



**G-90 DOCUMENT FOR THE SPECIAL SESSION OF THE COMMITTEE ON TRADE AND DEVELOPMENT (CTD-SS) ON SPECIAL AND DIFFERENTIAL TREATMENT PROPOSALS ON THE AGREEMENT ON THE APPLICATION OF SANITARY AND PHYTOSANITARY MEASURES AND THE AGREEMENT ON TECHNICAL BARRIERS TO TRADE**

*Communication from the G-90 [the Organisation of African, Caribbean and Pacific States (OACPS), the African Group and the LDC Group]*

The following communication, dated 20 May 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.

## **1 INTRODUCTION**

- 1. The G-90 submits the proposals herein in pursuance of the work directed under Paragraph 2 of the 12th Ministerial Conference (MC12) of the world Trade Organization (WTO) Outcome Document (WT/MIN(22)/24 – WT/L/1135).** This contribution seeks to advance work on the review of special and differential treatment (SDT) with a view to strengthening them and making them more precise, effective, and operational in line with paragraph 44 of the Doha Ministerial Declaration.
- The submission of the textual proposals in relation to the Agreement on the Application of Sanitary and Phytosanitary Measures (SPS Agreement) and the Agreement on Technical Barriers to Trade (TBT Agreement) builds on the G-90 submission presented to the Special Session of the Committee on Trade and Development (CTD-SS) contained in document JOB/TN/CTD/2 - JOB/TNC/106. These two Agreement-Specific Proposals (ASPs), therefore encompass the first set of the 10 ASPs that the G-90 will be presenting for negotiations towards outcomes by latest MC13, in line with and consistent with the roadmap that was proposed and presented by G-90 to the CTD-SS and subsequently agreed by the committee at its meeting on 20 March 2023.
- The G-90 ASPs focusing on the TBT and SPS agreements aim to advance the development aspirations of developing countries as well as enhance their participation in global trade. The CTD-SS has a clear mandate to improve the application of special and differential treatment by strengthening existing SDT flexibilities. Members have committed to ensure that in the preparation and application of SPS and TBT measures, they shall take account of the special needs of developing country Members, and in particular of the least-developed country Members. Strengthening the SDT flexibilities in these agreements will significantly contribute towards securing and safeguarding commercially meaningful export opportunities.
- Textual proposals on the remaining ASPs which are of equal priority for harvesting at MC13 shall be submitted either severally, jointly, or in sets as dictated by their level of readiness.

---

## 2 THE RATIONALE BEHIND THE G-90 AGREEMENT-SPECIFIC PROPOSALS

5. The G90 recalls the following key principles towards realisation of SDT provisions that are precise, effective and operational, in line with the negotiating mandate:

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

6. The G-90 is not seeking blanket exemptions from commitments, but instead seeks to ensure effective implementation of existing S&D provisions. The proposals aim to operationalize the collective commitments of the WTO Membership in several WTO agreements to facilitate the effective integration of developing and least developed countries (LDCs) into the multilateral trading system.

7. 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.

8. The G-90 proposals have been crafted with a view to ensuring stability, predictability and transparency in the implementation of existing S&D provisions, and thus strengthening a key area of the multilateral trading system in favour and benefit of the interests of developing countries, including LDCs. 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.

## 3 THE CASE FOR STRENGTHENING SPECIAL AND DIFFERENTIAL TREATMENT OF THE SPS AND TBT AGREEMENTS

9. The G-90 proposals on SDT in relation to SPS and TBT measures that are attached hereto as Annex 1 and Annex 2 respectively, recognise the rights of all Members to regulate for legitimate objectives such as the protection of human, plant, animal or plant life or health, of the environment, or the prevention of deceptive practices, provided that such "...measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between Members where the same conditions prevail or a disguised restriction on international trade". They also recognise that measures might, at times, be implemented on an urgent basis in accordance with the appropriate provisions in the SPS and TBT agreements.

10. The G90 is, therefore not questioning the need for or the right of Members to implement measures as provided for in the SPS and TBT agreements, but is calling for flexibilities provided to developing countries, including LDCs that continue to face capacity constraints to be given meaningful effect under conditions of certainty. At the heart of the proposals is striking the right balance between the pursuit of legitimate public policy objectives and the protection of gains from trade of developing countries, including LDCs by ensuring that SPS and TBT measures in key markets do not further marginalize developing countries in international trade owing to their limited capacities.

11. While SPS and TBT measures aim to pursue legitimate objectives of health and safety, they also substantially affect trade through informational, compliance-related and procedural costs.<sup>1</sup> Increasingly, the number and complexity of these measures is also rising as countries pursue environmental and climate-change mitigation objectives. SPS and TBT measures together are by far the most common nontariff measures (NTMs) affecting trade. Of all the NTMs that are notified to the WTO, TBT measures account for 57.6% and SPS measures for 37.6%. UNCTAD reports that the estimated ad-valorem equivalent of SPS and TBT requirements are over a third higher in developed countries than in developing and least developed countries.

---

<sup>1</sup> UNCTAD (2022). Non-tariff measures from A to Z. UNCTAD/DITC/TAB/2021/3. United Nations, Geneva.

12. Data from the UNCTAD-led non-tariff measures global transparency initiative covering over 100 countries and 90 per cent of global trade<sup>2</sup> shows that developed countries apply significantly more SPS and TBT measures than developing countries. Data also shows that developing countries and LDCs bear the highest incidence of costs, with SPS measures creating a relatively higher burden for lower income countries. Using one developed country market as a case study, a conservative estimation (i.e. discounting the usual costs of compliance) of the distortionary effect of SPS measures reveals that SPS measures alone in that market reduce agricultural exports of lower income countries by about USD 3 billion, representing about 14 percent of agricultural trade from lower income countries to that market.

13. The proliferation of TBT and SPS measures on environmental or sustainability grounds, for instance, threatens the majority of exports from developing countries, including LDCs. According to UNCTAD, such environmental/sustainability, health and other requirements are becoming increasingly numerous, complex and wide-ranging with measures becoming so stringent or technically advanced that that developing countries may not have access to the legal or technical infrastructure nor technologies and expertise necessary to implement them and demonstrate compliance.<sup>3</sup> In this context, the G-90 proposals and their intended objectives on SDT under the SPS and TBT agreements are indeed all the more relevant to safeguard the exports of developing countries and LDCs.

14. This proliferation, increased stringency and complexity of SPS and TBT measures compounds the challenges of informational, compliance-related and procedural costs of adjusting to new measures and alter the relative global competitiveness of exports in international trade. This calculus favours exporters that are capable of efficiently complying with new measures at the expense of exports originating in developing countries and LDCs whose compliance costs are higher. Ultimately for these economies, it is those micro, small and medium-sized enterprises (MSMEs) and sectors or businesses run by or largely employing youth and women that bear the brunt. It is these smaller or even informal businesses in developing countries and LDCs that are more likely to stop exporting when faced with new or changed SPS or TBT measures.

15. Developing countries are constrained from defending their interests by influencing requirements at the design stage both at national level in markets of export interest and in international fora. In addition to endeavouring to harmonise SPS and TBT measures on as wide a basis as possible by basing them on international standards, there is a need for consultation processes to be transparent and inclusive, with those creating new requirements facilitating and ensuring effective participation of developing country producers in their processes. Enhanced transparency and deliberate efforts by developed countries to ensure effective participation of developing countries and LDCs in processes of standards development can potentially reduce the costs of SPS and TBT measures by at least 15%, whilst simultaneously boosting their exports.

16. Many developing countries face capacity and supply-side constraints. The inadequate availability of technical infrastructure poses significant challenges for many developing country traders, including their ability to comply, demonstrate confidence in accreditation and conformity assessment systems or prove equivalence of their measures with the appropriate level of protection sought by trading partners. The G-90, therefore recognises that without the necessary support, standards, technical regulations and SPS measures can become significant barriers to the exports of developing countries, including LDCs to key international markets.

17. Technical assistance and capacity building, therefore continue to hold real potential to alleviate the competitive disadvantage of developing countries, including LDCs when navigating the regulatory environment under the SPS and TBT agreements. UNIDO reports that exporters in developing countries and LDCs struggle with processes of proving compliance than compliance itself.<sup>4</sup> The lack of quality infrastructure, is therefore a key deficit in many of these economies. Well-targeted technical assistance programmes on SPS and TBT compliance and conformity

---

<sup>2</sup> Data is freely accessible through UNCTAD TRAINS Online at [trainsonline.unctad.org](https://trainsonline.unctad.org), the WTO-ITC-UNCTAD Global Trade Helpdesk at <https://globaltradeshelphdesk.org>, and World Bank WITS at <https://wits.worldbank.org>

<sup>3</sup> Examples include energy efficiency standards and restrictions on the use of hazardous substances in electrical products and agrifood products, low residue levels for pesticides and other chemicals in food imports, animal welfare concerns and occupational safety issues.

<sup>4</sup> UNIDO (2022). Quality Infrastructure for Sustainable Development Index: Supporting Sustainable Development Goals with Quality Infrastructure. UNIDO, Vienna, Austria.

assessment at bilateral and multilateral levels could generate considerable gains for these economies, with some estimates computing cost reduction benefits at 15 percent and 28 percent for SPS and TBT requirements respectively.

18. Key features of the G-90 proposals on SDT under the TBT and SPS agreement are firstly, their focus on time-based elements of SDT, and secondly, emphasis on capacity building as means of safeguarding and facilitating exports of products of interest to developing countries, including LDCs. The proposals are, thus premised on the following three key elements:

- a) Longer time periods for developing countries and LDCs facing capacity constraints to provide comments on proposed SPS measures, technical regulations or standards by a developed country, or developing countries in a position to do so.
- 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 or TBT measures to assist them to maintain their market share in developed countries export markets and support of their quality infrastructural capabilities to meet such measures.

19. Based on the above elements, the G-90, therefore proposes mandatory provisions to ensure certainty, transparency and stability - key objectives of the multilateral trading system - in the development and implementation of SPS and TBT measures that impact exports of developing countries, including LDCs. Incorporating mandatory provisions in existing SDT provisions will also ensure that all Members are aware of their respective rights and obligations without ambiguities.

---

**ANNEX 1****Textual Suggestions on the Agreement on the Application of Sanitary and Phytosanitary Measures**

1. Members agree that, developed country Members and developing country Members declaring themselves to be in a position to do so, shall notify all proposed sanitary or phytosanitary measures affecting trade at an early stage before adoption. Developed country Members shall 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.

2. Upon request, a developed country Member proposing an SPS measure shall consult directly, at an early stage, with any developing or least developed country Member exporting a product that would be covered by the proposed SPS measure. In these consultations, Members shall consider the status of a developing or least developed country Member capacity to comply with the sanitary or phytosanitary measure, including technology, human resources and infrastructure needs, with a view to exploring solutions which neither restrict nor preclude the participation of developing country Members and least developed country Members in the market in question.

3. Where a developing country Member or least developed country Member is or will be adversely affected<sup>5</sup> 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 be accorded on products of interest to developing and least developed country Members so as to maintain opportunities for their exports. 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 of not less than 12 months.

(ii) Where substantial investments are required in order for an exporting developing or least developed country Member to fulfill the sanitary or phytosanitary measures proposed or applied by a developed country Member, the developed country Member shall provide financial and technical assistance required for compliance with the sanitary or phytosanitary measure and will permit the developing or least developed country Member to maintain and expand its market access opportunities for the product covered by the final or proposed sanitary or phytosanitary measure.

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.

---

<sup>5</sup> "Under this Article, a developing country Member or least developed country Member that is or will be "adversely affected" shall be understood to mean a developing or least developed country Member whose exports of the product that would be covered by the final or proposed sanitary or phytosanitary measure to the Member implementing the sanitary or phytosanitary measure represent 20 per cent or more of the exports of that product by the concerned developing or least developed country Member during the two years prior to the commencement, or proposed commencement, of the implementation of the sanitary or phytosanitary measure".

**ANNEX 2****Textual Suggestions on the Agreement on Technical Barriers to Trade**

1. Members agree that, developed country Members and developing country Members declaring themselves to be in a position to do so shall notify all proposed technical regulations, standards and conformity assessment procedures affecting trade at an early stage before adoption. Developed country Members shall 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 LDCs.

2. Upon request, a developed country Member proposing a technical regulation or standard shall consult directly, at an early stage, with any developing or least developed country Member exporting a product that would be covered by the proposed technical regulations or standards. In these consultations, Members shall consider the status of a developing or least developed country Member capacity to comply with the proposed technical regulations or standards, including technology, human resources and infrastructure needs, with a view to exploring solutions which neither restrict nor preclude the participation of developing country Members and least developed country Members in the market in question.

3. Where a developing country Member or least developed country Member is or will be adversely affected<sup>6</sup> 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, not less than 12 months, shall be accorded on products of interest to developing and least developed country Members so as to maintain opportunities for their exports.

(ii) Where substantial investments are required in order for an exporting developing or least developed country Member to fulfill technical regulation or standard proposed or applied by a developed country Member, the developed country member shall provide financial and technical assistance required for compliance with the technical regulation or standard and will permit the developing or least developed country Member to maintain and expand its market access opportunities for the product covered by the final or proposed technical regulation or standard.

---

<sup>6</sup> "Under this Article, a developing country Member or least developed country Member that is or will be "adversely affected" shall be understood to mean a developing or least developed country Member whose exports of the product that would be covered by the final or proposed sanitary or phytosanitary measure to the Member implementing the sanitary or phytosanitary measure represent 20 per cent or more of the exports of that product by the concerned developing or least developed country Member during the two years prior to the commencement, or proposed commencement, of the implementation of the sanitary or phytosanitary measure".