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General Council Discussion on the Built-In-Agenda
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Communication from Egypt

The following statement made by Egypt at the Informal Intersessional General Council meeting on 24 November 1998 is being circulated at the request of that delegation.

The built-in-agenda (BIA) contains an ambitious program of work of unfinished negotiations, special reviews, regular reviews and new negotiations. We have addressed the mandated negotiations in the areas of agriculture and trade in services and will address other elements in the BIA in this intervention.

It has to be indicated at the outset that there is no clear or agreed legal definition of the BIA. Furthermore, in some cases the demarcation line is not very clear between implementation issues and what may be considered an issue related to the BIA. A recent WTO publication included a list of the commitments in the BIA. The said list includes even the establishment of the WTO as one of the elements of the BIA. This demonstrates the fact that what constitutes the BIA has varying interpretations.

A number of useful papers have been prepared on the BIA. The first was a note by the Secretariat in October 1995 (document WT/L/88). Moreover, during the preparation for the Singapore Ministerial Conference two useful papers were also presented by Asean and Australia. Finally, a more recent note was prepared by the Secretariat in May 1998 (document WT/L/271).

The BIA has been categorized in different ways, such as:

(i) by the deadline for the start or completion of tasks;

(ii) by dividing it into: unfinished business, regular or special reviews, and future negotiations;

(iii) by dividing it into obligations in different agreements.

We believe that one of the most important objectives of the various elements in the BIA should be to address the difficulties encountered by WTO Members, particularly the developing countries, during the process of implementation. Some of these difficulties were highlighted in some detail during the informal meeting of the General Council in October.

Several obligations in the BIA have already been implemented. This has been achieved with varying degrees of success. Some activities were successfully completed, and some others were suspended, postponed or unsuccessfully completed. Others are ongoing or are taking much longer than initially anticipated.

The negotiations on financial services and basic telecommunications have been completed successfully. The negotiations on maritime transport services were not successful and were therefore suspended. Negotiations on rules and disciplines in emergency safeguards, government procurement, and subsidies in the area of services is taking much longer than originally anticipated. This is the situation as well in the process of harmonization of non-preferential rules of origin.

It was also agreed that a review of non-actionable research and development subsidies would be conducted at a future time if Members so wished. Moreover, many developing countries have expressed frustration at the outcome of the review of the ATC Agreement.

Generally speaking, we have found that a number of the reviews that were completed so far did not adequately address the fundamental difficulties encountered by developing countries during the process of implementation.

In addition to the work that has already been completed, a number of activities are currently taking place in the context of the BIA. Others will commence at a later stage.

The ongoing work in the context of the BIA, excluding in the area of trade in services, include:

(i) the work programme on the harmonization of non-preferential rules of origin which was initiated in July 1995 and was supposed to be completed within three years has not been completed;

(ii) a review of the operation and implementation of the Sanitary and Phytosanitary Agreement has already started;

(iii) the review of dispute settlement rules and procedures is also ongoing and is not expected to be completed on time.

<u>The Review of the Agreement on the Application of Sanitary and Phytosanitary Measures (SPS)</u>

The difficulties facing developing countries in the area of standards were addressed in the meeting in October. A number of ideas have been proposed to address these difficulties in the course of the review of the SPS Agreement. One of the main objectives of the review should be to reach concrete recommendations in a manner that would address the difficulties facing developing countries in this area. The paper that was presented by Egypt on S&D treatment (document WT/GC/W/109) addressed a number of these issues in some detail.

<u>The Review of the DSU (The Understanding on Rules and Procedures Governing the Settlement of Disputes)</u>

We have indicated our general satisfaction with the functioning of the dispute settlement mechanism on numerous occasions. However, we have also indicated the difficulties identified in this respect including the lack of implementation of a number of S&D provisions in the DSU. Another source of concern is that resorting to the dispute settlement body proved to be extremely onerous from the perspective of developing countries. Despite the larger involvement of developing countries in this system, it is not as accessible to developing countries as it should be. Bringing a dispute to the WTO

proved to be a legal intensive process which requires specialized expertise that is lacking in most developing countries. We hope that these difficulties would be adequately addressed.

Another concern is related to the fact that even if the outcome of the settlement is in favour of a developing country that is party to a dispute, the ruling does not provide compensation to the losses inflicted on the developing country concerned which in some cases may lead to lay-off of workers and bankruptcy with all the social and economic repercussions that this may entail.

The Harmonization of Non-Preferential Rules of Origin in accordance with Article 9 of the Agreement on Rules of Origin

Rules of origin are still not regulated or harmonized at the multilateral level. This situation has allowed some countries to apply rules of origin in a questionable manner and has resulted in trade tensions in some cases. The preliminary outcome of the negotiations at the product level tend to reflect the views of active industry groups mostly in developed countries. The majority of unresolved issues are linked to different views held by domestic industries in various members as to the kind of processing that should be considered as "substantial transformation". Most domestic industries tend to protect their interests by arguing that the processing carried out in their premises involved a "substantial transformation" and deserved origin status.

The final rules of origin which will emerge from the negotiations may have profound implications particularly when they interact with other instruments of commercial policy such as safeguards, quotas, or anti-dumping duties. Thus, it is important to assist developing countries to strengthen their participation in the process of negotiations in both WTO and WCO to enable them to protect their interests in these negotiations.

The impact of the work programme on the harmonization of rules of origin on the rights and obligations of members should be adequately considered in the Committee of rules of Origin with a particular focus on areas of interest to developing countries like textiles and clothing.

The results of the negotiations should not introduce additional burdens or impediments on the market access of products of export interest to developing countries. It should be implemented in a transparent and flexible manner that takes into account the needs of developing countries in this context.

These were a few remarks on the ongoing work in the BIA. Moreover, a number of future activities in the context of the BIA will take place in the near future. The preparatory work which has already started in the areas of agriculture and services were addressed yesterday. I will focus now on a number of other agreements.

The Agreement on Trade-Related Investment Measures (TRIMs)

In accordance with Article 9 of the TRIMs Agreement, the Council for Trade in Goods will review its operation by the year 2000 and propose appropriate amendments to the Ministerial Conference. In the course of its review, the Council should consider whether provisions on investment policy and competition policy should be added to the Agreement.

A number of developing countries have indicated the difficulties that they are facing in the implementation of the TRIMs Agreement. On our part, we are ready to engage in the review process of this Agreement in a constructive manner taking into consideration the exploratory and educational exercise in the working groups on trade and investment and trade and competition policy.

Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPs)

1. Increased protection for geographical indications for wines and spirits

The TRIPs Agreement establishes protection of the indications which identify a good as originating in a country, a region or locality where a given quality, reputation or other characteristic of the good is essentially attributed to its geographical origin. It includes two provisions for continuing negotiations with respect to geographical indications for wines and spirits. We believe that the negotiations to increase protection for geographical indications for wines and spirits (Article 23.1) should be extended to other products, particularly those of interest to developing countries.

2. Patent or *sui generis* protection of plant varieties

Patentable subject matter was one of the most difficult issues in the negotiations of intellectual property rights issues during the Uruguay Round negotiations. One of the main of the difficulty was that intellectual property protection in this area of living matter is still in its early years of development. The TRIPs Agreement calls for a review of this matter four years after the date of entry into force of the WTO Agreement (Article 27.3-b).

We believe that this matter remains a sensitive and controversial issue. While it may be useful to consider the new developments in this area, the status quo should not be altered at this stage.

3. The non-application of non-violation provisions in the TRIPs Agreement

While paragraph 1 of Article 64 of the TRIPs Agreement affirms the applicability of the Dispute Settlement Understanding to the TRIPs Agreement, paragraphs 2 and 3 of Article 64 try to accommodate the inconclusive negotiations in the Uruguay Round regarding non-violation provisions. Non-violation provisions do not apply to the settlement of disputes under the TRIPs Agreement for a period of five years from the entry into force of the WTO Agreement.

Due to the fact that developing countries are enjoying transitional periods, they will be unable to assess the possible advantages and disadvantages of the non-application of non-violation provisions in the TRIPs Agreement. Therefore, during this period, the TRIPs Council should examine the scope of and modalities for such complaints with a view to considering an extension of the period stated in the Agreement. This will allow an accurate judgment on this issue and the submission of recommendations to the Ministerial Conference in this respect.

Articles 66.2 and 67 provide commitments on the part of developed countries to extend incentives for the transfer of technology to LDCs together with technical and financial assistance in favour of developing and least developed members in order to facilitate the implementation of the TRIPS Agreement. These provisions should be subject to the review with a view of assessing their implementation. This matter is of extreme importance to developing countries since these provisions are within the balance of rights and obligations of members.

We also believe that the relationship between the provisions of the TRIPS Agreement and the Convention on Biodiversity should be examined in order to address any contradiction and to reconcile the relevant provisions of these two agreements in particular those related to the protection of knowledge, innovations and practices of indigenous and local communities who should be enabled to share equitably and fairly the benefits arising from the utilization of genetic resources and the patents granted for the exploitation of these resources.

Agreement on Subsidies and Countervailing Measures

Three important provisions should be reviewed in the context of the Agreement on Subsidies.

1. The Committee on Subsidies shall review the operation of Article 6.1 on actionable subsidies regarding the criteria for existence of serious prejudice with a view to determining whether to extend its application, either as presently drafted or in a modified form, for a further period. The operation of these provisions is applicable for a period of five years.

2. A review of non-actionable research and development subsidies was supposed to be conducted within 18 months of the entry into force of the WTO Agreement. However, in view of the lack of experience and the fact that no notifications of non-actionable research and development subsidies had been submitted, it was agreed that such a review would be conducted at a future time if members so wished. This review should be conducted in the context of the other mandated reviews in this Agreement.

3. The review of the operation of Article 27.6 on the export competitiveness provision for developing countries should be conducted five years from the date of the entry into force of the WTO Agreement.

The Subsidies Agreement is of great importance to developing countries due to the widely held view that certain types of subsidies may be critical in the process of development. Given the fact that the financial capacity of developing countries to provide subsidies is limited and that their development, particularly in the industrial sector, may require certain subsidies; these also should be categorized as non-actionable under Article 8. These subsidies may include measures such as cheaper finance, financial support for advanced technology, subsidy for diversification efforts or market development, etc. We will need to examine whether the provisions of that Agreement provided adequate flexibility to developing countries to serve their development objectives.

To conclude, I would like to reiterate the fact that a number of the reviews that were completed so far did not adequately address the fundamental difficulties encountered by developing countries during the process of implementation and that addressing this issue should be one of our top priorities in relation to the consideration of the BIA.

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