

COMMUNICATION BY THE UNITED STATES

The following communication, dated 9 December 2009, is circulated at the request of the Delegation of the United States.

**TRANSITION PROVISIONS FOR DEVELOPING AND LEAST-DEVELOPED
COUNTRY MEMBERS**

The following draft text is submitted for consideration by the Negotiating Group.

Section [D]
Transition Provisions

ARTICLE 1

1. The provisions of sections [A, B and C] above shall be implemented by developing country Members and least-developed country (LDC) Members in accordance with the provisions of this section.

ARTICLE 2: ESTABLISHING IMPLEMENTATION PERIODS

1. Upon entry into force of this Agreement, each developing country Member and each LDC Member shall implement the provisions and sub-parts of provisions it has designated in Schedule A. Each Member's Schedule A is hereby made an integral part of this Agreement.

2. With respect to those provisions or subparts of provisions that it has not designated in Schedule A, a developing country Member or LDC Member may delay implementation of such provisions or sub-parts of provisions in accordance with the process set forth in this paragraph.

- (a) No later than [90] days after entry into force of this Agreement, each Member shall notify to the Trade Facilitation Committee in draft Schedule B/C an indicative time period for implementation of each provision or sub-part of a provision that is not designated in Schedule A.¹
- (b) No later than [300] days after entry into force of this Agreement, the Member concerned shall notify to the Trade Facilitation Committee in final Schedule B/C the definitive time period for implementation of each provision or sub-part of a provision.

¹ The format for Schedule B/C is set forth in [Annex 1].

- (c) A Member does not notify a time period for a provision or sub-part of a provision in final Schedule B/C, the Member shall implement that provision or sub-part of a provision within [one year] after entry into force of this Agreement.
- (d) Notifications submitted in draft and final Schedule B/C may also include such further information as the notifying Member deems appropriate. Members are encouraged to provide information on the domestic agency responsible for implementation and, for those provisions or sub-parts of provisions for which a Member considers that technical assistance and capacity building is required, the donor agency with which the Member has an agreement to provide assistance.
- (e) Members experiencing difficulties in submitting indicative and definitive time periods under sub-paragraphs (a) and (b) within the deadlines set forth therein because of the lack of a donor should notify the Trade Facilitation Committee of those difficulties as early as possible prior to the expiration of those deadlines. Members agree to cooperate to assist in addressing such difficulties, taking into account the particular circumstances and special problems facing the Member concerned. The Committee may take appropriate action to address the difficulties, including, where necessary, extending the deadlines under sub-paragraphs (a) or (b) for the Member concerned.
- (f) [One year] after entry into force of this Agreement, and then 60 days after an extended deadline established under subparagraph (e), the Committee shall meet to ratify each Member's final Schedule B/C. Upon ratification, each Member's Schedule B/C will become an integral part of this Agreement.

ARTICLE 3: EARLY WARNING MECHANISM

1. A developing country or LDC Member experiencing difficulty in implementing a provision or sub-part of a provision by the date set forth in Schedule B/C may, no later than [X] days before that date, request that the Committee extend the time period for implementation of that provision or sub-part of a provision. The request shall include the additional time requested and the reasons for the request. Such reasons may include the need for assistance where not earlier anticipated.
2. The Committee shall give sympathetic consideration to requests under paragraph 1, and may decide to grant the extension for good cause. Good cause may include difficulties and delays in obtaining assistance.

ARTICLE 4: TRADE FACILITATION COMMITTEE ACTIVITIES RELATING TO IMPLEMENTATION

1. In addition to its responsibilities under Articles 2 and 3, the Trade Facilitation Committee shall provide a forum for discussions on technical assistance and capacity building during implementation periods, including sharing experiences and information on ongoing assistance and implementation programs, including challenges and successes.
2. Members shall submit to the Committee the following information, or internet references that provide the following information.
 - (a) For Members assisting developing and LDC Members with implementation through bilateral channels: a contact point or points for facilitation of assistance; and information on the process to request assistance.

- (b) For developing country and LDC Members: a contact point or points for the office responsible for coordinating and prioritizing assistance and arranging assistance with donors.
 - (c) Because assistance will primarily be arranged within the country or region where the assistance is to be provided, the contact information provided under (a) and (b) should normally be provided for donor and partner officials in that country or region.
3. Members shall update the information in paragraph 2 as necessary. The Secretariat shall make this information easily accessible to Members.
4. A Member assisting developing and LDC Members with implementation should submit to the Trade Facilitation Committee information on technical and financial assistance and capacity building provided to Developing Country Members and LDCs in relation to the Trade Facilitation Agreement. Members should update this information as necessary.
5. The Committee may invite International Organizations to submit the information referred to in subparagraph 4.

ARTICLE 5: DISPUTE SETTLEMENT INVOLVING DEVELOPING COUNTRY AND LDC MEMBERS

1. For two years after entry into force of this Agreement, Articles XXII and XXIII of the GATT 1994 shall not apply to the settlement of disputes arising under any provision or sub-part of a provision of this Agreement listed in Schedule A of a Member with respect to a measure of that Member. Each Member shall nevertheless provide adequate opportunity for consultation with respect to any issue relating to the implementation of this Agreement.
2. Before making a request for consultations pursuant to Articles XXII or XXIII, and at all stages of dispute settlement procedures with regard to a measure of an LDC Member, a Member shall give particular consideration to the special situation of LDC Members. In this regard, Members shall exercise due restraint in raising matters under dispute settlement procedures involving an LDC Member.
3. The Committee shall encourage and facilitate ad hoc consultations or negotiations among Members on specific issues relating to trade facilitation, with a view to reaching a mutually satisfactory solution promptly.

ARTICLE 6: TECHNICAL ASSISTANCE AND CAPACITY BUILDING

1. Members agree to facilitate the provision of technical assistance and capacity building to developing country Members, on mutually agreed terms and either bilaterally or through the appropriate international organizations. The objective of such assistance is to assist developing country Members to comply with the Agreement's commitments.
2. Members shall endeavour to apply the following principles for providing technical assistance and capacity building with regard to the implementation of this Agreement:
- (i) Take account of the overall developmental framework of recipient countries and regions and, where relevant and appropriate, ongoing reform and technical assistance programs;

- (ii) Include, where relevant and appropriate, activities to address regional and sub-regional challenges and promote regional and sub-regional integration;
- (iii) Ensure that ongoing trade facilitation reform activities of the private sector are factored into assistance activities;
- (iv) Promote coordination between and among Members and other relevant institutions, including regional economic communities, to ensure maximum effectiveness of and results from this assistance. To this end,
 - Coordination, primarily in the country or region where the assistance is to be provided, between partner Members and donors, and among bilateral and multilateral donors, should aim to avoid overlap and duplication in assistance programs, and inconsistencies in reform activities through close coordination of technical assistance and capacity building interventions.
 - For least-developed country Members, the Enhanced Integrated Framework should be a part of this coordination process.
 - Members should also promote internal coordination between their trade and development officials, both in capitals and Geneva, in the implementation of the Agreement and technical assistance;
- (v) Encourage use of existing in-country and regional coordination structures such as round tables and consultative groups to coordinate and monitor implementation activities; and
- (vi) Encourage developing countries to provide capacity building to other developing and least-developed countries and consider supporting such activities, where possible.

Annex [1]
Format for Schedule B/C

Provision/Sub-part of Provision	Time Period	Assistance Required and Other Information
