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Negotiating Group on Market Access

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MARKET ACCESS FOR NON-AGRICULTURAL PRODUCTS

Non Tariff Barriers – Proposal on Procedures for the Facilitation of Solutions to NTBs

Communication from the African Group, Canada, European Communities, LDC Group, NAMA -11 Group of Developing Countries¹, New Zealand, Norway, Pakistan and Switzerland

The following communication, dated 20 July 2007, is being circulated at the request of the delegations from the African Group, Canada, European Communities, LDC Group, NAMA-11 Group of Developing Countries, New Zealand, Norway, Pakistan and Switzerland.

The co-sponsors hereby submit the draft legal text of a Ministerial Decision on Procedures for the Facilitation of Solutions to Non-Tariff Barriers, as part of the non tariff barriers negotiation in the Negotiating Group on Market Access, in accordance with the paragraph 16 of the Doha Ministerial Declaration. This text shall replace the texts submitted by the European Communities (“Ministerial Decision on Procedures for Facilitating the Resolution of Non-Tariff Measures between WTO Members”)² and the NAMA 11 (“Draft Text on Procedures for Resolution of Non-tariff Barriers”)³ in the Secretariat’s compilation of proposals on NTBs contained in document JOB(07)/57.

¹ Argentina, Bolivarian Republic of Venezuela, Brazil, Egypt, India, Indonesia, Namibia, Philippines, South Africa and Tunisia

² JOB(07)/44

³ JOB(07)/39

**MINISTERIAL DECISION ON PROCEDURES FOR THE FACILITATION
OF SOLUTIONS TO NON-TARIFF BARRIERS**

Ministers,

Recalling that in paragraph 16 of the Doha Ministerial Declaration, Annex B of the Framework Agreement and paragraph 22 of the Hong Kong Ministerial Declaration, Members agreed to negotiations on, *inter alia*, reduction or as appropriate elimination of non-tariff barriers, in particular on products of export interest to developing countries,

Conscious of the fact that non-tariff barriers affect market access opportunities for all WTO Members and may negate benefits sought to be achieved from the reduction of tariffs,

Recognizing that there is a need for facilitating the expeditious consideration of non-tariff barriers through comprehensive and flexible procedures of a conciliatory nature involving a facilitator who actively assists Members in finding mutually acceptable trade solutions that aid exporters and importers,

Recognizing that these procedures neither alter the balance of rights and obligations of Members under the WTO Agreement nor prevent Members, in line with paragraph 6 of the Doha Ministerial Declaration, from taking measures necessary to achieve their legitimate regulatory objectives,

Recognizing that these procedures build upon and further the objectives of existing procedures in regular WTO bodies,

Emphasizing that the procedures under this Decision are not intended to replace or otherwise affect the Understanding on Rules and Procedures Governing the Settlement of Disputes, and Members' rights and obligations thereunder,

Decide, on the basis of Article IV:1 of the WTO Agreement, as follows:

GENERAL PROVISIONS

1. Pursuant to this Decision, any Member may seek to solve through recourse to the procedures set out below any non-tariff barrier (NTB) [*scope to be determined*], which it believes adversely affects its trade.
2. The procedures are not intended to serve as a basis for the enforcement of specific obligations under the WTO Agreement or for a subsequent dispute settlement procedure, or to impose new obligations on Members, and shall be without prejudice to the Understanding on Rules and Procedures concerning the Settlement of Disputes and Members' rights and obligations thereunder.
3. The procedures shall be applied in the context of relevant WTO Committees¹.
4. Any time limit referred to in this Decision may be extended by mutual agreement between the Members involved in these procedures.

¹ The relevant WTO Committee is the one overseeing the operation of the WTO agreement most closely related to the measure at issue. If there is no such Committee for a particular measure, the request shall be notified to the Council for Trade in Goods.

5. Following an agreement between Members involved to initiate these procedures, any Member involved may decide to discontinue the procedures.²

6. At all stages of the procedures, particular consideration shall be given to the special situation of least-developed country Members involved in the procedures. In this regard, Members shall exercise due restraint in raising matters under these procedures involving a least-developed country Member and solutions explored shall take into consideration the specific situation of the least developed country Member involved, if any.

PROCEDURES FOR SOLVING NTBS

Request and Response on a Specific NTB

7. Any Member may, individually or jointly with other Members, submit in writing to the Member concerned, a request to initiate these procedures. The request shall identify and describe the specific measure concerned and provide a detailed description of its trade effects.

8. The Member to which the request has been submitted shall provide, within [20] days, a written response containing its comments on the information contained in the request.

9. Upon their submission, the request and response shall be notified to the relevant WTO Committee³ and shall be circulated to all Members. Following the receipt of these notifications, upon the request of either the requesting or the responding Members (hereinafter referred to as “the parties”), the Chairman or one of the Vice Chairmen of the relevant WTO Committee shall convene a meeting of the parties to *inter alia* address any outstanding issues and explore possible next steps.

Initiation of the Procedures

10. Following this initial exchange, the parties shall decide on whether to initiate the procedures. If one of the parties requests to initiate the procedures, the other party shall accord sympathetic consideration to the request.

11. Any agreement to resort to the procedures under this Decision shall be notified by the parties to the relevant WTO Committee.

12. Any other Member with a substantial interest in the NTB concerned may convey its request for participation in the procedures, as a third party, to the parties. There shall be no participation by such other Members in these procedures unless the parties mutually agree.

Appointment of a Facilitator

13. Upon agreement between the parties to launch the procedures, they shall appoint the Chairman of the relevant WTO Committee, or one of the vice Chairmen, as facilitator, unless one of the parties requests that another person serve as facilitator. If the parties cannot agree on the appointment of a facilitator within [15] days of the launch of the procedures, the [Chairman of the Council on Trade in Goods] shall appoint the facilitator within [25] days of the launch of the

² For the purposes of paragraph 5, Members involved shall only refer to the requesting and responding Members.

³ If the Committee to which these communications were notified considers itself not to be the relevant Committee, it shall forward the notifications to the Committee most closely related to the measure at issue or, if it is unclear which Committee is most related, to the Council for Trade in Goods.

procedures and after consulting the parties. Citizens of Members whose governments are parties to the procedures shall not serve as the facilitator, unless the parties agree otherwise.

Seeking Mutually Agreed Solutions

14. The facilitator, in consultation with the parties, shall have full flexibility in organizing and conducting their deliberations under these procedures, which may take place at the WTO headquarters, or any other place by mutual agreement of the parties and taking into account possible capacity constraints of developing country parties. The facilitator and the parties may rely on existing working procedures of any WTO Committee concerned, to the extent they are relevant for prompt resolution of the NTB in question. Video conferencing and other telecommunication facilities may be utilized, if considered suitable and agreed to between the Parties.

15. Either party may present to the facilitator and the other party any information that it deems relevant.

16. The role of the facilitator under the procedures shall be to actively assist, in an impartial and transparent manner, the parties in bringing clarity to the NTB concerned and its possible trade effects. The facilitator may:

- (a) offer advice and propose solutions for the parties' consideration taking into account the information presented by the Parties; *provided* any such opinion shall not pertain to the WTO consistency of the NTB, nor to the rights and obligations of the parties involved;
- (b) meet individually or jointly with the parties in order to facilitate a mutually agreed solution; and
- (c) seek assistance of the WTO Secretariat and, after consulting with the parties, consult with relevant experts and stakeholders.

17. All deliberations and information acquired pursuant to paragraph 15 and 16 of this procedures shall be confidential and without prejudice to the rights of any Member in any further proceedings.

18. The procedures shall be completed within [60] days from the appointment of the facilitator. Pending final resolution of the NTB, the parties may consider possible interim solutions, especially if the NTB relates to perishable goods.

Outcome and Implementation

19. The procedures end with a written factual report by the facilitator, in consultation with the parties, to the relevant WTO Committee, providing a brief summary of (1) the NTB subject to these procedures; (2) the procedures followed; and (3) any mutually agreed solution reached as the final outcome of these procedures, including possible interim solutions.

20. Any mutually agreed solution shall be implemented in conformity with Members' rights and obligations under the WTO Agreement.

FINAL PROVISIONS

Transparency

21. For the purposes of transparency, the Chairmen of the concerned WTO Committees shall provide, on an annual basis, a status report of notified requests and responses and of ongoing and recently completed procedures, together with any reports by facilitators. Where no solution has been found to a specific NTB, the parties are expected to state the reasons for this outcome following the Chairman's presentation of the status report. Upon request, adequate opportunity shall be provided for an exchange of views among Members.

Technical assistance

22. Developing country Members and in particular least developed country Members may request assistance from the WTO Secretariat to promote their understanding of the use and functioning of these procedures. Technical assistance required by least developed country Members would be made available through the Technical Assistance Programmes of the WTO. Developed country Members are encouraged to provide technical assistance, inter alia, to share with developing country Members their experience for effective participation in these procedures.

Review

23. In light of experience gained from the operation of these procedures, the [Council for Trade in Goods] will undertake a review of the procedures under this Decision no later than 3 years after the adoption of this Decision. Based on this review, the General Council will assess the need to modify this Decision, including the possibility of extending these procedures to other matters falling under the WTO Agreement.
