

July 2007

Report on AITIC-ILI *Flash Meeting*
Moving Forward WTO Rules Negotiations

6 July 2007, 10.00-13.00
Room A, *Centre de Conférences de Varembe*

I. Objectives

1. In the Doha negotiations, the focus on agriculture and non-agricultural market access tends to divert attention from actions and concrete results in other no less important areas, such as Rules. The Flash Meeting aimed to clarify key issues, describe current positions and allow for an exchange of views on them.

II. Issues Discussed

2. HE Mr Guillermo Valles Galmés, Chairman of the Negotiating Group on Rules, presented:

- The new regional trade agreements (RTAs) transparency mechanism
- Outstanding systemic issues on RTAs: the “substantially all the trade” requirement, transition periods and development
- Fisheries Subsidies: disciplines and S&D ensuring sustainability and development

3. Mr Charles Verrill, ILI President, spoke about:

- Antidumping: the lesser duty rule, public interest test, sunset review, zeroing, causation, regional issues.

4. The mandate of the Rules negotiations is broad and covers RTAs, subsidies, fisheries subsidies and anti-dumping. The negotiations have concentrated more on exploring the feasibility of different proposals than on theoretical approaches. This has allowed real progress in the Negotiating Group. This experience could be used in other areas as well.

A. RTAs

5. The new Transparency Mechanism for RTAs was provisionally adopted by the General Council in December 2006. It contains a clear timeframe for the notification of RTAs, guidelines on the type of information to be provided and gives to the WTO secretariat a fact-finding role similar to that for Trade Policy Reviews (TPR). It tries to avoid overloading developing countries with excessive information requirements and offers them technical assistance. Organisations like AITIC could help disseminate information regarding the new mechanism.

6. The negotiations on systemic issues have seen little progress. They focused on clarifying the “substantially all the trade” requirement for RTAs, the length of transition periods and the development dimension of RTAs. One Participant expressed concerns about the lack of S&D treatment given to the Economic Partnership Agreements (EPAs).

B. Fisheries Subsidies

7. Members consider prohibiting certain forms of fisheries subsidies contributing to overcapacity and over fishing and ways of providing S&D to developing countries. Some favour a broad prohibition of subsidies with some exceptions, while others advocate a positive list approach for authorised subsidies. Subsidies under discussion include those for construction, modernisation and repair of boats, and those to boat operating costs, to infrastructure, as well as income and price support. Some participants feared that in addition to subsidies, direct and indirect investments could also have an important impact on over fishing.

8. Consultations on these issues are held with international organisations, such as FAO and UNEP, as well as with regional fishery organisations. Participants highlighted the need to avoid duplication, achieve coherence between the WTO and other international rules, and to avoid circumvention. On S&D, members agree that there should be no blank checks to developing countries but simple and enforceable rules leaving them room to grow, given the importance of this sector for many developing countries.

C. Anti-dumping

9. Generally, the stand-off continues between the so-called “Friends of Anti-dumping Negotiations”¹ who want to tighten up the rules and make the imposition of anti-dumping measures more difficult, and others, such as the US, who defend the existing approach. On the “lesser duty rule”, the “Friends” are in favour of making it mandatory, when the US favours the status quo. “Friends” also insist that the interests of consumers and industrial users of dumped products should be taken into account by national investigating authorities, which the US opposes.

10. “Friends” propose to require that Sunset reviews (Article 11 of the Anti-dumping Agreement) be completed prior to the end of the 5th year following the

¹ Brazil; Chile; Colombia; Costa Rica; China; Hong Kong; Israel; Japan; Rep of Korea; Mexico; Norway; Singapore; Switzerland; Chinese Taipei; Thailand; and Turkey

imposition of anti-dumping duties, and to remove any presumption that the removal of the duties would result in a resumption of dumping.

11. Several Appellate Body decisions considered that zeroing was inconsistent with the Anti-Dumping Agreement, the US made a proposal that would explicitly recognise the legality of this practice, a move opposed by the “Friends”.

12. Although developing countries are today by far the main users of anti-dumping measures, some participants explained that their countries faced enormous difficulties to implement anti-dumping rules. These mechanisms are complex and costly to operate, reason why Kenya² proposed that technical assistance be provided to developing countries to help them implement their anti-dumping rules. The Agreement on Anti-dumping could also be modified to recognise that the government of developing countries should assist their affected industries before the investigating authorities.

13. Participants also enquired about the possibility to develop anti-dumping rules at a regional level. According to the Agreement on Anti-dumping, this required a prior integration of the countries in the region, which today has been reached only by the EU.

List of Acronyms

EPAs	Economic Partnership Agreements
EU	European Union
FAO	Food and Agriculture Organization of the United Nations
ILI	International Law Institute
RTA	Regional Trade Agreements
S&D	Special and differential treatment
TPR	Trade Policy Review
US	United States
UNEP	United Nations Environment Programme
WTO	World Trade Organization

² See *Special and Differential Treatment and Technical Assistance in Trade Remedies*, WTO, TN/RL/GEN/143, 27 June 2006.

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