

**COMMUNICATION FROM ARGENTINA, BOLIVIA, BRAZIL, CHILE,
COLOMBIA, ECUADOR, EL SALVADOR, GUATEMALA,
HONDURAS, MEXICO, PARAGUAY, PERU
AND URUGUAY**

The following communication, dated 1 June 2005, from the delegations of Argentina, Bolivia, Brazil, Chile, Colombia, Ecuador, El Salvador, Guatemala, Honduras, Mexico, Paraguay, Peru and Uruguay, is being circulated in advance of the Negotiating Group meeting of 13-14 June 2005.

LINKS BETWEEN THE ELEMENTS OF ANNEX D

I. INTRODUCTION

1. On 1 August 2004, the General Council decided by explicit consensus to commence negotiations on trade facilitation on the basis of the modalities set out in Annex D of the Doha Work Programme. Since then, the Negotiating Group has focussed mainly on a preliminary consideration of ideas and proposals put forward by Members with a view to improving and clarifying Articles V, VIII and X of the GATT 1994.

2. Over and above the valuable ideas contained in the communications from, among others, China and Pakistan (TN/TF/W/29), Peru (TN/TF/W/30) and the African Group (TN/TF/W/33), the most commonly shared feature of the documents submitted consists in their identification of specific problems and the suggestion of practical ways to improve the relevant elements of Articles V, VIII and X of the GATT 1994 and enhance their effectiveness. Although those communications recognize that central importance should be attached to the identification of national needs and priorities, and to technical assistance, capacity-building and special and differential treatment, a more in-depth analysis should be made of how those elements should interact and interrelate in future disciplines, so that all Members can benefit from the outcome of the negotiations.

3. This communication addresses the interrelationship between the elements of Annex D, and develops some preliminary ideas on a possible approach to ensuring that the developing and least developed countries take full advantage of the benefits of trade facilitation and lessen any attendant costs.¹

¹ The content of this contribution does not fully reflect all the views of the co-sponsors and should not be seen as their final position on all or some of the points raised.

II. ELEMENTS OF ANNEX D

4. The modalities set out in Annex D were adopted after extensive consultations focussing on the concerns of the developing and least-developed countries with regard to their ability to assume new obligations in this field, as well as with regard to the possible repercussions on their national policies. Consequently, those modalities should not only guide the *negotiating process*, but should also be adequately reflected in the *final outcome of the negotiations*.²

5. Annex D establishes links and conditions with regard to *rules*, the *identification of the needs and priorities* of Members and *technical assistance and capacity-building*, each of these elements being interrelated, while at the same time being linked to *special and differential treatment*. Thus, a new form of cooperation between Members is outlined, aimed at ensuring that developing and least developed countries have real capacity to implement the new commitments. The links and conditions concerned are the following:

- The scope of the commitments must be commensurate with the capacity for implementation of developing and least-developed countries (paragraph 2 of Annex D).
- The capacity for implementation of the new commitments, particularly in the case of developing and least developed countries, shall be determined in accordance with their trade facilitation needs and priorities (paragraph 4 of Annex D).
- Technical assistance and capacity-building should help developing and least developed countries to implement the commitments resulting from the negotiations (paragraphs 5 and 6 of Annex D).

6. **Special and differential treatment** should be made subject, in future disciplines, to longer time-frames than the customary transition periods, so as to ensure a cross-cutting interrelationship with the elements referred to above.

III. INTERRELATIONSHIP BETWEEN THE ELEMENTS OF ANNEX D

7. The relationships and synergies between the elements referred to could be reflected in future disciplines as follows:

1. Relationship between the rules and the needs and priorities of Members

8. The negotiating process will lead to the adoption of a series of improvements and clarifications designed substantially to enhance the effectiveness of Articles V, VIII and X of the GATT 1994. It is possible that some rules, though beneficial from the standpoint of trade facilitation, may require resources, capacity-building or institutional adjustments for their implementation, and will therefore be temporarily beyond the implementation capacity of certain Members, particularly developing and least developed countries.

9. In such cases, compliance with future commitments should be commensurate with the demonstrated implementation capacity of each Member. This would serve to promote gradual implementation in the manner best suited to the capacity, development level and trade needs of each Member.

² Note 1 to Annex D provides that: "*It is understood that this is without prejudice to the possible format of the final result of the negotiations and would allow consideration of various forms of outcomes*".

10. The identification of the needs and priorities of Members will be a compulsory benchmark, parallel to the identification of future commitments³, within the negotiating process. To that end, a process of self-assessment by each Member – with the necessary technical assistance – would make it possible to diagnose the actual capacity for implementation of future commitments. This diagnosis would serve to determine each Member's real situation in relation to trade facilitation and the distance separating it from the capacity needed to implement obligations to be agreed in the future. It would also serve to define technical assistance and capacity-building requirements for the purpose of narrowing the gap between the rule and the actual capacity for implementation.

11. With a view to the implementation of the agreed commitments, Members will report on their actual capacity for implementation within a period of time to be determined.

12. In the case of developing and least developed countries with no proven capacity for immediate implementation of the new commitments, differential transition periods will be established, combined with programmes of technical assistance and capacity-building, and geared to the obligations to be assumed and the analysis of national needs and priorities. Upon completion of those programmes, the Members concerned could be in a position to undertake the new commitments gradually, following a timetable and a procedure adapted to their implementation capacities. Pending achievement of the required capacities, the commitments would not be enforceable.

2. Technical assistance and capacity-building in the light of Members' needs and priorities and the rules

13. Compliance with the future trade facilitation disciplines for developing and least developed countries may entail technical assistance and capacity-building, with a resulting need for resources. The experience with the implementation of the Uruguay Round Agreements demonstrated the practical difficulties to which commitments undertaken in the WTO framework give rise if resources for their implementation are lacking or if inadequate consideration is given to each country's needs for the implementation of the discipline.

14. Technical assistance and capacity-building should be directed to the establishment of programmes conducive to implementation of the outcomes of the negotiations. In other words, when rules are considered for possible adoption in the WTO, simultaneous consideration should be given to technical assistance so as to guarantee the viability of their implementation.

15. An assessment should be made of the desirability of establishing a mechanism to organize and coordinate technical assistance and capacity building in the area of trade facilitation, pooling the efforts of donors, recipients and other international organizations. This mechanism would ensure that technical assistance is adapted to the needs of the recipients, so as to guarantee transparency, coherence and effective assistance to developing and least developed countries in the implementation of commitments in this field.

3. Special and differential treatment and its relationship with the other elements of Annex D

16. Special and differential treatment, which must go beyond the customary granting of transition periods for the implementation of commitments, is horizontally related to each of the above-mentioned elements of Annex D. This principle should therefore form an integral part of the clarification and improvement of Articles V, VIII and X of the GATT 1994, of the identification of

³ Suggestions along these lines were recently made in the communication from the People's Republic of China and Pakistan (TN/TF/W/29).

each Member's needs and priorities, as well as of the means of providing technical assistance and support for capacity-building. Moreover, the effectiveness of special and differential treatment will depend on the way in which the existing links and relationships between the above-mentioned elements are given effect in the final outcome.

IV. CONCLUDING REMARKS

17. The links, relationships and synergies between the elements discussed in this communication are not exhaustive and may be further elaborated in the course of these negotiations. It is especially important for the design and implementation of future disciplines that they be taken into account. For this reason, they should be dealt with in parallel with the process of clarification and improvement of Articles V, VIII and X of the GATT 1994, as they can make a significant contribution to the progress of these negotiations.
