# WORLD TRADE ORGANIZATION

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**Working Group on the Relationship between Trade and Investment**

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## COMMUNICATION FROM THE SEPARATE CUSTOMS TERRITORY OF TAIWAN, PENGHU, KINMEN AND MATSU

The following communication, dated 28 June 2002, has been received from the Permanent Mission of the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu.

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## DEVELOPMENT PROVISIONS

1. The Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu appreciates the Secretariat's Note on the development provisions and would like to offer this brief note to indicate our support of having effective development provisions in the future investment rules to enable developing Members to benefit therefrom. Some additional practical considerations are submitted at the same time for participants to take into account.

2. One of the purposes of having a multilateral investment agreement is undoubtedly to provide a stable as well as predictable environment for investment. Apart from supporting the pursuit of this objective, we strongly support developing Members in obtaining a reasonable condition for development within the future investment framework. We consider that although dual favors in both requiring developed Members to open up wider of the business opportunities for investors from developing Members and allowing developing Members an extended period and higher flexibility to phase-in the future investment framework would be of assistance, the future investment rules should still be focusing more on providing a transition period and flexibility for developing Members.

3. Regarding the support for developing Members in achieving a reasonable condition for development within the future investment framework, since transitional arrangements are among the most flexible ways to deal with developing Members and have been used in quite a number of WTO agreements, there is no reason why the same mechanism cannot be used in the future rules on investment. A transitional arrangement for developing Members should definitely be available under the future investment rules. It will certainly facilitate developing Members in adjusting to the requirements imposed by these future rules. However, any transitional arrangement should probably apply to specific issue only, for example, the establishment of an enquiry point. It might not be appropriate for such arrangement to be made applicable to matters relating to, say, publication of regulations. Neither would it be advisable to allow the application of transition arrangements in most-favored-nation treatment. Further discussion is needed on the scope of matters that can be suitably covered under transition arrangements for developing Members.

4. The Doha Ministerial Declaration has already explicitly declared that the commitments model under the GATS would be used as a basis for future model on the negotiation of investment rules. Under the GATS, developing Members do enjoy a substantial degree of flexibility in deciding whether to include specific sectors within their economy into the Schedule of Commitments. Furthermore, under the GATS, developing Members may impose specific restrictions on the provision of national treatment. We see no reason why developing Members may not be given the same

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flexible treatment in the future rules on investment. Members will probably agree that such special treatment could go far in meeting the needs of the developing Members.

5. Perhaps it would also be useful for the future investment rules to include provisions urging developed Members not to expect developing Members to accord balanced commitments on the opening up of investment markets as well as provisions indicating the progressiveness of the liberalization of investment markets.

6. Since the need of flexibility is to enable developing Members to identify their development priority and to enhance their economic development, it might not be appropriate to allow fuller flexibility regarding some aspects of international investment rules. Our views are as following in this regard:

- Pre-establishment treatment could be given more flexibility than post-establishment treatment, because pre-establishment is more directly related to the development needs of developing Members.
- Most-favored-nation status should be given less flexibility than national treatment, due to the fact that most-favored-nation treatment discriminates investors based only on their origins and has less to do with development needs of the developing Members.
- Disclosure of investment laws and regulations as well as procedural fairness should be given less flexibility than the establishment of enquiry points, because the latter involves higher capacity demand and the former is less related to development needs.

7. We do not favor granting developing Members with right on imposing performance requirements on foreign investors. If such performance requirements are allowed, it should not be made permanent under future investment frameworks. Requiring foreign investors to transfer technology to domestic firms or to the government might not be an effective way to actually attract high quality technology. It could have the counterproductive effect of deterring genuine investors from investing in such host countries. From the investors' point of view, performance requirements could become a non-transparent and unpredictable factor preventing them from participating in the business opportunities in developing Members.