

**ACP STATEMENTS
GENERAL COUNCIL
JULY 2021**

AGENDA ITEM 4

TRIPS COUNCIL MATTERS

**A. STATUS REPORT ON THE CONSIDERATIONS BY THE TRIPS COUNCIL ON THE REVISED
"PROPOSAL FOR A WAIVER FROM CERTAIN PROVISIONS OF THE TRIPS AGREEMENT
FOR THE PREVENTION, CONTAINMENT AND TREATMENT OF COVID-19"
(IP/C/W/669/REV.1) – STATEMENT BY THE CHAIR OF THE COUNCIL FOR TRIPS**

Thank you Chair.

The ACP Group thanks the Chair of the TRIPS Council for his report which provides a succinct update of the discussions within the Council concerning the waiver proposal contained in IP/C/W/669/Rev.1. The ACP again wishes to express commendations to the Chair for his commitment to the discussions on this file. The small groups' meetings and the informal meetings of the TRIPS Council have provided the opportunity for further deliberations and robust exchanges on the matter. We appreciate the constructive spirit of delegations in these meetings and request continued engagement as well as a greater level of flexibility amongst members.

As a Group of developing countries, the ACP can attest to the devastating social and economic impacts brought on by the Covid-19 pandemic. The rate of vaccination in ACP and developing countries is very low due to limited access to vaccines with some countries having as low as only one per cent of the total population vaccinated. This is noteworthy Chair, as it means that economic recovery for many members of the Group and other developing countries will not be possible in the near future. This is being further compounded by the emergence of new strains which are being reported as more contagious. Vaccination of individuals across the world, therefore, has to be a priority particularly for those living in developing countries.

Chair

We all know that no one is safe until everybody is safe. Furthermore, the recovery of the global economy should not be at the expense of the poor and vulnerable. Therefore, we should all strive to have a response from the WTO in dealing with the pandemic. This sentiment is shared by all WTO members based on the discussions within the Council over the past weeks and months. The ACP welcomes the discussions on specific elements of the proposals such as scope, duration, implementation and regulatory data. There

should also be continued structured discussions on specific elements of the proposal with a view to concluding the discussions way ahead of MC12.

In closing Chair, the ACP wishes to reiterate its willingness to continue engaging on this matter and is committed to ensuring that the WTO is a part of the solution and effectively contribute to the fight against this pandemic as well as the global economic recovery. Our response should also, to the extent possible, foresee the contribution of the WTO to future pandemics.

I thank you Chair.

AGENDA ITEM 5 WORK PROGRAMME ON ELECTRONIC COMMERCE – REPORT BY THE CHAIR

Chair,

The ACP Group thanks you for your report on the Ecommerce Work Programme. We think that it has confirmed what we have been saying for some time now, that is, that the 1998 work programme on electronic commerce continues to be a critical aspect of the WTO's current and future work.

The ACP Group has been one of the main supporters for the reinvigoration of the 1998 Work Programme on Electronic Commerce and the structured discussions which were set out in the 2019 decision. We have therefore, taken good note of the recent activities that have taken place and the proposed road ahead on the issue. While at the macro level we can concur that the COVID-19 pandemic has bolstered ecommerce and digital trade, there is evidence to suggest that such growth has not been equal across all WTO Members. In fact, there is data to suggest that growth has been limited to a handful of WTO Members and there has indeed been a widening of the digital divide since the onset of the pandemic.

Chair,

We were pleased to have been able to share some of the challenges that continue to plague our countries in terms of ecommerce as well as some of the opportunities that some ACP Members have been able to benefit from during the 5th July structured discussions convened by you. The ACP Group thanks you for convening that meeting and commends you on the way in which you have sought to achieve progress on

the Work Programme. We would also like to request that the observations which were made at the structural discussions be placed on the record of this meeting under this agenda item.

We note and understand that the moratorium on customs duties does not prohibit internal duties and taxes. Whilst our Membership is diverse and remain open to exploring the landing zone on the moratorium on the imposition of customs duties on electronic transmissions, we feel that it is necessary to remind WTO Members that while we do recognise the opportunities, we also face challenges concerning internal taxes on digital trade.

We would like to mention here that we are finding that we must seek to examine a balance between our revenue requirements from internal taxes and where we have emerging exports of digitised products that could face discriminatory taxes in export markets and added costs our entrepreneurs and businesses, which are predominantly small and medium sized business.

In ACP Regions where Economic Partnership or other Agreements have been entered into, we committed to non-discriminatory treatment of digitally traded goods and services. We would like to suggest that the structured discussions of the Work Programme could take stock of the extent to which developing countries are party to such agreements with similar terms.

The ACP Group is examining in detail the ecommerce-related challenges and opportunities confronting our countries and is of the view that there is scope for us to benefit from more dedicated structured discussions before MC12. The Group will bring forward its ideas on the specific issues that could be covered in these sessions. For us, such issues extend beyond the moratorium on the imposition of customs duties on electronic transmissions.

We recognise that we will need to renew the work programme at MC12 and that the discussions on this will need to start soon. The ACP group continues to be a proponent of the exploratory discussions under the 1998 Work Programme and would therefore wish to be a part of any consultations on this issue.

Thank you Chair,

AGENDA ITEM 6

WORK PROGRAMME ON ELECTRONIC COMMERCE AND MORATORIUM ON IMPOSING CUSTOMS DUTIES

The ACP Group thanks India and South Africa for adding this item to the agenda of this meeting.

We agree with India and South Africa that there still is a need for greater clarity on the scope and definition of electronic transmissions and the impact that the moratorium has had on developing countries, particularly from a revenue perspective. We look forward to a resolution of the issues raised in this submission.

Thank You Chair.

Agenda Items 7 and 8

7. PREPARATIONS FOR THE TWELFTH SESSION OF THE MINISTERIAL CONFERENCE – STATEMENT BY THE CHAIR A. WTO RESPONSE TO THE PANDEMIC – REPORT BY THE FACILITATOR

8. CONTRIBUTIONS TO THE MULTILATERAL PROCESS ON THE WTO RESPONSE TO THE PANDEMIC

A. DRAFT GENERAL COUNCIL DECLARATION - COVID-19 AND BEYOND: TRADE AND HEALTH – COMMUNICATION FROM AUSTRALIA; BRAZIL; BRUNEI DARUSSALAM; CANADA; CHILE; CHINA; THE EUROPEAN UNION; HONG KONG, CHINA; ICELAND; JAPAN; KAZAKHSTAN; KENYA; REPUBLIC OF KOREA; MEXICO; REPUBLIC OF MOLDOVA; MONTENEGRO; NEW ZEALAND; NORTH MACEDONIA; NORWAY; SINGAPORE; SWITZERLAND; THE SEPARATE CUSTOMS TERRITORY OF TAIWAN, PENGHU, KINMEN AND MATSU; THE UNITED KINGDOM; URUGUAY AND VANUATU (WT/GC/W/823)

B. URGENT TRADE POLICY RESPONSES TO THE COVID-19 CRISIS - COMMUNICATION FROM THE EUROPEAN UNION TO THE WTO GENERAL COUNCIL (WT/GC/231)

C. MINISTERIAL DECLARATION ON COMBATING, MITIGATING AND RECOVERING FROM THE IMPACTS OF COVID-19 AND BEYOND – COMMUNICATION FROM THE SEPARATE CUSTOMS TERRITORY OF TAIWAN, PENGHU, KINMEN AND MATSU (WT/GC/W/822)

Thank you, Chair,

My intervention covers both agenda items 7 and 8.

The ACP Group thanks you for your statement. We also thank the Facilitator for his report and acknowledge the contributions of Members in WT/GC/W/823, WT/GC/231 and WT/GC/W/822 which is critical in light of the global circumstances posed by the Covid-19 pandemic.

Chair,

The WTO has been fairly responsive to the impact of the pandemic. Initiatives taken to date include monitoring of trade measures, publication of reports on trends in trade, collaboration with other international organisations, facilitating discussions in committees and negotiation groups, initiation of processes with a view to map out the WTO's response to the effects of the pandemic with a dedicated facilitator and very recently, Chair, the Director General's convening of events that bring vaccines stakeholders together.

We are seeing progress with the reduction of restrictive measures implemented in light of the pandemic with continued reports on specific trade concerns faced by members. These initiatives should continue and be bolstered, as trade restrictive measures negatively affect the trade and economies of ACP Group members. A uniform approach is critical that considers both health and trade that aims to eliminate unilateral measures that could further exacerbate the situation of our vulnerable members.

The ACP Group believes that the WTO should further enhance the pace at which it collaborates with key international organisations such as the IMF, World Bank and regional organisations or country groupings to complement initiatives underway in these frameworks.

It is advisable that the WTO's response to the pandemic be guided by core principles. These principles could include equitable and efficient access to Covid-19 vaccines therapeutics and related products, preservation of trade flows, international coherence, inclusivity, transparency, respect for WTO rules and adaptation to a post COVID-19 global economy that embraces the positive changes occasioned by the pandemic, while enabling members to manage issues that have emerged. Our focus should be on building back better.

There are at least three approaches that the WTO should pursue in its response to the pandemic:

- One, **trade and health**-There should be a coordinated and timely response to the health dimension of the crisis, similar to what is now in progress in the TRIPS Council. We welcome text-based negotiations on the waiver and it is critical to have a text adopted prior to MC12. We urge

Members to prioritise discussions on the waiver with a view to arriving at an amicable conclusion that improves access to medical supplies to respond to the pandemic.

In parallel, the TRIPS Council initiative could be complemented by improving the pace at which COVID-related medical and health products are processed at the border, removing unnecessary trade related bottlenecks, export restrictions including tariffs and raw materials, in order to better facilitate transactions involving these products along the supply chain. Additional measures to monitor, safeguard and expedite procedures for vaccine inputs to be more predictable for manufactures is critical to sustain production and needs

Further WTO needs to continue to collaborate closely with the World Health Organisation and private sector stakeholders involved in the production and trade of these items.

- Two, it is important to streamline the recovery and rebuilding initiatives in the work programmes of WTO Committees and negotiating groups, bearing in mind that the impact of the pandemic is likely to be prolonged, and the lag effect as well as the severity of the impact, will vary from country to country, most likely depending on their trade capacity. Developing countries such as those in the ACP Group will be disproportionately affected. The rebuilding work in the WTO should involve both a focus on the impact of the present crisis, facilitating development-oriented and capacity-building work to address these crises to mitigate the current circumstance, and establishing a blueprint for future similar events.
- Three, **monitoring and reporting**- the WTO should continuously monitor and evaluate the impact of the crisis on trade and report findings so that the relevant committees can take them into account in their work. The objective is to ensure that the pandemic does not interrupt world trade nor impede the integration of developing countries and LDCs into the global economy and global value chains, safeguard measures to sustain the vulnerable and worst affected must be instituted to expedite recovery for such economies.
- Four, **collaboration with global economic governance organisations**- the WTO Secretariat should continue and enhance its collaboration with other international organisations, such as the United Nations, IMF, World Bank and Regional Development Banks, to ensure that global

economic recovery is coherent, timely, inclusive and incorporates trade as an important element of global recovery. The objective should be to ensure that issues such as reduced access to trade finance, trade restrictive measures and possible trade distorting subsidies emanating from stimulus programmes, all of which we have seen throughout the crisis, have a lasting negative impact on trade flows. This is critical to the survival of MSMEs, as they are disproportionately affected by the fall-out from the pandemic.

We are already witnessing a third wave of infection of COVID 19 and new variants which will continue to stall our economic recovery and rebuilding. We need to work urgently to prioritise these elements of the negotiations with available WTO tools, that can ensure equitable access to affordable vaccines and medical supplies, required to help us all to combat COVID 19. We look forward to working closely with you Chair and Ambassador David Walker in this regard.

In closing, Chair, we will continue to approach discussions on the WTO's response in a solution-seeking mode. We believe that outcomes from these discussions should contribute to the successful adaptation of developing countries and LDCs to a post-pandemic trading environment and provide a blue print on how the WTO should respond to similar future occurrences.

I thank you, Chair!

AGENDA ITEM 11 PROCEDURAL GUIDELINES FOR WTO COUNCILS & COMMITTEES ADDRESSING TRADE CONCERNS

Thank you Chair

At the outset, let me start by thanking the co-sponsors for their submission on this agenda item as contained in document **WT/GC/W/777/Rev.6**.

The ACP is of the view that there are certain systemic benefits which accrue to all WTO Members when they are allowed to address trade concerns through the relevant Councils and Committees of the organisation. Literature from the WTO Secretariat and elsewhere suggest that these benefits include enhanced transparency; they permit clarification of trade measures between and amongst Members; they

allow Members to signal their support for the trade concerns of other Members; and importantly, they contribute to reducing friction within the WTO.

Furthermore, we are all aware that pursuing formal dispute settlement can be costly and onerous for some Members, especially developing and least-developed country Members with resource constraints. Therefore, having recourse to address trade concerns through the relevant WTO Councils and Committees provide a mechanism for Members to address trade grievances without expending the political and economic capital required by formal WTO dispute settlement.

The proposal before us is a clear attempt at further institutionalising the mechanisms to address trade concerns and to expand their *formal* use to other Committees. This has arisen given the success to date of the existing mechanisms. On the surface, the overall thrust of the proposal is constructive.

The ACP recognises that there are potential benefits to be derived from strengthening the ability of regular WTO Councils and Committees to facilitate the effective consideration of trade concerns, to the extent that it improves efficiency, is inexpensive, and increases the robustness of the processes concerned.

However, we have to be mindful that there is the potential to impose additional financial and institutional burdens on developing and least-developed country Members. Essentially, some elements of the proposal would require technical assistance, training, a greater commitment of time and ACP human resources, and in some cases funding. We should also proceed cautiously in seeking to establish deadlines that are difficult for smaller delegations to meet.

We must also give further consideration to whether it is best to establish horizontal procedural guidelines across various WTO Councils and Committees, including in issue areas which differ substantially, and which may require specific guidelines which are fit for purpose.

Chair

The ACP believes that the current proposal could benefit from further consultations across the WTO Membership, and we stand ready to engage. Therefore, we are not in a position to endorse the proposal at this time, and we trust that proponents will accept our invitation to carry out further outreach to Members.

Thank you, Chair

AGENDA ITEM 12

SUPPORTING THE CONCLUSION OF FISHERIES SUBSIDIES NEGOTIATIONS FOR THE SUSTAINABILITY OF THE OCEAN AND FISHING COMMUNITIES - DRAFT MINISTERIAL DECISION - COMMUNICATION FROM BRAZIL (WT/GC/W/815)

The ACP would like to thank the delegation of Brazil for putting this item on the agenda.

We re-affirm our full commitment to concluding the fisheries subsidies negotiations as soon as possible, preferably, before the 12th WTO Ministerial Conference. We would also wish to ensure that we conclude a quality agreement that delivers on the SDG14.6 and MC11 mandates. The WTO's fundamental objectives of prohibiting certain forms of harmful subsidies that contribute to overfishing and overcapacity and IUU fishing, while preserving the sovereign rights of Members within their maritime jurisdiction, and, allowing for sufficient policy space for developing countries and LDCs to develop the capacity of their fisheries sector in a manner that responsibly seize the benefits to be derived from the ocean economy.

In 2018, *only ten* of the largest subsidizing fishing countries in the high Human-Development Index (HDI) category together accounted for 64 percent of the global total fisheries subsidies.¹ Total subsidies provided by all high HDI countries amounted to 87 percent, which represents a bulk share of the total. In contrast, estimations from the same global dataset reveal that 62 developing WTO Members, which form the African, Caribbean and Pacific (ACP) Group at the WTO, together account for only 4.7 percent of total global marine fisheries subsidies. ACP and African Group Members are predominantly not subsidising or engaged in large-scale industrial fishing. It would therefore be a priority of these negotiations, in line with our mandate to eliminate certain forms of subsidies that contribute to overfishing and overcapacity, to target large subsidisers that provide 81 percent of global subsidies based on proportionate burden and responsibility sharing. We are concerned that the term 'sustainable development' is often used in a manner that does not reflect the reality that exist in the fishery sector today.

The ACP is also on record in saying that special and differential treatment provisions of the agreement should allow for and foster the responsible development of the fisheries sectors in developing countries and LDCs.

Chair,

¹Soumaila et al. (2018). *Updated estimates and analysis of global fisheries subsidies*. Marine Policy 109 (2019).

We believe that we all have an interest in ensuring that fishing at all levels remain sustainable based on determinations and policies by national authorities. There is no single common international standard by which sustainability can be assessed given the different ecological and regulatory frameworks that exist. However, what we need is to ensure that the most appropriate sustainability standards should be applied having regard for a myriad of different circumstances that Members find themselves in and the type of information they rely on to take such decisions.

We urge Members to constructively engage in discussions in order to achieve an outcome by MC12. The ACP does not believe that whatever little time remains should be invested in negotiating a draft ministerial decision on sustainability. All our efforts should go into finalising an outcome on fisheries subsidies negotiations.

AGENDA ITEM 13

G90 DECLARATION ON SPECIAL AND DIFFERENTIAL TREATMENT – COMMUNICATION FROM SOUTH AFRICA ON BEHALF OF THE G90 (WT/GC/234)

Special and differential is a fundamental pillar of the WTO and should not be dispensed with in current nor future agreements. We believe that an outcome for MC12 based on the G90 proposals would assist our national efforts to stabilize our trade imbalances, including those arising from the COVID-19 pandemic, build back better and successfully integrate into the global economy and global trading system. In this regard the ACP supports the G90 Declaration on Special and Differential Treatment contained in WT/GC/234.

The COVID-19 pandemic is expected to slow down or even reverse some of the gains made in the realization of the SDGs, as indicated in the Sustainable Development Goals Report 2020 (United Nations, 2020). According to the OECD Global Outlook on Financing for Sustainable Development 2021, the COVID-19 crisis hit us at the dawn of the Decade of Action for the SDGs (2020-2030). Based on this report, more developing countries entered economic recession than at any time since the Second World War, with more than 73% (90 of 122) of low and middle-income countries impacted. Increasing the share of international trade of developing and least developed countries and empowering them with policy space and flexibilities to enable them to diversify and industrialise their economies will accelerate their recovery and promote their resilience to future shocks. Strengthening and operationalising S&D provisions in line

with the mandate in paragraph 44 of the Doha Ministerial Declaration is, therefore, now a matter of urgency and survival for our people.

The ACP also wants to thank the Chair of the CTD SS for her monumental efforts to facilitate discussion of the G90 Agreement Specific Proposals (ASPs). The G90 has made efforts to negotiate in good faith. As the ACP, we remain concerned about the lack of engagement by some Members.

The ACP stands ready to engage with the broader membership on how SDT can be made more effective and appropriate to the prevailing circumstance that many developing, and least developed countries continue to face. As we move towards MC 12, clear parameters to deal with SDT need to be agreed and put in place. We ask for a further engagement on the G90 Agreement Specific Proposals to be facilitated by the Chair in order to finalise recommendations to the ministerial conference.

AGENDA ITEM 15

PROPOSED GENERAL COUNCIL DECISION ON PROCEDURES TO ENHANCE TRANSPARENCY AND STRENGTHEN NOTIFICATION REQUIREMENTS UNDER WTO AGREEMENTS

Mr. Chairman, thank you. I take the floor on behalf of the ACP Group. We also thank the co-sponsors for their submissions on this agenda item.

The ACP Group considers transparency and notification requirements to be particularly important areas. Transparency reduces information asymmetries and contributes to predictability in the trading environment which is beneficial for all Members.

The Group remains concerned about the punitive measures contemplated in document **JOB/GC/204/Rev.6** under the heading Administrative Measures. Should punitive measures and sanctions be introduced as instruments for promoting compliance with transparency and notification obligations, as proposed, this will serve only to further alienate many developing countries from the WTO, may even undermine the already faltering capacity of members to agree on future binding commitments and be further marginalised in the WTO system.

Furthermore, the ACP Group observes that punitive measures relating to a breach under a covered agreement, if imposed without recourse to the dispute settlement process, may constitute unauthorised enforcement, and be of uncertain legality.

It must be emphasized that failure to adhere to notification obligations is not wilful on the part of many developing countries. These countries face formidable capacity and institutional constraints in meeting the numerous regular and ad hoc notifications required under the WTO Agreements. For the ACP Group, therefore, the starting point must be engagement in meaningful dialogue on the underlying reasons for non-compliance by developing and least developed countries. These reasons would include, but are not limited to, notification templates which remain too complicated; limited technical and human resources; and difficulties relating to domestic inter-agency coordination, especially as transparency and notification obligations increasingly impinge on a large number of national agencies and economic actors.

The ACP Group believes that the **Working Group on Notification Obligations and Procedures** can be usefully reactivated for the purpose of this important discussion.

The ACP Group further shares the view, also expressed by some other Members, that transparency should not be limited to compliance with notification obligations. It must permeate the entire functioning of the WTO system, including areas such as the scheduling of meetings, the conduct of negotiations, and in the preparation, organisation, and decision-making relating to Ministerial Conferences.

Special attention should also be paid to conformity by developed countries with transparency and notification requirements that have the effect of facilitating or contributing to improved market access for developing countries, especially those pertaining to technical barriers to trade and phytosanitary measures, and to the establishment of mechanisms such as facilitation and enquiry points.

Additionally, the role of the Secretariat should be strengthened in regard to transparency and notification obligations, but we recommend that this should be achieved primarily through enhancing further its supportive role in providing technical assistance to developing and least-developed Members. However, the ACP Group does not contemplate any role for the Secretariat to make notifications on behalf of Members. Furthermore, the Secretariat should work closely with developing and least-developed Members in identifying and addressing their technical assistance and capacity building needs regarding transparency and notification, and this role should be strengthened.

In closing, proposals with respect to transparency and notification must be thoroughly examined and tested against the fundamental principles of the WTO, which are without fault such as the consensus rule in decision making. Essentially, the work on all elements of WTO reform should be handled in a holistic manner that allows the participation of all Members.

Finally, while the ACP cannot acquiesce to the Draft Decision before us today, we will remain engaged and constructive in discussions on every aspect of reform. We are also developing a contribution which we hope to put forward in the General Council in the not too distant future.

I thank you, Chair.

Agenda Item 17

STRENGTHENING THE MULTILATERAL CHARACTER OF THE WORLD TRADE ORGANIZATION – REQUEST FROM THE AFRICAN GROUP

Thank you, Chair!.

The ACP Group thanks the African Group for its submission contained in WT/GC/W/825, titled *Strengthening the Multilateral Character of the World Trade Organization*. This submission is not only timely but is relevant as WTO members continue preparation in earnest for the MC12.

Like other areas of international cooperation, the multilateral trading system faces challenges but it remains an importance pillar of the global architecture. If the MTS is to be effective in contributing to the growth and sustainable developments of all its members, especially the most vulnerable among us, it must be underpinned by the principles of non-discrimination, predictability, inclusivity, decision making by consensus, transparency and development-orientation.

Chair,

The ACP Group wholeheartedly supports the African Group's view that decision by consensus must be the modus operandi in the WTO. In fact, this is a longstanding position of the ACP Group. Decision by consensus has played a critical role in the WTO in bringing balance to decision making and negotiated outcomes, catering especially for smaller economies with less capacity. Decision by consensus does not always deliver on legitimate expectations, as we have seen in the case of the impasse over the appointment of Appellate Body members, but it is the most durable solution in the interest of all WTO members. We, therefore, jealously guard against any attempt that may undermine this fundamental principle within the WTO.

It is within this context that the ACP Group urges caution against the current proliferation of plurilateral initiatives in the WTO. While we believe that plurilateralism is not new to the WTO, as witnessed with the

Government Procurement Agreement, for example, we believe that plurilateral discussions should not undermine the coveted tradition and principle of multilateralism in the WTO. Additionally, any plurilateral outcome must be accepted by consensus by the WTO's membership in accordance with Articles 9 and 10 of the Marrakesh Agreement. We align our sentiments to the African Group's call for the restoration of the Appellate Body. Without adequate confidence that the dispute settlement system will be able to bind members' adherence to existing rules, we believe that it could affect negotiation of new ones. Our Ministers should be presented with a reform work programme to this effect at MC12. It is time to resolve the Appellate Body impasse. A two-tier, transparent, independent dispute settlement system, as envisaged by the DSU, is critical to the functioning and credibility of WTO.

The Covid-19 pandemic has highlighted the interconnectedness of our world and while causing disruptions on several fronts has also presented an opportunity for us to demonstrate what can be achieved through shared collaboration.

The global community is keenly observing the WTO and is expecting deliverables at MC12. As members of the WTO, we have the moral obligation to ensure the Organization continues to perform its roles and responsibilities and it remains relevant and fit for purpose.

The ACP Group thanks the African Group for its submission and encourages all WTO members to have deeper engagement and discussion on this matter.

I thank you Chair.