

**COMMUNICATION FROM THE PEOPLE'S REPUBLIC OF CHINA, INDIA,  
PAKISTAN AND SRI LANKA**

The following communication, dated 30 March 2006, from the Delegations of the People's Republic of China, India, Pakistan and Sri Lanka is being circulated in advance of the Negotiating Group meeting of 5-7 April.

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**A PROPOSAL ON THE PROCESS  
OF TRADE FACILITATION NEGOTIATIONS**

**I. INTRODUCTION**

1. Since the initiation of trade facilitation negotiations, the focus of the Negotiating Group has been on clarification and explanation of proposals on GATT Articles V, VIII and X. Such efforts have enabled Members to have a general picture of what might need to be implemented after the negotiations. Ministers instructed us to start text-based negotiations early enough after the Sixth Ministerial Conference. In light of the new mandate, it is appropriate to have in-depth discussions among Members on how to proceed further to achieve a balanced outcome.

2. Negotiations on trade facilitation are different from other areas of the DDA in that the result of trade facilitation negotiations may be technically more complicated to implement and this needs to be factored in during the negotiations. Given their limited resources and comparatively low levels of development, one of the major concerns of some developing Members is that commitments they have to take might be well beyond their implementation capability, and that the promised technical assistance and capacity building support may not be sufficient to meet their needs. They would in addition be confronted with the prospect of dispute settlement cases for not honouring their commitments. In fact it would be fair to say that the real difficulty of trade facilitation negotiations lies ahead in the process of text-based negotiations, resulting from the concerns described above.

**II. PROPOSAL**

3. Considering the factors outlined above, it may be appropriate to go beyond the traditional roadmap of negotiations and try to solve the relevant issues while still in the actual drafting process so as to lay a good foundation for our text-based negotiations. These issues are basically the ones that we have to address in the establishment of all trade facilitation rules through the negotiations. The issues are as follows: (i) the arrangement of commitments for developing Members; (ii) the provision of technical assistance and capacity building support; and (iii) the applicability of the dispute settlement mechanism.

### **The Arrangement of Commitments for Developing Members**

4. From the proposals submitted so far to the Negotiating Group on the clarification and improvement of GATT Articles V, VIII and X, we understand that some of the measures proposed are comparatively easier to implement while others require much greater effort. Though it is still early to say which of the measures proposed or to be proposed will finally be accepted as part of the final agreement, there is need to discuss the general arrangement of the mode of commitments while we negotiate on specific rules. We would then have a better idea of the possible impact of these rules.

### **Technical Assistance and Capacity Building Support**

5. There are two stages of technical assistance and capacity building support being discussed now in the Negotiating Group: one in the course of negotiations and the other beyond. This proposal addresses the latter. When discussing commitments, it is important to understand that satisfactory resolution of the issue of provision of technical assistance and capacity building support plays a vital role in the arrangement of possible commitments from the negotiations. This issue has already been discussed in the Negotiating Group. However, discussions have tended to fall into a "chicken or egg" stalemate and Members have found it difficult to move further on this issue. However, if we once again change our way of thinking and go beyond that stalemate, we will find what lies in the core is that we are short of a working mechanism in this area.

6. Such a mechanism, in whatever format, will basically serve to pool and coordinate the efforts of technical assistance and capacity building support. There might be other functions as well, depending on the negotiations of Members. The objective is to ensure that when Members examine specific trade facilitation rules during the negotiations, they could be assured how and what kind of assistance and support they can get to provide them the requisite comfort for taking commitments. With such a working mechanism, the sort of "chicken or egg" stalemate could be solved.

### **The Application of Dispute Settlement Mechanism**

7. Developing Members have comparatively low levels of development and limited resources in comparison with developed Members. One of the reasons for developing countries to stress the provision of technical assistance and creation of implementation capacity is the concern about non-implementation being subject to dispute settlement mechanism. Concern has already been expressed that it would be onerous for a Member to be brought before the DSU system because it lacks capacity to implement its commitments. Taking into consideration the special nature of trade facilitation rules, if the Negotiating Group could have an arrangement on the application of the dispute settlement mechanism to the implementation of trade facilitation rules, it will no doubt alleviate the concerns of the developing Members on the possible effect of the commitments made. It needs to be made clear here that the suggestion of the DSU is not to make the negotiating process more difficult. On the contrary, we believe that taking up the issue now rather than later will help to ease the Negotiating Group's rule-drafting effort, thus facilitating the negotiating process.

### **III. POSSIBLE OPTIONS TO SOLVE THE ISSUES IN QUESTION**

8. As a matter of fact, some Members have already been looking for ways to solve the three issues mentioned above. There is also some thinking in that regard from some international fora on trade facilitation. In the following paragraphs, this paper tries to pool the resources and give Members a general picture on what might be possible options to solve those issues in question.

### **The Arrangement of Commitments for Developing Members**

9. In view of the different requirement of proposed trade facilitation measures and the limited resources of developing Members, it would be desirable that proper arrangements of commitments are made for developing Members. A possible mode of commitment arrangement might be that the rules to be established are divided into different modules, depending upon the degree of difficulty and the extent of resources and capability required for implementation. There could be the kind of module rules that is comparatively easier to implement and forms the basic commitments by the developing Members. For these rules, the developing Members might take the commitments the day the agreement comes into effect and may also have (X) years of transition period if they so require. For those modules of rules that require technical assistance and capacity building support, commitments shall be taken subject to a period of transition and provision of relevant assistance and support guaranteed under the technical assistance and capacity building mechanism established from the negotiations. It needs to be made clear that the actual mode of arrangement of commitments and the specific working mechanism is yet to be decided in further discussions and there is no attempt to prejudge the issue here.

### **Technical Assistance and Capacity Building Support Mechanism**

10. There are already specific submissions from Members on how to solve the issue. These include the idea of "establishing a coordination/collaborative mechanism or building upon any existing mechanism involving various partners engaged in trade facilitation to enhance synergies and ensure efficient use of available resources" (TN/TF/W/56)<sup>1</sup>, an organizing and coordinating mechanism ensuring that "technical assistance is adapted to the needs of the recipients, so as to guarantee transparency, coherence and effective assistance to developing and least-developed countries in the implementation of commitments" (TN/TF/W/41)<sup>2</sup>, and a possible mechanism to relate TA&CB and financing to reform (TN/TF/W/63)<sup>3</sup>. However, more in-depth discussions are needed to kick off proper arrangements in this area.

### **The Application of Dispute Settlement Mechanism**

11. In the past it has been suggested that, given the nature of implementation of a Trade Facilitation Agreement and that thousands of transactions everyday could be subject to this Agreement, there is need for Members to have some creative thinking and to consider dispute settlement rules that would address the concerns of the developing Members without otherwise diminishing the fundamental rule of the WTO dispute settlement process. A possible solution could be the establishment of an agreement-specific process of consultation or mediation. Disputes would first be brought to a dedicated body, such as a Committee on Trade Facilitation, to be discussed and mediated there. The dispute settlement mechanism should only be the last resort when there is no hope of settling the dispute within the Committee. There has been no discussion in the Negotiating Group on this issue and this would need to be addressed at the appropriate stage.

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<sup>1</sup> Communication from the African Group, Operationalizing Technical Assistance and Capacity Building in Trade Facilitation, TN/TF/W/56 (22 July 2005).

<sup>2</sup> Communication from Argentina, Bolivia, Brazil, Chile, Colombia, Ecuador, El Salvador, Guatemala, Honduras, Mexico, Paraguay, Peru, and Uruguay, Links Between the Elements of Annex D, TN/TF/W/41 (2 June 2005).

<sup>3</sup> Communication from Pakistan and Switzerland on Development-Related Issues in Trade Facilitation, TN/TF/W/63 (19 September 2005).

#### **IV. CONCLUSION**

12. The issues are there and we will have to deal with them sooner or later. This proposal is submitted only to flag the issues and it is up to this Negotiating Group to decide when to take them up. However, as an old Chinese saying goes, "it is always desirable to get twice the result with half the effort". It is believed that proper settlement of the above-mentioned issues will no doubt facilitate our negotiating process and help Members to cope with the challenge of reaching a timely conclusion of text-based negotiations in a more smooth way. One thing that should be made clear is that the ideas mentioned in the possible options are gathered only to our knowledge, without prejudice to any new options that might be identified in the future and to the position of any Member on a specific option. Therefore, it is not the intention of this paper to give a final solution to each of the three issues. The ideas gathered are meant to give Members something to chew on in the process of work.

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