

# WORLD TRADE ORGANIZATION

RESTRICTED

TN/CTD/M/24

7 June 2006

(06-2707)

---

## Committee on Trade and Development Twenty-Fourth Special Session

### NOTE ON THE MEETING OF 7 APRIL 2006

*Chairman: Ambassador Burhan Gafoor (Singapore)*

A.	ADOPTION OF THE AGENDA .....	1
B.	AGREEMENT-SPECIFIC PROPOSALS .....	1
C.	ALL OTHER OUTSTANDING ISSUES .....	7
D.	OTHER BUSINESS .....	15

#### A. ADOPTION OF THE AGENDA

1. The draft agenda for the meeting as contained in airgram WTO/AIR/2789 of 27 March 2006 was adopted.

#### B. AGREEMENT-SPECIFIC PROPOSALS

2. The Chairman began by updating Members on the status of the Category II proposals which had been referred to other WTO bodies and negotiating groups. He noted that paragraph 37 of the Hong Kong Ministerial Declaration had mandated the Special Session to "continue to coordinate its efforts" with the other bodies, so as to ensure that the work on those proposals was completed on time. In pursuance of that mandate, he had written to the Chairpersons of the bodies to which the Category II proposals had been referred, stressing the need to expedite work on those proposals, and also requesting them for an update on the status of work on the proposals. The Chairpersons had also been asked to communicate the dates of the meetings at which the S&D proposals were likely to be taken up, so as to inform Members in advance of those meetings. He had received responses from the Chairpersons and, as requested, copies of the responses were available at the back of the room.

3. The Vice-Chairman of the Safeguards Committee had informed him that despite the large number of meetings that had been held, no consensus had been forthcoming on the proposals. In the Vice-Chairman's view, it was difficult to make progress as there was no consensus among Members. In addition, the proponents had not been actively pursuing the proposals. The Vice-Chair therefore considered that, without prejudice to any new developments or any action that the proponents might take in the future, the proposals referred to the Committee would be set aside. The next meeting of the Committee was scheduled for 24 April and the S&D proposals would be taken up at that meeting only if the proponents so indicated.

4. The Chairman of the Negotiating Group on Rules had indicated that although the S&D proposals had been on the agenda of the Group's meetings on several occasions, discussions had been only of a preliminary nature. Except for a proposal on Article 27.1 of the Agreement on Subsidies

and Countervailing Measures, the proponents had either not attended the meetings or had not been in a position to provide justifications and clarifications on their proposals. The Chairman had scheduled a meeting cluster for the Negotiating Group in May, June and July at which he would be pleased to take up the proposals, if the proponents so indicated.

5. The Chairman of the TRIMs Committee had indicated that although the Committee had held several formal and informal meetings to consider the S&D proposals, Members had been unable to reach an agreement on them. The main divergence had been on the coverage of countries that should be allowed to temporarily deviate from the prohibition to apply TRIMs. Fundamental differences in Members' positions still remained concerning the country coverage and the temporal horizon for the application of the proposals. Discussions were ongoing, based on which the Chairman would decide whether or not to hold further consultations on the proposals. In any case, the S&D proposals were due to be discussed at the next formal meeting of the TRIMs Committee scheduled for 9 June.

6. The Chairman of the Committee on Agriculture in Regular Session had informed him that with regard to the African Group proposal on the framework of the Decision on Measures Concerning the Possible Negative Effects of the Reform Programme on Least-Developed and Net Food-Importing Developing Countries, the discussions had not advanced since he had last reported to the General Council in December 2005. In that report, he had stated that from the consultations undertaken on the proposal, it was clear that the African Group was not going to revise its original proposal. For some Members, the proposal as it currently stood was unviable as it dealt with questions which were largely outside the WTO's terms of reference. The Chairman had said that some of the proponents also recognised that certain aspects of the Marrakesh Decision could be more effectively dealt with as part of the DDA negotiations. The Chairman had assured him that the Committee was ready to take up any amendments that might be tabled. However, if the circumstances remained the same when the subject was discussed at the next meeting scheduled on 12 May, then he would have to inform the General Council that the situation remained unresolved.

7. The Chairman of the TRIPs Council had informed him that at the Council meeting of 14 to 15 March, Members had authorized him to report that the situation, as reported by him in July 2005 and contained in document IP/C/36, was unchanged. The Chairman said that in view of this, no further action was presently contemplated in the Council. The Chairman had also stated that despite the fact that the S&D proposals had been put on the agenda of the Council's meetings in December 2004, March and June 2005, none of the proponents had taken up the proposals at any of those meetings.

8. The Chairman of the Special Session of the Dispute Settlement Body had indicated that the discussions that were due to take place on the Category II proposals at the meeting scheduled in October 2005 had, at the proponents request, been postponed to after the Hong Kong Ministerial Conference. The Special Session had since scheduled a number of meetings and the Chairman also intended to schedule a discussion on the Category II proposals. The Chairman had also indicated that he would keep him informed of the date of that meeting, as well as on any progress made.

9. The Chairman of the Sanitary and Phytosanitary Committee had informed that following consideration of the proposals at various meetings, the SPS Committee, on 30 June 2005, had adopted a report contained in document G/SPS/35, which among other things, reflected the underlying concerns the proposals were attempting to address as well as described the action that had been taken to address those concerns. The African Group had indicated that it was still considering revising some of its other proposals. The Chairman had also informed him that a one-day workshop on the implementation of the SPS Agreement had been held on 31 March 2006. The workshop identified tools that were already available to assist developing country Members in utilizing the SPS Agreement. The SPS Committee had scheduled an informal meeting on S&D, prior to its next regular

meeting scheduled to be held on 28 to 30 June 2006. If the African Group submitted further revisions to its proposals, then an additional informal meeting would be convened during the intervening period.

10. The Chairman of the Special Session of the Council on Trade in Services had informed him that in July 2005, the African Group had submitted a paper compiling responses to questions and comments regarding the S&D proposals in the GATS. It had been agreed at its meeting in September 2005, that the Special Session would revert to that issue at its first meeting held in 2006. At an informal meeting of the Special Session held on 7 February 2006, several Members had noted the importance of considering S&D in the Special Session this year. The Chairman had urged Members, to contribute further and to table new submissions on S&D in the GATS. The African Group had since been holding informal consultations with Members on some of its proposals, in an effort to narrow the differences. The issue would be discussed at the next Special Session meeting which was taking place that day.

11. The Chairman said that the only body from which a report was still awaited was the Special Session of the Committee on Agriculture. As soon as that report was received, he would update Members on the status of those proposals. He said that the reports from the Chairpersons of the different bodies clearly presented a stark picture of the situation. The reality was that Members had not been able to make much headway on the Category II proposals. Ministers had mandated Members to complete that work by the end of 2006. However, the reports by the Chairpersons had shown that progress had not been forthcoming. The Chairpersons had also highlighted that, in their view, the proponents needed to take the lead and engage in a dialogue with other Members and thereafter, if necessary, redraft their proposals. Some of the Chairpersons had also stated that unless the proponents indicated that some developments had taken place and signalled their desire to take up the proposals, they would not be on the agenda of the coming meetings. Clearly, it was up to the proponents to communicate their intention before the scheduled meetings and to prepare themselves in order to actively pursue those proposals in those meetings.

12. The representative of Kenya said that his delegation was not surprised at the reports that had been given by the various Chairpersons, because in 2003 when the proposals were being categorized the African Group had informed the then General Council Chairman of the difficulties it would have, due to its capacity constraints, of following the proposals in other bodies. The fact that Kenya was the focal point for all S&D issues made it difficult especially when parallel meetings were held, as was the case with the Special Session of the Committee on Trade in Services, a meeting which was being held at that very moment. He was expected to defend those proposals in that Committee, yet he had to be also present in the Special Session of the CTD. This problem had been identified in 2003, but the then General Council Chairman had still gone ahead and categorized the proposals, referring the Category II proposals to different bodies. In the run up to the Hong Kong Ministerial Conference, the African Group had again raised this issue and requested that all the Category II proposals be brought back for consideration in the Special Session. Members had again opposed that request for reasons that were not convincing. He now hoped that the reports that had been given by the various Chairpersons would convince them of the need to bring back the Category II proposals to the Special Session of the CTD. As long as those proposals remained in the subsidiary bodies, the problems would remain. Some of the Chairpersons had suggested setting aside some of the proposals if the proponents did not show interest. He said that the proponents were interested and probably more so than what they had been when the proposals were initially categorized. He requested the Chairman to assure the other Chairpersons that the proponents wished to see those proposals addressed and a decision taken in the General Council to bring the proposals back to the Special Session of the CTD. He said that the proponents had attempted to revise some of the proposals but other Members had still responded negatively to the proposals. He gave the example of the TRIMs proposal which had been initially drafted in favour of the least-developed and developing country Members. Since some Members had stated that not all developing countries would need further flexibility in TRIMs, the African Group, in the belief that Africa needed it more than any other continent, had revised the

proposal seeking the flexibility only for African countries. However, Members had opposed the revised proposal even more. So even in cases where the proponents were showing flexibility, they were not making any headway. Members would therefore need to consider other approaches to ensure that progress was made on the Category II proposals.

13. With respect to the status report received from the SPS Committee, the representative of Egypt said that progress had been made on the African Group proposals on Article 9.2 of the SPS Agreement on which they had tabled revised language at the last meeting. That language was welcomed by Members and the African Group was committed to further revise its other proposals. He said that in several reports there were nuances that the proponents had not been present at some of the meetings. The reasons for this had already been explained. He also referred to paragraph 3 of the report by the Chairman of the Committee on Agriculture in Regular Session which stated that "it became clear that the African Group did not intend to revise the original proposal as previously announced". He clarified that this was because the African Group had intended to revise its proposals after receiving feedback from other Members on its proposals which had not been forthcoming. That paragraph also stated that "disappointment was expressed by the proponents at the absence of any counter-proposal". The problem was that sometimes Members did not provide any alternate language on the proposals; they just expressed concerns on the proposals. In order to revise proposals, Members needed to engage in discussions that were not dismissive of the proposals but which rather provided concrete suggestions. There was a feeling that some of the proposals would be addressed as part of the ongoing negotiations and would therefore not need to be addressed separately. Therefore, in some cases progress on the proposals was linked to progress in the Doha negotiations. So it was also an issue of anticipating when the final outcome in the negotiations would be reached.

14. The Chairman clarified that he had merely reported what the Chairman of the Committee on Agriculture in Regular Session had stated, which was that some of the proponents too recognized that certain aspects of the Marrakesh Decision could more effectively dealt with as part of the DDA negotiations. The Chairman had however assured him that the Committee was ready to consider any revised proposals that might be tabled. He said that none of the comments that he had made on the Category II proposals reflected his own views. They were all based on the reports that had been forwarded by the Chairpersons of the other bodies, copies of which had also been made available to Members.

15. The representative of Zambia said that her delegation was concerned at the assumption that the proponents were not interested in the Category II proposals. As had been mentioned by the representative of Kenya, the proponents faced capacity constraints and the lack of progress was an indication that there was a problem in the process. Members had only been able to make progress on the LDC proposals because of the amount of time that had been dedicated to addressing those proposals. Perhaps the only way Members could make progress on the Category II proposals was for them to be addressed in the Special Session as the other bodies did not have sufficient time to address them.

16. The representative of India said that since the Chairman had pointed out that the situation was not positive, he himself could perhaps suggest alternative ways in which the situation could be improved. The Chairman would recall that he had earlier stated that he realized the importance of the Category II proposals to developing countries and would raise the issue with the various Chairpersons. He asked the Chairman what he felt was the best way to move forward with the proposals. It was a matter of concern that the proponents faced capacity constraints because of which progress was not forthcoming. Members needed to consider whether bringing the proposals back to the Special Session would help. It was clear that for a variety of reasons there was no progress on the proposals being dealt with in the different bodies and it was important to consider how to get out of the logjam.

17. The representative of Switzerland said that her delegation was not certain that Members' participation in the Special Session was necessarily better than that in the other Committees. Perhaps the situation related more to the issues being dealt rather than the forum. For example, in the Special Session of the Committee on Agriculture, there were integrated teams working on particular issues. Therefore, the Category II proposals that had been forwarded to that Committee for consideration were not being dealt with as an integral part of the formal meetings, but rather as a separate issue. In that context, perhaps something could be done to streamline work on the Category II proposals into the main work of those Committees. Another reason for lack of progress was that some of the proposals were difficult and finding solutions had not been easy. There was no single reason as to why progress had not been forthcoming. Her delegation did not feel that bringing the Category II proposals back to the Special Session for consideration would solve anything or make the situation any better.

18. The representative of Pakistan said that work in the Committee on Trade in Services had been coordinated by providing timetables on when issues would be discussed. In that context, she suggested that a matrix be established, listing the bodies where the proposals were being addressed as well as the dates at which they would be addressed. That would enable the proponents to prepare themselves and know when discussions on the proposals would take place.

19. The representative of the United States said that her delegation was aware that the issue was one of expertise versus practicality. Her delegation had taken several steps to try and address the issues that had been raised by the proponents by encouraging the Chairpersons to hold special consultations. In fact, her delegation had tried to reach out to various groups such as the LDCs. She agreed with the representative of Egypt that the revised language by the African Group on the SPS side had constructive elements, which had reinvigorated the discussions. Perhaps with the ideas that had been suggested to expedite progress on the proposals, progress may be forthcoming. However, her delegation did not favour bringing back the Category II proposals to the Special Session. Her delegation believed that the expertise provided in those bodies, especially at this point in the negotiations, was critical.

20. The representative of Australia said that her delegation shared the view that it would not be appropriate to bring back the Category II proposals to the Special Session. There were several reasons for that. First, it would be a mistake to think that if the Special Session had dealt with those proposals, somehow more progress would have been made on them. Second, there were a number of good reasons why the Category II proposals were being dealt with in the different bodies; one of which was that that was where the expertise to deal with those proposals existed. The reasons for lack of progress were complicated and were not really related to the forum in which the proposals were being discussed but to their content. Members had fundamental concerns about some of those proposals; there was lack of clarity on the objective of certain proposals; and in some instances, the proponents had not actively pursued the proposals. In the March TRIPs Council meeting, although the proposals were on the agenda, none of the proponents took the floor in that meeting. Her delegation sympathized with small delegations and the difficulties that they faced in attending two meetings at the same time. She was not however certain this was the main reason why progress had not been made. Perhaps Members could consider requesting the relevant Committees which were dealing with those proposals to hold dedicated sessions to address the Category II proposals.

21. The representative of Ecuador said that her delegation supported the request made by the representative of Pakistan. Also as the representative of Australia had suggested, the Chairpersons of the bodies addressing the Category II proposals, should consider holding special sessions to address the Category II proposals. In her delegation's view, that was the most viable way of moving forward. Once a schedule of meetings was put together and special sessions scheduled, then she was certain that Members would be able to attend the meetings and progress could be made.

22. The representative of India said that Members should not exaggerate the inability of the Special Session to address some of those proposals and the fact that expertise to address the Category II proposals only existed in the various bodies. Members had already dealt with some difficult issues in the Special Session, such as the proposal on TRIMs and the proposal on duty-free, quota-free (DFQF) market access, which could have arguably also been referred to the negotiating group on NAMA or Agriculture. In the Special Session, Members had made the effort and got their experts when needed and dealt with the proposals in small groups. Clearly those were issues that could not be dealt with in formal meetings such as the one they were having, but could be dealt with in small groups. Progress would be forthcoming, provided there was political will to move.

23. The representative of Kenya said that Members needed to look at the mandate contained in paragraph 44 of the Doha Ministerial Declaration and paragraph 12 of the Decision on Implementation-Related Issues and Concerns. It was clear in those mandates that the Special Session of the CTD had been directed to undertake work on the S&D proposals. Had Ministers at the time of taking that decision felt that the issue of expertise was important, then they would have given suitable directions in this regard. He asked whether the question was one of the proposals lacking clarity or rather of Members not willing to adhere to the mandate. His delegation had no problem with the holding of dedicated sessions to address the Category II proposals if the majority of Members felt that was the best way to proceed. However, it was important that those sessions did not clash with other important meetings.

24. The Chairman said that he would be guided by what the Ministers had agreed at Hong Kong. With respect to the Category II proposals Ministers had asked the Special Session to continue to coordinate its efforts with the various bodies to ensure that they completed their work by December 2006. In that sense, there was scope for the Special Session to consider creative ways to coordinate its efforts with the other bodies. The suggestion made by the representative of Pakistan of creating a matrix also seemed useful. Tentative dates for upcoming meetings were already available and could therefore be incorporated into the matrix. Although the reports were not very positive, there was the possibility of making progress in some areas, for example in the SPS area. The proponents had raised a genuine problem relating to their inability to attend all meetings and it was important that efforts were made to avoid possible clashes of meetings. With respect to the ongoing Special Session of the Committee on Trade in Services, he said that the Special Session of the CTD had scheduled its meeting much in advance and had made that schedule available to Members. In that sense, Members should have sought alternate scheduling with the Chairman of the Committee on Trade in Services. He said that he would do his best to impress upon the other Chairpersons to avoid clashes of meetings. However, Members would also need to be vigilant against clash of meetings, because as the Chairman he could avoid clashes of the Special Session with other Committees, but he could not decide for other Chairpersons as to when they would hold their meetings. With respect to the suggestion to hold dedicated sessions to discuss the Category II proposals in the other bodies, he would raise that with the other Chairpersons at the meeting which he intended to hold shortly with them. In addition, he would inform the Chairpersons of the sentiments and concerns expressed on the Category II proposals.

25. The Chairman went on to say that he was aware that the decision on DFQF market access was of great importance to the LDCs as well as other stakeholders. He was also aware that there had been an exchange of views between interested delegations and that consultations on the issue were continuing. His sense was that all Members were committed to fully and faithfully implementing what Ministers had decided at Hong Kong. That was an encouraging sign. It was his understanding that no delegation wished to make any statements at that stage. He therefore proposed that Members move on and address the Category I Agreement-specific proposals. He said that the intention was for Members to make as much progress as possible on the remaining Category I proposals and to then move on and address the other outstanding issues. He said that he had held some informal consultations with several delegations on the remaining Category I proposals and his sense was that

stakeholders were committed to moving towards a middle ground; a sign that was encouraging. He said that at the last meeting, Members had discussed proposals 28 to 30 on Article 3.5 of the Agreement on Import Licensing and proposal 13 on GATT Article XVIII. Revised language had been prepared and circulated on the basis of those discussions. However, more work was needed to be carried out on those proposals. He proposed that Members take up the proposals on Article 10.3 of the SPS Agreement which consisted of two proposals; proposal 24 which had been tabled by a group of developing countries and proposal 25 which had been tabled by the African Group. The last language considered on those two proposals contained three sets of brackets which he hoped could be further narrowed.

26. During discussions (which were held in an informal mode) on proposal nos. 24 and 25 on Article 10.3 of the Agreement on Sanitary and Phytosanitary Measures, the proponents clarified that they were seeking flexibility from the provision of the SPS Agreement for developing country Members when importing from other Members. While Members appreciated this clarification, a number of them stated that it was not clear why the proponents were seeking additional flexibility, since no developing country had sought recourse to Article 10.3 in the past. One Member stated that paragraph 44 of the Doha Ministerial Declaration had mandated Members to review and make existing S&D provisions more precise, effective and operational and that utilization, or lack of it, should not prevent Members from fulfilling that mandate. Members also had a preliminary discussions on proposal no. 22 relating to the Understanding in Respect of Waivers of Obligations under the GATT 1994. A number of Members stated that they had had difficulties agreeing to a similar proposal for the LDCs and although they had been able to compromise their position at Hong Kong, they could not agree to the mandatory language being proposed for all developing countries. It was agreed that discussions would continue on these proposals.

#### C. ALL OTHER OUTSTANDING ISSUES

27. While introducing this agenda item, the Chairman said that paragraph 38 of the Hong Kong Ministerial Declaration had mandated the Special Session to "resume work on all other outstanding issues, including 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". He said that it was clear that Members needed to resume their discussions on all the other outstanding issues. However, as Chairman, he had no preconceived ideas as to what should be the focus, priority or outcome of that work. That was something for Members to decide. He sought Members' guidance on how to proceed on the outstanding issues. He would carefully listen to what Members had to say and see whether there were areas of convergence.

28. The representative of Kenya said that paragraph 13 of the African Group submission contained in document TN/CTD/W/3/Rev.2 specified the African Group's understanding of the cross-cutting issues. Some of the elements contained in paragraph 13 were yet to be discussed and he hoped that Members would get the opportunity to do so. This paragraph identified issues such as "clear legal rights to enforce the provisions as binding obligations" and "provisions setting out the details and mechanisms for implementing and complying with the binding provisions". In that sense, the notion of "binding provisions" referred to strengthened S&D provisions. Paragraph 13 also mentioned "appropriate institutions to determine issues concerning implementation and compliance with the obligations" and identified the CTD Regular Session and its subsidiary bodies as well as the Dispute Settlement Body and the General Council as being the bodies where that evaluation could be carried out. Also of interest to Members was sub-paragraph (e) which related to the Monitoring Mechanism, the role of which was to monitor the implementation and compliance of the strengthened S&D provisions. The African Group had tabled a further submission contained in document TN/CTD/W/23 explaining what was meant by the Monitoring Mechanism. The paper spelt out the functions of such a mechanism, including a regular evaluation of the utilization and effectiveness of the S&D provisions with a view to ensuring that the provisions were fully utilized and problems, if

any, effectively addressed. The mechanism could also provide a framework for initiating and considering recommendations that the CTD may make to ensure compliance with obligations under S&D provisions. Though the African Group was still interested in the establishment of a Monitoring Mechanism, it was important to first strengthen the S&D provisions. Therefore, the question was whether to begin discussing the elements of the Monitoring Mechanism right away or to wait until some progress had been made on strengthening the Agreement-specific proposals. Additionally, the African Group had also proposed the creation of a development framework. That proposal requested the Fifth Ministerial Conference to take a decision on the elaboration of a multilateral framework on the provisions of Article XVIII and Part IV of GATT 1994; in other words, it had proposed a development framework that would help those countries which were at low levels of development to make use of the flexibilities provided in the current and future WTO Agreements. These were the two areas that the African Group was keen to discuss further under the agenda item on outstanding issues.

29. The representative of the European Communities welcomed the reminder of the submissions made by the African Group on the Monitoring Mechanism. He agreed that the Monitoring Mechanism and the idea of establishing a broader development framework both merited further discussion. His delegation welcomed the opportunity to resume discussions on the outstanding issues and recognized that the work on the Agreement-specific proposals was important but was not the limit to the work that Ministers had mandated the Special Session to carry out. Different elements of the Special Session's mandate were mutually supportive. He made reference to earlier submissions tabled by his delegation on the cross-cutting issues contained in documents TN/CTD/W/13, W/20 and W/26. While those submissions remained valid, his delegation realized that a lot of time had since passed and Members did not necessarily have the same position they had had when those submissions had been tabled. Therefore, some elements of those submissions might no longer be relevant. However, work on the outstanding issues could begin with discussions on the Monitoring Mechanism. That was something that the General Council had, on the basis of the recommendation made earlier by the Special Session, agreed to establish but had remitted the task of working out the functions, terms of reference and structure of the Monitoring Mechanism back to the Special Session. At present, the Monitoring Mechanism was an empty vessel. For the Monitoring Mechanism to be useful, Members would have to ensure that it was forward looking and performed a function relevant to the landscape that would emerge after the conclusion of the DDA negotiations. In his delegation's view, there were a number of broad areas in which the Monitoring Mechanism could usefully contribute. It could ensure improved transparency by monitoring how the S&D provisions were working within the WTO system to help developing and least-developed countries better integrate into the global trading system, taking into account their different levels of development. This work would include monitoring all the existing S&D provisions in the legal texts and the provisions that would come into force after the end of the Round. Basically, this would cover all the types of S&D provisions which had been detailed by the Secretariat when Members had first began their work on S&D. The Monitoring Mechanism, which could function through the CTD, could also work as a transparency mechanism which would be tasked with preparing regular factual reports on the utilization of S&D provisions drawing on inputs from other WTO bodies and from individual Members. This would enable Members to have a global overview of how S&D was operating in the WTO system. On the basis of such an assessment, Members would be in a position to track the trends in the utilizations of S&D provisions and to identify best practise, and on that basis to draw appropriate recommendations. In addition, his delegation would be interested in exploring the contribution that the mechanism could make to a more focused identification and possible responses to the needs of developing countries in trade-related technical assistance and capacity building. The Monitoring Mechanism could also help Members in the implementation of their rights and obligations. Clearly, this would require a more proactive role in assessing and tracking the need and use of the S&D provisions and would help in addressing problems as and when they arose, thereby promoting the further integration of developing and least-developed countries into the multilateral trading system. The Monitoring Mechanism could also have a troubleshooting role in terms of dealing with problems, that might arise as Members implemented the results of the Doha negotiations. It would essentially be a more dynamic process



responsive to the needs of Members, capable of evolving in the light of the experience and expectations of Members. He said that these ideas were yet to be fully developed and his delegation was interested in hearing what other Members may have to say on those issues.

30. The representative of the EC went on to say that in its earlier submissions his delegation had set out its thinking on the broad principles and objectives of S&D. Many of those principles and objectives remained valid even as Members neared the end of the negotiations. He suggested that if Members were willing, those principles and objectives could be developed into a set of guidelines to help facilitate the operation of S&D provisions in the post-DDA period. The Monitoring Mechanism would of course be an important element of that. Members were aware of the deadline for the completion of the Round and some Members were sceptical about the ability to develop these ideas in the time they had. However, his delegation remained convinced that it was still possible to make progress in this area and that this progress would help in finding solutions in other elements of the outstanding work, including on the Agreement-specific proposals. If Members were able to work productively in this area, then they would be able to ensure that S&D provisions remained a proactive and dynamic tool to assist developing countries, and in particular the LDCs and other marginalized developing countries, which were least well placed to benefit from the commercial opportunities that would come out from the Round.

31. The representative of Japan said that it was clear from the mandate of the Hong Kong Ministerial Declaration that the Special Session had been given a specific timeline for completing work on the Agreement-specific proposals. It had also been mandated to resume work on all other outstanding issues. In a sense, Members had already fulfilled the mandate on the outstanding issues as that work had been successfully resumed. Considering the overall objective of S&D, which in his view was contained paragraph 44 of the Doha Ministerial Declaration, it would be useful to begin discussions on the Monitoring Mechanism which Members had already agreed to establish as well as consider the utilization of the existing S&D provisions. Given the time constraint, it was important for Members to have a common understanding on what to discuss under this agenda item. His delegation felt it was worth concentrating on discussions on the Monitoring Mechanism. He proposed four elements which Members could discuss in identifying the basic elements of a Monitoring Mechanism. The first, was to consider what the objective of the Monitoring Mechanism would be, in terms of why such a mechanism should be created. The second, was the scope of the mechanism, in terms of what should be reviewed and monitored. The third, was the structure of the mechanism, in terms of where and how often the review should be carried out in the individual WTO bodies. The fourth, was how to coordinate the review that would be undertaken. He said that the Monitoring Mechanism was an important element of the work on the outstanding issues, its establishment should not be rushed. There was first a need to have a common understanding of its elements.

32. The representative of Canada said that a considerable amount of time had passed since Members had last discussed the outstanding issues and this meeting was a good opportunity to take a fresh look at things. To his delegation, the Monitoring Mechanism was one of the most concrete elements of the outstanding issues and was perhaps the best point on which to begin discussions. As had been mentioned by the representative of the EC, it was at the moment an empty vessel and Members would need to develop its elements, some of which had been proposed by the representative of the EC. His delegation was aware of the need for Members to be pragmatic and realistic. His delegation was aware that even though there was no fixed timeline attached to completing work on the outstanding issues, these too needed to be completed before the end of the Round. Members therefore had a lot to accomplish in very limited time.

33. The representative of Mexico sought clarification from the representative of the EC on the elements of its earlier submissions which it felt were no longer relevant. She noted that the representative of the EC had stressed the need to further integrate developing and least-developed country Members into the multilateral trading system, taking into account their different levels of

development. She asked whether the EC had something specific in mind in terms of the different levels of development. She also sought clarification about what the representative of Japan had meant when he had mentioned that a review could be carried out in other bodies and asked about the sort of procedure that they may have had in mind.

34. The representative of China said that his delegation had revisited some of the proposed elements of the Monitoring Mechanism that had been tabled by the African Group. His delegation believed that many of those elements were valid and deserved careful consideration and discussion in the Special Session. Although his delegation was flexible on the elements of the mechanism, it would be important to ensure that it had a simple structure that would help Members in making the S&D provisions more effective and operational. The Monitoring Mechanism could possibly have two layers of review. The first, at the level of the CTD which could have a standing item on its agenda relating to the monitoring of the implementation of S&D provisions. Alternatively, a dedicated session of the CTD could be established which would be at the same level and would address the same issues. The second layer could revolve around the establishment of a Special Session of the General Council or a standing item on the agenda of the General Council. If necessary, an additional third layer could be introduced which could involve the preparation of a special report to each Ministerial Conference. The African Group had suggested that a sub-committee under the CTD be created to carry out the monitoring. In his delegation's view that would not be necessary because making the monitoring system more effective was a matter of goodwill. Once there was political will the mechanism would be implemented effectively. With respect to the terms of reference, his delegation believed that all the points raised in the African Group's submission as well as by the representative of the EC were relevant and deserved further consideration. In addition, discussing the possibilities for technical assistance and capacity building for the utilization of S&D provisions would be helpful. If Members found, after the review, that the S&D provisions were not proving to be effective and operational, then they could develop recommendations in this regard. That was something that could be considered under the Monitoring Mechanism's terms of reference. With respect to the broader cross-cutting issues, his delegation shared the views expressed by the representative of Mexico relating to the earlier submissions made by the EC. He too felt that some issues were not relevant to the mandate of the Special Session, or even to that of the WTO. Discussing those elements could confuse the situation. In his delegations view, it was not necessary to discuss issues such as the definition of a developing country or graduation. Members would never be able to reach a common understanding on those issues and discussing them would only waste the time of the Special Session.

35. The representative of Egypt said that his delegation was aware of the mandate relating to the other outstanding issues and the past submissions that had been tabled in that regard. The Monitoring Mechanism was important to African countries, as a result of which the African Group had tabled a submission in 2002. In light of the developments that had taken place since, the African Group would build on that proposal. He suggested that discussions on the Monitoring Mechanism be structured on the basis of those three elements which were not too different to those that had been proposed by the representative of Japan. The first, was to consider the objective of the mechanism and what it was going to do. The second, was the way in which it was going to fulfil that objective. The third, was the scope and terms of reference of the mechanism. In his view, the objective of the mechanism should be to regularly evaluate the utilization and effectiveness of S&D provisions. This should provide an avenue through which Members could make recommendations and propose ways to fully utilize the S&D provisions. This could be done either in the CTD or along the lines of how trade policy reviews were carried out. His delegation was flexible in that regard. As for the third element, that is the scope and terms of reference, this could be a little controversial. With respect to scope, he agreed with the representative of China that there could be layers of reviews in terms of the current S&D provisions as well as those that would result from the conclusion of the Round. However, since it was not clear how the S&D provisions would evolve, it made no sense to decide on the scope of the Monitoring Mechanism at this stage. It was like buying an insurance policy for an unborn child. For

the time being, it would be best to focus on the current S&D provisions. As for the terms of reference, a number of elements had been raised in the different interventions and submissions. Some Members had acknowledged that some elements contained in earlier submissions may no longer be relevant. He hoped that Members would be able to indicate those elements. His delegation was willing to begin work on the cross-cutting issues by focusing on the Monitoring Mechanism.

36. Without precluding the importance of other cross-cutting issues that might come later, the representative of Switzerland agreed that work on the outstanding issues could resume with discussions on the Monitoring Mechanism. In that regard, the African Group submission was a good starting point. She shared the views that had been raised by some of the other delegations and believed that a number of submissions that had been tabled would be useful for the discussions. Her delegation's submission (TN/CTD/W/14) also, contained elements that were not very different from the African Group's submission. Perhaps putting together all the different elements relating to the Monitoring Mechanism would facilitate the discussions. It was important to discuss the possible functions of the Monitoring Mechanism. In her view, these could be twofold. First, the mechanism could monitor the implementation of obligations under the Doha Round. Second, it could monitor the effectiveness of S&D provisions. Members could also consider how the provisions operated in reality. Her delegation felt that the Monitoring Mechanism should be structured in a flexible way and should have enough in-built flexibility to evolve.

37. On behalf of the ASEAN Members, the representative of Malaysia said that her delegation was willing to resume discussions on the outstanding issues. There were certain issues that had been implicitly mentioned in the discussions about which she echoed the caution that had been raised by the representatives of Mexico, China and Egypt. If Members were not careful then raking them up could impact further discussions on the outstanding issues. Since there was no specified deadline to complete work on these issues, there was no reason to rush through the work.

38. The representative of Kenya said that his delegation shared some of the views that had been expressed by the EC regarding the monitoring of strengthened S&D provisions. Coherence would also be an element to be considered. The African Group submission had in this context made reference to the role of international organizations such as UNCTAD and other international financial institutions. The elements of the Monitoring Mechanism suggested in the African Group submission were broadly along the lines of the elements suggested by the representative of Japan and he believed that was a good basis to begin discussions. The African Group submission reasoned why a Monitoring Mechanism should be established and had elaborated its possible functions. The Monitoring Mechanism should not duplicate what was being done in other bodies, but should instead make use of information from other bodies to help Members analyze and ascertain whether S&D provisions were being utilized, and were proving to be effective and operational. With respect to the structure, he agreed with the representative of China that Members needed to raise the profile of this review, and the suggestion of reporting to the Ministerial Conference was certainly something Members should consider. It was clear that Members were beginning from a common platform and what was now required was for them to have a common understanding on what they wished to establish.

39. In response to the query raised by the delegation of Mexico, the representative of the EC said that he did not think that this was the time to go through all of the EC's three submissions and highlight the points that were no longer relevant. With respect to his reference to different levels of development, he said that from the time he had come to Geneva and begun work on S&D issues, the objective of S&D and the work programme of making S&D provisions precise, effective and operational had been constantly repeated. The three words precise, effective and operational had been repeatedly used in the context of the Agreement-specific proposals. These words were, however, also relevant in understanding the nature of special and differential treatment and how it could be made into a user friendly element of the WTO system. It was evident that the term "developing countries"

covered a large number of Members which were not all at the same levels of development. As had been mentioned earlier by the representative of Kenya, one of the objectives of S&D was to assist those countries that were less developed than others. It was evident to all Members that some developing countries were in a better position than others in terms of their share and participation in world trade. If Members failed to take that into account then they would be failing in their task. It was therefore important to recognize that not all developing countries were in the same situation and were at different levels of development.

40. In response to the question of coordination, the representative of Japan clarified that his suggestion was for instance in areas such as the SPS Agreement where the CTD might find it difficult to follow the utilization of the SPS provisions. In such cases, an initial review process could be undertaken in the SPS Committee, the results of which could be then forwarded to the CTD, which could gather all such information and then see how to improve the implementation of the S&D provisions.

41. The representative of India said that a clear distinction had been drawn by Ministers in terms of the work that the Special Session was required to carry out and the timelines attached to different aspects of that work. Members were expected to come up with recommendations on the Agreement-specific proposals by December 2006. They were also expected to resume work on the outstanding issues and report on those issues on a regular basis. It was important for Members to keep in mind this priority and in that regard he appreciated the fact that most Members had alluded to this. With respect to the Monitoring Mechanism, his delegation agreed with the broad structure that had been suggested, thought it would need to revisit some of the submissions that had been tabled earlier. Given that negotiations were in the final stages, it was important to keep in mind that the bulk of the monitoring would have to be of the new and strengthened S&D provisions that Members finally adopted. The work on the Agreement-specific proposals, once completed, would provide a clearer picture of what the Monitoring Mechanism should do and how it should do it. Members also needed to bear in mind that Annex F of the Hong Kong Declaration already provided for a certain type of monitoring in the CTD. These were parallels that Members could consider. His delegation's concern was that there was still a lack of clarity about how different elements of the Monitoring Mechanism would be put in place. Therefore, issues such as when, at what stage and how the Monitoring Mechanism would work were important for the discussions of the Special Session. As for the other cross-cutting issues, Members were treading on dangerous ground. He had listened carefully to the explanation given by the representative of the EC about "different levels of development". While his delegation was open to discuss these issues, Members needed to be clear in their mind about what they were trying to achieve and the path they wished to proceed. The representative of the EC had stated that there was a lot of heterogeneity amongst developing countries, but there was a similar heterogeneity amongst developed countries, which too were at very different levels of development. In the same way that some countries used the term "advanced developing countries", a term which was inappropriate and not recognized in any intergovernmental organization, the term "advanced developed countries" could also be used to describe countries which had a greater role in the world trading system. Members, therefore, needed to be careful and decide what they really wished to discuss. It was for them to determine whether they wished to proceed on a path of confrontation or convergence. Once there was a clear understanding on this then Members would know where the discussions were headed and could formulate their response accordingly. His delegation was willing to listen with an open mind but it was important to know what the aim of the work was. If it was to come up with differentiation amongst, or divisions between, developing countries, then his delegation would strongly oppose it.

42. The representative of the United States said that the earlier submissions tabled on some of the outstanding issues could be a useful basis on which to resume work. Members had learnt a lot in terms of each others positions during the course of the earlier discussions on these issues. There had been other developments in the negotiations since then, which would need to be taken into account as

Members resumed their discussions. The renewed discussions presented an opportunity for Members to reconsider the merits of some of the ideas that had been tabled in 2002. Her delegation appreciated the fact that a number of Members had said that they were willing to engage on these issues. Her delegation was interested in considering ways that would make S&D more effective through a collaborative process of review and examination. Her delegation's goal had always been to work towards greater participation in the multilateral trading system and it believed that the WTO was an important tool towards that end. An important assumption was that all Members had a responsibility towards the system and that the basic objective was to come up with S&D provisions that were more effective, focused in delivery and attuned to the needs of countries wishing to advance their development goals through trade. Her delegation was aware of the little time that remained and the need therefore to be practical. Her delegation hoped to keep things simple. She agreed with those that had mentioned the need to sift through previous submissions and identify those ideas that were more reasonable to work with in the limited time that Members had. In that context, the suggestion made by the representative of Japan was useful. Her delegation was open as to how Members decided they would proceed on the issues of the effectiveness of S&D; problem solving; individual needs and concerns; and the idea of incorporating offensive market access elements. Her delegation believed that continuing discussions in dedicated informal sessions was a good way to proceed.

43. The representative of Costa Rica agreed that a lot had happened since Members had last discussed the outstanding issues. He said that the representative of India had been correct in highlighting the issue of the mandate. With respect to the Monitoring Mechanism, he said that Members could build on the structure that the representative of Japan had suggested. His delegation was ready to revert to earlier submissions and consider additional elements to work on. According to his delegation, S&D was supposed to provide flexibility to all developing countries, irrespective of the size of their economy. His delegation believed that whatever work Members carried out for developing countries, was for all developing countries and not for some. Sometimes proposals tabled to resolve problems faced by a group of developing countries, could result in discriminating against other developing countries. That was something that Members needed to avoid.

44. The representative of Kenya clarified that the African Group had made a proposal in 2002 to establish a multilateral development framework, based on the provisions of Article XVIII and Part IV of the GATT 1994. Though it had been mentioned that S&D was for all developing countries, there had been instances when certain S&D proposals had been challenged by other developing countries. If S&D was for all developing countries, why had these other developing countries questioned some of the S&D proposals. When WTO provisions themselves discriminated between developing countries, countries had not challenged this. He gave the examples of Annex VII of the Agreement on Subsidies and Countervailing Measures and the provisions for Net Food Importing Developing Countries and asked why no one had complained about that. Similarly, some developing countries had been given preferential treatment to assist them in moving away from growing narcotic crops, but no one had complained about that either. He had recently read about a panel report in which a Member of the WTO opposing preferences and waivers had argued that the reference to developing countries in the WTO did not automatically mean that it applied to all developing countries. Therefore, much as he understood the position of some developing countries, he did not understand the concern with respect to the African Group proposal on a development framework, when the entire Doha Work Programme was about development.

45. The representative of Japan agreed that there was no timeline to complete the work on the outstanding issues. However, Members needed to have a focused discussion on those issues. It was not as if Members were required to come up with concrete results on the outstanding issues before the end of the Round, but they needed to reach some convergence and make some progress.

46. In response to the representative of Kenya, the representative of Costa Rica said that it was clear that there were differences in view about what S&D meant. For his delegation, S&D was a

mechanism that could help developing countries integrate into the multilateral trading system, and help them develop without deviating from the basic rules. In many cases, what was being sought were exceptions to the principles and rules of the WTO which in his delegation's view was not right, because this meant that the interest of other developing countries would be prejudiced. The representative of Kenya had given the example of some developing countries taking the view that a reference to developing countries did not necessarily include all developing countries. His delegation certainly had difficulties with such a view and that was the reason why it had certain concerns with the granting of waivers and the erosion of preferences.

47. The representative of Brazil said that this type of discussion had the tendency to develop into an acuminous debate, because Members had different views on certain fundamental and philosophical issues about S&D. Real S&D was one that promoted development, by ensuring that trade liberalization benefited developing countries. Enhanced market access was therefore important in labour intensive sectors such as services, manufactures, agriculture, textiles and steel. Unfortunately, those were precisely the areas where the greatest restrictions existed. This was where there was a need for exemptions and flexibilities because a large number of developing countries were not in a position to undertake those commitments, at least not to the same extent as the advanced developed countries. The problem with preferences, was that at the beginning, preferences were intended to be generalized and non-discriminatory. Over time, given the unilateral nature of most preference-giving schemes, they developed into discriminatory schemes and generated a division among developing countries that received preferences and those that did not. There was a perverse collusion of interests among the most protected sectors in the developed countries and a number of developing countries receiving some kind of rent from the persistence of that protection. Lobby groups often stated that those distortions should be maintained because some developing countries benefited from them. Those were issues Members needed to address and find solutions for. The idea that somehow the problems Members faced in the WTO were because some developing countries which were better off did not wish to share the benefits with other countries was completely misleading. Members needed to go back to the original rationale for S&D. It was a lot like other public policies. Nobody questioned the provision of free schooling even though it benefited some more than others. The idea was that those who needed it the most should benefit the most. When discrimination involved something regressive like the provision of subsidies to the opera, the question could arise as to why public money was being used for people who did not really need it. That could then lead to the establishment of categories of people that may or may not need that kind of subsidy. The basic problem in this case was that the initial policy itself was regressive in the first place. Ideally, Members needed to liberalize those sectors which had the most distortions, in particular in developed country markets. Members had not yet been able to do that. Also, what Members were unlikely to achieve in the few months that remained until the end of the Round, was to establish some sort of mechanism to identify those who should, and should not, be eligible for S&D provisions. That was something that the Monitoring Mechanism could perhaps do in the future.

48. The representative of Kenya said that he agreed with the representative of Brazil that real S&D would be to liberalize trade in a way that created benefits for developing country exports. But that was dependent on a country's ability to export products. There was, therefore, a need for special and differential treatment that would help countries develop capacity to export. This was why the proposed development framework was based on Article XVIII and Part IV of GATT 1994, also because these provisions did not discriminate among developing countries. The concern that there could be some form of implicit discrimination in the development framework could be addressed once Members got there. The African Group's intention was to ensure that Africa was truly industrialised; in as much as that it did not just attract shopping malls but instead produced products that were sold in those malls.

49. The Chairman said that he sensed a constructive mood among delegations and a willingness to have a fresh look at some of the ideas that had been tabled in the past. The discussions had been

positive and had, to a large extent, made Members' views and concerns clear. However, a discussion, no matter how positive, was not an end in itself; and what was important was that discussions should lead to convergence. He said that Members needed to do three things. The first, was to "crystallise" their thoughts and ideas in terms of what they had in mind, in particular with respect to the Monitoring Mechanism. There were a number of useful ideas that had been raised in the discussion and in earlier submissions. Clearly, the Monitoring Mechanism meant different things to different Members and it was therefore necessary to build some commonality of views. It would be useful for Members to put their ideas on the Monitoring Mechanism on paper and then share it with others. The second, was for Members to "converse" and continue the discussions once thoughts had been further crystallised. The third, was to reach "convergence" on the different ideas. He said that he was not proposing a timetable for a work plan as it was clear that Members would need to have further discussions, perhaps in an informal context. He said that he would facilitate those discussions and urged Members to engage amongst themselves on what their expectations were; what they felt were the areas that could be taken up; and how they wished to move forward. He indicated that the next meeting was scheduled for 8 May, at which his intention was to continue discussions on the Agreement-specific proposals.

D. OTHER BUSINESS

50. No issue was raised under "Other Business".
-