

# WORLD TRADE ORGANIZATION

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**Negotiating Group on Trade Facilitation**

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**COMMUNICATION FROM ARMENIA, CHILE, CHINA, DOMINICAN REPUBLIC,  
ECUADOR, THE EUROPEAN COMMUNITIES, GEORGIA, GUATEMALA, HONDURAS,  
JAPAN, KYRGYZ REPUBLIC, MEXICO, MOLDOVA, NICARAGUA, PAKISTAN,  
PARAGUAY, SRI LANKA, SWITZERLAND AND URUGUAY**

The following communication, dated 19 July 2006, from the Delegations of Armenia, Chile, China, Dominican Republic, Ecuador, the European Communities, Georgia, Guatemala, Honduras, Japan, Kyrgyz Republic, Mexico, Moldova, Nicaragua, Pakistan, Paraguay, Sri Lanka, Switzerland and Uruguay, is being circulated in advance of the Negotiating Group meeting of 24-26 July.

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**IMPLEMENTATION MECHANISM OF TRADE FACILITATION COMMITMENTS  
INCLUDING KEY ELEMENTS FOR TECHNICAL ASSISTANCE**

**I. INTRODUCTION**

1. This communication attempts to materialise the modalities set in Annex D of the Decision of the General Council of July 2004 and follows up with a textual proposal based on the non-paper dated 6 June 2006 "Phases of a Proposed Implementation Mechanism". It takes its inspiration namely from the communications TN/TF/W/81 submitted by a group of Latin American delegations, TN/TF/W/82 submitted by a group of Asian delegations, as well as TN/TF/W/95 submitted by the African Group.
2. This contribution is intended to deepen the discussions on special and differential treatment, technical assistance and capacity building in the context of the negotiations on trade facilitation. It is a living document that will evolve as negotiations proceed and does not reflect any final views of the co-sponsors on this matter. In particular, co-sponsors are of the view that legal aspects of this proposal need to be further elaborated in the course of the negotiations. They reserve the right to revise, supplement and/or withdraw any of the ideas set out herein.
3. This communication presents a text that details the structure proposed in the non-paper mentioned above. The proposed trade facilitation implementation mechanism is divided into nine phases. The first three phases in Part A – all phases between the end of the Doha Round and the entry into force of the trade facilitation agreement– will be dealt with through transitional provisions which may be part of, for example, a Ministerial or General Council Decision. As for Part B, the mechanism starts with the entry into force of the agreement, going through seven successive phases to end with the full implementation of the obligations of the trade facilitation agreement. These provisions shall be contained in a separate part of the agreement dealing with implementation. As for Part C, containing key elements dealing with technical assistance and capacity building it shall also be handled in a special chapter therein.

4. Other chapters of the agreement will also have to deal with institutional, e.g., the establishment and the functions of the Committee on Trade Facilitation, and enforcement matters. So far, this communication refers implicitly to enforcement issues and limits itself to mentioning the Committee on Trade Facilitation.

## **II. TEXTUAL PROPOSAL**

### **A. TRANSITIONAL PROVISIONS**

#### **0. Signing of the single undertaking (including the Trade Facilitation Agreement)**

1. Provisions will be applicable after the signing of the single undertaking including the trade facilitation agreement. A Working Group is established for the duration of the transitional period to handle matters related to the implementation of the results of the trade facilitation negotiations<sup>1</sup>.

##### **1. Capacity self-assessment**

2. For the purpose of ascertaining their capacity to meet the agreed obligations, each developing<sup>2</sup> and least-developed Member shall complete a capacity self-assessment in relation to the provisions in the trade facilitation agreement. On request, donors, including relevant international organizations<sup>3</sup>, shall assist Members in this exercise on mutually agreed terms and conditions<sup>4</sup>.

##### **2. Notification procedure**

3. On the basis of its capacity self-assessment, each developing and least-developed Member shall notify all other Members, through the WTO Secretariat for which obligations it needs (i) technical assistance and capacity building, and (ii) additional time which shall not exceed [N] years, to implement and be made available on Members' site of the WTO Internet portal.

4. Members shall not notify other Members of (i) measures they are ready to implement from the date of entry into force of the agreement, (ii) measures regarding provisions they have already implemented, and (iii) provisions in the trade facilitation agreement which are designed to apply from its entry into force.<sup>5</sup>

5. For the sake of transparency and predictability, Members shall engage in a multilateral dialogue on the notifications [...] months before the entry into force of the Agreement at the latest. Notifications shall be made one month before the multilateral dialogue takes place. The Secretariat shall support Members in organizing this multilateral dialogue providing the necessary documentation they may request in order to facilitate the dialogue and to ensuring that it is completed before the entry into force of the trade facilitation agreement.

6. Members may modify their Notification until the entry into force of the Trade Facilitation Agreement. Positive consideration should be given to comments by Members.

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<sup>1</sup> [Remark: The functions of this body will be developed at a later stage].

<sup>2</sup> In the context of these provisions, the following countries shall enjoy the same rights and obligations as developing countries: Armenia, Georgia, Kyrgyz Republic and the Republic of Moldova.

<sup>3</sup> Relevant international organisations as referred to in Annex D of the July framework, including the IMF, OECD, UNCTAD, WCO and the World Bank.

<sup>4</sup> [Explanation: This phase of the text is also dealt with in C-(A) Transitional Provisions under Key Elements of Technical Assistance and Capacity Building].

<sup>5</sup> [Explanation: The idea expressed here is that Members would negotiate a selection of obligations comparatively easier to implement, namely such obligations that already exist through GATT Articles V, VIII and X].

7. Members shall finalize their Notification before the entry into force of the trade facilitation agreement, which shall be published on the Members' site of the WTO Internet portal.

## B. PROVISIONS OF THE TRADE FACILITATION AGREEMENT

### 3. Entry into force of the Trade Facilitation Agreement

8. Developing<sup>6</sup> 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.

9. The obligations set forth in this agreement apply from the date of its entry into force, except for those contained in the Notification, which shall apply for each Member as from the end of the implementation period set out therein and from the Notifications of the capacity acquisition in accordance with paragraphs 20 to 22 hereafter.

10. The Notifications are hereby made an integral part of this agreement.

### 4. Formulation of the capacity building plans

11. For obligations requiring technical assistance and capacity building as contained in the Notification, each developing, least-developed Member shall detail its requests and enter into discussion with donors, including relevant international organizations. On this basis, capacity building plans shall be prepared by the parties involved. On request, donors, including relevant international organizations, shall assist Members in this exercise on mutually agreed terms and conditions.<sup>7</sup>

### 5. Notifications of capacity building plans

12. The capacity building plans shall contain: (a) the obligations for which the need for technical assistance and capacity building has been signalled in the Notification; (b) intermediary steps as necessary; (c) the implementation periods; (d) the donors; and (e) the implementation agency if appropriate. These as well as other relevant data shall be notified to the Committee on Trade Facilitation and made available on the Members' site of the WTO Internet portal.

13. Members shall, on request, be provided with the opportunity to engage in consultations with the notifying Member.

14. The Notifications shall be up-dated with the information contained in the capacity building plans no later than [...].

### 6. Implementation of trade facilitation commitments

15. Members shall take actions at the earliest possible moment to achieve compliance according to the implementation periods specified in the Notifications.

16. Progress in implementing notified obligations shall be reviewed by Members on a periodic basis.

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<sup>6</sup> In the context of the following provisions the following countries shall enjoy the same rights and obligations as developing countries: Armenia, Georgia, Kyrgyz Republic and the Republic of Moldova.

<sup>7</sup> [Explanation: This phase of the text is also dealt with in C-(B) Provisions of the trade facilitation agreement under Key Elements of Technical Assistance and Capacity Building].

17. Any request for modification of a Member's Notification needs to be brought to the Committee on Trade Facilitation for decision as soon as an implementation problem has been identified.

#### **7. Verification of capacity acquisition**

18. At the end of each implementation period related to the provision of capacity building and technical assistance contained in the Notification, the implementing developing and least-developed Member and, if so agreed, the other parties involved<sup>8</sup>, shall assess whether capacity building and technical assistance has been effectively provided according to the mutually agreed terms and conditions and whether capacity has been acquired.

19. Should this Member come to the conclusion that capacity has not entirely been acquired, this Member and the donor Members involved shall so report and make recommendations to the Committee, which will review the matter and decide on a case-by-case basis.

#### **8. Notification of the acquisition of capacity**

20. Members who successfully acquired the capacity to assume a certain provision shall notify this, at the latest 6 months after the capacity acquisition to the Committee on Trade Facilitation. The obligation shall apply after this notification.

21. The Notifications shall be up-dated with the notified information.

22. In case a Member fails to notify within this time period, the provision becomes applicable 6 months after the end of the implementation period of that obligation.

#### **9. Full implementation**

23. Members shall ensure full implementation of the obligations contained in the Agreement.

### **C. KEY ELEMENTS OF TECHNICAL ASSISTANCE AND CAPACITY BUILDING**

#### **C-(A) TRANSITIONAL PROVISIONS**

##### **1. Technical assistance and capacity building in the transitional provisions**

24. Members shall carry out a clear and precise diagnosis of the situation in each developing and least-developed Member through capacity self-assessment with, upon request, donor support to assist this assessment on mutually agreed terms and conditions. The diagnosis could be done through existing tools developed for this purpose by relevant international organizations such as the World Bank and the World Customs Organisation. While carrying out the diagnosis relevant work done in the context of the Integrated Framework for LDCs and other international or regional development programmes shall be taken into account.

25. Developing and least-developed Members that lack capacity to carry out a capacity self-assessment shall so inform the WTO Secretariat which shall circulate this information to Members and relevant international organizations in the field of trade facilitation.

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<sup>8</sup> The parties involved means: the recipient Member, donor Members providing technical assistance and capacity building in that Member as well as the implementing agency.

## C-(B) PROVISIONS OF THE TRADE FACILITATION AGREEMENT

### 1. General principles

26. Members shall endeavour to apply the following principles and elements for providing technical assistance and capacity building with regard to the implementation of this agreement:

- (i) Handle technical assistance and capacity building in a manner that is consistent with the relevant principles of good practices of the Paris Declaration on Aid Effectiveness (2005) including issues of ownership, harmonization, alignment, results and mutual accountability. Account should also be taken of the principles of good practices set out in the OECD/DAC guidelines on Harmonizing Donor Practices for effective Aid Delivery (2003 and 2006) in areas such as donor cooperation, diagnosis, sector-wide or program based approaches and reporting and monitoring.
- (ii) Take account of the overall developmental framework of recipient countries and regions.
- (iii) Design and strengthen targeted technical assistance and capacity building with mutually supportive components to build trade facilitation capacity also taking into account ongoing reform programmes. Particular attention should be paid to ongoing trade facilitation reform activities of the private sector when designing support programmes.
- (iv) Coordinate with and between Members and relevant international organizations coordinated with the Integrated Framework for LDC's. Avoid inconsistencies in reform activities through close coordination of technical assistance and capacity building interventions. In particular, strengthen coordination at national level and build capacities to plan, manage, implement and monitor technical assistance and capacity building.
- (v) Designate focal points to coordinate the implementation of the trade facilitation agreement both in donor as well as in partner countries.
- (vi) Facilitate in-country coordination structures such as round tables and consultative groups to coordinate and monitor implementation activities.
- (vii) Take into account developing countries' readiness to provide capacity building to other developing and least-developed countries and consider supporting such activities.

### 2. Joint platform for cooperation and coordination

27. Members, as part of the work of the WTO Committee on Trade Facilitation shall operate, without the creation of a new body outside the WTO, a joint platform on technical assistance and capacity building to facilitate the implementation of this Agreement. The platform shall not duplicate the activities of existing coordination mechanisms, but shall coordinate with them and use such instruments to help it fulfil its functions. It shall take into account relevant work being carried out in the context of the Integrated Framework for LDCs, and other instruments for development. The platform shall:

- (i) promote international transparency, cooperation and coordination of technical assistance in the field of trade facilitation, bringing together donor Members and

recipient Members, relevant international organizations, regional groupings, as well as other intergovernmental organizations with a role to play; and

- (ii) help ensure, where necessary, coordination of assistance between donors and recipients so that potential gaps are filled.

28. A role may be provided for the private sector in such transparency and coordination efforts, where the private sector is already providing assistance or investment in trade facilitation, is interested in doing so, or is directly affected by measures.

### **3. Technical assistance and capacity building in the phase of formulating capacity building plans**

29. Members shall take into account the following elements when providing, on request, technical assistance and capacity building on mutually agreed terms and conditions:

- (i) Capacity building plans should, as appropriate, provide for adequate long-term assistance and for post-implementation support.
- (ii) Training, deployment of in-country advisors, particular attention to SMEs, could be reflected, as appropriate and as requested, in capacity building plans.
- (iii) Technical assistance and capacity building could be also provided to support initiatives to overcome sub-regional divides and facilitate regional or sub-regional integration.
- (iv) To the extent practicable, account should also be taken of the implementation plans of neighbouring countries.

30. A Member that has not managed to finalize the capacity building plan shall so inform the Joint Platform for Cooperation and Coordination, which shall take the necessary steps to facilitate interaction with donors. On request and within mutually agreed terms and conditions, relevant international organizations should assist developing and least-developed Members in formulating capacity building plans.

Annex

Phases of a proposed Implementation Mechanism

	<b>PHASE</b>	<b>PERIOD / DEADLINE</b>	<b>APPLICABLE PROVISIONS</b>
0	SIGNING OF THE SINGLE UNDERTAKING	Year X	TRANSITIONAL PROVISIONS  (OUTSIDE THE TF AGREEMENT)
1	CAPACITY SELF-ASSESSMENT	Year X + period extending until the entry into force of the Agreement of TF	
2	NOTIFICATION PROCEDURE <ul style="list-style-type: none"> <li>SUBMISSION OF THE NOTIFICATION</li> </ul> MULTILATERAL DIALOGUE ON THE NOTIFICATION		
3	ENTRY INTO FORCE OF THE AGREEMENT	Year X + Y	PROVISIONS OF THE AGREEMENT REGARDING S&D
4	FORMULATION OF THE CAPACITY BUILDING PLANS	Year X + Y + Z at maximum	
5	NOTIFICATION OF CAPACITY BUILDING PLANS		
6	IMPLEMENTATION OF TRADE FACILITATION COMMITMENTS	Period specified in the notification	
7	VERIFICATION OF CAPACITY ACQUISITION	At the end of the implementation of the capacity building plan	
8	NOTIFICATION OF THE ACQUISITION OF CAPACITY	At the latest 6 months after the verification of the capacity acquisition	
9	FULL IMPLEMENTATION		

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