



**G-90 DOCUMENT FOR THE SPECIAL SESSION OF THE COMMITTEE ON TRADE
AND DEVELOPMENT (CTD-SS) ON 10 AGREEMENT-SPECIFIC SPECIAL
AND DIFFERENTIAL TREATMENT PROPOSALS**

*Submission by South Africa on behalf of the Organisation of African, Caribbean
and Pacific States (OACPS), the African Group and the LDC Group*

The following communication, dated 27 February 2023, is being circulated at the request of the Delegation of South Africa on behalf of the Organisation of African, Caribbean and Pacific States (OACPS), the African Group and the LDC Group.

A Introduction

1. The Marrakesh Agreement Establishing the World Trade Organization (WTO) recognized the "need for positive efforts designed to ensure that developing countries, and especially the least developed amongst them, secure a share of growth in international trade commensurate with the needs of their economic development." Special and differential treatment (SDT) was embedded in WTO agreements precisely as an acknowledgement of the different levels of economic development and capacities among its membership and the role that trade should play in bridging the development divide which finds expression in a number of forms, including infrastructure, prosperity, technology, industrialisation, digital connectivity, etc.

2. The constructive exchanges and interaction at the Informal General Council Meeting on WTO Reform focused on Development on 2-3 February 2023 revealed consensus among WTO Members on the centrality of development as a fundamental objective of the multilateral trading system. The G-90 is encouraged that all members reasserted their commitment to the founding principles and objectives of the WTO, in particular, that trade is not an end in itself, but a means towards "...raising the standards of living, ensuring full employment and to enhance the means of doing so in a manner consistent with their respective needs and concerns at different levels of economic development." Consistent with the reaffirmation by the 12th Ministerial Conference (MC12) that SDT provisions of the WTO and its agreements are an integral part of the WTO and its agreements, the unanimity among members that SDT remains a crucial pillar both in existing and future agreements as a means towards achieving these objectives was significant.

3. Paragraph 2 of the MC12 Outcome Document (WT/MIN(22)/24 – WT/L/1135) contains an unambiguous mandate and instruction for "...officials to continue to work on improving the application of special and differential treatment in the CTD SS and other relevant venues in the WTO, as agreed and report on progress to the General Council before MC13." The G-90 is confident that this political commitment and guidance provides a clear pathway and necessary impetus towards the review of all special and differential treatment provisions with a view to strengthening them and making them more precise, effective, and operational in line with paragraph 44 of the Doha Ministerial Declaration.

4. The global economy faces more challenges today than it did since the last formal submission by the G-90 on agreement specific proposals on special and differential treatment (JOB/DEV/65 – JOB/TNC/97). As developing countries, including LDCs are still grappling with the lingering devastating impact of the COVID-19 pandemic on their economies and remain constrained in

realising equitable and meaningful integration into the global economy and reaping gains from the 'post-pandemic' recovery, these countries are now contending with new sets of external shocks such as rocketing inflation, the food and energy crises, and balance of payment challenges, among a host of threats. These shocks to the global economy and disruptions to global supply chains have also exposed the risk of overconcentration of production among a few economies, with those overly reliant on imports bearing the highest and disproportionate impact. Of significance is the disproportionate impact of these global economic shocks for developing countries, including LDCs relative to more resilient developed economies with the resources and capacities to cushion and withstand negative economic shocks.

5. The G-90 remains committed to the pursuit of meaningful mainstreaming of development in the WTO and its agreements. A significant part of this exercise and effort will be ensuring that the various vague SDT provisions in existing WTO agreements are rendered implementable and infusing more clarity on SDT provisions that have the potential to address the real and practical difficulties that developing countries, including least developed countries (LDCs) find themselves in and that continue to inhibit their access to and ability to deploy developmental policies to advance their economies. It is worth recalling that the 10 Agreement-Specific Proposals (ASPs) outlined herein for consideration by members have been a result of serious consideration over several years and have undergone arduous rationalization from what were over 150 ASPs. These have been selected by the G-90 as signifying the most effective provisions, but by no means the only tools, that can propel their trade potential and meaningful integration into global trade.

6. While some 75% of WTO Members are currently developing countries, the promises of welfare gains from trade liberalization have not materialized for a majority of them or at the least been much more modest than anticipated when the WTO was established. Just as recognised in paragraph 44 of the Doha Ministerial mandate and reaffirmed by Ministers at MC12, the G-90 believes that whilst the multilateral trading system has been equipped with SDT to level the playing field and to provide developing countries, including LDCs with the necessary assistance to catch up with their developed country partners, these provisions have in reality and practice not been effective in addressing development gaps among members at different levels of development nor operational largely owing to their opaqueness.

7. The G-90 believes that providing the necessary clarity and certainty to the policy space and flexibilities accorded in theory in the 10 ASPs will positively contribute to the industrialization, economic diversification and structural transformation of its members and ensure their integration into the multilateral trading system. These flexibilities are after all not foreign concepts nor inventions, including to developed economies whose advances were on the back of similar policies geared towards building resilient value chains and in support of their own industrialization objectives.

8. As was numerously pointed out at the Informal General Council Meeting on WTO Reform Focused on Development, improving the development prospects of developing countries, including LDCs and narrowing the development divide is in the interests of all members, including developed countries. Indeed, evidence also points today to a growing use of policy tools that are deployed especially by developed countries, including the adoption of measures to promote industrial development, build supply-chain resilience, among other objectives, and to address specific vulnerabilities.

9. In the context of the current global economic climate characterised by multiple crises and new emerging challenges such as climate-related disasters that threaten to reverse even the meagre gains that some developing economies had started to register pre Covid-19, ensuring that SDT provisions are reviewed with a view to strengthening them and making them more precise, effective, and operational remains not only relevant, but all the more urgent. Therefore, strengthening the ten carefully picked S&D provisions and their effective operationalisation should be at the heart of the response of the multilateral trading system to achieve the developmental aspirations of developing and least developed countries. Delivering on the G-90 proposals will ensure a meaningful and structured response by the WTO to operationalise existing policy space developing countries, including LDCs need to respond to the multiple global economic crises and promote their economic resilience.

10. Delivering on the mandate of the CTD-SS, in particular issues that are central to development is critical to the restoration of confidence and trust in the MTS, especially among the majority of developing countries, including LDCs. Not doing so would be denying developing countries, including LDCs the tools through which they can arrest a reversal of gains towards achieving the United

Nations Sustainable Development Goals (SDGs) and ensuring that no one is left behind. These include the Goals and Targets directly falling within the ambit of the WTO aimed at addressing the challenges faced by developing countries, including LDCs on matters of international trade¹.

11. The G-90 has sought to elaborate and provide clarity on numerous occasions and in different formats where the 10 ASPs have not been appreciated by some members, and avails itself to constructively engage with a view to reaching mutually agreeable outcomes that meet the standards of effectiveness, precision, and operability of existing SDT provisions as contained in the 10 ASPs and mandated by Ministers in paragraph 44 of the Doha Ministerial Declaration and at MC12². This submission aims to contribute towards that effort.

B CTD-SS Process & Roadmap Pre-MC13

12. In September 2022, the G-90 and Sri Lanka circulated an Unofficial Room Document RD/TN/CTD/1 and RD/TN/CTD/1/Add.1 as an input towards discussions at the first CTD-SS meeting following MC12. Therein we reaffirmed our commitment to having structured engagements within the CTD-SS in pursuance of the mandate and 'instruction' from Ministers to ensure we have concrete outcomes on SDT prior MC13.

13. To this end, the G-90 proposes a series of CTD-SS formal meetings dedicated to focussed, technical discussions all the 10 ASPs over 4-5 meetings. These could be complimented by informal open-ended meetings, as necessary to facilitate substantive negotiations based on proposals by members on the ASPs within each of the 10 ASPs.

14. The Chair may, where it is deemed requisite and feasible, organise a workshop and invite relevant experts, including from institutions such as UNCTAD and members of the WTO Secretariat responsible for the agreements under which the ASPs fall to apprise the Committee on the implementation of relevant SDT provisions in those agreements, including factual data and information that could assist the CTD-SS to appreciate the technical matters at hand.

15. Without inferring any hierarchy of importance or priority, the G-90 proposes the next CTD-SS meeting should be dedicated to substantive discussions on ASP 4 on the Agreement on the Application of Sanitary and Phytosanitary Measures and ASP 5 on the Agreement on Technical Barriers to Trade.

16. All members are encouraged to provide substantive proposals that will facilitate technical engagements in solutions-based mode.

C The rationale behind the G-90 Agreement Specific Proposals (ASPs)

17. The 10 ASPs identified and presented herein by the G-90 focus on key policy tools that can advance the development aspirations of developing countries as well as enhance their participation in global trade. Whilst the core elements and motivations are enunciated in earlier submissions by the G-90 as referenced above (see footnote 2) and which remain the core bases of the G-90 ASPs, it is instructive to highlight that at the heart of the ASPs are time-bound or time-based elements of SDT and proposals that primarily seek to provide clarification and precision to existing SDT provisions in order to make them more accessible, effective and operational.

18. The G-90 reiterates the following key points and principles that inform its approach to fulfilling the mandate to make SDT provisions more precise, effective and operational:

- SDT for developing and least developed countries is an integral part of the multilateral trading system architecture and a treaty embedded right.

¹ For instance SDG Target 10.a "Implement the principle of special and differential treatment for developing countries, in particular least developed countries, in accordance with World Trade Organization agreements"

² In documents JOB/DEV/60 – JOB/TNC/79, JOB/DEV/61, and in JOB/DEV/65 – JOB/TNC/97

- The mandate under paragraph 44 of the Doha Declaration and reaffirmed at MC12 is to review SDT provisions under the covered Agreements with a view to strengthening them and making them more precise, effective and operational.
- The G-90 is not seeking blanket exemptions from commitments, but rather, to operationalize the collective commitments of the WTO Membership in several WTO agreements to facilitate the effective integration of developing countries and LDCs into the multilateral trading system.
- SDT is not confined to transitional periods and capacity building and technical assistance, but should be intrinsically embedded in the trade rules to allow policy flexibility to developing countries and LDCs to achieve their development objectives, and under conditions of certainty.

19. G-90 proposals do not aim to seek blanket, permanent, unconditional carve outs. On the contrary, they aim to seek the effective implementation of existing S&D provisions, including through the provision of assured technical assistance and capacity building, policy space, commercially meaningful export opportunities, and implementation timelines. They seek to provide stability, predictability and transparency in the implementation of existing S&D provisions, and thus strengthen the key hallmarks of the multilateral trading system. These proposals are the result of careful and detailed deliberations among G-90 members, taking into account the needs of members at different levels of development.

20. In relation to the SPS and TBT, of all the NTMs that are notified to the WTO, Technical barriers to trade account for 57.6% and SPS account for 37.6%. The G-90 is not putting into question the right of Members to implement legitimate measures but is calling for an opportunity to be provided where possible and where the regulations of the Member implementing the measures allow to make provision for phased implementation, longer timeframes and capacity building for developing countries that are facing capacity constraints.

21. The G-90 reiterates its commitment to engage in good faith in the negotiations and is open and willing to benefit from the insights and reasoned inputs from other members, as we move towards a results-oriented and solutions-based discussion.

22. The polycrisis is revelatory in highlighting the structural weaknesses of developing countries and underscores the need to move with speed to strengthen SDT provisions in the WTO covered agreements. The discussions on the 10 ASPs should be framed on the basis of strengthening SDT provisions with a view to address these structural weaknesses and to ensure effective and meaningful integration of developing countries in global trade.

1 AGREEMENT ON TRADE-RELATED INVESTMENT MEASURES

1.1. The G-90 proposes a temporary, time-bound deviation from the provisions of Article 2 of the TRIMs Agreement for developing countries, to enable the introduction of new investment measures related to trade in goods, to achieve structural and socio-economic transformation, as well as accelerate industrialization, move up the value chain; stimulate development and transfer of technology; address the digital divide; and modernize the domestic manufacturing capabilities of small and medium enterprises and their contribution to employment generation.

1.2. A special provision for LDCs in this regard would exempt them from neither implementing, applying, nor enforcing the provisions of the TRIMs Agreement as long as they remain LDCs. The flexibility is targeted to only those measures needed for a clearly specified set of objectives, e.g. those related to environmental-friendly methods or products, developing industries in green technologies, bridging the digital divide, fostering competition, development of geographically disadvantaged regions, high value-added/technology-intensive sectors, etc. Importantly, the measures will be temporary, with transparency provisions through notifications to the Council for Trade in Goods.

1.3. The aim of this proposal is to:

- i. Accelerate industrialization and achieve socio-economic transformation;

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- 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.

2 GENERAL AGREEMENT ON TARIFFS AND TRADE 1994 (GATT 1994) ARTICLE XVIII: SECTION A AND C

2.1. Implementation challenges related to Article XVIII Sections A and C are particularly related to burdensome consultation procedures. The existing provisions make it almost impossible to avoid retaliation by other Members, and also broaden the scope of such retaliation.

2.2. The G-90 proposes a more concise, simplified and accessible procedure that recognizes the human and financial resource constraints of Members that seek to invoke Article XVIII: A or C.

2.3. For purposes of clarity, the G-90 further proposes an addition of the phrase "developing country member facing constraints" to provide certainty that this proposal is targeted at developing countries, who are in actual need. This is borne out of our understanding that such flexibilities are for Members designated by paragraph (4) of Article XVIII. Thus, it enables an LDC or a developing country facing constraints to deviate from the provisions of Section A and paragraphs 14, 15, 17 and 18 of Section C, to achieve its development objectives.

2.4. 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.

2.5. The second challenge that the G-90 proposal seeks to remedy is the uncertainty regarding where a Member seeking to invoke these sections would need to notify. Accordingly, the G-90 proposes that such notifications be submitted to the Committee on Trade and Development. It also seeks to bring clarity in the consultations process and implementation of the outcome through consultations which are in line with the Agreement on Safeguards.

3 GATT: ARTICLE XVIII – SECTION B

3.1. Article XVIII-B deals with Balance of Payments (BoP) difficulties faced by developing countries. BoP illustrates the intersection of trade and finance and reveals the relationship of a given economy to the international marketplace. Balance-of-payments crises among developing countries stem from the basic obstacles that they face in trying to diversify their economies and industrialise towards higher value manufacturing or services activities. Addressing BoP challenges is critical for the implementation of development strategies and even more so for economies in distress that more often than not requires urgent interventions.

3.2. Owing to the difficulties in timeously processing and reaching consensus on requests made under the BoP provisions of Article XVII due to overly stringent and overelaborate procedures, the G-90 proposal is, therefore designed to ensure that the unique challenges facing developing countries, including commodity price volatility and volatile financial capital flows are taken into account. In particular, it seeks to clarify that short-term financial flows should not be included in determining the adequacy of a developing country's external financial position and proposes better guidelines for determining the adequacy of Member's reserves within the context of their economic development progress and programmes. The proposal also calls for the suspension of the right to retaliate against countries who use this provision.

3.3. The WTO must serve its meaningful purpose and provide developing countries and LDCs with better tools to overcome their trade and economic difficulties. SDT should not be regarded as a compromise but as a necessity to help address the challenges posed by global crises, such as the COVID-19 pandemic and current multi-crisis afflicting the global economy such as spiraling inflation, high food price bills, interest rate hikes that trigger unpredictable short-term financial flows with developing countries, including LDCs who generally rely on narrow basket of goods for foreign earnings disproportionately affected. The proposal respects WTO provisions and does not aim to change them. It does not change the fundamentals of Article XVIII B or the bi-annual review and consultations by the Committee on BoP Restrictions. The proposal simply seeks to facilitate that vulnerable developing and least developing members utilise the right that all members have agreed upon without fear of undue retaliation.

4 AGREEMENT ON THE APPLICATION OF SANITARY AND PHYTOSANITARY MEASURES

4.1. The G-90 proposal on the application of Sanitary and Phytosanitary (SPS) measures, recognises the legitimate goal of safeguarding populations' health and well-being. The G-90 acknowledges measures prohibiting imports for SPS reasons or imposing certification requirements can contribute directly and positively to public health and well-being.

4.2. The G-90, nevertheless reiterates that without the necessary support, SPS measures can become significant barriers to developing countries and LDCs' access to key international markets. The increasing use of SPS measures on environmental grounds of late threatens the majority of exports from developing countries, including LDCs. Such environmental and related health requirements are becoming increasingly numerous, complex and wide-ranging with the standards becoming so stringent or technically advanced that developing countries may not have access to the equipment nor technologies and expertise needed to implement them and demonstrate compliance.

4.3. The G-90 proposal aims to equip capacity-constrained developing countries and LDCs to participate effectively and provide meaningful comments in the development stages of measures or standards that would enable them to meet such standards and safeguard their market access. It consists of three key elements to realise this objective:

- a. Longer time periods for developing countries and LDCs facing capacity constraints to provide comments on proposed SPS measures or standards by a developed country;
- b. Longer time frames for compliance, accompanied by capacity building and technical assistance by developed country to developing countries and LDCs to ensure no or minimal disruptions to their exports;
- c. Compensatory adjustment support by developed countries to adversely affected developing and least-developed countries in case of urgent implementation of SPS measures to maintain their market share in developed countries export markets and support of their quality infrastructural capabilities to meet such measures.

4.4. The G-90, therefore proposes mandatory provisions for the above elements to avoid uncertainty and ensure transparency and stability - key objectives of the multilateral trading system. Mandatory provisions will also ensure that all Members are aware of their respective rights and obligations without any doubt. These will not confer either blanket exemptions or universal rights for all, but will be applicable to only those developing countries and LDCs that face capacity constraints and/or are to be adversely affected by the technical regulation or standard at hand.

4.5. The proposal therefore aims to operationalise and make effective existing S&D provisions in the Agreement. The proposal is not intended to limit the ability of Members to implement legitimate SPS measures for health and safety, but aims to ensure that their implementation will not further marginalise developing countries and LDCs in international trade owing to their very limited capacities. The objective is to embed the necessary flexibility (e.g. timelines) and assured capacity-building and technical support to enable them to meet such standards developed in accordance with the SPS Agreement.

5 AGREEMENT ON THE TECHNICAL BARRIERS TO TRADE

5.1. The G-90 fully appreciates the right of Members to regulate their markets in accordance with the WTO TBT Agreement in pursuance of the legitimate objectives enshrined therein. It is however important to also recognize that many developing countries face capacity and supply-side constraints. The inadequate availability of (credible) conformity assessment infrastructure, such as testing and certification services, poses significant challenges for many developing country traders, including their ability to comply. Access to technical assistance, skills, equipment, credit and other supply-side inputs are critical in ensuring that countries/ firms benefit from standards.

5.2. Without the necessary support, standards and technical regulation can act as significant barriers to the ability of developing countries, including LDCs to access key international markets. On the supply-side, standards may affect foreign producers fixed and variable costs through a myriad of channels, e.g. by necessitating investment in new technologies or inputs or generating economies of scale.

5.3. According to UNCTAD, environmental and related health requirements are becoming increasingly numerous, complex and wide-ranging. They include energy efficiency standards and restrictions on the use of hazardous substances in electrical products, low residue levels for pesticides and other chemicals in food imports, animal welfare concerns and occupational safety issues. Some standards are so stringent or technically advanced that developing countries may not have access to the equipment, technology and expertise required to implement them and demonstrate compliance. For example, the removal of heavy metals such as lead, from electronic equipment requires costly research and development work to create substitute materials and new product designs. Meeting such standards is often made more difficult by the lack of internationally recognised testing procedures.

5.4. Developing countries are constrained to defend their interests by influencing environmental requirements at the design stage both at national level and in international fora. There is a need for consultation processes to be transparent and inclusive, and those creating new requirements should facilitate the participation of developing country producers. We need to acknowledge the shared responsibility of both developed and developing countries to ensure that environmental considerations are not overshadowed by trade protectionist impulses when technical requirements are developed or implemented.

5.5. The G-90 proposal in this regard contains three key elements:

- a. Longer time periods for developing countries and LDCs facing capacity constraints to provide comments on proposed technical regulations or standards by a developed country;
- b. Longer time frames for compliance and support by developed countries to developing countries, including LDCs to be adversely affected by the technical regulation or standard and facing capacity constraints to ensure no or minimal disruptions to their exports;
- c. Compensatory adjustment support by developed country to adversely affected developing and least-developed countries in case of urgent implementation of technical regulation or standard to maintain their market share in their export markets and support for their technological and infrastructural capabilities.

5.6. The G-90, therefore proposes mandatory provisions for the above to avoid uncertainty and ensure transparency and stability. Mandatory provisions will also ensure that all Members are aware of their respective rights and obligations without any doubt. The mandatory provisions will not confer either blanket exemptions or universal rights for all. These will be applicable to only those developing

countries and LDCs that face capacity constraints and / or are to be adversely affected by a particular technical regulation or standard.

5.7. The G-90 proposal does not question the need for such technical regulations or standards. In fact, it also recognizes that at times the technical regulation or standard might need to be implemented on an urgent basis. Its aim is rather to equip capacity-constrained developing countries and LDCs to provide useful comments on the technical regulation or standard in order to meet its requirements. It also aims to safeguard adversely affected developing countries and LDCs against losing their hard-earned share in export markets.

5.8. The G-90 proposal aims to strike the right balance between the pursuit of public policy objectives and the pursuit of gains from trade and to ensure that measures implemented do not further marginalize developing countries in international trade. However, it emphasizes the need for flexibility (e.g. timelines) and assured capacity building and technical support to enable its Members to meet such standards in view of their "special circumstances", i.e. very limited capacities.

6 AGREEMENT ON SUBSIDIES AND COUNTERVAILING MEASURES

6.1. The essence of the G-90 proposal on the Agreement on Subsidies and Countervailing Measures is an attempt to seek the necessary, well-defined and time-bound flexibilities for qualifying developing countries, and LDCs to provide targeted subsidies. This flexibility will be premised on the following:

- a. The support to be provided will be for achieving development goals, including regional growth, technology research and development funding, production diversification and development, and implementation of environmentally sound methods of production, and development of green technology industries;
- b. A developing country will have to demonstrate that it meets the criteria mentioned in the proposal to benefit from the provision; and
- c. The flexibility is being sought for a certain and defined period, i.e. 10 years for LDCs and 8 years for qualifying developing countries.

6.2. The proposal seeks to develop a well-designed tool to assist developing and least-developed countries achieve their development aspirations in line with the Doha mandate.

6.3. Subsidisation has been a part of the industrialisation strategies of developed countries. Developed economies continue to provide substantial amounts of subsidies for their selected sectors to this day. Developing and least-developed countries should have access to similar instruments that developed economies utilised for their development. Improving production and productivity for fast-growing populations, creating decent jobs for bulging youth populations, technological development and industrial transformation including to bridge the digital divide, and promoting environmentally sustainable pathways to economic growth are the objectives that the G-90 seeks to promote.

6.4. The proposal on ASCM aims to operationalize the S&D provision under covered Agreements taking into account that enterprises in developing countries and LDCs are mostly micro, small and medium enterprises (MSMEs) which generally face the problems of limited liquidity, limited access to credit/finance, uncertain market conditions (the same problems that COVID-19 has created for the enterprises in the developed countries); and provide jobs to large and growing populations.

7 AGREEMENT ON CUSTOMS VALUATION AND DECISION ON MINIMUM VALUES

7.1. This LDC-specific proposal aims to redress significant problems being faced by LDCs while implementing the Agreement on Customs Valuation. The WTO Customs Valuation Agreement (CVA) stipulates the rules for valuations of goods for customs purposes. While there are a number of methods to determine the customs value of imported goods, the Agreement largely suggests that such valuation should mainly be based on the transaction value of the goods.

7.2. There are currently no LDC-specific provisions in the CVA. A G-90 proposal would establish, for LDCs, that minimum values for customs valuation purposes be used for 10% of tariff lines in cases where the accuracy of declared values cannot be established (WTO/EIF, 2020) .

7.3. This proposal takes into account that many customs administrations in LDCs are small and suffer from a lack of resources, which means that no part of their organization is specifically set up to deal with valuation issues. There is often a lack of knowledge within customs administrations of the contents of the CVA, as well as difficulties to fully implement it. The result is a disparity in the levels of knowledge and technical capacities among and between customs authorities.

7.4. Also important are the challenges particularly related to the scourge of under-invoicing, the need for easier access to international pricing data to identify and effectively correct improperly billed transactions, and the need of customs cooperation. Due to these problems, LDCs are losing substantial amounts of revenues each year. A study conducted in January 2019 by Global Financial Integrity and titled "Illicit Financial Flows to and from Developing Countries: 2006-2015" noted that "between 2006 and 2015, the countries of sub-Saharan Africa lost each day, the equivalent of USD 23 million in tax revenue, due to false invoices made by economic actors in international trade transactions."

7.5. The G-90 proposal seeks to address this problem and will contribute to the curbing of illegal practices, increasing the revenues of LDCs, and promote cooperation among customs authorities with those of LDCs. By granting flexibility to LDCs in the implementation of the Customs Valuation Agreement, this G90 proposal will also contribute to better application of the Trade Facilitation Agreement.

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

8.1. The original GATT 1947 already contained some exceptions to the MFN clause to allow trade preferences between certain countries (GATT Art I:2-4).

8.2. In 1969 the second UNCTAD Conference formulated the concept of GSP which allowed developed countries to grant non-reciprocal market access (low tariff or duty-free) to products from developing countries, whilst developing countries could grant each other more preferential tariffs. Non-discrimination between developing countries was at the core of the scheme, so that preferences had to be offered on an equal basis to all developing countries. The objectives of the generalized, non-reciprocal, non-discriminatory system of preferences in favour of the developing countries, including special measures in favour of the least advanced among the developing countries, were meant to: (a) increase their export earnings; (b) promote their industrialization; and (c) to accelerate their rates of economic growth.

8.3. The Tokyo Round and later embodied in the Enabling Clause of 1979 sought to address capability differentials between developed and developing states through a general undertaking of trade liberalization obligations. In many respects the Enabling Clause consolidated the concept of "differential and more favourable treatment" for developing countries, the principle of non-reciprocity in trade negotiations in derogation to the MFN clause, and trade preferences. The Enabling Clause also supported South-South preferential trading schemes. Fundamentally too, it specifically recognized the status of LDCs and their special needs.

8.4. The 1979 Decision on Differential and More Favourable Treatment, Reciprocity and Fuller Participation of Developing Countries (known as the "Enabling Clause") that was part of the Tokyo Round Agreements established a permanent legal framework for special and more favourable treatment for developing countries and territories. The Enabling Clause paragraph 2(a) (developed country preferential agreements) pertains to the promotion of North-South trade and the Enabling Clause paragraph 2(c) (developing country preferences) can be used in support of South-South trade.

8.5. The G-90 proposal, rather creating an obligation of result, instead merely intends that developed countries give due consideration to meaningful market access. We refer, as further articulation of paragraph 2a in the Enabling Clause, to the Decision of the CONTRACTING PARTIES

of 25 June 1971, which envisages the establishment of "generalized, non-reciprocal and non-discriminatory preferences beneficial to the developing countries" (BISD 18S/24) .

8.6. It is not impractical for developed members in designing their GSP schemes to proactively consider how meaningful market access can be best secured for developing and least developed country members. We seek that developed countries, in formulating their GSP schemes, should consider how the export interests of relevant developing and least developed country members can be ensured or enhanced, and make the market access accorded to them under the various GSP schemes meaningful.

8.7. This means ensuring that such market access is not undermined by non-tariff barriers or onerous market entry requirements. Such considerations would extend to the product coverage of such schemes to ensure they include products that developing countries, including LDCs actually trade in, the qualification criteria that render market access under these schemes inaccessible or uncertain, support of supply side capacity constraints of beneficiary countries, policy design that promotes diversification of exports, and preference margins sufficient enough to grant real competitive advantage to their exports.

9 ARTICLE 66.2 OF TRIPS AGREEMENT (TRANSFER OF TECHNOLOGY)

9.1. Technology and innovation play an increasingly important role in the global economy, and can potentially contribute to meeting urgent human needs for improved health, food security, water and energy, climate change sustainability, among others. The role of technology in development has attracted increased attention, particularly with regards its role in bridging the technological gap between countries with different levels of industrial capacity.

9.2. Article 7 on the Objectives of the TRIPS Agreement states that the protection and enforcement of intellectual property rights should contribute to the promotion of technological innovation and to the transfer and dissemination of technology, to the mutual advantage of producers and users of technological knowledge and in a manner conducive to social and economic welfare, and to a balance of rights and obligations. Therefore, technology transfer is an integral part of the TRIPS Agreement.

9.3. The question of how the TRIPS provisions can be implemented in a manner conducive to technology transfer is quite evident and came sharply to the fore most recently in the context of COVID-19 with regards access to digital health technology solutions. This matter is also quite relevant in the context of ensuring an inclusive digital economy, and the role that green technologies should play in supporting global and individual countries' climate change mitigation and adaptation goals.

9.4. In the spirit of ensuring that no one is left behind, technology transfer is fundamental to an inclusive MTS. LDCs have attracted special consideration in the debates on technology transfer, in recognition that TRIPS implementation would put an additional burden on them. Special consideration was given to LDCs in the TRIPS Preamble and Article 66.2. The obligation under Article 66.2 is for developed countries to provide incentives to induce technology transfer to LDC Members, in order to enable them "to create a sound and viable technological base".

9.5. The core concern of LDCs has been that some of the policies and programmes reported by developed countries either barely target or do not at all target LDCs. LDCs request that these programmes be made more effective in meeting their intended purpose. Even where there is regular reporting by developed country Members on their contributions under Article 66.2 of the TRIPS Agreement, there remains a lack of clarity in notifications on the nature of incentives and whether such incentives sufficiently result in technology transfer to LDCs, including whether such incentives truly contribute to the creation of a sound and viable technological base in LDCs. Many notifications continue to show that recipients of incentives are not LDCs, and where LDCs are identified in the notifications as recipients, the incentives do not result in any transfer of technology. Thus, notwithstanding the decisions taken in 2001 and 2003, and the subsequent mechanisms and processes introduced in the TRIPS Council, the implementation of Article 66.2 of the TRIPS Agreement continues to fall short of the letter and spirit of TRIPS Agreement mandate.

9.6. The LDC group previously tabled three specific submissions to the Council for TRIPS (through document [IP/C/W/561](#) dated 6 October 2011, document [IP/C/W/640](#) dated 16 February 2018, and

document [RD/IP/24](#) dated 14 June 2018) to further assist Members provide clarity in reporting under this Article and to acknowledge the expected contributions by developed country Members to promote and encourage transfer of technology to the least-developed country Members. The LDC Group have developed an illustrative list containing the types of programmes, that in their view, could qualify as incentives or actual transfer of technology. They have encouraged Members to use this guide as a basis.

9.7. A further challenge is the lack of a standard definition of what comprises technology transfer, nor does the TRIPS Agreement provide one. This lack of common understanding and definition implies that technical capacity programmes are at times included as part of technology transfer. While the G-90 appreciates the dialogue taking place through various platforms between developed countries and LDCs, it is important to ensure an effective mechanism for real and meaningful technology transfer in the WTO.

9.8. The proposal by G-90 affords a real opportunity to developed countries to discharge their commitment under Article 66.2; to meaningfully contribute to the achievement of SDGs and bridging the digital divide; and to send a positive signal about the role of the multilateral trading system for the growth and development of developing countries and least-developed countries.

9.9. 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 and least-developed countries. A key element of the WTO role in this respect is full and effective operationalisation of Article 66.2 of the TRIPS Agreement. It is worth emphasising that Article 66.2 is a firm commitment made a quarter of a century ago by developed countries and not a promise of best-endeavour efforts. Technology is at the heart of structural transformation for sustainable development. It is the backbone of the knowledge and digital economy of the 21st century.

10 ACCESSION

10.1. The accession process, including the availability of S&D, other benefits and the level of concessions extracted from acceding members, has increasingly become a critical issue of concern. The demands made to LDCs for specific commitments during accession negotiations with far-reaching implications for such Members erode the necessary policy space required for countries at their level of development and prejudice their ability once acceded to meaningfully gain and integrate into the multilateral trading system in line with their development objectives. Typical commitments include binding tariffs at significantly lower levels than the overall WTO membership or even comparable economies, and often times at applied tariff levels, removing agricultural subsidies or entitlements, making significant services commitments, joining plurilateral agreements, and complying with most or all WTO agreements upon entry without recourse to transitional periods.

10.2. In the services area, acceding developing countries are often asked to make commitments that are more generous than even the most developed WTO members. Demands in the area of agriculture are particularly stringent and, with some standard S&D provisions negotiated away during accession. Acceding LDCs are generally not afforded transitional periods to implement WTO commitments even in areas where such periods were provided to existing members. Implementation periods included in the WTO agreements are calculated from the entry into force of the WTO Agreement, not from the date of accession of a particular country.

10.3. Despite the specific flexibilities in the WTO texts vis-à-vis the LDCs accession process, the reality is that LDCs still face significant challenges, as the requirements are not always in line with the level of development and regulatory capacity of LDCs. This also contributes to protracted WTO accession timeframes, which averages more than 12 years for LDCs.

10.4. The G-90 has pointed out that even in light of the 2002 LDCs Accession Guideline and the 2012 General Council Decision that call for Members to offer reasonable concessions that are commensurate with their level of development, on the contrary, undue concessions are extracted during the accession process. The G90 proposal seeks to ensure that Members restrain from seeking concessions and commitments beyond the individual level of development and regulatory capacity of acceding LDCs.

10.5. Since the average period for completion of accessions exceed 12 years, we call for the Guideline to be 'instrumentalized' as a minimum requirement to "fast-track" the accession procedure of LDCs. This proposal will specifically contribute towards achieving SDG 17.10 and 17.11 which envisages an open, non-discriminatory and equitable rules-based trading system as well as doubling LDCs share of global exports by 2020 – an objective that is yet to be achieved.
