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PREPARATIONS FOR THE FOURTH SESSION OF THE MINISTERIAL CONFERENCE

Communication from India

The following statement made at the General Council Meeting on 31 October-1 November 2001 by Mr. Prabir Sengupta, Commerce Secretary of India, is being circulated at the request of that delegation.

Mr. Chairman,

At the outset, I would like to recognize, on behalf of my delegation, as has been done by all distinguished delegates, the serious efforts undertaken by you, Mr. Chairman, the Director General, and the WTO Secretariat.

I would first like to bring out our serious concerns relating to certain issues in the draft Ministerial Declaration prepared by you in cooperation with the Director General.

To start with, the manner in which the four Singapore subjects have been dealt with in general and in particular, the language suggested for "trade and investment" and "trade and competition policy" is extremely disturbing. Mr. Chairman, my delegation has repeatedly expressed its inability to accept commencement of negotiations either explicitly or implicitly, in respect of the four Singapore subjects. In your text of 26 September you had provided two options each for investment and competition. Even at that time, we had pointed out that the second option did not reflect our views accurately. In a number of consultations, multilateral, plurilateral and bilateral, many delegations, including my own, have voiced our strong opposition to the negotiating option as well as the so-called the "opt-in/opt-out" approach in respect of investment and competition. In the context of competition policy, a large number of delegations including my own had expressed serious reservations on a number of occasions about commencement of negotiations in this complex area, without first acquiring at least some minimum experience in implementing domestic competition law.

It is surprising and, upsetting, to find that the earlier paras giving options on Investment and Competition have been dropped and the draft now has, according to our reading, only the option of negotiations. We strongly urge that the option of continuation of study with a report to the fifth ministerial conference be reintroduced. We are also of the view that the way these two subjects have been handled in the draft of 27 October clearly prejudices my delegation's interests. We would urge that our position is reflected as an option in your draft, especially because of your own acknowledgement that on these two Singapore subjects the opinion is more or less equally divided.

The fact that the option proposed by our delegation and a large number of delegations in respect of investment and competition, does not find place in your draft is particularly disturbing in the light of the fact that the Singapore Ministerial Declaration gave a solemn undertaking to the effect that in these two areas, the study mode will not be converted into negotiation mode unless there is an explicit consensus. It has been clear to everybody including yourself that such a consensus is nowhere in sight. When a significant number of WTO Members have serious concerns, I do not think the system will be well served by going along the route indicated in paragraphs 20 and 21 of the revised draft declaration.

As regards para 22 and 23 relating to transparency in government procurement and trade facilitation, the draft clearly proposes negotiations, while we have all along been urging for continuation of the study process, in as much as there is no consensus as yet even on the elements like scope and definition.

The next subject I would like to deal with is trade and environment reflected in paragraph 27. The revised text envisages a phase for identification of any need to clarify WTO rules and deciding on "the desirability of negotiations" after the fifth ministerial conference. In view of our well known position that the WTO rules are sufficient to address all legitimate concerns relating to environment, we find the latest draft unsatisfactory. We note that certain items have been mentioned for particular attention. However, we hope that all the agenda items assigned to CTE would receive due focus as envisaged in the mandate of the CTE. We are also worried about paragraph 44 which appears to mainstream environment.

As regards market access for non-agricultural products covered in paragraph 16, we have repeatedly pointed out that the word 'comprehensive' in the second sentence would create serious problems for countries like mine in relation to some extremely sensitive sectors. Moreover, we are not clear about the inclusion of the phrase "high tariff" in the draft which can lead to asymmetry in the outcome of negotiations to the developing and least developed countries. Again, we are concerned with the structure of the first sentence which seems to imply that the phrase "in particular, in products of export interest to developing countries" does not cover non-tariff barriers. In spite of all these concerns, we do take note of the fact that the revised language of this paragraph attempts to embody special and differential treatment for developing countries in the negotiations as well as their outcome as provided for in Articles XXVIIIbis:3 and XXXVI:8 of GATT 1994. Having said this, I would like to recall that in the last General Council meeting, my delegation had associated itself with the suggestions made by Kenya, Tanzania and other countries that there should be a study process to assess the impact of tariff reductions already carried out by a number of developing and least developed countries. We feel that this suggestion needs serious consideration.

Now, Mr. Chairman, I would like to move on to paragraph 12 of the draft declaration relating to outstanding implementation issues. While my delegation will have separate opportunity to give our comments on the quality of resolution of "Implementation Issues" in the Special Session of the General Council, the key message that I want to convey is that it falls short of our expectations and there is a considerable scope for improvement. Our delegation has conveyed specific proposals in this regard. We take note that negotiations on outstanding implementation issues shall be an integral part of the work programme that is being established. However, we are anxious that no confusion should be sought to be created by any delegation because of the language in this paragraph. It has been indicated therein that where a specific negotiating mandate in this declaration is provided the relevant implementation issue be addressed under that mandate and that the other outstanding implementation issues shall be addressed as a matter of priority by the relevant WTO bodies. In fact, the draft declaration is silent as to where the subjects mandated for negotiations in paragraphs 24 and 25 will be addressed. As regards outstanding implementation issues, we are proceeding on the basis that the remaining outstanding implementation issues will be negotiated as an integral part of the work programme.

Mr. Chairman, as regards paragraph 8 relating to core labour standards, we find that a third sentence has been added to this paragraph without deleting the second sentence to which a large number of delegations had raised objections. We would strongly urge deletion of the second sentence. It is not necessary for WTO to take note of non-trade related issues being considered by other organizations.

Mr. Chairman, you are kindly aware that we have been demanding concomitance between the completion of negotiations for the establishment of a system of notification and registration of geographical indications for wines and spirits and negotiations for extension of higher level of protection to geographical indications to additional products on par with wines and spirits. We find that now the issue of negotiation of extension of higher level of G.I. protection to additional products has been included in para 18 by reference to para 12. We note that this will ensure the concomitance between the establishment of the multilateral register for wines and spirits and the completion of negotiations for the extension of higher G.I. protection to additional products.

Mr. Chairman, in respect of para 24 which envisages negotiations relating to anti-dumping and subsidies, my delegation is proceeding on the basis that the phrase "while preserving the basic concepts and principles underlying them" will not inhibit consideration, during the negotiating process, of the outstanding implementation issues relating to these two agreements. We will appreciate your confirmation in this regard.

My delegation fully associates itself with the observation of the Ambassador of Tanzania that the draft Ministerial Declaration does not appropriately take note of the existing development deficit and that it needs to be fully reflected in its Preamble.

The last section of the draft on organisation and management of the work programme continues to cause us concern. In particular, we do not see any need for a separate Trade Negotiation Committee and the negotiations should be conducted through the existing bodies under the direct supervision of the General Council.

Mr. Chairman, we note the addition of paragraph 43 relating to S&D provisions.

Let me make some brief comments on the draft Declaration on TRIPs and Public Health. First, the title should be changed to the "Ministerial Declaration on TRIPs and Public Health" as suggested by other delegations. Second, the most important issue in the whole declaration figures in paragraph 4 as two options. We strongly suggest the retention of option 1 in paragraph 4 and the deletion of option 2. May I also say that we have other concerns relating to other paragraphs, which we will raise at an appropriate time.

Mr. Chairman, we have formulated some drafting suggestions covering some other points I have made just now as well as some of the other paragraphs of the DMD. I will hand over a note containing the drafting suggestions, which should be taken on record for incorporation in the DMD.

Mr. Chairman, after having made some specific remarks about the draft ministerial declaration dated 27 October, I would like to make some general observations:

Mr. Chairman, I find that you have come out with a draft ministerial declaration without square brackets and without options. To the best of my understanding, the purpose of the preparatory process was to agree as much as possible and where there is no agreement, give options to our Ministers or put the controversial language in square brackets so that the Ministers could focus on the differences and take appropriate decisions. By opting for a text which does not bring out the

differences in crucial areas, especially in respect of new issues, you are probably forcing many of us to put the entire text in square brackets.

Mr. Chairman, I have very serious problem with the suggestion that your text should be transmitted as it is to the Ministers. Such a course of action, we strongly feel will not be appropriate. I do not think it is fair to cause any disadvantage to any Member of the Organisation through a Chairman's text. WTO is a forum for negotiations. Sometimes, we acquiesce when a Chairman comes out with a text after wide ranging consultations. Today we are dealing with a momentous issue, which will have tremendous impact on the commercial, economic and social life of billions of people. This is, therefore, not an ordinary issue. While we appreciate your constraints, I must say that it is not possible for me to acquiesce in a situation where a draft ministerial declaration is transmitted to the Ministers without reflecting concerns and objections from a large number of countries including mine. You will recall, Mr. Chairman, the Seattle text that was transmitted with the consensus of the General Council contained various options relating to various issues in square brackets. I know that it has been a fashion to criticize that text saying that it was unmanageable. However, that text had the merit of not prejudicing anybody's position. We feel that by opting for a clean text without appropriately reflecting the different positions at least on major issues, we have swung to the other extreme. If appropriate revision of the text is not considered possible at this stage, at a minimum, there should be a clear covering letter as an integral part of the DMD explaining the main differences encountered and options suggested on critical issues during the preparatory process. We visualise this covering letter to deal with substance and not on process alone.

I am sure, your experience and commitment to the Member-driven nature of this organisation will help you to find a way out of this situation so that the Ministers have before them a full picture of different positions on various subjects which will come up for consideration at Doha. I would like to emphasise again the need to accommodate the expressions and positions of a significant number of countries while transmitting the draft Ministerial Declaration.

Thank you.
