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**Committee on Trade and Development Special Session  
Trade Negotiations Committee**

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**G-90 DOCUMENT FOR THE SPECIAL SESSION OF THE COMMITTEE ON TRADE  
AND DEVELOPMENT (CTD-SS) ON SPECIAL AND DIFFERENTIAL TREATMENT  
PROPOSALS ON THE TRADE-RELATED INVESTMENT MEASURES**

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 22 November 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 12<sup>th</sup> 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.

2. The submission of the textual proposals in relation to the Agreement on Trade-Related Investment Measures (TRIMS 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 as part of the ten Agreement-Specific Proposals (ASPs) that the G-90 is tabling 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.

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

3. 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.

4. 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.

5. 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.

6. 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 IN THE TRIMS AGREEMENT**

7. Structural transformation, including industrialization and economic diversification, remain key objectives for developing and least- developed countries (LDCs) and necessary to address development objectives, including poverty alleviation as well transition to sustainable economies. In this endeavour, raising manufacturing productivity and production and exports of higher value-added products are crucial. Yet today, many developing countries remain commodity dependent (See *Annex 1*), and primary products continue to be dominant in the export composition of many developing countries.<sup>1</sup> According to UNCTAD's 'The State of Commodity Dependence' report (2023), "95 of 142 developing countries (66.9 per cent) were commodity-dependent during 2019– 2021".<sup>2</sup>

8. In this context, and according to UNCTAD, the share of developing countries in global exports was still only 42% in 2022,<sup>3</sup> despite the fact that over 70% of world population lives in these countries. The share of LDCs in global exports was around 1% in 2022<sup>4</sup>. The target for Sustainable Development Goal (SDG) 17.11 is to 'significantly increase the exports of developing countries, in particular with a view to doubling the least developed countries' share of global exports by 2020'.<sup>5</sup> When that SDG was agreed,<sup>6</sup> LDCs' share of global exports was 0.9% and in 2022 it had only increased to 1%,<sup>7</sup> so the goal of reaching 1.8% by 2020 has already been missed.

9. Developing countries and LDCs face ample challenges in the pursuit of economic diversification, and in enhancing economic, social and environmental resilience. The adverse terms of trade and continued dependence on commodity exports<sup>8</sup> have made many of these countries vulnerable and prone to chronic current account deficits or shallow surpluses. The solutions are often restrained by the current trade rules, which were designed with the absence of many developing countries and without accounting for their longer-term development needs.

10. Trade-related investment measures (TRIMs) assumes a renewed importance in the policy toolbox that developing countries require today in order to achieve their development goals, which require industrialization and structural transformation while enabling just transitions towards climate resilient economies and societies. UNCTAD has called for 'industrialization based on minimal use of fossil fuel machinery and an emphasis on local production to meet basic needs' and for 'coordinated industrial policies based on intellectual property and technology available within the global South'.<sup>9</sup> Thus, tools as TRIMs are especially important as governments are expected to undertake measures with multiple policy objectives including the enabling of industrialization while at the same time seeking a switch from carbon-intensive to clean energy sources.

11. More recently in the context of the polycrisis, governments in many developed economies have been implementing industrial policies and measures that would qualify as investment-related trade measures in the name of addressing inflation or the needed transformation to respond to the climate crisis and in some cases fall in tension with the WTO rules. For example, the measures subject to local content requirements adopted under the Inflation Reduction Act by the United States is in effect a clear statement that policy tools that have been restricted under WTO rules continue to be needed to enable an industrialization and economic structural transformation that allows meeting the climate and environmental goals. Developed countries, through unilateral interventions,

<sup>1</sup> See: UNCTAD, 'The State of Commodity Dependence' Report (2023), available at: <https://unctad.org/publication/state-commodity-dependence-2023>

<sup>2</sup> UNCTAD, 'The State of Commodity Dependence' Report (2023), available at: <https://unctad.org/publication/state-commodity-dependence-2023>

<sup>3</sup> <https://sdgpulse.unctad.org/trade-developing-economies/>

<sup>4</sup> <https://sdgpulse.unctad.org/trade-developing-economies/>

<sup>5</sup> <https://www.un.org/sustainabledevelopment/globalpartnerships/>

<sup>6</sup> In 2015, <https://www.un.org/sustainabledevelopment/development-agenda-retired/>

<sup>7</sup> <https://sdgpulse.unctad.org/trade-developing-economies/>

<sup>8</sup> i.e. where commodities on average constitute more than 60 per cent of the value of exports.

<sup>9</sup> Source <https://unctad.org/tdr2022>.

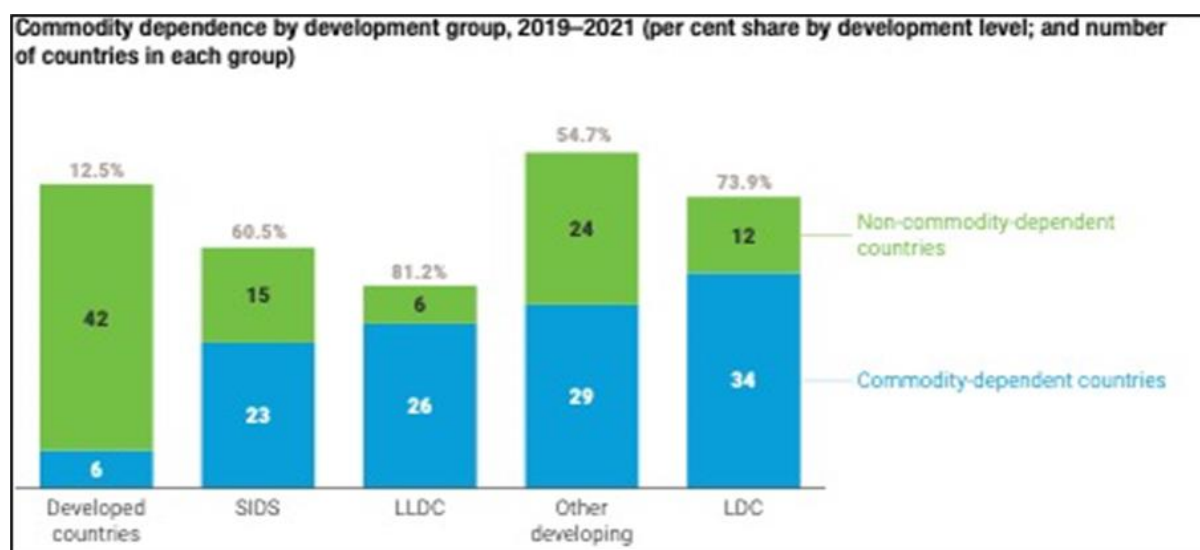
are re-utilizing such measures despite being in tension with WTO rules, and irrespective of the impact on developing countries. It is also worth recalling that such measures have been widely deployed by developed countries in their period of industrialization.<sup>10</sup>

12. Developing countries have for long been calling for a revisit of WTO rules to enable developing countries and LDCs the policy space to utilize such policy tools that are crucial for their developmental and industrialization trajectories, and the ability to enhance domestic added value creation and reducing dependance on export of primary products. The proposition of the G-90 will enable developing countries and LDCs to better pursue policies to achieve industrialization, structural transformation, and diversification of their economies, with a view towards achieving the climate response and raise the standard of living of their population and integrate into the multilateral trading system on a sustainable basis. This proposal could also support the integration of developing country MSMEs in global trade. This proposal has become all the more relevant in the context of lessons learned from the COVID-19 pandemic, as it could contribute to the development of industrial and manufacturing capabilities in developing and least-developed countries for better responses and greater resilience in the face of similar crises in future.

13. As such the G-90 proposes a temporarily time-bound deviation from the provisions of Article 2 of the TRIMs Agreement for developing countries, to be able to introduce new investment measures related to trade in goods (see *Annex 2*). The flexibility is targeted to only those measures needed for a clearly specified set of objectives (e.g. accelerate industrialization, move up the value chain, stimulate development and transfer of technology, address the digital divide, modernize the domestic manufacturing capabilities of small and medium enterprises and their contribution to employment generation, stimulate environmental-friendly methods or products, development of geographically disadvantaged regions...). Importantly, the measures will be temporary, coupled with transparency provisions through notifications to the Council for Trade in Goods. A special flexibility is proposed for LDCs for as long as they remain LDCs.

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<sup>10</sup> Kumar, N. and Gallagher, K., 2007. 'Relevance of Policy Space for Development: Implications for Multilateral Trade Negotiations'. New Delhi: Research and Information System for Developing Countries. See also: Kumar, N., 2005. Performance requirements as tools of development policy: Lessons from developed and developing countries. Putting Development First.

**ANNEX 1**

Source: UNCTAD 2023

**ANNEX 2****TEXTUAL SUGGESTIONS ON THE AGREEMENT ON TRADE-RELATED INVESTMENT MEASURES**

1. Notwithstanding the obligations under Articles 4 and 5 of the TRIMs Agreement and Articles III and XI of GATT, Members agree that developing countries shall be free to deviate temporarily from the provisions of Article 2 of the TRIMs Agreement, and introduce new investment measures related to trade in goods, in accordance with the following provisions:
    - a. Measures notified by developing countries under this provision may be effective for an initial period that does not extend beyond 15 years or up to the time these objectives have been met in the developing country concerned (whichever is shorter), provided the selected measures fulfil one of the objectives stipulated below:
      - i. Accelerate industrialization and achieve socio-economic transformation;
      - 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.
    - b. After the initial period, if the objectives of the measure are not fulfilled, a developing country Member undertaking measures under paragraph 1 may request an extension. For greater certainty, the Council for Trade in Goods shall, upon request by a developing country Member, accord the requested extensions.
  2. Least-developed country Members (LDCs) may introduce and maintain measures that deviate from their obligations under the TRIMs Agreement. Members agree that LDCs shall not be obliged to implement, apply or enforce the provisions of the TRIMs Agreement as long as they remain LDCs.
  3. Developing countries undertaking measures under paragraph 1 shall notify these new investment measures related to trade in goods to the Council for Trade in Goods no later than six months after their adoption.
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