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Negotiating Group on Trade Facilitation

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COMMUNICATION FROM THE AFRICAN GROUP

The following communication, dated 2 May 2006, is being circulated at the request of the Delegation of Benin, on behalf of the African Group.

Implementing the Technical Assistance and Capacity Building and Special and Differential Treatment (SDT) Mandates of Annex D of the July 2004 Framework

GOAL

Future commitments on trade facilitation must focus on measures which are vital for the economic development of developing countries and the least-developing countries, and at the same time these measures should be implementable. To this end, appropriate technical assistance and capacity building must be mandatory, besides appropriate S&D arrangements.

I. INTRODUCTION

1. Paragraphs 2, 3, 5 and 6 of Annex D of the 1 August 2004 Decision confer comprehensive provisions on SDT and provisions on Technical Assistance and Capacity Building (TA&CB). In addition, Paragraphs 4 to 7 of Annex E of the Hong Kong Ministerial Declaration are the operative paragraphs that basically outline the Negotiating Group on Trade Facilitation's (NGTF) work programme for 2006. These MC6-endorsed recommendations in Annex E basically require the NGTF to:

- Intensify negotiations and move these negotiations towards text drafting mode;
- Identify TF needs and priorities of individual Members;
- Identify the cost implications of possible measures;
- Make the provision of TA&CB during the negotiations fully operational "in a timely manner" – i.e. within such time as to be effective and useful to the recipients in the course of the negotiations – and agree on provisions that would make operational such provision of TA&CB to the implementation of new commitments after the negotiations;
- Agree on and integrate SDT proposals and considerations in the Trade Facilitation (TF) negotiations. This should be done through provisions that are precise, effective and operational.

2. The stress laid down in Paragraph 4 of Annex E for the NGTF to move into "focused drafting mode ... so as to allow for a timely conclusion of text-based negotiations on all aspects of the mandate" clearly indicates that the negotiations must be on **all** parts of the mandate – i.e. this would include those parts of the negotiating mandate reflected in Paragraphs 5, 6 and 7 of Annex E as well.

3. This means that in order for the TF negotiations to proceed in a logical and sequential manner, the mandates reflected in Paragraphs 5 to 7 of Annex E must be effectively complied with and accomplished. Paragraphs 5 to 7 of Annex E (with respect to TF needs and priorities and cost implications, TA&CB, and SDT) form the premise or foundation for ensuring that a negotiated outcome is mutually acceptable and beneficial to all African Members.

The objective of this paper is aimed at providing illustrative examples on what TA&CB elements and SDT in TF should include.

II. THE KEY ELEMENTS FOR TA&CB SHOULD INCLUDE:

- Establishment of a clear and precise diagnosis of the situation in hand in each concerned country and addressing factors that might otherwise compromise the success of domestic implementation.
- Designing well targeted technical assistance and capacity building programs; ensuring that their different components are mutually supportive.
- Setting of benchmarks verifying that all necessary steps are taken for achieving the expected benefits.
- Support and assistance during the trade facilitation negotiations. One way to do this is through inviting capital-based experts to assist Geneva-based negotiators as well as training officials in the trade facilitation area.
- Support and assistance to help developing and least-developing countries implement the commitments resulting from the negotiations, with particular attention to needs of SME's.
- Strengthening programmes to promote investment with a view to building domestic trade facilitation capacity.
- Technical assistance to overcome sub-regional divides and to facilitate integration.
- Better targeting aspects of cooperation between border agencies of concerned countries.
- Avoiding inconsistencies through a better coordination of TA&CB interventions related to trade facilitation *stricto sensu* with related issues in the area of customs valuation, rules of origin, import licensing or sanitary controls.
- Make provision for post-implementation support.
- Incorporate adequate provision for short- and long-term in-country advisors.
- Adequate long-term re-sourcing and access to sustainable funding which include mechanisms for the provision of additional support and long-term funding provisions with particular attention to the use of communication and information technology-based interventions.
- Monitoring mechanism on whether TA&CB is adequate and whether Members are fulfilling their obligations, and developed-country Members shall notify the WTO that they have implemented the technical assistance measures contained in provisions.
- Developed-country Members shall set "benchmarks" which they shall meet on financial and technical cooperation designed to strengthen the capacity of developing countries.

- Coordination and coherence between relevant organizations in the area of trade facilitation.
- Developed countries, in cooperation with the World Bank, IMF, WCO, UNECE, UNECA, ITC and other international organizations, need to assist with technical and financial assistance needed to build trade facilitation infrastructure.

III. THE ELEMENTS TO BE INCLUDED AS SDT

A. HOW SHOULD FLEXIBILITY BE MAINTAINED?

- Acceptance of the principle implying flexibility for all developing countries and commitments to fit the specific circumstances of different countries.
- Due respect for policy space and the level of development of individual Members.
- Setting non-binding and long-term objectives for trade facilitation and rule setting.
- A country specific approach that would make implementation of any new rules a matter of national priority. This implies that any new rules would be implemented only when this conforms with or supports the attainment of national development objectives.
- Future commitments should not be part of the single undertaking and should exclude the dispute settlement mechanism, i.e. they should be "best-endeavour commitments".

B. GATS-TYPE COMMITMENTS

Non-exhaustive illustrative list of samples:

- Extend the GATS "positive list" approach, making certain obligations applicable only when developing countries have the capacity to implement them.
- Allowing developing countries to undertake fewer or limited obligations as long as this does not impose significant financial burden, i.e. opt-out possibility from applying negotiated disciplines.
- Link shall be made between implementation of new commitments and the provision of TA&CB.
- Allowing opt -outs for resource intensive agreements.
- When countries surpass thresholds or meet the criteria required, significant longer implementation should be incorporated to give such countries policy space.
- The principle of progressivity should be adopted, meaning that a developing country should enter into a commitment only after a certain benchmark is achieved indicating its ability to implement a commitment and indicating that the TA&CB obligations by developed countries have been met.

- Commitments are made on an individual country basis rather than expressing a set level for developing countries as a group.
 - Provision for flexibility and more favourable treatment to developing countries in regional groupings.
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