

WORLD TRADE ORGANIZATION

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Negotiating Group on Trade Facilitation

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COMMUNICATION FROM CHILE, DOMINICAN REPUBLIC, ECUADOR, GUATEMALA, HONDURAS, MEXICO, NICARAGUA, PARAGUAY AND URUGUAY

The following communication from the delegations of Chile, Dominican Republic, Ecuador, Guatemala, Honduras, Mexico, Nicaragua, Paraguay and Uruguay, dated 30 March 2006, is being circulated ahead of the meeting of the Negotiating Group to be held from 5 to 7 April 2006.

This contribution is intended to stimulate discussion on special and differential treatment in the context of the negotiations on trade facilitation. It sets out no final positions and the co-sponsors accordingly reserve the right to revise, enlarge on and/or supplement any of the ideas expressed.

SPECIAL AND DIFFERENTIAL TREATMENT: APPLICATION AND INTER-RELATIONSHIP WITH COMMITMENTS ARISING FROM THE NEGOTIATIONS ON TRADE FACILITATION

I. INTRODUCTION

1. In the current negotiations on trade facilitation special and differential treatment is of crucial importance, being a principle which, if given proper form, will enable the developing and least developed countries, as agreed in Annex D, to benefit from trade facilitation and have the necessary flexibilities to undertake commitments without having to fulfil obligations that exceed their capacity.

2. The importance of special and differential treatment has been acknowledged by Members in oral statements made at meetings of the Negotiating Group and in valuable written contributions such as those from the African Group (TN/TF/W/33 and 56), Pakistan and Switzerland (TN/TF/W/63), Mauritius on behalf of the ACP Group (TN/TF/W/73) and a large group of Latin American countries¹ (TN/TF/W/41).

3. With a view to this principle being applied, Ministers recommended in the Hong Kong Ministerial Declaration that the Negotiating Group "deepen and intensify its negotiations on the issue of S&DT, with a view to arriving at S&DT provisions that are precise, effective and operational and that allow for necessary flexibility in implementing the results of the negotiations". They furthermore reaffirmed the linkages between the elements of Annex D and recommended that further negotiations on S&DT build on input presented by Members in the context of measures related to Articles V, VIII, and X of the GATT 1994 and in their proposals of a cross-cutting nature.

¹ Argentina, Bolivia, Brazil, Chile, Colombia, Costa Rica, Cuba, Dominican Republic, Ecuador, El Salvador, Guatemala, Honduras, Mexico, Nicaragua, Panama, Paraguay, Peru and Uruguay.

II. PURPOSE OF THE PROPOSAL

4. The present communication aims within that framework to submit to the Negotiating Group for consideration a mechanism for special and differential treatment in trade facilitation for developing and least developed countries with a view to giving practical effect to the inter-relationship between the main elements of Annex D as described in document TN/TF/W/41 "Links between the elements of Annex D".

5. In addition, to help the Negotiating Group to move on to the text-based phase of the negotiations, the co-sponsors suggest language in section IV below, which gives wording and a form such as the future agreement on trade facilitation² might use for the S&DT mechanism we propose.

III. PROPOSED MECHANISM

6. Document TN/TF/W/41 states that the modalities set out in Annex D should guide the negotiating process and be adequately reflected in the final outcome of the negotiations. The inter-relationship between the scope of the commitments and the other elements of Annex D accordingly constitutes the basis on which to design special and differential treatment in this area.

7. The mechanism we propose would go into operation on completion of the negotiations on trade facilitation, once the specific commitments to be undertaken by Members have been defined. The mechanism consists of four main phases: (i) capacity self-assessment; (ii) notification; (iii) capacity development; and (iv) confirmation of capacity acquisition and compliance with the obligation.

A. CAPACITY SELF-ASSESSMENT

8. The period between the signing and the entry into force of the agreement on trade facilitation will need to be long enough to allow developing and least developed Members to carry out a self-assessment of their capacity to meet the obligations agreed on. During this phase, the Members in question will identify the obligations in the agreement that they will be able to meet immediately, those they will be able to meet within a specified period and those they will be able to meet only when they have acquired the necessary capacity.

9. The capacity self-assessment phase will be governed by transitional provisions that could be a part either of the agreement on trade facilitation itself or of the Ministerial Decision adopted at the end of the current negotiations.

10. Capacity self-assessment will be carried out, if the Member so requires, with assistance from a body that will be created to supervise implementation of the WTO agreement on trade facilitation. The body will start to operate immediately after the signing of the agreement.³

11. The international organizations referred to in Annex D and other relevant organizations should cooperate with the said supervisory body in lending any such assistance as Members may need in order to carry out their self-assessments.

² The "agreement on trade facilitation" as referred to in this document should not be construed as indicating any final legal format to be adopted as an outcome to these negotiations.

³ The membership and functions of the body set up to supervise implementation of the agreement will be agreed by Members in the context of the present negotiations.

B. NOTIFICATION

12. The obligations included in the agreement on trade facilitation will be binding on all Members as from entry into force of the agreement, except for those duly notified to the WTO in accordance with the procedure set out in the paragraph below.

13. Before the entry into force of the agreement on trade facilitation, developing and least developed Members must notify to the WTO:

- (a) The obligations they are unable to meet because they lack the necessary capacity; and
- (b) the obligations compliance with which is not subject to capacity-building and which they will be able to meet after a period to be specified in the notification which may not exceed six years.

14. Obligations notified to the WTO in accordance with the previous paragraph will not be subject to the Dispute Settlement Understanding until notification by the Member that it has acquired the capacity to fulfil them (13a) or until expiry of the period for meeting them specified in the notification (13b).

15. The WTO Secretariat will provide a register in which to enter the information notified by Members. The register will be available on the Members' web site of the WTO Internet portal.

C. CAPACITY DEVELOPMENT

16. Once the agreement on trade facilitation has entered into force, Members that so request will work with donors and relevant international organizations in formulating and implementing capacity-building plans. The plans will aim to enable these Members to meet the obligations notified under paragraph 13(a). The main components of each plan – donor, time estimated for acquiring capacity and a verification plan – will also be notified by these Members to the WTO.

17. Three years after entry into force of the agreement, any Members which, for want of a donor or for any other reason, have not managed to formulate the capacity-building plans needed to meet all obligations in the agreement must so inform the body responsible for supervising implementation of the agreement. This body will coordinate any actions needed to enable the said Members to formulate and implement their capacity-building plans.

D. CONFIRMATION OF CAPACITY ACQUISITION AND FULFILMENT OF THE OBLIGATION

18. Every capacity-building plan will have a mechanism for supervising its implementation and confirming that the capacity has been acquired. It will be called the "verification mechanism" and will be made up of the recipient Member, the donor and the agency responsible for implementation of the plan.

19. If the mechanism verifies that the Member has acquired the capacity to meet an agreed obligation, the Member will so notify the WTO within six months at most from the date of the verification. The obligation will become binding for the Member as from the date of this notification.

20. Obligations not subject to capacity-building that a Member will be able to meet once a specified period has elapsed and that have been notified to the WTO Secretariat in accordance with paragraph 13(b), will enter into force upon expiry of the period specified in the notification.

IV. PRELIMINARY PROPOSAL FOR A TEXT

21. The procedure described in the previous section is reproduced in the preliminary text proposed below. The proposed text could be part of the chapter on implementation of special and differential treatment in the future agreement on trade facilitation and, as appropriate, of the transitional provisions to apply between the signing and the entry into force of the agreement.

1. Provisions on special and differential treatment

- (i) Developing and least developed Members will enjoy special and differential treatment in accordance with the following provisions and other relevant provisions set forth in other articles of this Agreement.
- (ii) The obligations set forth in this Agreement shall be binding from the entry into force of the Agreement, except for those notified by the said Members to the WTO Secretariat prior to the entry into force of this Agreement. They shall comprise:
 - (a) Obligations compliance with which will be subject to acquisition of the necessary capacity; and
 - (b) obligations to be met upon expiry of a period specified in the notification which shall not exceed six years from the date of the said notification. These obligations shall become binding upon expiry of the notified period.
- (iii) Obligations notified pursuant to (ii)(a) above shall not be subject to the Dispute Settlement Understanding until such time as the Member has notified acquisition of the capacity to meet them. Obligations notified under (ii)(b) above shall be subject to the Dispute Settlement Understanding as from the date set in the notification.
- (iv) The WTO Secretariat shall provide a Trade Facilitation Register for entry of notifications sent by Members. The Register shall be published on the Members' web site of the WTO Internet portal.
- (v) Any Member that lacks the capacity to meet an obligation set in this Agreement and that has so informed the WTO Secretariat pursuant to (ii)(a) above, shall also notify to the WTO Secretariat within three years at most from the date of entry into force of this Agreement, the plans it has drawn up to acquire such capacity. Any Member that so requests will be assisted by the international organizations or other relevant organizations in formulating and implementing capacity-building plans.
- (vi) If, three years after the entry into force of this Agreement, any Member has not managed to draw up a plan enabling it to acquire the capacity to meet one or more obligations of this Agreement, that Member shall so inform the Body responsible for supervising implementation of the Agreement. The said Body shall assist any Member that so requests in taking the necessary steps to formulate and implement its capacity-building plans.
- (vii) Verification of capacity acquisition by a Member shall be carried out by means of a mechanism which will be part of the capacity-building plan in question. The mechanism shall be made up of the recipient Member, the donor and the agency responsible for implementation of the plan.

- (viii) Once its capacity acquisition has been verified, the Member shall so inform the WTO Secretariat within six months at most from the date of the verification.
- (ix) Obligations notified under (ii)(a) above shall be binding for the Member as from the date on which the Member notifies acquisition of the capacity to comply with them. Obligations notified under (ii)(b) above shall be binding for the Member as from the date of expiry of the period specified in the notification.

2. Transitional provisions

- (a) In the period between the signing and the entry into force of this Agreement, developing and least developed Members shall carry out capacity self-assessments for the purpose of ascertaining their capacity to meet the agreed obligations.
- (b) Upon completion of the capacity self-assessments, these Members shall proceed with notification pursuant to (ii)(a) and (b) above.
- (c) Members that lack the capacity to carry out a capacity self-assessment shall so inform the Body responsible for supervising implementation of this Agreement. The said Body shall take the necessary steps to enable such Members to obtain the support needed to carry out the capacity self-assessments.

ANNEX I

Example of Notification Pursuant to Paragraph 13 and Paragraph (ii)(a) and (b)

Notifying Member	XXXXXXXXXXXXX	
Obligation/measure	Compliance subject to a specified period	Compliance subject to acquisition of capacity
Publication of trade laws and regulations (Discipline x)	(2) years	
Publication of trade laws and regulations on the Internet. (Discipline y)		Yes
Notification of trade regulations (Discipline z)	(5) years	
Establishment of enquiry points/single national contact points/contact points (Discipline xy)		Yes

ANNEX II

Phases of the Proposed Mechanism

PHASE	PERIOD OR DEADLINE	APPLICABLE PROVISIONS
SIGNING OF THE AGREEMENT ON TRADE FACILITATION		TRANSITIONAL PROVISIONS
CAPACITY SELF-ASSESSMENT	The period shall be long enough to enable developing and least developed Members to carry out self-assessment and notification.	
NOTIFICATION The following shall be notified: (a) obligations that cannot be met because the necessary capacity is lacking; and (b) obligations able to be met upon completion of a period to be specified in the notification and not to exceed six years.		
ENTRY INTO FORCE OF THE AGREEMENT Non-notified obligations become binding.		PROVISIONS OF THE AGREEMENT ON TRADE FACILITATION THAT RELATE TO SPECIAL AND DIFFERENTIAL TREATMENT
FORMULATION OF CAPACITY-BUILDING PLANS	The period for formulating and notifying each capacity-building plan shall be three years at most from entry into force of the Agreement.	
NOTIFICATION OF CAPACITY-BUILDING PLANS		
IMPLEMENTATION OF CAPACITY-BUILDING PLANS	Capacity-building plans shall be implemented within the period specified in the plans.	
VERIFICATION OF CAPACITY ACQUISITION	To be carried out immediately after implementation of the capacity-building plan.	
NOTIFICATION OF CAPACITY ACQUISITION	To be carried out within six months at most from verification of capacity acquisition.	
ENFORCEABILITY OF THE COMMITMENT	As from the date of the notification of capacity acquisition.	