

**COMMUNICATION FROM THE REPUBLIC OF ZAMBIA
ON BEHALF OF THE LDC GROUP**

A Mechanism to Operationalize Article IV: 3 of the GATS

The following communication, dated 27 March 2006, was received from the delegation of the Republic of Zambia on behalf of the LDC group, with the request that it be circulated to Members of the Council for Trade in Services.

I. BACKGROUND

1. Article IV:3 of the GATS provides the mandate for granting special priority to LDCs by stating that "special priority shall be given to the least-developed country Members..." in the liberalization of market access in sectors and modes of supply of export interest to them, among other things. However, there is no mechanism through which this 'special priority' can be accorded to LDCs,¹ which means that currently, any special treatment accorded to LDCs would have to be extended on an MFN basis in order to comply with the MFN obligation. This would nullify the "special priority" clause, a consequence that is not contemplated in the GATS.²

2. WTO Members are aware of this gap and they have expressly recognized this in paragraph 7 of the LDC Modalities³ which provides that:

"Members shall work to *develop appropriate mechanisms* with a view to achieving full implementation of Article IV:3 of the GATS and facilitating effective access of LDCs' services and service suppliers to foreign markets "(Emphasis added).

¹ The GATT, on the other hand, has several preferential treatment mechanisms, for example: the Decision on Differential and More Favourable Treatment, Reciprocity, and Fuller Participation of Developing Countries - Decision of 28 November 1979 (L/4903) (the Enabling Clause), which replaced the GSP Waiver - Decision of 25 June 1971 (BISD 18S/24); and the Preferential Tariff Treatment for Least Developed Countries (Waiver adopted on 15 June 1999) (WT/L/304).

² "One of the corollaries of the "general rule of interpretation" in the Vienna Convention on the Law of Treaties (1969) is that interpretation must give meaning and effect to all the terms of the treaty. An interpreter is not free to adopt a reading that would result in reducing whole clauses or paragraphs of a treaty to redundancy or inutility": *United States – Standards for Reformulated and Conventional Gasoline*, WT/DS2/AB at p.23. This principle has been applied in many subsequent WTO cases: See Appellate Body Repertory of Reports and Awards 1994 – 2004 at www.wto.org.

³ Modalities for the Special Treatment for Least-Developed Country Members in the Negotiations on Trade in Services (TN/S/13) – adopted by the Special Session of the Council for Trade in Services on 3 September 2003.

3. Recently, paragraph 9 of Annex C of the Hong Kong Ministerial Declaration affirmed this provision by reiterating that Members shall expeditiously develop appropriate mechanisms for according special priority to sectors and modes of supply of interest to LDCs. This is in line with paragraph 3 of Annex C of the Hong Kong Ministerial Declaration which says Members shall pursue full and effective implementation of the LDC Modalities with a view to the beneficial and meaningful integration of LDCs into the multilateral trading system.

4. The mechanism for operationalising Article IV:3, that is, providing special priority to LDCs, has to be developed by Members. The LDC Modalities have made this clear, as has Annex C of the Hong Kong Ministerial Declaration. In addition, Annex C says that Members shall develop the mechanism within the course of the negotiations. This implies that the mechanism should be adopted in the present negotiations, as part of the single undertaking, and within the stated deadlines. Paragraph 11(e) of Annex C substantiates this view because it states that Members shall strive to develop the mechanism by 31 July 2006.

5. In light of the above, LDCs could propose the following mechanism for negotiation among and adoption by the Members:

II. THE PROPOSED DRAFT TEXT OF THE MECHANISM

Understanding on Article IV:3 of the GATS

Members,

Recognizing the low level of participation in world trade in services by the least developed countries, and the need to ensure their effective participation in the world trading system by taking further measures to improve their trading opportunities;

Reaffirming the need for positive efforts to ensure that developing countries, especially the least developed among them, secure a share in the growth of world trade commensurate with the needs of their economic development;

Recognizing that enhanced market access has an important role to play in ensuring that least-developed countries secure a share in the growth of world trade commensurate with the needs of their development;

Noting that Article IV:3 of the GATS provides that special priority shall be given to least-developed countries;

Recognizing that currently there is no operational mechanism for effectively implementing the provisions of Article IV:3;

Considering that Paragraph 3 of Annex C of the Hong Kong Ministerial Declaration requires full and effective implementation of the LDCs Modalities as an objective of the negotiations; and that Paragraph 47 of the Hong Kong Ministerial Declaration calls on Members to implement the Modalities for the Special Treatment for Least Developed Country Members in the Negotiations on Trade in Services and to give special priority to sectors and modes of supply of interest to least developed countries;

Considering also that Paragraphs 6 and 7 of the LDCs Modalities and Paragraph 9 of Annex C of the Hong Kong Ministerial Declaration require Members to develop appropriate mechanisms with a view to achieving full implementation of GATS Article IV:3;

Desiring to provide a mechanism to make Article IV:3 operational, consistent with the abovementioned LDCs Modalities and the Hong Kong Ministerial Declaration;

Hereby *agree* as follows:

1. Notwithstanding any provision of the GATS, non-reciprocal special priority shall be accorded only to least developed countries in sectors and modes of supply of interest to them.
2. Developed country Members shall, and developing country Members declaring themselves in a position to do so should, accord non-reciprocal special priority to least developed countries.
3. Any special priority provided under this Understanding:
 - shall be designed to facilitate and promote the exports of least developed countries;
 - shall be designed, and if necessary, modified, to respond positively to the development, financial and trade needs of least developed countries as identified by the least developed countries concerned;
 - shall be provided on a permanent basis and in a manner that ensures security, stability and predictability.
4. Members providing special priority under this Understanding to least developed countries shall notify the Council for Trade in Services of the special priority that they are providing. Based on such notifications and Members' Schedules of commitments, the Council for Trade in Services shall annually review the special priority that Members are providing to least developed countries with a view to ensuring that positive commitments are made in favor of LDCs.
5. All least developed countries shall be treated as affected Members for the purposes of Article XXI when a Member modifies the special priority provided pursuant to this Understanding. Compensatory adjustments will be made only in favour of least developed countries.
6. The dispute settlement provisions of the GATS and the Dispute Settlement Understanding may be invoked with respect to any matter arising from this Understanding.
