

**COMMUNICATION FROM CANADA, COSTA RICA AND KOREA**

The following communication, dated 4 June 2003, has been received from the Permanent Mission of Canada, on behalf of Canada, Costa Rica and the Republic of Korea.

**NEGOTIATING A MULTILATERAL FRAMEWORK ON INVESTMENT IN THE WTO**

**I. SYNOPSIS**

1. In December, 1996, WTO Ministers set up a Working Group on Trade and Investment (WGTI) to examine the relationship between trade and investment.<sup>1</sup>

2. Five years later, at Doha in November 2001, WTO Ministers addressed investment more comprehensively. In particular, they recognized the case for a multilateral framework for investment that will contribute to the expansion of trade, and the need for enhanced technical assistance and capacity building in this area. Ministers also agreed that negotiations would take place after the Fifth Session of the Ministerial Conference on the basis of a decision to be taken at that Session on modalities of negotiations.<sup>2</sup>

3. In paragraph 21 of Doha, Ministers went on to expand upon their reference to technical assistance and capacity-building, stating that work with other organisations, including UNCTAD, would be undertaken to respond to the needs of developing and least-developed countries.

4. In paragraph 22, Ministers turned their attention to the work of the WGTI. They identified several issues for clarification, and with respect to a multilateral framework as a whole reminded the Group of the importance of balancing the interests of home and host countries, and the particular needs of developing and least-developed countries, including with respect to the right to regulate in the public interest. They also noted the broader context of WTO, bilateral and regional arrangements in which the work of the WGTI on an investment framework takes place.

5. After almost seven years, and particularly since Doha, the preparatory work of the WTO's WGTI is complete. Thanks to a more structured mandate under paragraph 22 of the Doha Declaration, the work of the WGTI has been particularly fruitful, as an examination of the comprehensive WGTI meeting reports reveals. At the Group's five meetings since Doha, the scale and quality of engagement on the mandated work of the Group has been considerable. The WGTI has considered and discussed well over fifty submissions from Members, other international organizations, and the Secretariat (including reports to Council), amounting to many hundreds of pages of documentation covering not only all the issues that the Group had been asked to cover, but

<sup>1</sup> WT/MIN(96)/DEC, para. 20.

<sup>2</sup> WT/MIN(01)/DEC/1, para. 20.

additional issues as well. We now find ourselves ready to proceed to the next phase of work referred to by Ministers for years: negotiations on a multilateral framework for investment within the WTO.

6. This is of course not to say that there is agreement on all issues by all delegations to the WGTI, since such a situation would obviate the need for negotiations. What has been witnessed, however, is very real progress in clearing the underbrush for a greater understanding of issues to be taken into account during negotiations, as well as a better appreciation of other considerations relevant to the design of an investment agreement within the superstructure of the WTO family.

## II. PURPOSE OF A WTO INVESTMENT FRAMEWORK

7. Why should we negotiate comprehensive investment rules in the WTO? After all, there is already a network of bilateral and regional investment agreements, not to mention rules affecting investment to a greater or lesser degree in the WTO already. In addition, as a few delegations have observed, the relationship between investment agreements and investment flows, or investment agreements and trade flows, is arguably more complex than that of trade rules and trade flows.

8. But this is not to deny that these relationships exist, nor that they would not benefit from clear rules at the multilateral level. Furthermore, as countries seek to diversify their sources of, and destinations for, international investment, a multilateral framework is best suited to complement the large but less than universal network of bilateral and regional agreements that already exists. (The scope and coverage among agreements in this network is also highly variable.)

9. It is difficult to gauge the effects of a failure to agree to negotiate rules in the WTO on the international economy. In addressing the issue of developing country participation in the WTO as a whole, Peter Sutherland, a former Director-General of the WTO noted in a speech last month: "We must start from the observation that the GATT and WTO systems do not guarantee *anybody* a greater slice of world trade. What they strive for is some equality of opportunity through open, competitive and predictable markets".<sup>3</sup>

10. Similarly, a multilateral framework for investment in the WTO would not *guarantee* greater investment flows. Cancún simply represents an opportunity – an opportunity not only to tidy up loose ends within the WTO family of agreements, but more importantly to help lay the groundwork for meaningful rules that both respond to and shape the framework under which international investment takes place.

11. We believe that in failing to take the opportunity presented to us in the Doha Declaration to negotiate an investment agreement in the WTO we would miss an opportunity to shape the multilateral environment in which international investment can contribute to the development prospects of all our citizens. Today, multilaterally agreed rules – on investment and indeed other issues – are more important than ever to the international economy.

12. In the absence of investment rules, investment will continue to take place. But well crafted rules at the multilateral level can contribute to a framework not only where investment can take place and flows enhanced, but which can facilitate transparency and predictability, and thereby enhance economic efficiencies – as well as defer to sustainable development priorities. Members are indeed already familiar with negotiating rules governing non-discrimination, transparency and other relevant issues bilaterally and regionally. The ability to do so multilaterally among virtually all major trading partners also represents an opportunity to undertake negotiations with a wider variety of home and host countries than would be represented in bilateral or regional agreements often characterized by highly asymmetrical relations among partners.

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<sup>3</sup> "The Tacitus Lecture", given by Peter D. Sutherland to The Worshipful Company of World Traders, London, 15 April 2003, at: <http://www.world-traders.org>

13. Notably, at the birth of the WTO at Marrakesh in 1994, Ministers expressed their "determination to resist protectionist pressures of all kinds."<sup>4</sup> A WTO investment agreement would also represent an opportunity to consolidate gains made in this vein at the domestic as well as multilateral level.

### III. DEVELOPING AND LEAST-DEVELOPED COUNTRIES IN A WTO INVESTMENT AGREEMENT

14. It has been encouraging to note the level of interest in investment issues as reflected in technical assistance activities on WTO issues organized by the Secretariat at the request of developing and least-developed members.<sup>5</sup> We maintain that these activities would enjoy even greater prospects for positive impacts once the focus inherent in investment negotiations is underway. What WGTI discussions and TA/CB activities on investment associated with Doha have also revealed is that it is least developed members in particular who will require special attention in order to maximize their influence during negotiations, as well as any benefits they could expect to enjoy as a result.

15. The sophistication of the discussion in the WGTI reflects well on all delegations, including developing and least-developed countries. Nevertheless, we would like to emphasise our recognition of the needs of developing and particularly LDCs in WTO investment negotiations. Notwithstanding the contribution investment flows can make to development, we recognize that the transition to more open economic framework, including with respect to investment, can also entail costs that we should also take into account. Such a recognition would be fully consistent with WTO rules, including the Uruguay Round's Decision on Measures in Favour of Least-Developed Countries.<sup>6</sup>

16. The WTO's 1996 *Annual Report* contained a section focusing on the special topic of Trade and Foreign Direct Investment. Apart from summarizing the considerable literature on FDI and trade, it also argued that: "Because the benefits which the WTO brings to the world economy come primarily via the impact of the WTO on investment decisions, it is no exaggeration to say that investment lies at the heart of the WTO."<sup>7</sup>

17. It also concluded its discussion with a challenge to investment negotiators, many aspects of which continue to remain relevant to our work, including with respect to developing and least-developed countries. Today, this may be summarized as follows: A global framework can implicitly recognize the close linkages between trade and investment, assure the compatibility of investment and trade rules and, most of all, take into account in a balanced way the interests of all the Members of the WTO – developed, developing and least-developed alike. A multilateral negotiation in the WTO can provide such a global and balanced framework. This can contribute to an enhanced, more transparent and sustainable system within which scarce supplies of capital and technology are allocated. It can also complement efforts to integrate all developing countries into the multilateral trading system.<sup>8</sup>

### IV. CONCLUSION

18. After almost seven years, and particularly since Doha, the preparatory work of the WTO's Working Group on Trade and Investment is complete. The negotiation of comprehensive investment rules in the WTO is overdue. Such negotiations would ultimately be part of a single undertaking associated with WTO agreements as a whole.

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<sup>4</sup> Marrakesh Declaration of 15 April 1994, para. 2 – as reproduced in *The Results of the Uruguay Round of Multilateral Trade Negotiations – The Legal Texts*, WTO (Geneva: 1995), p. iv. Reaffirmed at Doha – para. 1

<sup>5</sup> See WT/COMTD/W/101/Add.4 (2002); on 2003 activities, see WT/COMTD/W/104/Add.1/Rev.2.

<sup>6</sup> See WT/MIN(96)/14.

<sup>7</sup> WTO 1996 *Annual Report*, pp. 76.

<sup>8</sup> See WTO 1996 *Annual Report*, pp. 77-78.

19. We can collectively commit to addressing the challenges and opportunities posed by the growth in importance of FDI to the trading system – which is one of the challenges Ministers recognized at Singapore in 1996<sup>9</sup> – or simply choose to observe this growth that will continue to evolve without our input. Further delay risks undermining prospects for investment rules in the WTO system. As we approach Cancún we believe that it is in our collective interest to take the opportunity now afforded us to negotiate comprehensive investment rules within the WTO family of agreements.

20. Finally, consistent with the work mandated for the WGTI under paragraph 22 of the Doha Declaration, we believe that such a WTO investment framework should reflect in a balanced manner 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. The special development, trade and financial needs of developing and least-developed countries should be taken into account as an integral part of any framework, which should enable Members to undertake any obligations and commitments commensurate with their individual needs and circumstances.<sup>10</sup>

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<sup>9</sup> WT/MIN(96)/DEC, para. 3.

<sup>10</sup> Based on the work of the WGTI since Doha, we would note that the right to regulate in the public interest is a right of all countries, and that the special development needs of least-developed countries warrant particular attention.