Analytical Note
SC/TDP/AN/S &D
April 2013
Original: English

SUMMARY TABLE OF THE CANCUN ANNEX C 28 SPECIAL AND DIFFERENTIAL TREATMENT PROPOSALS

SYNOPSIS

The Cancun Annex C containing 28 S&D proposals has been put forward for possible adoption at the WTO's Ninth Ministerial Conference (MC9) in December 2013.

The table in this paper provides

- a summary of the intent of the original proponents and their proposals;
- what was finally obtained in Annex C ; and
- a short summary assessing the value of the Annex C language.

Most of the Annex C proposals have no economic value. Some have language that is worse than the existing language in the Agreements and if adopted, could weaken the present rights of developing countries. There are also a couple that are simply inappropriate for adoption, for instance because they add to rather than ease developing countries' commitments and burden.

It would be best for negotiations to continue on this package in order to improve the language in Annex C. Otherwise, if the Annex C language is adopted with only minor changes at MC9, there should be a caveat saying i) that negotiations on these items will nevertheless continue post-MC9, with a view to strengthening them and making them more precise, effective and operational and ii) post MC9, priority will also be given to the completion of the rest of the Special and Differential Treatment proposals from the Doha Work Programme.

April 2013
Geneva, Switzerland

No. Cancun Annex C	Article	Intent of Original Proposal/s	What was obtained in Annex C Proposal	Value?
1 and 2. Developing countries especially LDCs	GATT Article XXXVIIIC - infant industry	Infant industry clause should apply also to existing industries. Developing countries not required to pay compensation when taking XVIIIC measures etc.	Further negotiations : Council on Trade in Goods to 'develop and adopt procedures' on issues raised by developing countries.	Rather than delivering something concrete, the proposal simply defers negotiations to a future time! The word 'procedures' in the Annex C language could also be limiting. The difficulties in using XVIIIC are not only procedural. Developing countries also want a strengthening of their rights under XVIIIC (as outlined in the original proposals).
3 Developing coutnries	GATT Article XXXVI – Trade and development chapter of GATT - Principles and Objectives	Upgrade Article XXXVI's best endeavor language on increasing developing countries' share in world trade to binding commitments	Annual review by CTD of the implementation of Article XXXVI	No value. CTD already has the mandate for reviews. Developing countries instead want the best endeavor language to be made binding in Article XXXVI. Reviews of the implementation were to be undertaken following the strengthening of the Article.
4. Developing countries	GATT Article XXXVII: Trade and development chapter of GATT - Commitments	Best endeavor language upgraded to binding commitments – reduce market barriers and tariff escalation, refrain from NTBs against developing countries' exports etc.	Members 'may initiate discussions' on Article XXXVII in CTD to reach satisfactory solution.	No value. In fact, it is a worsening of the existing language in Article XXXVII.2a. In XXXVII2a, if developed countries have not given effect to their commitments of providing special treatment to developing countries (on tariff escalation; NTBs), they have to give 'reasons' and these 'shall be examined'.
5 Developing countries	GATT Article XXXVIII: Trade and development chapter of GATT – Joint Action	Joint studies and recommendations to General Council to contain concrete goals and indicators in increasing actual market access for exports of developing countries and LDCs.	DG 'to pursue and conclude cooperation arrangements as may be necessary'… CTD to receive studies from international agencies and organisations	No value – the language in Annex C is broad and vague. In fact, this language is weaker than para 2c of Article XXXVIII. In Article XXXVIII, contracting parties *'shall collaborate jointly'* and in Article XXXVIII para 2c *'shall … collaborate… to devising concrete measures to promote the development of export potential and to facilitate access to export markets'*.
6. Developing countries	Understanding on the interpretation of GATT Article XVII: State Trading Enterprises	To have language that provides some flexibility for developing countries' state trading enterprises, the African Group proposed: *'Members agree that STEs may have a significant role to play in protecting public policy…'*	Annex C language: '*Whilst acknowledging that the provisions of Article XVII of the GATT apply to all Members, Members recognize that state trading enterprises may have a significant role to play…'*	No value . There is no additional flexibility because the first sentence of the Annex C language reinforces all the provisions of Article XVII. This takes away the utility or flexibility the second sentence could have provided if it were a stand-alone statement. This is a loss for developing countries as there were good reasons why the African Group had formulated its original proposal.
7. Developing	Understanding on BOP – procedures for	Full consultation procedures and its examination in great depth	Further negotiations - the Committee on BOP to 'examine' ways to simplify	No immediate deliverables, only a mandate for further negotiations. Furthermore, the mandate for these negotiations is already too

No. Cancun Annex C	Article	Intent of Original Proposal/s	What was obtained in Annex C Proposal	Value?
countries	BOP consultations	have had a chilling effect on countries' use of Article XVIIIB on BOP. Proponents wanted developing countries to always have recourse to the simplified consultation procedures	the 'administrative requirements' within full consultation procedures.	narrow, limited only to simplifying the 'administrative requirements' within *full* consultation procedures. Even with these negotiations, developing countries would still have to undertake *full* consultation procedures rather than *simplified* ones. Finalising Annex C language would mean loss of original proposals calling for simplified procedures.
8. Developing countries	Enabling Clause	A key objective was to have clarity that no WTO Member outside of a South-South preferential trade agreement could prescribe criteria relating to South-South agreements on non-tariff barriers.	Enabling Clause applies when used.	No value at all – a statement of the obvious.
9. LDCs	Agreement on Agriculture: Article 15.2	African Group asked for developing countries to have the right to modify their commitments for reasons of food security and rural poverty.	Watering down of Article 15.2. 15.2 says 'LDCs shall not be required to undertake reduction commitments'. Annex C adds 'unless decided otherwise by consensus'.	Annex C language is worse than Article 15.2 language and weakens the rights for LDCs. The phrase *'unless decided otherwise by consensus'* should be deleted.
10. Developing countries	**Preshipment Inspection Agreement Article 3.3- Technical Assistance**	**Elaborates on the types of TA that could be provided**	**No additional TA commitments; elaboration of types of TA that could be provided under 3.3.**	**a)No additional value – no expansion of TA already provided in Article 3.3. It merely elaborates on the types of assistance that could be provided under 3.3.** **Article 3.3 says that *'Exporter members shall offer to provide to user Members, if requested, technical assistance.'* The Annex C language does not indicate who should provide the assistance – there should be more clarity.** **b)The language provided in b) does not go beyond what has already been agreed to in para 8.3 of the Decision on Implemnetation-Related Issues and Concerns. In fact, the 8.3 language is better as it calls on the Committee on Customs Valuation to address concerns such as the exchange of information and report to the GC by 2002. This has not been**

No. Cancun Annex C	Article	Intent of Original Proposal/s	What was obtained in Annex C Proposal	Value?
				captured and updated in the Annex C text.
11. Developing countries	Agreement on Rules of Origin	Preferential rules of origin to achieve trade policy objectives; Participation in World Customs Organisation – Technical Committee on harmonized work programme.	Annex C language simply reiterates Annex II of the Agreement on Rules of Origin, that preferential rules of origin are allowed in preferential agreements. Non-binding best endeavor language on TA.	No value. The first part is a reiteration of what countries can already do under the Agreement. In the second part, it should be noted that the work of the Technical Committee of the World Customs Organisation in relation to the WTO's Rules of Origin harmonized work programme is already over. Therefore greater participation in that Committee has fairly limited utility in that regard.
12. Developing countries	Agreement on Import Licensing Procedures– Article 1.2 on 'administrative procedures'	The African Group proposed that countries' import licensing regimes should prevent adverse effects on developing countries.	Administrative procedures to implement licensing regimes should be reduced. Import licensing procedures should be expeditious	This language could be a burden for developing countries. The obligation in this Annex C proposal applies to all Members i.e. even developing countries and LDCs will have to make their licensing procedures 'expeditious' for other developing countries! The intention of the proponents is not reflected in the language – they wanted simplification of import licensing regimes, not just the administrative procedures relating to import licensing.
13. LDCs	GATS Article IV: Increasing Participation of Developing Countries	Specific commitments to be taken by WTO members in favour of LDCs.	Priorities of LDCs to be *'presented and duly taken into account'.*	This Annex C language weakens Article IV.3. IV.3 says *'Special priority shall be given to LDCs…',* Annex C says that the LDCs' priorities shall be presented and duly taken into account!
14. LDCs	GATS Article IV.3	Specific commitments to be taken by WTO members in favour of LDCs.	Members to provide 'the information' on how they are giving special priority to LDCs.	The language in Annex C is unclear in relation to 'the information' it refers to. The only information referred to in GATS Article IV is the information provided by contact points. This language needs to be made clearer if we are to ensure that developed countries will provide notifications of how they are giving effect to Article IV.3. Nevertheless, even calling for notification has limited utility since Members are already supposed to notify the measures they take pertaining to the GATS (GATS III.1). What would be useful is for concrete preferences to be provided in terms of commitments to be taken by countries to operationalize the

No. Cancun Annex C	Article	Intent of Original Proposal/s	What was obtained in Annex C Proposal	Value?
				LDC Services waiver.
15. Developing countries	GATS Article XXV – Technical Cooperation	WTO to conclude arrangements with international institutions	WTO to conclude arrangements with international institutions	No value. This is about the WTO Secretariat seeking assistance from international institutions. Such arrangements can presumably be carried out without a ministerial declaration or decision.
16. Developing countriesesp LDCs -6(d)	GATS Annex on Telecommunications – Para 6: Technical cooperation	LDCs asked that '*Developed country Members will promptly notify'* measures they have taken to implement Para 6.	CTS to put in place arrangements for prompt notification.	This language is not clear. What does '*put in place arrangements for prompt notification'* mean? GATS III.1 says that Members '*shall publish promptly'* measures they take to give effect to GATS. What would be more useful is the strengthening of the language in para 6 especially 6d on LDCs.
17. LDCs	**TRIPS Article 66.2 – LDCs: developed countries provide incentives to their enterprises and institutions for technology transfer.**	**LDCs outlined the types of incentives developed countries can give when implementing 66.2.**	**Annex C simply 'reaffirm(s)' the decision in IP/C/28 (Members shall annually submit reports on their commitments under 66.2).**	**This language is of no value since it only reaffirms IP/C/28. There have been problems over developed countries' reporting in IP/C/28. Most of the reports have not been about assistance to LDCs, and only less than a handful have been about technology transfer.** **The language should call for 'effective' implementation of IP/C/28 and developed countries deemed by LDCs not to be providing such incentives should have to give an explanation of this in the TRIPS Council. LDCs have also proposed a new reporting format in IP/C/W/561 (2011).**
18. Developing countries	TRIPS Article 67 – Technical Cooperation	LDCs called for comprehensive programme of assistance under Article 67.	Elaborates on how this technical assistance can be given. Annual review by TRIPS Council of state of implementation of agreement between WTO and WIPO.	No additional value – TA language is already in Article 67. Even closer ties with WIPO in implementing Art 67 could be problematic because of WIPO's focus on IP protection and enforcement.
19. Developing countries	TRIPS Article 70.9 – exclusive marketing rights (EMRs)	Members have right to define exclusive marketing rights; no requirement to grant EMR unless marketing approval is granted in that WTO Member.	Slightly more limited than proponents' proposal.	No value in the current situation. As developing countries' TRIPS transition period is over, they are not applying exclusive marketing rights. LDCs covered by the TRIPS waiver also need not apply EMRs.

No. Cancun Annex C	Article	Intent of Original Proposal/s	What was obtained in Annex C Proposal	Value?
20. Developing countries	Understanding on Rules and Procedures Governing the Settlement of Disputes – Article 8.10	In disputes between developed and developing countries, at least one panelist shall be from a developing country.	As proposed.	No value. Article 8.10 already says that a panelist shall be from a developing country member if the developing country Member requests.
21. LDCs	**Decision on Measures in Favour of LDCs, para 2(v)- 'LDCs shall be accorded substantially increased TA…'**	**LDCs provided very clear benchmarks on how to measure the success of the IF and other Technical Assistance programmes.**	**These benchmarks have not been reproduced in Annex C.**	**No obligations beyond what is already enshrined in para 2(v) of the Decision. In fact, the language in 2(v) is better and some form of it could be reflected: '*LDCs shall be accorded substantially increased technical assistance in the development, strengthening and diversification of their production and export bases including those of services, as well as in trade promotions*…'.**
22. LDCs	**Rules Relating to Notification Procedures**	**--- No formal proposal found. Could have been an informal proposal.**	**Sub-Committee on LDCs to 'examine possible improvements' to the notification procedures for LDCs.**	**This language could be dangerous for LDCs. Will 'improvements' also mean that LDCs will have to adhere more strictly to notification commitments and timelines? It would be better to have water-tight language making it clear that 'improvements' *will* be about providing more flexibilities for LDCs and not more scrutiny. For now, this remains unclear.**
23. Developing countries	Enabling Clause	Developed countries to demonstrate to CTD how they are providing increase market access to developing and LDCs. Meaningful access to be measured with targets.	Developed countries to take into account the needs of developing countries and consult with them when formulating preferential schemes. However, the Annex C language also captures 2c of the Enabling Clause referring to South-South preference schemes!	This Annex C language is dangerous if retained as is. 2(c) of the Enabling Clause granting developing countries the right to South-South preferential agreements should not be part of consultations with developed countries! Instead, 2(d) pertaining to preference schemes for LDCs should be inserted. Consultation on North-South Agreements may be useful but language is very weak/best endeavor, unlike the original proposal.
24. LDCs	**Review of Progress on Market Access for LDCs –para 42**	**Special treatment for LDCs *'shall take the form of DFQF for all products'*.**	**Recall the promise to LDCs in DDA. Review progress made in providing access to LDCs.**	**No value. No obligation to increase market access to LDCs. The language should take the Hong Kong DFQF Decision a step**

No. Cancun Annex C	Article	Intent of Original Proposal/s	What was obtained in Annex C Proposal	Value?
	DDA; 2(d) of Enabling Clause			**further.**
25. LDCs	**Decision on Measures in Favour of LDCs – para 2(ii)**	**Commitment that provides contractual status to DFQF through a legal instrument to make market access secure, stable, and predictable. Temporary withdrawal should be disciplined.**	**Best endeavor - Members to 'expeditiously pursue the objective of DFQF...'.**	**No value. Best endeavor.** **The language should take the Hong Kong DFQF Decision a step further.** **The LDCs' original proposal should be more closely reflected. It called for binding of these DFQF commitments to provide certainty; that any temporary withdrawal of DFQF *'should be disciplined in a contractual manner'*; harmonization of rules of origin in DFQF schemes for LDCs etc.**
26. LDCs	Decision on Measures in Favour of LDCs – Para 2.	'LDCs shall always be entitled to extensions for their transition periods as they may require'. TA to remove supply-side constraints.	Annex C: 'LDCs shall in principle be eligible for extensions of their transition periods', where relevant procedural provisions exist, those apply. TA shall aim to remove supply –side constraints.	a)Weak, best endeavor language. The words 'in principle' should be deleted. If it is not deleted, this Annex C language could have a weakening effect on TRIPS Article 66.1, which says that *'The Council for TRIPS shall, upon duly motivated request by a LDC Member, accord extensions of this period'.* The legal question that remains unclear is whether Article 66.1 is a 'procedural provision' or not. b) Language is weak. It does not talk about increased technical assistance or mandatory technical assistance. Furthermore, the TA requested is from other 'institutions', not from developed country WTO Members.
27. LDCs	Decision on Measures in Favour of LDCs; Enabling Clause para 3b.	LDCs ask for compensation and other measures when they suffer erosion in preferences due to MFN tariff reductions.	Consider the issue of loss of preferences by LDCs with a view to identifying targeted assistance programmes.	Best endeavor language – '*considered…with a view to…*'. In addition, this is of little use in as far as the Doha tariff reduction negotiations are at a stalemate. There is also no mention that they are obligations to be taken by developed countries. This is very far from what the LDCs had requested – compensatory measures in the context of preference erosion.

No. Cancun Annex C	Article	Intent of Original Proposal/s	What was obtained in Annex C Proposal	Value?
28. Developing Countries	Article XVIIIB – BOP	Short term financial flows shall not be included in determining reserves of Members. BOP measures shall not be for less than 3 years.	'Full consideration' shall be given to impact of volatility of short-term flows.	This is very weak, non-committal language, and is far from what the African Group had proposed, which is that short term financial flows *'shall not be included'* in determining the external reserves or surpluses of Members. It is not clear what 'full consideration' means – does it necessarily mean a positive consideration? There is also no mention of the minimum duration of BOP measures. The African Group wanted it to be not less than 3 years.

Chemin du Champ d'Anier 17
Case postale 228, 1211 Geneva 19
Switzerland

Telephone: (41 22) 791 8050
Fax: (41 22) 798 8531
Email: south@southcentre.org

Website:
http://www.southcentre.org