

**Committee on Trade and Development
Special Session**

**SPECIAL SESSION OF THE COMMITTEE ON
TRADE AND DEVELOPMENT**

Report by the Chairman, Mr. Faizel Ismail (South Africa),
to the General Council

I. INTRODUCTION

The July 2004 Decision reaffirmed that provisions for special and differential (S&D) treatment are an integral part of the WTO Agreements and directed the Special Session to expeditiously complete the review of all the outstanding Agreement-specific proposals and report to the General Council with clear recommendations for a decision, by July 2005. The Special Session was also instructed to address all other outstanding work, including on the cross-cutting issues, the monitoring mechanism and the incorporation of S&D treatment into the architecture of WTO rules, and report, as appropriate, to the General Council. In addition, the General Council instructed the WTO bodies to which Category II proposals had been referred, to expeditiously address them and report to the General Council with clear recommendations for a decision no later than July 2005.

II. STATUS OF WORK

Since the adoption of the July Decision, the Special Session of the Committee on Trade and Development (Special Session) held 5 formal meetings on 28 October, 7 December 2004, 8 February, 6 April & 10 May and 19 July 2005. A large number of informal meetings were also held.

The initial consultations mainly focussed on possible approaches that would take the S&D Work Programme forward, as well as to elicit Members' views on what they wished to do with the 28 Agreement-specific proposals that they had earlier agreed to in principle. During these discussions, most Members felt that addressing the remaining Agreement-specific proposals in the same way as had been done in the past was unlikely to result in any progress. They felt that it would be more productive if the underlying issues that the proposals were seeking to address were identified and the proposals then discussed on the basis of their categorisation into thematic clusters. With respect to the package of 28 Agreement-specific proposals, a number of Members expressed the need to strengthen the package before considering its adoption. There were, however, differences in perception about what would constitute a strengthened package. Some Members felt that strengthening the package required reopening it and revisiting some of the proposals in order to make them more precise, effective and operational; others, however, felt that the package already represented recommendations that Members had agreed to and that the package should instead be strengthened by adding more proposals to it.

Members, in these consultations, also expressed concern about the lack of progress on the Agreement-specific proposals that had been referred to other WTO bodies and agreed that the Special Session should maintain a supervisory role on the work being carried out on those proposals, including by calling for periodic reports from these bodies.

In December 2004, I put forward a conceptual approach to Members for consideration based on consultations held with Members in several informal groups. This approach was based on a number of elements that had emerged during the discussions namely that: (i) flexibility in WTO rules should facilitate development; (ii) these flexibilities should be made available on a situational basis, whilst ensuring that there is no a priori exclusion of any developing country from such a situational flexibility; (iii) there should be a multilateral monitoring of the use of these flexibilities; (iv) enhanced capacity-building programmes should be developed to assist countries to implement WTO rules and address supply-side constraints; and (v) these flexibilities must be consistent with a multilateral rules-based system. The approach also envisaged a possible redrafting or merger of the remaining Agreement-specific proposals based on an identification of the underlying development issues raised therein.

While Members appreciated the effort in attempting to find a way forward and were cautiously positive, they raised a number of concerns on certain elements of the suggested approach. Some Members felt that the conceptual approach focussed more on a review of the basic concepts of S&D, rather than towards making the existing S&D provisions more precise, effective and operational. In that context, they felt that any approach on future work should be in line with the mandate contained in paragraph 44 of the Doha Ministerial Declaration and paragraph 12 of the Decision on Implementation-Related Issues and Concerns. They stressed that the Special Session should begin examining the remaining Agreement-specific proposals, especially if "clear recommendations for a decision" were to be made by the July 2005 deadline. Some of these Members also raised concerns that the approach would lead to discussions on the cross-cutting issues which they felt should only be taken up once work on the Agreement-specific proposals had been completed. At the same time, other Members felt that having a discussion on the cross-cutting issues was important as this would help Members in making progress on the Agreement-specific proposals. These Members also felt that the approach seemed to give undue emphasis on development being the end purpose of S&D, instead of integrating developing countries into the multilateral trading system, which they felt should be the main objective of S&D. Although further consultations were held to allay these concerns, differences among Members on the best way to proceed could not be bridged. However, Members did agree to begin work on the remaining Agreement-specific proposals, giving priority to the proposals made by the LDCs.

Accordingly, Members took up the five remaining LDC Agreement-specific proposals identified by the LDC group, which included proposals on the Understanding in Respect of Waivers of Obligations under the GATT 1994, the Enabling Clause, the Agreement on Trade-Related Investment Measures and the Decision on Measures in Favour of Least-Developed Countries.

During the past few weeks, I have held very intensive consultations on the LDC proposals. Members have generally been sympathetic towards the problems faced by the LDCs. At the same time, many Members have expressed concern about the automaticity, open-endedness and self granted exemptions being sought by the LDCs in some of their earlier proposals. While Members agree that it is important to provide the LDCs with a certain degree of flexibility and assistance in implementing the WTO Agreements, it is clear that there is a difference in perception about the nature and extent of this flexibility. A number of Members feel that any flexibility should be transitional and should be provided on the basis of a need that is assessed collectively by Members. Other Members, including the LDCs themselves, believe that there must be a degree of automaticity in granting these flexibilities. The LDCs have also proposed that where they have difficulty in implementing obligations, it should be mandatory for the developed country Members to provide technical assistance. While most developed country Members accept the importance of providing technical assistance to the LDCs, they do not agree that this should be mandatory.

Despite these concerns, Members have been able to make progress and there has been definite and discernible progress during the consultations towards greater convergence of positions, especially

from Members' initial positions. Members have engaged very constructively in the process, and the LDCs too have been very forthcoming in their willingness to redraft their proposals on the basis of concerns expressed and suggestions made by Members. It is also noteworthy that Members which have concerns on the proposals remained constructively engaged with the LDCs in assisting them in the revision of their proposals. As a result, Members have been able to bridge many of their differences on most of the LDC proposals. However, in spite of Members' goodwill and flexibility, certain key issues remain unresolved. As a result, the Special Session is not in a position to make specific recommendations on any of the remaining Agreement-specific proposals. But I am hopeful that we should be able to bridge most of the differences in the coming months, especially since Members have time and again expressed a strong commitment towards finding solutions to the development challenges faced by LDCs.

In addition to the work done on the LDC proposals, Members have also had a first reading of the remaining African Group proposals. These discussions have revealed a rather wide divergence of views on most of the proposals, especially with respect to the proposals in Category III. The proponents have indicated their willingness to redraft their proposals in a manner that would take into account some of the views expressed on their proposals.

III. FUTURE WORK

While significant progress has been made on the Agreement-specific proposals tabled by the LDCs, the Special Session will no doubt need to continue to work on the LDC proposals and other remaining Agreement-specific proposals and report on them with "clear recommendations for a decision" to the General Council by the Hong Kong Ministerial Conference. This work shall continue to be done within the parameters of the mandate contained in paragraph 44 of the Doha Ministerial Declaration, paragraph 12 of the Decision on Implementation-Related Issues and Concerns and the July 2004 Decision.

The Special Session will also need to continue to monitor and coordinate its efforts with that of the negotiating groups and other WTO bodies to which the Category II proposals have been referred by the General Council.

Furthermore, as mandated in the July Decision, the Special Session should also continue, within the parameters of the Doha mandate, to address all other outstanding work, including on the cross-cutting issues, the monitoring mechanism and the incorporation of S&D treatment into the architecture of WTO rules, as referred to in document TN/CTD/7 and report, as appropriate, to the General Council.
