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México D.F. 10 al 14 septiembre, 2003.

ICC México

International Chamber of Commerce

No. 41 Septiembre, 2003

CARTA DEL PRESIDENTE

México, D.F. Octubre del 2003.

Estimados Socios y Amigos,

Nos es grato hacerles llegar el ejemplar de la revista Pauta No. 41, en formato electrónico. En esta ocasión, se realizó con información generada en la pasada 5ta. Reunión Ministerial de la Organización Mundial del Comercio (OMC, por sus siglas en inglés) celebrada en Cancún, del 10 al 14 de Septiembre de este año. La obtención de la misma estuvo basada en artículos emitidos por ICC París, la página web de la OMC y artículos realizados por la delegación participante de ICC México.

Evento en el cuál, ICC México tuvo una participación activa tanto en la Reunión Ministerial como en los diversos foros alternos, lo cuál refrendó los nexos de vinculación del mundo empresarial con Gobiernos e Instituciones enfocadas al Comercio Internacional.

Teniendo como finalidad, el que usted encuentre, un resumen de los aspectos generales relacionados a las comisiones que son de su interés, y teniendo en consideración la relevancia del evento queremos compartirles la satisfactoria experiencia, que estamos seguros será de su interés.

Refrendamos el compromiso de ser la organización mundial de las empresas más importante, y les reiteramos, que estamos a sus apreciables órdenes,

Cordialmente,

LIC. LUIS DE LA PEÑA STETTNER
PRESIDENTE

ING. CARLOS ESPINOSA CASTILLO
DIRECTOR EJECUTIVO

WTO compendium of ICC statements for the Doha Development Agenda

May 2003

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Policy Statement

World business and the multilateral trading system

ICC policy recommendations
for the Cancún Ministerial Conference
of the World Trade Organization (10-14 September 2003)

World business, as represented by ICC, believes strongly that the rules-based multilateral trading system built up through the General Agreement on Tariffs and Trade/World Trade Organization (GATT/WTO) is one of the central pillars of international cooperation. It has contributed greatly to liberalizing world trade and improving market access, and is a major driving force for global economic growth, job creation, and wider consumer choice.

ICC wishes to take this opportunity to convey key business messages and policy recommendations to trade ministers participating in the 5th WTO Ministerial Conference in September 2003 in Cancún (Mexico).

Now that the war in Iraq is over, ICC urges WTO members to put their divisions behind them and commit themselves to renewed multilateral cooperation for the vital purposes of rebuilding business and consumer confidence and reinvigorating a weak global economy.

It is in the urgent interest of all WTO member countries to work closely together to ensure the success of the Doha Development Agenda, launched at the 4th Ministerial Conference of the WTO in November 2001 at Doha (Qatar). It will be essential for WTO members to make substantial progress on the broad agenda agreed at Doha, in the lead-up to and at Cancún, in order to reaffirm in concrete form the key role of the WTO multilateral system in the management of globalization and in enabling its benefits to spread throughout society in all parts of the world.

ICC urges governments to communicate more effectively to the public at large the benefits of trade liberalization for economic growth and development so as to build more solid support for the rules-based multilateral trading system and progressive trade liberalization. For its part, ICC will continue to contribute the business voice to this effort.

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The opportunity at Cancún

ICC strongly believes that the Cancún Ministerial Conference must make concrete advances towards the objective of concluding the Doha Development Agenda by 1 January 2005, as mandated by the Doha Ministerial Declaration, and that this should constitute a key priority for all WTO member governments. Real progress at Cancún would:

- reassure business that governments are committed to further liberalize global trade and investment and will work to develop multilateral rules that are in line with new business realities and requirements and necessary to the effective management of globalization;
- send a confidence-boosting signal to investors, traders and consumers that, at a time of considerable uncertainty in the face of a weak and fragile global economy, governments from all continents are able to work together not only to resist protectionist pressures but to enlarge the potential for increasing trade and investment links between nations; and
- confirm that governments attach prime importance to liberalizing trade multilaterally through a global institution, the WTO.

Considerable work has already taken place in Geneva on most of the negotiating agenda agreed to at Doha. ICC urges agreement in Cancún to push forward these negotiations and finalize the negotiating agenda to include the key issues of investment, trade facilitation and government procurement. The overall objective of the Cancún Ministerial should be to achieve consensus on clear and forward-looking decisions in order to improve the prospects of achieving a balanced result that all WTO members can subscribe to within the time frame set at Doha. If Cancún is to accomplish this objective, WTO member governments must demonstrate flexibility in the search for a consensus and commit themselves to summon the political will to carry out essential preparatory work for the Ministerial Conference.

Addressing the concerns of developing countries

Of particular importance to ICC is that the Doha Development Agenda addresses as a priority the concerns of developing countries. These countries, which now account for about three-quarters of WTO members, carry increasing weight in that organization. It is clear that if they are to support moving the Doha Development Agenda forward, they have to feel strongly confident of making concrete and reliable gains in access to developed country markets, and especially for products in which they have a competitive advantage, as well as benefiting from further trade liberalization among themselves. At the same time, while the Doha Development Agenda should extend effective market access on a mutually beneficial basis, it must be recognized that many developing countries will require special transition periods and technical assistance to enable them to fulfil their commitments. Technology transfer is also an important concern for developing countries and ICC supports the development of innovative approaches to promote market-oriented transfers of technology.

Policy recommendations for Cancún

On behalf of world business, ICC recommends to WTO member governments the following strategic priorities for the Cancún Ministerial conference.

Tariffs and non-tariff barriers for non-agricultural products

The GATT made immense progress in dismantling tariff barriers to international trade, but its work is by no means completed. Remaining tariffs inhibit trade significantly and cause substantial commercial and economic inefficiencies. Their elimination is one of the largest potential sources of economic benefits to all parties in this negotiation. Thus, ICC believes that WTO members should aim at the elimination of all remaining tariffs on non-agricultural products.

ICC considers that the negotiations on market access for non-agricultural products is of central importance to trade liberalization because of the benefits for all WTO members that such liberalization could bring. In particular, it is strongly in the interest of developing and least-developed countries (LDCs) to eliminate tariff barriers, provided that capacity building and sequencing of tariff cuts are appropriate to individual situations. A large part of the expected gains from tariff elimination will result from tariff elimination by low and middle income countries, with many of these gains resulting from increased trade among these countries.

ICC urges WTO members to agree on modalities for the negotiations on market access for non-agricultural products by end-May 2003, with a view to:

- eliminate or substantially reduce tariffs for all products by specified deadlines using a formula approach starting from applied tariff rates, and supplement this formula approach by other modalities, such as zero-for-zero, harmonization, and request-offer, where they would assist in further liberalization.
- substantially reduce tariff peaks, high tariffs, tariff escalation, and tariff disparities;
- eliminate low tariffs by establishing a tariff threshold, under which tariffs would be set at zero;
- shift all tariff-related measures, including tariff-rate quotas, to ad valorem tariff rates;
- bind 100 percent of tariff headings at the levels negotiated during the round;
- expand member and product coverage of sectoral agreements;
- eliminate or substantially reduce non-tariff barriers and increasingly involve developing countries in the setting of global technical standards; and
- include export duties, restrictions and export bans within the scope of the negotiations.

ICC encourages WTO members to agree to the following considerations for developing and least-developed countries (LDCs):

- credit for autonomous liberalization;
- elimination of industrialized country tariffs for products from LDCs;
- application of the "less than full reciprocity" principle mainly through longer phase-in periods; and
- greater targeting of technical assistance funding for LDCs.

With regards to environmental goods, WTO members should identify a list of commonly agreed objective criteria for the identification of environmental goods. Production and/or process methods (PPMs), as well as the end-use of a product, should be excluded as criteria.

Agriculture

At Cancún, WTO members must achieve concrete progress in reducing export subsidies and the substantial protectionist barriers that severely impede and distort trade in agricultural products, pose a heavy burden on consumers and taxpayers, and have a particularly injurious effect on the export capability of many developing countries. ICC urges WTO members to agree on the modalities for agricultural trade negotiations in the lead-up to Cancún. The overriding aims of the negotiations must be increasingly to expose the sector to international competition through:

- meaningful tariff cuts from applied rates in order to improve market access;
- the progressive elimination and ultimate prohibition of all forms of trade-distorting subsidies, especially export supports;
- further substantial reductions in domestic support measures that encourage overproduction and distort trade;
- the promotion of food safety regulations based on sound science and risk assessment; and
- the avoidance of using non-trade concerns to create new barriers to trade in agriculture.

ICC is of the view that the success of the Doha Development Agenda depends largely on substantial farm trade liberalization, which is an issue of key importance to developing country WTO members. Therefore, if the Cancún Ministerial is to pave the way for a successful conclusion of the Doha Development Agenda within the agreed time frame, WTO members, particularly industrialized countries, must be prepared to make real concessions on trade in agriculture in the lead-up to and at Cancún. It will be essential for industrialized countries to extend effective market access to agricultural exports from developing countries, especially to products in which they have a competitive advantage.

Services

Based on the initial requests and offers submitted by WTO members, ministers at Cancún should confirm their commitment to ensure that the negotiations on trade in services continue to make substantial progress.

- A major priority must be to expand the number and improve the quality of countries' commitments on market access and national treatment under the General Agreement on Trade in Services (GATS) on the broad range of traded services.
- Negotiations should develop multilateral disciplines on the domestic regulation of services for integration into the GATS as legally binding provisions, building on existing work on professional services and the pro-competitive principles accompanying the 1997 WTO Agreement on Basic Telecommunications Services.
- Agreement on international standards for certain services that are highly regulated nationally would greatly facilitate the goal of expanding trade in those services.
- The need to move professional, technical and managerial personnel across national borders for purposes linked to international trade and investment should be treated as a priority issue in the GATS negotiations, and further progress should be made towards the mutual recognition of professional qualifications.
- The liberalization of government procurement of services remains an important objective of world business since it would open up a vast potential market to international competition.

In particular, governments wishing to improve the efficiency of their services sector should make further commitments on the following services, which ICC has identified as key priorities for the Doha Development Agenda. At the same time, ICC welcomes the granting of credit to WTO members who have undertaken autonomous liberalization.

- ICC supports the further reduction of barriers to foreign participation in financial services and insurance and believes that liberalizing trade in financial services will play a critical role in building and enhancing the financial services infrastructures and economies of all WTO members regardless of their stage of development.
- ICC supports efforts to liberalize maritime transport services provided liberalization is substantial and there is no acceptance of "grandfathering" restrictive practices. Meaningful and comprehensive market access commitments, including the free establishment of maritime and related services, by a defined critical mass of countries are essential to any new GATS agreement on maritime transport services.
- Although the air transport sector possesses characteristics that make it peculiarly difficult to liberalize on a multilateral basis, ICC believes that a start could and should be made with air cargo.
- The further liberalization and recognition of express delivery services as a distinct services sector on a fair basis with government suppliers of these services. Express delivery services are a key infrastructure underpinning increasing shares of world trade.

- ICC believes that more commitments by national governments to remove barriers to advertising services under GATS should be a priority. The introduction of competition through liberalization will encourage the advertising industry to evolve to meet the requirements and challenges of consumers and its business users and will provide a stimulus for advertisers to offer choice and quality in their services.

Since an efficient services sector significantly reduces transaction costs, it is a powerful vehicle to strengthen the competitiveness of the whole economy and, in particular, to attract foreign direct investment. Dismantling barriers to trade in services brings particular benefits to small and medium-sized enterprises, who otherwise often lack the resources to overcome these hurdles. Liberalization would also enhance competition and consumer choice in both importing and exporting economies.

Electronic commerce, information technology and telecommunications

Consistent with our view that current WTO obligations, rules, disciplines and commitments -- namely the GATT, GATS, and TRIPS agreements -- apply to e-commerce. ICC has developed the following key principles regarding the negotiations affecting e-commerce, information technology and telecommunications:

- WTO members should implement fully existing commitments and further liberalize all basic telecommunications, value-added and computer and related services including scheduling market access and national treatment commitments for all service sectors without restriction, earlier implementation dates, reduction or elimination of foreign ownership restrictions, adoption of and adherence to the "Reference Paper" for basic telecommunications services only, and compliance with the GATS Annex on Telecommunications.
- WTO members should commit to fully liberalize trade in services sectors associated with the infrastructure needed for business-to-business and business-to-consumer e-commerce.
- WTO members should agree to eliminate duties on all information technology products in line with the goals of full realization of the Information Technology Agreement.
- Whether considered goods or services, digital products should continue to flourish in a liberal and open trade environment, with full market access and national treatment and no imposition of discriminatory measures, quantitative restrictions or other trade barriers.
- WTO members should agree that the interpretation of classifications under existing international classification schemes such as those in the GATS schedules, is sufficiently flexible to capture technological progress and evolution in the delivery of services.
- WTO members should agree that valuation of digitizable products delivered on a physical medium should be based on the value of the physical medium only.
- Intellectual property made available over digital networks should receive strong protection.

- In light of the importance of trade liberalization in digital trade, the moratorium on customs duties on electronic transmissions should be made permanent and binding.
- Where legitimate public policy objectives require domestic regulations that affect e-commerce, any such regulations should be consistent with existing WTO principles. They should be transparent and non-discriminatory, should represent the least-trade restrictive measures available and should promote an open market environment.

Intellectual property rights

ICC attaches primary importance to the effective implementation by WTO members of their commitments under TRIPS, and continues to support this agreement's basic principles.

ICC fully shares WTO members' concerns that adequate measures should be taken so that serious epidemics of infectious diseases such as HIV/AIDS, tuberculosis and malaria in the developing world can be effectively treated. When deciding upon a solution further to paragraph 6 of the Doha Declaration on TRIPS and Public Health, ICC cautions WTO members not to erode the patent system, which could discourage research into drugs for the diseases falling into the scope of the system eventually agreed. More specific recommendations on this issue, as well as on geographical indications, technology transfer and the relationship between TRIPS and the Convention on Biodiversity, can be found in the ICC papers referenced in the conclusion of this statement.

Investment

ICC calls upon ministers at Cancún to launch WTO investment negotiations towards the establishment of a legally binding, comprehensive multilateral framework of rules for investment that would provide for better market access, greater transparency and high standards of investment protection worldwide.[1] Such a framework should reflect in a balanced way the interests of home and host countries, and take due account of the development policies and objectives of host governments, as well as their right to regulate in the public interest, without discriminating against foreign investors. ICC would like to see the following key elements included in a multilateral agreement on investment:

- a broad definition of investment;
- a negative list approach for pre-establishment including national treatment, most-favoured nation treatment (MFN) and market access provisions;
- national treatment and MFN treatment in the post-entry stage;
- a high standard of investment protection;
- transparency;

[1] ICC India does not support the framing of multilateral rules on investment "unless the rules enshrined in BITs are harmonized and the specific concerns of developing countries embodied in BITs on a case-by-case basis are also included in a multilateral framework."

- provisions for comprehensive and unrestricted transfer of funds; and
- an obligation for member countries to provide for investor-to-state dispute settlement procedures.

Trade facilitation

ICC urges WTO ministers to launch negotiations on trade facilitation at Cancún. Such negotiations will be instrumental in ensuring the full realization of the benefits of trade liberalization flowing from successive rounds of multilateral negotiations by further expediting the movement, release and clearance of goods – to the advantage, in particular, of developing and transition economies, and of small and medium-sized enterprises. The largest potential for improvement in trade facilitation exists in developing countries, and they are therefore likely to be the main beneficiaries. A WTO trade facilitation agreement will augment the capacity of developing countries to enlarge their share of international trade, not least their trade with other developing countries.

Trade facilitation is all the more important for business at a time when security requirements risk slowing down cross-border trade. A trade facilitation agreement is fundamental to the establishment of an improved and more efficient management process for international trade in goods on a global basis. All WTO member countries will benefit from it – especially those burdened with the least efficient trading processes, either through infrastructure or managerial limitations or because of procedural barriers being imposed by trading partners. WTO ministers should launch negotiations on trade facilitation regardless of the decisions made on the other “Singapore issues”.

Trade and competition

The WTO’s pioneering work in analyzing the interaction between trade and competition policy in dialogue with the business community should continue in order to advance understanding of the complex issues involved and their ramifications.

To assist WTO members as they decide whether to begin negotiations on a multilateral framework of competition principles, ICC has recently submitted views on the scope and complexity of the issues set out in paragraph 25 of the Doha Declaration. This submission outlines the key matters that require consideration in any discussion of competition policy norms. The issues in question are complex, there are significant differences among WTO members on substantive competition law principles and their application, and the framework for any discussion of competition policy norms is constantly changing. In this context, the issue of the inclusion of a competition framework in the WTO system should be assessed very carefully as WTO ministers revisit this issue at Cancún.

ICC reserves its views on any WTO rules on competition until it becomes clearer what proposals will be made, how they will relate to other policies and objectives, and the modalities proposed for linking the proposals to the overall WTO framework and other policy objectives.

Government procurement

ICC believes that WTO ministers at Cancún should launch negotiations on a multilateral agreement on government procurement with a view to increasing transparency, openness and due process.

Anti-dumping

To prevent abusive use of anti-dumping measures, ICC supports a more harmonized and disciplined approach in the implementation of the anti-dumping instrument.

Dispute settlement

ICC believes that it is of the utmost importance that governments strictly respect the role and authority of the WTO's dispute settlement mechanism. A key aim of any improvements and clarifications of the WTO dispute settlement system should be to ensure that when formal adjudications become unavoidable, WTO decisions are implemented fully and expeditiously, thus minimizing instances of retaliation. WTO members should consider more carefully whether or not to bring a dispute case, and should rely increasingly on mediation and arbitration for dispute resolution.

* * *

The above strategic recommendations for the Cancún ministerial conference are based on more detailed ICC policy statements, which cover key issues in the Doha Round. These policy statements are listed below for easy reference, and are available on the ICC website at www.iccwbo.org:

- "ICC proposals on market access for non-agricultural products"
http://www.iccwbo.org/home/statements_rules/statements/2003/market_access_non_ag_products.asp

- "Agricultural trade and the Doha Development Agenda"
http://www.iccwbo.org/home/statements_rules/statements/2002/agricultural-trade.asp

- "The liberalization of trade in financial services"
http://www.iccwbo.org/home/statements_rules/statements/2000/liberalization_of_trade_2.asp

- "The liberalization of trade in insurance services"
http://www.iccwbo.org/home/statements_rules/statements/2000/liberalization_of_trade.asp

- "The liberalization of advertising services"
http://www.iccwbo.org/home/statements_rules/statements/2002/liberalization_advertising_services.asp

- "ICC's strategic objectives for multilateral trade negotiations to ensure a trade regime that facilitates competition in telecommunications and e-business"
http://www.iccwbo.org/home/statements_rules/statements/2002/ebitt_multitrade.asp

- "Initial views on the post-Doha Agenda of the Council for TRIPS"
http://www.iccwbo.org/home/statements_rules/statements/2002/initial_views_on_post_doha_agenda.asp

- "Further views on cross border compulsory licensing"
http://www.iccwbo.org/home/statements_rules/statements/2002/cross_border_compulsory_licensing.asp

- "ICC expectations regarding a WTO investment agreement"
http://www.iccwbo.org/home/statements_rules/statements/2003/wto_investment_agreement.asp

- "ICC recommendations for a WTO agreement on trade facilitation"
http://www.iccwbo.org/home/statements_rules/statements/2003/trade_facilitation.asp

- "Competition policy in the WTO: Doha Declaration issues"
http://www.iccwbo.org/home/statements_rules/statements/2003/Competition_policy_in_the_WTO.asp

- "ICC proposals for improvements to the WTO Dispute Settlement Understanding"
http://www.iccwbo.org/home/statements_rules/statements/2003/wto_dispute_settlement.asp

- "Regional trade agreements and the multilateral trading system"
http://www.iccwbo.org/home/statements_rules/statements/2002/Regional%20trade%20agreements_multilateral%20trading%20system.asp

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Policy Statement

ICC proposals on market access for non-agricultural products

Prepared by the Commission on Trade and Investment Policy

ICC strongly supports the objectives adopted at the 4th WTO Ministerial Conference at Doha (Qatar) in November 2001 regarding market access negotiations for non-agricultural products. The GATT made immense progress in dismantling tariff barriers to international trade, but its work is by no means completed. Remaining tariffs inhibit trade significantly and cause substantial commercial and economic inefficiencies. Their elimination is one of the largest potential sources of economic benefits to all parties in this negotiation. Thus, ICC believes that WTO members should aim at the elimination of all remaining tariffs on non-agricultural products. The following proposals are intended to assist WTO members and the Negotiating Group on Market Access, in particular, in developing a common understanding with a view to reaching an agreement on those modalities by 31 May 2003.

ICC considers that the negotiations on market access for non-agricultural products is of central importance to trade liberalization because of the benefits for all WTO members that such liberalization could bring. In particular, it is strongly in the interest of developing and least-developed countries (LDCs) to eliminate tariff barriers, provided that capacity building and sequencing of tariff cuts are appropriate to individual situations. A large part of the expected gains from tariff elimination will result from tariff elimination by low and middle income countries, with many of these gains resulting from increased trade among these countries.

The Doha Development Agenda ("DDA")

ICC notes with satisfaction that paragraph 16 of the DDA sets out four general objectives for negotiations on market access for non-agricultural products:

a. to reduce or as appropriate eliminate tariffs (including the reduction or elimination of tariff peaks, high tariffs, and tariff escalation) on a comprehensive group of products (without a priori exclusions) and, in particular, on products of export interest to developing countries;
b. to reduce or as appropriate eliminate non-tariff barriers;
c. to take fully into account the special needs and interests of developing and LDCs;
d. to include in the modalities to be agreed appropriate studies and capacity-building measures to assist least-developed countries to participate effectively in the negotiations.

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Notably, paragraph 31(iii) provides for negotiations on “the reduction or, as appropriate, elimination of tariff and non-tariff barriers to environmental goods and services.” The WTO Committee on Trade and Environment ceded competence over these negotiations to the Negotiating Group on Market Access.

ICC’s proposals for modalities

ICC has reviewed the proposals of WTO members regarding modalities for negotiations on market access for non-agricultural products. WTO members have presented a wide range of possible, and often conflicting, modalities intended to satisfy the DDA’s objectives. As a result, WTO members will need to engage in more detailed discussions and negotiations on an urgent basis in order to meet the timetable adopted in July 2002.

To help in facilitating this process, ICC offers the following proposals, including suggested modalities, regarding each of the four general negotiating objectives identified in the DDA. In developing these proposals, ICC has taken into account its overall objective in this area to improve market access and to promote transparency and predictability in a rules-based trading system. ICC believes that these objectives, and the objectives in the DDA, cannot be achieved in a timely way, if at all, without the effective participation of developing countries and LDCs. There should be consideration of the needs and interests of these countries, whose possibilities may be limited by public budgetary considerations.

- **Reduction/elimination of tariffs**

ICC suggests the following modalities for reducing and/or eliminating tariffs on non-agricultural products. These suggestions should be read in conjunction with the comments on the other three DDA objectives. Negotiations should seek elimination of all tariffs on non-agricultural products by dates certain.

a. **Reliable data set** - WTO members should update as soon as practicable the Integrated Database in order to ensure that negotiations are based on a reliable data set.

b. **Starting point** - The preferred starting point for negotiations should be the applied tariff rates, with the base rates established using a period as close as possible to the date of the final agreement on modalities. The applied rate should also be the starting point where the particular tariff rate has not been the subject of a prior binding. However, a reasonable attempt will have to be made to accommodate the needs of developing and least developed countries and the need to establish a common set of rules.

c. **Tariff reduction** - WTO members should develop a formula for the progressive reduction of tariffs over a five-year period from the conclusion of the negotiations. This reduction should lead to a reasonably narrow, fixed band of tariffs for all products. To the extent that such a general formula would not sufficiently address tariff peaks, high tariffs and tariff escalation, WTO members should develop appropriate definitions for these occurrences and establish specialised formulas where appropriate. In addition, but only as a complementary step, WTO members should supplement this formula approach by relying on other modalities, such as zero-for-zero, harmonisation, and request-offer, where they would assist in further liberalisation. In developing and implementing the above approach to tariff reduction, WTO members should give due consideration to the interests of developing and least-developed countries as discussed below.

d. **Tariff elimination** - Where there is a consensus, industrialized countries as well as WTO country members having well developed industrial sectors should agree to eliminate certain tariffs at the conclusion of the DDA and at the conclusion of a five-year phase-out period. A ten-year phase out period could be considered for high tariffs. Virtually all of these countries are currently parties to free trade agreements involving the elimination of substantially all tariffs. As a result, their domestic industries have already substantially adjusted to the entry of duty-free products. Therefore, the expansion of duty-free status to similar imports from additional countries should not have an adverse or disproportionate impact.

e. **Elimination of low tariffs** - WTO members should establish a tariff threshold, under which tariffs would be set at zero. This would ensure that tariffs are eliminated where governments concerned consider that the administrative costs outweigh the revenue collected, and where sectors concerned consider that the gains of reciprocal duty-free access would outweigh the limited protection afforded by low tariff rates.

f. **Reduction of tariff disparities** - Considerable tariff disparities remain between industrialized countries and various developing countries. However, these differences no longer reflect the economic and development need of most developing countries. Therefore, the narrowing of wide tariff disparities between WTO members should be an important goal in the progression toward the elimination of tariffs on non-agricultural products.

g. **Shift to ad valorem rates -** WTO members should seek to shift all tariff-related measures, including tariff-rate quotas, to ad valorem tariff rates. In the interim, WTO members should agree on mechanisms to improve transparency in the administration of, in particular, tariff-rate quota systems. Such mechanisms could include more detailed reporting requirements to the WTO and/or more detailed transparency-related obligations on national authorities.

h. **Comprehensive binding of tariff headings** - At the conclusion of negotiations, WTO members should seek to bind 100 percent of tariff headings at the levels negotiated during the round. Tariff headings not subject to negotiations, whose number should be very limited, should be bound at applied rates. This would substantially improve the transparency and predictability of the system and the relevant obligations.

i. **Expand member and product coverage of sectoral agreements** - WTO members should promote the expansion of existing zero-for-zero and harmonisation agreements to additional WTO members and additional products, including WTO members with viable industry sectors, and particularly with respect to the Information Technology Agreement, the chemical harmonisation agreement and the Uruguay Round pharmaceutical agreement. WTO members should also seek the widest member and product coverage in any zero-for-zero or harmonisation agreement negotiated in the context of DDA negotiations.

- **Reduction/elimination of non-tariff barriers**

ICC strongly supports technical work aimed at defining the universe of non-tariff barriers in order to establish the basis for negotiations on their reduction and elimination. Importantly, ICC urges WTO members to agree that no subset of non-tariff barriers will be excluded from the DDA negotiations by virtue of their arbitrary classification or categorisation on an issue-specific or sector-specific basis. With this general understanding, WTO members can more freely assess the most appropriate DDA negotiating groups to address certain barriers. For example, issues relating to rules and customs procedures could be more effectively addressed in other negotiating groups on, for example, anti-dumping and trade facilitation. Upon establishing the universe of non-tariff barriers appropriately within the scope of the Negotiating Group's competence, WTO members should develop modalities for negotiating the reduction and elimination of such barriers.

As part of the negotiations, WTO members should develop more objective and predictable rules for assessing whether WTO members' measures are striking a reasonable balance between those that are or are not achieving legitimate objectives using the least trade restrictive means. The development of such rules could, where appropriate, build upon the interpretations of the necessity test by dispute settlement panels and the Appellate Body. In the context of assessing rules applicable to non-tariff barriers, WTO members should also explore mechanisms for increasing the involvement of developing countries in setting global technical standards.

Finally, ICC supports the inclusion of export duties, restrictions and export bans within the scope of the negotiations. These measures cause distortions in trade of downstream products within national markets due to the supply chain advantages such measures often afford to domestic producers. At a minimum, WTO members should re-examine Article XI of GATT 1994 with the aim of clarifying its principles and improving its effectiveness.

- **Consideration of the interests of developing and least-developed countries**

ICC encourages WTO members to agree to the following considerations for developing and least-developed countries:

a. **Credit for autonomous liberalization** - Appropriate means should be developed for recognising autonomous liberalization, but only where such liberalization is bound.

b. **Elimination of tariffs for products from LDCs** - Industrialized countries should agree to eliminate tariffs on products from LDCs.

c. **Less than full reciprocity** - WTO members should consider the principle of "less than full reciprocity" set forth in the DDA in developing the formula and other modalities for tariff reductions, in particular by ensuring that the formula results in reductions that are consistent with requisite levels of development. The application of the "less than full reciprocity" principle should mainly consist of longer phase-in periods. Any special and differential treatment regarding tariff liberalization should have sunset provisions.

d. **Credit for binding** - WTO members should accord credit to LDCs for binding current applied rates.

- **Appropriate studies and capacity-building measures**

ICC notes with concern the limited coverage of this key element in WTO members' proposals. The only clear statement seemed to relate to a request that LDCs define for themselves the type of studies and capacity-building measures that would facilitate their greater participation in the DDA negotiations. ICC agrees that a demand-driven process would be optimal. However, in many cases, ICC considers that reliance on such a demand-driven approach may be premature, given that many LDCs have too many priority areas that need attention and are not in a position to select only those that would be the most effective at improving their capacity. In most cases, other WTO members and consultants are also unable to identify the optimal priorities for particular countries, because the necessary comprehensive studies have not been conducted.

ICC understands that a substantial amount of technical assistance funds are being made available to assist LDCs but that these funds may be spread too thin to generate optimal results or may be used in other less-than-optimal ways. ICC strongly supports the greater targeting of technical assistance funding in order to establish precedents for how such assistance can benefit LDCs in raising capacity, whether to achieve the benefits of these negotiations more effectively or whether to achieve the benefits in other mutually advantageous areas, such as trade facilitation. Special efforts must be made to improve access to data for all WTO members, particularly developing countries and LDCs.

Such targeted technical assistance could be in the form of individual test countries in three or four regions around the world. The selection criteria for such countries should be strict, perhaps based on agreements to implement non-trade obligations in the area of infrastructure administration or bribery and corruption, which often undermine progress in achieving the benefits of trade liberalisation. For each of the test countries, WTO members could target technical assistance funding at higher, more effective levels in order to increase the likelihood of achieving meaningful results. Such results could then be the basis for developing more effective technical assistance for other countries and for highlighting the benefits of trade liberalisation measures to LDCs and developing countries.
This approach could be combined with similar efforts in other areas, most importantly trade facilitation, where targeted and effective technical assistance with demonstrable results could assist in supporting a mandate for negotiations.

Environmental goods

ICC also urges WTO members to take all necessary steps to ensure that the letter and the spirit of the DDA regarding the reduction and/or elimination of tariffs on environmental goods is satisfied. WTO members should identify a list of commonly agreed objective criteria for the identification of environmental goods, in conjunction with work undertaken in APEC and the OECD. Production and/or process methods (PPMs), as well as the end-use of a product, should be excluded as criteria. WTO members should allow the necessary flexibility for these criteria to cover new or improved environmental goods. This will ensure that the benefits of this initiative, in terms of trade, development and the environment, can be maintained and expanded in the face of new technology and new environmental risks, without the need to wait for another multilateral round of negotiations.

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Policy Statement

Agricultural trade
and the Doha Development Agenda

Prepared by the Commission on Trade and Investment Policy

Introduction

At the 4th Ministerial Conference of the World Trade Organization (Doha, Qatar, 9-14 November 2001) WTO member governments renewed their commitment to continue with the fundamental reform of trade in agriculture mandated by the Uruguay Round and begun in early 2000. This decision offers an excellent opportunity to further open markets and expand trade in food and agricultural products. Improved access to international markets and increased trade in agricultural products will ultimately benefit *all* countries and stakeholders. Therefore, the major goals of WTO negotiations on agriculture should be to create new market access opportunities and to ensure that the benefits of an open market system reach developing countries. The establishment of a market-oriented multilateral trading system by strengthening rules and commitments regarding agricultural support and protection will make a significant contribution to economic development and sustainable agriculture.

The case for trade liberalization and economic growth

Under current trade policies, trade in agricultural and processed products has increased steadily. Still, government intervention in the agricultural sector remains intrusive, to the detriment of developing countries. According to the Organisation for Economic Cooperation and Development (OECD), total support to agriculture in 2000 amounted to 327 billion US dollars or 1.3% of GDP in the OECD area, of which support to producers accounted for 34 % of total farm receipts.[2] The vast majority of this support goes to a minority of large agricultural producers rather than to small family farms, in the form of a transfer from consumers and taxpayers. More competitive producers in other countries also are negatively affected. Export subsidies and other trade-distorting domestic support measures tend to destroy markets in developing countries by driving down world prices to levels where local farmers cannot compete and to encourage production that is economically and ecologically unsustainable.

2 Organisation for Economic Cooperation and Development, Agricultural Policies in OECD Countries: Monitoring and Evaluation, Paris, 2001.

Trade distortions in the agricultural sector harm stakeholders in both developed and developing countries. While developing countries argue that liberalization of international trade has not yet benefited them to the same extent as developed countries, trade barriers and distortions in the agricultural sector adversely affect *all* countries by impeding innovation, investment and economic growth. Economic growth in the agricultural sector supported by appropriate domestic policies provides opportunities for the poor in developing countries by offering increased access to food, land, income, employment, financial services, technology, and capital for community services and education.

We therefore encourage governments to phase out agricultural price-support mechanisms, export subsidies and all other trade-distorting agricultural support measures, as well as cascading tariffs. Governments should supplement such reductions with policies that promote private sector initiatives, particularly to improve the competitiveness of farms, downstream businesses (small firms) and the rural economy more generally, as well as product quality. There is evidence that even under open market conditions, 70-80% of food supply will be produced locally; an efficient national food system is, therefore, essential. However, local communities, businesses and markets will need time to adjust, in order to take full advantage of the benefits derived from a smoothly operating open market.

Farmers are no longer the only ones with commercial stakes in these negotiations. Processed foods account for an increasing amount of trade in agri-food products globally, and these products should receive top priority during the agricultural negotiations. The growth of global trade in the processed food sector is slowed by a number of factors, including tariff peaks (high protective tariff rates); tariff escalation (higher tariffs on processed foods than their commodity components); tariff rate quotas (TRQs -- with prohibitive over-quota rates and inefficient administration), export subsidies and trade-distorting domestic support measures. Industrialized countries should take the lead in removing these trade barriers. Specifically, we recommend the following:

Market access

- Tariff reductions should begin from applied rather than bound rates in order to ensure meaningful reductions. Tariff reductions, particularly of industrialized country tariffs, should apply to individual tariff lines rather than to average tariff levels for groups of products.
- Tariff peaks and tariff escalation should be eliminated. This is particularly important to improve market access for processed foods from developing countries and would encourage these countries to diversify into higher value-added production for exports.

- Additional reductions in tariffs through various approaches including a zero-for-zero approach for particular products, including but not limited to: beef, biscuits, cheese, cocoa and cocoa containing products, coffee and coffee containing products, dry cereals, fried potato products, pet food, pork, powdered soft drink mixes, oilseeds, soft drinks, soups, wines and spirits and luxury foods.
- Simplification of administrative procedures, including the elimination or further liberalization of tariff-rate quotas, through elimination or expansion of quota levels, lowering of in-quota tariff rates, and significant reduction of over-quota rates to levels that permit commercially meaningful access. In addition, tariff rate quotas should be allocated on a transparent and non-discriminatory basis.

Subsidies

- Progressive elimination and ultimate prohibition of all forms of subsidies that distort international trade, among them export subsidies on primary products, making agricultural export subsidy rules conform to the prohibition on export subsidies for non-primary products (in effect since 1948).
- This process should give priority to reducing high export subsidy levels at a faster rate than lower export subsidy levels.

Domestic support

- Further substantial reductions in domestic support measures.
- Establishment of further commodity-by-commodity reduction commitments for domestic support.
- No increase in permitted levels of domestic subsidies (whether in the amber box or the green box) for so-called “multifunctional” purposes. But be willing to consider special transitional measures for developing countries and transition economies with still very high percentages of rural population.

Health and safety regulations

Sound science and risk assessment are the proper foundations of a credible health and safety regulatory regime. The WTO Agreement on the Application of Sanitary and Phytosanitary (SPS) Measures ensures that these values are the underpinning of global food trade. Expanding agricultural negotiations to include non-trade concerns could result in a reopening of the SPS Agreement, which could ultimately increase barriers to trade, as this could be particularly problematic to exports from developing countries. Developing countries should be encouraged to be more actively involved in the setting of global food standards, and to build their capacity to improve the quality and safety of their agricultural production through technical assistance.

Scope of the negotiations

- No products or policies should be exempted from the new rules and disciplines.
- Effective access to developed country markets should be extended to exports from developing countries, especially to products in which they have a competitive advantage.
- At the same time, negotiations should enable developing countries to effectively take into account their development needs.
- Negotiations should ensure that non-trade concerns are not used to create new barriers to trade in agriculture, as this is particularly injurious to the export capabilities of developing countries.

Biotechnology

- While the WTO should address issues related to trade in biotechnology products, it is not the most appropriate forum for all issues, and should give due account of measures undertaken in other bona fide international fora (such as the Codex Alimentarius for food safety standards).

Food security

- International concerns about food security should be addressed through multilateral disciplines banning the use of export sanctions, not through tariff barriers or trade-distorting subsidies.

Policy recommendations

In many countries, the first priority for the farm sector is to become economically sustainable. Economic viability usually depends to some degree on trade in agricultural products, both within and between countries. Such trade can help achieve the goals of sustainable agriculture: improving living conditions in rural areas, particularly in developing countries; ensuring increased food quality and quantity; providing employment opportunities; contributing to the protection of natural resources and the environment. Thus, economic policies that promote agricultural trade are in the interests of all stakeholders. Towards this end, ICC recommends that WTO members:

- allow the alignment of food prices at world market levels;
- work towards harmonization of food regulatory, customs, safety and other control systems;
- progressively dismantle government price support systems and other price-distorting measures – within a reasonable timeframe to allow farmers, agri-food businesses and the market itself time to adjust;

- promote policies and activities that allow private enterprise to: improve the quality of products; help small farmers acquire knowledge and land (better legal framework for land titles); purchase seed, fertilizer and equipment; gain access to markets; and remain competitive as markets become more open;
- promote trade and investment in the agri-business sector through non-price distorting policies, which will in turn increase technological innovation;
- promote best farming and environmental practices; develop and adopt cost effective, scientifically sound and environmentally sustainable food products and production techniques;
- create channels through which innovations in good farming and environmental practices and sustainable food production can reach all economies, i.e., make this again a priority for multilateral development assistance; and
- develop an infrastructure that ensures the safe and efficient production, processing, and transportation of food within and between countries.

Conclusion

An open and non-discriminatory trade policy is necessary to ensure the viability of the agricultural sector based on environmentally sound practices. A liberal trade policy also provides agri-business with the financial resources to undertake voluntary initiatives and form partnerships that promote sustainable agriculture. Open markets and sustainable agriculture are the foundations of an efficient global food system.

The agri-food business sector, farmers, non-governmental organizations and governments share many common interests. Increased dialogue and cooperation between relevant stakeholder groups is required to identify and promote opportunities for joint initiatives and partnerships in support of sustainable agriculture. ICC urges WTO members to tackle the pervasive obstacles to trade and investment in the agri-food sector.

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Commission on E-Business, IT and Telecoms
Task Force on Telecoms Policy

ICC's strategic objectives for multilateral trade negotiations to ensure a trade regime that facilitates competition in telecommunications and e-business

World business has four core objectives for multilateral trade negotiations:

- The development of the domestic and global infrastructures necessary to conduct e-business while avoiding barriers that would hinder such development.
- Full implementation of existing commitments and further liberalization of all basic telecommunications, value-added and computer and related services.
- The development of trade in goods and services via e-business.
- Strong protection of intellectual property made available over digital networks.

1. To promote the development of the domestic and global infrastructures, necessary for e-business, world business seeks:

- The elimination of duties on all IT products in line with the goals of full realization of the objectives of the Information Technology Agreement (ITA), including commitments at the broadest possible level for categories 84, 85, and 90. Due to the length of the descriptions of these categories, please refer to http://www.wto.org/english/tratop_e/inftec_e/itadec_e.htm
  This is important to ensure that all countries have access to the hardware and software necessary to deploy and benefit from the e-commerce infrastructure.
- Full market access and national treatment commitments for the sectors that are associated with the infrastructure needed for business-to-business and business-to-consumer e-commerce.
- An open, competitive market for electronic commerce, including commitments not to impose new barriers to the development of the e-commerce infrastructure.

2. To promote full implementation of existing commitments and further liberalization of all basic telecommunications, value-added and computer and related services, world business seeks:

- Market access and national treatment commitments for all service sectors without restrictions.

- Earlier implementation dates.

- Reductions or elimination of foreign ownership restrictions.

- Adherence to the "Reference Paper" commitments for basic telecommunications services only.

- Compliance with the GATS Annex on Telecommunications for access to and use of public telecommunications networks for the provision of value-added services, including Internet services, and other sectors for which countries have made commitments.

3. To promote the development of trade in goods and services via e-business, world business seeks:

- Recognition that current commitments under the General Agreement on Tariffs and Trade (GATT), the General Agreement on Trade in Services (GATS) and the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) apply to e-commerce. This is essential given the fact that electronic commerce is not a new form of trade but rather a new tool for conducting trade in goods and services as well as a means of delivering intellectual property.

- Trade treatment and classification of an electronic transmission that is no less favorable than the historical treatment applied to the underlying good, service, or intellectual property.

- Scheduling of commitments at the highest level possible, including, the adoption of an approach in which parties make full market access and national treatment commitments such that all sub-sectors are covered for relevant service sectors.

- An agreement that existing international classification schemes, such as those used in GATS schedules, should be flexible enough to accommodate technological progress in the online delivery of services. As technology evolves, the interpretation of the existing classifications of services based on this technology should also evolve to capture these advances. With such flexibility, countries can ensure that they benefit from the productivity increases and cost savings associated with the information technology revolution.

- An agreement that valuation of digitizable products delivered on a physical medium, including software pursuant to GATT decision 4.1 on Valuation of Carrier Media Bearing Software for Data Processing Equipment, for customs purposes, be based on the value of the physical medium only.

- Make permanent the moratorium on imposing customs duties or other border measures on electronic transmissions.

4. To promote strong protection of intellectual property made available over digital networks, world business seeks:

- Effective and timely implementation and enforcement of the WTO Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS). With the rapid development of digital technologies and electronic services, the need for effective protection and enforcement of intellectual property rights is imperative. The TRIPS Agreement plays a very important role insofar as it provides minimum standards for such protection and enforcement.

- Timely ratification of the World Intellectual Property Organization (WIPO) Copyright Treaty and the WIPO Performances and Phonograms Treaty which ensures balance between the rights and obligations of network operators, service providers, and content providers, and users.

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Policy Statement

The liberalization of advertising services

Prepared by the Commission on Marketing and Advertising

The purpose of this policy statement is to present the important role of the advertising services sector for businesses and consumers as well as the contribution of advertising on economic growth, and request more market opening commitments from all countries regarding advertising and related services in order to increase market access. Advertising services play a crucial role in spurring economic development and growth locally and globally because they touch upon numerous industries and services. In its simplest form, advertising may be defined as a commercial communication from an identified sponsor which uses various commercial platforms, such as newspapers, radio, TV, billboards, satellite, internet, to connect with an audience, *e.g.* customers.

The contribution of advertising to economic growth

- Advertising makes the global market more accessible to business and consumers since it provides information about products, services, brands, companies, individuals or events. Advertising is in itself information to consumers. Due to the wide range of commercial vehicles, companies can more easily advertise and market their products or services to a targeted audience. For example, with the internet and the spread of multi-channel television, companies can reach consumers in many countries with a single advertising spot.

- Conversely, consumers can visit the websites of sellers of goods or services worldwide. With accurate information, consumers benefit from being able to choose the particular goods or services that meet their needs at the most economical price. This great range of choice allows them ultimate power and control over when and where to shop.

- Advertising stimulates competition between companies for the sale of their products or services. Government revenues are increased via the sales tax base.

- Advertising stimulates demand and thereby creates jobs in the industry and other service sectors. Increased employment boosts government revenues through more taxable income.

- Advertising revenues significantly finance the media, educational programming and entertainment, such as sporting and music events. Newspapers, magazines, cable, satellite, broadcast services and internet could not exist freely without the support of advertising. As a general indication, the total world advertising expenditure projected for 2001 was $481.1 billion, representing an increase of 3.7% compared to the year of 2000.

- Restrictions to the distribution and placement of advertising services should be avoided. In an increasingly competitive environment and the tendency towards shorter product life spans, new products and services must be introduced without delay to the local market so that business can meet consumer expectations or preference and also reach their sales volumes in a shorter time. Barriers preventing business from using cross-border concepts are hence detrimental to economies since restrictions increase the costs of the new products and services which are passed on to the customers and fall heavily on small and medium size enterprises (SMEs), agencies and advertisers.

- National and international laws prohibiting misleading and deceptive advertising provide an essential framework within which business has to operate and are necessary to foster consumer confidence and promote truth and accuracy in advertising. In addition to the existing legal instruments, self-regulatory guidelines and voluntary industry norms, such as those developed by the International Chamber of Commerce (ICC), play an important role in promoting high standards of consumer protection. Self-regulatory advertising systems respect the same principles to discipline advertising without forbidding or placing any veto or slowing down any free economic initiative.

Liberalizing trade in advertising services

ICC believes that, as an overall principle under the General Agreement on Trade in Services (GATS), more commitments from all countries regarding advertising and related services are needed in order to increase market access as well as the adoption of least trade restrictive measures. Below is a non-exhaustive list of specific impediments that advertisers encounter worldwide.

1. Restrictions on the importation and broadcast of foreign-produced television commercials.

2. Residency requirements for advertising production professionals filming in some countries and/or for employees of the advertising firm.

3. Requirements for local participation in the production of advertising transmitted through an electric medium.

4. Requirements for local-post production work (e.g. editing, music, sequence editing) if foreign actors are used in television commercials.

5. Equity limitations on foreign ownership of advertising firms.

6. Requirements that host-country nationals hold managerial positions in foreign-owned advertising firms.

7. Requirements that programme services carried by cable or satellite be "local" in order to carry certain advertising.

8. Requirements for foreign advertisers to broadcast their advertisements in the local language.

In conclusion, ICC believes that increased international trade and commerce comes from liberalized markets. Advertising plays a key role in providing information and generating business opportunities. The introduction of competition through liberalization will encourage the advertising industry to evolve to meet the requirements and challenges of consumers and its business users and will provide a stimulus for advertisers to offer choice and quality in their services. ICC therefore believes more commitments by national governments to remove barriers to advertising services under the General Agreement on Trade in Services (GATS) should be a priority.

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Policy Statement

Initial views on the post-Doha Agenda of the Council for TRIPS

Prepared by the Commission on Intellectual Property
Task Force on TRIPS

ICC (International Chamber of Commerce) is the world business organisation. Representing thousands of member companies and associations from over 130 countries, ICC is the only representative body that speaks with authority on behalf of both large and small enterprises from all sectors in all parts of the world.

ICC's purpose is to promote international trade, investment and open market economies. ICC firmly believes that the protection of intellectual property stimulates international trade, creates a favourable environment for foreign direct investment, and encourages innovation, transfer of technology, and the development of local industry, all of which are essential for sustainable economic growth.

ICC has consistently advocated cost-effective and non-discriminatory systems for the protection of intellectual property rights as being in the interests of businesses worldwide. ICC therefore welcomed the conclusion of the Uruguay Round, including the Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS), which sets out minimum standards for obtaining and enforcing intellectual property rights. ICC attaches primary importance to the effective implementation by WTO Members of their commitments under TRIPS and continues to support the basic principles of the TRIPS Agreement: national treatment and most-favoured-nation treatment; non-discrimination among sectors and fields of technology; and the maintenance of an adequate balance between rights and obligations.

ICC has always supported the need for a proper balance between different interests. In the field of patents, for example, the system should allow those who innovate technology to obtain and enforce rights protecting such technology, but it should also ensure that society as a whole benefits, for instance, from disclosure of inventions and the dissemination of innovation. The interests of third parties must also be balanced against rights provided to innovators. In the view of ICC, maintaining adequate balances is necessary for the continued successful operation and, hence, acceptance of intellectual property protection systems.

ICC has closely followed the debate on whether the patent system in general, and the TRIPS Agreement in particular, meets the interests of developing countries. In this regard, ICC wishes to reiterate its view that intellectual property protection fosters sustainable development of local innovative industries and encourages investment into developing countries. Recently, the debate focussed on the complicated issue of "access to medicines," which contains significant and broad aspects that are not intellectual property-related. It culminated in the Declaration on the TRIPS Agreement and Public Health at the WTO Ministerial Conference in Doha in November 2001, in addition to the Doha Ministerial Declaration (DMD) and the Decision on Implementation-related Issues and Concerns. The three Ministerial statements define the Doha Development Agenda (DDA).

1. Extension to January 1, 2016, of the time limit for least-developed WTO Members to implement or apply Sections 5 (Patents) and Section 7 (protection of undisclosed information) with respect to pharmaceutical products

Paragraph 7 of the Doha Declaration on TRIPS and Public Health allows least developed countries (LDCs) an extension of an additional 10 years from January 1, 2006, for implementation of TRIPS Sections 5 and 7 with respect to the protection of pharmaceutical products. ICC generally supports this provision.

2. Cross-border compulsory licensing

ICC fully shares WTO members' concern that adequate measures must be taken so that serious epidemics of infectious diseases such as HIV/AIDS, tuberculosis and malaria can be effectively treated. However, it is important to remember that the issue of access to medicines calls for measures and policies that are entirely unrelated to intellectual property, and which will not be resolved by eroding the strength of intellectual property rights.

ICC believes that the suggestion to allow for compulsory licensing in a country for the purpose of exporting to other countries not having sufficient manufacturing capacities in the pharmaceutical sector carries a significant risk for erosion of intellectual property protection without providing the desired benefit of greater access to critical drugs for HIV/AIDS, tuberculosis and malaria. Any solution to the cross-border compulsory licensing problem, which could represent a deviation from the principle of non-discrimination with respect to fields of technology, must include adequate safeguards to protect the patent holder's interests.

ICC urges that in any solution on cross border compulsory licensing, language is provided to clarify the following critical issues:

- That the field of use of compulsory licensing be strictly limited.
- That the solution should not apply to other than pharmaceutical products.
- That safeguards be put into place to protect the rights of the innovator from re-exportation of the drug out of the receiving country and from diversion of the drug either within the manufacturing country or to other countries.
- That safeguards be put in place to limit which countries will be eligible as a receiving country, and which countries will be eligible as a manufacturing country

- That the duration of a compulsory license be limited in time and that the compulsory licence itself be reviewed periodically by the TRIPS Council.
- That the exporting and importing countries issue compulsory licenses that comply with each provision of TRIPS Article 31, excepting Article 31 (f) but including prior notice to the right holder in conformity with Article 31 (b) and with particular emphasis on Article 31 (c) as to limiting the scope of the compulsory license to the purpose for which the use was authorized.

3. Geographical Indications

ICC believes that the TRIPS Council should concentrate on its current task of setting up a multilateral system for notification and registration of wines and spirits and assess actual implementation of the rules for geographical indications. It also believes that negotiations on the development of a system of notification and registration should begin without delay.

Some producers, for example of agricultural and consumer goods, have expressed an interest in using a system for the protection of geographical indications. The implications of such an extension, notably to the interests of trademark holders, would have to be studied carefully. However, care should be taken to keep discussions of the extension of the protection for geographical indications separate from the work of the Special Negotiating Session on the notification and registration system for wines and spirits.

ICC suggests that WTO members study the question of whether the World Intellectual Property Organization (WIPO) would be an appropriate organization to administer the notification and registration system on behalf of the WTO.

4. Relationship between TRIPS and the CBD; the protection of traditional knowledge

Both TRIPS and the CBD are important international treaties, which bind their numerous signatories. They have different objectives that are broadly mutually compatible. They are fully consistent. In cases of apparent or alleged conflict, neither automatically takes priority over the other, either legally or morally. This is further explained in the ICC paper " Trips and the Biodiversity Convention: What Conflict?"[3]

[3] 28 June 1999, doc no 450/897rev available on ICC website at www..iccwbo.org

ICC sees a strong case in equity for recognising the contribution of groups who hold valuable traditional knowledge. However, this has to be balanced against the interests of society as a whole. ICC has raised many questions which have to be answered before a practical system can be put in place (see ICC's discussion paper "Protecting Traditional Knowledge"[4])

ICC strongly believes that the continuing intergovernmental discussions at WIPO offers the best forum for solving these problems.

5. "Non-Violation" Complaints under the TRIPS Agreement

Throughout the negotiation of the Uruguay Round and in the period since its implementation, ICC has recognized that the traditional principles governing non-violation complaints concerning goods and services apply with equal force to trade-related intellectual property rights because the TRIPS Agreement, as a market access agreement, is an integral part of a single, negotiated undertaking.

ICC urges that the TRIPS Council limit its actions to making recommendations to the Ministerial Conference about the best ways to apply Article XXIII subparagraphs 1(b) and 1(c) to "non-violation" complaints arising under the TRIPS Agreement.

6. Technology Transfer to Least-Developed Countries

ICC has long advocated the view that strong and effective intellectual property rights are an essential tool for technology transfer and will encourage the creation of a "sound and viable technological base" in the least-developed countries. As a result, ICC urges prompt implementation of the TRIPS Agreement by all WTO members, taking into account the new timeframe set out in Paragraph 7 of the Doha Declaration on TRIPS and Health for implementation of TRIPS Sections 5 and 7 with respect to the protection of pharmaceutical products by least developed countries (LDCs). The development of innovative approaches for promoting market-oriented technology transfer to less developed nations through technology development, direct investment, technology sales and dissemination, and cooperative technology ventures remains an important priority for ICC. ICC supports the increasing use of public-private partnerships to meet particularly difficult technological and economic challenges confronting many of the least-developed WTO members.

ICC hopes that the above initial views will assist the TRIPS Council in its discussions and looks forward to making further contributions later this year.

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24 June 2002

[4] 3 December 2001 document no. 450/937 Rev available on ICC website at www..iccwbo.org

Policy Statement

Further views on cross border compulsory licensing

Prepared by the Commission on Intellectual Property

ICC, the world business organization, promotes international trade, investment and open market economies. ICC firmly believes that the protection of intellectual property stimulates international trade, creates a favourable environment for foreign direct investment, and encourages innovation, transfer of technology, and the development of local industry, all of which are essential for sustainable economic growth.

ICC has always supported the need for a proper balance among different interests. In the field of patents, for example, the system should allow those who innovate to obtain and enforce rights protecting their technological innovations, but should also ensure that society as a whole benefits from disclosure of inventions and the dissemination of knowledge. In the view of ICC, maintaining adequate balances is necessary for the continued successful operation and, hence, acceptance of intellectual property protection systems.

ICC fully shares WTO members' concern that adequate measures should be taken so that serious epidemics of infectious diseases such as HIV/AIDS, tuberculosis and malaria in the developing world can be effectively treated. However, it is clear that many factors other than patented drugs play a role in a successful health strategy - including living conditions, medical facilities, nutrition, and means for the distribution and administration of medicine. It is also clear that many pharmaceuticals which are effective in combating diseases in the developing world are not subject to patent rights (see attached table). It has been pointed out that the availability of health services adapted to local needs, efficient distribution systems and tariff and tax free treatment for drugs play an equally important role in ensuring access to medicines[5]. In the current negotiations on paragraph 6 of the Doha Declaration on TRIPS and Public Health, it is therefore important to remember that the issue of access to medicines calls for measures and policies that are entirely unrelated to intellectual property, and which will not be resolved by eroding the strength of intellectual property rights.

[5] *Workshop on Differential Pricing and Financing of Essential Drugs* organised by WHO and WTO, 8-11 April 2001 in Norway.

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Where a country does need medicines to fight a major disease and cannot afford their market price, the real question to be considered is how to finance that country's access to these drugs, whether patented or not. The current discussions in the TRIPS Council concerning cross border compulsory licensing appear to be premised on the assumption that the companies or institutions which develop such drugs should essentially bear the financial burden of supplying these drugs to countries which cannot afford them.

Research and development in all innovative sectors, including pharmaceuticals, can be funded through grants or, as is the case of the private sector and some academic institutions, through revenues generated by the sale of the resulting products. These revenues in turn are largely dependent on the exclusive rights afforded by patent protection, which is of a limited duration. Cutting off these revenues will deprive entities carrying out research and development of the funds necessary to continue their work. In addition, without the guarantees of effective patent protection, innovative industries and research institutions cannot take the risk of investing in the R&D necessary to the development of new products; indeed, a company's financial viability may depend on the strength of its patents given the sensitivity of share prices to a firm's patent portfolio in certain industries. Innovative companies whose revenues are reduced in certain markets may also be obliged to raise their prices in other markets to recoup their R&D costs.

ICC submits that the problem of access to medicines is essentially one of financing, both of the R&D to produce the necessary drugs and of the infrastructure necessary to administer them effectively. ICC also submits that this financing should be the responsibility of the entire international community, including industry and governments. The private sector is already working with governments and non-governmental organizations to develop and deliver drugs, as well as to build the infrastructure necessary to combat diseases prevalent in developing countries, such as malaria, tuberculosis and HIV/AIDS (see attached table for examples of initiatives). ICC therefore urges governments to give priority to voluntary initiatives and partnerships with the private sector to resolve the problem of access to medicines rather than resorting to a system of unrestrained cross border compulsory licensing which imposes the burden of financing primarily on innovative organizations.

Working with the private sector through voluntary mechanisms will also help reduce the risk that products being manufactured and distributed are of substandard quality, which in the case of pharmaceuticals, can have dangerous and even lethal consequences (see table for proportion of drugs failing quality control tests in developing countries). This risk can spread into other markets if drugs produced under a cross border compulsory licence, not subject to the quality control standards of the patent holder, are diverted into other markets, as has recently occured in Europe. [6]

[6] *The Financial Times.* 3 October 2002, Section Europe Pg. 8, DYER, Geoff "Netherlands acts against re-sold Aids drugs Africa illegal re-exports uncovered:" ; *The Guardian,* 4 October 2002, Boseley and Carroll.

Although ICC urges governments to give priority to voluntary solutions for the reasons stated above, it recognizes that negotiations are underway in the TRIPS Council to decide on a mechanism to allow a country to issue compulsory licences for the purpose of exporting to other countries that do not have sufficient manufacturing capacity in the pharmaceutical sector. ICC is concerned that sight of the initial objective has been lost during the course of these discussions. The genesis of the Doha Declaration on TRIPS and Public Health was the debate on how to help populations in certain low income countries to access medicines for HIV/AIDS, malaria and TB. Some of the solutions being proposed are far wider than necessary to tackle this issue and will erode the patent system without any corresponding contribution to resolving the original problem. ICC urges the TRIPS Council to keep its focus on diseases of the degree of seriousness of HIV/AIDS, malaria and TB and on access by countries that cannot afford drugs for such diseases.

To limit unneccessary erosion of the patent system, which could in turn discourage research into drugs for the diseases falling within the scope of any mechanism eventually agreed, any solution to the cross-border compulsory licensing problem must include adequate safeguards to protect the patent holder's interests. ICC urges that the TRIPS Council clarify the following critical issues:

That the field of use of cross border compulsory licensing be strictly limited.

That the solution should not apply to products other than pharmaceuticals.

That safeguards be put into place to protect the rights of the innovator from re-exportation of the drug out of the receiving country and from diversion of the drug either within the manufacturing country or to other countries.

That safeguards be put in place to limit which countries will be eligible as a receiving country, and which countries will be eligible as a manufacturing country.

That the duration of a cross border compulsory licence be limited in time and that the cross border compulsory licence itself be reviewed periodically by the TRIPS Council.

That the exporting and importing countries issue cross border compulsory licences that comply with each provision of TRIPS Article 31, excepting Article 31 (f) but including prior notice to the right holder in conformity with Article 31 (b) and with particular emphasis on Article 31 (c) as to limiting the scope of the cross border compulsory licence to the purpose for which the use was authorized.

Attached is a table of facts and figures which ICC hopes will contribute to the debate by setting the discussions in a factual context.

DISCUSSION ON ACCESS TO MEDICINES AND CROSS BORDER COMPULSORY LICENSING: BACKGROUND FACTS

A/ Prevalence of TB, malaria, HIV/AIDS and existence of drug patents

Table I provides information concerning the prevalence, in the developing world, of the diseases specifically mentioned in the Doha Declaration on TRIPS and Public Health. **Table II** provides general information concerning the existence of patents on drugs for treating these diseases, and **Table III** details patent coverage in Africa for antiretroviral drugs. The combination of these facts suggests that the existence of patents alone is not responsible for the lack of access to such drugs.

Table I ***Prevalence of TB, malaria and HIV/AIDS in developing countries***

Disease	Deaths w-wide	New Cases	Prevalence in Developing World
TB[7]	2 million per year	>8 million per year	2 million in sub-Saharan Africa; 3 million in South East Asia, 0.25 million in Eastern Europe (per year)
Malaria[8]	>1 million per year	300 million per year	90% of deaths w-wide in Sub-Saharan Africa
HIV/AIDS	3 million[9] in 2001	5 million[10] in 2001	95% in developing world[11]; 40 million HIV cases w-wide; 28.5 million (71%) in Sub-Saharan Africa [12]

[7] WHO fact sheet on tuberculosis no 104, revised August 2002, see website. http://www.who.int/mediacentre/factsheets/who104/en.
[8] Roll Back Malaria, see WHO website fact sheet on malaria no 94, http://www.who.int/inf-fs/en/InformationSheet01.pdf.
[9] UNAIDS Report on the Global HIV/AIDS Epidemic 2002, page 8.
[10] UNAIDS Report on the Global HIV/AIDS Epidemic 2002, page 8.
[11] “Patent Protection and Access to HIV/AIDS Pharmaceutical in Sub-Saharan Africa”, A Report Prepared for the World Intellectual Property Organization (WIPO), International Intellectual Property Institute, 2000.
[12] UNAIDS Report on the Global HIV/AIDS Epidemic 2002, page 8.

Table II Patents on drugs for TB, malaria and HIV/AIDS

Disease	**Patents on relevant drugs**
TB and malaria	Some 95 % of the pharmaceutical products on the World Health Organization's Essential Drugs List are now "off patent", that is, no longer protected by patents[13]. This list includes 9 anti-tuberculosis drugs and 8 drugs against malaria[14].
HIV/AIDS	Most anti-retroviral drugs not protected by patents in majority of developing countries.[15] Some 95 % of the pharmaceutical products on the World Health Organization's Essential Drug List - which includes many drugs used to treat various aspects and side effects of HIV/AIDS - are now "off patent", that is, no longer protected by patents[16]. This list includes 12 antiretrovirals.[17]

[13] WIPO *Emerging issues in IP: Patents & access to drugs and health care.* "Striking a Balance: Patents and Access to Drugs and Health Care". http://www.wipo.org/about-ip/en/studies/publications/health_care.htm
[14] WHO Essential Medicines Model List (Revised April 2002) Core List. http://www.who.int/medicines/organization/par/edl/eml.shtml
[15] "Patent Protection and Access to HIV/AIDS Pharmaceutical in Sub-Saharan Africa", page 36, Report Prepared for The World Intellectual Property Organization (WIPO), International Intellectual Property Institute, 1996, 2000.
[16] WIPO *Emerging issues in IP: Patents & access to drugs and health care.* "Striking a Balance: Patents and Access to Drugs and Health Care". http://www.wipo.org/about-ip/en/studies/publications/health_care.htm
[17] WHO Essential Medicines Model List (Revised April 2002) Core List. http://www.who.int/medicines/organization/par/edl/eml.shtml

Table III ***Patent coverage in Africa for antiretroviral drugs for HIV/AIDS, by country***[18]

	NRTIs*							NNRTIs*			Protease Inhibitors					
		Epivir [GSK]			Videx [BMS*]		Ziagen [GSK]		Stocin [Merck]				Fortovase [Roche]		Viracept [Agouron]	Total
Algeria																0
Angola																0
Benin	X	X								X					X	4
Botswana	X	X		X			X			X	X					6
Burkina Faso	X	X								X					X	4
Burundi	X			X												2
Cameroon	X	X								X					X	4
Cape Verde																0
Central African Republic	X	X								X					X	4
Chad	X	X								X					X	4
Comoros	X	X		X												3
Congo (Republic)	X	X					X			X					X	5
Congo (Democratic Republic)	X											X				2
Côte d'Ivoire	X	X								X						3
Djibouti																0
Egypt	X	X														2
Equatorial Guinea																0
Eritrea																0
Ethiopia																0
Gabon	X	X								X					X	4
Gambia	X	X		X			X			X	X				X	7

[18] Table III was taken from a study completed by Amir Attaran and Lee Gillespie-White in October 2001. ATTARAN, Amir and GILLESPIE-WHITE, Lee. "Do Patents for Antiretroviral Drugs Constrain Access to AIDS Treatment in Africa". *Journal of the American Medical Association.* October 17, 2001-Vol. 286, No. 15, Pg. 1888.

Ghana	X	X		X			X			X					X	6
Guinea										X					X	2
Guinea Bissau															X	1
Kenya	X	X		X			X			X	X				X	7
Lesotho	X	X					X			X	X				X	6
Liberia																0
Libya																0
Madagascar	X	X														2
Malawi	X	X		X						X	X				X	6
Mali	X	X								X					X	4
Mauritania	X	X								X					X	4
Mauritus																0
Morocco	X	X														2
Mozambique																0
Namibia																0
Niger	X	X													X	3
Nigeria	X	X		X									X			4
Rwanda	X			X												2
Sao Tome and Principe																0
Senegal	X	X								X					X	4
Seychelles	X	X		X			X									4
Sierra Leone	X			X			X									3
Somalia										X						1
South Africa	X	X		X	X	X	X	X	X	X	X	X	X		X	13
Sudan	X	X		X			X			X	X				X	7
Swaziland	X	X					X			X	X				X	6
Tanzania	X	X		X			X			X						5
Togo	X	X													X	3
Tunisia	X	X														2
Uganda	X	X		X			X			X	X				X	7
Zambia	X	X		X			X			X	X					6
Zimbabwe	X	X		X			X			X	X		X		X	8
Total	37	33	0	17	1	1	15	1	1	25	12	2	3	0	24	172

* NRTI indicates necleoside reverse transcriptor; NNRTI, non-NRTI; GSK, GlaxoSmithKline; BMS, Bristol Myers Squibb; BI, Boehringer Ingelheim.

B/ Healthcare infrastructure

The following data puts into perspective other identified factors contributing to the lack of available drugs to treat TB, malaria and HIV/AIDS. These include insufficient public funding for the purchase of drugs and the lack of an adequate medical infrastructure to properly deliver medicines to the target patient population.

Public health expenditures

a) Western Europe and North America upwards of USD 1,500 per person annually.

b) Africa frequently under USD 20 per person.[19]

World Health Organization insights into factors contributing to lack of access to essential drugs in the developing world[20]:

c) Over one-third of the world's population lacks access to essential drugs, mainly in poorest parts of Africa and Asia ;

d) 50-90% of drugs in developing and transitional economies are paid for out-of-pocket;

e) Up to 75% of antibiotics are prescribed inappropriately; worldwide average of patients who take their medicines correctly is 50%;

f) Less than one in three developing countries have fully functioning drug regulatory authorities; and

g) 10-20 % of sampled drugs fail quality control test in many developing countries. Failure in good manufacturing practices too often results in toxic, sometimes lethal products.

[19] "Beyond Our Means? The Cost of Treating HIV/AIDS in the Developing World", Martin Foreman, The Panos Institute (London, 2000). See www.panos.org.uk.

[20] WHO Essential Drugs and Medicines Policy, see www.who.int/medicines, "The Rationale of Essential Medicines" (updated 8 November 2002)

C/ Public-private partnerships and private sector initiatives for supplying needed drugs

Table IV provides a non-exhaustive listing of certain public-private partnerships and private sector initiatives working to provide access to drugs to treat HIV/AIDS, TB and malaria in developing countries. Some of these initiatives provide outright grants to developing countries or international organizations to allow for the purchase of needed drugs, while others provide needed drugs directly to the developing countries or international organizations. Other programs conduct research into targeted diseases.

Table IV[21] ***Public-private partnerships and private sector initiatives for supplying needed drugs***

HIV/AIDS, TB and malaria

Initiative	Participants	Goals
The Global Fund	Government, philanthropic organizations, industry and individuals	Attracts, manages and distributes financial resources to combat HIV/AIDS, tuberculosis and malaria

HIV/AIDS

Initiative	Participants	Goals
Accelerating Access Initiative	UNAIDS, WHO, UNFPA, World Bank, Merck & Co. Inc., Boehringer Ingelheim, Bristol-Myers Squibb, F. Hoffmann-La Roche, GlaxoSmithKline and Abbott Laboratories	Finds ways to broaden access while ensuring rational, affordable, safe and effective use of drugs for HIV/AIDS-related illnesses

[21] Information used for Table IV was taken from the International Federation of Pharmaceutical Manufacturers Association website at www.ifpma.org .

HIV/AIDS *(continued)*

Initiative	Participants	Goals
African Comprehensive HIV/AIDS Partnership (ACHAP)	Government of Botswana, the Bill and Melinda Gates Foundation, Merck & Co., Inc./The Merck Foundation	Helps prevent HIV infection, increase rates of diagnosis and treatment of HIV/AIDS in Botswana. Merck & Co., Inc. Donates antiretroviral medicines
Enhancing Care Initiative	Merck & Co., Inc., Harvard AIDS Institute Francois-Xavier Bagnoud Center for Health & Human Rights at the Harvard School of Public Health, Brazil, Senegal, KwaZulu Natal province in South Africa and Thailand	Helps advance the quality of and access to comprehensive education, care, and treatment for individuals living with HIV/AIDS in developing countries
International AIDS Vaccine Initiative (IAVI)	Developing countries, governments and international agencies, GlaxoSmithKline, Merck & Co., Inc., Boehringer Ingelheim, Bristol-Myers Squibb, Roche Holding, Rockefeller Foundation, World Bank, USAID, the Bill and Melinda Gates Foundation.	Collaborates with developing countries, governments and international agencies dedicated to accelerating the development of a vaccine to halt the AIDS epidemic.
Viramune Donation Program	Boehringer Ingelheim	Viramune offered free of charge for a period of 5 years to developing countries

Tuberculosis

Initiative	Participants		Goals
Action TB	Tuberculosis	GlaxoSmithKline, and Academic Research Groups in South Africa, Gambia, UK, USA	***International, coordinated research program aimed at finding new targets for anti-TB therapies, identifying novel vaccine candidates and identifying surrogate markers for use in clinical trials.***
Global Alliance for TB Drug Development	Tuberculosis	An alliance of industry, NGO's and foundations from around the world.	***Discovery and development of cost-effective new anti-TB drugs.***
Stop TB Partnership	Tuberculosis	International Federation of Pharmaceutical Manufacturers Association, WHO	***Development and improvement of strategies to control and eliminate TB.***

Malaria

Initiative	Participants		Goals
Coartem		Novartis, WHO, Institute for Microbiology and Epidemiology in Beijing	***Novartis supplies, through WHO, unlimited quantities of Coartem to public sector agencies of developing countries where malaria is endemic.***

Malaria *(continued)*

Initiative	**Participants**		*Goals*
JPMW Alliance	Malaria	Japanese pharmaceutical companies, the Ministry of Health, Labor & Welfare, and the Special Program for Research and Training in Tropical Diseases of the WHO, Kitasato Institute, Tokyo	***Screens chemical entities from the chemical libraries of the Japanese pharmaceutical companies for antimalarial activity.***
LAPDAP Antimalarial Drug Development	Malaria	WHO, UNDP, World Bank, WHO Special Program for Research and Training of Tropical Diseases and GlaxoSmithKline.	***Research agreement to develop a new effective oral treatment for uncomplicated malaria, primarily for use in Sub-Saharan Africa, at affordable prices for public health programs.***
Malaria Vaccine Initiative	Malaria	Program for Appropriate Technology in Health, the Bill and Melinda Gates Foundation, GlaxoSmithKline.	***Develops malaria vaccines and ensures their availability and accessibility in the developing world.***
Medicines for Malaria Venture	Malaria	Bayer, GlaxoSmithKline, Roche, the International Federation of Pharmaceutical Manufacturers Associations, WHO, the Rockefeller Foundation, World Bank, Department for International Development, the Swiss Agency for Development Cooperation, the Ministry for Development Cooperation and the Netherlands.	***Discovers and develops new anti-malarial drugs suitable for use in developing countries.***

Malaria *(continued)*

Initiative	Participants		*Goals*
Roll Back Malaria Global Partnership	Malaria	WHO, UNDP, UNICEF, World Bank, NGOs, donor agencies, research groups, private sector (eg Exxon Mobil, GlaxoSmithKline, Novartis, Proctor and Gamble, World Alliance for Community Health)	***RBM seeks to strengthen health systems to ensure better delivery of health care, especially at district and community levels, and to encourage the development of new and more effective anti-malarial drugs and vaccines.***

D/ Impact beyond the private sector

Academic and other non-profit research insitutions also derive revenue from the outlicensing of patents on drugs. Without this revenue, these institutions would have to draw more heavily upon local government support or reduce much needed medical research. Below are figures indicating licensing revenues for over 300 universities, hospitals and other research institutions in the US and Canada in 2000 – these do not relate exclusively to, but include, licensing of drug patents.

Table V ***Data relating to patent filing and licensing activity of academic and other non-profit research institutions in the US and Canada in fiscal year 2000 (July 1, 1999 - June 30, 2000)***[22]

Total inventions disclosed	13,032
US patent applications filed in fiscal year	9,925
Total Adjusted Gross License Income received	USD 1,26 billion
Total U.S. patents issued	3,764
Start-up companies formed around university intellectual property in 2000	454
Start-up companies formed around university intellectual property since 1980	3376

In addition, for US universities that responded to the 2000 AUTM survey:

Percentage increase from 1991 to 2000 in patent filings	256%
Percentage increase from 1993 (earliest year surveyed) to 2000 for patents issued to U.S. universities	131%
Percent increase in gross license revenue from 1991 to 2000	698%

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[22] Information extracted from "Association of University Technology Managers (AUTM) Licensing Survey:Fiscal Year 2000" , Copyright 2002, The Association of University Technology Managers,Inc.

Policy Statement

ICC's expectations regarding a WTO investment agreement

Prepared by the Commission on Trade and Investment Policy

Introduction

Worldwide economic integration requires business to produce and market goods and services on a global scale, by integrating the skills of people and various assets – tangible (e.g., land and resources), intangible (e.g., intellectual property) and monetary (e.g., stocks). In this process, trade and investment have become indistinguishable parts of a single strategy. Indeed, companies trade to invest and they invest to trade.

Therefore, ICC fully supports the aim of WTO investment negotiations towards the establishment of a legally binding, comprehensive multilateral framework of rules for investment that would provide for better market access, greater transparency and high standards of investment protection worldwide. Such a framework should reflect in a balanced way the interests of home and host countries, and take due account of the development policies and objectives of host governments, as well as their right to regulate in the public interest, without discriminating against foreign investors.

Currently, international investment activity is governed by over 1800 bilateral investment treaties (BITs), regional agreements, such as the North American Free Trade Agreement (NAFTA), and to a varying extent by multilateral agreements in the WTO on Trade-Related Investment Measures (TRIMS), Trade-Related Aspects of Intellectual Property Rights (TRIPS), and the General Agreement on Trade in Services (GATS). These instruments have proven useful and flexible in meeting the needs of business and host countries.

However, given the growing importance of international investment – for investors, home, and especially host countries – ICC believes that a multilateral framework of WTO rules on investment would contribute to transparent, stable and predictable conditions for long-term cross-border investment, particularly foreign direct investment (FDI). The purpose of such a framework would be to increase the quantity of investment, encourage its more efficient allocation and create a level playing field for developing countries wishing to attract a growing share of investment inflows to underpin their economic growth, and by doing so to make a positive contribution to their human and institutional development.

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In view of the overarching objective of the Doha Development Agenda agreed at the 4th WTO Ministerial Conference in 2001, which is to address as a priority the concerns of developing countries, it is essential for WTO members to forge a consensus on both the desirability and the elements of a multilateral framework for FDI that are to be negotiated after the Cancun Ministerial Conference in September 2003.

ICC hopes to contribute to building this consensus with this policy statement on ICC's objectives for WTO investment negotiations and the requirements of a multilateral framework of rules on investment.

Building on the results of Doha

In preparation for the WTO Ministerial Conference in Doha, Qatar, ICC recommended in its policy statement that

> "Governments should take the opportunity of new WTO trade negotiations to begin a process towards establishing high-standard rules by developing a framework of multilaterally-agreed principles for FDI, commencing with transparency, non-discrimination, and national treatment (including to address the more favourable treatment of foreign investors than of local enterprises). Such principles would complement and support the competitive process of autonomous liberalization currently being pursued by a growing number of developing countries."

The Doha Ministerial Declaration did not launch investment negotiations, as ICC had hoped. Nonetheless, it states that "negotiations will take place after the Fifth Session of the Ministerial Conference on the basis of a decision to be taken, by explicit consensus, at that Session on modalities of negotiations." ICC therefore expects negotiations to start in earnest immediately following the Fifth WTO Ministerial Conference to be held in Cancun (Mexico) from 10-14 September 2003.

Moreover, ICC was encouraged by the commitment of Members to clarify in the WTO Working Group on the Relationship Between Trade and Investment the issues of: "scope and definition; transparency; non-discrimination; modalities for pre-establishment commitments based on a GATS-type, positive list approach; development provisions; exceptions and balance-of-payments safeguards; consultation and the settlement of disputes between Members…" This paragraph lays out the WTO's work programme on investment until the Fifth Ministerial, but does not exclude that the negotiations may deal with additional topics at a later stage.

Core elements of a WTO investment agreement

ICC believes that WTO negotiations should aim to build a solid consensus on the following basic elements of a global framework of WTO rules and disciplines to govern cross-border investment:

Scope and definition

Investment should be broadly defined to cover the multitude of ways in which investors access foreign markets, and the multiple types of assets that are considered to be an investment. A single definition of the term "investment" should apply to both liberalization and protection provisions of a WTO investment agreement.

ICC prefers a broad definition of investment drawing on the provisions of the most extensive BITs, and including: shares, stocks, bonds and debentures or any other forms of participation
in a company, business enterprise or joint venture; strategic alliances; claims to money or performance under contract having economic value; real property; tangible and intangible property; goodwill; intellectual property; trademarks; contractual obligations under service or turnkey construction contracts; BOT (build, operate, transfer) arrangements; legal rights such as licenses, and other forms of business cooperation; as long as they reflect a long-term commitment to growing an overseas-based business.

The term "investor" should be broadly defined to include business entities (traditional and other), natural persons, joint ventures, business organizations, strategic alliances, etc. The definition of "investor" should also allow for possible new forms of investor arrangements. Majority ownership and management control should be always be possible in cases where investors consider this as essential for running a business effectively.

The term "national" should include any natural person who is a citizen or permanent resident of a WTO member country and any entity (e.g., corporation, trust, partnership, joint venture, sole proprietorship, or other association) constituted or organized under the laws of that WTO member country.

The term "returns" should be broadly defined to include: profit, capital gains, interest, dividends, royalties, and fees (including service and technical assistance fees) and other financial or performance-related remuneration, and proceeds from liquidation of an investment.

A WTO agreement on investment should include a definition of the territorial entities and the regional economic integration arrangements to be bound by the obligations of the agreement. Such an agreement should apply equally to sub-national entities and to members of regional arrangements.

Transparency

All national provisions affecting rights of entry, establishment and post-establishment operations, such as sectors or industries reserved for domestic investors, conditions applying to joint ventures, taxation etc., should be publicly available. In addition to the WTO's general transparency provisions, notably the obligation to publish, notify and impartially administer all relevant rules and regulations pertaining to the conditions for, restrictions of and changes in the investment regime affecting foreign investors, the right of foreign investors to appeal and review such measures before they become effective should form part of procedural transparency in the context of a framework of WTO rules on investment. ICC believes that a negative list or "top-down" approach for a comprehensive investment regime (i.e. no sector would be excluded a priori but specific exceptions would be listed) would provide for greater transparency for investors and governments alike.

Non-discrimination

A framework of multilateral investment rules must incorporate the principles of MFN and national treatment, which form the bedrock of all WTO agreements. ICC supports a high unconditional standard of MFN treatment both in the pre- and the post-establishment phase of foreign investment to ensure equal treatment of foreign investors by the host country. National treatment must aim at treating foreign investors no less favourably than domestic investors.

Pre-establishment and post-establishment conditions

From ICC's point of view, a framework of WTO rules on investment should include pre-establishment obligations to remove discriminatory measures against foreign investors through general MFN and national treatment, while scheduling exceptions (screening, national security etc.) on a negative list or "top-down" basis. An advantage of the negative list approach is that new sectors, arising as a result of technological development, could be automatically covered by the disciplines of an agreement unless explicit action was taken to exclude them. A negative list approach would be the most transparent and pro-liberalization.

If, however, WTO Members adhere to the positive-list approach identified in Doha, ICC expects the results to be less investor-friendly, with the added risk that Members schedule merely their current liberalization achievements rather than new market-access commitments. This would limit the market-opening effect and up-front liberalization resulting from such an agreement and its added value for business.

Investment protection

One of the main objectives of a WTO agreement on investment should be to provide strong and effective protection for investors against nationalization, expropriation, and measures tantamount to expropriation. Protection should be provided both against outright expropriation, as well as so-called "creeping expropriation" caused by progressive erosion of the original conditions under which an initial investment decision was made. In the event such actions take place, expropriations must be for a public purpose and carried out in a non-

discriminatory fashion, and investors must be provided with an acceptable timetable for divestment. Clear guarantees of prompt, adequate and effective compensation should be paid in freely convertible currencies.
A WTO agreement on investment should offer a broad definition of expropriation. ICC would therefore like to see expropriation standards included in the negotiations.

Transfer of funds

Because the right to make financial transfers is intrinsic to foreign investment projects, a WTO investment agreement should include clear provisions guaranteeing investors the freedom to transfer all payments related to an investment (i.e., capital, current income and proceeds from liquidation, payments pursuant to a loan agreement in connection with investments, payments for technical services and royalties for the use of trademarks, patents and other intellectual property) without delay and in a freely convertible currency.

Development provisions

ICC considers that the core provisions of an investment agreement as described in this statement would be of great benefit to developing countries by supporting their economic development and enabling them to attract a greater share of world investment flows. The special situation of developing countries can and should be taken into account by means of negotiated sector exceptions and phasing-in periods. Specific concerns of developing countries embodied in existing BITs should be reflected in a multilateral framework. Moreover, technical assistance and capacity building in helping to implement the provisions of such an agreement will make a significant contribution towards making the provisions of the agreement operationally effective. Technical assistance and capacity building to encourage the transfer of technology from foreign investors to local partners would be particularly helpful to developing countries.

Exceptions and balance-of-payments safeguards

While recognizing that the ability to establish reservations and exceptions to provisions of a WTO agreement on investment will be necessary to ensure acceptance and facilitate adherence to the agreement, such reservations and exceptions should be strictly limited and subject to:

- a “stand-still” commitment: no further country-specific exceptions to either market access or non-discrimination commitments; and
- a “rollback” commitment, meaning progressive liberalization of those areas where countries have registered exceptions.

For the sake of transparency there should be no general exception clause (e.g. excluding “any existing non-conforming measures”), but detailed country-specific exception lists, as lack of transparency in the process of administering reservations and exceptions raises questions about non-discrimination.
Under a WTO investment agreement, recourse to balance-of-payments safeguards should be the only justification for temporarily limiting financial flows.

Settlement of disputes

As in the case of other WTO agreements, effective dispute settlement mechanisms are essential to secure the benefits of a WTO agreement on investment. ICC is of the view that such an agreement should include provisions for both state-to-state and investor-to-state dispute settlement. Therefore, ICC favours a full extension of the WTO state-to-state dispute settlement procedure to all provisions of a WTO investment agreement. Furthermore, in order to provide effective protection of investor rights, the agreement should include a binding investor-to-state dispute settlement mechanism, in addition to and separate from the WTO "state-to state" dispute settlement procedure. While remaining a treaty regulating strictly state-to-state disputes, the WTO must in an agreement on investment provide for effective means to settle disputes between investors and host governments. Investors should be required to make a choice between taking a dispute to the existing WTO "state-to-state" dispute settlement mechanism through their government, or opting for the investor-to-state mechanism. Under such an investor-to-state mechanism, investors should be free to choose between resort to arbitration or going to the courts, this choice however having to be fixed at a given time. In the case of arbitration, a WTO investment agreement should include a provision stating that WTO members agree to submit themselves to arbitral proceedings, which the investor may put in motion. While the investor and the host government should be free to select the arbitration rules and forum, a WTO investment agreement should nevertheless foresee a choice of competent authorities in case no selection was previously made, namely ICSID, UNCITRAL, or the ICC International Court of Arbitration.

Conclusion

ICC strongly believes that only by providing high standards of market access and investment protection will a WTO agreement on investment offer an added value to companies by increasing the predictability of the policy environment for their investment, which in turn may lead to additional investments. Adherence to such high standards will encourage foreign investment in developing countries.

To summarize, ICC would like to see the following key elements included in a multilateral agreement on investment[23]:

- a broad definition of investment[24];
- transparency;
- a negative list approach for pre-establishment including national treatment, MFN treatment and market access provisions;
- national treatment and MFN treatment in the post-entry stage;
- a high standard of investment protection;
- provisions for comprehensive and unrestricted transfer of funds; and
- an obligation for member countries to provide for investor-to-state dispute settlement procedures.

ICC knows that it will be difficult to achieve all of the above-mentioned objectives in the Doha Round. Nonetheless, it should be noted that many of the high standards of market access and investment protection described above are incorporated in a large number of BITs, many of them concluded with developing countries. A WTO investment agreement should therefore strive to multilateralize those same high standards. At this early stage of the negotiating process, ICC wishes to state world business expectations so that these can serve as a reference point for the initial proposals put forward by WTO members and over the course of the negotiations. ICC stands ready to provide further input into the negotiation process as it progresses.

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[23] ICC India considers that "there is no evidence that the pattern and flow of investment will change in any significant way with multilateral rules on investment. Therefore, any comments on the basic provisions that should be included in such rules is premature." ICC India further remarks that it "does not support the framing of multilateral rules on investment unless the rules enshrined in BITs are harmonized and the specific concerns of developing countries embodied in BITs on a case by case basis are also included in a multilateral framework."

[24] ICC Thailand is of the view that short-term capital flows should be excluded from a WTO investment agreement and strongly recommends a positive list approach.

Policy Statement

ICC recommendations for a WTO agreement on trade facilitation

Prepared by the Commission on Customs and Trade Regulations

ICC is actively addressing a wide range of international issues with the aim of improving processes associated with cross border trade. The 1996 WTO Singapore ministerial conference recognized the benefit of addressing "trade facilitation" within the WTO, and the 2001 Doha ministerial conference agreed that this topic should be considered for a WTO rules-based agreement with particular reference to the modernization of Articles V, VIII and X of the GATT 1994.

Trade Facilitation

ICC's preferred definition of "trade facilitation" focuses on improvements in the efficiency of the processes associated with trading in goods across national borders. This requires the adoption of a comprehensive and integrated approach to simplifying and reducing the cost of international trade transactions, and ensuring that all relevant activities take place in an efficient, transparent, and predictable manner, based on internationally accepted norms, standards and best practices. Trade facilitation is not just a matter of improving customs procedures but should also target the growing range of controls being implemented at national borders by other authorities. Procedures associated with agricultural products and security are just two areas where many new controls are being implemented and where it is imperative that a rational, transparent and standardized approach be adopted.

ICC's aim is to encourage the establishment of a trade facilitation agreement that benefits all WTO Members through the establishment of mutually agreed rules covering trade procedures that improve the management process of traded goods as they cross national borders.

International transactions sometimes span a series of countries, some not necessarily directly concerned with the manufacture or use of the goods. Specific issues may arise through the goods' physical transit of intervening territories and the availability or not of arrangements linking initial export and final import.

Facilitation of trade therefore concerns not only the countries directly involved in a transaction but also others indirectly linked to the transaction. An important role for an International Trade Facilitation Agreement (ITFA) will be to define the responsibilities of governments involved in complex transactions covering export, transit, and final import of the goods.

Benefits

ICC is convinced that an ITFA will deliver very significant benefits to all Members -- especially those that suffer from commercially damaging delay or lack of predictability due to inefficient border or transit procedures. The more specific benefits will be:

- more gross revenue collection,
- more cost effective revenue collection,
- more effective detection of non-compliance,
- improved security of international transactions through improved control of high risk transactions,
- more efficient and correct application of regulations, thereby ensuring that any differential treatment of traders is based on objective criteria,
- more predictable and faster movement of goods,
- more efficient transit procedures,
- increased trade, increased revenue, and improved economic performance, and
- more efficient and predictable border procedures encouraging increased foreign direct investment.

The bottom line for Members is increased trade, increased foreign direct investment, enhanced competitiveness, overall reduction in costs, and enhanced government revenues. (For more details on benefits see the ICC statement "Trade liberalization, foreign direct investment and customs modernization: a virtuous circle" 8 October 1999.)

The largest potential for improvement in trade facilitation exists in, and therefore the main potential beneficiaries are generally likely to be, developing countries. An ITFA will augment the capacity of developing countries to handle and grow their share of international trade, not least in trade with other developing countries. Increased efficiency will enable higher volumes of both imports and exports to be managed with the same level of resources, resulting in higher compliance and lower costs for both governments and business.

Scope of an agreement

The WTO ministerial conference in Cancún in September 2003 offers the opportunity to make a key change in the effective border management of international trade. Not only is there huge scope for improving the efficiency of the current international trade process but there is also a compelling need to improve customs efficiency to deal with disciplines covering emerging and potentially costly new areas of control, such as security issues and agricultural goods. For example, modern customs administrations are an operational necessity to ensure that security and trade facilitation objectives are integrated in ways that maintain both objectives. (See also ICC Policy Statement on Supply Chain Security, 18 November 2002.)

Binding commitments are essential because only the WTO can ensure the political support required for durable improvements in global trade facilitation.

ICC believes that a WTO agreement covering trade facilitation should encompass the following principles:

- rules should have sufficient impact to cause a measurable improvement in trade facilitation;
- measurement of the improvement in trade facilitation, for example through the measurement of release times, is in the interest of all WTO members as it will quantify improvement and help ensure the sustainability of improved border procedures;
- rules should set global standards in facilitation, encourage sustainable progress, and assist in the progressive adoption of those standards;
- rules should be non-discriminatory, and must be based on objective criteria;
- rules should not undermine the efficiency and reliability of traders and transport or impose unnecessary costs;
- implementation of a rules-based trade facilitation agreement must be linked to increased overall economic benefits and capacity building to help fund and enable sustainable improvements in those countries with the greatest need; and
- implementation of the rules should be capable of objective assessment and enforcement through the WTO dispute settlement process and policy review mechanism.

In particular, ICC recommends that the WTO seek to improve efficiency and facilitation with reference to the trade facilitation objectives outlined in the attached Annex.

Securing commitment

For agreement to be secured on an approach that is sufficiently ambitious and comprehensive to deliver the benefits described, it is essential to take account of the needs and capabilities of all WTO members. All members should sign up to a significant set of core commitments that will bring about progressive improvements in international trade. There should be a commitment to assess facilitation through the measurement of release times and to reduce them over a period of time. This approach allows improvements to be made within the structure of the existing processes and legal systems.

ICC recognizes that an ITFA should acknowledge the state of development and ability of some WTO member countries to implement the agreement. In such cases it may be necessary to make appropriate accommodation both in transition time and support to ensure that all member countries are capable of implementing and benefiting fully from the agreement.

Capacity building

In line with the commitment made in Doha to establish this round as the "development round," capacity building for those countries unable to finance improved border management is vital.

Capacity building should not just consist of a package of training. It must be a project that takes due regard of the infrastructure development of countries and builds both capability and competence in a way that will lead to sustainable improvement. ICC urges that the agreement include commitments to capacity building based on member needs, with designated funding and WTO coordination of donor activity to ensure efficiency and common standards.

Business very much supports the process of capacity building and will work energetically together with international organisations and local administrations to help manage the process of change and contribute expertise where required. To ensure that capacity really produces the benefits on a sustainable basis, a system of measuring the benefits achieved through this process should be implemented.

Conclusions

A trade facilitation agreement is fundamental to the establishment of an improved and more efficient management process for international trade in goods on a global basis. All WTO member countries will benefit from it -- especially those burdened with the least efficient trading processes, either through infrastructure or managerial limitations or because of procedural barriers being imposed by trading partners. ICC is committed to assisting the WTO and its member countries to realize the full benefits of international trade through a trade facilitation agreement that encourages improved border management and discourages both inefficient and artificially complex or burdensome border procedures. To realize these benefits for all parties, WTO negotiations should be launched at the upcoming Cancún ministerial regardless of the decisions made on the other "Singapore Issues." In view of the high level of mutual benefits for all parties, it will be in their interest to begin implementing eventual results without waiting for the formal conclusion of the Doha Development Round.

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Annex: general ICC trade facilitation objectives

- transparent conduct by customs and other government agencies, with easily accessible procedures and regulations, including an open, independent and efficient appeal process of customs decisions open to all importers;
- an authorization for legitimate traders, allowing operators to cross national borders with minimal interference, through the use of pre-arrival declarations and post release audits, enabling Customs to concentrate their resources on the key target of illegitimate trade;
- the measurement of release time at the frontier and, the introduction of targets to encourage governments to reduce release time;
- use of modern customs techniques such as risk assessment and profiling, enabling administrations to make direct resources gains, while reducing the time for legitimate trade to cross borders;
- utilization of commercial systems for customs controls including sophisticated information technologies, the internet and integrated information systems more rapidly adaptable to business and government needs than independent customs information technology systems;
- adoption and implementation of international standards in the trade transaction process such as those of the United Nations, WCO and ICC;
- global automation to create a paperless environment, with data transmitted and processed by Electronic Data Interchange (EDI) or over the internet;
- administration of official frontier controls by a single agency, preferably customs;
- consider where appropriate, a "Seamless Integrated Transaction" where a core set of identification control data can be generated, submitted and processed at any time during the transaction, to avoid duplication of the traditionally separate export and import procedures.

Policy Statement

Competition policy in the WTO: Doha Declaration issues

1. Introduction

1.1 In preparation for the 2003 WTO Ministerial Meeting and subsequent negotiations, paragraph 25 of the Doha Declaration mandated the Working Group on the Interaction between Trade and Competition Policy (the "WTO Working Group") to focus on the clarification of:

(i) core principles, including transparency, non-discrimination and procedural fairness;

(ii) provisions on hard core cartels;

(iii) modalities for voluntary cooperation; and

(iv) support for progressive reinforcement of competition institutions in developing countries through capacity building.

1.2 This paper discusses each of these subjects from a private sector perspective, with the objective of providing input to the WTO Working Group. Since business plays a central role in the WTO goal to expand cross border trade in goods and services, ICC assumes that it is helpful to provide input from a business perspective to the WTO as it continues its important work on the interaction between trade and competition policy. ICC represents companies and associations from over 130 countries and is the only representative body that speaks with authority on behalf of enterprises from all sectors in every part of the world.

1.3 ICC continues to support the work of the WTO Working Group and appreciates the opportunity to contribute. ICC's intention is to focus discussion on areas that require consideration from the perspective of international business.

1.4 World business, as represented by ICC, firmly believes that an open multilateral system that facilitates flows of goods, services and investment across national borders is a major force for raising living standards and creating jobs in all parts of the world. Growth in world trade and investment – which far outpaces growth in world output – is an essential condition for the spread of job and wealth creation throughout the world economy. ICC notes that both government and private sector practices can impede these objectives.

1.5 Governments and business must work more closely together to design the multilateral rules for the worldwide marketplace that will be increasingly necessary for the globalization of trade and investment. The special contribution of business is to help governments to develop rules that maximize the scope and ability of business to work productively to create wealth and employment, while maintaining appropriate individual and business freedoms.

1.6 Competition policy is one of the areas in which an international framework is germinating, and in which this necessary balance has to be achieved. Private sector input is necessary to ensure that the work done is realistic, potentially effective, and balanced, therefore more likely to be accepted.

2. Summary

2.1 ICC has actively contributed business views to international discussions on the interaction between trade and competition policy. In its November 1998 "Statement on future WTO work on competition and trade", ICC supported the mandate of the WTO Working Group as established at the December 1996 Singapore Ministerial Conference, but suggested that it should not go beyond educational and informative discussions among its members on market access issues related to competition and trade policies. In that note, ICC recommended that if the WTO Working Group's mandate were to be prolonged, there should be opportunities for the WTO Working Group to receive and consider business views. Dialogue with the business community would be essential should the WTO consider expanding the Working Group's mandate beyond its current analytical and educational focus.

2.2 In a joint statement with the Business and Industry Advisory Committee to the OECD (BIAC), "ICC/BIAC comments on report of the US International Competition Policy Advisory Committee" (3 June 2000), (the "June 2000 Statement") ICC and BIAC stated that "the WTO is not an appropriate forum for the review of private restraints and that the WTO should not develop new competition laws under its framework at this time…" In the June 2000 Statement, ICC also took the view that a dispute resolution mechanism within the framework of a multilateral agreement on competition laws raises many complex issues and was premature at the time.

2.3 There is broadly shared recognition among ICC members that the issues in question are complex and that, while efforts are being made to achieve a workable level of soft harmonization and convergence in the application of the world's already large number of competition regimes, there remain significant differences on substantive competition law principles and their application. Bridging those differences will require time and a great deal of cooperation among governments, competition authorities, private sector interests and other stakeholders. The issue of the inclusion of a competition framework in the WTO system thus should be assessed very carefully as the WTO proceeds at its meetings later this year.

2.4 ICC believes that the "core principles" identified in the Doha declaration that set out this Working Party's present charter – transparency, non-discrimination and procedural fairness – are, as broadly understood, fundamental and that they should be reflected in the competition regime of every jurisdiction that chooses to adopt one.

2.5 ICC identifies in this paper key issues that require consideration in any discussion or analysis of competition policy norms.

2.6 ICC notes that the backdrop for any discussion of procedural or substantive competition policy norms in a multilateral framework is constantly changing. In particular, regard must be had not only to private sector positions such as those put forward by ICC and BIAC, but the ongoing work of other international organizations such as the OECD and the International Competition Network (ICN). Work on many of the issues before the WTO Working Group is proceeding rapidly in various fora shaped by competition policy and legal developments.

2.7 In particular, ICC encourages the WTO Working Group to carefully consider in the broader competition policy context, the application of the principles of transparency, non-discrimination, procedural fairness and protection of confidential information endorsed in the merger context, by the ICN at its inaugural conference in Naples, Italy, September 2002 ("Guiding Principles for Merger Notification and Review") if and when developing recommendations for going forward.

2.8 ICC joins in the condemnation of "hard core cartels," which victimize business consumers and competitors and ultimate consumers alike, while noting the importance of addressing important definitional issues in this connection, as well as the importance of appropriate safeguards for confidential information in the context of investigations of cartel activity.

2.9 With respect to modalities for cooperation, ICC encourages the expanded use of appropriate voluntary "peer review" mechanisms that periodically subject jurisdictions' competition regimes to in-depth scrutiny and comment such as those conducted under the OECD's Regulatory Review program and the WTO's TPRM.

3. Non-discrimination

Competition laws should not discriminate on the basis of nationality

3.1 ICC strongly supports the view that competition laws should not discriminate on the basis of nationality, and that non-discrimination should be considered a core principle of all competition laws. Put another way, the principle of national treatment should apply to competition laws, i.e., the principle that a government should treat the goods, services and persons of other nationalities no less favorably than it treats its own.

3.2 It is generally accepted that competition laws and their implementation should be "nationality-blind," and should be concerned exclusively with the impact on competition of the conduct or transaction in question. The recently adopted ICN "Guiding Principles for Merger Notification and Review" endorse non-discrimination on the basis of nationality in the context of the merger review process. Competition laws that are expressly drafted or implemented so as to favor local as against foreign firms, distort trade and undermine the credibility of competition policy generally. They risk becoming instruments of protectionism rather than a guardian of open and efficient markets.

3.3 Any WTO competition agreement, if one does come about, should include an appropriately tailored prohibition on de jure nationality-based discrimination. ICC considers that including de facto discrimination in such a prohibition would, although attractive at the level of principle, require further consultation and thinking in order to see whether a workable line can be drawn between inappropriate de facto discrimination and legitimate enforcement discretion, both as an evidentiary matter and as a substantive matter.

3.4 The application of the non-discrimination principle to de facto nationality-based discrimination in the context of competition law raises complex issues. These issues are of two kinds. First, it may prove difficult or impossible to identify instances of de facto discrimination with any assurance. A competition authority that wants to bend its policies or its enforcement decisions to favor its nationals can cloak its actions in ostensible competition-based rationales. Second, competition authorities exercise a wide range of discretion in their enforcement decisions, both in choosing their enforcement targets, in reaching their substantive conclusions, and in choosing remedies. In considering this issue, the WTO should take into account the risk that a binding rule against de facto discrimination, accompanied by dispute resolution, could too easily trigger supranational litigation of individual enforcement decisions or enforcement policies, and deprive competition authorities of a degree of necessary and legitimate discretion to enforce or not to enforce in particular cases.

3.5 In adopting any nondiscrimination principle, it is important not to sweep so broadly as to prohibit legitimate distinctions that may coincide with nationality but that nonetheless have appropriate nondiscriminatory bases. For example, evidence-gathering powers will often differ for firms located abroad, in view of sovereignty and other issues that may arise regarding foreign-located evidence. Similarly, regulatory schemes in local markets result in differences in the way competition law is applied in those markets and the way it is applied to foreign-based firms that are not subject to the same regulations. It is important to distinguish in these cases between discrimination based on corporate nationality or ownership, which generally should be unacceptable, and differences based on where the firm is operating and what markets are affected by its activities.

Important questions remain and need to be considered by the Working Group about the application of a non-discrimination principle to competition laws

3.6 Even a prohibition on de jure discrimination raises difficult questions. Set out below are examples that should be considered and resolved before adopting any binding non-discrimination principle. These examples do not, of course, exhaust those that arise in examining the nondiscrimination issue; but they do suggest that the issue is more complex than it may at first seem, and that it requires careful examination and analysis. Preliminary comments have been offered on some of these examples.

3.6.1 *Example 1:* Under a bilateral or regional antitrust cooperation agreement, a jurisdiction cooperates more closely with, or shares information more extensively with, parties to the agreement than with nonparties.
Comment: This does not constitute impermissible discrimination. Competition authorities must have discretion to tailor their cooperation to considerations that are specific to the other jurisdiction involved.

3.6.2 *Example 2:* Under a positive comity or "who goes first" agreement, a presumption is set up under which each party refers enforcement action to the other party, in whose territory the companies are based, the conduct is centered, or the effects of the conduct predominate. The presumption does not apply to jurisdictions that are not party to the agreement or to a similar agreement. *Comment:* As in the last example, this does not constitute impermissible discrimination. Given existing disparities among the world's competition law regimes – disparities that are likely to persist for some time – ICC believes that competition authorities should retain discretion regarding the extent of their cooperation with, or deference to enforcement by, authorities of other jurisdictions. That discretion should not be viewed as inconsistent with the principle of nondiscriminatory enforcement.

3.6.3 *Example 3:* A competition enforcement authority gives explicit priority to effective enforcement against foreign-based cartels whose members sell into its markets.
Comment: While there would be reasons for legitimate concern if this competition authority chose to target foreign cartel participants while ignoring equally culpable domestic participants, or equally damaging domestic cartels, instances of this nature should not be justiciable under internationally binding rules or dispute resolution. Subjecting prosecutorial decision-making of this nature to supranational review would unduly interfere with legitimate discretion and resource allocation, and in effect impose an unwarranted and artificial obligation to "balance" enforcement efforts among a range of targets.

3.6.4 *Example 4:* A jurisdiction's enforcement policy restricts aggressively competitive activities by large powerful firms in order to protect small and medium firms. In the context of this economy, the large powerful firms are foreign and the small and medium-sized firms are local. Apart from policy questions that are raised by a policy that may amount to protection of less efficient firms, this does not necessarily constitute impermissible discrimination. However, what if the jurisdiction passed a new law designed to increase protection for small and medium firms and there was evidence the law was intended to neutralize their foreign rivals' advantages of efficiency and access to capital?

3.6.5 *Example 5:* A competition law that, by its express terms, deals more harshly with, or denies exemptions or favorable treatment to, non-nationals appears on its face to be discriminatory. Does that mean that any exemption available to domestic, but not to foreign, firms is suspect?

3.6.6 *Example 6:* A competition law requires filing and review of international contracts, but has no such requirement for similar contracts between domestic firms: does this constitute impermissible discrimination?

4. Due Process and Transparency

Overview

4.1 ICC strongly believes that due process and transparency are important core principles to be respected and applied in the design, implementation and enforcement of competition laws at the national level and with respect to any multi-jurisdictional enforcement cooperation. Both principles are essential because they provide stakeholders – the public, consumers and competitors – some assurance that the system will produce consistent and rational results and generate confidence in the system of competition law enforcement. Those jurisdictions with the longest traditions of competition law enforcement have managed to create a consensus for such laws and policies by trying to grapple with these issues and to continually balance the interests of a rigorous competitive process with concerns for due process and fair play. It is perhaps all the more important that laws and policies enacted to safeguard the competitive process be seen to be administered in a transparent and fair manner.

4.2 The following are suggested key due process and transparency elements of competition policy offering a preliminary view of elements that need to be considered and resolved before adopting any binding principles of due process and transparency in the WTO context, should this prove desirable. These questions do not, of course, exhaust those that arise in examining these issues; but they do suggest that the issues are complex ones that require careful examination and analysis. Many of these values are endorsed in the "Guiding Principles for Merger Notification and Review" recently adopted by the ICN which should be an important basis for any discussions on issues of transparency and due process in the WTO . The institutional framework that best provides the checks and balances desirable from a business perspective is one that combines both administrative proceedings and private suits in national courts. However, these suggested elements would apply with equal force to regimes that rely exclusively on formal participation in administrative proceedings or those that rely exclusively on private suits before national courts.

4.2.1 *Mechanism for bringing matters before competition agency*. The process should provide a mechanism whereby anyone can bring a matter to the attention (by complaint or otherwise) of the competition agency; such complaint should identify the interests and competitive problems they seek to address. Agencies should develop appropriate systems to filter out spurious complaints.

4.2.2. *Right to be advised of progress and reasons for decisions.* Those who bring matters to the attention of the competition authority should, to the extent practicable and appropriate, be kept advised of the progress of the authority's examination and its ultimate determination, including reasons for not initiating an investigation or launching proceedings if applicable, having regard to confidentiality obligations.

4.2.3 *Right to notice and disclosure of investigations.* Persons subject to investigation should be advised at the earliest possible time of the nature of the matters under investigation and the basis for the investigation, unless doing so would materially prejudice the authority's enforcement obligations. Further, persons with a "legitimate interest" in the proceedings should receive notice and disclosure of investigations at the earliest time practicable. Persons with a "legitimate interest" should include complainants and third parties who satisfy the appropriate authority that they will be directly and significantly affected by the conduct being investigated.

4.2.4 *Right to make submissions.* Persons subject to investigation and persons with a legitimate interest in matters being considered by the competition authorities should be allowed to make written or oral submissions to the authorities at any time as well as offer evidence and participate in formal hearings or proceedings.

4.2.5 *Independent and objective decision.* The first decision should be an independent and objective assessment by the deciding body.

4.2.6 *Transparency of substantive and procedural rules.* The substantive and procedural rules, including evidentiary rules must be transparent. In order to foster consistency, practicability and fairness, the process should be transparent with respect to the policies, practices and procedures involved in the review, the identity of the decision-maker(s), the substantive standard of review, and the basis of any adverse enforcement decisions on the merits.

4.2.7 *Right of appeal.* A timely appeal of decisions to an independent judicial authority should be provided.

4.2.8 *Timely decisions.* Decision-making by agency and appellate bodies must be timely. (Deadlines for responding to complaints and for completing investigations and proceedings should be stated in advance, but the agency could have the opportunity to extend these for good faith reasons or, in a merger investigations, with the consent of the merging parties). Competition authorities should be accountable for adherence to stipulated timelines.

4.2.9 *Ability to challenge investigatory measures.* Throughout the investigation, there should be an effective ability to challenge the investigatory measures employed.

4.2.10 *Clear and transparent process standards; adequate protection of information.* The investigatory and judicial process, both within individual jurisdictions and in the multijurisdictional investigation context, should have established standards that are clear and transparent and provide adequate protection of competitively sensitive, proprietary information and information subject to legal or other privilege. Legal privilege should apply without discrimination to both lawyers called to the local bar and to those called to foreign bars, and should also extend to in-house lawyers who are governed by the same code of ethics as lawyers in private practice.

4.2.11 *Adherence to due process standards binding.* The agency should be bound by legal rules to adhere to its due process standards and at least be subject to a rule excluding evidence obtained contrary to due process standards.

4.2.12 *Jurisdictional nexus.* Jurisdiction should be asserted only over transactions and conduct that have an appropriate nexus with the jurisdiction concerned. Determination of the nexus to the jurisdiction of a transaction or conduct should be based on whether the transaction or conduct is likely to have a significant, direct and immediate economic effect within the jurisdiction concerned.

4.2.13 *Reasonable and proportionate remedies.* Remedies for anti-competitive conduct must be reasonable, proportionate and linked by an appropriate causal nexus to the specific anti-competitive harm or conduct alleged, having regard to legitimate enforcement concerns relating to deterrence and compensation.

5. Technical Assistance, Capacity Building and Competition Advocacy

5.1 The Doha Declaration set out two tasks for the WTO in the area of capacity building. In Paragraph 24, WTO commits to cooperating with other intergovernmental organizations in providing technical assistance to developing countries to “better evaluate the implications of closer multilateral cooperation for their development policies and objectives”. Paragraph 25 of the Doha Declaration sets out the more analytical mandate of the WTO Working Group to reflect upon and to clarify the issues relating to the reinforcement of competition institutions in developing countries through capacity building.

5.2 Pursuant to paragraph 24 and in the run-up to the Cancun Ministerial meeting, the WTO secretariat has been cooperating with organizations such as UNCTAD in organizing meetings to help developing countries better understand the possible consequences of negotiations on a multilateral framework on competition so that they are prepared for discussions at the Cancun Ministerial.

5.3 ICC supports educational efforts made by WTO to ensure that all WTO members enter into discussions on this important topic with sufficient understanding of the complex issues involved. ICC refers to its views set out elsewhere in this paper on the principles of non-discrimination, due process and transparency, and on hard core cartels, which might be useful to the WTO in raising its members’ awareness on different aspects of these issues.

5.4 ICC believes, however, that it would not be appropriate for WTO to advocate any particularsubstantive principles or approach to competition policy – other than the core principles examined above – unless and until further thinking and consultation allow reaching a common understanding as to the proper premise and substantive underpinnings of competition policy.

5.5 The world’s competition policy regimes vary widely in content, with many mandating conflicting rules on business, and many allowing different nation-states and regional groupings to issue conflicting commands to businesses engaged in trade in more than one nation.

5.6 While many governments subscribe to the beneficial effects of competition policy regimes in mature economies as an act of faith, some question their efficacy for other types of economies, while still others strongly advocate their adoption as beneficial for all. There is conflict even among the most mature economies, such as the US and the EU, about the appropriate premise and substantive underpinnings of competition policy, which historically has progressed from populist notions of "fairness" and "anti-large business" to a more refined appreciation of a consumer welfare focus, based on modern economic thinking. Even this is tempered with the realization that innovation is changing the global landscape of business, adding new dimensions to the competitive process that have yet to be assimilated in competition policy rules.

Any WTO-mandated capacity building efforts should therefore be directed in priority toward implementation of "core principles" and, where appropriate, to developing agencies' capacity for sound economic analysis. Capacity building should not be designed to promote enforcement of substantive competition law rules on which there is not a sufficient level of consensus.

5.7 In this respect, ICC welcomes the Working Group's recognition in its 2002 Report that, in the context of capacity building, a "one size fits all approach" is not appropriate as each country should be free to choose how to apply a competition regime in a way that reflects its economic situation and development objectives. It also supports the Working Group's view that developing countries should be allowed to take a phased approach to the discussion, introduction and implementation of competition legislation. ICC would add that while countries should also have the scope to determine whether to choose to adopt a competition regime, every country that does so should adhere to the "core principles" of non-discrimination, due process and transparency .

Role of WTO

5.8 In considering how the WTO could most helpfully fulfill its mandate to provide technical assistance to developing countries, ICC suggests that the following factors should be considered.

5.9 Numerous international organizations are already actively involved in efforts to bring some intellectual harmonization or convergence to the disparate competition policy rules now in force, and also to promote the adoption of modern competition policy rules. Most recently, some 60 governments (all members of the United Nations and the World Trade Organization) have joined the ICN, a virtual organization of governmental competition agencies, devoted to meetings and working groups exploring the content of competition policy rules, enforcement mechanisms, and technical assistance and capacity building issues. The OECD has for years undertaken efforts of convergence and advocacy, with programs such as its Global Competition Forum. UNCTAD's efforts now span more than four decades. UNESCO, the World Bank, and the International Monetary Fund have all been involved in promoting the adoption of competition policy rules—with varying content over the years, it might be noted. Many of these organizations are devoting substantial efforts at reducing the conflicts between nations growing out of the varying competition policy statutes.

Many individual governments, such as the US agencies and the EC, have devoted, and continue to devote, considerable resources on both promotion and convergence of competition policies.

5.10 To preserve its scant resources and to allow it to focus on its primary role as an organization for negotiating and administering international trade rules, ICC suggests that the WTO should carefully consider whether to devote further resources to capacity building initiatives. If the WTO does pursue such initiatives, it should continue to work in the area of technical assistance in cooperation with, and through, organizations already active in this field.

5.11 ICC also suggests that the WTO deploy its expertise and utilize survey and coordination functions to assist the other international organizations and member governments in the activities they are already conducting in the competition policy area. Because more nations are members of the WTO than are members or participants in the efforts of these other organizations, it might also be useful for the WTO to comment to the other international organizations and member governments on needs, issues, and focus of activity.

5.12 Specifically, because of its broader membership base, a WTO survey of its members (and the other, non-member nations who are members of the United Nations) with respect to various aspects of competition policy, administration and enforcement might be useful. The survey could be designed to elicit their competition policy laws, the budgets and personnel of their enforcement agencies, the exemptions and immunities from the competition regime, the priorities of those agencies, and the perceived needs of the member governments for technical assistance and capacity building.

5.13 Such a survey might form the initial database of information on competition policy regimes, which member governments might make use of in evaluating their own activities, and which the other active organizations in the field might make use of. If this proved useful, the survey, periodically conducted, might be broadened to include questions on the current and planned activities of others in the areas of technical assistance, capacity building, and competition advocacy. The objective of broadening the survey would be to include in the general database information on other agencies' and governments' efforts, which might help coordinate the myriad of activities being undertaken. Periodic monitoring of the situation, i.e. of the elements disclosed in the survey, and reports on the situation might be useful to the world community, as it evaluates whether progress is being made in producing a global trading system where the constituent national elements have competitive free markets.

5.14 Finally, while the instances of competition policy producing impediments to international trade probably constitute a very small subset of such impediments, it might be useful for the WTO to issue reports on the impact of competition rules on international trade, with particular reference to the application of the principle of non-discrimination. This might become a part of the regular Trade Policy Review Mechanism of the WTO, which in essence is a peer review mechanism.

6. Hard Core Cartels

Overview

6.1 ICC fully supports increased international co-operation focussed on the detection and punishment of hard core cartels. Nevertheless, the pursuit of this worthwhile objective does not negate the need for legal safeguards and protections for parties involved in investigations (who may or may not be proved guilty), especially as penalties for antitrust offences are becoming increasingly serious and the risk arises of multiple penalties for the same transgression. The fact that more and more jurisdictions have introduced, or are considering introducing, criminal sanctions for these offences, makes the need for legal safeguards and proportionality in penalties imposed even more imperative bearing in mind human rights statutes, both national and international.

6.2 In addition, as a result of some recent US case developments, businesses and legal advisors, both within and outside the US, are increasingly concerned about the implications of information sharing among competition authorities. These developments may give rise to pressure on competition authorities and governments to reject bilateral or multilateral cooperation arrangements that override domestic protections for confidential and privileged information.

6.3 Recognizing the ever-changing contextual landscape, there are four key issues to consider in any discussion of a possible multilateral framework for addressing “hard core cartel” behavior:

(i) What is a “hard core cartel”? In defining the term, consideration should be given to such matters as whether the proscribed conduct includes only horizontal agreements (not vertical agreement), whether there should be a distinction between covert and overt activities, and what recognition, if any, should be given to efficiency-enhancing activities.

(ii) What are the appropriate procedural safeguards in the context of investigating and prosecuting parties who have participated in hard core cartels?

(iii) What are the appropriate safeguards for protecting confidential business information in the context of inter-agency co-operation in pursuing and prosecuting hard core cartel activity?

(iv) Is the WTO framework suited to address the foregoing and related issues given the great disparity in substantive principles and treatment of hard core cartels among WTO members?

Definition of "Hard Core Cartel"

6.4 Before engaging in any substantive discussion, the various parties and stakeholders must have a common understanding or reference point with regard to the type of activities to which enforcement co-operation is directed. The definition will in part depend on the enforcement measures applicable to the conduct. For example, if the behavior is punishable per se and the penalties for engaging in the activity are serious criminal sanctions, it may be appropriate to define the term narrowly.

6.5 In Draft BIAC Talking Points dated 07/02/01 to the OECD CLP WP3 Roundtable on Information Sharing in Cartel Cases, BIAC noted that the business community has differing views on the definition of a hard core cartel based on the fact that different jurisdictions have different laws which govern activities that may be considered hard core cartel behaviour in one jurisdiction and not another.

6.6 The OECD Recommendation of the Council Concerning Effective Action Against Hard Core Cartels adopted on March 25, 1998 defines "a hard core cartel" as follows:

> "A 'hard core cartel' is an anti-competitive agreement, anti-competitive concerted practice, or anti-competitive arrangement by competitors to fix prices, make rigged bids (collusive tenders), establish output restrictions or quotas, or share or divide markets by allocating customers, suppliers, territories or lines of commerce."
>
> "The hard core cartel category does not include agreements, concerted practices, or arrangements that (i) are reasonably related to the lawful realization of cost-reducing or output-enhancing efficiencies, (ii) are excluded directly or indirectly from the coverage of a Member country's own laws, or (iii) are authorized in accordance with those laws. However, all exclusions and authorizations of what would otherwise be hard core cartels should be transparent and should be reviewed periodically to assess whether they are both necessary and no broader than necessary to achieve their overriding policy objectives."

6.7 While the OECD definition of "hard core cartel" provides a strong foundation upon which to build, and represents a consensus among the members of the OECD, it does not address the distinction between covert and non-covert activities, which is currently a subject of discussion among stakeholders. For example, many believe that agreements between competitors regarding prices, quantities, markets or customers that are arrived at and carried out in a covert manner are the most egregious activities and should be per se unlawful. A related issue is whether there should be a mechanism for exemption from per se categorization as a result of notification of an agreement to the relevant competition authorities or the public. Another issue is the appropriate treatment to be given to efficiency enhancing agreements. The OECD definition of "hard core cartel" is in terms that the definition judges behaviour in advance.

6.8 ICC recommends at a minimum the following guiding principles:

6.8.1 *Horizontal agreements only.* Hard core cartels ought to be confined to horizontal agreements, properly defined, between competitors, and should not extend, for example, to an agreement between two or more undertakings each of which operates, for the purposes of the agreement, at a different level of the production or distribution chain. In section 8 of "Discussion Points on Information Sharing in International Cartel Investigations" submitted by BIAC to the OECD Global Forum on Competition on February 15, 2002, BIAC suggested that hard core cartel behaviour means (i) horizontal price fixing agreements, (ii) horizontal bid rigging, and (iii) horizontal market allocation.

6.8.2 *Recognition of efficiency enhancing activity.* Even where a jurisdiction adopts a "per se" category of hard core cartels, there should always be some opportunity to demonstrate in an appropriately unbiased forum the efficiency enhancing aspects of an agreement, even in a case that involves elements of price fixing, e.g., Broadcast Music, Inc., et al. v. Columbia Broadcasting System, Inc., et al., 441 U.S. 1 (1979).

6.8.3 *Affiliates excluded.* Hard core cartels should not include agreements between affiliates or entities within the same economic unit.

Procedural Safeguards

6.9 The following are appropriate key procedural safeguards to consider in any multilateral framework for addressing hard core cartel activity.

6.9.1 *Non-discrimination.* Competition laws and regulations applicable to hard core cartels should be applied without discrimination on the basis of the nationality or location of the parties.

6.9.2 *Transparency.* The hard core cartel investigation process should be transparent with respect to the policies, practices, and procedures involved in the review, the identity of the decision-makers, and the standard of review. Transparency should foster consistency and predictability of the outcomes of hard core cartel investigations.

6.9.3 *Due process.* Appropriate procedural safeguards should be available to ensure that the hard core cartel investigation process incorporates core principles of due process and procedural fairness. Specific safeguards are discussed in Part 4 - Due Process and Transparency.

Safeguards for Confidential Information

6.10 The exchange of confidential information between competition authorities continues to be of concern to the international business community. Such exchanges should include appropriate safeguards to prevent leaks, and greater transparency to improve business confidence, avoid adverse commercial consequences and protect the rights of companies targeted for investigation. (See ICC Statement on International Cooperation between Antitrust Authorities no. 225/450 rev. 3 of 28 March 1996; ICC Recommendations to ICPAC on Exchange of Confidential Information between Competition Authorities in the Merger Context no. 225/52 of 21 May 1999, and ICC/BIAC Comments on report of the US International Competition Policy Advisory Committee no. 225/554 Rev. of 5 June 2000).

6.11 The hard core cartel investigation process, both within individual jurisdictions and in the multi-jurisdictional investigation context, should have established standards that are clear and transparent, and provide adequate protection of confidential information, consistent with the need for such disclosures as may be necessary for effective enforcement by competition authorities in the jurisdictions concerned. A number of issues relevant to information sharing between antitrust authorities in the context of hard core cartel investigations are discussed in the February 15, 2002 BIAC Discussion Points referred to above.

6.12 The following is a list of safeguards specific to information exchanges among competition authorities.

6.12.1 *Prior notification.* The owner or provider of the information should receive prior notice of any proposed exchange of information and an opportunity to be heard on: (a) the necessity of such exchange; and (b) whether information is confidential or not, unless doing so would be prejudicial to the investigation. When, for the latter reason, prior notice is not given, information should be exchanged only with the approval of an independent judicial arbiter.

6.12.2 *Solicitor-client privilege protection*. A receiving jurisdiction should not receive or use information that would be considered privileged under the recipient's own law and a loss of privilege should not occur as a result of the sharing of confidential information between antitrust authorities in different jurisdictions. The privilege should be respected regardless of the lawyer's bar origin and including communications with in-house lawyers who are subject to rules of ethics comparable to those applied to independent lawyers.

6.12.3 *Substantial convergence and similarity in laws.* The highest standard of protection in either jurisdiction should be provided in order to avoid conflicts.

6.12.4 *Consistency with immunity/amnesty programs.* Rules governing information exchange should encourage, rather than interfere with, immunity/amnesty programs.

6.12.5 *Reciprocity*: The receiving party must agree to reciprocate as a condition of exchange.

6.12.6 *Facilitation, not delay*. Any exchange of information should speed up the investigation process rather than lead to extra delays.

6.12.7 *Substantive case and jurisdiction*. Information exchange should only take place where there is a substantive case as well as jurisdiction over the parties in matters at issue, rather than only suspicion.

6.12.8 *Use of information/no further disclosure*. The information should be used by the receiving authority only for the purpose for which it was disclosed, be subject to conditions of confidentiality at least as stringent as those of the jurisdiction supplying the information, and not be disclosed to any parties outside the receiving authority, in particular, potential third party plaintiffs, other agencies or foreign governments. There should also be an assurance that the authority has exhausted its own administrative procedures and possibilities before making a request.

The Role of the WTO

6.13 Any discussion about the appropriate definition and treatment of hard core cartel activity at the WTO level should recognize that there are significant issues that need to be addressed on which there is little consensus among the various stakeholders. In addition to the foregoing, there are issues regarding the extent to which any framework will address government procurement, exemptions from cartel laws such as state action immunity, and how to recognize differences between common law and civil code jurisdictions.

6.14 Given the complexity of the issues, as reflected in paragraph 2.3 of the summary, the issue of the inclusion of substantive rules on hard core cartels in the WTO system should be weighed carefully as the WTO proceeds with its meetings later this year.

7. Modalities of Cooperation

Introduction and summary

7.1 This part sets out ICC's perspective on the appropriate scope for voluntary cooperation among competition authorities. The Working Group has already reviewed the history of prior and existing bilateral and multilateral cooperation efforts, and we will not reiterate that background except as it bears directly on our suggestions.

7.2 In summary, ICC:

7.2.1 Supports efforts by competition authorities to cooperate with one another with the objectives of :

- formulating and adopting coherent, consumer-welfare oriented competition policies;
- fostering the use of "best practices" in the implementation of their

competition laws; and

- ensuring that related investigations and proceedings ongoing in multiple jurisdictions are handled in a way that is efficient for the agencies and for the businesses involved and that promotes economically and legally sound and consistent outcomes.

7.2.2 Stresses the importance of assuring effective and adequate protection for confidential information. (In that regard, see Part 6 - Hard Core Cartels)

7.2.3 Urges that individual competition authorities retain flexibility and discretion in the nature and extent of their cooperation with competition authorities of other jurisdictions, taking into account, among other things, the sufficiency of protections for confidential information, the impact on the cooperating authority's own investigation or proceeding, the degree of policy convergence or divergence, and demands on the authority's resources.

7.2.4 Supports the use of appropriate voluntary "peer review" mechanisms that periodically subject jurisdictions' competition regimes to in-depth scrutiny and comment, but that do not include dispute resolution mechanisms or other compulsory measures that would result in "second guessing" individual jurisdictions' enforcement decisions.

Discussion

7.3 The importance of cooperation among competition authorities has increased in recent years. The reasons include the proliferation of revised or newly adopted competition laws around the world; the frequency with which transactions are subject to review in multiple jurisdictions; a perceived need to combat hard core cartel activity at both local and international levels and a growing appreciation of the importance of an appropriate balance between the need for sound and effective competition law enforcement on the one hand, and on the other hand, the importance to economic growth and efficiency of an environment in which legitimate mergers and other transactions are not impeded or deterred by unnecessary delay, cost and uncertainty.

7.4 Antitrust authorities have responded to the need for expanding cooperation in a number of ways. First, the network of bilateral cooperation agreements has expanded rapidly, while jurisdictions that have had agreements in place are revising or replacing old agreements with new arrangements based on their more recent experience. The US was the earliest jurisdiction to build a bilateral cooperation network, in its early period to deal with jurisdictional conflicts and more recently to manage the growing demand for more extensive enforcement cooperation. Agreements have been entered into between other pairs of jurisdictions in all parts of the world, sometimes similar to the US bilateral model, and in other cases custom-designed to address the particular needs and interests of the jurisdictions involved.

7.5 Most bilateral agreements leave the parties substantial discretion to apply them in a way that does not prejudice their important policy or enforcement interests. Few bilateral agreements allow jurisdictions to share confidential company information with one another.

7.6 Experience with bilateral competition agreements has influenced the development of multilateral arrangements, and vice-versa. Probably the best known multilateral instrument dealing with competition law cooperation is the OECD Council Recommendation Concerning Co-operation Between Member Countries on Anticompetitive Practices Affecting International Trade. The Recommendation is non-binding, although most OECD members purport to adhere to it in – albeit to differing degrees and with a range of interpretations.

7.7 The OECD Recommendation's provisions are basically similar to – and have influenced and been influenced by – what has become the US's de facto bilateral model agreement, which also has been followed by several other jurisdictions. The OECD recommendation does not call for multilateral cooperation as such. Instead, it is a recommendation about the way in which member countries should cooperate with one another in their bilateral dealings.

7.8 The Recommendation calls for the parties to notify one another when they launch an investigation under competition law that significantly affects the other party's interests. Triggering circumstances include investigations of conduct in the other's territory, or of conduct the other government may have required or endorsed; mergers involving one or more firms incorporated in the other party or one of its political subdivisions; cases in which the remedy will require or prohibit conduct in the other party's territory; and, in some agreements, seeking information located in the other party's territory.

7.9 The Recommendation also includes a "positive comity" provision – i.e., an acknowledgment that one party may ask the other to act against anticompetitive conduct in the latter's territory that adversely affects the interests of both parties.

7.10 In recent years the OECD has expanded its "peer review" examinations of member countries', and in some cases non-member countries', competition law regimes. These reviews are similar to those carried out in the WTO as part of its Trade Policy Review Mechanism, but with a deeper examination of competition policy than has been possible so far in the WTO context.

Although these peer review exercises normally include discussion of individual cases as illustrative of the examined jurisdictions approach, their focus is on the overall competition regime. They are not designed to be critiques of individual agency decisions. By most accounts, these examinations have been a valuable impetus to convergence around best practices and policies.

7.11 In addition, several WTO agreements provide that members will inform the committees established under these agreements of their legislation, regulations and administrative practices. They may be discussed in the committees and other members may and do raise questions. The committees are not mandated to make findings on the member country's legislation, etc. Under some agreements Members are required to report on a yearly or a six-month basis on measures taken. Here again other members may express views on the consistency of these measures with the relevant agreement but the committees are not mandated to make findings.

7.12 The regular meetings of the various WTO committees are often used to raise bilaterally certain issues in the margin of these meetings. It is sometimes surprising to see that potential disputes result from misunderstandings that are cleared up in such bilateral informal discussions.

7.13 In addition to multilateral efforts at the OECD and WTO, the EU is in the process of putting in place an elaborate network for cooperation among the Commission and Member State competition authorities. This network, however, will operate in the context of the extensive legal and political integration of the EU, a level of integration which is not mirrored at the WTO or global level or, in most instances, at regional levels elsewhere in the world.

ICC's recommendations

7.14 ICC endorses constructive efforts among competition authorities to cooperate with one another and supports ongoing voluntary efforts to put into place a basic framework for cooperation . Cooperation can help to achieve important objectives that provide a public benefit both to consumers and to businesses, both as consumers and competitors.

7.15 First, the sharing of experience among authorities at different levels of development, and among authorities applying differing procedures and substantive rules, benefits all participants. It helps identify the policies and procedures best designed to promote coherent, consumer-welfare oriented competition policies. In addition, it facilitates the identification and use of "best practices" in the design and implementation of competition laws. Further, it helps to ensure that related investigations and proceedings ongoing in multiple jurisdictions are handled in a way that is efficient for the authorities and for the businesses involved and that promotes economically and legally sound and consistent outcomes.

7.16 ICC stresses the importance of ensuring that cooperation among competition authorities is based on effective and adequate protection for confidential information. Competition authorities that receive confidential information from businesses normally are obliged under their national laws to protect that information against further disclosure. These protections serve a range of important and legitimate interests, including due process, damage to competition that could result from the release of competitively sensitive information, property rights in trade secrets and business confidential information, privacy, and respect for the balances struck in individual jurisdictions between these interests and the specific law enforcement objectives and processes in place. In crafting mechanisms to enhance inter-jurisdictional cooperation, it is essential to avoid creating a presumption in favor of the sharing of confidential information that risks damaging these important interests. Appropriate safeguards for confidential information in the context of information sharing are discussed in Part 6 - Hard Core Cartels.

7.17 It is important that individual competition authorities retain flexibility and discretion in the nature and extent of their cooperation with competition authorities of other jurisdictions. If for no other reason, in a world of 100 or more separate competition authorities, the tasks of cooperation and coordination can impose substantial cost and resource drains on individual agencies which could overtax the resources of requested agencies and potentially interfere with their own enforcement responsibilities. Agencies must have discretion to decide when and how to cooperate with other authorities, taking into account, among other things, the impact on the cooperating authority's own investigation or proceeding, the degree of policy convergence or divergence, and demands on the authority's resources. The sufficiency of protections for any confidential information proposed to be exchanged must also be take into account in any such cooperation.

7.18 ICC encourages the expanded use of appropriate voluntary "peer review" mechanisms that periodically subject jurisdictions' competition regimes to in-depth scrutiny and comment. Peer review mechanisms such as those conducted under the OECD's Regulatory Review program and the WTO's TPRM subject competition regimes to the discipline of the "marketplace of ideas," while leaving individual jurisdictions discretion to alter or maintain their laws and policies. Peer review mechanisms should not be used as dispute resolution for "second guessing" of individual enforcement decisions.

7.19 Effective peer review is likely to be a more effective mechanism for convergence toward sound policies and best practices than vaguely-worded multilaterally-agreed rules that leave broad discretion in their interpretation and application.

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9 April 2003

Policy Statement

Precaution, science, risk and trade

Prepared by the Task Force on Trade and Environment

Summary

World business, as represented by ICC, supports an open multilateral trading system with rules and disciplines as elaborated under the GATT/WTO since 1948.

There is a growing tendency to deal with environmental or health concerns about new or existing technologies through an expanded use of precaution. This policy statement

- presents a world business perspective on precaution, and
- expresses concern about increasing recourse to trade-restrictive measures under the pretext of precaution.

The exercise of precaution in the context of international trade is expressly provided for in multilateral trade agreements under the GATT/WTO. The authority to take science- and risk-based action under these provisions should be maintained, as should the scientific discipline that underpins them.

In both domestic and international law, the identification and evaluation of risks associated with new and existing products and technologies should rely on sound, science-based risk assessment principles and high-quality data. Corresponding cost-effective, balanced and proportional measures should be taken to manage potential risks to health and the environment. Inevitably, some risk management decisions will be made in the absence of complete scientific data and information. Significant uncertainty where serious or irreversible damage might be caused justifies appropriate precautionary action. This should be taken in a cooperative spirit, in proportion to the seriousness of the risk, and with the least trade-restrictive effects, until such time as more complete information becomes available.

Precaution is integral to responsible business practices, a foundation of most contemporary environmental and health regulation, and a long-standing concept in many areas of international policy. In particular, where science cannot yet provide a full or appropriate evaluation in response to concerns about the consequences of a certain

activity, technology or product, precautionary action is often taken. However, excessive precaution has the perverse effect of stifling the evolution of safer, beneficial technologies, and hinders economic development and improvements in the quality of life. The risks and benefits of proceeding should be weighed against the risks and benefits of maintaining the status quo. Thus, the implementation of a new technology requires a balanced application of precaution in risk management in both the public and private sectors.

Business fully supports the balanced, non-discriminatory and least trade-restrictive use of precaution, and implements it in many ways in its day-to-day operations. The private sector has to evaluate and manage economic activities, goods and services, and should take measures that will properly protect human health and the environment. All parties should recognize this and work together so that risks may be managed effectively and cooperatively, within an open, rules-based trade system.

Analysis

In the context of multilateral trade and environment agreements, the challenge of the appropriate use of precaution lies in balancing the benefits derived from importing or marketing a product or technology and the legitimate concerns of society, especially when a potentially serious risk to the environment or health exists.

International trade law recognizes the right of countries to protect themselves – within the context of a multilateral rules-based trading system – from the import of products or materials that may pose a threat to human, animal or plant life or health. This is codified in GATT Article XX ("General Exceptions"), which reads in relevant part:

> "Subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between countries where the same conditions prevail, or a disguised restriction on international trade, nothing in this Agreement shall be construed to prevent the adoption or enforcement by any contracting party of measures:
> (b) necessary to protect human, animal or plant life or health; (and)
> (g) relating to the conservation of exhaustible natural resources if such measures are made effective in conjunction with restrictions on domestic production or consumption;"

There is no international consensus on the definition of a precautionary approach, but it is generally understood to be applied as a risk management tool. It is cited as guidance for decisionmakers faced with potentially serious harmful effects to human, animal or plant health or the environment in the midst of scientific uncertainty as to the nature of the risk.

There are two well-known approaches to precaution.[25] One is Principle 15 of the 1992 Rio Declaration of the United Nations Conference on Environment and Development:

> "In order to protect the environment, the precautionary approach shall be widely applied by States according to their capabilities. Where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation."

The Rio Declaration provides guidance in the case of a threat of serious or irreversible damage, but condones neither the unwarranted use of precaution nor the failure to address environmental protection. It also stresses the need to pursue international consensus approaches and avoid unilateral trade measures.

The other is the WTO Agreement on the Application of Sanitary and Phytosanitary Measures (SPS). This Agreement establishes more clearly the relation between science and precautionary action, codifying interpretation and practices that have evolved around Article XX.:

> "Members shall ensure that any sanitary or phytosanitary measure is applied only to the extent necessary to protect human, animal or plant life or health, is based on scientific principles and is not maintained without sufficient scientific evidence…" (Article 2 paragraph 2), and
> "In cases where relevant scientific evidence is insufficient, a Member may provisionally adopt sanitary or phytosanitary measures on the basis of available pertinent information, including that from the relevant international organizations as well as from sanitary or phytosanitary measures applied by other Members. In such circumstances, Members shall seek to obtain the additional information necessary for a more objective assessment of risk and review the sanitary or phytosanitary measure accordingly within a reasonable period of time." (Article 5 paragraph 7)

Notwithstanding the above guidelines and rules, governments have on occasion taken precautionary measures for prolonged periods ostensibly to protect the environment or health, where the scientific community has concluded that the potential risks are not sufficient to support such action, and without taking the necessary steps to clarify the existence, nature and extent of the alleged risks and the justification for the specific measures applied. Often, such measures are taken in response to political pressures on decisionmakers, and in some cases they are a disguised form of protectionism.

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[25] The following multilateral agreements also include implicitly precautionary concepts: the Climate Change Convention; the Bio-Diversity Convention; the Bio-Safety Protocol; the Convention on Prior Informed Consent; Article XX ("General exceptions") of the GATT; the Preamble of the Marrakesh Agreement establishing the WTO; Article XIV of the General Agreement on Trade in Services (GATS); Article 2 paragraph 2 and Article 5 paragraph 7 of the WTO Agreement on the Application of Sanitary and Phytosanitary Measures; and Article 2.2 of the WTO Agreement on Technical Barriers to Trade.

Developing countries, in particular, are concerned that environmental or health considerations could serve as a pretext for unduly restricting trade. ICC considers essential that precautionary measures and policies respect the needs of developing and least-developed countries, and are not employed as protectionist devices to keep out their exports. Furthermore, developing countries – through investment, capacity building, technical assistance and other means – should be encouraged to build-up their infrastructure, training and human resources to strengthen their technology assessment capabilities.

Economic development and technological innovation have led to dramatic improvements in health, the environment and the quality of life. In this respect, a misinterpretation of precaution – allowing it to be used as a rationale for trade-restrictive action without scientific justification -- could be counterproductive by stifling innovation. ICC is concerned that some governments as well as private groups favour extreme uses of precautionary measures, considering a modest indication of doubt or concern, or even an unanswered question, as an absolute standard for action overriding all other considerations, and in some cases, taking precedence over domestic and international regulations. Such unbalanced application of precaution has been used to justify restricting, or even eliminating a technology even though the risk may be remote or manageable and the evidence of the risk limited, unsupported or unverified. As a result, concern persists that governments will use this concept to justify discriminatory and trade-restrictive measures without scientific rationale instead of relying on existing domestic and international rules and disciplines and cooperative efforts to carefully evaluate and address the risk in question.

Science- and risk- based precaution is already practised in a number of priority areas and key industry sectors. For example, the safety assessment of food and food ingredients occurs at various levels in the private and public sectors. ICC believes that throughout the system, the focus should be on collecting and analyzing evidence of links to serious or irreversible adverse consequences, and that decisions should be based on such scientific evaluation, rather than political expediency driven by unsubstantiated fears or biases. ICC cautions that an over-simplistic extrapolation of the concept of precaution across different disciplines ignores both existing safeguards and qualitative differences. The imposition of unnecessary restrictions on trade and innovation and divergence from sound science and risk principles is unacceptable to business.

Objectives

Gaining the public's trust is vital for promoting economic progress, sustainable development, improving the quality of life and safeguarding an open and non-discriminatory multilateral trade system.

Understanding risk and dealing with uncertainty through appropriate risk management are basic tenets of sound business operations, management and business principles, reflecting the commitment of business to integrate environmental protection and health into its practices and product stewardship.

It is, therefore, important that stakeholders and negotiators recognize the expertise of the private sector, enabling all parties to manage potential risks effectively. Precaution should be seen as an essential ingredient of risk management in the area of environment and health, and one of several important considerations in adopting appropriate measures. ICC believes that precaution should be considered within a structured approach to risk management, comprising analysis, assessment, and the communication of risk. Potential risks should be managed without departing from the principles of sound science and in full recognition of the consequences of precautionary action.

Policy recommendations

Since few, if any, activities can guarantee zero-risk to the environment or health, precaution cannot justify a call for proof of zero risk or harm.

Governments should pursue appropriate international cooperation in scientific research, information sharing, risk communication and other non-trade restrictive approaches. Precautionary measures should be provisional and not be a substitute for specific regulatory provisions, nor should they cause policy gridlock or generate cumbersome and disproportionate regulation.

ICC believes that precautionary measures should be:

Analysis

- based on a weight-of-evidence approach using well-recognized scientific data and analysis showing that serious or irreversible damage can be reasonably expected to the environment or health as a consequence of a particular action, and targeted as precisely as possible at the specific issue of concern (e.g. specific chemical and specific application) using existing and reasonably obtainable knowledge;

Assessment

- subject to a preliminary risk assessment identifying at each relevant stage the effective degree of scientific knowledge and uncertainties, and to an independent, balanced and transparent scientific peer review process;

Necessity, due-process and review

- necessary to achieve acceptable management of risks to the environment and health, justified and subject to legal redress, and provisional (time-limited) and subject to periodic review based on the carrying out of further scientific research especially when there are long-term risks and substantial uncertainty;

Consistency

- consistent with measures already taken in similar circumstances;

Proportionality

- proportional both to the objective of a technology's development and to the potential risk, and thus include a cost/benefit assessment with the manifest intention of reducing the risk to an acceptable level, recognizing that zero-risk is not an option;

Least-trade restrictive

- applied in the least-trade restrictive manner in line with the principles and specific obligations embodied in WTO legal texts;

Urgency

- based on scientific evidence in cases where it is agreed that urgent action is required;

Transparency

- transparent and decided with the involvement of affected businesses and other relevant stakeholders; and

Notification

- communicated in a transparent and comprehensive manner to avoid unwarranted interpretations and impact.

Considerations like cultural, socio-economic values or other preferences play a legitimate role in public policy, but should not be allowed to inappropriately influence a science-based and legally defined approach to precaution.

Conclusion

Business supports cooperative international efforts involving both public and private sectors to develop and share scientific data that help improve the accuracy and relevance of risk assessments and recognizes best practices with regard to methodology and quality assurance. The responsibility remains with governments to ensure that precautionary risk-management measures that they take in circumstances of uncertainty involve scientifically substantiated threats to health or the environment, are least trade-restrictive and are taken only after full consideration of their negative impact on economic development and on further improvements in social and environmental wellbeing.

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Policy Statement

ICC proposals for improvements to the WTO Dispute Settlement Understanding

Prepared by the Commission on Trade and Investment Policy

Introduction

ICC strongly supports the decision taken at the 4^{th} Ministerial Conference of the World Trade Organization (WTO) at Doha (Qatar) in November 2001 to continue negotiations "on improvements and clarifications" of the WTO Dispute Settlement Understanding (DSU) and to agree on such proposals by May 2003.

ICC reiterates its strong support for the WTO dispute settlement system as expressed in its policy statement "World business and the multilateral trading system" (6 June 2001). ICC believes that it is of the utmost importance that WTO members strictly respect the role and authority of that system.

ICC notes with satisfaction that the WTO dispute settlement system has efficiently resolved the vast majority of complaints brought in its first seven years of existence. These disputes have involved a broad spectrum of issues brought by WTO members at all levels of economic development.

The DSU: a cornerstone of the multilateral trading system

The WTO dispute settlement system is a cornerstone of the primacy of the rules-based multilateral trading system; it is also a market-opening tool to guarantee that WTO members respect their commitments and to ensure equal treatment of all WTO members.

The WTO dispute settlement system was set up for the purpose of establishing a multilateral legal framework for the expeditious resolution of trade disputes between WTO member governments in order to ensure the preservation of the rights and obligations of members.

International Chamber of Commerce
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Suggested improvements

World business is of the view that the WTO dispute settlement system can be improved and that improvements should be made without having to open undesirable negotiations on the basic provisions of the Understanding.

As a constructive contribution by world business to the ongoing WTO negotiations on this key element of the rules-based multilateral trading system, ICC puts forward the following recommendations for improving the WTO dispute settlement process:

- **Composition of panels:** the composition of panels could be enhanced by combining ad hoc panelists chosen according to their expertise with professional full-time panelists, as in the case of some domestic commercial courts. The provision under Article 8(10) of the existing rules, allowing the inclusion of at least one panelist from a developing country in the case of disputes between a developing country member and a developed country member, if the developing country so requests, is particularly important to facilitate and support the full participation of developing countries in the system.
- **Exchange of information:** equality among WTO members, and particularly among parties to a dispute, in the access to available information could be increased through a more effective exchange of information. This is particularly important for WTO developing country members. Panel findings should be made public promptly and all agreements reached should be notified to all WTO members. ICC also supports a timely general derestriction of documents including timely release of the agenda and minutes of WTO meetings, submissions to panels and the Appellate Body, and interim panel reports. Regarding dispute settlement submissions and reports, ICC believes that unless a panel decides, in consultation with the parties, to designate all or part of a document as confidential, all non-confidential documentation should be unclassified and available to the public. A possible way to implement this recommendation would be for all WTO members to post their submissions -- with the exception of confidential information -- on their government websites; a practice already followed by some WTO members. Parties should furnish the WTO with electronic copies of the non-confidential portions of their submissions for posting on the WTO website. In addition, Appellate Body proceedings should be public, since, unlike the original panels, they deal almost entirely with legal interpretations rather than facts, and the protection of confidential information is not normally necessary.
- **Predictability:** one of the strengths of the WTO dispute settlement system is its contribution to the security and predictability of the multilateral trading system. To ensure and improve performance in this regard, it is vital that panel rulings and recommendations do not add to or diminish the rights and obligations of WTO members as provided under WTO agreements, in compliance with Article 3 of the DSU. Members will be more willing to make the difficult and sensitive concessions necessary to reach agreement in WTO negotiations when they are confident that

these concessions will not be enlarged by panels.

- **Duration of proceedings***:* another essential feature of the WTO dispute settlement system, and one of the keys to its effectiveness in the view of world business, is its ability to deliver expeditious results. For this reason, ICC strongly recommends that the duration of DSU proceedings be kept as short as possible, realizing however, that the duration of the proceedings is often more a factor of the time necessary for the parties to reach agreement on the various steps of the procedure (i.e. the selection of panelists) rather than of the DSU rules themselves. Currently, there are few incentives to prevent WTO members from "stretching out" the DSU process. Faced with the prospect of three to six years for resolution, members and their interested commercial constituents may resort to other, less desirable options. Proceedings can be expedited by panels disposing of procedural issues before addressing substantive issues.
- **Compliance:** ICC supports clarification of procedures to be used in establishing whether a compliance measure meets the requirements of a dispute panel ruling. ICC expresses strong opposition to any retroactive remedy applied directly to private parties (such as the "Australian leather case").
- **Resources:** given the wide use of the WTO dispute settlement system by WTO members, and the likely growing demands that will be put on the system in the future, ICC recommends that consideration be given to enhancing the resources and support services for the DSU within the WTO Secretariat, as a way to improve the efficiency of the system.
- **Least-developed countries***:* with regard to the particular problems and difficulties of least-developed countries (LDCs), improvements to the DSU should seek to facilitate and support LDCs' full participation in the system.

Implementation rather than compensation/retaliation

ICC notes that implementation of decisions under the DSU is not assured. Losing members can exercise their rights by providing compensation to winners, or accepting retaliation. Retaliation is an unfortunate last resort as it increases rather than reduces the restrictions on trade. Although it has been employed relatively infrequently, threat of retaliation can be destabilizing in cases involving large volumes of trade. ICC believes that members should consider other methods to either encourage implementation of decisions or provide some alternative form of relief to members who are unable to benefit from their victories. Notwithstanding the importance of expeditious results noted above, ICC believes that parties to a dispute should have the right to suspend the process in order to reach a negotiated settlement, thus minimizing instances of retaliation and conserving panel resources.

An undesirable and potential consequence of retaliation is that the proper functioning and the stability of the multilateral trading system could, to some extent, be put at risk due to the substantial economic impact of the authorized retaliatory measures; as such measures also have the potential to distort trade, especially when the retaliation affects a sector other than the one where the dispute occurs.

In cases where a disagreement arises on whether a panel report has been complied with by the parties, this question should be dealt with first (article 21.5 of the WTO DSU) and before recourse is taken to compensation or the revocation of concessions.

It may be useful to create a possibility to request a WTO panel to make an independent estimate – outside the framework of a procedure for the revocation of concessions – of the size of the damage caused by actions of WTO members that are not in conformity with WTO rules. This would facilitate negotiations on compensation and would promote the recourse to compensation instead of retaliation.

With respect to retaliation, ICC proposes the following:

- that consideration be given to the need to protect exporters that would otherwise be harmed by the sudden imposition of retaliation; and
- that a fast-track procedure be created to establish whether a WTO member, after retaliatory measures have been enforced, is in compliance with a panel report.

Conclusions

A key aim of any improvements and clarifications of the WTO dispute settlement system should therefore be to ensure that when formal adjudications become unavoidable, WTO decisions are implemented fully and expeditiously. WTO members should consider more carefully whether or not to bring a dispute case, and should rely increasingly on mediation and arbitration for dispute resolution.

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7 March 2003 SB/am

Policy Statement

Regional trade agreements and the multilateral trading system

Prepared by the Commission on Trade and Investment Policy

The primacy of the multilateral trading system

ICC considers multilateral agreements in the World Trade Organization (WTO) to be the preferred instruments for liberalizing international trade. Such agreements ensure a non-discriminatory approach with potential mutual benefits for all parties. They reduce trade distortions and simplify administration. The eight rounds of multilateral trade negotiations under the General Agreement on Tariffs and Trade (GATT) have made major contributions to economic growth and higher living standards around the world since World War II. The most recent Uruguay Round resulted in substantial improvements, including establishment of the WTO, inclusion of agriculture and services in the multilateral trade regime, and multilateralization of most of the GATT's plurilateral codes. ICC strongly supports the new broad-based round of multilateral trade negotiations launched in November 2001 at the 4th Ministerial Conference of the WTO in Doha, Qatar. World business is particularly encouraged by the new mandate agreed at Doha to pursue "…negotiations aimed at clarifying and improving disciplines and procedures under the existing WTO provisions applying to regional trade agreements…"

Regional trade agreements as building blocks

It is to be expected that trading partners and neighbours will try to advance liberalization through regional and bilateral trade agreements. There is an array of such initiatives in progress or contemplated at the present time. A total of 162 regional trade agreements notified under the GATT and the WTO are in force today. Between 100 and 200 new regional trade formations are anticipated by 2005. Regional or bilateral agreements may bring faster results than the multilateral process, may enable parties to conclude levels of liberalization beyond the multilateral consensus, and may be able to address specific issues that do not register on the multilateral menu. The resulting achievements in trade liberalization can be substantial complements to the WTO system, and they can be important building blocks for future multilateral liberalization.

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Potential negative effects of regional trade agreements

The most powerful economic arguments against regional and bilateral trade agreements are that they can cause trade diversion and trade distortions and ultimately undermine the multilateral system because of their discriminatory nature. In some cases, preferential rules of origin have proven to stifle technological developments, networks and joint manufacturing, and to unduly restrict third-country sourcing, leading to trade diversion. Moreover, they can create obstacles to trade facilitation by increasing administrative complexity at customs. One specific example is the proliferation of different preferential rules of origin -- a prominent source of trade costs and complexity in today's global marketplace in which companies depend on the rapid delivery of products and components from multiple overseas sources. Such effects are costly to business and detrimental to the regional trading areas. Harmonization and simplification of preferential rules of origin and the cumulation of origin could alleviate some of these obstacles to trade facilitation.

The need for improved WTO disciplines

The founders of the GATT understood the positive and negative potential of sub-multilateral trade agreements, and included provisions to address the formation of agreements aimed at closer integration through customs unions and free trade areas. Besides Article XXIV of the GATT, the Uruguay Round Understanding on Article XXIV and Article V of the General Agreement on Trade in Services set out disciplines aimed at ensuring compatibility of such agreements with GATT/WTO rules. In this context it should be noted that of the 162 regional agreements officially notified to the WTO and in force today, only one -- the customs union between the Czech and Slovak Republics formed in 1992 -- is formally acknowledged to be in conformity with GATT Article XXIV. All other regional agreements reviewed and assessed by the WTO are subject to differing opinions by practitioners and examiners. Because of the high level of political commitment to regional and bilateral agreements, there have been few, if any, successful challenges to breaches of GATT/WTO rules. The provisions under Article XXIV concern above all customs tariffs, whereas the evolution of the trading system has brought to the fore the trade restrictive effects of non-tariff barriers. The decision taken at Doha to review WTO provisions for regional trade agreements therefore responds to a timely need for bringing these up to date.

While continued reduction of barriers to trade under the WTO will erode preferential trade arrangements over time, regional trade agreements must maintain and strengthen momentum towards global economic integration. ICC firmly supports the WTO principle that such agreements be in concordance with WTO rules and that objective assessment to that effect takes place. This principle is particularly important in the current climate of active regional and bilateral trade negotiations.

ICC recommendations

- The WTO Committee on Regional Trade Agreements should conduct its assessments with a view to ensuring compatibility of regional agreements with WTO rules, including in areas like agriculture, technical barriers to trade, and sanitary and phytosanitary measures. Negotiations launched at Doha aimed at clarifying and improving existing disciplines and procedures should address these aspects, in particular.
- In cases where regional agreements increase protection against non-parties, compensation must be in accordance with Article XXIV.6.
- In cases where regional agreements do not meet GATT criteria for customs unions and free trade agreements, the parties should at least respect the Most Favoured Nation (MFN) principle and lower trade barriers on an MFN basis [e.g., tariff cutting agreements in the Asia Pacific Economic Cooperation area (APEC)].[26] [27] [28]
- While bilateral agreements offer opportunities to handle issues that cannot be addressed through multilateral agreements, WTO members should be circumspect about creating the potential for precedents on non-commercial, domestic governance issues that will hamper multilateral trade liberalization.

[26] ICC India is of the view that there should be a "time bound" mechanism for integrating regional trade agreements in the multilateral trading system; and that MFN tariff rates should not exceed preferential rates applying to trade within regional trade agreements by more than 3-4% in order to minimize trade distortion with third countries.

[27] ICC Thailand is of the view that regional trade agreements do not have negative effects on the members of such agreements, as they increase trade among members. However, ICC Thailand recognizes that potential negative effects on non-members should be mitigated and that non-member countries may require negotiations to restore benefits. ICC Thailand considers that there should be a monitoring system to ensure respect for preferential rules of origin. Members of regional trade agreements should have the right to agree on the privileges and special treatment among themselves, and that regional trade agreements should be acceptable even if written without regard to GATT/WTO rules as their key function is to promote trade liberalization.

[28] The Canadian Council for International Business (CCIB) views regional agreements in a positive fashion, noting their value to Canada and other countries. NAFTA has demonstrated that regional and plurilateral agreements have their own intrinsic value and can accomplish much that is far off or unattainable in the WTO context (e.g., investment). Similarly, bilateral agreements between Canada and specific trade partners have provided both parties with positive outcomes. Moreover, the evolving Free Trade Area of the Americas may be able to accomplish quicker progress than the WTO in the near future. In short, regional agreements are more than simply "building blocks" for the multilateral system, as noted in the statement. If constructed properly and in a manner consistent with WTO rules, regional agreements complement multilateral agreements and lay the groundwork for even greater progress on a multilateral basis.

- WTO members should seek to develop multilateral disciplines to simplify and harmonize preferential rules of origin including the cumulation of origin.
- Recognizing that regional trade agreements will continue in view of the considerable potential benefits that they can bring, the overarching goal of WTO negotiations in this area should be to minimize the scope for such agreements to divert trade with or discriminate among non-parties.

ICC submits these recommendations to all WTO members as input into their timely negotiations on this important issue for the multilateral trading system.

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ICC EN LA OMC

ICC –la organización mundial de las empresas- como parte activa de la comunidad empresarial estuvo presente en el evento de la OMC (Organización Mundial del Comercio, por sus siglas en español). Dicho evento se llevo a cabo en la ciudad de Cancún, México del 9 al 14 de Septiembre del presente año.

La participación de ICC no se vio únicamente enfocada a las reuniones de trabajo de la OMC, sino también participando en foros alternos compartidos con otras organizaciones de diversa índole.

Una delegación ICC de aproximadamente 100 personas, provenientes de países como Alemania, Holanda, Estados Unidos de Norteamérica, Italia, Japón, Australia, Reino Unido, Francia, Bangladesh y México, entre otros.

El plan de acción de ICC estuvo basado en sesiones diarias de trabajo, en las cuáles se compartían puntos de vista e información por parte de representantes de cada Comité Nacional. Cabe mencionar que algunos participantes venían también acreditados como parte de la delegación de sus Países, por lo que además de asistir a reuniones de ICC, participaban también en sesiones de trabajo de los respectivos Países. Algunos otros participantes asistían a eventos alternos como Conferencias, Ferias, etc. por lo que la información para compartir era abundante y las posturas de cada comité eran interesantes.

Estas reuniones diarias se realizaron en el Hotel Sierra, centro de operaciones de las ONG´s (Organizaciones no Gubernamentales), o bien en el Briefing room No. 2 del Hotel Fiesta Americana.

El día 12 de septiembre se tuvo una conferencia de prensa, organizada en cooperación con ICC Francia. En este evento estuvieron presentes los delegados de ICC, y entre los medios asistentes se encontraban reporteros de prensa nacional e internacional, por citar algunos: Agence France Press, Milenio, el Universal, BBC.

El presidio estuvo compartido por la Sra. María Livanos Cattaui, Secretaria General de ICC, el Ing. Guillermo Cadena, Ex presidente de ICC México y actualmente Miembro del Consejo de ICC Francia, y otros dos representantes tanto de ICC Holanda y Australia.

De igual manera la participación de ICC México, incluyo reuniones diarias con el Dr. Luis Ernesto Derbez, Secretario de Relaciones Exteriores y Presidente de la 5ta. Reunión Ministerial y con otras ONG’s nacionales participantes.

Por las tardes se tuvieron reuniones junto con otras ONG’s internacionales, a fin de detallar o para aclarar temas o posturas, en el Briefing Room no. 5 del Hotel fiesta Americana. Dichas reuniones eran presididas por representantes de la OMC Ginebra.

Conclusion

La experiencia de participación en si fue muy gratificante, y se reafirmo la importancia que tiene la ICC a nivel mundial, pues recordemos que es la voz de las empresas. Así mismo se refrendó el trabajo de ICC mu ndial.

COMUNICADO FINAL DE PRENSA ICC PARIS

Comunidad Empresarial Decepcionada Por El Colapso De Cancún

Cancún, Q Roo, 14 de septiembre.- ICC, (Cámara Internacional de Comercio, por sus siglas en inglés) la organización mundial de las empresas, reaccionó con decepción ante el colapso de las pláticas de comercio mundial, haciendo un llamado a los gobiernos para redoblar sus esfuerzos y encontrar una causa común en el establecimiento de un sistema de comercio basado en reglas de comercio multilateral.

“Esto es obviamente un retroceso, pero no es el final, dijo la Sra. María Lívanos Cattaui, Secretaria General de ICC. Hemos perdido una oportunidad aquí en Cancún de dar a la economía mundial un apoyo necesario de confianza. El colapso de estas pláticas significan que los gobiernos deben regresar al trabajo duro de definir términos bajo los cuáles se pueda avanzar en la Agenda de Desarrollo de DOHA ”

Encontrar un acuerdo entre aproximadamente 146 países nunca será fácil, agregó la Sra. Livanos. Sin embargo, si los gobiernos hacen bien en los compromisos hechos con anterioridad en DOHA, ellos deberán mostrar infinitamente más disposición hacia las negociaciones que han sido mostradas en éstos últimos días.

Negociaciones de este tipo requieren compromiso de todas las partes. Lo cuál se transforma obviamente en que algunos gobiernos no estuvieron aquí para negociar, si no para estar como espectadores de tribuna o simplemente reiterar sus insostenibles posiciones.

No debe haber duda que los países en desarrollo necesitan tener acceso a los mercados agrícolas de los países desarrollados. Al mismo tiempo, los países en desarrollo no deben estar temerosos para liberalizar sus mercados. Cada lado debe estar preparado para traer algo a la mesa de negociaciones.

La Sra. Cattaui dijo también, que fue importante mantener el fallo de estas pláticas en perspectiva. No olvidemos que éstas platicas fueron solamente un intento para fijar los parámetros de futuras negociaciones.

La importancia de este proceso no puede ser minimizado. El futuro del multilateralismo quedará en nuestra habilidad para trascender en esta tarea.

ICC (la Cámara Internacional de Comercio, por sus siglas en inglés) es la organización mundial de las empresas más grande. Entre sus miembros encontramos empresas de 130 países.

ICC tuvo una delegación empresarial presente en Cancún, de aproximadamente 100 ejecutivos de negocios provenientes de 32 páises.

Bryce Corbett
Director de comunicaciones ICC Francia.

Business disappointed by Cancun collapse

Cancun, Q Roo 14 September 2003.- ICC, the world business organization, reacted with disappointment to the collapse of global trade talks here today, calling on governments to redouble their efforts to find common cause in the establishment of a rules-based multi-lateral trading system.

"This is obviously a set-back, but it is not the end, said ICC Secretary General, Maria Livanos Cattaui. We have missed an opportunity here in Cancun to give the world economy a much-needed confidence boost. The collapse of these talks means that governments must now return to the very hard work of defining the terms on which we can move the Doha Development Agenda forward.

Finding agreement among 146 nations was never going to be easy, she said. But if governments are going to make good on the commitments they made in Doha, they will have to show infinitely more willingness to negotiate than has been on display these last few days in Cancun.

Negotiations of this kind require compromise on all sides. It became obvious early on at Cancun that some governments were not here to negotiate, but rather to grandstand or simply reiterate untenable positions. "There can be no doubt that developing countries need access to the agricultural markets of developed countries. At the same time, developing countries should not be afraid to liberalise their own markets. Each side must be prepared to bring something to the table.

Cattaui said it was important to keep the failure of the talks in perspective.
Let's not forget that these talks were only ever intended to set the parameters for future negotiations.

The importance of this process succeeding cannot be overstated. The future of multilateralism will rest largely on our ability to succeed in this endeavour.

ICC, the International Chamber of Commerce, is the world largest, most representative business organization. Its member companies come from 130 countries.

ICC led a business delegation to Cancun comprising some 100 business leaders from 32 countries, including the US, Bangladesh, Sweden, the Netherlands, Germany, Australia, and Japan.

Bryce Corbett.
ICC Director of Communications

REPORTE FINAL DE LA OMC [1]

5a Conferencia Ministerial de la OMC

México fue sede de la 5a Conferencia Ministerial de la Organización Mundial del Comercio, la cual se llevó a cabo del 10 al 14 de septiembre de 2003, en Cancún, Quintana Roo.

A partir de 1995 la OMC, sucesora del Acuerdo General de Aranceles Aduaneros y Comercio (GATT), es el instrumento fundamental para la liberalización del comercio mundial, es la única institución internacional que se ocupa de las normas que rigen el comercio entre los países.

México fue el primer país latinoamericano en ser anfitrión de una Conferencia Ministerial de la OMC, que es la instancia superior en la toma de decisiones de la Organización. El hecho de presidir este evento refleja, por un lado el compromiso de México con la Agenda de Doha para el Desarrollo y por otro lado, su importante papel de promotor del libre comercio.

Objetivo

La Organización Mundial del Comercio (OMC) es el único organismo internacional que se ocupa de las normas que rigen el comercio entre los países. Su principal propósito es asegurar que las corrientes comerciales circulen con la máxima facilidad, previsibilidad y libertad posible.

Funciones :

- Administra los acuerdos comerciales de la OMC
- Foro para negociaciones comerciales
- Trata de resolver las diferencias comerciales
- Supervisa las políticas comerciales nacionales
- Asistencia técnica y cursos de formación para los países en desarrollo
- Cooperación con otras organizaciones internacionales

Reporte final

Cancún: Los verdaderos perdedores son los pobres

El Director General Supachai Panitchpakdi, en el International Herald Tribune del 18 de septiembre de 2003, escribió que el futuro de las cuestiones comerciales posiblemente beneficiosas para los países en desarrollo, tales como la apertura de los mercados de productos manufacturados, servicios y agricultura, es incierto debido a la falta de acuerdo en Cancún. Añadió que buscaría inmediatamente vías para hacer avanzar el proceso de la OMC.

Texto del Artículo

CANCÚN, Mexico: The disappointing ministerial conference that concluded here on Sunday will have many ramifications, but sadly the most significant of them will be its impact on poor countries.

Two years ago, in the Qatari capital, trade ministers agreed to begin global trade negotiations driven by what is known as the Doha Development Agenda, which put the question of development at its core. It is widely acknowledged today that trade is a vitally important element in any program for development, as it can deliver benefits to developing countries worth many times more than all the development aid they receive.

[1] Información obtenida de la página web oficial de la OMC (Organización Mundial del Comercio) www.omcmexico.org.mx y www.wto.org

Opening markets for trade in manufactured products, services and agriculture can provide the key for global economic growth and development. Unquestionably, we will need a balanced outcome to this round of negotiations. At the same time it is essential that the negotiations deliver more to developing countries than they have received from trade rounds in the past.

Already we have recorded some benefits for these countries. In the last several months, we have achieved significant progress both in Geneva and here in Cancún. We reached a historic agreement last month on access to essential medicines for the poorest countries and we have agreed on 28 proposals that would extend special and differential treatment to developing countries.

An initiative to phase out cotton subsidies was advanced and indeed widely supported at the ministerial conference in Cancún. For the first time, the poorest countries in the world actively took part in the negotiations and succeeded in placing their interests on the trade agenda. The proposal for improving the situation of cotton farmers in West Africa did not go as far as governments in that region wanted, but the fact remains that this issue was on the agenda, and once something is on the agenda it can be improved upon.

The same goes for the progress that was made here on agriculture. Many developing countries thought the work done here had moved the negotiations in a very positive direction. Not as far as they wanted perhaps, but in a system when all decisions are taken by consensus members must be realistic about the political concerns of their trading partners.

Now, because ministers could not agree in Cancún on the future agenda, the future of many of these issues is uncertain. For this reason, and others, the outcome of this ministerial conference is a great disappointment. Ministers could not agree on whether to launch negotiations on the so-called “Singapore” issues of trade and investment, trade and competition, transparency in government procurement and trade facilitation. The level of political sensitivity varies widely on these issues, but members could not agree on any of them.

In the end the ministers could not summon the necessary flexibility and political will to bridge the gaps that separated them. Sadly, those that will suffer the most for their inability to compromise are the poorest countries among us. A more open and equitable trading system would provide them with an important tool in alleviating poverty and raising their levels of economic development.

If we are to preserve what we have already achieved, build on these achievements and resuscitate these negotiations, ministers will have to intensify their efforts at finding solutions to the problems they could not overcome in Cancún.

We may have to learn the Cancún lesson that when participants take too long to unveil their true positions, compromise becomes even more difficult to achieve. We may also need to work closely with groups of countries and address their concerns earlier to prevent the unnecessary hardening of positions that complicates the decision-making process at ministerial conferences.

For my part, I intend to immediately begin to look for ways in which to move this process forward. This round is too important for all of us to allow this setback to keep us from our objective — an ambitious and balanced round that delivers better market access and more equitable rules for all our member governments and for the people they represent.

COMUNICACIÓN MINISTERIAL

1. Al concluir en Cancún nuestra Quinta Conferencia Ministerial, queremos expresar nuestro profundo agradecimiento al Gobierno y al pueblo de México por la excelente organización y la cálida hospitalidad que hemos recibido en Cancún.
2. En esta reunión hemos dado la bienvenida a Camboya y Nepal como primeros países menos adelantados que se adhieren a la OMC desde su establecimiento.
3. Todos los participantes han trabajado ardua y constructivamente para progresar como requieren los mandatos de Doha. De hecho, hemos progresado considerablemente. No obstante, aún es preciso trabajar más en algunas esferas fundamentales para que podamos avanzar hacia la conclusión de las negociaciones en cumplimiento de los compromisos que asumimos en Doha.
4. En consecuencia, encomendamos a nuestros funcionarios que sigan trabajando sobre las cuestiones pendientes con determinación y sentido de urgencia renovados y teniendo plenamente en cuenta todas las opiniones que hemos expresado en esta Conferencia. Pedimos al Presidente del Consejo General que, en estrecha colaboración con el Director General, coordine esos trabajos y convoque una reunión del Consejo General a nivel de altos funcionarios no más tarde del 15 de diciembre de 2003 a fin de tomar en ese momento las disposiciones necesarias que nos permitan avanzar hacia una conclusión exitosa y oportuna de las negociaciones. Seguiremos ejerciendo una estrecha supervisión personal de este proceso
5. Llevamos con nosotros a esta nueva fase toda la valiosa labor realizada en esta Conferencia. Por lo que respecta a las esferas en las que hemos llegado a un alto nivel de convergencia en los textos, nos comprometemos a mantener esa convergencia mientras trabajamos para llegar a un resultado global aceptable.
   A pesar de esta contrariedad, reafirmamos todas nuestras Declaraciones y Decisiones de Doha y nos comprometemos una vez más a trabajar para aplicarlas plena y fielmente.

Decisión Sobre La Próxima Conferencia Ministerial

En la sesión de clausura los Ministros pidieron al Presidente del Consejo General que continuara manteniendo consultas sobre la fecha y el lugar de celebración de la próxima Conferencia Ministerial.

Tomaron nota "con apreciación" de que antes de la reunión del Consejo General celebrada en agosto Hong Kong, China se había ofrecido a acoger la próxima reunión. Sin embargo, el Presidente Derbez señaló que, dado que los Miembros estaban preocupados por el contenido de la Conferencia de Cancún, no habían podido estudiar seriamente las fechas y el lugar de la próxima reunión, excepto en contactos informales con algunas delegaciones .

La Conferencia Ministerial ha de celebrarse al menos una vez cada dos años.

Proyecto De Texto Ministerial De Cancún

El Presidente del Consejo General, Carlos Pérez del Castillo, y el Director General, Supachai Panitchpakdi, presentaron su proyecto de declaración ministerial de Cancún a los Ministros el 31 de agosto de 2003. En una carta de presentación, destacan que no se ha acordado "en ninguna de sus partes" y que no se han incluido muchas de las propuestas de los Estados Miembros. No obstante, "sigue constituyendo, según nuestro mejor criterio, un marco viable para la actuación de los Ministros en Cancún. Estimamos que constituye una base adecuada y manejable para el debate y esperamos que se revele como una herramienta útil para buscar terrenos comunes de entendimiento en Cancún".

Proyecto de Texto Ministerial de Cancún

1. Reafirmamos las Declaraciones que hicimos en Doha y las decisiones que allí adoptamos. Tomamos nota de los progresos realizados para la ejecución del Programa de Trabajo acordado en Doha, y nos comprometemos nuevamente a completarlo

en su totalidad. Renovamos asimismo nuestra resolución de concluir con éxito, a más tardar en la fecha acordada del 1º de enero de 2005, las negociaciones que se pusieron en marcha en Doha.

2. Para alcanzar esos objetivos acordamos lo siguiente:

ADPIC y salud pública

3. Acogemos con beneplácito la decisión sobre la aplicación del párrafo 6 de la Declaración de Doha relativa al Acuerdo sobre los ADPIC y la Salud Pública que figura en el documento […].

Negociaciones sobre la agricultura

4. Reafirmamos nuestro compromiso con el mandato sobre la agricultura establecido en el párrafo 13 de la Declaración Ministerial de Doha. Tomamos nota de los progresos realizados a este respecto por el Comité de Agricultura en Sesión Extraordinaria y acordamos intensificar la labor para traducir los objetivos de Doha en modalidades de reforma. A este fin, adoptamos el marco establecido en el Anexo A del presente documento con respecto a los nuevos compromisos y disciplinas conexas sobre cuestiones pendientes clave relativas al acceso a los mercados, la competencia de las exportaciones y la ayuda interna como la base para concluir la labor en estas esferas. Disponemos que el Comité de Agricultura en Sesión Extraordinaria concluya su labor sobre el establecimiento de modalidades para los nuevos compromisos, incluidas disposiciones en materia de trato especial y diferenciado, a más tardar el […]. Acordamos que los participantes presentarán sus proyectos de Listas globales basados en estas modalidades no más tarde del […] y confirmamos que las negociaciones, con inclusión de las relativas a las normas y disciplinas y los textos jurídicos conexos, se concluirán como parte y en la fecha de conclusión del programa de negociación en su conjunto.

Negociaciones sobre el acceso a los mercados para los productos no agrícolas

5. Reafirmamos nuestro compromiso con el mandato para las negociaciones sobre el acceso a los mercados de los productos no agrícolas establecido en el párrafo 16 de la Declaración Ministerial de Doha. Tomamos nota de los progresos realizados a este respecto por el Grupo de Negociación sobre el Acceso a los Mercados y acordamos intensificar la labor para traducir los objetivos de Doha en modalidades para estas negociaciones. A este fin, adoptamos el marco de modalidades para las negociaciones sobre los productos no agrícolas establecido en el Anexo B del presente documento. Disponemos que el Grupo de Negociación concluya su labor sobre el establecimiento de modalidades a más tardar el [...] y que tome las medidas adicionales necesarias a fin de garantizar la conclusión de las negociaciones para la fecha acordada.

Negociaciones sobre los servicios

6. Estamos comprometidos a intensificar nuestros esfuerzos para llevar a término las negociaciones sobre compromisos específicos. Subrayamos la importancia del pleno empeño de todos los participantes, entre otras cosas mediante el continuo intercambio de peticiones y ofertas. Con miras a proporcionar a todos los Miembros un acceso efectivo a los mercados, se prestará la debida consideración a la calidad de las ofertas, en particular en sectores y modos de suministro de interés para las exportaciones de los países en desarrollo. Exhortamos a los participantes que aún no hayan presentado sus ofertas iniciales a que lo hagan lo antes posible. Deberán presentarse ofertas mejoradas no más tarde del […]. También estamos comprometidos a intensificar nuestros esfuerzos para concluir las negociaciones sobre la elaboración de normas en el marco del párrafo 4 del artículo VI, y los artículos X, XIII y XV del AGCS, de conformidad con sus respectivos mandatos y plazos, tomando nota de la fecha límite del 15 de marzo de 2004 para las medidas de salvaguardia urgentes. El Consejo del Comercio de Servicios en Sesión Extraordinaria pasará revista a los progresos realizados en esas negociaciones a más tardar el 31 de marzo de 2004. Reafirmamos que las negociaciones tendrán por objeto lograr niveles progresivamente más elevados de liberalización sin excluir a priori ningún sector de servicios o modo de suministro, y en ellas se prestará especial atención a los sectores y modos de suministro de interés para las exportaciones de los países en desarrollo. Tomamos nota del interés de los países en desarrollo, así como de otros Miembros, en el Modo 4. De conformidad con las disposiciones del AGCS, se respetará debidamente el derecho de los Miembros de reglamentar e introducir nuevas reglamentaciones en cumplimiento de objetivos de política nacional.

Ha de añadirse un texto sobre modalidades para el trato especial de los países menos adelantados Miembros según el resultado de las consultas en curso.

Negociaciones sobre las normas

7. Encomendamos al Grupo de Negociación sobre las Normas que acelere sus trabajos relativos a las medidas antidumping y las subvenciones y medidas compensatorias, incluidas las subvenciones a la pesca, con el fin de reorientar su atención de la identificación de cuestiones a la búsqueda de soluciones. Tomamos nota de los progresos que se han realizado en las negociaciones para mejorar la transparencia en los acuerdos comerciales regionales, y alentamos al Grupo a que llegue pronto a una

decisión provisional sobre su labor en materia de transparencia y a que acelere su labor sobre la aclaración y mejora de las disciplinas de los acuerdos comerciales regionales en el marco de las disposiciones vigentes de la OMC, teniendo en cuenta los aspectos de desarrollo de los acuerdos comerciales regionales.

Negociaciones sobre los ADPIC

8. Tomamos nota de los progresos realizados en las negociaciones sobre el establecimiento de un sistema multilateral de notificación y registro de las indicaciones geográficas de vinos y bebidas espirituosas y encomendamos al Consejo de los ADPIC en Sesión Extraordinaria que continúe la labor prescrita en el párrafo 4 del artículo 23 del Acuerdo sobre los ADPIC y el párrafo 18 de la Declaración Ministerial de Doha. Acordamos que las negociaciones se completarán a más tardar […].

Negociaciones sobre el medio ambiente

9. Tomamos nota de los progresos realizados por el Comité de Comercio y Medio Ambiente en Sesión Extraordinaria para llegar a un común entendimiento de los conceptos contenidos en su mandato, que figura en el párrafo 31 de la Declaración Ministerial de Doha. Reafirmamos nuestro compromiso con esas negociaciones.

Negociaciones sobre el ESD

10. Tomamos nota de los progresos realizados en las negociaciones sobre la solución de diferencias. Renovamos nuestra resolución de proseguir esas negociaciones con la finalidad de concluirlas a más tardar en mayo de 2004. En adelante las negociaciones se desarrollarán sobre la base del trabajo realizado hasta la fecha, incluidos el texto del Presidente de 28 de mayo de 2003 y otras propuestas de los participantes.

Trato especial y diferenciado

11. Reafirmamos que las disposiciones sobre trato especial y diferenciado son una parte integrante de los Acuerdos de la OMC. Recordamos la decisión que adoptamos en Doha de examinar las disposiciones sobre trato especial y diferenciado con miras a reforzarlas y hacerlas más precisas, eficaces y operativas. Tomamos nota de los progresos que se han hecho para alcanzar estos objetivos y adoptamos las decisiones contenidas en el Anexo C del presente documento. Encomendamos al Consejo General que continúe vigilando de cerca la labor sobre las propuestas remitidas a los grupos de negociación y a otros órganos de la OMC, y disponemos que estos órganos informen al Consejo General no más tarde del […]. Encomendamos al Comité de Comercio y Desarrollo en Sesión Extraordinaria que prosiga diligentemente, dentro de los parámetros del mandato de Doha, la labor sobre las restantes propuestas de acuerdos específicos y otras cuestiones pendientes a que se hace referencia en el documento TN/CTD/7 y rinda informe con recomendaciones, según proceda, al Consejo General a más tardar el […]. El Consejo General presentará a nuestro próximo período de sesiones un informe sobre todas estas cuestiones.

Aplicación

12. Observamos que, aunque se han hecho algunos progresos en cumplimiento de los mandatos que establecimos en Doha con respecto a las cuestiones y preocupaciones relativas a la aplicación, varias de las cuestiones y preocupaciones planteadas en este contexto siguen pendientes. Reafirmamos los mandatos establecidos en el párrafo 12 de nuestra Declaración Ministerial de Doha y en nuestra Decisión sobre las cuestiones y preocupaciones relativas a la aplicación, y renovamos nuestra resolución de encontrar soluciones apropiadas a estas cuestiones. Encomendamos al Comité de Negociaciones Comerciales, a los órganos de negociación y a otros órganos de la OMC competentes, con carácter prioritario, que redoblen sus esfuerzos para encontrar soluciones apropiadas, y pedimos al Director General que continúe las consultas que ha emprendido sobre determinadas cuestiones, con inclusión de las cuestiones relativas a la extensión de la protección de las indicaciones geográficas prevista en el artículo 23 del Acuerdo sobre los ADPIC a productos distintos de los vinos y las bebidas espirituosas. El Consejo General pasará revista a los progresos realizados y adoptará, en su caso, disposiciones apropiadas no más tarde del […].

Inversiones

13. [Tomando nota de la labor realizada por el Grupo de Trabajo sobre la Relación entre Comercio e Inversiones en virtud del mandato establecido en los párrafos 20 a 22 de la Declaración Ministerial de Doha, decidimos iniciar las negociaciones sobre la base de las modalidades establecidas en el Anexo D del presente documento.]

[Tomamos nota de las deliberaciones que han tenido lugar en el Grupo de Trabajo sobre la Relación entre Comercio e Inversiones desde la Cuarta Conferencia Ministerial. Esta situación no sirve de base para la iniciación de negociaciones en esta esfera. En consecuencia, decidimos que en el Grupo de Trabajo se emprenda un proceso de aclaración de las cuestiones.]

Competencia

14. [Tomando nota de la labor realizada por el Grupo de Trabajo sobre la Interacción entre Comercio y Política de Competencia en virtud del mandato establecido en los párrafos 23 a 25 de la Declaración Ministerial de Doha, decidimos iniciar las negociaciones sobre la base de las modalidades establecidas

	en el Anexo E del presente documento.] [Tomamos nota de las deliberaciones que han tenido lugar en el Grupo de Trabajo sobre la Interacción entre Comercio y Política de Competencia desde la Cuarta Conferencia Ministerial. Esta situación no sirve de base para la iniciación de negociaciones en esta esfera. En consecuencia, decidimos que en el Grupo de Trabajo se emprenda un proceso de aclaración de las cuestiones.]
Contratación pública	15. [Tomando nota de la labor realizada por el Grupo de Trabajo sobre la Transparencia de la Contratación Pública en virtud del mandato establecido en el párrafo 26 de la Declaración Ministerial de Doha, decidimos iniciar las negociaciones sobre la base de las modalidades establecidas en el Anexo F del presente documento.] [Tomamos nota de las deliberaciones que han tenido lugar en el Grupo de Trabajo sobre la Transparencia de la Contratación Pública desde la Cuarta Conferencia Ministerial. Esta situación no sirve de base para la iniciación de negociaciones en esta esfera. En consecuencia, decidimos que en el Grupo de Trabajo se emprenda un proceso de aclaración de las cuestiones.]
Facilitación del comercio	16. [Tomando nota de la labor realizada sobre facilitación del comercio por el Consejo del Comercio de Mercancías en virtud del mandato establecido en el párrafo 27 de la Declaración Ministerial de Doha, decidimos iniciar las negociaciones sobre la base de las modalidades establecidas en el Anexo G del presente documento.] [Tomamos nota de las deliberaciones que han tenido lugar en el Consejo del Comercio de Mercancías desde la Cuarta Conferencia Ministerial con respecto a la facilitación del comercio. Esta situación no sirve de base para la iniciación de negociaciones en esta esfera. En consecuencia, decidimos que en el Consejo del Comercio de Mercancías se emprenda un proceso de aclaración de las cuestiones.]
Pequeñas economías	17. Reafirmamos nuestro compromiso con el Programa de Trabajo sobre las Pequeñas Economías e instamos a los Miembros a que adopten medidas específicas que faciliten la mayor integración de las economías pequeñas y vulnerables en el sistema multilateral de comercio. Tomamos nota del informe del Comité de Comercio y Desarrollo en Sesión Específica acerca del Programa de Trabajo sobre las Pequeñas Economías al Consejo General y de las recomendaciones que en él se formulan. Encomendamos al Comité de Comercio y Desarrollo que, bajo la responsabilidad general del Consejo General, prosiga los trabajos en las reuniones específicas con la finalidad de completarlos lo antes posible, pero no más tarde del 1º de enero de 2005. Encomendamos al Consejo General que presente a nuestro próximo período de sesiones un informe sobre los progresos realizados y las disposiciones adoptadas, junto con las nuevas recomendaciones que procedan.
Comercio, deuda y finanzas	18. Tomamos nota del informe sobre los progresos realizados en el examen de la relación entre comercio, deuda y finanzas transmitido por el Consejo General y acordamos que esta labor continúe sobre la base del mandato contenido en el párrafo 36 de la Declaración Ministerial de Doha y de los progresos realizados hasta la fecha en el Grupo de Trabajo. El Consejo General presentará un nuevo informe a nuestro próximo período de sesiones.
Comercio y transferencia de tecnología	19. Tomamos nota del informe sobre los progresos realizados en el examen de la relación entre comercio y transferencia de tecnología transmitido por el Consejo General y acordamos que esta labor continúe sobre la base del mandato contenido en el párrafo 37 de la Declaración Ministerial de Doha y de los progresos realizados hasta la fecha en el Grupo de Trabajo. El Consejo General presentará un nuevo informe a nuestro próximo período de sesiones.
Informe del CCMA	20. Tomamos nota del informe sobre la labor llevada a cabo por el Comité de Comercio y Medio Ambiente de conformidad con los párrafos 32 y 33 de la Declaración Ministerial de Doha transmitido por el Consejo General. Acordamos que esta labor continúe sobre la base de los progresos realizados hasta ahora y encomendamos al Consejo General que rinda informe a nuestro próximo período de sesiones.
ADPIC: reclamaciones no basadas en una infracción	21. Tomamos nota de la labor realizada por el Consejo de los Aspectos de los Derechos de Propiedad Intelectual relacionados con el Comercio de conformidad con el párrafo 11.1 de la Decisión de Doha sobre las cuestiones y preocupaciones relativas a la aplicación y disponemos que continúe su examen del alcance y las modalidades de las reclamaciones de los tipos previstos en los apartados b) y c) del párrafo 1 del artículo XXIII del GATT de 1994 y haga recomendaciones no más tarde del […]. Queda acordado que, entre tanto, los Miembros no promoverán tales reclamaciones en el ámbito del Acuerdo sobre los ADPIC.
Comercio electrónico	22. Tomamos nota de los informes del Consejo General y de los órganos subsidiarios acerca del Programa de Trabajo sobre el Comercio Electrónico y acordamos continuar el examen de las cuestiones

comprendidas en ese Programa de Trabajo en curso, con arreglo a las disposiciones institucionales actuales. Encomendamos al Consejo General que rinda informe a nuestro próximo período de sesiones sobre los nuevos progresos que se realicen. Declaramos que los Miembros mantendrán hasta ese período de sesiones su práctica actual de no imponer derechos de aduana sobre las transmisiones electrónicas.

Cooperación técnica

23. Acogemos con beneplácito el informe del Director General acerca de la aplicación y adecuación de los compromisos sobre creación de capacidad y cooperación técnica que asumimos en nuestra Declaración Ministerial de Doha y le pedimos que presente un nuevo informe a nuestro próximo período de sesiones. Tomamos nota con satisfacción del establecimiento, después de nuestra última reunión, del Fondo Fiduciario Global del Programa de Doha para el Desarrollo y alentamos a los Miembros a asegurar una financiación adecuada para los futuros programas de cooperación técnica y creación de capacidad. Disponemos que, en la planificación de esos programas, se entablen consultas con los países beneficiarios y se dé prioridad a sus necesidades individuales mediante actividades regionales y nacionales. Acogemos con beneplácito la mejora de la colaboración y la coordinación con otros organismos, incluso en el Marco Integrado para la Asistencia Técnica Relacionada con el Comercio en apoyo de los países menos adelantados y el Programa Integrado Conjunto de Asistencia Técnica. Encomiamos la labor realizada a este respecto por el Director General y la Secretaría y alentamos la continuación de estos y otros esfuerzos con miras a facilitar la mayor participación de los países en desarrollo en el sistema multilateral de comercio.

PMA

24. Acogemos con beneplácito el informe del Director General sobre las cuestiones que afectan a los países menos adelantados (PMA). Reafirmamos nuestro compromiso de integrar eficazmente a los PMA en el sistema multilateral de comercio. En este sentido, reconocemos la gravedad de las preocupaciones de los PMA, expresadas en la Declaración de Dhaka, adoptada por sus Ministros en junio de 2003. Tomamos nota de que en todas las esferas de las negociaciones se tratan cuestiones de interés para los PMA. Basándonos en el compromiso que asumimos en la Declaración de Doha, continuaremos persiguiendo diligentemente el objetivo del acceso a los mercados libre de derechos y de contingentes para los productos originarios de los PMA. Instamos a los Miembros a que adopten y apliquen normas de origen que faciliten las exportaciones de los PMA. A este respecto, apreciamos las medidas de mejora del acceso a los mercados adoptadas por varios Miembros. Además, de conformidad con el compromiso que asumimos en la Declaración Ministerial de Doha, adoptaremos medidas adicionales para mejorar progresivamente el acceso a los mercados, tanto en la frontera como en otros órdenes. En materia de servicios, [daremos prioridad a los sectores y modos de suministro de interés para las exportaciones de los PMA, en particular con respecto al movimiento de proveedores de servicios según el modo 4]. Nos comprometemos además a proporcionar con carácter prioritario asistencia técnica y creación de capacidad relacionadas con el comercio efectivas a los PMA para ayudarles a superar la debilidad de sus capacidades humana, institucional y relacionada con el comercio. En este sentido, reiteramos nuestro respaldo al Marco Integrado (MI) y convenimos en que puede verdaderamente llegar a ser un modelo viable para el fomento del comercio de los PMA si contribuye eficazmente a reducir las limitaciones de oferta, incluso por medio de la incorporación del comercio a sus estrategias nacionales de desarrollo y reducción de la pobreza. Acogemos con beneplácito el comunicado conjunto adoptado por los seis organismos participantes en el MI en la tercera reunión de sus Jefes Ejecutivos y les instamos a intensificar su asistencia en materia de infraestructura relacionada con el comercio, desarrollo del sector privado y creación de instituciones para ayudar a los países a ampliar y diversificar la base de sus exportaciones. También encarecemos la cooperación con otros asociados bilaterales y multilaterales para el desarrollo. Pedimos al Director General que rinda informe a nuestro próximo período de sesiones sobre la evolución de la situación.

Iniciativa sectorial sobre le algodón

25. Tomamos nota de la propuesta de Burkina Faso, Benin, el Chad y Malí titulada “Reducción de la pobreza: iniciativa sectorial en favor del algodón” y acordamos que […].

Cuestiones relativas a los productos básicos

26. Teniendo en cuenta la dependencia de muchos países en desarrollo de un pequeño número de productos básicos y los problemas creados por los descensos a largo plazo y las pronunciadas fluctuaciones de los precios de dichos productos, encomendamos al Comité de Comercio y Desarrollo que, en el marco de su mandato, prosiga su labor sobre esta cuestión en colaboración con otras organizaciones internacionales competentes y antes de nuestro próximo período de sesiones rinda informe al Consejo General sobre los progresos realizados. Reconocemos también que diversos aspectos

de esta cuestión relacionados con el comercio podrían tratarse en las negociaciones en curso, especialmente en el marco de las negociaciones sobre la agricultura y sobre el acceso a los mercados para los productos no agrícolas.

Coherencia

27. Apreciamos los esfuerzos realizados por el Director General para fortalecer la colaboración de la OMC con el FMI y el Banco Mundial en el contexto del mandato que impartimos en Marrakech sobre la consecución de una mayor coherencia en la formulación de la política económica a escala mundial. Alentamos al Director General y al Consejo General a que procedan al seguimiento de la reunión del Consejo General sobre coherencia que tuvo lugar en mayo de 2003. Acogemos con especial beneplácito la declaración de apoyo de los Jefes Ejecutivos del FMI y el Banco Mundial, contenida en su carta al Director General de 20 de agosto de 2003, en la que indican su voluntad de trabajar con la OMC para abordar problemas con que algunos países en desarrollo Miembros pueden tropezar al adaptarse a un entorno comercial más liberal como consecuencia de la erosión de las preferencias, la pérdida de ingresos arancelarios u otros factores. Invitamos al Director General a que nos informe en nuestro siguiente período de sesiones acerca de las iniciativas que se hayan tomado en esta esfera.

Adhesiones

28. Observamos con especial satisfacción que esta Conferencia ha completado los procedimientos de adhesión de Camboya y Nepal. Este hecho señala el ingreso de los dos primeros PMA en la OMC de conformidad con el artículo XII del Acuerdo sobre la OMC. A este respecto, nos valemos de la oportunidad para reafirmar nuestro compromiso con las directrices sobre la adhesión de los PMA adoptadas por el Consejo General el 10 de diciembre de 2002, y nuestro compromiso de facilitar y acelerar su adhesión. Damos también la bienvenida a Armenia y a la ex República Yugoslava de Macedonia, que han pasado a ser Miembros después de nuestro último período de sesiones. Confirmamos que estas adhesiones, así como las de los 25 gobiernos que actualmente negocian su adhesión, fortalecerá en alto grado nuestro sistema multilateral de comercio. Continuaremos, por lo tanto, prestando atención y dando prioridad a la conclusión más rápida posible de los procesos de adhesión en curso.

REPORTE FINAL DEL PRESIDENTE DE LA 5TA REUNION MINISTERIAL DE LA OMC, DR. LUIS ERNESTO DERBEZ

El Presidente Derbez, Secretario de Relaciones Exteriores de México, celebró consultas inmediatamente después de la reunión de jefes de delegación de la noche anterior, que terminó hacia la 1 h.

El Sr. Derbez informó sobre sus consultas en una reunión posterior con todos los Miembros de la OMC y en una conferencia de prensa. Señaló que, como en la reunión de jefes de delegación las intervenciones habían versado una tras otra sobre los temas de Singapur — comercio e inversiones, comercio y política de competencia, transparencia de la contratación pública, facilitación del comercio, en su primera consulta con un pequeño grupo de participantes se había tratado este grupo de temas.

El Sr. Derbez dijo que, de las consultas, que terminaron en torno a las 4 h, se desprendió que se trataba del asunto más difícil y, por consiguiente, decidió que en las siguientes, que empezaron hacia las 8:30 h, se abordase esta cuestión en primer lugar.

Esas consultas se celebraron con un grupo más grande, que representaba a un amplio espectro de grupos regionales y de otro tipo. El Sr. Derbez dijo que, en ellas, se produjo un cambio en las posiciones y surgió la posibilidad de limitar las negociaciones a uno o dos asuntos. A continuación, suspendió las consultas sobre la transparencia, para que los participantes se pudiesen reunir con sus grupos respectivos.

No obstante, cuando los participantes regresaron, era evidente que no había consenso, de modo que decidió dar por concluida la reunión.

Hacia las 16 h, el Sr. Derbez informó a la reunión de jefes de delegación. Propuso una Comunicación Ministerial de seis párrafos, aprobada en la sesión de clausura, que se celebró poco antes de las 18 h. En ella, se encomienda a los funcionarios de los Estados Miembros “que sigan trabajando sobre las cuestiones pendientes con determinación y sentido de urgencia renovados y teniendo plenamente en cuenta todas las opiniones que hemos expresado en esta Conferencia”.

Los Ministros pidieron al Presidente del Consejo General y al Director General de la OMC que coordinasen estos trabajos y convocasen una reunión del Consejo General a nivel de altos funcionarios no más tarde del 15 de diciembre de 2003 a fin de tomar las disposiciones necesarias.

El Director General, Supachai Panitchpakdi señaló que no se podía ocultar el hecho de que el estancamiento era una contrariedad. Dijo estar decepcionado, pero no desanimado, y que es importante lograr que las negociaciones vuelvan a su cauce. Afirmó que, si fracasa el Programa de Doha para el Desarrollo, los perdedores serán los pobres del mundo y se comprometió a trabajar intensamente para conseguir un resultado satisfactorio.

El Sr. Derbez concluyó que los Miembros tienen que aprender de la falta de consenso, que no podrá seguirse como si no hubiera pasado nada y que es necesario reflexionar. Achacó una parte del estancamiento a la incapacidad para alejarse de la retórica — nadie puede vivir de la retórica, señaló.

El Sr. Derbez dijo que la OMC y sus Miembros todavía pueden lograr cambios en favor de la población más pobre.

"EL LIBRE MERCADO NO ES LA LEY DE LA SELVA"
EL EMPRESARIADO NO ES SINÓNIMO DE MALDAD, AFIRMA EL FUNCIONARIO

Hiroshi Takahashi/Enviado
El universal - online 15 de septiembre 2003

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Cancún . La Cámara Internacional de Comercio considerada el peso pesado entre los grupos de presión empresarial, pues lo integran entre otras compañías Shell, Unilever, BASF y Nestlé estuvo aquí.
La presencia empresarial durante la cumbre de la Organización Mundial del Comercio (OMC) mantuvo un perfil bajo, discreto. Aunque notable.

La delegación de la ICC, por sus siglas en inglés, estuvo compuesta por 100 empresarios de todos los rincones del mundo.
Estuvieron en las playas del Caribe mexicano, según explicó su secretaria general, Maria Livanos Cattaui, para apoyar a los ministros de los 146 países que conforman la OMC.

"Una delegación de asociaciones de negocios está acá para apoyar a los negociadores gubernamentales para que continúen con su duro trabajo de liberalización comercial, y que no sean distraídos por el ruido de los protestantes y los grupos de interés minoritarios", afirmó.

Livanos Cattaui, quién dirige al ICC desde París, advirtió que no se llegarían a muchos acuerdos durante la cumbre, pues sólo era una estación en el camino, que termina en 2005.
Tom Niles, presidente de la ICC en Estados Unidos, dijo que parte del atraso de las negociaciones tiene que ver con el lenguaje.

"Hablamos de concesiones comerciales, cuando realmente hay que negociar oportunidades de negocios", recalcó.

Luis de la Peña Stettner, presidente del Capítulo Mexicano de la Cámara Internacional de Comercio, recordó que existen en éste país desde hace más de 20 años. Y aclaró su función.

"La ICC juega un papel de vocero, es el vocero de las empresas ante los organismos internacionales oficiales, especialmente ante la Organización de las Naciones Unidas y la Organización Mundial del Comercio", dice De la Peña Stettner.

En medio de miembros de organizaciones no gubernamentales, globalifóbicos y reporteros en sandalias, recuerda que la comunidad empresarial tiene muchas tareas por delante.

"Es tradicional que se vea al empresario quizá como hace 200 años", dice el representante de la ICC en México. "Esta visión ha sido difícil de quitar, aunque no en todas partes, hay algunos lugares más avanzados que entienden las ventajas de la empresa."

Luego de que una representante de una ONG los atacara, prácticamente sin decir nada, sólo que eran unos empresarios sin escrúpulos que no podían entender el daño que le hacían al mundo, el empresario muestra mucha paciencia.

"Los empresarios no hemos sido capaces de comunicar lo importante que es nuestro trabajo, hacerlo bien, para generar empleos, generar riqueza, creen que riqueza es sinónimo de maldad".

Dicho eso, explica que esa es una de las tantas labores que tienen enfrente los empresarios, y recuerda que ICC representa a muchas empresas del mundo.
Sin embargo, no solo ve por los intereses de las grandes, trata de hacer que la competencia sea más equitativa.
Uno de los grandes avances que detecta es el hecho de que el sector empresarial ya sea tomado en cuenta en todas conferencias oficiales internacionales, eso desde hace un año y medio más o menos.

"ICC México aporta los problemas de los empresarios mexicanos, los lleva a París, donde está la sede de la cámara. Esta problemática se representa ante la OMC y la ONU".

ICC México

International Chamber of Commerce

La organización mundial de las empresas

Capítulo Mexicano de la Cámara Internacional de Comercio, A.C.

CAMECIC

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