

PREPARATIONS FOR THE 1999 MINISTERIAL CONFERENCE

General Council Discussion on Paragraph 9(b) of the 1998 Ministerial Declaration
27 January 1999

Communication from India

The following statement made by India at the Informal Intersessional General Council meeting on 27 January 1999, is being circulated at the request of that delegation.

1. The work programme that we adopted at Singapore in December 1996 was a difficult decision for India. We were strongly of the view that WTO's agenda was already overloaded and that any fresh or new work was unwarranted. Yet, in a spirit of compromise India agreed at Singapore to the establishment of two Working Groups: one on Trade and Investment and the other on Competition Policy.
2. It is nevertheless pertinent to recall the terms of reference which govern the work of these two Groups. First, due regard would be given to existing WTO provisions on matters related to investment and competition policy and to the built-in agenda in these two areas, including the TRIMS Agreement. But most importantly, it was made clear that the work undertaken shall not prejudice whether negotiations will be initiated in the future. In other words, the process would be an educative one, based on an information gathering exercise aimed at examination of the relationship between trade and investment.
3. If there is one thing that is clear after the work done by the Group on Trade and Investment, it is that the issue is complex, multifaceted and delicate. It is complex because the relationship between trade and investment is not a straightforward one, as some would have us believe. Statements such as more investment will necessarily lead to more trade or indeed vice versa have been shown to be demonstrably inaccurate when tested by the experiences of several developing and least developed countries. The issue is also multifaceted because this is not just about trade and investment; it is also about development. Indeed, the development dimension is so important for countries such as India that this, we believe, should form the core of the entire discussions in this Group. Lastly, this issue is also a delicate one for several developing countries. It is difficult for countries such as India to consider free movement of capital when the same yardstick is not applied to even temporary movement of labour. What is considered political sensitivity and a matter of national sovereignty with regard to one issue (labour for developed countries) must be legitimately considered to be the same for the other issue as well (capital for developing countries).
4. The discussions in the Working Group on Trade and Investment have brought out the complexity as also the determinants of investment flows, including the size of the domestic market, domestic policy framework encompassing the business facilitation regime and macro economic

stability. It is also clear, as highlighted by the 1998 World Investment Report of UNCTAD, that the majority of FDI flows take place within or through TNCs. The factors, which determine where TNCs invest, include the presence of ownership specific competitive advantage in a Trans National Corporation (TNC), the presence of locational advantage in a host country and the presence of superior commercial benefits in an intra-firm as against arms length relationship between investor and recipient. One could draw some conclusions already, such as, that multilateral rules do not constitute an important determinant of FDI flows, that TNCs act on considerations which may be inherent to an economy rather than induced through public policy, and so on. But further discussions are necessary to fully comprehend the linkages between trade and investment, the benefits expected of domestic or international policy on investments and the trend of existing arrangements. Most importantly, we must also integrate into our discussions a full debate on liberalisation of the movement of all factors of production, including labour, in particular.

5. The recent financial crisis in some parts of the world and, recession elsewhere, throws up new issues. Investor obligations is one such issue: management of local conflict is another. The need for putting in place appropriate regulatory mechanisms is increasingly being recognised. These issues would need to be discussed further. But perhaps more than anything else, the global financial crisis and the volatility of the capital markets has brought into sharp focus the extremely complex nature of the work in this Group on Trade and Investment. It is not even clear that any possible discipline on this issue belongs to the subject matter of WTO.

6. Our concerns have been articulated sufficiently in the working group. For now, we would like to stress that the educative process in this Group should continue. We are still a long way from clarity and comprehension on this complex issue. India, meanwhile, will continue to participate actively in this Group as it has up until now.

7. The Singapore Ministerial Declaration had also similarly agreed to establish a Working Group to study issues raised by Members relating to the interaction between Trade and Competition Policy. This Working Group in the course of the preceding two years has initiated an exploratory and educative exercise in order to better understand the interaction between trade policy and competition objectives. The work done by this Working Group so far has only reinforced the view that we have held earlier, that is, the issues relating to the interaction between Trade and Competition Policy are complex and that they would require further in-depth analysis. While the benefits of having a competition regime have no doubt emerged, It has also become clear that no single model, even if found to be successful in a particular country, would necessarily produce the same effect in another country, since Competition Policy, to a very large extent, depends upon local conditions, particularly the ability of the domestic industry to withstand international competition. It is therefore clear that the Working Group needs to consider these issues in greater detail.

8. It is also clear that while trade policies and competition principles are generally complementary, there are certain areas where the two can be in conflict with each other. For instance, anti-dumping is one such area where there seems to be a clear dichotomy between the objectives of trade and competition policies, since anti dumping action leads to the suppression of competition with a view to maximising national benefits. Another area which we feel is important is the impact of anti competitive practices of international enterprises and associations on international trade. The Working Group needs to focus on international cartels, where multinational corporations in different countries agree to fix prices and/or allocate territories amongst themselves. It would be important to also examine how national governments can best combat such practices.

9. In the discussions held in the Working Group, inconsistencies between trade policy measures and competition have also emerged in other areas, notably, the effect of anti-competitive practices such as quotas in textiles, tariff quotas in agriculture, subsidies which distort competition, the setting of national technical, sanitary and phytosanitary measures, at levels higher than accepted

internationally have been some of the important concerns voiced in the Working Group. Until and unless there is effective implementation of existing WTO commitments, which entails fostering competition, it would be premature to engage in discussions on how WTO provisions can be further strengthened to support competition. It is our view that simply by improving the efficacy of the implementation of many of the existing provisions, and perhaps by reviewing those provisions which have predominantly been used for protecting domestic industry, we would succeed in creating a more competitive environment.

10. We accordingly feel, that although, a beginning has been made much work still remains to be done. The introduction of competition policy and law has to necessarily be a progressive activity, specially since domestic industries in developing countries may find it difficult to adjust to international competition laws if these are not introduced gradually. Some Members have, in this context, suggested the need to develop multilateral rules in this regard. However, we feel that it is still too premature to talk of a multilateral frame work. What we need to do is to continue this open-ended educative and exploratory process till there is greater clarity in thinking, particularly in areas where there is a dichotomy between the tenets of Trade and competition policies, and to only thereafter consider this facet of work.

11. The other SMC issue, namely Government Procurement, it would appear that sufficient progress in the work programme has to be made before any conclusion can be drawn about the need for a multilateral discipline in this sphere. The Working Group has been engaged in an exercise to understand the transparency-related provisions in existing international instruments on government procurement and national procedures and practices. We find that the Working Group is still in an educative mode. There have been divergence of views even in respect of the first basic issue, namely, definition and scope of government procurement keeping in view the fact that Members of the WTO are in different levels of development. The Working Group has also not yet had the benefit of having complete information on national practices and procedures. During the discussions, concerns have also been raised regarding non-availability of technical assistance to developing country Members. In this connection, we would stress that India had misgivings in Singapore about introduction of this subject on a multilateral basis in the WTO. Keeping in view their development concerns, most of the developing countries, including India, did not join the Plurilateral Agreement on Government Procurement. Hence, we feel that the Working Group should first understand fully the concerns of the developing country Members before it can arrive at a common ground for all Members to accept. It is therefore necessary to continue and intensify the educative process.

12. Coming now to the last of the new areas where work was initiated in pursuance of the Singapore Ministerial Declaration, i.e., Trade Facilitation, we would like to place on record our appreciation of the work done so far by the CTG, the deliberations of which have helped improve our understanding of the problems in the area of trade facilitation. However, what has also become clear from these deliberations is that there are wide differences in interpretation and application of trade procedures amongst various trading partners. While we support the need to work towards harmonized documentation formats and procedures, we would caution in adopting too fast a pace. This is a process in which Members have so far participated constructively. We would not like this response to be hampered by putting pressure of a non-existent deadline. We therefore support a continuation of the exploratory and analytical work and hope that the CTG would continue to provide an opportunity for Members to raise such issues as they deem important.
