ANEXO 4

OMC - Asuntos sobre Implementación.

Organización Mundial de Comercio (OMC). Documento JOB(01)/152/Rev.1 del 27 de octubre de 2001: Compilation of Outstanding Implementation Issues Raised by Members.

COMPILATION OF OUTSTANDING IMPLEMENTATION ISSUES RAISED BY MEMBERS

Revision

This compilation is being circulated by the Secretariat with a view to assisting delagations in their consideration of the outstanding implentation issues. It should be read together with the draft Decision on Implementation–Related Issues and Concerns (Job(01)/139/Rev.1). It lists outstanding implementation issues raised in the draft Ministerial Text of 19 October 1999 (Job(99)/5868/Rev.1) and those subsequently raised by Members during consultations. For ease of reference, the text retains the numbering of the tirets used by the G–7 countries in their paper on implementation.

1. General Agreement on Tariffs and Trade 1994

- Tiret 1
  Only the Committee on Balance–of–Payments shall have the authority to examine the overall justification of BOP measures.
- Tiret 3
  A complete review of Article XVIII shall be undertaken witch a view to ensure that it subserves the original objective of facilitating the progressive development of economies in developing countries and to allow to implement programmes and policies of economic development designed to raise the general standard of living of their people.

2. Agreement on Agriculture

- Tiret 6
  If in the calculation of the AMS, domestic support prices are lower than the external reference price (so as to ensure access of poor households to basic foodstuffs), thereby resulting in negative product specific support, then Members shall be allowed to increase their non–product specific support by an equivalent amount.

3. Agreement on the Application of Sanitary and Phytosanitary Measures

Proposal by Brazil, 17 October 2001

- Where the introduction of SPS measures may have significant effect on trade opportunities for products of interest to developing countries, Members shall notify the WTO and inform the concerned Member prior to the application of such measures and, in addition, to the relevant provisions of paragraph 5 of Annex B and Article 7, shall notify final rules or subsequent decisions derived from a previously notified measure.

4. Agrement on Technical Barriers to Trade

- Tiret 33
  Article 11 shall be made obligatory so that technical assistance and cooperation is provided to developing countries.
- Tiret 34
  Acceptance by developed–country importers of self–declaration regarding adherence to standards by developing–country exporters. This provision should be introduced in Article 12.

5. Agreement on Trade–Related Investment Measures

- Tiret 37
  Developing countries shall another apportunity to notify existing TRIMs measures which they would be then allowed to maintain till the end of the new transition period.
- Tiret 38
  The provisions of Article 5.3 must be suitably amended and made mandatory.
- Tiret 39
  Developing countries shall be exempted from the disciplines on the application of domestic content requirement by provinding for an enabling provision in Articles 2 and 4 to this effect.
- Tiret 40
  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–á–vis* developed countries.

6. Agreement on Implementation of Article VI of the GATT 1994

- Tiret 42
  Under Article 9.1 the lesser duty rule shall be made mandatory.
- Tiret 43
  Article 2.2 shall be clarified in order to make appropriate comparison with respect to the margin of dumping.
- Tiret 44
  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 reviews, 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.
- Tiret 46
  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 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.
- Tiret 47
  The proposed de minimis dumping margin of 5 per cent is applied not only in new cases but also in refund and review cases.
- Tiret 48
  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.
- Tiret 50
  The substantial quantities test should be increased from the present threshold of 20 per cent to at least 40 per cent.
- Tiret 51
  Article 2.4.1 shall include details of dealing with foreign exchange rate fluctuations during the process of dumping.
- Tiret 52
  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.

- Tiret 53
  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.
- Tiret 54
  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.

Proposals by Least-Developed Countries, 22 October 2001

- The General Council agrees that simplified procedures for taking anti–dumping action shall be devised for the use of LDCs.
- The General Council agrees that the threshold for volume of imports referred to in Article 5.8 of the Agreement shall be increased from 3 percent to 7 percent in the case of LDCs. LDCs shall be exempted from cumulation.

7. Agreement on Implementation of Article VII of GATT 1994

- Tiret 57
  The addition of cost of services such as engineering, development, and design work, which are supplied directly or indirectly by the buyer free of charge or at reduced cost for the production of goods under impot, shall be included in Article 8:1 (b)(iv).
- Tiret 58
  The residual method of determining customs value under Article 7 shall be inclusive of all residual eventualities, thus allowing valuation based on domestic market price or export price in a third country with appropriate adjustments.
- Tiret 59
  The Agreement should be amended to provide for the highest value when more than one transaction value of identical or similar goods is found.
- Tiret 60
  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.
- Tiret 61
  Persons associated with each other as sole agents, sole distributors, and sole concessionaires, howsoever described, should automatically be deemed “related”.

8. Agreement on Subsidies and Countervailing Measures

- Tiret 64
  Article 8:1 of the Subsidies Agreement dealing with non–actionable subsidies shall be expanded to include subsidies referred to in Article 3:1 of the Agreement when such subsidies are provided by developing country Members.
- Tiret 65
  Export credits given by developing countries shall not be considered as subsidies so long as the rates at which they are extended are above LIBOR.
- Tiret 66
  Any countervailing duties shall be restricted only to that amount by which the subsidy exceeds the de minimis level.

- Tiret 67
  Annex VII of the Agreement shall be modified to read as follows:
  The developing–country Members not subject to the provisions of paragraph 1(a) of Article 3 under the terms of paragraph 2(a) of Article 27 are:

  (i) The developing countries, including the least–developed countries, Members of the WTO that are included in the Low and Middle Income Category of the World Bank.
  (ii) Countries indicated in paragraph (i) above will be excluded from this Annex if their GNP per capita has exceeded the top level of the Middle Income Category of the World Bank. They will be automatically included in this Annex, if their GNP per capita falls at or under the top level of the Lower–Middle Income Category of the World Bank.

- Tiret 68
  The prohibition on using export subsidies under Article 27:6 shall be applicable to a developing country only after its export levels in a product have remained over 3.25 per cent of world trade continuously for a period of five years.
- Tiret 70
  Article 27.2 shall be amended so that Article 3.1(a) prohibition does not apply to export subsidies granted by developing countries where they account for less than 5 per cent of the f.o.b. value of the product.
- Tiret 71
  Countervailing measures shall not be imposed in the case of imports from developing countries where the total volume of imports is negligible, i.e. 7 per cent of total imports.
- Tiret 72
  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.
- Tiret 73
  Developing countries should be allowed to neutralize the cost escalating effect of taxes.
- Tiret74
  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 where the subsidy being provided by a developing country is less than 2.5 per cent *ad valorem*, instead of the existing de minimis of 1 per cent presently applicable to all Members.
- Tiret 75
  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).
- Tiret 76
  There should be a clarification in Article 27:3 that it is applicable notwithstanding the provisions of any other agreement.
- Tiret 77
  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.
- Tiret 78
  Annex I of the Agreement shall be amended to provide developing countries the flexibility to finance their exporters, consistent their developmental objectives.
- Tiret 79
  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.
- Tiret 81
  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 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).

- Tiret 83
  The SCM Committee shall review the thereshold of US$ 1000 in Annex VII (b) and examine the possibility of including in Annex VII, Members in the low and lower–middle income categories as classifield by the World Bank. The SCM Committee shall examine additional possibilities for granting flexibility to developing countries such as threshold limits relating to percentage share of exports in import markets and in global trade.

Proposals by Least–Developed Countries, 22 October 2001

- The General Council agrees that subsities required for development, diversificacion and upgrading infant industries including freight rebate schemes in developing countries shall be treated as non–actionable subsidy.
- The General Council agrees that LDCs shall be exempted from competitivenenss thresholds of subsidies and the threshold for imports referred to Article 27.10 of the Agreement shall be increased from 4 per cent to 10 per cent in case of LDCs. LDCs shall be exempted from cumulation.
- The General Council agrees that financial resources shall be provided to LDCs to enable them to meet their special needs, in particular with respect to subsidies covered by Article 8.2 (c) (green subsidies).

9. Agreement on Safeguards

- Tiret 84
  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 and 15 per cent collectively.

10. Agreement on Trade–Related Aspects of Intellectual Property Rights

- Tiret 87
  In the light of provisions contained Articles 23 and 24 TRIPS Agreement, additional protection for geographical indications shall be extended for products other than wines and spirits.
- Tiret 88
  A clear understanding in the interim that patents inconsistent with Article 15 of the CBD shall not be granted.
- Tiret 91
  The period given for implementation of the provisions of Article 27.3(b) shall be five years from the date the review is completed.
- Tiret 93
  The transitional period for developing countries provided for in Article 65.2 shall be extended.

Proposal by Least–Developed Countries, 22 October 2001

- The General Council agrees that the transition period for LDCs shall be extended so long as they retain the status of an LDC.
- Tiret 94
  Articles 7 and 8 of the TRIPS Agreement to be operationalized by providing for transfer of technology on fair mutually advantageous terms.

- Tiret 95
  [Article 27.3(b) to be amended in ligth 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 practives 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.]

Proposal by Least–Developed Countries, 22 October 2001

- The General Council agrees that the review process should clarify that all living organisms, including plants, animals and parts of plants and animals, including gene sequeces, and biological and other natural processes for the production of plants, animals and their parts, shall not be granted patents.

11. Cross–cutting issues

- Tiret 98
  Having regard to the significant role played by preferenfial trading agreements between developing and developed countries, Members agree to consider favourably, as appropriate, the granting or extension of waivers to Article I of GATT 1994 covering such agreements.
- Tiret 99
  The General Council shall adopt measures designed to secure a redistribution of negotiating rights in favour of small and medium–sized exporting Members in trade negotiations.