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**STRENGTHENING THE WTO**

Communication from India

The following communication, dated 2 July 2009, is being circulated at the request of the Delegation of India.

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The Seventh Session of the WTO Ministerial Conference will be held from 30 November to 2 December 2009. The Conference is taking place four years after the last Ministerial Conference in 2005, where the emphasis will be on transparency and open discussion. The Conference provides an opportunity to look at some systemic issues in the WTO with a view to strengthening the multilateral trading system. At the General Council meeting on 26 May 2009 India had stated its intention to submit a few proposals that it considers important from the perspective of improving the functioning and efficiency of the WTO as a rules-based system. In that context, India is submitting a set of five proposals which are intended to enhance the usefulness of the WTO and to make the system more relevant, vibrant and user friendly for both the member states and the larger trading community.

The proposals made in this submission are not cast in stone. These are made to initiate discussion at the General Council. The delegation of India wishes to build on these proposals taking into account the views and suggestions from Members.

A. TRADE INFORMATION SYSTEM BASED ON MEMBER NOTIFICATIONS

1. **Proposal:** Ministers direct the setting up of a project to enhance the Integrated Database to include in an appropriate format non-tariff data, based on the current notification obligations under WTO Agreements. The project should be designed to be efficient and effective by *inter alia* limiting additional resource requirements; optimising the design and structure of present notification systems; enhancing co-operation with related multilateral agencies; and providing technical assistance to developing countries, in particular the LDCs.

2. **Background:** In the realm of trade information, there is a significant gap in the information available on non-tariff measures (NTMs). Closing this gap is of particular importance to governments as well as for trade operators. The WTO took a step in the right direction when it implemented the Integrated Data Base (IDB) covering tariff (applied and bound) and trade data (partner-wise) which are electronically available at the national tariff line level. This has proved to be of immense assistance in formulating not just negotiating positions but also for various research activities. It is time that NTMs are integrated with the IDB in a common format and for similar use.

3. Regarding NTMs, the WTO is uniquely placed as the biggest repository of certified trade information about its members' regimes through its system of notifications under various WTO agreements. However, at present this information has at best archival value because of the way information is submitted and stored. It is incomplete, not comparable amongst members or even timely. This pool of information has to be worked upon for it to become an asset. What is needed is better integration and coherence in database form and more effective public visibility of the existing information. In our view such an exercise need not be resource intensive. Improvements in the notification formats; content; and integration with existing database will assist in the project without any immediate additional resource requirement. Long-term resource implications can be contained by coordinating the activities with related multilateral agencies like the UNCTAD and ITC.

4. For the trade operatives, the proposal is to create a comprehensive information system that provides at the national tariff line level the tariff and non-tariff measures imposed by any member. This kind of a system will grant member regimes a level of transparency that is not presently available from any source would be an invaluable improvement to the present situation.

5. It is recognized that there are many issues and problems inherent in this proposal, it is therefore considered prudent that that project be developed in phases to enable it to address the arising demands based on experience gained and utility.

#### B. REVITALISE WTO COMMITTEES

1. **Proposal:** Direction from Ministers to include in the agenda of formal WTO Committee meetings *inter alia* – monitoring of recent developments in members on the trade disciplines covered by the committee, based on a compilation by Secretariat of developments between formal meetings and verified by the member concerned; regular discussions on general developments in the areas covered by the committee, including in the presence of outside experts; and through adoption of appropriate procedures, discussion on and resolution of low threshold specific trade concerns in small group settings.

2. **Background:** Given the widely perceived declining utility of the committee work, it is imperative that measures to revitalise them be adopted. Following are some suggestions on how the committees can be reinvigorated.

#### **Monitoring Developments**

3. The recent exercise in the TPRB of the WTO of monitoring developments in the trade regimes of various members has proved to be a useful tool for all members, particularly the developing countries that have an inherent disadvantage in gathering such information. This practice could be formalized and be made a regular agenda item for all formal meetings of all trade related WTO Committees.

4. Along with member notified measures, the Secretariat may make factual presentation on developments in various members on the disciplines covered by a committee. The Secretariat may base its factual report on information gathered from publicly available and reliable sources and after the gathered information being verified by the member concerned.

#### **Discussions on Trade Disciplines**

5. Another way to improve the relevance of the WTO Committees may be to include on the agenda, on a mandated basis, a discussion on the current practices and developments in the trade disciplines covered by a particular Committee. It may be considered to invite outside experts to present their views on such developments. Such a topical discussion will keep members abreast of the

latest developments. Improve the knowledge and performance of delegates and while it is not suggested or foreseen that the exercise will be recommendatory in nature, such discussions could help identify possible improvements to the WTO agreements/disciplines.

### **Forum to Address Specific Trade Concerns**

6. One other measure would be to enable the Committees to discuss and offer possible solutions to the specific trade concerns of members. As a forum to discuss and resolve the specific trade concerns, it is important that members have access to at least a limited committee process right through the year and not just the periodical formal committee meetings. Working procedures that balance the need for confidentiality, to meaningfully discuss and resolve a specific trade concern, with that of transparency, i.e. information to the membership as a whole about the issue and its resolution, has to be devised and adopted. To be quick, efficient and economic, working procedures should allow formation of appropriate sub-groups of interested members to form and deal with the matter at hand.

7. Needless to say, such a procedure will bring into the WTO low threshold concerns of developing countries with the promise of at least gaining a better understanding of the matter and at best a resolution of the problem.<sup>1</sup>

### **Frequency of Meetings**

8. Finally, keeping the above in view members may like to review the frequency of the WTO meetings. The frequency of the meetings refers to both, the formal meetings as well as informal meetings. These could be increased to allow discharge of its work efficiently.

### **C. WTO'S ENGAGEMENT WITH RTAS**

1. **Proposal:** Directions from Ministers to monitor the developing trends in RTAs and develop non-binding best practice guidelines for reference while negotiating new RTAs. To ensure robust and regular monitoring the two transparency mechanism should be implemented on a permanent basis; the Secretariat to produce an Annual Review of RTAs based on the factual reports; and members to discuss trends and formulate non-binding best practices in the CRTA.

2. **Background:** The fact that RTAs are proliferating and most of global trade is conducted on preferential terms is well documented. The work in WTO on RTAs which earlier focused entirely on evaluating the RTAs for their compatibility with GATT/ WTO provisions was for long log-jammed. Members could neither definitively establish standards for the examination or evaluation, and even where they had clear yardsticks such as for "reasonable length of time", they could not agree whether indeed the RTAs under examination met the standards or not.

3. Given this situation the membership responded with the implementation of the RTA Transparency Mechanism, which was earlier agreed to by members as an early and provisional outcome of the Doha Round. Certainly, one can say today that the RTA Transparency Mechanism is a success. It has contributed immensely to our understanding of the contents of RTAs. The success of the existing mechanism is reflected by the desire of the membership to design a similar mechanism for the unilateral preferential schemes as well. Even this mechanism, which is not Doha mandated, is close to finalisation. Thereby, all agreements offering preferences of any kind to participants will be covered by the transparency regime in WTO.

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<sup>1</sup> In this regard reference may be made to the proposal on "Procedures for the Facilitation of Solutions to Non-Tariff Barriers" (TN/MA/W/106) co-sponsored by a majority of WTO members in the DDA negotiations which seeks a similar procedure albeit for a limited purpose, i.e. resolution of identified non-tariff barriers, and in a limited area, i.e., trade in goods in the remit of the Council for Trade in Goods.

4. Given the accepted benefits of the RTA Transparency Mechanism and the expectation that the transparency mechanism on preferential schemes will be as useful, Ministers could now agree to implement both on a permanent basis, albeit with in-built provisions for periodic review.

5. At this stage, the issue for discussion is whether the two transparency mechanisms are enough. Is this all that the WTO can do? Or are there other aspects of RTAs that can be fruitfully examined in the WTO? Can more be done to reduce the adverse impact of RTAs on multilateral trade? Can the information provided by the Transparency Mechanism on RTAs currently in force, help members to identify what future RTAs should look like?

6. The basic problem with examination of RTAs in WTO has been the lack of a clear understanding amongst the members about the yardsticks on trade coverage; implementation periods; means to evaluate trade diversion; etc. In the present environment of multiplicity of such agreements involving all varieties of obligations, it is and will remain a challenging task coming to any common understanding on them and consequently a strict evaluation of any RTA is likely to remain a difficult task.

7. Therefore, while the work on the substantive issues may continue in the NGR, it will be useful to, in parallel, put in place measures that will allow us to move further on implementing the Transparency Mechanisms and best utilise the knowledge gathered on RTAs through them. In this context it is suggested that the Secretariat be requested to prepare an annual RTA Review. This publication, based on the factual presentations prepared by the Secretariat of individual RTAs, will *inter alia* review horizontally, across RTAs, the trends in content and structure of the RTAs that have come into effect during the year concerned.

8. Based on the trends detected in the annual reviews members in the CRTA may examine from an educative perspective ways to reduce the adverse impact of RTAs on multilateral trade. Aspects like, trade coverage/substantially all trade; reasonable length of time; non-trade issues; preferential rules of origin; etc. can be examined. To the extent that there is consensus, the outcome could be a series of non-binding "best practices/guidelines" on various elements/ aspects of RTAs for reference by members in negotiating future RTAs. In this way there will not just be greater insight about RTAs, but WTO may be able to influence the evolution of the RTAs based on the trends over the past years.

#### D. OMNIBUS LEGAL INSTRUMENT FOR PREFERENTIAL MARKET ACCESS TO LDCS

1. **Proposal:** Direction from Ministers for establishing a "Steering Group" or a subsidiary body under the General Council to comprehensively examine all WTO-related instruments allowing members to grant preferential access to LDCs. Following such examination, members to consider; propose and adopt a single instrument that would address all forms of preferential market access for LDCs.

2. **Background:** Within the GATT/WTO, members have provided special and differential treatment for Least-Developed Country members (LDCs) on a preferential basis under a variety of legal instruments and agreements. These preferential schemes have evolved over time both from the perspective of coverage, depth of concessions and the members granting the concessions.

3. The basic instruments providing legal coverage for preferential market access for LDCs include the Enabling Clause<sup>2</sup>, adopted in 1979, which allows developed country members to grant deeper preferences to LDCs within the GSP schemes they established for developing countries. In

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<sup>2</sup> "Differential and more favourable treatment reciprocity and fuller participation of developing countries", Decision of 28 November 1979 (L/4903).

1999, the General Council adopted the LDC Decision<sup>3</sup> which established a 10-year waiver for developing countries to grant preferential market access to LDCs. This 1999 waiver was recently extended until 30 June 2019.<sup>4</sup>

4. A momentum for granting greater preferential market access to LDCs was generated when the DFQF Decision was adopted at the Hong Kong Ministerial Conference in December 2005. This decision has effectively extended both the product coverage and the depth of concessions. This Decision applies to both developed countries and "developing-country members declaring themselves in a position to do so".

5. In addition to the existing instruments covering preferential market access in goods, a legal instrument which would grant preferential access to LDC service providers under GATS is being considered in the Special Session of the Council for Trade in Services.<sup>5</sup>

6. The multiple and sometimes overlapping instruments have different types of legal coverage and a variety of procedural requirements. This, combined with differential levels of market access commitments made in favour of LDCs, has created an environment of uncertainty both for the LDC preference receivers and the members granting or establishing such preferential market access schemes. For example, just on the procedural front, the developed country GSP schemes under the Enabling Clause are notified in the CTD while developing countries will have to notify their schemes through the Council for Trade in Goods under the cover of the Decision contained in WT/L/759. The implementation of the DFQF Decision is being notified to the CTD. The situation regarding the future services instrument is not yet clear.

7. For the purposes of certainty, predictability and transparency on all aspects of preferential market access for LDCs, an Omnibus Legal Instrument is necessary.

#### E. REAFFIRM PRIMACY OF INTERNATIONAL STANDARDS AND STANDARD SETTING FOR WTO OBLIGATIONS

1. **Proposal:** Statement from Ministers in the Conference outcome document, reaffirming the provisions relating to the need to adopt international standards in respect of sanitary, phytosanitary and technical barriers to trade, stressing the need for members to primarily base domestic regulations on such international standards for all trade in goods. Encourage increased participation in international standard setting activities.

2. **Background:** Lack of common product standards and framing of technical regulations on national rather than international standards is increasingly a major hindrance to a smooth flow of trade. Arguably alignment of standards amongst the membership and reduction of costs related to adherence, i.e. conformity assessment procedures, will bring about the most significant benefit to world trade.

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<sup>3</sup> "Preferential Tariff Treatment for Least-developed Countries", Decision on Waiver, adopted on 15 June 1999 (WT/L/304).

<sup>4</sup> "Preferential Tariff Treatment for Least-Developed Countries", Decision on Extension of Waiver, adopted on 27 May 2009 (WT/L/759).

<sup>5</sup> Paragraph 9 in the Report of the Chairman of the Special Session of the Council for Trade in Services, contained in TN/S/34, states that ... "to fulfil the requirements set out in paragraph 9(a) of Annex C of the Hong Kong Ministerial Declaration regarding the development of appropriate mechanisms for according special priority including to sectors and modes of supply of interest to LDCs", "members are of the view that a waiver, available to all members, from the obligations of Article II, paragraph 1 of the GATS in respect of preferential treatment benefiting all LDC members offers the most satisfactory outcome of this negotiation."

3. This matter is being discussed in many different fora in the WTO like the SPS and TBT Committees, as also partly in negotiating bodies under the DDA. A reaffirmation by Ministers will be an important signal to the membership that the increasing divergence from international standards and conformity assessment/testing practices is a matter of concern and it is time to roll back the complications brought about by the divergent national regulatory regimes.

In submitting this paper, it is recognized that the ideas included above do not represent a comprehensive list of possible improvements to the WTO's functioning. Other members have suggested other measures or similar measures, but to be implemented in different ways. In the period leading up to the Ministerial Conference in November/December 2009 it is expected that members would come to a consensus on the list of measures as also the format in which the direction from the Ministers would be sought.

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