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**Ministerial Conference  
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## **DRAFT DECISION FOR THE TENTH MINISTERIAL CONFERENCE - G90 PROPOSAL**

### **SPECIAL AND DIFFERENTIAL TREATMENT ISSUES AND CONCERNS**

#### *Decision of --*

The following communication, dated 3 December 2015, is being circulated at the request of the delegation of Barbados on behalf of the G90.

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The Ministerial Conference,

*Having regard to* Articles IV.1 and IX of the Marrakesh Agreement Establishing the World Trade Organization (WTO);

*Mindful* of the importance that Members increased participation of developing countries, in particular least-developed countries and small, vulnerable economies<sup>1</sup>, in the multilateral trading system, and of the need to ensure that the system responds fully to the needs and interests of all participants;

*Recalling* paragraph 44 of the Ministerial Declaration of the Fourth Session and paragraph 12 of the Decision on Implementation-Related Issues and Concerns, 20 November 2001 **and noting that this decision is a step toward completing this mandate;**

*Determined* to take concrete action to address concerns raised by many developing-country Members, in particular our least-developed countries and small, vulnerable economies, on agreement specific special and differential treatment provisions reflected in proposals submitted by them in the Doha Development Agenda negotiations;

*Noting* the actions taken in Annex F to the Ministerial Declaration of the Fifth Session, 22 December 2005, which were not satisfactorily implemented;

*Further noting*, proposals submitted in documents JOB/TNC/51 and JOB/TNC/51/Rev.1;

*Decides* as follows, which does not alter existing rights of developing countries under the relevant provisions of agreements and decisions:

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<sup>1</sup> A small vulnerable economy is defined as one whose average share for the period 1999-2004 (a) of world merchandise trade does not exceed 0.16 per cent and (b) of world NAMA trade does not exceed 0.10 per cent and (c) of world agricultural trade does not exceed 0.40 per cent.

## 1. GENERAL AGREEMENT ON TARIFFS AND TRADE 1994 (GATT 1994)

### PROPOSAL 1

#### Article XVIII. A and C

1.1. 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 or a small, vulnerable economy 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. In so doing, these countries may temporarily modify or withdraw concessions included in the appropriate schedules annexed to the GATT.

1.2. In addition, 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.

1.3. Such development objectives as referred to in sub-paragraphs 1.1 and 1.2 include promoting the establishment of a particular industry, or establishment of a new branch in an existing industry, or achieving substantial transformation, 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. To invoke the measures referred to in sub-paragraphs 1.1 and 1.2, 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. Upon request of Members having a substantial interest or principal supplying interest, 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; and
- 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 1.3 (d) above shall not be exercised for first five years.

### PROPOSAL 2

#### Article XVIII.B

1.4. The Committee on Balance of Payments Restrictions in making conclusions and proposals for recommendations to the General Council, for a developing country referred to in paragraph 4(a) of Article XVIII, in particular a least developed country or a small, vulnerable economy, in accordance with Article XVIII:9 (a) and (b), shall take several factors into account. The Committee shall consider the findings, facts and other determinations provided by the IMF including on matters related to the adequacy of reserves, in accordance with Article XV GATT, consistent with the

objectives of paragraphs 2 and 9 of Article XVIII. The Committee shall also take into account the overall economic context of the Member concerned.

1.5. In this regard, the Committee invites the IMF, while preparing its report, to also take account of a Member's international investment position, current account deterioration due to commodity price shocks, and volatility of financial capital flows. The Committee shall be provided with data on short-term financial flows including foreign participation in equity markets. In determining the need for taking measures under Article XVIII:B, the Committee shall give full consideration to the impact of the volatility of short-term financial flows on the level of external reserves of Members.

#### PROPOSAL 4

##### Article XXVIII OF GATT AND ITS UNDERSTANDING

1.6. Notwithstanding Ad note 4 and 5 of paragraph 1 of Article XXVIII, Members agree that when a Member proposes to withdraw or modify a concession on a product, a developing country, whose export of that product constitutes 'a major part of its total exports'<sup>2</sup> **to the destination market of the Member invoking the provision**, shall be deemed to have a substantial interest and in the case of a least-developed countries a principal supplying interest.

## 2 DECISION ON MEASURES IN FAVOUR OF LEAST DEVELOPED COUNTRIES – MARKET OPPORTUNITIES

#### PROPOSAL 21

2.1. Recognizing that least developed country Members are affected by preference erosion leading to a reduction in margins of preference and loss of competitiveness, In order to assist them to address these challenges, developed country Members granting preferences to least developed country Members shall, and developing country Members granting preferences to least developed country Members should, endeavour to,

- a. upon request, provide adjustment support measures in the trade, financial and technological fields to mitigate adverse effects on their export earnings and enable them to cope with increased global competition; and
- b. accord substantially increased and targeted assistance, and, when necessary, continue, improving Aid for Trade to enable least developed country Members, to diversify their economies and exports, add value to their natural resources and develop competitiveness.

## 3 ARTICLE XXXVI.6 GATT; DECLARATION ON THE CONTRIBUTION OF THE WTO TO ACHIEVING GREATER COHERENCE IN GLOBAL ECONOMIC POLICYMAKING

#### PROPOSAL 20

3.1. Members agree that least developed country Members shall determine whether commitments and concessions they undertake are commensurate with their individual development, financial and trade needs, or their administrative and institutional capacities.

3.2. Members reaffirm that least developed country Members shall not be required to undertake tariff reductions on agriculture, non-agricultural (industrial) products as well as liberalization of services commitments under the Doha Development Agenda and in future multilateral negotiations.

3.3. In furtherance of the objectives of Article XXXVI (6) of GATT 1947, Members shall:

- i. Not seek, neither shall least developed country Members be required to make, concessions that are inconsistent with their individual development, financial and trade needs or their administrative and institutional capacities; and

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<sup>2</sup> In this case, GATT 1994, Article XXVIII, Ad note 5 shall be read as [...]

- ii. Coordinate their work **with international lending or development agencies with a view to ensuring** that least developed country Members are not subjected to conditionalities on loans, grants and official development assistance that are inconsistent with their rights under the WTO Agreements.

#### **4 1979 DECISION ON DIFFERENTIAL AND MORE FAVOURABLE TREATMENT, RECIPROcity AND FULLER PARTICIPATION OF DEVELOPING COUNTRIES (“ENABLING CLAUSE”)**

##### **PROPOSAL 22**

4.1. The Ministerial Conference confirms that the terms and conditions of the Enabling Clause shall apply when action is taken by Members under the provisions of the Enabling Clause including paragraph 2(c).

4.2. 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.

#### **5 AGREEMENT ON AGRICULTURE**

##### **PROPOSAL 5**

5.1. Members reaffirm that, in keeping with the recognition that differential and more favourable treatment for developing country Members is an integral part of the Agreement, special and differential treatment in respect of commitments shall be provided as set out in the relevant provisions of this Agreement and embodied in the Schedules of concessions and commitments.

5.2. Members agree that duty-free and quota-free market access for least developed country Members constitutes special and differential treatment in respect of commitments and shall be embodied in the schedules of concessions and commitments. In particular, developed country Members **shall** endeavour and developing country Members declaring themselves to be in a position to do so **should**,<sup>3</sup> inscribe their commitments on duty-free and quota-free market access for least developed country Members in their schedules of commitments in accordance with Article II of GATT 1994 in line with the following disciplines:

- i. Developed country Members **shall** and developing country Members declaring themselves to be in a position to do so **should endeavour to**, provide duty-free and quota-free market access on a lasting basis, for all agricultural products falling under Annex 1 of the Agreement on Agriculture, originating from all least developed country Members no later than **six months after the date of this decision**, in a manner that ensures stability, security and predictability;<sup>4</sup>
- ii. **Members having difficulty to accord DFQF to all agricultural products shall submit a list of ten products to the CTD for which DFQF is not provided. This list shall be reviewed at least once a year with a view to minimizing exclusions of agricultural products and so as to provide increasingly greater market access to LDCs, in line with the Bali Ministerial Decision; and**

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<sup>3</sup> This obligation shall not apply to developing countries that have already declared themselves in a position to provide DFQF to imports originating from LDCs and are currently implementing DFQF in line with Annex F of the Hong Kong Ministerial Declaration

<sup>4</sup> Developing-country Members shall be permitted to phase in their commitments and shall enjoy appropriate flexibility in coverage.

- iii. By 1 July 2016, developed country Members **shall** and developing country Members declaring themselves to be in a position to do so **should endeavour to**, notify the Committee on Trade and Development of the implementation of this Decision and submit Schedules of Concessions as modified in accordance with this Decision with a view to established certification procedures (1980 Decision on Certification Procedures).

## 6 AGREEMENT ON THE APPLICATION OF SANITARY AND PHYTOSANITARY MEASURES

### PROPOSAL 6 & 7

6.1. Developed country Members **shall to the extent practicable** provide developing country Members and least developed country Members at least a 90-day comment period before the adoption of the measure, which should 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.

6.2. Upon request, a developed country Member proposing an SPS measure shall endeavour to consult directly, at an early stage, with **any developing country with capacity constraints** or least developed country Member exporting a product that would be covered by the proposed SPS measure.

6.3. Where a developing country Member or least developed country Member is or will be adversely affected by a proposed or final sanitary or phytosanitary measure, 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 to the extent practicable be** accorded to products of interest to **developing countries in particular small, vulnerable Members with capacity constraints** and least developed country Members so as to maintain opportunities for their exports.
  - ii. 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, if the circumstances allow, of not less than 12 months.
  - iii. Where substantial investments are required in order for an exporting developing or least developed country Member to fulfil the sanitary or phytosanitary measures proposed or applied by a developed country Member, the developed country Member **shall endeavour to**, subject to the circumstances of individual cases, provide financial and technical assistance required for compliance with the sanitary or phytosanitary measure.

6.4. Importing developed country Members shall not ban the importation and marketing of products originating from a developing and least developed country Member based on the rejection of shipments from one or a limited number of suppliers from that Member **unless there is scientific evidence which shows that the other suppliers are also found to have similar circumstances which warrant the imposition of the ban.**

## 7 AGREEMENT ON TECHNICAL BARRIERS TO TRADE

### PROPOSAL 15

7.1. Developed country Members shall to the extent practicable provide developing country Members, in particular small, and vulnerable Members with capacity constraints and least developed country Members, at least a 90-day comment period before the adoption of the measure. The period should commence with the circulation of the notification by the WTO Secretariat. Upon request, a longer period of time shall be granted for LDCs.

7.2. Upon request, a developed country Member proposing a technical regulation or standard shall endeavour to consult directly, at an early stage, with any developing country Member in particular, and least developed country Member exporting a product that would be covered by the proposed technical regulations or standards.

7.3. 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, 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, of not less than 12 months, **shall to the extent practicable** be accorded to products of interest to developing country Members **with capacity constraints, in particular small, vulnerable economies** and least developed country Members so as to maintain opportunities for their exports; and
  - ii. Where substantial investments are required in order for an exporting developing or least developed country Member to fulfil technical regulation or standard proposed or applied by a developed country Member, the developed country member **shall endeavour to** provide financial and technical assistance required for compliance with the technical regulation or standard.

## 8 AGREEMENT ON TRADE-RELATED INVESTMENT MEASURES

### PROPOSAL 17

8.1. LDCs shall be allowed to maintain or introduce, on a temporary basis, existing measures that deviate from their obligations under the TRIMs Agreement. For this purpose, LDCs shall notify the Council for Trade in Goods (CTG) of such measures within five years, starting 30 days after the date of this decision. LDCs will be allowed to maintain these existing measures until the end of a new transition period, lasting seven years. This transition period may be extended by the CTG under the existing procedures set out in the TRIMs Agreement, taking into account the individual financial, trade, and development needs of the Member in question.

8.2. Members agree that least-developed country Members shall not be obliged to implement, apply or enforce the provisions of the TRIMs Agreement until 2030.

## 9 AGREEMENT ON SAFEGUARDS

### PROPOSAL 19

9.1. Having regard to Article 9:1 of the Agreement on Safeguards, when a Member applies the collective import share of developing country Members with less than 3 % import share, small suppliers which have less than 1% import share of the product concerned when the collective import from the developing country Members with less than 3% import share exceeds 9% of total import of the product concerned, shall be excluded from the safeguard measure.

9.2. Footnote 2 of the Agreement on Safeguards, add: Members shall comply with Art. 9.1 of the Agreement on Safeguards by providing a specific list of the Members excluded from the safeguard measure and should **include information on trade shares**.

9.3. **Notwithstanding the provisions of Article 7.5 and Article 9.2 of the Agreement on Safeguards, developing country Members, shall have a right to take safeguard measures again on products previously the subject of safeguard measures.**

9.4. **In assessing the obligations of developing countries under Article 8.1 of the Agreement on Safeguards, Members shall consider the trade, development, finance and administrative circumstances of developing country Members, including the extent to which certain industries in the developing country Member are able to withstand a potential suspension of concessions by an affected exporting Member or potential further concessions by the developing country Member.** Article 8.1 of the Agreement on Safeguards shall be understood to mean that a least developed country Member proposing to apply or extend a safeguard measure, shall not be required to maintain a substantially equivalent level of concessions and other obligations to that existing under GATT 1994 between it and the exporting Members which would be affected by such a measure nor to pay trade compensation.

## **10 AGREEMENT ON SUBSIDIES AND COUNTERVAILING MEASURES**

### **PROPOSAL 14**

10.1. Recognizing that subsidies play an important role in industrialization and economic development programmes of developing country Members, Members agree that subsidies granted by developing country Members, in particular least developed countries and **small, vulnerable economies**, 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 **small vulnerable**, countries, from the date of adoption of this decision.

10.2. Developing countries 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.

### **PROPOSAL 16**

10.3. Least developed countries and small, vulnerable economies shall be exempted, as **long as they remain such**, 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 or export base. With respect to **small and vulnerable** developing countries, the prohibition of paragraph 1(b) of Article 3 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.

## **11 AGREEMENT ON CUSTOMS VALUATION AND DECISION ON MINIMUM VALUES**

### **PROPOSAL 18**

11.1. Where a least developed country Member continues to lack the necessary capacity, implementation of the relevant provisions of the Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade 1994 ('Customs Valuation Agreement') shall not be required until implementation capacity has been acquired. Developed countries shall endeavour to, and developing country Members declaring themselves in a position to do so should, provide technical and financial assistance to enable least developed country Members to implement the Customs Valuation Agreement.

11.2. With a view to addressing the issue of import under-invoicing, least developed country Members shall be allowed to use minimum or reference values including in either one of the following circumstances:

- a. If there is significant reason to doubt the authenticity or accuracy of documentation related to imported goods and/or services submitted to customs; or

- b. If there is a lack of customs cooperation between the importing and exporting Members or
- c. In case of lack of access to or availability of international pricing data.

## **12 FOOD SECURITY FOR LEAST-DEVELOPED COUNTRIES AND NFIDCS**

### **PROPOSAL 23**

12.1. In view of ensuring food security in least-developed countries and net-food importing developing country Members, non-LDC Members shall not apply any export restriction on any foodstuff imported by LDCs and net-food importing developing country Members, if the exporting Member is a net exporter of the foodstuff concerned.

## **13 REMAINING PROPOSALS AND PARTS OF PROPOSALS**

13.1. We instruct the Committee on Trade and Development Special Session to continue to examine the remaining proposals found in JOB/TNC/51/Rev.1, in whole or parts, where agreement has not yet been reached in this decision, with a view to achieving agreement on all of the specific proposals by 31 July 2016. This is without prejudice to Members' right to introduce any new special and differential treatment proposal in the future for Members' consideration based on the mandate of paragraph 44 of the Doha Ministerial Declaration.

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