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Assistance Provided to Individual Delegations

Introduction

From the beginning of the project it was recognised that in addition to providing assistance to the members of the Group as a whole, the Adviser should be available to assist individual delegations or small groups of like-minded delegations with advice on any WTO-related issue. It was further agreed that such advice should be treated as confidential. Where the assistance was provided through the preparation of papers it should be left to the delegation(s) involved to decide whether they should be made available to all members of the Group.

The assistance provided generally took the following forms:

- Briefings on WTO law and practice on the issues raised in ongoing discussions and negotiations;
- Analysis and feedback on the drafts of national legislations or on the approach that could be adopted in the discussions, on a bilateral or plurilateral basis;
- Preparation for participation in opinion forming seminars or workshops arranged by academic institutions and other research organisations.

Briefings on WTO law and practice

A number of delegations approached the Adviser for background information on legal aspects of issues that were under discussions or for advice on how they could respond to the points that had been raised in the discussions. The assistance required was provided through discussions with the requesting delegations over the telephone or in informal meetings in the WTO coffee room. In some cases, briefing notes on the issues raised were made available to the delegations.

The assistance provided to individual delegations was one of the most important features of the project. It was unique – no other Geneva-based international organisation provided such advice and assistance on demand and almost immediately, on a ‘hotline basis’. Providing such assistance took nearly 20 per cent of the time devoted by the Adviser to the work under the project.

It is important to note in this context that some of the papers prepared at the request of individual delegations were later circulated, with their consent, to all members of the Group. In these cases the requesting delegations considered that the issues analysed in the papers would be of interest to them. Following are highlights of some of these briefing papers.

Synoptic Listing of the Problems in the Implementation of the WTO Dispute Settlement Procedures (April 1999)

The paper provides an overview of some of the problems that had arisen in the implementation of the dispute settlement procedures and suggests some improvements that could be made in the selection of members of the panels and the working methods adopted by them. It expresses particular concerns at the trend on the part of the Appellate Body to create 'new law' where it considered that the existing WTO law failed to take into account fully the changes that had occurred since it was adopted or was not clear. It emphasises that in doing this the Appellate Body was going beyond its mandate to confine itself to the interpretation of the rules contained in WTO legal instructions (Rege 1999).

Workers Rights and International Trade (July 2000)

At the 1996 Singapore Ministerial meeting it was agreed that ILO was the only competent body to deal with labour standards. It was further agreed that while the WTO and ILO Secretariat should continue to collaborate in work in this area, the WTO law should not be changed to permit countries to prohibit or restrict imports from countries that failed to comply fully with international standards adopted by ILO. In 1997 some of the developed countries, as a result of demands by trade unions and other labour organisations in their countries, started building pressure for discussions on incorporation of the 'social clause' in the WTO law. This would establish linkages between trade and labour standards and permit countries to restrict imports if 'labour standards' relating to such matters as child and forced labour, minimum wages and hours of work, and safety and health of workers were not followed.

The paper provided a historical perspective of the efforts made by some of the developed countries since the establishment of GATT to secure inclusion of the social clause in WTO law and the reasons why they were not successful. This is followed by an analysis of arguments for and against inclusion of the social clause in WTO and of the proposals by some delegations for modifications in various GATT Articles that would permit countries to levy additional duties or restrict imports from countries that failed to apply internationally agreed labour standards. The paper concludes with some observations on why it may not be in the interest of developing countries, at their present stage of development, to have legally binding rules that would enable countries to deny or restrict imports, if they considered that the exporting countries were failing to abide by internationally accepted labour standards (Rege 2000).

WTO Procedures for Decision-making: Experience of the Operation and Suggestions for Improvement (May 2002)

The paper was prepared at the request of some delegations to assist them in the discussions that took place after the failure of the Seattle Ministerial meeting in 1999 on how the present procedures for resolving differences and for taking decisions could be improved.

It describes and compares the procedures adopted by the World Bank and the IMF and those adopted in WTO, for resolving differences and for taking decisions. The main differences in the procedures followed arise from the fact that in the World Bank and IMF the work is 'secretariat driven' while in the case of WTO it is entirely 'delegation driven'. Because of this, the proposals made by some analysts for the establishment of an Executive Committee, similar to that existing in IMF and the World Bank and consisting of 20 or so member countries, to make decisions on important matters (such as inclusion of new subjects in the work programme of WTO in the agenda for negotiations) may not be acceptable to a large number of member countries. These countries are likely to insist that the existing practice under which each member country has one vote should not be changed and that the decision on important policy-related matters should be taken by consensus (Rege 2002a).

Genetically Modified Products: Need for the Adoption of Regulatory Framework at National Level (May 2001)

The paper was prepared at the request of some delegations whose governments were considering adopting rules and regulations governing imports and sales of genetically modified food products. The paper explained the provisions of the WTO Agreement on Sanitary and Phytosanitary Measures and of the Cartagena Protocol on Biodiversity and pointed out that it may be possible for a country to temporarily prohibit or restrict imports of genetically modified products that are approved for sale in the domestic market of the exporting country, by applying the 'precautionary principle'. Continuation of such restrictive measures on a long-term basis would have to be justified on the basis of an 'assessment of risk' showing that the products may pose a threat to the conservation and sustainable use of biological diversity and to the human and animal health within the territory of the importing country. As undertaking such risk assessment may be beyond the technical capacities of a large number of developing countries, the Protocol on Biodiversity has established a database on risk assessments carried out by different countries. The countries wishing to ban or restrict sale of generally modified products can base their decisions on the information contained in the database if they are not able to carry out the risk assessment themselves. The paper further describes the principles and rules that would have to be taken into account in adopting regulations for mandatory labelling of such products (Rege 2001).

Principles and procedures that could be followed in the selection of a Deputy Director General (May 2002)

The paper was prepared in 2002 as the term of the then incumbent Director General was about to expire and the new person was expected to take over. It explains past procedures and recognises the right of the Director General to select his/her deputies, but argues that it may be necessary to establish a mechanism to ensure that persons selected have both knowledge and expertise in WTO-related work and at the same time are supported by the countries of the region from which they come. For this purpose, the applications received for the post should be screened by a panel consisting of independent trade policy experts, and the Chairman of the General Council and some of the other councils (Rege 2002b).

Feedback on national legislation, regional/bilateral negotiations

The Adviser was often asked for comments and views on the drafts of new legislations in the field of trade and economic development that countries proposed to adopt, particularly with a view to ascertaining whether they were consistent with WTO rules. Likewise, some delegations requested his views on whether their approach in the negotiations for bilateral or plurilateral trading agreements was consistent with WTO rules. The delegations making such requests desired absolute confidentiality, as very often ministries in their governments took different positions on the issues on which opinion was sought and they did not wish these differences to become public.

Assistance for participation in opinion-forming seminars, workshops

Ambassadors from member countries of the Group often requested help in deciding on the approaches they could adopt on special trade and development problems of developing countries in high-level seminars or workshops arranged by academic institutions and research-oriented non-governmental organisations. The aim of the assistance was to ensure wider dissemination of the views expressed in the papers prepared by the Adviser for the Group on the possible measures that could be taken in the Round so that the trade and development interests of developing countries were fully taken into account.

References

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