

General Council

Preparations for the Fourth Session of the Ministerial Conference

Report by the Chairman of the General Council in co-operation with the Director-General on the Current State of Preparatory Work

I. OVERALL EVALUATION

1. The General Council's work on the preparation of the Doha Ministerial is aimed at reaching consensus on the substantive agenda which will be before Ministers, preparing any decisions for them, and drafting the declaration(s) which they could be expected to make. As the process has gone on, attention has increasingly focused on the possible enlargement of the negotiating agenda. The discussions so far have shown wide and growing - though not universal - support among WTO Members for enlarging the agenda. Calls have also been made in various international forums by a range of governments for the launch of a new Round in Doha, though others have been more cautious and some say that they are yet to be convinced.

2. For many delegations it is clear that the launch of a wider negotiating programme is effectively the working hypothesis. However, even those who share this view are still a long way from reaching consensus on the scope and level of ambition that an enlarged negotiating agenda would have. The gaps among positions on key issues remain wide. It is an urgent necessity to narrow these gaps.

3. More also needs to be done to meet the concerns of some WTO Members, particularly some developing and least-developed countries, about the prospect of taking on new negotiations when they face problems with existing commitments. In some cases this may be a question of building capacity, and in this connection it is encouraging that the section in this report on technical cooperation reflects a fairly high level of convergence among Members. Much, however, depends on a satisfactory outcome to the intensive effort going on under a General Council mandate to resolve implementation-related issues and concerns. There have been some welcome advances in the process lately, but this needs to lead to tangible progress if these issues are to contribute to, rather than impede, agreement on the package for Doha. It is clear that, for a number of Members, progress towards resolving their implementation-related concerns will condition their approach to a possible expansion of the negotiating agenda.

4. At the informal General Council meeting on 26 June, the Director-General and I stressed the need to move beyond consultation to negotiation as rapidly as possible. Beyond progress on specific areas, this also means developing a sense of the positive connections and tradeoffs among issues and positions. In some cases, our work may be close to the limits of what is possible in terms of building consensus on specific issues in the absence of convergence on the broader picture. In continuing and intensifying our work in the short time available, we need to focus on solutions for individual issues as part of an acceptable whole.

5. The following section identifies areas of convergence and divergence in the various areas covered by the Checklist of Issues circulated by the Chairman of the General Council on 20 April

2001. These issues have been the subject of intensive work over the last few months. In too many cases, however, the results so far have not yet been proportionate to the effort. It is not simply the extent of the outstanding differences in position that is worrying, it is also the apparently entrenched nature of some of these differences. It is true that, especially in the past month, there have been some encouraging signs of greater engagement to find common ground. However, these signs need to be translated into concrete terms if they are to prove meaningful.

6. This means considering, for example, the relationship between the scope of the agenda and levels of ambition. Otherwise we risk entering a vicious circle where the question of whether to launch a Round and the question of its agenda pursue each other. We also cannot run the risk of going to Doha with too many complex issues still open.

7. The assessment of the present situation cannot be other than a sobering one. The task of bridging the substantial gaps we still face in a very short time is difficult and complex. It is not impossible, however, given two essential conditions; a strengthening of the political will to find consensus solutions and the conversion of that political will into negotiated outcomes.

8. Failure to arrive at a consensus in the weeks to come on a future agenda for the WTO which advances the objectives of the multilateral trading system could call into question both our approach to decision-making and the value of the WTO as a forum for negotiations.

11. SUBJECT-BY-SUBJECT ASSESSMENT¹

A. MINISTERS' VIEWS/STATEMENTS ON CURRENT ISSUES

9. The preparations for drafting on bullet point I - the introductory part of an eventual Ministerial Declaration - are moving forward in a satisfactory manner. It is now apparent that there is broad agreement on a number of elements as a good initial basis for drafting an introductory section that is a concise, collective statement on matters on which consensus could be found. At present, these subjects are likely to include:

- state of the global economy, as the context in which the Ministerial Conference is being held and decisions are being made;
- role and contribution of the WTO;
- implementation;
- development dimensions;
- least-developed countries;
- the relationship between regional arrangements and the multilateral trading system;

¹ Following the order of the Initial Checklist of Possible Issues for Discussion circulated by the Chairman of the General Council on 20 April 2001 (Job(01)/51).

- accessions;
- global economic coherence;
- sustainable development;
- health and intellectual property rights;
- transparency issues.

10. It is clear that flexibility will need to be maintained as consideration of this section proceeds, and that an effort should be made to refrain from adding a large number of additional points. Furthermore, on some of these issues more operational language may also be appropriate elsewhere in the Declaration.

B. IMPLEMENTATION

11. Work on outstanding implementation concerns has been progressing under the specific mandate given to the General Council in the Decision of 3 May 2000. Although progress at this stage in achieving concrete results has not been as rapid as might have been hoped, and significant differences of view remain, there have been some positive developments. Notable among these has been the recent submission of a widely welcomed contribution from Uruguay and a group of six other delegations (Argentina, Morocco, New Zealand, Norway, Switzerland and Thailand). On the basis of the framework offered by this paper, some headway has been made on a number of implementation proposals in intensive consultations in the past few weeks. This has resulted in specific elements

being put forward by the Chairman and the Director-General, pending further discussion elements, as elements, as possibilities for early agreement.

12. These papers, together with other inputs that have recently been submitted or foreshadowed, can serve to energise the further process and guide Members to early decisions. On the basis of the discussion at the most recent Special Session on 20 July, there are indications that early agreement on certain proposals may be possible, and these are being explored further. Members' views also appear to be converging on the desirability of referring certain other issues to subsidiary bodies on the basis of clearly defined guidelines and time-frames, keeping in mind that they will remain at all times under the overall General Council process. There have, at the same time, been indications of an enhanced sense of engagement and willingness on the part of key Members to address these issues. Discussions have also clearly demonstrated the significance that Members continue to attach to satisfactory results in this area in terms of the mandate of the 3 May 2000 Decision, and broad recognition that this would be a vitally important contribution to the overall process for Doha and key to a successful result.

13. Nonetheless, delegations continue to maintain a range of views on a number of the outstanding implementation-related concerns, and there appears little significant movement as yet towards convergence in some major areas. There are also divergent views as to technical feasibility of resolution in certain areas, the extent to which some proposals will necessitate changes to-

domestic legislation or to existing agreements themselves, and whether these issues can appropriately be addressed in wider negotiations.

14. Considerable effort has also gone into intensive consultations on the issue of TRIMs transition periods. In this connection, it is hoped that the present report could be supplemented at the informal General Council meeting of 30 July.

C. ONGOING NEGOTIATIONS/REVIEWS

1. Agriculture

15. The mandated negotiations on agriculture, a key area for virtually all WTO Members, have been conducted fully in conformity with the work programmes agreed by the Committee on Agriculture meeting in Special Sessions. It is generally recognized that the negotiations are moving forward and most WTO Members have been fully engaged in the process. As for the treatment of agriculture in a Doha Ministerial Declaration, while there appear to be some broadly shared views, the gap between the positions of Members has to date remained wide. Regarding the key divergences, the views of Members at both ends of the spectrum are strongly differentiated.

16. Members differ on the question of further guidance from Ministers for the negotiations on agriculture, particularly under the working hypothesis of an expanded programme of negotiations. Under this scenario, some Members would want to see such guidance limited to establishing a common deadline for conclusion of the negotiations. Some other Members would also be agreeable to including in the Doha Declaration language designed to provide political impetus to the negotiations on agriculture. Still other Members hold that under the “new Round” scenario, a high level of specificity about what has to be reformed is needed, as well as a clear understanding of the timetables and benchmarks for concluding the negotiations.

2. Services

17. There seems to be general recognition that the services negotiations are progressing reasonably well. The Guidelines and Procedures for the negotiations adopted by the Services Council on 28 March 2001 set the objectives, scope and modalities for the negotiations in a clear and balanced manner. They also reaffirm the date of 15 March 2002 set by the Services Council for the conclusion of the negotiations on emergency safeguard measures. Members consider that these guidelines, together with Articles IV and XIX of the GATS, constitute a good basis for continuing the services negotiations.

18. Currently, as in the case of agriculture, there is no deadline for the services negotiations. While Members have not addressed that point, realizing that it is likely to be linked with other areas of negotiation, some have expressed the desirability of establishing certain benchmarks.

3. TRIPS

19. There seems to be a widespread recognition that the issue of the TRIPS Agreement and access to medicines should figure prominently in the results of the Doha Ministerial Conference, but there are different views as to the appropriate context. One view is that it could be handled in the main Declaration, with language in the first, more “political”, part and probably also in a more operational part of the Declaration. Another view is that a separate declaration specifically on this matter should be issued. A range of elements that should be reflected has been suggested.

20. Other TRIPS issues have been raised during the consultations. These include the negotiation of a multilateral notification and registration system for geographical indications pursuant to Article 23.4, extension of the product areas in respect of which geographical indications should be eligible for the protection provided for in Article 23, the relationship between the TRIPS Agreement and the Convention on Biological Diversity, the protection of traditional knowledge, non-violation complaints, the transfer of technology, including under Article 66.2, and keeping the TRIPS Agreement abreast of new technological and other developments. In matters of substance, in most cases delegations have so far largely repeated positions that they have already expressed in other contexts. As regards the question of how the work should be carried forward, many of these issues have been raised in a variety of contexts, including those of implementation, the built-in agenda of the TRIPS Council and as possible future negotiating issues. There are differences on the substance of what delegations want future work in the WTO to achieve in these areas, and a lack of clarity as to the most appropriate context in which such work should be pursued.

D. OTHER ELEMENTS OF THE WORK PROGRAMME

1. Relationship between Trade and Investment

21. Members’ positions are divided as follows:

- Those in favour of launching negotiations at Doha on a multilateral framework of rules on foreign investment, with the aim of securing a stable, transparent and predictable climate that will facilitate and promote flows of FDI, while preserving the ability of host countries to regulate the activities of investors on their territories. Emphasis has been placed, in this context, on the need for a precise mandate for negotiations, on the importance of flexibility for developing countries as an overarching principle for negotiations, and on satisfaction with the overall balance of other elements for negotiation.

- Those who prefer to continue the educational work of the Working Group on the Relationship between Trade and Investment. For proponents of this approach the issue is not ripe for negotiations. They consider that WTO rules would not assist Members to attract more foreign investment, but they would reduce policy options for dealing with foreign investment in ways that promote development.
- It has also been proposed that the work of the Working Group could be prolonged, but with a new and more focuses mandate, and with the possibility of Ministers revisiting this issue in 2003.

2. Interaction between Trade and Competition Policy

22. There is no disagreement that the issue should be the subject of further work in the WTO. However, there remain substantial differences as to how this should be done. The main positions on this issue can be summarised as follows:
- Those in favour of launching negotiations at Doha with a mandate that would include two main elements: (I) the development of a multilateral framework for cooperation among Members, of an essentially voluntary nature, including technical cooperation and capacity building, exchange of national experience and with regard to individual cases; and (ii) the negotiation of binding commitments relating to the basic principles of non-discrimination and transparency and with regard to hardcore cartels.
 - Those favouring the continuation of educational work in the Working Group because the issue is not seen as ripe for negotiations and/or because of capacity constraints and other priorities. Some of these delegations have expressed concern about the possible implications of binding rules in a multilateral agreement for their development and social policies, and about any requirement to have a competition law of general application.
 - As in the case of investment, there is also a significant number of Members who seem to be ready to consider positively negotiations in the context of a Declaration with a satisfactory overall balance. In addition, there are some delegations which have indicated some flexibility provided their concerns about dispute settlement in this area can be met.

3. Transparency in Government Procurement

23. There seems no disagreement about the importance of transparency in government procurement and of the desirability of the WTO pursuing its work in this area. The differences essentially relate to how this should be done. In this regard, there would appear to be three main positions held by Members on this issue:
- Those WTO Members who believe that the Working Group has effectively exhausted its mandate are advocating a short negotiating mandate for a multilateral agreement on transparency in government procurement, which would specify a time-frame but leave for the negotiations the determination of the principal elements and features of a multilateral transparency agreement. A few of these Members are also advocating a broader mandate that could provide, in the longer term, for the exploration of the scope for significant liberalization in this area.

- A second group of delegations who, while not demandeurs, are open to a negotiating mandate in this area, provided that it is strictly limited to the area of transparency and it forms part of a Declaration with a proper overall balance.
- The third group of Members consists of those who believe that the Working Group has not yet completed its work and should be required to do so before consideration is given to opening negotiations in this area. They point to outstanding differences on such matters as definition and scope, dispute settlement and domestic reviews in this connection.

4. Trade Facilitation

24. Members agree on the general importance and the overall benefits of trade facilitation. There is also agreement on developing countries' need for substantial and comprehensive technical assistance and capacity building.
25. The Key outstanding question is the reluctance of certain developing countries to engage in negotiations aimed at developing new binding rules in this area, a concern that seems tied to worries about capacity constraints and being subject to dispute settlement in the future. As for the capacity constraints, the proponents appear to recognize this problem and have made clear that they see up-front commitments on technical assistance and capacity building as an integral part of the negotiation of new rules. If an accommodation can be reached, the main elements of a trade facilitation negotiating mandate would probably be:
 - Additional rules based on existing rules found in GATT Articles V, VIII and X;
 - The focus of the rules would be on customs procedures designed to provide for enhanced transparency and due process, simplification of documentation and procedures; efficiency (more rapid clearances and greater security); and non-discrimination;
 - GATS-related issues, as well as TBT and SPS questions, would be outside the scope of the negotiations.

5. Market Access Negotiations for Non-agricultural Products

26. Consultations on this issue have been carried out on the understanding that the discussion on possible market access negotiations for non-agricultural products was to be without prejudice to linkages which delegations might have drawn with other questions. The consultations revealed that Members tend to regard non-agricultural market access negotiations as part of the core business of the WTO, and believe that it would be natural for this subject to be a part of any expanded negotiating agenda. If other linkages and issues and successfully addressed to a point where we can agree to non-agricultural market access negotiations, there would appear to be a broad consensus on how, in Doha, questions relating to the elements of coverage, objectives, modalities and special and differential treatment may be treated. These elements may be outlined as follows:
 - Coverage should be comprehensive and without a priori exclusions. Tariff and non-tariff measures should be included in the scope of the negotiations;
 - Among the objectives of such negotiations should be the substantial reduction or elimination of tariffs and non-tariff barriers. There is an expectation on the part of

many delegations that the negotiations should aim to address tariff peaks and tariff escalation;

- Developing countries' interests would require the inclusion of special and differential treatment considerations in the negotiating mandate, such as an absence of full reciprocity;
 - On modalities, delegations seem to be in favour of leaving agreement on the details of modalities for the post-Doha period.
27. A small number of delegations state that they are not in favour of lowering their tariffs. However, in the context of a broader negotiation agenda, and if other linkages and issues are satisfactorily addressed, it appears that an overall consensus would be possible regarding new market access negotiations for non-agricultural products.

6. Trade and Environment

28. There is convergence in reaffirming WTO's commitment to sustainable development in appropriate introductory language. Elements in this regard include the need to ensure that environmental protection is not used as a cover for protectionism, and that trade, environment and development policies are mutually supportive. It has been emphasized that there is no inherent policy contradiction between upholding and safeguarding an open, non-discriminatory and equitable multilateral trading system, and acting for the protection of the environment, and the promotion of sustainable development.
29. Some Members have called for the maximization of positive synergies between trade liberalization, environmental protection and economic development. Sustainable resource utilization has also been mentioned. Some have suggested market access for environmentally friendly goods and services, and the reduction or removal of environmentally harmful subsidies while providing flexibility to use environmentally friendly subsidies. A number of other Members have proposed to address subsidies in the fisheries sector that contribute to over-capacity and over-fishing, or have trade-distorting effects, giving special consideration to the development dimension of the issue.
30. However, there are still wide divergences as to any operational treatment of environmental issues in relation to possible negotiations on market access or rules-related matters. There is no consensus yet with regard to proposals by a number of Members to clarify the relationship between trade measures in Multilateral Environmental Agreements and WTO rules; to review and, as appropriate, clarify the status of labelling under relevant WTO rules, and to ensure the recognition and non-protectionist application of precaution in the WTO. A major concern relates to the need for certainty that the purpose of any such exercise is not to weaken those rules.
31. Views also differ on the role of the Committee on Trade and Environment in relation to any possible expanded negotiating agenda.

7. Other issues raised

32. There is wide support among Members for the initiation of negotiations relating to anti-dumping. Supporters generally envisage negotiations aimed at improving, clarifying and strengthening the rules governing the application of anti-dumping measures within the existing framework of the Anti-Dumping

Agreement, including taking into account the interests of developing country Members. At this stage, no outright opposition to an exercise to clarify, strengthen or improve rules in this area has been expressed. However, the position of those Members which have not yet expressed a clear view remains to be clarified. In addition, some Members consider that implementation issues must be adequately resolved before any negotiations on anti-dumping or other topics can be considered.

33. A significant number of Members support the initiation of negotiations on the Subsidies Agreement, and concerns of developing countries have been identified as one possible element of such negotiations. Several Members have, however, expressed reservations about negotiations in this area, noting that the Agreement reflects a careful balance of rights and obligations, and do not see any need to re-open it. In addition, some Members consider that implementation issues must be adequately resolved before any negotiations on subsidies or other topics can be considered. Substantial support has also been expressed for a post-Doha work programme on fisheries subsidies (see also under Trade and Environment); however, the relationship of any such work programme with any possible broader negotiation under the Agreement remains to be clarified.
34. In consultations so far on the issue of the review/amendment of the **Dispute Settlement Understanding**, a cross-section of views was expressed, but there was no consensus evident. While some Members would like the draft amendment already tabled to be agreed before Doha, perhaps with some limited changes, other feel the draft text is not suitable and could not be easily fixed. Still others would prefer a much broader text. A number of delegations were ready to consider the idea of a mandated review of the DSU post-Doha, but with certain conditions, such as a clear time-frame, a limited scope, and that this be seen as a systemic matter separate from any single undertaking. At this stage, there would appear to be a need for a further reflection on the prospects for the draft text which has been under discussion and on the various options.
35. Consultations so far on how **electronic commerce** might be treated at Doha indicate considerable potential support for an approach based on the following elements:
 - a Ministerial decision to reaffirm interest and continue (perhaps in update form) a WTO work programme on electronic commerce;
 - a Ministerial decision (political commitment) to abide by a moratorium on the imposition of customs duties on electronic transmissions until the Fifth Session of the Ministerial Conference.
36. An updated work programme declaration would take into account developments since 1998, the application of existing rules and disciplines to e-commerce and the need to build developing countries' capacity to benefit from e-commerce.

On **regional trade agreements** (RTAs), a subject also mentioned in discussions on the introductory section, there seems to be a strong feeling among Members on the need to ensure that such agreements are complementary to and consistent with WTO rules.