

**COMMUNICATION FROM MAURITIUS
ON BEHALF OF THE ACP GROUP**

The following communication, dated 9 November 2005, is being circulated at the request of the Delegation of Mauritius on behalf of the ACP Group.

**ISSUES IN THE NEGOTIATIONS ON TRADE FACILITATION
AND THE IMPORTANCE OF PROMOTING DEVELOPMENT OBJECTIVES
THROUGH TECHNICAL ASSISTANCE AND CAPACITY-BUILDING**

I. INTRODUCTION

1. The mandate and modalities for the Trade Facilitation negotiations in the WTO are set out in Annex D. These negotiations "shall aim to clarify and improve relevant aspects of Articles V, VIII and X of the GATT 1994 with a view to further expediting the movement, release and clearance of goods, including goods in transit."

2. The African, Caribbean and Pacific (ACP) Group of States recognize the potential development benefits that would accrue to ACP countries from undertaking trade facilitation measures. In the context of the current negotiations on trade facilitation, development must be the main objective and focus. This will include, *inter alia*, ensuring that special and differential treatment in favour of developing and least-developed countries is accorded and made fully effective and operational; that international cooperation is enhanced through the provision of sufficient and effective technical assistance and capacity-building in trade facilitation; and that the outcomes of the negotiations reflect the needs of these countries for development policy space and flexibility.

3. Key elements contained in Annex D designed to ensure that these negotiations promote development objectives include:

- "enhancing technical assistance and support for capacity building in this area";
- developing "provisions for the effective cooperation between customs or any other appropriate authorities on trade facilitation and customs compliance issues";
- fully taking into account "the principle of special and differential treatment for developing and least-developed countries"; and
- that these countries would not be obliged "to undertake investments in infrastructure projects beyond their means".

II. MAKING ANNEX D OPERATIONAL

4. The ACP acknowledges the importance of the mandate contained in Annex D which is aimed at clarifying and improving Articles V, VIII and X of the GATT 1994 in respect of the following:

- Transparency – as an essential element of a regulatory business environment.
- Consistency and predictability – that remove uncertainty in trade operations.
- Non-discrimination – as a guarantee of impartial and uniform administration of border-related regulations and procedures.
- Simplification and avoidance of unnecessary restrictiveness – that are essential for the enhancing of efficiency.
- Due process – devising an appropriate mechanism to review and correct administrative action.

5. The proposals so far are largely consistent, in principle, with the thrust of ongoing national programmes in some ACP countries. However, it must be borne in mind that ACP countries are at different levels of development and by extension, utilize varying levels of border procedure and administration. Trade Facilitation for the ACP is therefore as much about institutional development, systems modernization, attitudinal culture and changes, human resource training, and equipment and technology upgrading, as it is about trade rules as such. It is also about identifying improvements that these countries would wish to see others undertake for their benefit.

6. It is important that the mandate of the Negotiating Group on Trade Facilitation is adhered to without diverting into related areas.

7. The WTO Secretariat should expeditiously prepare a study that compiles and looks at various Trade Facilitation tools and measures that have been used by WTO Members, the physical and policy infrastructure required to adopt and implement such tools and measures, the timeframe for implementation, and their respective total costs of implementation (from costs associated with policy or regulatory changes, physical infrastructure development, acquisition of technology, human resource training, etc.). This study should be circulated to the Membership as soon as possible.

8. The ACP attaches great value to the flexibilities contained in Annex D. These include:

- The latitude of Members to ultimately decide on the possible format of the final result of the negotiations and the allowance for consideration of various forms of outcomes. Footnote 1 of Annex D states 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." This envisages accommodation for exigencies and the specific requirements of individual Members.
- The extent and timing of entering into commitments shall be related to delivery of the required support and assistance and to implementation capacities of developing and least-developed countries.
- LDCs will be required to undertake commitments only to the extent consistent with their individual needs and capabilities.

- The principle of special and differential treatment for developing and least-developed countries must be fully reflected and made directly operational in any negotiated outcome.
- The concerns of developing and least-developed countries relating to the cost implications of proposed measures shall be effectively addressed.

9. Therefore, although it is recognized that there are potential gains from trade facilitation, the ACP would not want to see any new disciplines or commitments which would impact negatively on existing policy space and the flexibility of developing countries in adopting trade facilitation measures. It is also critical that a balance be struck between the legitimate objective of border control and the economically desirable goal of trade facilitation. In addition, full account should be taken of the economic structure of and levels of development in ACP countries.

III. TECHNICAL ASSISTANCE AND CAPACITY BUILDING

10. It has often been stressed that there are costs associated with the pursuit of trade facilitation as a legitimate development policy objective. In this regard, we welcome the recognition in Annex "D" ("Modalities for Negotiations on Trade Facilitation") of the 1 August 2004 Decision of the WTO General Council that there is a need for synergy between level of commitments, the cost of and the availability of resources to implement any possible outcome and the provision of financial and technical resources to help build the capacity of developing and least-developed countries in the area of trade facilitation. These commitments must be met in letter and in spirit.

11. An important task in fulfilling the letter and the spirit of the negotiating mandate will clearly be the identification of the needs and priorities of developing countries for technical assistance and capacity building on Trade Facilitation, evaluating proposals in terms of the technical assistance they will require for implementation – and while some Members might view it otherwise, we believe that such assistance can and should include financial assistance, where necessary – and finally developing target projects or programmes of assistance to support the implementation of any negotiated outcome.

12. The commitment in Annex D to provide technical assistance and capacity-building (TA&CB) to developing countries in the area of trade facilitation – both in the context of the negotiations and in the implementation of the outcomes of the negotiations – should be made immediately operational. The launch of the trade facilitation negotiations was agreed-upon on the basis of such commitment to provide TA&CB and to ensure that such negotiations would promote the development of developing and least-developed countries. The ACP believes that the TA&CB mandate should be made operational by providing support (both financial and technical) to developing countries to assist them during and after the trade facilitation negotiations.

13. It is worth recalling and reiterating, in this regard, the proposals presented by the African Group in their submission TN/TF/W/56, dated 22 July 2005. In addition to those raised by the African Group, the ACP is hereby proposing some further suggestions on how to operationalise TA&CB in the course of the trade facilitation negotiations.

A. ESTABLISHING AN INTER-AGENCY COORDINATING MECHANISM FOR TRADE FACILITATION TA&CB

14. We emphasize the need to strengthen existing trade facilitation-related TA&CB programmes and the need for closer collaboration and enhanced coordination among relevant international, regional and sub-regional organizations (such as, but not limited to, UNCTAD, UNECE, UNECA, WTO, WCO, World Bank) in the delivery of trade facilitation-related TA&CB support to ACP countries and other developing and least-developed countries.

15. In this respect, there should be an operational inter-agency coordinating mechanism set up for the provision of TA&CB to developing countries during and after the negotiations to help them design and undertake trade facilitation-related projects or programmes identified as part of their trade facilitation negotiations needs or priorities.

16. This mechanism should be a trade facilitation TA&CB "one-stop shop" or "single window" facility (to be participated in by bilateral and multilateral donors or agencies with experience in trade facilitation) for the expeditious processing, allocation, and evaluation of funding for TA&CB requests from developing countries in connection with specific projects or programmes in the key areas for trade facilitation TA&CB described below.

B. KEY AREAS FOR FUNDING OF TRADE FACILITATION TA&CB

17. Pursuant to Annex D, there are three (3) key areas where trade facilitation-related TA&CB need to be supported and to which the inter-agency coordinating mechanism described above should endeavour to source and allocate supportive funding. These are:

- (i) Support for the identification of trade facilitation negotiating needs and priorities of developing and least-developed countries (Paragraph 4, Annex D);
- (ii) Support and assistance during the trade facilitation negotiations (Paragraph 5, Annex D); and
- (iii) Support and assistance to help developing and least-developed countries implement the commitments resulting from the negotiations, in accordance with their nature and scope (Paragraph 6, Annex D).

18. In order to efficiently source and allocate TA&CB support for developing countries in the three areas listed above, a special Trade Facilitation Technical Assistance and Capacity-Building Fund needs to be established. This fund shall be managed by the inter-agency coordinating mechanism described previously, and contributions thereto shall be sourced from bilateral and multilateral donors. Developing countries requiring trade facilitation TA&CB support in the course of or after the trade facilitation negotiations may submit their TA&CB proposals and requests to the inter-agency coordinating mechanism, which will then expeditiously process and allocate such TA&CB support funded through this special fund.

19. Consistent with the provisions of Annex D, the negotiation and implementation of new trade facilitation rules by developing and least-developed countries should be subject to the prior provision of effective and sufficient TA&CB targeted at building and enhancing the capacity of these countries to effectively negotiate and implement such new rules. Among the trade facilitation-related TA&CB projects, programmes, or activities for which support and assistance could be provided through the inter-agency coordinating mechanism and special fund described above would be, *inter alia*, the following:

- (i) Support for the identification of trade facilitation negotiating needs and priorities
 - ◆ National inter-agency trade facilitation needs and priorities assessment projects which ACP and other developing countries need in order to enable them to build a complete and comprehensive picture of their domestic trade facilitation needs and priorities for purposes of the trade facilitation negotiations.

(ii) Trade facilitation negotiations support

- The development of a human and technical resource base relevant to the trade facilitation negotiations in ACP and other developing countries through trade facilitation negotiations training projects and programmes to be undertaken at the national level for the benefit of, and to be participated in by, developing countries' trade negotiators, customs officials, and other relevant domestic stakeholders in trade facilitation;
- Ways and means through which ACP and other developing countries' negotiating capacity could be enhanced including, *inter alia*, financial support for the direct participation by their capital-based customs officials in the on-going trade facilitation negotiations;
- Facilities for direct and specific trade facilitation negotiations-related policy and legal research and analytical support for developing-country delegations;
- Subject to the need to preserve development policy space and flexibility, the identification of trade facilitation-relevant physical and policy infrastructure needed to enable ACP and other developing countries to fully maximize the benefits of trade facilitation and to effectively comply with any new trade facilitation rules, including policies or measures needed to upgrade and streamline existing customs administration, transparency, and procedures consistent with individual developing countries' needs or conditions;

(iii) Trade facilitation commitments implementation support

- The acquisition or transfer of appropriate trade facilitation-related equipment, technologies, systems or methodologies that could be adopted or adapted by developing countries as they deem necessary;
- Identification and implementation of ways and means appropriate to developing countries through which traffic in transit could be secured and its transit facilitated;
- Subject to the need to preserve development policy space and flexibility, implementation of trade facilitation-relevant physical and policy infrastructure that will be needed by ACP and other developing countries to fully maximize the benefits of trade facilitation and to effectively comply with any new trade facilitation rules or commitments;
- Support for regional trade facilitation initiatives and programmes in ACP and other developing countries;
- Enhancement of ACP and other developing countries' human and technical resource base in trade facilitation through, *inter alia*, continuing skills exchange, training, scholarships, and information exchange in trade facilitation-related matters among WTO Members' customs and trade agencies.

IV. EVALUATING THE IMPLEMENTATION OF THE TECHNICAL ASSISTANCE MANDATE IN ANNEX D

20. The provision of TA&CB support and assistance is a key component of the Trade Facilitation negotiations mandate under Annex D. Hence, the implementation of this mandate needs to be periodically reviewed by the WTO Membership to ensure that the development objectives of the negotiations are being met. Members should note that Paragraph 7 of Annex D states that they "agree

to review the effectiveness of the support and assistance provided and its ability to support the implementation of the results of the negotiations."

21. To this end, the ACP recommends that a report be prepared by the WTO Secretariat on the extent to which the technical assistance aspects of Annex D are being implemented. The report should include information and other data concerning the nature, source or provider, destination or beneficiary, objectives, activities undertaken, output produced, and financial amounts of TA&CB support and assistance that have been specifically provided to ACP or other developing or least-developed countries pursuant to the mandate in Annex D (including the activities of the inter-agency coordinating mechanism for TA&CB described above in the event that such mechanism and its associated fund are established). The report should also contain qualitative information or assessments from the beneficiaries of such TA&CB on the extent to which such TA&CB has been effective in enhancing their negotiating capacity in the trade facilitation negotiations.

22. This report should be submitted to the Negotiating Group on Trade Facilitation (NGTF) as expeditiously as possible, with appropriate operational recommendations on how to improve and enhance the provision of trade facilitation-related TA&CB to ACP and other developing countries. The NGTF shall expeditiously take appropriate action thereon in order to ensure that adequate and effective TA&CB is provided to ACP and other developing countries in the trade facilitation negotiations.
