

19<sup>th</sup> May 2019

The Principal Secretary  
Ministry of Trade and Industry, Cooperatives and Marketing  
Government of Lesotho  
Maseru

Dear Mr Mphaka,

**RE: Development concerns regarding the Trade Facilitation Agreement of the WTO**

We are writing today with regards to the negotiations in the World Trade Organization (WTO) with regards to the agreement in Bali on Trade Facilitation (TF).

As members of civil society, we have long advocated for a national trade policy that allows for the maximum policy space for our national development. Since the inception of the WTO, developing countries have made positive proposals to improve the functioning of the global trade system in favor of development for our peoples. Unfortunately, throughout the Doha Round, we have also witnessed the often successful attempts by developed countries to push aside key development-oriented proposals put forth by developing countries and Least Developed Countries (LDCs) in favor of market access demands that benefit their exporting and importing corporations.

Unfortunately, the outcomes of the Ministerial Conference in Bali were likewise significantly imbalanced. The issues of interest for developing countries and LDCs, such as the G33 proposals, were sidelined or addressed in “best endeavor” language. However, the developed country agenda, reflected in the trade facilitation agreement (TFA), was concluded with binding rules that carry extensive regulatory and recurring cost implications.

Developing countries and LDCs members of the WTO stand at a juncture at this stage. They are called upon to make sure that the approach to the negotiations adopted in the run up towards Bali, which involved ‘cherry picking’ of issues of interest to developed countries, is avoided. Instead, a development focused approach where the issues of concern to developing countries and LDCs including implementation, SDT, and agriculture must be reprioritized in the agenda. Thus, the Trade Facilitation Agreement should be considered within the assessment of the overall balance of the Doha negotiations, especially in regard to the extent to which the Doha negotiations have actually fulfilled the development dimensions of the Doha mandate. It must be remembered that developing countries only agreed to initiate the Doha Round of negotiations on the basis that development was to be the core priority of the talks.

**Thus, it is of utmost importance that the WTO Members condition the entry into force of the TFA to the conclusion of the Doha Round Single Undertaking mandate and the fulfillment of the development dimension in this mandate.** This would be in accordance with paragraph 47 of the Doha Declaration, which establishes that “*the conduct, conclusion and entry into force of the outcome of the negotiations shall be treated as parts of a single undertaking.*”

This is essential in order to ensure that developing countries maintain leverage on the way forward in the negotiations post-Bali, and in order to ensure that development issues are fully dealt with in the Doha Round. It would also allow for considering the TFA when assessing the overall balance of the negotiations under the Doha mandate. Otherwise, if the TFA enters into force before the conclusion of

the negotiations under the Doha mandate, the TFA would be harvested alone irrespective of what is achieved in the rest of the negotiations under the Doha work programme.

We are aware that there is already an attack on the idea of creating this linkage within the protocol of amendment. The counter-proposal of developed countries to use the 'protocol of acceptance' of each country to accomplish this linkage is completely unacceptable, as these are domestic instruments that simply cannot be used to link the entry into force of the TFA to the Single Undertaking.

Furthermore, in Bali, developing countries and LDCs agreed to the Trade Facilitation Agreement on the basis that they would enjoy full flexibility in self-assessing their capacity and self-designating various commitments into the Categories A, B, and C, provided under Section II of the Agreement.

**We urge you to maintain the maximum policy space for our national officials to assess our capacity for implementing various highly technical rules and procedures for facilitating trade, and thus to schedule all of our commitments into Category C or Category B.** Category B includes substantial flexibility, as long as we ensure an adequate transition period according to our own needs, as is provided for in the agreement, irrespective of any other factor.

**We thus urge you, for the sake of our national development policy space and the ability to ensure development-oriented global trade rules in the future, to secure the linkage between the entry into force of the TFA and the conclusion of the single undertaking in the 'protocol of amendment to insert the TFA into Annex 1A of the WTO Agreement', and to schedule our TFA commitments fully under Categories B or C.**

We thank you and remain at your disposal for any further consultations in regard to our national position in the ongoing negotiations in the WTO.

Yours sincerely,



Lehlohonolo Chefa

Executive Director  
Policy Analysis and Research Institute of Lesotho (PARIL)

CC Minister of Trade and Industry, Cooperatives and Marketing  
Director of Trade