

Implementation Related Issues and Concerns

On a Slower Track

Implementation related issues and concerns under the current WTO framework imply the following: a) Lack of implementation of certain obligations and commitments on the part of developed countries; and b) Inability of developing countries to implement their new obligations due to financial and technical difficulties. Upon consistent pressure by developing countries, in May 2000 the General Council decided to hold Special Sessions to discuss the Implementation related issues highlighted by the WTO members in the preparatory process of the Third Ministerial Conference at Seattle and which were a prominent part of the Draft Ministerial Text (DMT) at Seattle.

Implementation related issues, as spread over the various Uruguay Round Agreements, were the underpinning rationale behind objections by several developing countries to the launching of the Doha round of trade negotiations. However, the ultimate treatment of the implementation proposals in the Doha Ministerial Declaration (DMD) and the Ministerial Decision has been very disappointing. Submissions made by developing countries in the run-up to the Cancun Ministerial, state clearly that until implementation related issues and concerns are resolved, they are unwilling to lend support for the inclusion of new issues in the WTO framework.

I. The Doha Mandate

Implementation Related Issues and Concerns is the first item in the Work Programme of the DMD. There is also a text, separate of the main Ministerial Declaration, called the “Decision on Implementation Related Issues and Concerns”, which lays down the specific negotiating mandate for implementation related issues concerning various WTO Agreements. It is important to consider these two set of provisions together.

The very interpretation of the Doha mandate on Implementation issues is widely disputed amongst WTO members. Para 12 of the DMD states, “We agree that negotiations on outstanding implementation issues shall be an integral part of the Work Programme we are establishing [...]”(WT/MIN(01)/DEC/W/1). The Para also lays down a two-track approach for carrying out the mandate on implementation issues. Firstly, it explicitly states that where a specific negotiating mandate has been provided in the Doha Declaration, the relevant implementation issues will be addressed under that mandate.

Secondly, the other outstanding implementation issues “shall be addressed as a matter of priority by the relevant WTO bodies, which shall report to the Trade Negotiating Committee, [...]”(WT/MIN(01)/DEC/W/1). Para 13 of the Decision on Implementation Related Issues and Concerns also states that the outstanding implementation issues, as compiled in document Job(01)/152/Rev.1, shall be addressed “in accordance with paragraph 12 of the DMD”.

The above statements have formed the basis of the first interpretation by some WTO members, who state that all implementation issues contained in both the Decision on Implementation Related Issues and Concerns and the outstanding issues contained in the Compilation document (Job (01)/152/Rev.1) are and should be under negotiations. The second interpretation, by some other WTO members, restricts the negotiating mandate to those issues specifically mentioned in the Decision on Implementation Related Issues and Concerns. The other issues, as per this interpretation, are subject to discussions not negotiations.

II. Current State of Play

In the run-up to the Seattle Ministerial, the WTO Members raised approximately 95 implementation-related points, out of which approximately 40 were touched upon in the Decision on Implementation and nearly 50 in the Compilation on Outstanding Implementation Issues

(JOB(01)/152/Rev.1) (ICTSD, 2003). Since it was beyond the scope of this issue paper to cover all Agreements, focus is only on some key implementation issues.

Agriculture

Article 18.6 of the WTO Agreement on Agriculture (AoA) entrusts the Committee on Agriculture with review of the implementation of commitments negotiated under the Uruguay Round reform programme. Matters relevant to the implementation of commitments under the Reform Programme have been under heated debate in the regular meetings of the Committee.

The second prominent implementation issue is related to the Green Box subsidies. Green Box measures are the ‘permitted’ subsidies for domestic support, which are not considered trade distorting. Ever since the Uruguay Round, it has generated intense controversy. The Doha mandate calls for “restraint in challenging measures notified under the Green Box by developing countries to promote rural development and adequately address food security concerns”. Although this statement is positive, it cannot be promising until the loopholes in the main text of the AoA are amended. As per the AoA, “developing countries with predominantly rural agrarian economies shall have sufficient flexibility in the green box to adequately address their non-trade concerns, such as food security and rural employment” (Tiret 5). This statement has far reaching implications.

Another implementation concern that remains pending with the Committee on Agriculture is related to the calculation of the Aggregate Measure of Support (AMS). The amount of total subsidies subject to reduction commitments, given by a government to its agriculture sector is measured in terms of the AMS. It is calculated on a product-by-product basis using the difference between the average external reference price for a product and its applied and ministered price multiplied by the quantity of production. The question whether, in the event that the external reference price is greater than domestic support (applied) price, Members will be allowed to increase their non-product specific AMS by an equivalent amount.

Article 10.2, yet another pending implementation issue, which states that “Members undertake to work towards the development of internationally agreed disciplines to govern the provision of export credits, export credit guarantees or insurance programmes and, after agreement on such disciplines, to provide export credits, export credit guarantees or insurance programmes only in conformity therewith”. The

full implementation of Article 10.2 of the AoA has still not taken place. In the meantime, however, disciplines for agricultural export credits, export-credit guarantees and insurance programmes have already been developed. As a result, developing countries have to adopt disciplines in the formulation of which they did not have any role.

Textiles

Work in the WTO on Textiles is handled by the Council for Trade in Goods and the Textiles Monitoring Body. The Agreement on Textiles & Clothing (ATC) sets out a transitional process for the ultimate removal of quotas by January 1 2005. The ATC calls for a liberalisation process “to progressively enlarge existing quotas (until they are removed) by increasing annual growth rates at each stage”.

As per the Doha Decision on Implementation Related Issues and Concerns, by 31 July 2002, the Council for Trade in Goods was to report to the General Council on the examination of the methodology used to calculate the growth of textile quotas. Despite extensive formal and informal discussions, the Chair of the Council for Trade in Goods was unable to bridge the gap between the opinions of various WTO members. Members of the International Textiles and Clothing Bureau (ITCB) argued that “developing countries had failed to progressively increase growth rates for textile quotas to allow for meaningful access to their textile markets” (G/C/W/368 as quoted in ICTSD, 2003). The developed countries, on the other hand claimed that they had “adhered to the transitional process under the ATC” (ICTSD, 2003). The WTO members could not even agree on how to represent their conflicting views, thus disabling the Chair to even come out with a factual report on the differing opinions.

Sanitary and Phytosanitary Measures

Paragraph 10(2) of the Agreement on Sanitary and Phytosanitary (SPS) measures provides that a longer time frame for compliance can be given on products of interest to developing countries. Further, the Doha Decision on Implementation related issues and concerns states that this interval shall not ‘normally’ be less than six months. However, this is a purely discretionary provision as even suggested by the use of the term ‘normally’. Besides, it will be possible only where there is scope for a phased introduction of new SPS measures.

Another key implementation related issue in the Doha Decision is the statement that “Subject to the conditions specified in paragraph 2 of Annex B to the Agreement on the Application of SPS measures, the phrase “reasonable interval” shall be understood to mean normally a period of not less than six months”. Not only does this *tiret* give developing countries very little breathing space (between the date of notification of a SPS measure and its compliance), but also that they will ultimately have to comply with the measure. The same *tiret* is applied to the Decision’s provision for a “reasonable interval” in the Agreement on Technical Barriers to Trade.

TRIPs and Public Health

Although the Doha mandate gave each WTO member the right to grant compulsory licences for the production of patented drugs or drugs using patented processes, it did not provide for any solutions to the difficulties faced by those WTO members with insufficient or no manufacturing capacity in the pharmaceutical sector. However,

Para 6 of the Doha Declaration on the TRIPs and Public Health instructed the Council for TRIPs “to find an expeditious solution to this problem and to report to the General Council before the end of 2002”. At its meeting of 28 August 2003, the Council for TRIPs approved a draft decision on Implementation of paragraph 6 of the Doha declaration on the TRIPs and Public Health, which stated, “The obligations of an exporting member under Article 31(f) of the TRIPs shall be waived with respect to the grant by it of a compulsory licence to the extent necessary for the purposes of production of a pharmaceutical product(s) and its export to an eligible importing Member(s) in accordance with the terms set out ..[.]”

The Doha Decision on Implementation Related Issues and Concerns covered two other implementation related issues, which still haven’t been resolved. Key among them is regarding Para 66.2 of the TRIPs Agreement, which deals with developed country obligations to provide incentives for the transfer of technology to LDCs. The Doha mandate called for developed countries to submit reports on the practical functioning of the incentives provided, with the TRIPs Council requesting such to be made available by the November 2002 meeting. As of December 6, information had been received and circulated by Australia, Canada, Japan, New Zealand, Norway, Switzerland, as well as the EU and its member states (See ICTSD AND IISD, 2003). “The Council suspended this meeting and agreed to revert to this item later....” (ICTSD AND IISD, 2003).

Trade Related Investment Measures (TRIMs)

The Council for Trade in Goods (CTG) agreed on 7 May 2002 to assign to the TRIMs Committee the responsibility for conducting work on the outstanding implementation issues related to the TRIMs Agreement as contained in *tirets* 37-40 of JOB (01)/152/Rev.1, and for reporting regularly to the CTG on its progress. The TRIMs Committee met four times to discuss the four *tirets* (G/TRIMs/W/29/Rev.1) with there being no consensus amongst the WTO members on this. The view of the developed countries was that the proposals under *tirets* 37-40 would involve a renegotiation of the TRIMs Agreement and were not a matter of implementation. The view of most developing countries was that “all proposals under Paragraph 12(b) of the DMD were matters for negotiation within a given timeframe, as an integral part of the Doha work programme” (G/TRIMs/W/29/Rev.1). For the different views on each of the *tirets* see WTO document G/TRIMs/W/29/Rev.1.

III. Conclusions

As rightly brought out in Das (2002), most of items in the Doha Decision on Implementation related issues and concerns, including those that have not been covered in this paper, contains operative phrases like: (a particular WTO body) “is directed to give further consideration”, “urges Members”, (a particular WTO body) “is instructed to review”, “requests” (a particular WTO body) to “to examine”, “recognises”, “underlines the importance” etc. The Draft Cancun Ministerial Declaration “renew our determination to find appropriate solutions to these issues”. There is a hope that the post Cancun Ministerial period sees the resolution of several of these issues with greater speed and clarity with respect to the implications of its outcomes.

References

ICTSD AND IISD, 2003, “Implementation –related Issues and Concerns”, *Doha Round Briefing Series, Vol. 1 No. 1 of 13, February 2003.*

Das, B. L. (2002), “Implementation Issues (Para.12)”, in *The New Work Programme of the WTO, Third World Network, Malaysia, 2002.*

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