluated so as to address, under a permanent and more adequate framework, the needs and specificities of developing countries concerning incentives and subsidies.
- The language of the Agreement regarding investigation procedures shall be further clarified, incorporating provisions that improve its disciplines regarding, *inter alia*, review procedures, facts available, sampling, significant volumes, calculation of amount of a subsidy, and impositions and collection of a countervailing duty.
- The language of Annex I of the Agreement, particularly item 'k', shall be reviewed to permit developing countries to provide competitive export financing *vis-à-vis* the conditions found in the international market or those offered by the credit agencies of developed countries (controlled by and or acting under the authorities of the governments).

(c) Safeguards

- Article 9.1 shall be amended so that safeguard measures are not applied to imports from developing countries which individually account for less than 7 per cent of total imports.

(d) Sanitary and Phytosanitary Measures

- Though the SPS Agreement encourages Members to enter into MRAs, developing countries have not so far been included in such agreements. In this context, it is suggested that MRAs are developed in a transparent way and they should be open to parties that may wish to join them at a later stage.
- The definition of an international standard, guideline and recommendation (paragraph 3 of Annex A) needs to be revised so that a differentiation is introduced between mandatory international standards and voluntary international guidelines/recommendations.

- Article 12:7 provides for a review of the operation and implementation of the Agreement three years after the date of entry into force of the Agreement. This review shall be carried out once every two years.

(e) Technical Barriers to Trade

- Means have to be found to ensure effective participation of developing countries in setting of standards by international standard-setting organizations.
- Article 11 shall be made obligatory so that technical assistance and cooperation is provided to developing countries.
- Acceptance by developed-country importers of self-declaration regarding adherence to standards by developing-country exporters. This provision should be introduced in Article 12.
- A specific provision to be introduced in Article 12 that developing countries shall be given a longer time-frame to comply with measures regarding products of export interest to them. Furthermore, if a measure brought forward by a developed country creates difficulties for developing countries, then the measure should be reconsidered.

(f) Trade-Related Investment Measures

- The provisions of Article 5.3 must be suitably amended and made mandatory.
- Developing countries shall be exempted from the disciplines on the application of domestic content requirement by providing for an enabling provision in Articles 2 and 4 to this effect.
- Specific provisions shall be included in the Agreement to provide developing countries the necessary flexibility to implement development policies (intended to address, among others, social, regional, economic, and technological concerns) that may help reduce the disparities they face *vis-à-vis* developed countries.

(g) Trade-Related Aspects of Intellectual Property Rights

- Articles 7 and 8 of the TRIPS Agreement to be operationalized by providing for transfer of technology on fair and mutually advantageous terms.
- [Article 27.3(b) to be amended in light of the provisions of the Convention on Biological Diversity and the International Undertaking. Also, clarify artificial distinctions between biological and microbiological organisms and process; ensure the continuation of the traditional farming practices including the right to save, exchange and save seeds, and sell their harvest; and prevent anti-competitive practices which will threaten food sovereignty of people in developing countries, as permitted by Article 31 of the TRIPS Agreement.][Article 27.3(b) should be amended to take into account the Convention on Biological Diversity and the International Undertaking on Plant Genetic Resources. The amendments should clarify and satisfactorily resolve the analytical distinctions between biological and microbiological organisms and processed; that all living organisms and their parts cannot be patented; and those natural processes that produce living organisms should not be patentable. The amendments should ensure the protection of innovations of indigenous and local farming communities; the continuation of traditional farming processes including the right to use, exchange and save seeds, and promote food security.]

(h) Agreement on Implementation of Article VII of GATT 1994

- The Agreement should be amended to provide for the highest value when more than one transaction value of identical or similar goods is found.
- Buying commissions should be taken into account in the determination of customs value of imported goods as it forms a legitimate component of the landed cost of imported goods.
- Persons associated with each other as sole agents, sole distributors, and sole concessionaires, howsoever described, should automatically be deemed "related".

(i) Article XVIII of GATT 1994

- A complete review of Article XVIII shall be undertaken with a view to ensure that it subserves the original objective of facilitating the progressive development of economies in developing countries and to allow them to implement programmes and policies of economic development designed to raise the general standard of living of their people.
-