

**PREFERENTIAL TREATMENT TO SERVICES AND
SERVICE SUPPLIERS OF LEAST-DEVELOPED COUNTRIES**

Decision of 17 December 2011

The Ministerial Conference,

Having regard to paragraphs 1, 3 and 4 of Article IX of the Marrakesh Agreement Establishing the World Trade Organization (the “WTO Agreement”), paragraph 2 of the Annex on Article II Exemptions of the General Agreement on Trade in Services (the “GATS”); and the Decision-making Procedures Under Articles IX and XII of the WTO Agreement agreed by the General Council (WT/L/93);

Considering the 1979 Decision on Differential and More Favourable Treatment, Reciprocity and Fuller Participation of Developing Countries, the 1994 Decision on Measures in Favour of Least-Developed Countries, and the 1999 Decision on Preferential Tariff Treatment for Least-Developed Countries, and without prejudice to the rights of Members to continue to act pursuant to the provisions contained in those Decisions;

Noting that the WTO Agreement recognises the need for “positive efforts designed to ensure that developing countries, especially the least developed among them, secure a share in the growth in international trade commensurate with the needs of their economic development”;

Confirming the importance of trade in services for economic growth and development;

Noting that Article IV:3 of the GATS provides that special priority shall be given to least-developed country Members *inter alia* in respect of the liberalization of market access in sectors and modes of supply of export interest to them;

Acknowledging the serious difficulty of the least-developed countries in view of their special economic situation and their development, trade and financial needs;

Determining that this serious difficulty is an exceptional circumstance that prevents least-developed countries from securing an adequate share in the growth of world trade in services;

Affirming that a waiver from the obligations imposed under paragraph 1 of Article II of the GATS to enable Members to provide preferential treatment to services and service suppliers of least-developed countries without according the same treatment to like services and service suppliers of all other Members will constitute a positive effort towards facilitating the increased participation of least-developed countries in trade in services;

Noting that, in light of the foregoing, least-developed countries are confronted with exceptional circumstances justifying a waiver from paragraph 1 of Article II of the GATS;

Being mindful of the 2003 Modalities for the Special Treatment for Least-Developed Country Members in the Negotiations on Trade in Services (TN/S/13) and Annex C of the 2005 Hong Kong Ministerial Declaration;

Decides as follows:

1. Notwithstanding the provisions of Article II:1 of the GATS, Members may provide preferential treatment to services and service suppliers of least-developed countries with respect to the application of measures described in Article XVI and any other measures as may be annexed to this waiver, than to like services and service suppliers of other Members. Any such treatment shall be granted immediately and unconditionally to like services and service suppliers of all least-developed country Members. Preferential treatment with respect to the application of measures other than those described in Article XVI, is subject to approval by the Council for Trade in Services in accordance with its procedures and will be annexed to this waiver.
2. Each Member according preferential treatment pursuant to this waiver shall submit a notification to the Council for Trade in Services. The notification shall specify the preferential treatment made available, the sectors or sub-sectors concerned and the period of time during which the Member is intending to maintain those preferences. A supplemental notification shall be made if the preferential treatment is subsequently modified. The notifications shall be made before the preferential treatment is granted or modified.
3. Each Member granting preferential treatment pursuant to this waiver shall, upon request, promptly enter into consultations with any Member with respect to any difficulty or matter that may arise as a result of such treatment. Where a Member considers that any benefit accruing to it under the GATS may be or is being impaired unduly as a result of such treatment, the consultations shall examine the possibility of action for a satisfactory adjustment of the matter.
4. Any preferential treatment accorded pursuant to this Waiver shall be designed to promote the trade of least-developed countries in those sectors and modes of supply that are of particular export interest to the least-developed countries and not to raise barriers or create undue difficulties for the trade of any other Member. Such preferential treatment shall not constitute an impediment to the reduction or elimination of market access barriers on a most-favoured-nation basis.
5. For the purpose of preferential treatment granted pursuant to paragraph 1, a service supplier of a least-developed country is:
 - (a) a natural person of a least-developed country; or
 - (b) a juridical person which is either:
 - (i) constituted or otherwise organized under the law of a least-developed country and, if it is owned or controlled by natural persons of a non-least-developed country Member or juridical persons constituted or otherwise organized under the law of a non-least-developed country Member, is engaged in substantive business operations in the territory of any least-developed country; or
 - (ii) in the case of the supply of a service through commercial presence, owned or controlled by:
 1. natural persons of least-developed countries; or

2. juridical persons of least-developed countries identified under subparagraph (i).

6. In accordance with the provisions of paragraph 4 of Article IX of the WTO Agreement, the General Council shall review annually whether the exceptional circumstances justifying the Waiver still exist and whether the terms and conditions attached to the Waiver have been met.

7. This Waiver shall terminate upon the expiration of a period of 15 years from the date of its adoption.

8. This Waiver shall apply to preferential treatment granted to services and service suppliers of least-developed countries designated as such by the United Nations. Notwithstanding the provisions of paragraph 7 above, this Waiver shall terminate with respect to the preferential treatment granted to services and service suppliers of any particular least-developed country when graduation of that country from the United Nations list of least-developed countries becomes effective.
