

**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 Trade Negotiations Committee and the General Council

I. INTRODUCTION

1. As mentioned in my report to the General Council on 7 May 2007¹, Members had reached an in-principle agreement on 28 Agreement-specific proposals in the lead-up to the Cancún Ministerial Conference in September 2003.² These proposals, which are yet to be formally adopted, are contained in Annex I. At the Hong Kong Ministerial Conference in December 2005, Members adopted five decisions in favour of the LDCs.³ Additionally, Ministers mandated the Special Session of the Committee on Trade and Development (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; and
- resume work on all other outstanding issues, including on the cross-cutting issues, the Monitoring Mechanism and the incorporation of S&D into the architecture of WTO rules and report on a regular basis to the General Council.

2. Furthermore, the bodies to which the 38 Category II proposals had been referred, were instructed to complete consideration of these proposals and report to the General Council, with the objective of ensuring that clear recommendations for a decision are made no later than December 2006. In this regard, the Special Session was directed to continue to coordinate its efforts with these bodies, so as to ensure that this work was completed on time.

II. STATUS OF WORK

3. Since the last report to the General Council in May 2007, the Special Session has held two formal meetings (5 June and 11 July) and a number of informal plurilateral consultations at which work continued on all aspects of the mandate.

4. On the Agreement-specific proposals, Members continued to engage in text-based discussions on seven of the 16 remaining Agreement-specific proposals. In particular, the discussions focussed on the proposal relating to Article XVIII of GATT and the two proposals relating to Article 10.3 of the Agreement on Sanitary and Phytosanitary Measures (SPS). The discussions also explored possible alternate language for these two issues. In order to facilitate the process, I circulated a revised draft text at the meeting on 11 July 2007 on Article XVIII of GATT that attempted to capture

¹ TN/CTD/19.

² Annex C of JOB(03)/150/Rev.2.

³ Annex F of WT/MIN(05)/DEC.

the key ideas that emerged in the informal and formal discussions. It was my sense that Members remain divided on this proposal. Both proponents and opponents expressed unhappiness with my draft revised text on Article XVIII. The proponents thought the text had gone too far away from their original proposals, while others thought it had moved too much in the opposite direction. Nevertheless, no Member rejected the revised draft text that I had tabled as a basis for future work. This is an encouraging development. Similarly, on the two proposals relating to Article 10.3 of the SPS Agreement, I tabled revised draft language on the basis of informal and formal discussions, and taking into account ideas put forward by the delegation of New Zealand. Here too, it is my sense that the divergences remain. Nevertheless, Members thought that the revised language was a step in the right direction. As for the three proposals relating to Article 3.5 of the Agreement on Import Licensing Procedures, there is a greater degree of convergence but one outstanding issue remains in brackets. Overall, the revised draft texts on the six Agreement-specific proposals represent the result of more than 16 months of text-based negotiations since the Hong Kong Ministerial Conference. These texts, which are contained in Annex II, are still a "work-in-progress" but it is my view that they provide a good basis for continued work in the post-summer period. As for the seventh proposal relating to Article 10.2 of the SPS Agreement, discussions continued on the basis of new draft language tabled by India. On this issue, there remains a divergence at the conceptual level and it is not clear at this stage whether textual convergence is possible. Nevertheless, this is a proposal on which continued work is needed in the post-summer period.

5. As for the other nine remaining Agreement-specific proposals, I continue to hold the view (which I stated in my report to the General Council in May 2007) that there is no value in addressing these proposals unless and until Members (proponents or otherwise) put forward new ideas or new text to take the process forward. It is my assessment that, in the absence of new ideas or new texts, any discussion of these proposals would only lead to a repetition of well known positions. For this reason, it is my view that it is best to set aside these proposals and take no further action on them for the time being. As for the Category II Agreement-specific proposals which had been referred to other bodies, I have been in touch with the respective Chairpersons. However, I have not heard anything which connotes any significant development on these proposals.

6. During discussions on the duty-free quota-free (DFQF) market access issue, the LDCs have continued to stress the need for Members to ensure effective implementation of the decision. The LDCs had tabled two submissions, one on rules of origin and the other on market access.⁴ The LDCs have raised concerns over the apparent lack of Members' engagement on these submissions, and have expressed disappointment at the fact that only one Member has provided substantive feedback on them. On rules of origin, some Members have reiterated that attempting to negotiate preferential rules of origin is impractical and unrealistic, especially in light of the difficulties Members have been experiencing in moving the work programme on non-preferential rules of origin forward. It has been suggested that a workshop be held to increase the understanding of different Members' rules of origin regimes. On market access, I have continued to stress the need for the stakeholders to keep one another, and particularly the LDCs, informed of the domestic processes that they are undertaking to implement the decision. In this regard, I am pleased to say that there are already a number of developed country Members providing DFQF market access for at least 97 per cent of LDC exports at the tariff-line level and that a number of developing country Members are in the process of considering how they will provide DFQF market access to the LDCs. I continue to believe that taking the DFQF issue forward will require the major stakeholders to reach out to one another in order to resolve their differences to ensure full compliance with the decision as soon as possible.

7. Work on the other outstanding issues has continued to focus on the possible elements of a Monitoring Mechanism. Discussions have built on the common elements that had already been identified in a paper that I had tabled in April 2007 on my own responsibility. These elements include the establishment of a Monitoring Mechanism that is simple, practical and efficient and one that will

⁴ TN/CTD/W/30 and TN/CTD/W/31 respectively.

take other existing as well as proposed monitoring mechanisms into consideration. In addition, the Mechanism will have a simple structure that can evolve, as necessary. The basic aim of the Mechanism would be to monitor the implementation and effectiveness of special and differential treatment (S&D) provisions in the existing agreements as well as those that will result from the Doha Round of negotiations. In this context, it has been suggested that the Mechanism be more forward looking and monitor those S&D provisions that may result from future rounds of negotiations. Members believe that the Mechanism could function at two levels, the technical and the political level. At the technical level, the monitoring process would take place in dedicated sessions of the Committee on Trade and Development (CTD). Some Members have proposed that instead of dedicated sessions, the review process take place in a Sub-Committee. The actual 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 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. On the basis of further discussions in the informal and formal context, I have revised the paper which is contained in Annex III. Even though there are a number of elements which will require further discussion and clarification, Members indicated that the revised non-paper provides a good basis for continuing work in the post-summer period.

III. FUTURE WORK

8. The Special Session will need to build on the progress already made in the various areas of its mandate. On the Agreement-specific proposals, Members will need to work towards reaching convergence and making clear recommendations to the General Council in the shortest possible time. On the DFQF market access, Members will need to ensure speedy and effective implementation of the DFQF market access decision. On the outstanding issues, Members will need to reach agreement on the elements of a Monitoring Mechanism. It is my view that the Special Session should resume its work earnestly in September on the basis of the text contained in Annexes II and III, and build on the language that we have already on the table. It is my conviction that the work of the Special Session represents an important part of any overall package and it is therefore important that the work of this Committee keep up with the pace and progress in other areas of the negotiation.

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*

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. Therefore, the implementation of these provisions shall be carried out in a manner that facilitates the attainment of the goals mentioned in Article XVIII. While taking due account of the rights of other Members, developing and least-developed country Members shall not be expected, in the context of Article XVIII, to undertake measures that would undermine the attainment of these goals. Members agree to review and simplify the procedures laid down 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 no later than at the third meeting at which the request is considered and in any case within 12 months, on any request made by such Members under Article 10.3 of the Agreement, taking into account their individual financial, trade and development needs. Furthermore, Members shall facilitate the provision of technical assistance if requested by a developing country Member in relation to its request for a specific time-limited exception.

(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.

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.

*This language was circulated to Members at the formal meeting of the Special Session held on 11 July 2007.

Annex III*

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 (S&D) in the WTO, aimed at improving the implementation and effectiveness of S&D provisions.
- 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 S&D issues in the WTO.
- To begin with, it will function at two broad levels:
 - At the first level, the monitoring process will take place in [dedicated sessions] [Sub-Committee] of the CTD. The review would take place on the basis of both submissions made directly to the [CTD] [Sub-Committee] by Members, as well as on the basis of reports received from the other WTO bodies, to which submissions can also be made.
 - At the second level, the General Council would review and take decisions, as appropriate, on the basis of recommendations made by the [CTD] [Sub-Committee].
- 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.
- Provide a forum at which Members can raise any other issues related to the implementation and effectiveness of S&D provisions.

*This revised non-paper was circulated at the formal meeting of the Special Session held on 11 July 2007.