

## **TRADE FACILITATION DEAL HITS TROUBLE OVER LINK TO DOHA 'SINGLE UNDERTAKING'**

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Efforts in the World Trade Organization to lay the groundwork for the implementation of the new Trade Facilitation (TF) Agreement hit an obstacle this week when African nations and least-developed countries (LDCs) proposed that the deal not enter finally into force until the conclusion of the Doha round, according to Geneva sources.

The African and LDC groups proposed variations on this idea during a May 26-28 meeting of the Preparatory Committee on Trade Facilitation (PCTF) to discuss the text of the protocol of amendment that will formally make the TF deal part of the WTO agreement, as well as an accompanying General Council decision.

Sources said these efforts appear aimed at creating negotiating leverage for these developing countries by delaying the implementation of the TF agreement -- which they view primarily as a developed country priority -- until they can be assured their priorities on agriculture and development will be satisfactorily addressed in a future Doha round deal.

By the end of the year, WTO members are trying to develop a work program to conclude the Doha round, and one Geneva source speculated that these developing countries may be seeking to hold the TF agreement hostage until other WTO members give a clearer signal about how they plan to address agriculture and development issues in that work program. The U.S. has signaled that its main goal is to have a balanced Doha outcome across the three main pillars -- agriculture, industrial tariffs and services -- regardless of the level of ambition.

A group of WTO members including the U.S., European Union, Japan and Mexico gave a clear indication during the PCTF meeting this week that they will not accept the idea of linking the final implementation of the TF agreement to the completion of the Doha round, sources said.

These WTO members argue that this linkage is not mentioned in the Bali Ministerial Declaration or the text of the TF agreement, and that therefore it is outside the mandate of the PCTF, according to these sources. Some of these members also make the point that the TF agreement already provides sufficient leeway for developing countries to decide which commitments they will implement at what time, so no further flexibility is needed, sources said.

They said the debate over this linkage is the major outstanding issue standing in the way of the completion of the protocol of amendment, which is supposed to be adopted by the General Council no later than July 31, 2014. WTO members made progress on other elements of the protocol during the committee meeting this week based on a draft submitted by Norway in February. At the conclusion of the three-day meeting, PCTF Chairman Esteban Conejos of the Philippines said he

believed further work on drafting the protocol should await a definitive resolution on the linkage issue raised by the African and LDC groups.

WTO members will consult on this issue ahead of the next meeting of the PCTF slated for June 24-26, although sources disagreed about what role Conejos will play in those consultations. One source said Conejos will likely hold consultations on this issue with major WTO members and negotiating groups, while another source said consultations will be among WTO members.

Also at the PCTF meeting, the African Group reiterated its longstanding worries about the lack of clarity on the terms under which donor countries will provide technical assistance to developing countries to implement certain commitments in the TF agreement. Similarly, the LDC group stressed that the receipt of this technical assistance is a prerequisite for developing countries to implement their commitments.

The trade facilitation text approved by WTO ministers last December in Bali includes a provision making explicit that developing countries will not be required to take on its commitments until they have acquired the necessary capacity via technical assistance from donor countries.

The African and LDC groups have taken slightly different approaches in calling for the final implementation of the TF agreement to be linked to the completion of the Doha round. One Geneva source said that not all members of these two groups agree with the approaches they have proposed.

In a one-sentence room document tabled on May 26 on behalf of the African group, Lesotho informally proposed that the TF agreement be implemented "on a provisional basis in line with Paragraph 47 of the Doha Ministerial Declaration" of 2001. That paragraph states in part: "With the exception of the improvements and clarifications of the Dispute Settlement Understanding, the conduct, conclusion and entry into force of the outcome of the negotiations shall be treated as parts of a single undertaking. However, agreements reached at an early stage may be implemented on a provisional or a definitive basis."

Lesotho told other WTO members that this proposal reflects the position agreed upon by African Union trade ministers at an April 27 meeting in Addis Ababa. At that meeting, African Union Commissioner for Trade and Industry Fatima Haram Acyl urged ministers to instruct the African Group negotiators in Geneva "to formally submit language on the Protocol of Amendment -- the legal instrument that will enter the TF Agreement into force at the WTO -- to the effect that the Trade Facilitation agreement will be provisionally implemented and in completion of the entire Doha Round of Negotiation," according to a copy of her statement released by the African Union. But one Geneva source said the African Group has not yet articulated this proposal in formal legal language.

"This is a systemic issue that has implications far beyond the issue of Trade Facilitation," Acyl said. "It is about ensuring that our development issues will not be marginalized in the future negotiations on the Doha Work Programme whilst the issues of others are brought to conclusion and it creates strong negotiating leverage to achieve satisfactory outcomes in the negotiations on our issues of interest."

THE LDC GROUP'S APPROACH DIFFERS FROM THAT OF THE AFRICAN GROUP because it does not explicitly refer to the idea of provisional implementation of the TF agreement and it came in the form of legal text.

The LDC proposal would amend a paragraph in the protocol that specifies it shall enter into force in accordance with paragraph 3 of Article X of the Marrakesh Agreement Establishing the World Trade Organization, which states that two-thirds of members must ratify any amendment to the WTO agreement before it can go into effect.

Specifically, it would change that paragraph of the protocol so that it states: "[Subject to the conclusion of the single undertaking as agreed upon in paragraph 47 of the Doha Declaration] (t)his Protocol shall enter into force in accordance with paragraph 3 of Article X of the WTO Agreement [in line with paragraph 47 of the Doha Declaration]." The brackets indicate text that has not yet been agreed to by WTO members.

The notion that the TF agreement should not be implemented until the conclusion of the "single undertaking" in line with paragraph 47 of the Doha Declaration and that, prior to that time, it should only be provisionally applied, appears to have originated in a November 2013 paper by the South Centre, a Geneva-based think tank established by developing countries.

The South Centre paper argues that paragraph 47 makes clear the TF agreement can only enter into force upon the conclusion of the single undertaking and the ratification of two-thirds of WTO members. It further contends that, because of this linkage, WTO members have no obligation to apply the TF agreement on a provisional basis but can make that concession if they so choose.

In the event members decide to implement the agreement on a provisional basis, they need to specify what that means since the language is not clear and there is no existing precedent, according to the paper. It argues that developing countries should explicitly stipulate that "provisional" application means the TF agreement would not be subject to dispute settlement.

"This should include a clear point that the [Dispute Settlement Understanding] shall not apply during provisional application of the agreement," the paper states. "In fact, any application of the agreement before the conclusion of the single undertaking and the fulfillment of the requirements under Article X of the Marrakesh Agreement cannot be binding."

The paper also makes the case that the implementation of the TF agreement needs to be linked to the conclusion of the single undertaking in order to preserve developing countries' leverage to achieve strong outcomes on their priorities on agriculture and development in a future Doha round deal. --  
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