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Special and Differential Treatment and the Spaces for Policies in WTO: Two Elements of the Development Dimension in the Multilateral Trading System

Proposal under Paragraphs 9 and 10 of the Geneva Ministerial Declaration

Communication from Venezuela

The following communication, dated 12 July 1999, has been received from the Permanent Mission of Venezuela.

Introduction

1. The forthcoming negotiations in WTO will review a wide range of existing agreements and, if it is decided in Seattle, they could also open the discussion on new disciplines related to international trade, investment, competition policies, technology-related issues and environment. These areas - which are already covered in some way in several WTO agreements - are being the subject of initiatives and proposals promoted by some Members in the framework of the preparatory process for the third Ministerial Conference.

2. The forthcoming negotiations will take place in two dimensions, which can be addressed through two different perspectives that complement each other:

- One that could be called "the trade dimension in restricted sense", in which the aims are to liberalize trade, to widen the possibilities of market access and to facilitate international flows of goods and services
- Another dimension that could be named "the spaces for policies", which includes a range of policy instruments that could be used by developing countries to modify their trade patterns in order to gain and sustain competitiveness. The basic objective behind these instruments is not only to induce growth of their traditional trade flows (basically commodities) but also to promote the structural transformation of their economies and the possibility to add more value to their exports.

3. Regarding the first dimension (trade in restricted sense), almost all Members seem to agree upon the basic postulates and objectives of liberalization, despite the fact that each of them has its own interests in specific sectors (such as textiles, agriculture, services, industrial goods) or in some cross-cutting disciplines (i.e. competition or anti-dumping), as well as differences regarding the relative speed of such liberalization. But, given the fact that there are common basic postulates and

objectives, the efforts made so far in these areas could converge. In fact, WTO Members seem to have identified and recognized in this first dimension a space in which they want to agree, where there is no doubt that widespread liberalization leads to trade growth.

4. However, the situation is not the same with regard to some issues that are particularly relevant for developing countries, such as those included in the TRIMs and TRIPS Agreements, in the Agreement on Subsidies, and in others related to foreign investment, government procurement, technology and competition policy. These issues have in common, from a non-static perspective of growth, the fact that they deal with the opportunities of developing countries to increase the "added value" of their exports and to achieve structural changes in their productive sectors in order to become competitive and to remain competitive, as a result of an equitable participation in technological developments and investment flows.

5. The above-mentioned issues - which may appear disconnected and which are addressed individually in various WTO agreements - include some policy instruments whose utilization can contribute to improved economic performance of developing countries, not only in terms of wider participation in trade growth and better integration into the global economy, but also in terms of their successful transition to economic development. These matters are development-policy issues; therefore, they are key elements of the "space for policies".

What kind of policy instruments and to what purpose?

6. There has been substantial progress in the debate that started several years ago with regard to the role of "supply-side" policies, conceived as tools to promote the development and modernization of productive sectors and a better integration of developing economies in global markets in the context of increasing liberalization. This debate, originally polarized between two extremes (delaying structural reforms and liberalization of domestic economies, on one hand, or renouncing the use of "supply-side" policies, on the other), is neither justifiable nor viable in the present context. In fact, discussions have evolved as a consequence of several factors, such as better expertise in the administration of the Uruguay Round Agreements, the further analysis of the South East Asian experience and the theoretical contributions made by important institutions with regard to the economic development paradigms.

7. Today it is quite clear that there is a "space" in which developing countries can implement their own market-oriented development strategies, consistent with their multilateral commitments. This space has been successfully used by countries in order to face externalities and market failures, as well as to reach progressive improvements in their competitiveness and productivity, to promote technical progress and to foster domestic economic dynamism.

8. The "supply-side" rationale that underlies the growth and the strengthening of modern economic sectors in the world is the constitution of productive clusters, whose capacity to compete in global markets is based on strategies that combine several mechanisms, two of which deserve special attention: the development of technological innovation capacities and the construction and exploitation of business networks.

9. Technological innovation allows firms to be "up-to-date" in terms of processes, products and strategies, in order to avoid depending on price reductions and profit cutting as their main strategy for competition.

10. Business networks widely favour three processes that are especially relevant to growth and development. The first is the successive aggregation of value along the productive chains, downstreaming the production of commodities; the second is the development of information networks among enterprises in a cluster, which helps to diffuse innovations and "best practices"; and

the third is the creation of dendritic systems of Small and Medium Enterprises (SMEs) that supply goods and services to the cluster, which contributes to a higher and more extended impact on employment and income distribution.

11. These goals are not automatically reached by trade liberalization, nor are they helped by just allowing "transitional periods" within the special and differential treatment scheme. In many cases, there is a need for market-oriented "supply policies" focused on specific development objectives. If the multilateral trading system legitimizes spaces for these kinds of policies, as well as for others on the "demand side", a wide range of policy instruments consistent with WTO commitments could be implemented by developing countries in order to reach their development objectives within the framework of a market economy.

Proposal

12. In the context of the forthcoming negotiations, the Venezuelan proposal aims to contribute to the discussion that has already started in the WTO regarding the need to include the "development dimension" in those negotiations, as a concept that should go beyond the scope of special and differential treatment as it is conceived nowadays in the multilateral trading system.

13. We believe that a fundamental task that should be addressed by the WTO in the near future is to propitiate a sincere discussion with regard to the "development dimension", in order to give substantive content to this concept and to bring it to a practical and concrete field. This would contribute to ensuring a better use of opportunities for developing countries and, thus, the strengthening of the multilateral trading system.

14. Some Members interpret the development dimension as a principle of narrow flexibility, that is sufficiently covered by the current S&D provisions in WTO, mainly based on the concession of transitional periods and technical cooperation to developing countries in order to help them to adjust to the obligations contained in the Agreements. However, most developing countries consider that much more than adjustment periods and technical cooperation has to be done in order to overcome structural limitations in their production and trade, and that they are not in a position to fulfil some commitments related to those limitations, presently pressed upon them in the Agreements. It seems, thus, that S&D treatment as it is conceived nowadays is just one instrumental part of what should be the development dimension in the multilateral agreements.

15. The other part of the development dimension seems to be the preservation of spaces for policies that exist or may be created within the multilateral trading system, to which we have already referred. From a developing-country view, it is necessary, as well as compatible with a market oriented economy, to instrument public policies devoted to the promotion of the competitiveness and dynamism of sectors producing tradable goods and services, which cannot be granted solely through liberalization, export expansion and a stable macroeconomic environment.

16. In fact, as long as the multilateral trading system does not recognize the legitimacy of some market-oriented policy instruments whose use can help developing countries in achieving those structural changes as well as a better integration into the global economy, it would not be a real development dimension in such a system. The current conception of special and differential treatment is just an aggregate of "remedies" (i.e. transitional periods and technical cooperation) designed with the objective of assisting developing countries to fulfil the obligations contained in agreements that do not contemplate by themselves the development dimension.

17. This idea of "policy spaces" is not really new in the multilateral trading system. There are some examples of measures that have been agreed in the past in order to preserve spaces for policy objectives. These are the specific case of the agricultural "multicoloured boxes", the time periods

given under the Agreement on Textiles and Clothing, and the non-actionable subsidies, that can be considered policy spaces created as a response to the needs of some Member countries. Thus, the possibility of preserving or creating spaces for different needs and interests expressed by other Members should not be considered unfeasible.

Concrete actions

18. The development dimension (that is to say the S&D provisions and the "spaces for policies") should be considered as a cross-cutting issue that affects not only the implementation of existing agreements, but also those agreements that are going to be reviewed under the built-in-agenda as well as those new areas where negotiations could begin.

19. In order to ensure that the development dimension so considered is properly addressed in such negotiations, it is proposed to include it as a general mandate in the Third Ministerial Conference. This objective could be implemented through the following specific actions:

- In reviewing the implementation of existing agreements, as well as in the negotiations scheduled under the built-in-agenda (paragraph 9(a) of the Geneva Ministerial Declaration), it is necessary to identify and recognize those market oriented policy instruments already existing in the agreements or that could be introduced in them, under the condition that they are consistent with the WTO general principles. This exercise would not prejudice the need to improve the S&D provisions as they are conceived at the present time.
- In the eventual negotiations on new issues (paragraph 9(b) and 9(d) of the Geneva Ministerial Declaration) it is necessary to identify and recognize those market-oriented policy instruments that could be placed in the resulting agreements, under the condition that they are consistent with already existing WTO commitments. This exercise would not prejudice, or anyhow substitute, specific measures related to the S&D treatment.

20. Finally, with regard to the future WTO work programme (Paragraph 10 of the Geneva Ministerial Declaration), we propose the creation of a Working Group oriented to the following specific objectives:

- To follow-up the steps taken to fulfil the above-mentioned mandate.
- To develop the idea that the development dimension in the multilateral trading system should cover two sets of instruments that run through various agreements: the special and differential treatment (S&D) and the spaces for development policies (SDP).
- To identify and analyze market-oriented policy instruments that could be placed in those two categories, already existing in the agreements or that could be introduced in them, under the condition that they are consistent with the WTO general principles.

21. In any case, the Working Group should carry out its work with a realistic approach. In this regard, a solution in which developing countries are allowed to apply policy instruments that work against some key concepts of multilateralism or that are not consistent with already existing WTO agreements - including those that prohibit the use of trade-distortive policy instruments – would not be acceptable. It could be acceptable, for instance, that the Group focuses its work on those policy instruments that are feasible to implement in a market-oriented economy and that can be really useful in achieving development objectives.

22. The Group should also analyse what is being pursued with the application of a specific policy instrument, why it is useful and under which conditions its use is considered legitimate.

23. In conclusion, we are convinced that preservation of "policy spaces" is compatible not only with the multilateral trading system, but also with the possibility of developing favourable domestic climates for international trade and investment flows. A joint effort by all WTO Members to recognize, legitimize and instrumentalize such spaces would strengthen the multilateral trading system. In this context, it seems justified to promote a "conceptual ground" that facilitates the convergence of interests and positions of developed and developing countries and, thus, the possibility to design negotiating agendas and methods conducive to win-win solutions.
