

## Brief on Trade Facilitation

Trade Facilitation covers a multitude of issues that are relevant to the smooth and efficient flow of trade and, in general, represents an opportunity to LDCs. In order to generate expected benefits in LDCs, trade facilitation measures should support trade reforms. The trade facilitation needs of LDCs mainly take the form of technical assistance, capacity building and infrastructural development.

In the Doha Ministerial Declaration of 2001 Members of the WTO agreed to review and, as appropriate, clarify and improve relevant aspects of Article V, VIII, and X of the GATT 1994 and identify the trade facilitation needs and priorities of members. Members committed themselves to providing their support for technical assistance and capacity building on trade facilitation. The scope of negotiations was originally intended to clarify and improve relevant aspects of the three GATT Articles.

On 1<sup>st</sup> August 2004, through the “July Framework”, the WTO General Council agreed to commence negotiations on trade facilitation on the basis of the modalities set out in Annex D of the July Framework. This annex clarifies issues contained in paragraph 27 of the Doha Ministerial Declaration and takes into account some of the major concerns of the developing countries, particularly the LDCs. It recognises the need for special and differential treatment beyond granting of transition periods, taking into account a country’s implementation capacities. Over and above this, LDCs are only required to undertake commitments consistent with their development needs and capabilities. The Annex goes into the issue of the need for technical assistance and capacity building for the LDCs and invites international organisations to undertake collaborative efforts in the provision of the technical assistance. The Annex has obliged donor countries to ensure that the implementation capacities of the LDCs should be upgraded to implement TF measures. The Annex also stresses that without implementation capacity developing countries may not be required to implement commitments resulting from the negotiations so support and assistance are to be extended before and during the implementation phase.

Annex E of the 2005 WTO Hong Kong Ministerial Declaration reaffirmed and reinforced Annex D of the July Framework and stressed that these commitments in the area of technical assistance and capacity building (TACB) should be made operational in a timely manner. Annex E of the Hong Kong Ministerial Declaration also recommended deepening and intensifying negotiations on the issue of special and differential treatment to allow for necessary flexibilities in implementing the results of negotiations.

Since the start of the negotiations on TF, Members have submitted proposals:

- concerning transparency and predictability of trade rules and regulations relating to GATT 1994 Article X;
- reducing the incidence and diversity of fees and charges to ensure they do not exceed the cost of the services;
- streamlining of documents and simplification of formalities in connection with exportation and importation relating to GATT 1994 Article VIII; and
- non-discrimination and MFN treatment with respect to goods in transit relating to GATT 1994 Article V.

As these proposals entailed a progressive enlargement of the scope of the negotiations and the commitments expected to be taken on board by LDCs, LDCs have been progressively devoting more attention to the mechanisms of special and differential treatment (S&DT) and technical assistance as regards TF. The concerns of LDCs can be summarised as follows.

- Modalities for self assessments;
- Listing of commitments;
- Modalities to be used when providing technical assistance; and
- Verification of capacity acquisition.

Cross-cutting issues in relation to TACB and S&DT have been set out in document TN/TF/W/147 dated 18 July 2007, which has been co-sponsored by the LDC Group. In this document a “positive list” approach for two kinds of commitments have been proposed for developing countries and LDCs, subject to the provision of TACB where needed, as follows:

- A minimal set of commitments which would be determined individually by developing Members to be implemented after entry into force; and
- A set of commitments that would be implemented after the conclusion of a transition period of X years determined on a self-assessment of capacity for LDCs after the entry into force of the TF agreement.

Other commitments that do not fall into either category above would be implemented by developing and LDC Members as and when appropriate in their development context.

Conversely a proposal contained in document TN/TF/W/137 has been put forward by a heterogeneous group of countries led by the EC. Under this proposal a "negative list" approach is proposed in that each developing country and LDC Member shall notify to all other Members, through the WTO Secretariat, which obligations it needs technical assistance and capacity building for, and additional time which shall not exceed [N] years, to implement and be made available on Members' site of the WTO Internet portal. Members shall **not** notify other Members of: measures they are ready to implement from the date of entry into force of the agreement; measures regarding provisions they have already implemented; and provisions in the trade facilitation agreement which are designed to apply from its entry into force. In other words, under this approach, LDCs will have to take on all commitments contained in the trade facilitation agreement, excluding those that have been notified in terms of technical assistance needs.

A second major difference from the proposal supported by LDC and the core group is the assessment of capacity acquisition. Under the proposal sponsored by the EC and other members, capacity acquisition is not self determined and the final determination is left to the Committee on trade facilitation:

*"Should this Member come to the conclusion that capacity has not entirely been acquired, this Member and the donor Members involved shall so report and make recommendations to the Committee, which will review the matter and decide on a case-by-case basis."*

The EC *et al* proposal suggests modalities regarding the provision of TACB in that it suggests LDCs should detail their own requests and then enter into presumably bilateral discussions with donors, including relevant international organisations, to secure support for its TACB requirements. On this basis, capacity building plans shall be prepared by the parties involved. On request, donors, including relevant international organisations, shall assist Members in this exercise on mutually agreed terms and conditions. The term "mutually agreed terms and conditions" is not clarified in the proposal.

The EC *et al* proposal stipulates that capacity building plans shall contain:

- a) the obligations for which the need for technical assistance and capacity building has been signalled in the Notification;
- b) intermediary steps as necessary;
- c) the implementation periods;
- d) the donors; and
- e) the implementation agency if appropriate.

These, as well as other relevant data, shall be notified to the Committee on Trade Facilitation and made available on the Members' site of the WTO Internet portal.

From this wording it follows that implementation of TACB under this proposal is mainly left to bilateral initiatives between LDCs and bilateral donors and agencies and relies mainly on the ability and capacity of the concerned LDC to identify and articulate its own needs.

Conversely, the proposal from the LDCs and the Core Group provides for the conduct of a TACB-supported capacity self-assessment prior to the signing of the trade facilitation agreement and a greater role for the WTO through the establishment of a WTO TF TACB support unit. The WTO should assist Members in coordinating and facilitating TACB resources to be provided by developed Members. It is, however, not clear how WTO Secretariat, given its current mandate, could effectively play such a role.

There are strong indications that the modalities to carry out needs assessments prior to the entry into force of the new Agreement on Trade Facilitation need to be clarified and strengthened. Needs assessments should be tailored to allow LDCs to reach a comfort level on the degree of commitments they are going to progressively assume which should be linked to the quality and effectiveness of the associated TACB.

Needs assessments, as they are conducted at present, are not adequate and should be followed by cost assessments (with the assistance of donors and various institutions) so that cost implication of all measures requiring capacity building are known, allowing a detailed project proposal, which should be fully owned by the LDC concerned, to be developed.

Scheduling of commitments should be carried out using a "positive list" approach, indicating what the country could be able to implement from day one, and a set of commitments that will require assistance in implementation but bearing in mind that LDCs are not subject to WTO dispute settlement proceedings with respect to TF commitments that they are not fully implementing as a result of a lack of implementation capacity.

In summary, from the LDC perspective, the modalities for Technical Assistance and Capacity Building and S&DT remain a fundamental part of the TF negotiating mandate and therefore should be reflected in its outcome. In the context of the LDCs' need for TACB, both during the negotiations and the implementation period, various solutions should be explored and should not be limited to the bilateral approach suggested by the EC and its partners. The lack of capacity of LDCs in developing project proposals, accessing available funds and monitoring TACB projects is well documented under IF and other Official Development Assistance (ODA) programmes. Past experiences on implementation of the customs valuation agreement and insufficient delivery of TACB would seem to justify the concerns of LDCs on taking a purely bilateral approach. Alternative approaches would need to be defined but best practices using, for example, the Integrated Framework and the Standards and Trade Development facility (STDF) could offer examples and lessons learned in designing a suitable approach which is user friendly, accessible and conditionality-free for the LDCs and adequate to meet all TF TACB requirements of the LDCs both during and after the negotiations.

Finally, the link between Trade Facilitation and Aid for Trade needs to be made. In conjunction with trade facilitation measures, the development of infrastructure, including roads, railways, ports, bridges and border posts, is needed if LDCs and other low-income countries are to use trade as a mechanism to reduce the cost of production and supply and so be able to use trade as a mechanism to ensure sustainable economic growth and poverty alleviation.