



10 December 2017

(17-6773)

Page: 1/8

**Ministerial Conference
Eleventh Session
Buenos Aires, 10-13 December 2017**

Original: English

DRAFT MINISTERIAL DECISION¹

SPECIAL & DIFFERENTIAL TREATMENT

Revision²

The following communication, dated 9 December 2017, is being circulated at the request of the delegation of Rwanda on behalf of the G90.

The Ministerial Conference,

Recognizing the central importance of the development dimension in every aspect of the Doha Work Programme;

Having regard to paragraph 1 of Article IX of the Marrakesh Agreement Establishing the World Trade Organization;

Noting the specific constraints facing developing countries, particularly least-developed countries;

Recalling paragraph 44 of the Doha Ministerial Declaration and Decision adopted by the General Council on 1 August 2004, that all Special and Differential Treatment provisions be reviewed with a view to strengthening them and making them more precise, effective and operational;

Emphasizing the need for the WTO to ensure that its rules enable, and do not inhibit, least-developed countries and developing countries from pursuing policies to achieve industrialization, structural transformation and diversification of their economies, in order to raise the standard of living of their population and integrate into the multilateral trading system on a sustainable basis;

Take note of the original review of one hundred and forty-eight Agreement-specific proposals;

Recognizing that substantial work still remains to be done;

Decides:

1. To reaffirm that the provisions for special and differential treatment (S&DT) remain an integral part of existing and future WTO Agreements.
2. To adopt the decisions detailed in the Annex below on ten Agreement Specific Proposals.
3. To instruct the Committee on Trade and Development in Special Session to expeditiously complete the review of all the outstanding Agreement-specific proposals and report to the General Council, with clear recommendations for a decision, at the next Ministerial Conference.

¹ This document was previously circulated as JOB/GC/160 and JOB/TNC/65 on 28 November 2017.

² This Revision indicates a correction to the title.

ANNEX 1

1 AGREEMENT ON TRADE-RELATED INVESTMENT MEASURES

1.1. Notwithstanding Articles 4 and 5 of the TRIMs Agreement and Articles III and XI of GATT, Members agree that developing countries shall be free to deviate temporarily from the provisions of Article 2 of the TRIMs Agreement, and introduce new investment measures related to trade in goods, in accordance with the following provisions:

- a. Measures notified by developing countries under this provision shall be effective for an initial period that does not extend beyond 15 years or up to the time these objectives have been met (whichever is shorter), provided the selected measures fulfil one of the objectives stipulated below:
 - i. Accelerate industrialization and achieve socio-economic transformation;
 - ii. Upgrade and modernize the domestic manufacturing capabilities of small and medium enterprises and their contribution to employment generation;
 - iii. Promote domestic manufacturing capabilities in high value-added sectors or technology intensive sectors;
 - iv. Stimulate and facilitate the transfer or indigenous development of technology;
 - v. Promote domestic competition and/or correct restrictive business practices;
 - vi. Promote purchases from disadvantaged regions in order to reduce regional disparities within their territories and support the development of geographically disadvantaged regions;
 - vii. Stimulate environment-friendly methods or products and contribute to sustainable development;
 - viii. Increase export capacity in cases where structural current account deficits would cause or threaten to cause a major reduction in imports;
 - ix. Close the digital divide in industrial production.
- b. If upon the conclusion of the initial period, the objectives of the measure are not fulfilled, a developing country Member that is referred to in paragraph 1, shall be enabled to renew the measure subject to a review and decision by the Council for Trade in Goods. The Council for Trade in Goods shall, upon duly motivated request by a developing country member, accord extensions of this period.

1.2. LDCs shall be allowed to introduce and maintain measures that deviate from their obligations under the TRIMs Agreement. Members agree that least-developed country Members shall not be obliged to implement, apply or enforce the provisions of the TRIMs Agreement as long as they remain LDCs.

1.3. Developing countries that are referred to in paragraph 1 shall notify new investment measures related to trade in goods to the Council for Trade in Goods no later than six months after their adoption.

2 GENERAL AGREEMENT ON TARIFFS AND TRADE 1994 (GATT 1994)

ARTICLE XVIII.A AND C

2.1. Having regard to safeguard actions for development purposes (Decision of 28 November 1979(L/4897)) Members agree that a developing country Member referred to in

paragraph 4(a) of Article XVIII of GATT 1994, in particular, a least developed country member or a developing country member facing constraints may deviate from the provisions of Section A and paragraphs 14, 15, 17 and 18 of Section C, to achieve development objectives deemed necessary by the Member concerned.

2.2. Accordingly, these countries may temporarily modify or withdraw concessions included in the appropriate schedules annexed to the GATT, or where the Member concerned finds that no measure consistent with the other provisions of the GATT is practicable to achieve these development objectives, they may have recourse to Section C of Article XVIII and deviate from other provisions of the GATT/WTO to the extent deemed necessary by the concerned Member.

2.3. Such development objectives as referred to in sub-paragraphs 2.1 and 2.2 include promoting the establishment of a particular industry, or establishment of a new branch in an existing industry, or achieving substantial transformation, bridging the digital and technological divide, modernization and upgrading and expansion of an existing industry, or reconstruction of an industry destroyed or substantially damaged as a result of hostilities or natural disasters including the impact of climate change with a view to achieving fuller and more efficient use of resources in accordance with the priorities of their economic development.

2.4. To invoke the measures referred to in sub-paragraphs 2.1 and 2.2, the Member concerned above shall:

- a. Notify the Committee on Trade and Development of the measures including the objectives of the measures immediately after introducing the measures;
- b. When a measure is taken under Section A and measure taken under section C affects a product is subject to a concession included in the appropriate schedule Members having a substantial interest or principal supplying interest may request to enter into consultations with them, within thirty days of the notification of the measures in order to reach a mutually satisfactory solution. If agreement is reached between such concerned Members, the Member introducing the measures shall be free to continue the measures in accordance with mutually agreed conditions;
- c. If the conditions require rebalancing concessions from the Member introducing the measures, rebalancing concessions by the Members introducing the measures shall be effective only after five years of introduction of measures;
- d. If no agreement is reached within 60 days from the date of notification, the affected Members (principal and substantial suppliers) shall be free, not later than 90 days after the measure is applied, to suspend, upon expiry of 60 days from the day on which written notice of such suspension is received by the Committee on Trade and Development, the application of substantially equivalent concessions or other obligations under GATT 1994, to the trade of the Member applying the development measure;
- e. The right of suspension referred to in paragraph 2.4 (d) above shall not be exercised for first five years.

3 ARTICLE XVIII OF GATT – SECTION B

3.1. Notwithstanding the current provisions in Article XVIII B and the Understanding, developing countries in balance of payments difficulties shall be enabled to take measures to address their BOP difficulties including quantitative restrictions and tariffs until such time these difficulties have been overcome.

3.2. Members agree that in drawing up its conclusions and recommendations to the General Council, including on determining the adequacy¹ of reserves for a developing country referred to in paragraph 4(a) of Article XVIII, in particular, a least developed country or a small and vulnerable economy, in accordance with Article XVIII:9 (a) and (b), the Committee on Balance of Payments Restrictions, while taking account of the findings, facts, and other determination provided by the IMF in accordance with Article XV GATT, shall ensure that its conclusions and recommendations are adequate in the context of a members economic development policies as expressed by the concerned members and do not undermine the objectives of paragraph 2 and 9 of the Article XVIII.

3.3. Actions stipulated in the last sentence of Article XVIII subparagraph 12(c)(ii) and last sentence of Article XVIII subparagraph 12(d) shall be suspended for a developing country Member referred to in paragraph 4(a) of Article XVIII, in particular, a least developed country or a small and vulnerable economy.

4 AGREEMENT ON THE APPLICATION OF SANITARY AND PHYTOSANITARY MEASURES

In order to make operational and effective Art. 9.2 and Art.10, the following provisions shall apply:

4.1. In pursuance with the condition set out in Paragraph 5(d) of Annex B of the Agreement on the Application of Sanitary and Phytosanitary measures, reasonable time for making comments on any SPS measure notified by the developed country members shall be understood to mean at least 180 days for least developed country Members and developing country Members facing capacity constraints before the adoption of the measure, which shall commence with the circulation of the notification by the WTO Secretariat. Upon request, a longer period of time shall be granted for least developed country Members.

4.2. A developed country Member proposing an SPS measure shall consult directly, at an early stage, with any least developed country Member or developing country Member facing capacity constraints exporting a product that would be covered by the proposed SPS measure in order to take into account the special needs of those countries for effectively implementing Article 10.1 of the Agreement on Sanitary and Phytosanitary measures.

4.3. Where the trade of a least-developed country Member or developing country Member facing capacity constraints is or will be adversely affected by a proposed or final sanitary or phytosanitary measure taken by a developed country Member, the following procedures shall apply:

- a. Where the appropriate level of sanitary and phytosanitary protection allows scope for the phased introduction of new sanitary and phytosanitary measures:
 - i. Longer time-frames for compliance with the measure shall be accorded to products of interest to least developed country Members and developing country members facing capacity constraints so as to maintain opportunities for their exports. The phrase "longer time-frame for compliance" referred to in Article 10.2 of the Agreement on the Application of Sanitary and Phytosanitary Measures shall be understood to mean a period of not less than 12 months.
 - ii. Where investments are required in order for an exporting least developed country Member or a developing country Member facing capacity constraints to fulfil the sanitary or phytosanitary measures proposed or applied by a developed country Member, the developed country Member shall, provide financial and technical assistance required for compliance with the sanitary or phytosanitary measure in order to enable them to maintain and expand its market access opportunities for the product involved as envisaged in Article 9.2.

¹ In assessing the adequacy of monetary reserves for a developing country referred to in paragraph 4(a) of Article XVIII, in particular, a least developed country or a small and vulnerable economy, the Committee shall take full account of a country's international investment position, current account deterioration due to commodity price shocks, and volatility of financial capital flows. Short-term financial flows shall not be included in determining the adequacy of the external financial position a developing country Member referred to in paragraph 4(a) of Article XVIII, in particular, a least developed country or a small and vulnerable economy.

- b. Where the sanitary or phytosanitary measure is adopted in urgent circumstances, a developed country Member shall provide a developing or least developed country Member that is or will be adversely affected by the proposed or final sanitary or phytosanitary measure compensatory adjustment such as to ensure maintaining the market share of the developing or least developed country Members in their export markets and supporting the technological and infrastructural capabilities of the concerned developing or least developed country Member.

4.4. Importing developed country Members shall not ban the importation and marketing of products originating from a least developed country Member and developing country member facing capacity constraints based on the rejection of shipments from one or a limited number of suppliers from that Member.

5 AGREEMENT ON TECHNICAL BARRIERS TO TRADE

5.1. Developed country Members shall provide developing and least developed country Members facing capacity constraints at least a 180 day comment period before the adoption of the measure. The period shall commence with the circulation of the notification by the WTO Secretariat. Upon request, a longer period of time shall be granted for LDCs.

5.2. A developed country Member proposing a technical regulation or standard shall consult directly, at an early stage, with any developing and least developed country Member facing capacity constraints exporting a product that would be covered by the proposed technical regulations or standards.

5.3. Where a developing country Member or least developed country Member is or will be adversely affected by a proposed or final technical regulation or standard taken by a developed country Member, the following procedures shall apply:

- a. Where the technical regulation or standard allows scope for phased introduction:
 - i. Longer time-frames for compliance with the measure shall be accorded to products of interest to developing and least developed country Members facing capacity constraints so as to maintain opportunities for their exports. The phrase reasonable interval referred to in paragraph 12 of Article 2 of the Agreement on Technical Barriers to Trade shall be understood to mean a period of not less than 18 months.
 - ii. Where investments are required in order for exporting developing and least developed country Member facing capacity constraints to fulfil a technical regulation or standard proposed or applied by a developed country Member, the developed country member shall provide financial and technical assistance required for compliance with the technical regulation or standard.
- b. Where the technical regulation or standard is adopted in urgent circumstances where urgent problems of safety, health or environment arise or threaten to arise for a Member, a developed country Member shall provide a developing or least developed country Member that is or will be adversely affected by the proposed or final technical regulation or standard compensatory adjustment so as to ensure maintaining the market share of the developing or least developed country Members in their export markets and supporting the technological and infrastructural capabilities of the concerned developing or least developed country.

6 AGREEMENT ON SUBSIDIES AND COUNTERVAILING MEASURES

6.1. Recognizing that subsidies play an important role in industrialization and economic development programmes of developing country Members, Members agree that subsidies granted by least developed countries and developing countries facing certain constraints described in 6.2, with a view to achieving development goals, including regional growth, technology research and development funding, production diversification and development and implementation of environmentally sound methods of production, provided these subsidies fall under Article 8 of the Agreement, shall be treated as non-actionable subsidies for a period of 10 years for LDCs, and

8 years for the developing country members facing certain constraints, from the date of adoption of this decision.

6.2. A Developing country member referred to above must demonstrate the following for the flexibility in this paragraph to apply:

- a. Failed to deepen and diversify their existing industrial capacity in a more open global economy and experienced a stagnation or decline in the share of manufacturing in their gross domestic product; or
- b. Sustained vulnerability to external trade and financial shocks; or
- c. Suffered from sustained decline in commodity prices for primary products; or
- d. As GDP share in manufacturing declined, while share in services did not substantially increase;²
- e. Failed to be able to close the digital divide vis à vis other economies and domestic industries remain backwards in keeping with essential technological advances.

6.3. Least developed country Member and Developing country members applying subsidies should notify these new non-actionable subsidies within two years from the date of adoption of this decision. The transitional period could be extended subject to review of the measures in the SCM Committee.

6.4. Developing Country members listed in the Annex 7 of the Agreement on subsidies and countervailing Measures shall be exempted from the obligations in paragraph 1 (b) of Article 3 of the Agreement on Subsidies and Countervailing Measures to allow them to use subsidies contingent on the use of domestic over imported goods, with a view to adding value to their natural resources and diversifying their production and export base only when the products concerned are destined for export. With respect to developing country members demonstrating certain constraints referred to in Paragraph 6.2, the prohibition of paragraph 1(b) of Article 3 in such case shall not apply for a period of 8 years, from the date of adoption of this decision for the same objective stated in the paragraph above.

7 AGREEMENT ON CUSTOMS VALUATION AND DECISION ON MINIMUM VALUES

7.1. Considering least developed country Members continue to lack the necessary capacity to implement the relevant provisions of the Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade 1994 ('Customs Valuation Agreement'), the least developed country Members shall be allowed to use minimum or reference values up to 10% of their tariff lines when they are in difficulty utilizing the rest of valuation techniques to addressing the issue of import under-invoicing.

7.2. Considering least developed country members continue to lack the necessary capacity to implement the relevant provisions of the agreement on implementation of Article VII Of The General Agreement on Tariffs And Trade 1994 ('Customs Valuation Agreement'), where a least-developed country member continues to lack the necessary capacity to establish the truth or accuracy of declared values, implementation of the transaction value for customs valuation purposes will not be required until implementation capacity has been acquired, through technical and/or financial assistance or increased customs cooperation.

7.3. Members agree to conclude, on request by the relevant LDC Member or developing country Member, Customs Mutual Assistance Agreements, or customs cooperation agreements that include inter alia provisions and mechanisms to exchange information about values, with in particular LDCs and developing countries that consider themselves to have lack of access to price data to enable a reliable determination of the truth or accuracy of declared values.

² See UNCTAD 2016 p. 57.

8 1979 DECISION ON DIFFERENTIAL AND MORE FAVOURABLE TREATMENT, RECIPROCITY AND FULLER PARTICIPATION OF DEVELOPING COUNTRIES ("ENABLING CLAUSE")

8.1. In formulating schemes under paragraphs 2(a) and (d) of the Enabling Clause as well as other non-reciprocal preference schemes, developed-country Members shall take into account the needs of developing and least-developed country Members by consulting with them, with a view to ensuring that their products of export interest are accorded meaningful market access. The Committee on Trade and Development will annually review the progress made in this regard and report to the General Council.

9 TRANSFER OF TECHNOLOGY

9.1. Developing and Least Developed countries continue to struggle with industrialisation because many are still far behind technologically. There are many pronouncements about supporting these countries to bridge the technological divide which must be made operational and effective. Sustainable Development Goal 17.6-8 encourages international cooperation on and access to technology and innovation, including the promotion, development, transfer, dissemination and diffusion of technologies to developing countries. A number of provisions in the WTO agreements mention the need for the transfer of technology to take place between developed and developing countries. As becomes apparent, technology transfer goes beyond the mere import or purchase of machines and other hardware at commercial rates and includes the building of local capacity so that people and institutions in Developing and Least Developing countries can design and make technologies which can be diffused into the domestic economy. Against this background, specific measures need to be taken within the WTO to encourage such flows of technology.

9.2. Article 66.2 of the Agreement on Trade-related Aspects of Intellectual Property Rights (TRIPS) provides that developed country Members shall provide incentives to enterprises and institutions in their territories for the purpose of promoting and encouraging technology transfer to Least Developed Members in order to enable them to create a sound and viable technological base. The incentives mandated by Article 66.2 shall allow effective access, on fair, reasonable, and non-discriminatory terms, to technologies owned or controlled by enterprises and institutions in the territories of developed country members, in a manner that enables Least Developed Countries to absorb, adapt and improve on the received technologies.

9.3. Developed country Members shall adopt measures to enable enterprises and institutions in the territories of developing country Members and Least Developed Countries to have access, upon demand and on fair, reasonable, and non-discriminatory terms, to technologies owned or under the control of developed country members and to technologies developed with public funding.

9.4. Targeted technical assistance shall be provided to the least developed countries to support their domestic efforts to enhance their technological base and improve their innovation capacities and capabilities throughout the technology cycle of research, development, demonstration, commercialisation and diffusion to enable these countries to advance up the technological ladder.

9.5. Developed country governments shall establish a Publicly Owned Technology Inventory. Developed country Members shall promptly make available information concerning technologies patented or funded for at least 50 per cent, either directly or indirectly, by the government or any public body within their territory.

9.6. Working Group on Trade and Transfer of Technology (ToT) should examine restrictive practices adopted by multinational enterprises in the area of ToT and how to prevent such practices; analyse the impact of tariff peaks and tariff escalations on ToT; examine difficulties of developing countries and LDCs in meeting relevant WTO standards when the relevant technologies are unavailable; examine all the WTO Agreements to identify the constraints that certain provisions in these Agreements may be creating against transfer of technology to developing countries; assess the implementation by developed countries of all WTO provisions related to the transfer of technology to developing countries with a view to identifying the needs for appropriate changes/strengthening of these provisions; the design of instruments and incentives, including tax incentives, that developed countries could grant to enterprises and institutions in their own territories in order to disseminate and transfer technology to developing countries.

9.7. Developed countries shall take into account the objectives and principles of the TRIPS Agreement, in particular, as contained in Articles 7 and 8 respectively as well as the objective of sustainable development contained in the preamble of the Agreement establishing the WTO (Marrakesh Agreement).

10 ACCESSION OF LDCS

10.1. The WTO Agreement recognizes the need for a positive effort to ensure developing countries, especially the least-developed countries, secure a share in the growth of international trade that commensurate with their level of economic development. Though the special provisions are applicable to LDCs accession, experience showed that the limited human, institutional, financial and administrative capacity of LDCs makes LDCs accession more challenging. To facilitate a speedy and smooth integration of LDCs into the multilateral trading system based on the principles of universalizing the multilateral trading system: no-one left out of the system, and help LDCs secure a share in the growth of international trade and benefit from the system in a balanced term consistent with their level of development and achieve the SDGs, LDCs need a special & differential treatment in their accession process.

10.2. To this end, based on the 2002 LDCs Accession Guideline and the 2012 General Council Decision, while the LDC's are expected to offer reasonable concessions that commensurate with their individual development, financial and trade levels, Members shall exercise a full restraint in seeking concessions and commitments from acceding LDCs. On this ground, Members shall:

- a. Restrain from seeking concessions and commitments beyond their level of development and regulatory capacity and fully implement the benchmarks set for an average tariff binding on goods and market access opening for services stipulated in the 2012 General Council Decision on LDCs Accession to further strengthen, streamline and operationalize the 2002 LDC Accession Guidelines; and,
 - b. Discipline the "fast-track" accession procedure recently practiced by LDC's accessions.
-