

**Notes from the WTO 7th Ministerial Conference held in Geneva
November 30, December 1 and December 2, 2009**

Drawn up by Ivan Hjertman, Chair of AIPPI Special Committee Q94 WTO/TRIPS,
attending the Conference as observer and rapporteur for AIPPI

Introductory notes

1. The WTO held its 7th Ministerial Conference on November 30, December 1 and December 2, 2009. Although the WTO Ministerial Conferences in principle are to be held every two years, it is four years since the 6th Ministerial Conference which was held in Hong Kong in 2005.

2. At the Hong Kong WTO Ministerial Conference, AIPPI was represented by Esmé du Plessis, Co-Chair of AIPPI Special Committee Q94. For the 2009 Geneva Ministerial Conference it was decided by the AIPPI Bureau that AIPPI should again be represented, by one Bureau member and by one member of the Q94 Committee. Your present rapporteur was appointed as the Q94 Committee representative. Because of unfortunate circumstances, the Bureau could in the end not be represented. Your present rapporteur attended during the three days of the Conference those of the sessions which were open to NGOs: the Opening Session, the Plenary Meetings during the main conference, and the Closing Session.

3. It was expressly stated early on, when the decision was taken that a WTO Ministerial Conference was to be held in the fall of 2009, that such Ministerial would be different from earlier WTO Ministerial Conferences. It was not intended to be a negotiating meeting on the Doha Round. Rather, it was to focus on the “big picture” in the sense of reviewing the functioning of the WTO organization and to provide guidance to the organization for its continued work. This is reflected in the official general theme for the meeting: “The WTO, the Multilateral Trading system and the Current Global Economic Environment”.

4. At the same time, it was repeatedly stated by Pascal Lamy, WTO Director General, that the general direction of the Ministerial did not prevent ministers from taking up the Doha Round or negotiating issues. Quote from a speech by Pascal Lamy: “...this does not mean that ministers’ statements or indeed their discussions cannot address the issue of the Doha Round or indeed specific negotiations. On the contrary, it would seem rather odd if the elephant in the room remained nameless.”

5. Your rapporteur must emphasize that this report is limited to providing some impressions from and information on the Conference, with special attention on TRIPS related aspects. It obviously cannot be a full report on the Conference and its outcome. Some observations are made in regard to implications for TRIPS related aspects which AIPPI should take note of for its further activities.

General set-up and agenda for the Conference

6. The Conference was set for three days, starting with an Opening Session Monday November 30 at 15.00 and ending with a Closing Session Wednesday December 2 at 17.00. The Conference closed December 2 at 17.43. It was held at the Centre International de Conférences de Genève, CICG. According to the List of Participants, it was attended by

- 153 Members of the WTO, meaning the whole membership
- 36 Observer Governments
- 76 Observer International Intergovernmental Organisations
- 487 Non-Governmental Organisations, NGOs
- Press

The total number of persons attending was reported to be some 3 000.

7. The NGOs had been allotted space in a separate building across the street from the CICG. There were meeting rooms, computers, and a small cafeteria. WTO staff was attending at all times when the NGO centre was open.

8. The Conference agenda had four items which were taken up in Plenary Sessions. These sessions were open for NGOs and for the press, although with a limited number of seats.

- Overview of Activities of the WTO
- Action by Ministers
- Date and Venue of the Eighth Session
- Election of Officers.

9. The Opening Session and the Closing Session were also open to NGOs and to the press, again with a limited number of allocated seats.

10. In parallel with the Plenary Sessions, what was called Working Sessions were held on day 2 and day 3 of the Conference. Those sessions were not open for NGOs, however reports were provided at briefings at the NGO Centre and also published on the WTO website. General themes taken up at the working sessions included items such as regional trade agreements, Aid for Trade, candidate countries' accession negotiations, and the WTO's contribution to recovery, growth and development.

11. The agenda item Overview of Activities of the WTO took up the major part of the Plenary Sessions the three days. With each speaker's time limited to three

minutes – in fact by and large also held by the large majority of speakers – 121 WTO Members and 16 Observer delegations made statements. To this come 6 statements at the Opening Session – by Andres Velasco, Minister of Finance, Chile, Chair of the Conference, Pascal Lamy, DG WTO, Mario Matus, Chair of the WTO General Council, Supachai Panitchpakdi, DG UNCTAD, Francis Gurry, DG WIPO, and Patricia Francis, Executive Director, International Trade Centre. And two statements were made at the Closing Session, by Conference Chair Andres Velasco and by DG WTO Pascal Lamy. Your rapporteur listened to all but two of these 145 statements.

12. For a general review of the outcome of the Conference you are referred to the Summary, **attached**, prepared by the Conference Chair Andres Velasco. This summary was expressly prepared on his own responsibility. It is not a negotiated text.

13. Your rapporteur was impressed by the essentially unanimous positive expressions in the ministerial statements, indeed across the whole range of WTO Members from LDCs to developed countries, on the value of the WTO and the multilateral trading system, on the value of the WTO and its rules in counteracting protectionism, on a strong wish to conclude the Doha Round in 2010, and on the importance of the development dimension in the Doha Round.

14. However, reservations in one form or the other were also discernible, even if not always clearly expressed. For example, the US pointed out the ever-increasing role of advanced developing countries in the global economy, specifically mentioning China, India, Brazil, Argentina, South Africa and the ASEAN countries, and that “creation of new trade flows and meaningful market opening, particularly in key emerging markets, is required to fulfill the development dimension of Doha”. Brazil stated that in the current negotiating package “the contribution of developing countries would be greater than that given by developed countries in any of the previous negotiating Rounds. It is unreasonable to expect that concluding the Round would involve additional unilateral concessions from developing countries.” Switzerland noted that the agricultural negotiations met with difficulties in the Swiss farming sector.

15. In regard to TRIPS and the issues discussed since long in the TRIPS Council, especially related to two areas: geographical indications (GIs), and the TRIPS/CBD relationship with its linkage to special disclosure requirements for patent applications where genetic resources are involved, it was not to be expected – given the expressed purpose of the conference - that those issues would be much mentioned or discussed in any detail. Nevertheless, TRIPS issues are among those open issues which apparently will be part of a possible final deal in the Doha Round, and it was of interest to see to what extent they were mentioned in the ministerial statements.

16. Among the formal Opening Session statements, only Francis Gurry mentioned intellectual property, however in general terms only and not specific to TRIPS issues.

17. TRIPS issues were mentioned in some of the ministerial statements:

17a) GIs were mentioned by France, Portugal, and Morocco.

17b) The significance of the TRIPS/CBD relationship as a major development issue was mentioned by India, Peru, and Norway.

17c) Antigua & Barbuda mentioned its dispute with the US on cross-border gambling and noted that despite long bilateral negotiations with the US the case remained unresolved. And this although the WTO Panel and Appellate Bodies clearly had ruled in favour of Antigua & Barbuda. (Note: this is one of the cases with cross-retaliation in the TRIPS area)

17d) For completion, one of the few decisions taken at the Conference was TRIPS related: to extend until the next Ministerial Conference the existing moratorium on so-called “non-violation complaints” under TRIPS Agreement. This means that complaints based on legal grounds under TRIPS although the agreement has not been violated, should not be taken to the WTO dispute settlement process.

WTO Languages

18. The WTO languages are English, French, and Spanish. A formal request to add Arabic as an official language of the WTO was tabled by Qatar on behalf of the Arab Group. No decision was made on this request during the Conference.

Documentation

19. All Statements, reports from the Working Sessions, and other materials from the Conference are available on the WTO website, www.wto.org

The further WTO process for the Doha Round

20. As noted, the very large majority of ministers’ statements emphasized the need to conclude the Doha Round in 2010.

21. On this basis, it was agreed that a so-called “stock-taking exercise” will take place during the first quarter of 2010. Specifically, the time end March was mentioned. By that time, the status of remaining open issues would be examined, aiming at a conclusion whether it is realistic to achieve a final deal during 2010. And the work on negotiating issues in Geneva would now be strengthened, starting the week after the Ministerial with senior officials meetings in Geneva.

22. It was decided that the next WTO Ministerial Conference would be held in 2011. Location: to be decided.

Implications for AIPPI work on TRIPS related issues

23. The TRIPS related issues concerning GIs and concerning the relationship TRIPS/CBD are among the unresolved issues which accordingly would be among those coming up for the stock-taking exercise by end March 2010.

24. Those issues concern as noted on the one hand GIs in two respects – which I am not going into in detail here - and on the other hand the TRIPS/CBD relationship with its linkage to special disclosure requirements for patent applications where the invention involves use of genetic resources. These issues have been discussed in the TRIPS Council since a long time, notably during the “mini-ministerial” WTO meeting held in July 2008. Currently, they are discussed in ongoing informal consultations, led by DG WTO Pascal Lamy, between selected WTO Members,

25. Your rapporteur notes in that context that the issue of special disclosure requirements for patent applications where the invention involves use of genetic resources is also included, as one among a number of so called compliance measures, in the currently ongoing negotiations under the CBD on an International Regime for Access and Benefit Sharing (ABS). The timeline for those negotiations prescribes a decision on an International Regime at CBD COP-10 to be made in Japan in October 2010.

26. Any actions by AIPPI in regard to those issues must therefore be considered with the WTO timeline by end March 2010 and the CBD timeline by October 2010 in mind.

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