

**PREPARATIONS FOR THE FOURTH SESSION OF THE MINISTERIAL CONFERENCE**

Comments on the Draft Ministerial Declaration of 27 October 2001 (Job (01)/140/Rev.1)

*Communication from Cuba*

The following communication, dated 1 November 2001, has been received from the Permanent Mission of Cuba.

General

1. It is quite disappointing to note that the revised Draft Ministerial Declaration of 27 October 2001 has not taken on board the comments, concerns and interests of a large number of developing countries, expressed by them during the various consultations held by the Chairman of the General Council on the Draft of 26 September 2001. In this sense, we consider unacceptable this Draft Ministerial Declaration as a base for negotiations.

Preamble - Paragraphs 1 to 11

Para 1. While an equitable and rule-based multilateral trading system can contribute to economic growth, development and employment, it has not always been the case. Smaller developing countries, have felt marginalized and have not been able to reap the expected and promised benefits from the system. The first para therefore should be less unambiguous on this issue and recognize both the opportunities and challenges faced by developing countries in the multilateral trading system.

Para 2. This para is too weak. It needs to be strengthened with a view to putting development rather than 'their needs' at the heart of the WTO's work programme

Para 4. Especially in the context of the current climate, there needs to be a statement of commitment on seeking multilateral solutions within a multilateral system, leaving no room for unilateral action of any kind. In this regard, we propose to include the following paragraph:

We stress the importance for all countries of consistency between national trade policies and the multilateral trade agreements. In this regard, we reiterate our concern and call for the elimination of the continuing use of coercive economic measures against developing countries, through, inter alia, unilateral economic and trade sanctions which are in contradiction with international law, in particular new attempts aimed at extraterritorial application of domestic law, which constitute a violation of the United Nations Charter and of WTO rules.

Para 6. This para devotes too much space to reaffirming the right to undertake environmental measures. The third sentence should be deleted.

Para. 7. This paragraph should be located in the section on services. However, it is probably more adequate to simply delete it.

Para 8. This para should be deleted in the first instance. As alternative, we propose the following paragraph:

We reaffirm that ILO is the competent body to set and deal with all issues relating to labour standards. We therefore firmly oppose any linkage between trade and labour standards. We believe that issues relating to such standards should be dealt with by the competent international organization and not by the WTO.

Para 10. The issue of an 'expanding membership' does not bear relationship to this problem. A firm decision should be taken to seriously address this re-occurring problem. The General Council should be instructed to develop a work programme and recommend measures which will guarantee full and effective participation by all members and transparency by the fifth Ministerial.

Para 11. Any reference to an 'expanded negotiating agenda' should be deleted.

#### Implementation-Related Issues and Concerns - Paragraph 12

12. This para will be subject to approval of outcomes derived from Draft Decision on Implementation-Related Issues and Concerns (Job (01)/139/Rev.1) which still falls much short of our expectations. With regard to para 12 of the Draft Ministerial Declaration, following can be of major concern to developing countries:

- (a) All implementation issues should therefore be addressed under the existing Special Mechanism of the General Council, with the help of subsidiary bodies when needed, with a view to effectively resolving them latest by the end of 2002.
- (b) A related concern is the references in this para to paras 39 and 40 of the Draft Declaration. There is no agreement on the proposed organization of the new work program and, in view of the desire of developing countries to keep the implementation issues under the Special Mechanism of the General Council, there should not be any reference to other paras here.

#### Agriculture - Paragraph 13

Proposed Alternative formulation (inclusions indicated in bold):

13. We recognize the work already undertaken in the negotiations initiated in early 2000 under Article 20 of the Agreement on Agriculture, including the large number of negotiating proposals submitted on behalf of a total of 121 Members. We recall the long-term objective referred to in the Agreement to establish a fair and market-oriented trading system through a programme of fundamental reform encompassing strengthened rules and specific commitments on support and protection in order to correct and prevent restrictions and distortions in world agricultural markets. We reconfirm our commitment to this programme. Building on the work carried out to date, we commit ourselves to comprehensive negotiations aimed at: substantial improvements in market access, **including through the elimination or substantial reduction of tariff peaks, tariff escalation and non-tariff barriers**; reductions of, with a view to phasing out, all forms of export subsidies; and substantial reductions in trade-distorting domestic support. **Recognising the vulnerability of the agriculture sector in developing countries** we agree that special and differential treatment for developing countries shall be an integral part of all elements of the negotiations and shall be embodied in the Schedules of concessions and commitments and as

appropriate in the rules and disciplines to be negotiated, so as to be operationally effective and to enable developing countries to effectively take account of their development needs, including food security, **poverty eradication** and rural development, **through the provisions of an appropriate ‘development box’**. **The concerns and specific problems of NFIDC’s shall also be effectively addressed**. We take note of the non-trade concerns reflected in the negotiating proposals submitted by Members and confirm that non-trade concerns will be taken into account in the negotiations as provided for in the Agreement on Agriculture. **NTCs must not be used as a technical barrier to trade**.

14. No changes proposed.

#### Services - Paragraph 15

Proposed alternative formulation (inclusions indicated in bold):

15 The negotiations on trade in services shall be conducted with a view to promoting the economic growth of all trading partners and the development of developing countries. We recognize the work already undertaken in the negotiations, initiated in January 2000 under Article XIX of the General Agreement on Trade in Services, and the large number of proposals submitted by Members on a wide range of sectors and several horizontal issues, as well as on movement of natural persons. **We confirm that greater emphasis shall be placed on the liberalization of sectors and modes of supply of export interest to developing and least developed countries, as provided for in Article IV.1c of GATS**. We reaffirm the Guidelines and Procedures for the Negotiations adopted by the Council for Trade in Services on 28 March 2001 as the basis for continuing the negotiations, with a view to achieving the objectives of the General Agreement on Trade in Services, as stipulated in the Preamble, Article IV and Article XIX of that Agreement. **Negotiations shall be adjusted in accordance to progress in assessment. A first assessment shall therefore be conducted prior to the beginning of negotiations on specific commitments and on initial offers**. Participants shall submit initial requests for specific commitments by ... and initial offers by ... .

#### Market Access for Non Agricultural Products - Paragraph 16

Proposed alternative formulation

16. We agree that negotiations **shall only commence after a detailed analytical study has been carried out with the help of UNCTAD to examine the effects of previous and future tariff reductions on local industries and national economies of developing countries and** shall aim, by modalities to be agreed, 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, ~~as well as non tariff barriers~~. ~~Product coverage shall be comprehensive and without a priori exclusions~~. The negotiations shall take fully into account the special needs and interests of developing and least-developed country participants, in accordance with the relevant provisions of Article XXVIII *bis* of GATT 1994 and the provisions cited in paragraph 43 below.

#### Trade-Related Aspects of Intellectual Property Rights - Paras 17 to 19

Proposed alternative formulation

17. We stress the importance we attach to implementation and interpretation of the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement) in a manner supportive of public health, ~~by promoting both access to existing medicines and research and development into new medicines~~ and, in this connection, have adopted a separate Declaration.

18. With a view to completing the work started in the Council for Trade-Related Aspects of Intellectual Property Rights (Council for TRIPS) on the implementation of Article 23.4, we agree to negotiate the establishment of a multilateral system of notification and registration of geographical indications for wines and spirits by the Fifth Session of the Ministerial Conference. We **also agree** ~~note~~ that issues related to the extension of the protection of geographical indications provided for in Article 23 to products other than wines and spirits will be **part of these negotiations** ~~addressed in the Council for TRIPS pursuant to paragraph 12 of this Declaration.~~

19. We instruct the Council for TRIPS, in pursuing its work programme including under the review of Article 27.3(b), the review of the implementation of the TRIPS Agreement under Article 71.1 and the work foreseen pursuant to paragraph 12 of this Declaration, to examine, *inter alia*, the relationship between the TRIPS Agreement and the Convention on Biological Diversity, the protection of traditional knowledge and folklore. In undertaking this work, the TRIPS Council shall be guided by the objectives and principles set out in Articles 7 and 8 of the TRIPS Agreement, **the proposals already submitted by Members**, and shall take fully into account the **trade and development dimension-interests of developing countries**. **We direct the Council for TRIPS to complete these reviews expeditiously and, in any case, not later than end 2002. We also agree to exercise due restraint in the initiation of disputes against developing countries regarding the TRIPS agreement.**

Relationship between Trade and Investment, & Interaction between Trade and Competition Policy – Paragraphs 20 and 21

*Proposed alternative formulation*

20. The Working Group on the Relationship between Trade and Investment shall undertake further focused analytical work, based on proposals by Members. We commit ourselves to ensuring that appropriate arrangements are made for the provision of technical assistance and support for capacity building to developing countries throughout this analytical process. A report on this work shall be presented to the Fifth Session of the Ministerial Conference.

21. The Working Group on the Interaction between Trade and Competition Policy shall undertake further focused analytical work, based on proposals by Members. We commit ourselves to ensuring that appropriate arrangements are made for the provision of technical assistance and support for capacity building to developing countries throughout this analytical process. A report on this work shall be presented to the Fifth Session of the Ministerial Conference.

Transparency in Government Procurement & Trade Facilitation - Paragraphs 22 and 23.

*Proposed alternative formulation*

22. We agree to continue the ongoing study process, which would inter-alia also examine both the need and necessity of negotiations on a multilateral agreement on transparency in government procurement. This work would, build on the progress that has been made in the Working Group on Transparency in Government Procurement and take into account participants' development priorities. The negotiations, if any, shall be limited to the transparency aspects and will not restrict the scope for countries to give preferences to domestic supplies and suppliers. Issues relating to compliance with any new obligations to be agreed shall also be addressed in the study process, taking into account the concerns and constraints of developing and least-developed country participants. We commit ourselves to ensure that appropriate arrangements are made for the provision of technical assistance and support for capacity building during this entire process.

23. We agree to continue the ongoing study process, which would inter-alia also examine both the need and necessity of negotiations so as to build upon Articles V, VIII and X of the GATT 1994, taking into account existing WTO provisions on matters related to customs and other procedures and formalities to expedite movement, release and clearance of goods. Issues relating to compliance with any new obligations to be agreed shall be addressed in the study process, taking into account the concerns and constraints of developing and least-developed country participants. We commit ourselves to ensure that appropriate arrangements are made for the provision of technical assistance and support for capacity building during this entire process.

#### Dispute Settlement Understanding-Paragraph 26

26. WE AGREE TO NEGOTIATIONS ON IMPROVEMENTS AND CLARIFICATIONS OF THE DISPUTE SETTLEMENT UNDERSTANDING. THE NEGOTIATIONS SHOULD BE BASED ON THE WORK DONE THUS FAR AS WELL AS ANY ADDITIONAL PROPOSAL BY MEMBERS, **SPECIALLY THOSE PROVIDED BY DEVELOPING COUNTRIES** , AND AIM TO AGREE ON IMPROVEMENTS AND CLARIFICATIONS NOT LATER THAN MAY 2003, AT WHICH TIME WE WILL TAKE STEPS TO ENSURE THAT THE RESULTS ENTER INTO FORCE AS SOON AS POSSIBLE THEREAFTER.

#### Trade and Environment - Para graph 27

The last paragraph on trade and environment should be deleted and little roman (iv) must said: “eco-labelling” instead of “labelling”.

#### Electronic Commerce – Paragraph 28

##### *Proposed alternative formulation*

We call upon the need of continuing the work program on e-commerce. We also reaffirm the need to bridge the digital divide and eliminate all restrictions to the participation of developing countries and to the access to modern technologies on a non-discriminatory basis.

#### Trade, Debt and Finance and Trade and Transfer of Technolog- Paragraph 30 and Paragraph 31

##### *Proposed alternative formulations*

30. We agree to an examination, under the auspices of the General Council, of the relationship between trade, debt and finance, **with a view to formulating** ~~and of any possible~~ recommendations on steps that **should** ~~might~~ be taken within the mandate and competence of the WTO to enhance the capacity of the multilateral trading system to contribute to a durable solution to the problem of external indebtedness of developing and least-developed countries, and to strengthen the coherence of international trade, financial and monetary policies, with a view to safeguarding the multilateral trading system from the effects of financial and monetary instability. ~~We instruct the General Council to consider the most appropriate institutional arrangements for handling this work.~~ The General Council shall report **with recommendations** to the Fifth Session of the Ministerial Conference on progress in the examination.

31. We agree to an examination, under the auspices of the General Council, of the relationship between trade and transfer of technology, **with a view to formulating** ~~and of any possible~~ recommendations on steps that **should** ~~might~~ be taken within the mandate of the WTO to increase flows of technology to developing countries. ~~We instruct the General Council to consider the most~~

~~appropriate institutional arrangements for handling this work.~~ The General Council shall report **with recommendations** to the Fifth Session of the Ministerial Conference on progress in the examination.

#### Technical Co-operation and Capacity Building - Paragraphs 32-34

##### Proposed alternative formulation

32. We confirm that technical co-operation and capacity building are core elements for ensuring the full and effective integration of developing countries and LDCs in the global economy and the multilateral trading system. We welcome the New Strategy for WTO Technical Co-operation for Capacity Building, Growth and Integration. We instruct the Secretariat, in co-ordination with other relevant agencies and in consultation with beneficiaries, to design more effective and transparent technical assistance, including through the Integrated Framework (IF) and Joint Integrated Technical Assistance Programme (JITAP), based on national development priorities and objectives of beneficiary countries. The delivery of WTO technical assistance shall be designed with a view to building institutional capacity across the national policy framework, involving all relevant stakeholders, and focus on strengthening and diversification of export products. We recognise that technical assistance should be timely in order to remain relevant, and should therefore relate to the length of transition periods before obligations become binding. Priority shall also be accorded, to building capacity for effective participation in multilateral trade negotiations by LDCs, and small and vulnerable economies, as well as Members and Observers without representation in Geneva. We reaffirm our support for the valuable work of UNCTAD and the International Trade Centre, which should be enhanced. We underscore the urgent necessity for the effective co-ordinated delivery of technical assistance with relevant bilateral donors and international and regional intergovernmental institutions within a coherent policy framework and timetable, which is based on national development objectives and priorities. We shall ensure regular monitoring and evaluation of technical assistance in order to enhance its on-going effectiveness. There is a need to enhance and ensure the provision of necessary resources on a predictable and regular basis and that technical cooperation activities should be funded from the regular budget of the WTO. Technical assistance should not be subject to conditionalities.

#### Least-Developed Countries paragraphs 35-36

##### Proposed alternative formula

35. We acknowledge the serious concerns regarding the marginalisation of the least-developed countries (LDCs) in the global trading system and take note of the outcomes of the Zanzibar Declaration and the Third United Nations Conference on LDCs. We stress that the full and meaningful integration of the LDCs into the trading system and the global economy will require urgent and combined action by all WTO Members. Therefore we agree to: provide bound duty-free, quota-free market access for all products originating in LDCs, together with addressing onerous Rules of Origin requirements and relevant non-tariff barriers which impede LDC exports; accelerate accession of LDCs by the fifth Ministerial recognising that concessions and commitments made by LDCs should be consistent with their development needs, resources and institutional capacity and we instruct the Secretariat to reflect the priority we attach to LDCs accessions in the annual plans for technical assistance; not call on LDCs to assume obligations or commitments which go beyond what is applicable to LDC members and in this regard we reaffirm the Decision on Measures in Favour of LDCs; bind and fully implement all existing special and differential provisions in favour of LDCs and bind new provisions; enhance and increase technical assistance, including through the Integrated Framework (IF), in addressing supply-side constraints, under a regular budget; not expect reciprocity by LDCs for commitments made by developed countries and developed country Members should not seek, neither shall LDCs be required to make, concessions which are inconsistent with the latter's development needs and provide sufficient flexibility to LDCs in the implementation of their

obligations in light of their limited capacity; and we instruct the Sub-Committee for LDCs to design a work programme in consultation with committee Members, particularly with input from the LDCs, and to report on the agreed work programme to the General Council at its first meeting in 2002.

### Special and Differential Treatment - Paragraph 37

#### Proposed alternative formulation

37. We reaffirm that provisions for special and differential treatment are an integral part of the WTO Agreements. We note the concerns expressed regarding their operation in addressing specific constraints faced by developing countries, particularly least-developed countries. In that connection, we also note that some Members have proposed a Framework Agreement on Special and Differential Treatment (WT/GC/W/442). **We therefore agree to entrust the General Council to elaborate a Framework Agreement on Special and Differential Treatment. This elaboration should be completed by the 5<sup>th</sup> Ministerial Conference and should include the following elements:**

- a) **review of the effectiveness of all existing S&D treatment provisions in favor of developing countries with a view to ensuring that individual S&D treatment provisions are strengthened and made more precise, effective and operational;**
- b) **recommendations to ensure that S&D treatment is mandatory and legally binding through the dispute settlement system of the WTO; and**
- c) **recommendations to ensure that flexibility in consonance with the trade and development needs of individual developing and least-developed countries is provided in the negotiation and application of rules, including new agreements when negotiated.**

~~that all special and differential treatment provisions shall be reviewed with a view to strengthening them and making them more precise, effective and operational. In this connection, we endorse the work programme on special and differential treatment set out in the Decision on Implementation-Related Issues and Concerns.~~

### Organization and Management of the Work Programme - Paragraphs 38 to 45

#### Proposed alternative formulations

38. No changes proposed

39. The overall conduct of the negotiations shall be supervised by ~~a Trade Negotiations Committee under the authority of the~~ General Council. The **General Council Trade Negotiations Committee** shall hold its first meeting **for this purpose** not later than . . . . **While every effort will be made to use the existing WTO bodies to conduct negotiations under this work programme, the General Council may ~~it shall~~ establish other** appropriate negotiating mechanisms **if** as required and supervise the progress of the negotiations.

40. ~~With the exception of the improvements and clarifications of the Dispute Settlement Understanding, †~~ The conduct, conclusion and entry into force of the outcome of **all** the negotiations **under this work programme** shall be treated as parts of a single undertaking. However, agreements reached at an early stage may be implemented on a provisional or a definitive basis. Early agreements shall be taken into account in assessing the overall balance of the negotiations.

41. No changes proposed

42. The negotiations shall be conducted in a transparent **and democratic** manner among participants, in order to facilitate the **active, informed and** effective participation of all, **particularly the LDCs and the Members without having missions in Geneva**. They shall be conducted with a view to ensuring **equitable** benefits to all participants and to achieving an overall balance in the outcome of the negotiations. **For this purpose, an assessment of the results of the negotiations will be carried out with the help of UNCTAD before these results are definitively agreed upon by Members. The results of the negotiations will be adjusted in the light of this assessment.**

43. The negotiations and the other aspects of the Work Programme shall take fully into account the principle of special and differential treatment for developing and least-developed countries embodied in: Part IV of the GATT 1994; the Decision of 28 November 1979 on Differential and More Favourable Treatment, Reciprocity and Fuller Participation of Developing Countries; the Uruguay Round Decision on Measures in Favour of Least-Developed Countries; and all other relevant WTO provisions. **Each negotiating body shall regularly report to the General Council the manner in which this is being complied with.**

44. Delete.

45. Those elements of the Work Programme which do not involve negotiations are also accorded a **similar high** priority. They shall be pursued under the overall supervision of the General Council, which shall report on progress to the Fifth Session of the Ministerial Conference.

---