

**Committee on Trade and Development
Special Session**

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

Report by the Chairman, Ambassador Burhan Gafoor (Singapore),
to the General Council

I. INTRODUCTION

1. In pursuance of the work programme on special and differential treatment (S&D) launched at the Doha Ministerial Conference, developing countries and the least-developed countries (LDCs) tabled a total of 88 Agreement-specific proposals in the Special Session of the Committee on Trade and Development (Special Session). Thirty-eight of these proposals (Category II proposals) were referred to other negotiating groups and WTO bodies for consideration. Of the proposals remaining in the Special Session, Members reached an in-principle agreement on 28 proposals.¹ These proposals, which are yet to be formally adopted, are contained in Annex I.

2. At the Hong Kong Ministerial Conference, Members adopted five decisions in favour of the LDCs.² Ministers also instructed 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 December 2006. Ministers also expressed concern at the lack of progress on the Category II proposals that had been referred to other WTO bodies and negotiating groups and asked these bodies to expeditiously complete the consideration of these proposals and report periodically to the General Council, with the objective of ensuring that clear recommendations for a decision were made no later than December 2006. The Special Session was also instructed, within the parameters of the Doha mandate, to resume work on all other outstanding issues, including on the cross-cutting issues, the Monitoring Mechanism, and the incorporation of S&D treatment into the architecture of WTO rules, and report on a regular basis to the General Council. However, despite all efforts, Members were unable to meet the stipulated deadline, partly because of the fact that formal negotiations remained suspended for over 6 months during this period.

II. STATUS OF WORK

3. Since the resumption of negotiations, the Special Session has held two formal meetings (19 March and 26 April 2007) and a number of informal plurilateral consultations at which Members have had a text-based discussion on 7 of the 16 remaining Agreement-specific proposals. These discussions have led to revised texts on 6 proposals. These are, three proposals relating to Article 3.5 of the Agreement on Import Licensing, two proposals relating to Article 10.3 of the SPS Agreement and one proposal relating to Article XVIII of the GATT. The revised texts on these 6 proposals, which are contained in Annex II, are not agreed in any final way and will require further consultations. Nevertheless, the fact that we have revised language for 6 proposals represents an important step forward for the work of the Special Session. As for the seventh proposal, which relates to Article 10.2

¹ Annex C of JOB(03)/150/Rev.2.

² Annex F of WT/MIN(05)/DEC.

of the SPS Agreement, Members have yet to come up with revised language. It is my intention to continue my informal consultations over the next several weeks on these 7 proposals.

4. On the remaining 9 Agreement-specific proposals, wide divergences still exist and it is my view that it will be difficult to reach convergence on the basis of the existing language. For this reason, I have urged and I continue to urge Members to put forward new ideas or table alternative language so as to take the process forward. It is my assessment that until and unless Members do so, there would be no value in continuing discussions on these proposals as this would only lead to a repetition of positions already known. It is therefore my intention to set aside these 9 proposals and take no further action on them for the time being.

5. During the discussions on the Agreement-specific proposals, the LDCs have continued to emphasize the importance of quick and effective implementation of the duty-free, quota-free (DFQF) market access decision adopted at Hong Kong. It may be recalled that the LDCs had formally tabled two submissions in the Committee, one on rules of origin and the other on market access.³ Discussions on the submissions have been very preliminary and despite Members being urged to provide questions and seek clarifications in writing, none have been received. The LDCs have indicated to me that they are concerned by this lack of engagement and they have urged that Members put forward any questions that they may have to take the discussions forward. The few Members that have provided preliminary remarks, have said that negotiating common preferential rules of origin is not realistic especially in light of the difficulties being currently experienced in the negotiations on the harmonization of multilateral rules of origin. There are also differences of view as to whether the issues relating to market access and rules of origin should be discussed and negotiated in the Special Session. On my part, I will continue to encourage and facilitate dialogue between the stakeholders to ensure speedy and effective implementation of the decision. At the same time, I am happy to report that a number of Members have informed the Special Session of the domestic processes that they have put in place and the other steps they have taken, or are intending to take shortly, to provide LDCs with DFQF market access in keeping with the decision taken at Hong Kong.

6. As for the Category II Agreement-specific proposals being considered in other WTO bodies, the proponents continue to be concerned about the lack of progress on them. I had recently written to all the Chairs of the bodies to which the Category II proposals have been referred, highlighting the need to urgently conclude work on the proposals in accordance with the Hong Kong Ministerial Decision. Though these Chairpersons will be individually reporting on the progress in the May meeting of the General Council, based on the preliminary feedback that I have received, it is clear that the status on the majority of the proposals remains unchanged in that essentially not much progress has been made.

7. As for the mandate on all other outstanding issues, I am pleased to report that Members have made some progress. In particular, Members have been considering possible elements of a Monitoring Mechanism. I have held a number of consultations on the basis of certain questions that I had circulated to Members. These questions essentially focus on the possible scope and structure of the Mechanism, as well as its relationship with other existing and proposed monitoring mechanisms. Members have said that the Monitoring Mechanism should be simple, practical and efficient and take into consideration other existing as well as proposed monitoring mechanisms. They would also like the Mechanism to have a simple structure that can evolve, as necessary. The basic aim of the Mechanism is to monitor the implementation and effectiveness of S&D provisions in the existing agreements as well as those that will result from the Doha Round of negotiations. Broadly speaking, Members believe that the Mechanism could function at two levels, i.e. the political and the technical. At the technical level, the monitoring process could take place in dedicated sessions of the Committee on Trade and Development (CTD). The review would take place on the basis of both submissions made directly to the CTD by Members, as well as on the basis of reports received from other WTO

³ TN/CTD/W/30 and W/31, respectively.

bodies, where Members have raised specific issues related to the implementation and effectiveness of the S&D provisions. At the political level, the General Council would review and take decisions on this issue based on submissions made directly by Members and/or on the feedback provided to it by the reports of the dedicated sessions of the CTD.

8. As a result of intensive informal consultations, we have been able to identify some common elements of the Monitoring Mechanism, which I have circulated as a Chairman's non-paper to all Members at the last formal meeting of the Special Session. These elements, a copy of which is attached at Annex III, are by no means agreed or exhaustive, but they represent a basis for our continued work over the next several weeks. My intention is to continue consultations on the Monitoring Mechanism by building on the common elements that have already been identified.

III. FUTURE WORK

9. I have repeatedly stressed to Members in the Special Session, that in light of the fact that the Chairs of the different negotiating bodies may be asked, at the appropriate stage, to table texts as part of the multilateral process to conclude the negotiations, it is important that when that time comes, the Special Session should be ready to do the same. I have, therefore, with the help of Members, begun identifying the possible elements of a package on S&D. It is my preliminary assessment that such a package will include the Agreement-specific proposals on which Members reach an agreement in the Special Session and the 28 Agreement specific proposals that were earlier agreed to in-principle, as well as a possible framework of the Monitoring Mechanism. I do not, of course, exclude other elements of a package on which convergence may emerge in future consultations.

10. In preparation for this S&D package, my intention is to continue consultations on the remaining Agreement-specific proposals, especially those on which we have made some progress, in the hope of reaching convergence and making clear recommendations to the General Council. I intend also to continue my informal consultations on the implementation of the DFQF market access decision. At the same time, I want to again stress, as I have done in the past, that this is one area where Members need to reach out and talk to each other. Ultimately, it is Members that have to implement the decision, not the Chairman. In accordance with my mandate, I will also continue to coordinate with the Chairpersons of the WTO bodies to which the Category II proposals have been referred in order to keep track of progress on these proposals. On the outstanding issues, I would like to build on the elements of the Monitoring Mechanism that Members have identified for further discussions.

Annex I*

GATT 1994 - Article XVIII:C

"The Ministerial Conference instructs the Council on Trade in Goods to develop and adopt procedures for recourse to Article XVIII:C. The concerns raised by developing countries, especially the least-developed countries, including those related to the suspension of concessions or other obligations under Article XVIII:C, shall be addressed."

GATT 1994 - Article XXXVI

"The Ministerial Conference agrees that the Committee on Trade and Development shall annually review the implementation of Article XXXVI of GATT 1994, and report to the General Council with concrete recommendations, as agreed, no later than the last General Council of each year."

GATT 1994 - Article XXXVII

"The Ministerial Conference agrees that any Member may initiate discussions in the Committee on Trade and Development on the basis of Article XXXVII and decides that a Member shall, upon request, provide a detailed explanation to matters raised in regard to the provisions under paragraph 1, with a view to reaching a solution that is satisfactory to all Members concerned."

GATT 1994 - Article XXXVIII

"The Ministerial Conference instructs the Director-General to pursue and conclude cooperation arrangements as may be necessary to further the objectives set forth in Article XXXVI of the GATT 1994. The Ministerial Conference further instructs the Committee on Trade and Development to receive studies and reports from relevant international agencies and organizations that may assist Members in analyzing the development plans and policies of individual developing and least-developed country Members, export potential and market prospects over the short and medium terms, measures that could be taken in the WTO framework and by other international agencies and organizations as well as the assistance required by developing and least-developed country Members to help achieve their respective development goals."

Understanding on the Interpretation of Article XVII of the GATT 1994

"While acknowledging that the provisions of Article XVII of the GATT 1994 apply to all Members, Members recognize that state trading enterprises may have a significant role to play in promoting and protecting public policy objectives in developing and least-developed country Members."

Understanding on Balance-of-Payments Provisions of the GATT 1994 –Paragraph 8

"The Ministerial Conference mandates the Committee on Balance-of-Payments Restrictions to examine ways and means of simplifying the administrative requirements within the full consultation procedures."

*This Annex contains the recommendations on the 28 proposals agreed to in principle but yet to be adopted as contained in Annex C of the draft Cancún Ministerial Text - JOB(03)/150/Rev.2.

Enabling Clause

"The Ministerial Conference confirms that the terms and conditions of the Enabling Clause shall apply when action is taken by Members under the provisions of this Clause."

Agreement on Agriculture – Article 15.2

"The Ministerial Conference confirms that least-developed country Members remain exempt from reduction commitments, as provided in Article 15.2, unless decided otherwise by consensus."

PSI Agreement - Article 3.3

"(a) The Ministerial Conference agrees that technical assistance for purposes of the Agreement on Preshipment Inspection shall address the concerns of developing and least-developed country Members relating among others to:

- (i) training customs and revenue officials to promote and achieve the objectives of the Agreement on Preshipment Inspection through the activities defined in Article 1.3 of the Agreement, in order to ensure the proper inspection of consignments to be exported to the user Member, and the prevention of false declaration, wrong classification and any fraud;
- (ii) regulation of preshipment entities.

(b) The Ministerial Conference further agrees that customs authorities of Members shall, in accordance with paragraph 8.3 of the Decision on Implementation-Related Issues and Concerns, closely cooperate in the context of the Agreement on Customs Valuation, and of the Decision Regarding Cases where Customs Administrations Have Reasons to Doubt the Truth or Accuracy of the Declared Value."

Agreement on Rules of Origin

"In regard to preferential rules of origin under the Common Declaration in Annex II to the Agreement, the Ministerial Conference agrees that in their arrangements for mutual reduction or elimination of tariff or non-tariff barriers, developing and least-developed country Members shall have the right to adopt preferential rules of origin designed to achieve trade policy objectives relating to their rapid economic development, particularly through generating regional trade.

Furthermore, the Ministerial Conference instructs the Director-General to take action to facilitate the increased participation of developing and least-developed country Members in the activities of the Technical Committee on Rules of Origin of the World Customs Organization as well as to coordinate with this organization in identifying technical and financial assistance needs of developing and least-developed country Members, and report to the Committee on Rules of Origin and the Council for Trade in Goods periodically, and the General Council as appropriate."

Agreement on Import Licensing Procedures – Article 1.2

"It is understood that the requirement to take into account the "development purposes and financial and trade needs of developing country Members" in Article 1.2 of the Agreement means that the burden of the administrative procedures used to implement import licensing regimes shall be further reduced in order to facilitate trade of developing country Members and minimize possible adverse effects to their trade, including by making import licensing procedures as expeditious as possible."

GATS – Article IV

"Pursuant to Article IV.3 of the GATS, in all services negotiations, whether broad-based rounds of negotiations or separate negotiations on specific sectors, modalities shall be developed in order to allow the priorities of least-developed country Members to be presented and duly taken into account."

GATS - Article IV.3

"The Ministerial Conference agrees that the information to be provided by Members shall indicate how the requirement that special priority be given to least-developed country Members in the implementation of paragraphs 1 and 2 of Article IV is being met, and that contact points, in this context, shall provide information of particular interest to services suppliers from least-developed country Members."

GATS – Article XXV

"The Ministerial Conference instructs the WTO Secretariat to pursue with a view to concluding arrangements with relevant international institutions that have the technical assistance capacity to assist developing and least-developed country Members in addressing their supply-side and infrastructural constraints and their development needs in the services sector. This shall be without prejudice to the prerogative of the Council for Trade in Services to decide upon technical assistance to developing countries which shall be provided at the multilateral level by the Secretariat, in accordance with Article XXV.2."

GATS, Annex on Telecommunications – Paragraph 6

"The Ministerial Conference instructs the Council for Trade in Services to put in place arrangements for prompt notification of any measures taken with regard to the implementation of subparagraphs (a) to (d) of paragraph 6 of the Annex on Telecommunications."

TRIPS Agreement – Article 66.2

"Members, having regard to Article 66.2 of the Agreement on Trade-Related Aspects of Intellectual Property Rights, and having regard to the decision of the TRIPS Council of 19 February 2003, contained in document IP/C/28, reaffirm that this decision be expeditiously implemented in a way that ensures the monitoring and full implementation of the obligations in Article 66.2."

TRIPS Agreement – Article 67

"The Ministerial Conference agrees that technical and financial cooperation, in accordance with Article 67, shall be provided on request and on mutually agreed terms and conditions, with due consideration given to comprehensive programmes comprising such components as improving the relevant legal framework in line with the general obligations of the Agreement, enhancing enforcement mechanisms, increasing training of personnel at the various levels, assisting in the preparation of laws and procedures in an effort to encourage and monitor technology transfer, making use of the rights and policy flexibility in the Agreement, and strengthening or establishing coordination between intellectual property rights, investment and competition authorities.

The Ministerial Conference instructs the Council for Trade-Related Aspects of Intellectual Property Rights to annually review the state of implementation of the Agreement between the World Intellectual Property Organization and the World Trade Organization, taking into account opportunities for technical assistance as provided for in the Agreement."

TRIPS Agreement – Article 70.9

"For purposes of the requirement to grant exclusive marketing rights during transition periods, it is understood that there is a clear distinction between "patent rights" on the one hand and "exclusive marketing rights" on the other. Patent rights are set out in Article 28 of the TRIPS Agreement. Exclusive marketing rights are not the same as patent rights. Members have the right to define exclusive marketing rights, so long as the definition accords with the meaning of the term in the TRIPS Agreement as interpreted under the rules of public international law. There is no requirement to grant exclusive marketing rights unless marketing approval is granted in that WTO Member for which exclusive marketing rights is sought."

Understanding on Rules and Procedures Governing the Settlement of Disputes – Article 8.10

"Pursuant to Article 8.10 of the DSU, the Ministerial Conference agrees that in disputes between a developing country Member and a developed-country Member, at least one panellist shall be from a developing country Member, unless the developing country Member party to the dispute waives this right."

Decision on Measures in Favour of Least-Developed Countries – Paragraph 2 (v)

"The Ministerial Conference agrees that the WTO through its participation in the Integrated Framework and JITAP and other relevant institutions will work to ensure that supply-side constraints of the LDCs are identified in the Diagnostic Trade Integration Studies (DTIS) and are addressed in the implementation and follow-up taking into account the specific circumstances of each beneficiary country. The Ministerial Conference also instructs the Sub-Committee on LDCs to undertake a biennial review of the implementation of the DTIS and to monitor the possible impact of assistance that is targeted towards the diversification of exports from LDCs, including through comparing the composition and concentration of LDCs' export structures over time and across LDCs and through the establishment of other relevant indicators."

Rules Relating to Notification Procedures

"Recognizing the practical difficulties faced by least-developed country Members in abiding fully by their notification obligations, the Ministerial Conference instructs the Sub-Committee on Least-Developed Countries to examine possible improvements to the notification procedures for least-developed country Members, taking into account the experience regarding Secretariat produced reports that helped fulfil some of these requirements. In conducting its examination, the Sub-Committee shall seek the input of relevant WTO bodies, which may be in a position to advise on practical means for improving the notification procedures in relation to least-developed country Members, for example the possibility of longer timeframes, specified exemptions and simplified procedures for notifications, and cross-notifications. The Committee on Trade and Development shall forward the Sub-Committee's report to the General Council by 31 December 2003 for appropriate action."

Enabling Clause

"The Ministerial Conference agrees that in formulating schemes under paragraph 2(a), (b) and (c) of the Enabling Clause, and in furtherance of paragraph 3 thereof, developed-country Members will take into account, among other factors, the needs of developing and least-developed country Members and consult with them with a view to ensuring that their products of export interest are accorded meaningful market access. The Committee on Trade and Development will annually review the progress made in this regard and report to the General Council with recommendations, if any."

Review of Progress on Market Access for Least-Developed Countries

"We recall paragraph 2(d) of the Decision on Differential and More Favourable Treatment, Reciprocity and Fuller Participation of Developing Countries, and Members' commitment to the objective of duty-free, quota-free market access for products originating from least-developed countries, as contained in paragraph 42 of the Doha Ministerial Declaration. The Ministerial Conference agrees to review the progress made in providing access to the least-developed countries on the above basis."

Decision on Measures in Favour of Least-Developed Countries – Paragraph 2 (ii)

"Without prejudice to the binding commitments that may result from work under Paragraphs 13, 16 and 42 of the Doha Ministerial Declaration, and building upon our commitment in the Doha Ministerial Declaration, Members shall continue to expeditiously pursue the objective of duty-free and quota-free market access for products originating from [all] least-developed countries in a manner that ensures security and predictability. We urge Members to adopt and implement rules of origin so as to facilitate exports from least-developed countries."

Decision on Measures in Favour of Least-Developed Countries – Paragraph 2

"We agree that:

(a) Taking into account their development needs, least-developed countries, following application, shall in principle be eligible for extensions of their transition periods; where relevant procedural provisions exist in the WTO agreements, those provisions shall apply.

(b) Technical assistance to least-developed countries shall aim among other things to remove their supply-side constraints which limit their ability to benefit from the WTO Agreements, including market access opportunities and development of domestic productivity. In this context, the Ministerial Conference also instructs the Director-General to consult other institutions on programmes/assistance related to supply-side constraints in least-developed country Members to determine what additional technical assistance may be made available."

Decision on Measures in Favour of Least-Developed Countries – Market Opportunities Enabling Clause– Paragraph 3(b)

"Accepting that extension of differential and more favourable treatment to developing countries should not constitute an impediment to the reduction or elimination of tariffs on an MFN basis, but recognizing that as WTO Members pursue improved MFN tariff liberalization some Members may have concerns about adjusting to the loss of preferences, we agree that this issue be considered, in close coordination with other relevant international organizations, with a view to identifying possible ways, including targeted assistance programmes, by which LDCs should be assisted."

GATT 1994 – Article XVIII:B

"In determining the need for taking measures under Article XVIII:B, full consideration shall be given to the impact of the volatility of short-term financial flows on the level of external reserves or surpluses of Members."

Annex II*

(13) GATT 1994 - Article XVIII

- (i) It is understood that the provisions of Article XVIII aim to promote the progressive development of economies which can only support low standards of living and are in the early stages of development.
- (ii) Therefore, this Article shall be implemented, interpreted and applied by Members and in all the WTO processes in a manner that fully supports the attainment of these goals. [Therefore, these provisions shall be (implemented, interpreted and) applied in a manner that facilitates the attainment of the goals mentioned in Article XVIII.]
- (iii) In particular, developing and least-developed country Members shall not be expected to undertake measures that would undermine the attainment of these goals. [In particular, Members shall not be expected to undertake measures that would undermine the attainment of these goals.] [In particular, developing and least-developed country Members shall not be subjected to requirements and conditions that would undermine the attainment of the goals of Article XVIII.]
- (iv) Due account shall be taken of the rights of other Members, and in particular the rights of those Members coming within the scope of Article XVIII 4(a).
- (v) [To simplify procedures under this Article, Members undertake to elaborate a multilateral framework on the provisions of this Article, at the next Ministerial Conference] [Members agree to develop and adopt procedures for recourse to Article XVIII].

(24 - 25) SPS Agreement – Article 10.3

The General Council agrees that with a view to ensuring that developing country Members are able to comply with the provisions of the SPS Agreement, they shall be eligible for specified, time-limited exceptions in whole, or in part, from the obligations under this Agreement. In this regard, the Committee shall give positive and expeditious consideration, and take a decision as appropriate within [x] days, on any request made by such Members under Article 10.3 of the Agreement, taking into account their individual financial, trade and development needs.

(28-30) Agreement on Import Licensing Procedures – Article 3.5

While all Members shall endeavour to provide import statistics with respect to products subject to import licensing for the purpose of enhanced transparency, the General Council agrees that for purposes of subparagraph (a)(iv) of Article 3.5, developing country Members shall not be expected to do so in cases where this will cause them additional administrative or financial burden beyond their capacity.

*This Annex contains the revised language on 6 of the remaining Agreement-specific proposals being currently considered by Members.

The General Council further agrees that:

- (a) Article 3.5(j) of the Agreement implies [mandatory and] non-discretionary obligations on the part of the Members; and
- (b) In the allocation of licenses, special consideration shall be accorded to existing and new importers of products originating in developing, and in particular least-developed country Members.

Annex III*

Non-Paper

Possible Elements of the Scope & Structure of the Monitoring Mechanism

Structure

- A simple, practical and efficient mechanism, that complements other existing, as well as proposed, monitoring mechanisms.
- Allows for a regular high level review of issues related to special and differential treatment in the WTO.
- Allows also for a bottom-up, horizontal and transparent process that would enable, *inter alia*, information sharing and compliance monitoring.
- Gives sufficient visibility to the importance of special and differential treatment (S&D) issues in the WTO.
- To begin with, it can function at two broad levels:
 - At the first level, the monitoring process can take place in dedicated sessions of the CTD. The review would take place on the basis of both submissions made directly to the CTD by Members, as well as on the basis of reports received from the other WTO bodies, where Members have raised specific issues related to the implementation and effectiveness of the S&D provisions.
 - At the second level, the General Council would review and take decisions, as appropriate, on this issue based on submissions made directly by Members and/or on the feedback provided to it by the reports of the dedicated sessions of the CTD.
- The structure will be reviewed in the future, taking into account the actual functioning of the Mechanism, and evolving circumstances.

Scope

- Monitor the implementation and effectiveness of S&D provisions in the existing agreements in line with paragraph 44 of the Doha Ministerial Declaration.
- Monitor the implementation and effectiveness of S&D provisions that will result from the Doha round of negotiations.
- Address concerns identified by Members and provide recommendations that will improve the implementation and effectiveness of S&D provisions, in order to enable developing countries' further integration into the Multilateral Trading System.
- Provide a forum at which Members can raise any other issues related to the implementation and effectiveness of S&D provisions.

*This non paper was circulated at the formal meeting of the Special Session held on 26 April 2007.