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Committee on Trade and Development
Twenty-Fifth Special Session

NOTE ON THE MEETING OF 1 JUNE 2006

Chairman: Ambassador Burhan Gafoor (Singapore)

A. ADOPTION OF THE AGENDA

1. The draft agenda for the meeting as contained in airgram WTO/AIR/2824 of 19 May 2006 was adopted.

B. AGREEMENT-SPECIFIC PROPOSALS

2. At the outset, the Chairman informed Members that at the recently held informal Heads of Delegation meeting, the Director-General had outlined an approach for timelines on the work that was needed to be carried out in the upcoming weeks. The Special Session operated in the context of the larger negotiating process and it was therefore important that the work of the Special Session keep pace with work elsewhere. The issue of special and differential treatment (S&D) for developing countries was an important part of the development dimension of the Doha negotiations and it was all the more reason that the work of the Special Session keep up with the larger process. Given the timelines, he reiterated the importance of maintaining a text-based approach to the discussions on the remaining Agreement-specific proposals.

3. With respect to the Category I Agreement-specific proposals, the Chairman said that while Members had made some progress, they were still far from reaching a middle ground. Members had been able to come up with revised language on the three proposals relating to Article 3.5 of the Agreement on Import Licensing, and on one proposal relating to Article XVIII of GATT 1994. However, further consultations would be needed to narrow the remaining differences. On the proposals relating to the Understanding in Respect of Waivers of Obligations and Article XVIII:A of the GATT 1994, Members still had fundamental differences and the landing zone for these proposals was not clear. He had recently held some informal consultations on the proposals relating to Article 10.3 of the SPS Agreement. Those consultations were a follow-up of the earlier discussions where several ideas and language had been put forward. Those consultations had been useful and had focused on the issue of ensuring predictability in cases where developing countries may seek time-limited exceptions under Article 10.3 of the SPS Agreement. It was also clear from the consultations that any approach that implied automaticity in terms of the outcome may not garner consensus and hence the discussions had focused on predictability rather than automaticity. He had been encouraged by the discussions and intended to continue consultations in the hope of reaching a middle ground, which he believed was possible. Like other Chairpersons, he was committed to

ensuring transparency and maintaining a bottom-up process, and would continue to keep the larger Membership abreast of the deliberations.

4. He went on to say that his intention of the meeting was to begin consideration of the remaining eight Category III Agreement-specific proposals. Time permitting, Members could comment on the Category I proposals after discussions on the Category III proposals. He was aware of the difficult nature of the Category III proposals which was in fact the reason why the former General Council Chairman had categorized them as such. It was important to get a collective sense of where Members stood on those proposals and for Members to start figuring out what could be the possible "landing zone" for the Category III proposals. He did not feel that there would be any value in having a general discussion since such a discussion had already taken place earlier. Members needed to go beyond just introducing and explaining the proposals. They needed to discuss what could be the "middle ground". He would be looking for signs of convergence as well as a clear indication of where the problems lay. At the same time, Members needed to bear in mind that, at Hong Kong, Ministers had agreed that the Special Session must make clear recommendations on all the Agreement-specific proposals by December 2006. In order to do this, Members would need to now also focus on the Category III proposals.

5. On behalf of the least-developed countries (LDCs), the representative of Zambia introduced a paper on rules of origin (TN/CTD/W/30) which the LDCs hoped would contribute to the debate on the implementation of the duty-free quota-free (DFQF) market access decision taken at Hong Kong. The LDCs had for a long time argued that despite being accorded preferential market access, they had not been able to take advantage of those market access opportunities due to the stringent associated rules of origin. It was against that background that the LDCs had been advancing the position that preferential rules of origin needed to be simplified. He said that being a multilateral decision, the DFQF market access decision, would require a single set of rules of origin. The Hong Kong decision had specified that the accompanying rules of origin for the DFQF market access should be simple and transparent so as to facilitate exports from LDCs. It was the LDCs understanding that rules of origin should be primarily designed to minimize trade deflection. In preparing the proposal, the LDCs had examined several preferential rules of origin and had reached the conclusion that there was no optimal set of rules of origin. There were advantages and disadvantages to whatever criteria one used. The LDCs were proposing the use of a combination of value addition and local content criteria to confer origin, and had provided a detailed proposal on how value addition and local content percentages could be calculated. While no specific percentages had been suggested, it was preferable that to promote trade, those percentages be kept as low as possible. The paper also attempted to address the unique situation faced by landlocked LDCs. Proposals had been made on what should constitute insufficient working processes, territoriality, cumulation and units of qualification. He said that since Members would need time to consider the paper, the LDCs did not expect to have a detailed discussion of the paper at the meeting. He requested that the LDCs be given the opportunity to make a more detailed presentation of the paper at the next formal meeting. He also indicated the LDCs' intention to table a second paper in the context of the DFQF decision, on market access.

6. The representative of Norway said that it was perhaps best to consider the rules of origin paper submitted by the LDCs in the Committee on Rules of Origin, where the experts were more likely to understand the points contained therein.

7. The Chairman said that copies of the paper by the LDCs were available at the back of the room. He recalled that the issue of DFQF market access had been raised at previous meetings of the Special Session. It was important for the key stakeholders to undertake bilateral consultations among themselves in order to reach convergence on the issue. He welcomed the LDCs' intention to make a PowerPoint presentation, as well as to submit a second paper on market access, at the next meeting. As Chairman, he was available to facilitate any process of informal consultations, if the key stakeholders so wished.

8. The representative of Egypt commented on the reference made by the Chairman to the notion of a "middle ground" and "landing zone". He sensed that the two terms had different meanings for different Members. To his delegation, reaching an agreement on language that exacerbated rather than solved the problems raised by the developing countries was not a "middle ground" solution. A "middle ground" solution was reaching an agreement on language that reflected disciplined flexibility. Developed countries needed flexibility albeit in a disciplined manner. However, questioning the need for flexibility itself should not be the aim of the exercise. Flexibility could not be sacrificed. Members should instead consider some form of monitoring of this flexibility to avoid possible abuse. That was the "middle ground" and the "landing zone" which Members should aim for. With respect to the SPS proposals, he said that the fundamental element was the need for predictability. Members had been engaged in discussions for a long time. What they now needed was a reference paper that highlighted the different problems and views on the proposals. This would help focus the discussions and give a sense of purpose to the work. It would also enable Members that had so far not been able to participate in the discussions to do so.

9. The representative of Kenya said that what the representative of Egypt had said was something Members needed to consider seriously if they were to make any progress. His delegation's understanding of a "middle ground" solution was that all Members needed to move, not just some Members. From past experience, it was clear that Members had discussed many of the proposals over and over again, and yet nothing had come out of that. If there was to be a common landing zone, then all Members needed to move. He reiterated the need for Members not to question the flexibility being sought but rather to work on the basis of the mandate and add value to the existing provisions.

10. The Chairman agreed with the representatives of Egypt and Kenya that all Members needed to move and work together to reach a middle ground. He had taken note of the suggestion of having reference papers. As Chairman, he would facilitate the process to build convergence and if a background paper helped such a process then it would be useful. However, if a reference paper merely catalogued the divergences that existed on the proposals, then there would be no value added in undertaking such an exercise. It was his understanding that the reference papers that had been used in the negotiations on agriculture were a means to an end, i.e. a means of getting to the modalities. Similarly, if there were any such reference papers in the Special Session, then they needed to be a means of reaching convergence and not merely to collate the different viewpoints.

11. The Chairman went on to introduce the first Category III proposal (no. 77) on the Understanding on the Interpretation of Article II.1 (B) of the GATT 1994, in which the African Group had proposed that the prohibition of not levying any "other duties or charges" as set out in Article II.1 (B), should not apply to developing countries if those charges were being levied for generating additional revenue.

12. The representative of Kenya said that Members had last discussed the proposal almost a year ago. At that time, the discussions had not yielded any results. He hoped that Members could now make some progress. The key issue in their proposal related to raising government revenue. Considering that tariffs were coming down and that donor funding was falling, the African Group wished to see some flexibility in Members' ability to levy other duties and charges. It was therefore important that in the context of falling reserves, Members were able to levy other duties or charges to increase government revenue. The African Group was not attempting to rewrite the provision but wished to strengthen it as mandated in paragraph 44 of the Doha Ministerial Declaration.

13. The representative of the United States said that Article II.1 (B) established that products subject to bound rates of duty be exempt, among other things, from all duties of any kind imposed in conjunction with importation. In her delegation's view, the proposal would rewrite the Uruguay Round Agreement of not raising trade barriers through other duties and charges and would relax the essential disciplines of Article II that discouraged the levying of duties and charges in excess of bound

rates of duty. The proposal, if accepted, would fundamentally change the obligations in the Agreement, which would not be acceptable to her delegation.

14. The representative of the European Communities said that the last time Members had considered the Category III proposals, his delegation had submitted written comments on all the proposals. That paper contained his delegation's comments as they currently stood on six of the eight Category III proposals, including the proposal on Article II.1 (B) of the GATT 1994. His delegation was concerned that the proposal questioned the value of Article II for both developing and developed trading partners since it suggested that other duties and charges should not be constrained in anyway, thus calling into question the value of the bound commitment itself. His delegation was willing to engage in further discussions in order to clarify the intent of the proposal, but would have reservations about any alteration of the fundamental rights and obligations of Members.

15. The representative of Norway said that he had taken note of Egypt's earlier intervention that it was important to ensure predictability and yet to avoid any abuses of the flexibilities granted. As had been stated by the representative of the EC, the proposal went against the basic principle of the WTO that Members not be allowed to exceed the bound tariff rates. At the same time, that did not mean that a country could not have a taxation system, or a value-added tax system, to secure government revenues. Those were revenues that would not be covered by Article II.1 (B). His delegation was therefore not clear what the African Group was seeking. If the African Group was suggesting that tariffs be no longer bound, then this would completely undermine one of the key principles of the GATT. If however the African Group was seeking to ensure that Article II should not prohibit countries from having a taxation system or being able to introduce value-added tax or a general sales tax within their national legislation, then that was clearly something different. There needed to be more clarity about what the proponents were seeking and how their proposal would operate within a rules-based system of bound tariffs.

16. The representative of Japan agreed with those who had raised concerns. While his delegation understood that some developing countries faced difficulties raising revenue, he felt that perhaps those countries could consider addressing the problem by seeking recourse to other S&D provisions, for example Article XVIII:A of the GATT 1994.

17. The representative of Canada said that his delegation had also submitted comments on the proposals which went along the lines of the comments that had been made by other delegations, including the fact that the proposal undermined the basic principle of tariff bindings. Perhaps there could be other ways of addressing the problem either through technical assistance or more focused language, because as it stood the proposal was too open-ended.

18. The representative of Pakistan said that when its Central Board of Revenue had wished to impose certain duties and taxes, her Government had been advised that if these other duties and charges had not been recorded at the time when Pakistan had made its commitments, then they could not be now imposed. However, as clarified by the representative of Norway, sales tax was not a part of other duties and charges. Perhaps, further clarification could be sought to ascertain whether what was being sought was feasible.

19. The representative of Australia associated her delegation with the comments made by the US, EC, Norway, Canada and Japan. She said that the proposal seemed to undermine one of the most fundamental principles of the WTO, namely that of tariff bindings. This would not only create uncertainty in trade between developed and developing countries, but also between developing countries themselves. As suggested by the representative of Canada, this was perhaps a problem that could be best dealt with elsewhere, including possibly through technical assistance.

20. The representative of Kenya said that it was true that Article II.1(B) was related to bindings but it was important to note that no Member was forced to bind tariffs except in the context of the negotiations. What the proposal sought to do was to preserve the flexibility of levying other duties and charges needed to support government revenues. He questioned how this could be addressed through technical assistance because shortfalls in government revenues could not be fulfilled through technical assistance. He felt that it would be helpful if the Members which had expressed concerns could suggest some alternate language.

21. The representative of Brazil said that the need to raise government revenue was a legitimate concern. The OECD Working Party on Trade in 2005 had come up with a paper which pointed out that some countries, especially African countries and LDCs, could face shortcomings in government revenue because of tariff liberalization. However, his delegation did not feel that that could be a reason to undermine tariff bindings. The OECD, World Bank and IMF had proposed that countries relying heavily on tariffs for their revenues should consider shifting to a tax system based on consumption. He therefore suggested that the proposal be amended by stating that "Other duties or charges shall not be construed or applied in a manner that prejudices the right of developed and least-developed country Members under assistance programmes to reform their tax systems to levy transitional duties or charges to meet their requirements relating to government revenue and administrative expenses". His delegation believed that before a country made the transition from a tariff-based revenue collection system to a domestic consumption tax-based system there might be a need for a transitional period during which other duties or charges may need to be maintained in order to guarantee revenue. His delegation, however, agreed with others that the proposal should not undermine the concept of tariff binding which was one of the main pillars of the GATT.

22. The representative of Kenya sought clarification from the representative of Brazil about the assistance programmes that had been referred to. Who would finance them and how predictable would this assistance be? The Understanding on the Interpretation of Article II.1(B) did not include any elements of such an assistance programme, but if that would add value and provide predictability, then it was something the African Group was willing to consider.

23. The representative of Australia said that her understanding was that the duties and charges referred to in the proposal were not sales tax and, therefore, she was not certain as to how including such flexibility under Article II (B) would be consistent with the suggestions made by the IMF or World Bank. Perhaps, what Members were attempting to put across was that other duties and charges would not be applied in a manner that could prejudice the rights of developed and least-developed country Members to levy sales tax. In that regard, she sought further clarification from the representative of Brazil.

24. The representative of Brazil said that it was his understanding that the World Bank, the IMF, the OECD and others had proposed that countries should not rely on tariff revenues alone as this was not productive. There was a need to shift from a tariff-based taxation system to a domestic consumption-based taxing system. However, the transition from one system to the other should not lead to a gap in the countries budget. That was why other duties and charges should be maintained in a transitional manner to allow governments to cope with that transition. The idea was not to prevent countries from imposing sales tax or any value-added tax, but to rather allow them to maintain their other duties or charges on imports, until they succeeded in raising revenue through tax-based consumption.

25. The representative of New Zealand said that his delegation was still unclear whether the proposal intended to provide scope for developing and least-developed country Members to temporarily breach their bindings, or to do so on a long-term basis. His use of the word "breach", though severe, reflected the significance of this principle of the GATT. The ability to introduce value-added taxes, or taxes on goods or services, had been raised by others. With respect to

assistance, New Zealand had introduced a GST in 1987 and had since then provided assistance to a number of its neighbours which had wanted to introduce a domestic consumption tax. That was perhaps getting into public policy but there was nothing under the present Agreement that constrained the ability to introduce a GST.

26. The representative of Kenya said that elements of the assistance that had been mentioned were not clear; neither was this assistance's relation to the proposal clear. He was not sure how the assistance which, was yet to be spelt out, would replace the levying of other duties and charges. Attempts had been made to raise revenues through value-added tax, however, this had not resulted in the desired outcome. Kenya had a large informal sector and more than 50 per cent of its population lived under the poverty line. Therefore, the transaction cost may even be more than the revenue generated. That was not what the proposal was suggesting. If the assistance or transitional period that had been mentioned could not be amplified then the proposal made by the representative of Brazil complicated, rather than helped the situation.

27. The Chairman suggested that Members reflect on the proposal based on the discussion that had taken place. He was willing to hold further informal consultations on the proposals, but those consultations could not be a substitute for movement on substance. He then introduced proposal no.78 on paragraph 1 of the Understanding on the Interpretation of Article XXVIII of the GATT 1994. The proposal, tabled by the African Group, made out a case for urgent consideration to be given to a rebalancing of the relative rights of small and medium-sized exporting Members.

28. Introducing the proposals, the representative of Kenya said that paragraph 1 of the Understanding on the Interpretation of Article XXVIII of the GATT 1994 related to the withdrawal and modification of concessions. It was in that spirit that the African Group felt that small and medium-sized exporting Members should have a right to share the compensation given in lieu of the withdrawal of a concession. The key word in the proposal was "consideration". It meant that no action was guaranteed beyond an initial phase of discussion whether or not to rebalance the rights. All it sought was to see whether small and medium-sized exporting Members could gain increased market access for their products. That was basically what the African Group had in mind and he hoped that the language put on the table met that objective.

29. The representative of Norway said that the proposal had a link to the implementation issue which had been raised by St. Lucia and Barbados, as well as to the five-year review on the Understanding on the Interpretation of Article XXVIII, of the GATT 1994 that had been undertaken in 2000. He did not recall what the outcome of that review was, but since no changes had been made, it would not be wrong to announce that Members had felt that there was no need to amend any part of the Understanding. Under Article XXVIII, there were actually four different groups of Members that had to be consulted. There were those with initial negotiating rights, those with a principal supplying interest, those with a substantial interest in the concession and those with the highest percentage of exports of that particular product into that country. It was a complex issue which had also been raised by Honduras and Guatemala in the General Council. His delegation needed to reflect more on what the African Group was attempting to achieve. He asked what sort of changes the African Group foresaw. In the last meeting chaired under the implementation agenda, the delegation of Barbados had suggested that they would come up with a new document explaining the sort of changes that they had foreseen. However, this had not yet been tabled.

30. The representative of Canada echoed the comments made by the representative of Norway. His understanding was that the 2000 review had not brought out any specific problems. He, therefore, sought clarity on what had happened since 2000 that had resulted in the proposed rebalancing in the existing language. In that regard, perhaps the paper by the delegation of Barbados would be useful.

31. The representative of the European Communities said that most Members were aware that his delegation had, in past General Council meetings, mentioned that it did not have a problem in having a broad discussion on different negotiating rights, in particular those of smaller exporters. However, there were two provisos. The first was that Members should not launch into a discussion in the Special Session without first being clear about what they intended to discuss and the objectives sought to be achieved. Second, the Special Session should not create a mandate for future discussion without being clear about its role, in particular in the context of the work being done under the implementation track, or in the Goods Council. The proposal was however essentially a starting point for future work and, as had been mentioned by the representative of Kenya, the key was to give consideration without necessarily concluding that an adjustment or rebalancing be carried out. His delegation was ready to engage in further discussions to refine the idea making it clear what Members should focus on and to ensure that the process was an inclusive one so that all Members could be engaged, especially because different Members had a different perspective about small and medium-sized exporting Members in situations covered by Article XXVIII, depending on whether or not they had initial negotiating rights and depending on their relative share of trade in particular products to that country.

32. The representative of Kenya said that the key issue was one of ensuring the security of market access for small and medium-sized exporters in developing countries.

33. The Chairman introduced proposal no. 79 on Article 10.2 of the Agreement on the Application of Sanitary and Phytosanitary Measures tabled by the delegation of India.

34. The representative of India said that Article 10.2 of the SPS Agreement related to those SPS provisions that allowed for a phased introduction of new SPS measures and longer time-frames for compliance for products of interest to developing country Members. Members would recall that paragraph 3.1 of the Decision on Implementation-Related Issues and Concerns, provided a clarification of the phrase "longer time-frame for compliance", stating that it should be understood that "normally" meant a period of not less than six months. His delegation proposed the deletion of the word "normally" from paragraph 3.1 of the decision on Implementation-Related Issues and Concerns to give clarity and precision to the decision. Explaining the reason for tabling the proposal, he stated that, over the years, experience had shown that compliance to new SPS measures required substantial infrastructural improvements and changes for which a fair amount of investment and time was needed at various levels. Exporters had little time to adjust and often exports were blocked. It was a practical issue that exporters faced. The developing countries needed to be given more time to comply with new measures.

35. The representative of Pakistan supported the proposal tabled by the delegation of India.

36. The representative of the European Communities stated that the phrase 'normally a period of six months' in paragraph 3.1 of the Decision on Implementation-Related Issues and Concerns meant that transition that was less than six months would be the exception rather than the norm. His delegation understood the concern that the representative of India had raised but was apprehensive that removing a degree of exceptional flexibility already foreseen in the decision from Doha, might not have the desired effect. However, those measures were always a judgement of the regulator in terms of the balance of risk versus the flow of trade. If the judgement of the regulator was that four months would be an appropriate transitional period but it was told that it had to wait six months, there could be a risk that the regulator would do so sooner and actually implement a more restrictive measure. He asked whether the delegation of India saw any risk in removing the exceptional possibility of a transitional period of less than six months as possibly leading regulating countries to veer towards precaution and implement measures with no implementation periods rather than through a transitional period.

37. The representative of India replied that the proposal emanated from practice and experience and the problems that exporters faced. Often importers suddenly came up with new standards and scientific ways, which may at times be based on valid grounds, to measure requirements resulting in the exporters' products having to meet extra standards. The problem was that it often took a long time for exporters to be able to conform. The purpose of ensuring a bare minimum period of at least six months was because, in practice, that time period was not provided by the regulating country. Citing an example, he stated that in the marine sector there had been cases where large amounts of money had to be spent on meeting certain requirements. In 2003/2004 alone, the marine sector in India had spent almost a million US dollars to meet the EU's food safety requirements. It was obvious that additional time was required for these types of investments. The concern was to prevent exports being restricted due to the introduction of new measures. He sought clarification on one of the points raised by the EC and stated his willingness to forward more specified comments to his capital and revert to the issue at a later stage.

38. The representative of the European Communities clarified that with the proposed text, the flexibility provided for in Article 10.2 would possibly be potentially decreased. It could also lead to situations where SPS measures that would liberalize trade would have to wait six months before being introduced. He, however, understood that the proposal was coming from the angle that SPS measures added to restrictions rather than liberalized trade to particular export markets.

39. The representative of Canada said that very few requests for the extension of time-periods had been made by Members and hence the experience, over the past few years, had shown that this had not seemed to have been a problem. It was also his understanding that the issue had not been brought up in the SPS Committee. His delegation, therefore, appreciated getting some more examples about the problems that Members may have faced in this regard.

40. The representative of the United States recalled that, in 2003, the then Chairman of the General Council had put the proposal no. 79 into Category III because there appeared to be a wide divergence of views on the proposal and it had appeared that progress was not forthcoming on it. She associated her delegation with the comments made by the representatives of the EC and Canada. She was especially struck by the EC's comment that elimination of the word "normally" could be disadvantageous in some instances. Her delegation felt that the retention of the word "normally" in paragraph 3.1 of the Decision on Implementation-Related Issues and Concerns, preserved Members rights under Article 2.1 of the SPS Agreement to take measures necessary to protect human, plant and animal life and for that reason could not support the idea of making phasing in mandatory.

41. The Chairman said that the Special Session's task was to come up with clear recommendations on all outstanding Agreement-specific proposals by December 2006. Ministers, at Hong Kong, had not specified what those recommendations ought to be. Those recommendations could take various forms. He was working on the assumption that Members should focus their efforts to finding common ground on those proposals. As Chairman, it was not for him to say, a priori, that progress was not possible on some of the proposals. That would only become apparent if Members were unable to find convergence on particular proposals. However, even that was something for which Members had to undergo a process of discussion and informal consultations. It was a bottom-up process in which it was for Members to make a decision as to where progress was possible and how far they could go in building convergence. For that reason, Members needed to work through the Category III proposals and try to identifying the zones of possible agreement. What could be achieved was something that would come as a result of the process that was being undertaken. Possible engagement in the discussion was a precondition to identifying the possibilities of building convergence. Members were clearly far from finding a middle ground on Category III proposals and even though some progress had been made on the Category I proposals a lot of work still remained to be done.

42. The representative of Egypt sought clarification from the Secretariat as to how the word "normally" in paragraph 3.1 of the Decision on Implementation-Related Issues and Concerns was perceived.

43. The Secretariat said that it was perhaps best to begin by putting Article 10.2 in the context of the other provisions of the Agreement. Under the SPS Agreement, measures that restricted trade could only be taken when they were necessary for health protection. Other provisions in the Agreement required that the measures be no more restrictive than necessary. Additionally, Members were obliged to notify proposed or draft measures at an early stage and to provide an opportunity for other trading partners to comment on the proposed SPS regulation. In addition to requesting an extension for the comment period, the Agreement also envisaged a situation where Members could lodge a request for an extension for the entry into force of a new measure or changes in a proposed measure. The recommended comment period was a minimum of 60 days. It was not hard to find instances where extensions of comment periods had been given. However, the fact that some Members did not provide a 60-day period for comments had been an issue of discussion in the SPS Committee. In response to the representative of Canada's observations that for most measures that were notified, few comments had been received and there were hardly any requests made by Members for extensions, the Secretariat stated that the transparency provisions agreed by the SPS Committee provided for favourable consideration to be given to comments made as well as to the requests for extensions for comments. Annex B of the SPS Agreement required that a reasonable interval of time be given after the adoption of a new measure and its entry into force. That was, in part, to address the concern that trading partners required a reasonable period of time to adjust to a new measure. The issue was considered by Ministers at Doha and they agreed on language that referred to that period as being normally a period of not less than six months. However, much depended on the health risks involved and the type of measure. There might be measures that could be phased in over a period of time while ensuring that the health protection was maintained. In such cases, Members had an obligation to take into account the concerns of developing countries in that phasing in process according to Article 10.2.

44. On a question raised by the EC, the representative of Egypt said that the issue related to the problems faced by developing countries to comply with a measure. Often the trade aspect was not taken into account as much as the compliance by the developing country Member to the measure. In the proposal, India was seeking predictability that developing country exports would be granted appropriate time for complying with that measure. Measures that liberalized trade did not fit into that process. Although the issue of flexibility was dealt with in paragraph 3.1 of the Decision on Implementation-Related Issues and Concerns, in that the appropriate level of SPS protection allowed scope for the phased introduction of new measures, ambiguity still remained due to the word "normally".

45. The representative of Mexico said that in emergency situations it was more difficult to have a longer time-frame to implement a measure. It was, therefore, important to consider the relationship between Article 10.2 and paragraph 6 of Annex B of the Agreement on SPS which related to emergency measures. He suggested that Members perhaps consider limiting the proposal to ordinary situations rather than those relating to emergency situations.

46. The representative of Japan said that since the Agreement related to the protection of human and animal life, any changes to it had to be taken with caution. His delegation could not agree to amendments that would undermine the purpose of the SPS Agreement.

47. In response to the representative of the US's comment on the categorization of the proposals, the representative of India said that it was important to bear in mind that the process of categorization had been carried out at a certain time and in a certain context, which had undergone considerable change. His delegation expected Members to consider all the proposals with an open mind and assess

them on their merit rather than in terms of the categorization. He also said that the proposal related to non-emergency measures especially since the idea of phase in related to non-emergency measures. He clarified that the intention was not to undermine the purpose of the SPS Agreement.

48. The representative of Kenya stated that since he was not privy to the process of categorization of the proposals, he could say anything about the criteria that may have been followed. The Chairman of the General Council had, in his own wisdom, categorized the proposals on the basis of what he felt could be agreed at Cancún and what would need to be dealt with at a later stage. He suggested that Members needed to put aside the categorization issue and focus their efforts towards making progress.

49. The representative of the United States clarified that her inquiry with regards to the status of the different categories was in no way related to the proposal that was being discussed.

50. The representative of Norway said that the proposal to consider the relationship between Article 10.2 and paragraph 6 of Annex B of the Agreement on SPS was interesting. He said that in the area of SPS and TBT there was a distinction between urgent measures which were immediately put in place and those that were not urgent that could follow normal procedures. In his view, the problem was, perhaps, twofold – one, being that it was probably not ideal to have a strict period of time and not for so long. Second, his delegation did not see the issue as a developed versus developing country issue. It was also an issue for developed countries when developing countries or other developed countries introduced new SPS measures with short time-frames. It was a problem that all Members had and they needed to find a solution that was generic to all countries.

51. In response to the representative of Mexico's comment, the Secretariat said that Article 10.2 related to measures where the level of health protection allowed for phasing in. That was not normally the case for emergency measures which logically needed to be taken quickly. There could be aspects of an emergency measure that might be phased in at a later stage but at least some part of it would be introduced almost immediately. In response to Egypt's comment that developing countries wished to have predictability to ensure that the time being allowed to phase in new requirements would provide enough time for them to make the necessary adjustments, the Secretariat said that such concern could in part be addressed through the opportunity to comment on the proposed new measure when it was being notified. It was not uncommon when considering notifications in the SPS Committee to find measures where a notification of a proposal did receive comments and was finally extended for a number of years before the new requirements were expected of all trading partners. That had been the case when the EC introduced HACCP processing requirements on fish products. It had taken more than ten years before the new requirements were actually imposed on their trading partners, in part due to the questions and concerns that had been raised on the need for systems to be changed, and for countries to adapt and introduce new methods.

52. The Chairman said that he would hold informal consultations on that proposal together with the Category I proposals on Article 10.3 of the SPS Agreement.

53. He introduced proposals no. 82 by the African Group and no. 83 by a group of developing country Members on Articles 11 and 12 of the Agreement on Technical Barriers to Trade.

54. Explaining the African Group proposal no. 82, the representative of Kenya said that sub-paragraph (a) of the proposal reaffirmed that Article 11 of the Agreement on TBT contained binding obligations and suggested the establishment of a fund which would help developing and least-developed countries to implement the Agreement. It recommended that those Members which introduced new standards, deposit money, that would be assessed by the TBT Committee based on the resource implications of developing and least-developed countries. Sub-paragraph (b) made reference to special needs which according to Article 12 meant that technical assistance would be provided to the developing and least-developed countries. Sub-paragraph (c) also related to technical assistance

and proposed that the technical assistance be fully funded. Sub-paragraph (d) proposed that an impact assessment be carried out that would establish the likely effect of the new standard to developing and least-developed countries. If the standard would adversely affect the export opportunities of those countries it would be recommended that the developing and least-developed countries be given sufficient time to fulfil the requirement of the new standard introduced. Sub-paragraph (e) strengthened paragraph 8 of Article 12 and introduced a time-period of no less than three years for developing and least-developed countries to undertake any necessary adjustments. Sub-paragraph (f) which related to paragraph (a) recommended the establishment of a facility within the global trust fund which would meet the requirement of implementing the Agreement by facilitating the participation of developing countries in meetings of the Committee on TBT and in other standard setting organizations and also helping those countries to utilize the flexibility provided in the Agreement. What the proposal sought was to provide for mandatory predictable technical assistance to developing and least-developed countries, both for the implementation of the existing Agreement and the standards that would be introduced in the future.

55. The representative of Egypt introduced proposal no. 83 by a group of developing country Members. He said that the proposal attempted to address the problem of lack of technology that developing country Members faced when complying with standards adopted by other countries. He said that it was important that when Members considered the proposal they also came up with suggestions and alternative language in order to reach convergence.

56. The representative of the European Communities said that the proposals were too wide ranging. He also pointed to the fact that a lot of work had been carried out in the TBT Committee since the proposal was tabled in 2002. In fact, there was an upcoming triennial review of the TBT Agreement where those issues could be addressed. Outside the WTO, a lot of work was also being done in the area of technical assistance and capacity building. For instance the EC had been working with developing countries to build capacity to meet TBT requirements in export markets. The EC found it difficult to consider the proposals because a number of the elements contained therein had evolved ever since their first submission. His delegation therefore felt that further work was needed to make the proposals more focused, taking into account the discussions and work carried out in the TBT area, both within and out of the WTO. Whilst it was useful to re-engage in discussions on those proposals, his delegation felt more work was needed to clarify, update and focus the proposals. With respect to proposal no. 83 relating to the issue of technology transfer, his delegation accepted that technology transfer could play a role in providing countries with the technical facilities to meet product standards of exports markets. In its bilateral cooperation assistance programmes, the EC had had good experiences in building regional capacity where, for example, it had made sense to build one laboratory in the region rather than building one in each individual exporting country. That was one dimension in the area of capacity building that his delegation felt merited further exploration. In both proposals, his delegation had, and would continue to have a problem with the suggestion that technical assistance and capacity building should be made mandatory. Essentially, technical assistance and capacity building were demand driven and were the product of a mutual agreement between partners in terms of what the priorities for trade-related assistance and capacity building were. Neither the relevance of TBT and SPS nor the volume and availability of that assistance was in doubt. It was, however, difficult to see how Members could pre-empt what was essentially a bilateral process between an individual beneficiary country and the provider of that support.

57. The representative of Canada said that his delegation shared the EC's position that the work on technical assistance in the TBT area had progressed since the time the proposal was tabled. The structure of proposal no. 82 in terms of the creation of a fund and impact assessment was perhaps too broad considering the work that had been done. The language in the proposals would therefore need to be streamlined. He said that the notion of making technical assistance mandatory was problematic for his delegation.

58. The representative of Colombia sought clarification on whether the contributions into the fund proposed in paragraph (a) of proposal no. 82 related to all Members or just developed country Members.

59. In response to the EC's comments relating to their reluctance to accept technical assistance as mandatory, the representative of Kenya said that he agreed that technical assistance was demand driven, however, the provision of technical assistance needed to be predictable. Once the beneficiary of the technical assistance determined what assistance it required, then the provision of that assistance needed to be mandatory. That was what the African Group proposal was attempting to address. He agreed that some good work had been done in the TBT area. However, he argued that, despite the work that had been done in the TBT Committee, the proposal aimed at making technical assistance in Articles 11 and 12 of the TBT Agreement predictable and ensuring that new standards were introduced in a way that would enable Members to comply with them. In response to the representative of Colombia's question, he said that those Members introducing new standards which proved difficult for developing and least-developed countries to comply with, were expected to contribute to the fund.

60. The representative of Egypt said that it would be useful if the EC could suggest language that addressed its concerns on proposal no. 83.

61. The representative of the Economic Communities said that he did not have any suggested language in mind. The problem that his delegation had was with the mandatory nature of the language, i.e. that an importing developed country Member "shall provide" relevant technology and technical facilities on preferential and non-commercial terms, preferably free of cost. His delegation would only feel comfortable with language that would not contain the words "shall provide" and would be more along the lines of an encouragement or a possibility to provide such assistance.

62. The representative of the United States associated her delegation with the comments made by the representatives of the EC and Canada. With respect to proposal no. 82, she said that a lot of work had been carried out in the TBT Committee and many of the concerns raised therein had been effectively addressed since the proposal was first tabled. On proposal no. 83, her delegation was concerned that the proposal would undermine the rights of Members with respect to technical regulations and conformity assessment procedures. Regulators already had the burden of enforcing compliance with legitimate regulations when they identified non-compliant products which signalled that there was a problem, be it from a developed or developing country. Since S&D was a standing item in the TBT Committee, her delegation suggested that both proposals along with the issues raised therein be considered by the relevant experts in the TBT Committee.

63. The representative of Canada echoed the statement made by the representative of the US and said that it would be useful to hear what work the TBT Committee had carried out on some of the issues raised in the proposals.

64. The representative of India sought clarification as to whether the representatives of the US and Canada were suggesting that the two proposals be addressed as part of the Category II proposals.

65. The representative of the United States said that it was not really an issue of categorization but more that the issues raised in the proposals be referred to the TBT Committee for consideration. It was important to keep the work performance oriented and if there were problems that needed to be solved it seemed the most efficient way to do that was to send them to the experts that had the best possibility of solving them.

66. The representative of Canada said that he had not had the notion of changing the category of the proposals in mind. However, that did not mean that discussions that had taken place in other fora

and the advice of experts should not be utilized. He was thinking along the lines of document G/SPS/33 relating to the procedure to enhance the transparency of S&D in favour of developing country Members which highlighted consultations and measures that had been carried out in the SPS Committee to take developing country concerns on board before putting measures in place. He thought some kind of consultation mechanism could perhaps be useful in addressing the concerns contained in proposal no. 83.

67. The representative of India said that his delegation did not consider document G/SPS/33 particularly helpful especially in addressing the S&D concerns. He therefore did not wish to pursue a parallel-track based on a document on which his delegation had concerns. In light of the US's clarification he explained the idea behind proposal no. 83. Citing an example, he said that India found that testing equipment used in the leather tanning process was very expensive and there had been an attempt to calculate the pcp content, which was used in the leather tanning process. Technical standards had been developed by the ISO and Members which adopted them had a tendency to strengthen them. A number of developing country Members had an interest in leather exports and in many of those countries it was the small and medium-sized enterprises that were involved in that sector. The testing equipment was extremely expensive and it was often not possible to obtain it without some assistance. As standards increased, some of which were sometimes legitimate, there was a need for increased technical assistance. That was where Article 12.3 of the Agreement fitted in. However, his delegation found that the Article as it existed was too general and their proposal attempted to make the assistance more targeted in order to assist their certification institutions and laboratories to conform to those standards. With respect to the phrase "preferably free of cost", the operative word was "preferably" and it was understandable that that might not be possible. The emphasis was that the relevant technology and technical facilities should be provided. Where it was too expensive that it made it virtually impossible for exporters to meet those standards, assistance needed to be provided on non-commercial terms. His delegation was open to suggestions on language that would address the concerns raised.

68. The representative of Kenya said that reference had been made to the good work done in the TBT Committee, and that some of the issues raised in the proposal might have been addressed. Proposal no. 83 raised three issues. One, the predictability of technical assistance; two, the establishment of a fund; and three, the timeframe for compliance. He wished to know which of those three issues had been addressed in the TBT Committee. He was aware that some good work had taken place in the SPS area, including the EC's proposed technical-assistance package. That went in the direction that the African Group was trying to go in the area of TBT. If some of those issues were to be referred to the TBT Committee, his delegation wished to know whether there would be positive results or whether the results would be the same as on the other issues being dealt with under Category II. If that was the case, then his delegation preferred those issues to be dealt with in the Special Session where experts could be invited to participate in the discussions.

69. The Chairman said that there were a number of elements in the proposals that Members needed to reflect on. There was clearly a conceptual issue on which Members needed to find convergence, otherwise drafting suggestions would not result in convergence. The second, was one of technical assistance. At the same time, it was important to obtain information on the work that was being carried out in the TBT Committee. Further work on those proposals would require informal consultations and dialogue between the stakeholders. He therefore encouraged the stakeholders to consult with a view to narrowing the divergences and coming up with drafting suggestions. That would put Members in a better position to revisit the issue. He then went on to introduce proposal no. 85 on Article 3 of the TRIMS Agreement which had been tabled by the African Group and sought to clarify that cooperation arrangements, laws, measures and policies adopted on the basis of the provisions of GATT 1994 and that operated as exceptions, and that they also applied to the provisions of the TRIMs Agreement.

70. The representative of Kenya said that Article 3 of the TRIMs Agreement stated that all exceptions under GATT 1994 applied as appropriate to the provisions of the TRIMs Agreement. The African Group proposal merely confirmed that and gave examples of the exceptions contained in GATT 1994. The African Group was seeking reaffirmation that all those exceptions were special and differential treatment permitted under the TRIMs Agreement.

71. The representative of Canada said that his delegation did not wish to rewrite the TRIMs Agreement and it considered that what was referred to in Article 3 as exceptions, were provisions such as GATT Articles XX and XXI, and not so much the examples that were laid out in the proposal. In his delegation's view, those examples were more of derogations.

72. The representative of Kenya said that he was not clear what the difference between an exception and a derogation was. The African Group was attempting to strengthen and operationalize Article 3 especially for those countries that were at low levels of industrialization. As a result, they were attempting to reaffirm the flexibilities provided in the TRIMs Agreement. He asked for suggestions on alternate language that could reaffirm that.

73. The representative of the United States supported the comments made by Canada and said that her delegation was not clear about the intent of the proposal, since the TRIMs Agreement already stated that all exceptions under GATT 1994 applied as appropriate to the TRIMs Agreement.

74. The representative of the European Communities said that the proposal was essentially repeating what was already contained in the Agreement. However, the representative of Kenya seemed to be talking about something else in terms of flexibility from the application of the TRIMs Agreement. He was not certain if that was the intention. Moreover, the proposal seemed to be reiterating something already contained in the TRIMs Agreement.

75. With respect to paragraph (a) of the proposal, the representative of Mexico sought a clarification on the kind of cooperation agreements the African Group had in mind. She also wanted to know how the notion of preferential treatment in that paragraph related to the Enabling Clause.

76. In response the representative of Kenya clarified that cooperation agreements related to regional trading arrangements established between developing countries.

77. The representative of Tanzania said that the idea of the exercise on S&D was to make the existing provisions more precise, effective and operational. If he had understood correctly, the representative of the US had stated that the proposal did not deviate from what was included in Article 3 of the TRIMs Agreement. Then there should not be a problem in accepting it. However, Members could come up with alternate language that would make the provision more precise and operational.

78. The representative of Kenya suggested that since the examples were a cause of concern and the proposal reiterated what was contained in Article 3 of the TRIMs Agreement, he was willing to delete the examples contained in paragraphs (a) to (c) from the proposal.

79. The representative of Hong Kong said that she had the same concern as the delegation of Mexico with regards to the cooperation agreements. Referring to the delegation of Kenya's proposed amendment, she said that that may not necessarily be an S&D proposal. As it was Article 3 of the TRIMs Agreement did not relate to S&D *per se*.

80. The representative of Tanzania said that he appreciated the amendment suggested by the representative of Kenya. However, his delegation preferred the original version.

81. The Chairman said that Members needed to reach a conceptual convergence on the proposal before starting any text-based discussions. He suggested that the various stakeholders consult among themselves and try to reach some degree of conceptual convergence.

82. The Chairman then introduced the two proposals no. 86 and no. 87, tabled by the African Group on Article 20 of the Agreement on the Implementation of Article VII of GATT 1994.

83. The representative of Kenya proposed that the consideration of those proposals be deferred until the next meeting as the African Group was still consulting on them. He said that there had been a number of developments in that area and the African Group needed some time to consider them.

84. The Chairman said that the discussions had been useful in giving a sense of different Members' positions. Although there had been useful suggestions on the way forward, Members had not really broken much new ground. The work on the remaining Category III proposals needed to be demand driven. On some of the proposals, there was a degree of conceptual divergence and Members would need to work further. On other proposals, a degree of conceptual understanding existed but it was a question of expressing those convergences into suitable language. The next time Members revisited the Category III proposals, he would look for signals from Members as to which of those proposals were ripe for discussion. There would be no value added if the next discussions just entailed going through each of the proposals and Members repeating their positions. He suggested that the proponents engage in discussions with the other Members on those proposals where there were conceptual divergences, and reflect on those proposals on which drafting suggestions had been made. He intended to schedule informal consultations before the next formal meeting scheduled for 7 July and said that he would look forward to signals from Members on any progress that may be made in the interim.

C. OTHER BUSINESS

85. No issue was raised under "Other Business" and the meeting was concluded.