

**COMMUNICATION FROM PAKISTAN AND SWITZERLAND
ON DEVELOPMENT-RELATED ISSUES IN TRADE FACILITATION**

The following communication, dated 16 September 2005, from the Delegations of Pakistan and Switzerland, is being circulated in advance of the Negotiating Group meeting of 19-20 September 2005.

The objective of this communication is to contribute to the challenging opportunity of Annex D to develop new forms of collaboration to implementing WTO rights and obligations supportive of development. This contribution focuses on development-related issues in Annex D. It is a living document that will evolve as negotiations proceed and the understanding of the issue deepens. Hence, this document does not reflect final views on this matter. Therefore, the sponsors reserve the right to revise, supplement and/or withdraw any of the ideas set out herein.

I. INTRODUCTION AND BACKGROUND

1. Many developing countries faced difficulties to implement the agreements of the Uruguay Round that established rules for "behind-the-border" issues or for non-tariff "technical" obstacles at the border. When Annex D was drafted, these concerns were on the top of the minds of the negotiators. This contribution tries to provide some operational elements to address these shortcomings. It builds on proposals by other delegations¹ on development-related issues.

2. Paragraph 2 of Annex D contains the main challenges that the negotiators will have to deal with:

- Members recognise that special and differential treatment should extend beyond the granting of traditional transition periods for implementing commitments; and
- in particular, the extent and the timing of entering into commitments shall be related to the implementation capacities of developing and least-developed countries.

3. As we all know, large differences exist among developing countries regarding trade facilitation measures already implemented, implementation capacities, and the role of trade facilitation in the country's development priorities. Overcoming these differences requires tailor-made and step-by-step solutions. The challenge is to provide enough flexibility for individual Members to **define their own pace and extent of development, while simultaneously ensuring that collectively we set ambitious targets for the longer term.**

¹ Namely TN/TF/W/41 by a number of Latin American countries, part II pointing to the interrelationship between the elements of Annex D; TN/TF/W/29 by China and Pakistan, proposing operational steps of work for the assessment of Members' needs and priorities; and TN/TF/W/56 by the African Group, focusing on technical assistance and capacity building (TA&CB) during and beyond the negotiations.

4. Further, paragraph 2 takes into account the views of those countries, which only agreed to the modalities with the understanding that assuming obligations under the agreement would go hand-in-hand with firm commitments for provision of TA&CB. Therefore, a specific mechanism has to be put in place in order to strengthen the link between negotiation and implementation of any future obligations and the provision of TA&CB. Essentially, such a mechanism should overcome the major shortcomings of technical agreements from the Uruguay Round with regard to their implementation. These shortcomings can be summarized in four points: lack of adequate prior assessment of the (cost) implications; poorly defined transition periods; insufficient or inadequate resources to back up institutional adjustment; and, finally, lack of appropriate monitoring and review of government action.

5. Such a **mechanism has to be transparent and predictable**. It has to accommodate expectations and concerns of the trading community (ambitious outcome), of developing, especially the landlocked and least-developed countries (lacking administrative and institutional capabilities) as well as of the donor communities (accountability to effectively use ODA).

II. SOME ESSENTIAL STEPS

6. One of the key messages of Annex D is that Trade Facilitation obligations would become effective for a country when, in the view of the WTO Members, the country has acquired the capacity to administer efficiently the rules. Any measures will become binding obligations once the capacity to implement has been achieved. Part C of this paper proposes elements of a mechanism that strives to operationalise this objective. The following three elements would complement this operational mechanism:

A. AN INVENTORY OF TRADE FACILITATION MEASURES

7. Members agreed in November 2004 that no specific work program would be established for the Negotiating Group but that the process would be driven by Members' contributions. As of end of July 2005, 40 submissions relating to Articles X, VIII and V have been made. These submissions cover a large range of measures to clarify and increase the effectiveness of the mentioned articles. It can be expected that these contributions cover the majority of technical issues. The WTO Secretariat's compilation document TN/TF/W/43 and subsequent revisions provides a good basis for such an inventory.

8. The contribution by the African Group TN/TF/W/56 suggests further support for clarification and educative process, including training of customs officials, with respect to the measures contained in the compilation document related to GATT Articles V, VIII and X. We welcome this proposal and encourage Members and relevant international organizations to contribute to this educational process. We also encourage proponents to voice their specific interests in the NGTF and bilaterally.

B. ASSESSMENT OF THE CURRENT SITUATION (NEEDS AND PRIORITIES)

9. Undertaking an assessment of the current situation *vis-à-vis* trade facilitation and the future needs and priorities is necessary for each Member so that it can then define which technical measures under negotiation it can implement and in what timeframe. Where do countries currently stand in trade facilitation? What gaps exist between ground facilities and proposed commitments? We tend to agree with China and Pakistan², as well as with a number of Latin American countries³, which see this assessment exercise as a continuous process that has to accompany the negotiations.

² TN/TF/W/29.

³ TN/TF/W/41.

10. International organizations such as the WCO, the WB and UNCTAD have already existing assessment tools. The difficulty with these tools is that they are not specifically designed for the measures of trade facilitation being negotiated at present, but look at trade facilitation more broadly. The inventory of trade facilitation measures should help to further focus and thereby simplify these tools. Members should not devote too much time in debating the necessity of such a new synthesized tool but rather adapt the content of existing tools to the measures compiled in the inventory.

11. Like other Members that have made proposals on assessment, we believe that each Member needs to undertake a thorough self-assessment.

12. Complementing the picture of the assessment of Members' needs and priorities, Members should also get a clearer idea on **ongoing and planned TA&CB and infrastructure-financing activities** related to the inventory of trade facilitation measures.

13. Indeed, an impressive number of projects are ongoing or have been implemented in trade facilitation. At the same time, the total amount of funding for trade facilitation is increasing as a result of the Doha Development Round. A compilation of these activities will allow for a proper evaluation of the TA&CB and infrastructure financing already provided and further required to implement the obligations undertaken under the present negotiations based upon the potential gaps identified through the self assessment. Because this needs to be accurate and done on a country-by-country basis, we suggest that the recipient Members make this compilation. OECD-DAC has recently launched an initiative, supported by Switzerland amongst others, to contribute to the establishment of an inventory of projects undertaken for trade facilitation. The outcome of this study should complement the self-assessment made by the recipient countries.

C. SEQUENCING OF MEASURES

14. Determining the sequencing and interrelationship of the technical measures being negotiated is equally essential. Indeed, sometimes a combination of measures allows to reap real benefits on the ground. Also, some advanced measures may require the prior implementation of other basic measures. Experienced international organizations could be of valuable support to Members by assisting them to organize these interrelationships and their sequencing.

15. It is our assessment that the measures enumerated in the inventory of trade facilitation measures⁴ are of a different nature: such that would not require investments in expensive infrastructure but primarily require administrative – although sometimes politically not easy to implement – actions and such that are increasingly demanding, both in terms of resources and implementation capacities. Members should not preclude devoting different treatment to these two categories of measures in a final Text on trade facilitation. As a starting point, Members could individually classify the measures contained in the Secretariat's compilation document according to the matrix provided by the WB/WCO at the July 2005 session, annexed to this document (see Annex).

III. A POSSIBLE MECHANISM TO RELATE TA&CB AND FINANCING TO REFORM

16. A basic requirement for this mechanism is that it is predictable and transparent, and to quote from TN/TF/W/56: "such mechanism should ensure that the needs and priorities with respect to trade facilitation ... are addressed effectively; that available resources will be efficiently used; and that there will be long-term sustainability of technical assistance programmes."

⁴ TN/TF/W/43 and subsequent revisions.

17. This mechanism could comprise a set of components:
 1. action plans containing obligations, implementation periods and required means;
 2. pledging mechanism for TA&CB and funding;
 3. multiple channels to provide TA&CB and funding
 4. WTO Trade Facilitation Committee (TFC) to endorse Members' obligations (TF measures) and commitments (TA&CB and funding); and
 5. multilateral endorsement of implementation capacities.

1. Action Plan Development and S&D Definition

18. First, in-depth gap analysis comprising (a) the review of already existing measures to comply with the rule; (b) the review of institutional, human and financial capacities to develop actions to comply with the rule; and (c) assessment of technical, financial and human resources needed to fill the gap.

19. Second, based upon the analysis above, project definition for each action required, including results, activities, co-financing share, additional resources and time span required. There could be some interest for the Member to cluster such actions into implementation packages. The result of this second step is a conditional action plan by the Member.

20. To draw such action plans, some Members may require technical assistance.⁵

21. Once the conditional action plans are completed, we see three possibilities:

- (i) this Member submits its proposal to the TFC so that Members can get notice of this Member's conditional action plan and then engage into negotiations with interested donors and executing agencies; or
- (ii) this Member submits its conditional action plan to *ad hoc* maybe regionally organized group(s) of independent and internationally recognized experts (some kind of technical committee) in order to get a second opinion and objective advice and then does (i) or (ii); or
- (iii) this Member directly enters into discussions with potential donors and executing agencies to match the assessed need for TA&CB and/or financing. Hence, the use of the services of these experts or technical committee is purely optional.

22. In all cases, the Member will have to submit its action plans to the WTO Membership through the TFC (see point 4.).

2. Pledging Mechanism for TA&CB and Funding

23. Requesting Members could match their assessed needs for TA&CB and funding in "pledging" round(s) where donors would make firm commitments to provide parts or all of the TA&CB requested by a specific Member in exchange of the obligation to implement a certain trade facilitation measure. We understand "donors" to include developed countries, other developing countries, multilateral institutions, national, regional and international trade federations, and other interested

⁵ In addition, one could also imagine that experts in trade facilitation would prepare guidelines per measure (or per module) for the Membership on the kind of information that needs to be contained in the action plans.

private business associations. Infrastructure financing, if and when required, could be obtained from multilateral development banks, which are specialized in dealing with these issues.

24. Pledging rounds would not necessarily need to consist of well organized processes in all moments, but would definitively gain in efficiency if coordination between donors and executing agencies were ensured at the country level. "Pledging" can also take place in the form of customary bilateral exchanges.

3. Multiple Channels to Provide TA&CB and Funding

25. Donors could choose to provide their assistance either bilaterally or multilaterally, earmarked for certain recipients and certain activities or not, as well as purely funded and/or partially or fully provided "in-kind" (sending their own experts to provide assistance). Therefore, these various channels for funding and providing TA&CB need to be kept open.

26. The mechanism for providing TA&CB could take into account the following:

- the object of funding would be the measures contained in the inventory of trade facilitation measures and defined as being eligible for support;
- provision of TA&CB would be based upon each country's action plan for trade facilitation. Due regard would be paid to administrative and financial constraints of each developing country and its access to grants and credits. TA&CB and/or funding would be sequenced according to the effective pace of implementation;
- the provision of TA&CB and/or funding would be "demand-driven" and hence would imply the recipient Member's commitment for implementation.

27. In order to facilitate the request process, Members could consider to develop guidelines for presenting requests as suggested in footnote 5.

4. WTO Trade Facilitation Committee to Endorse Members' Obligations (TF measures) and Commitments (TA&CB and funding)

28. Once the pledging round is complete, the requesting Member will revise its action plan, containing the consolidation of all secured projects and resubmit it along with the pledged support to the TFC.⁶

29. The TFC will have the possibility to ask for complementary information to endorse or refuse a Member's action plan. In these cases, this Member should have the possibility to submit its action plan to the *ad hoc* maybe regionally organized group(s) of independent and internationally-recognized experts (some kind of technical committee) in order to get a second opinion and objective advice.

30. The TFC would then give its final approval to the action plan. At this juncture all parties involved (requesting Member and donors) would notify their intent **to implement compliance with**

⁶ Two scenarios may occur: (a) the requesting Member was able to complement its action plan with additional resources or (b) the requesting Member has not obtained all the financing needed to realise the full action plan. In that case the Member could agree to maintain its commitment to implement a certain measure but on conditional terms, based upon the condition that the requested TA&CB or funding would be forthcoming in the future. This kind of mechanism would allow to maintain the momentum in trade facilitation beyond the negotiations.

the rules and to provide TA&CB and/or funding according to the terms and conditions set out in the action plan.

5. Multilateral Endorsement of Implementation Capacities

31. Once the implementation period for a measure agreed to by the Member is over and the TFC has reviewed the effectiveness of the support and assistance provided, the obligations undertaken by the Member would become binding. Therefore, Members need to further reflect on how best this review could be done.

32. Finally, we need to answer the question what happens in case the TFC agrees that the intended TA&CB and/or funding has not been forthcoming. Well, the answer is quite simple: the Member would be freed from its binding obligation to comply with certain rules for which the request for TA&CB and/or funding has not been satisfied.

IV. FINAL REMARKS

33. Although we have tried to propose some operational ideas on a mechanism to address the elements contained in Annex D, these need to be further scrutinized. Moreover, certain questions remain largely unanswered as for example:

- *How to ensure that countries currently playing only a marginal role in world trade will be able to accede funding for trade facilitation measures?*

34. Moreover, discussions on the mechanism should also consider clustering recipient countries with regards to the implementation of certain measures as well as for related TA&CB and/or funding in trade facilitation (e.g., on a regional or sub-regional level). This should namely be the case for transit countries, which need to coordinate and adjust their action plans in accordance to the needs and priorities of landlocked developing and least-developed countries.

35. Finally, recognising the asymmetry that the implementation burden of a trade facilitation agreement would primarily fall on poorer countries, Switzerland is ready to consider making firm commitments for providing TA&CB to our partner countries, both for supporting the initial assessment stage and for supporting the implementation phase.

ANNEX

World Bank / World Customs Organization Analysis Grid

