WORLD TRADE ORGANIZATION

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Committee on Trade and Development
Thirtieth Special Session

NOTE ON THE MEETING OF 11 JULY 2007

Chairman: Ambassador Burhan Gafoor (Singapore)

A. ADOPTION OF THE AGENDA

1. The draft agenda for the meeting as contained in airgram WTO/AIR/3039 of 29 June 2007 was adopted.

B. AGREEMENT-SPECIFIC PROPOSALS

2. The Chairman reminded Members that the Special Session did not exist in isolation but coexisted in the larger process currently underway. He said that the meeting at Potsdam had been a setback and had had an impact on reducing the momentum in the larger process. This would, to some extent, impact the work of the Special Session as Members were preoccupied with the negotiations on Agriculture and Non-Agricultural Market Access (NAMA). Despite this, it was important for the Special Session not to lose, but rather build on the progress that had been made over the past year and a half. Members' positive attitude had enabled them to carry out their work in a constructive, business-like manner, which was something he hoped would be maintained as the work continued.

3. He recalled that at the last formal meeting held on 5 June, Members had engaged in detailed discussions on the remaining Agreement-specific proposals. Following that meeting, an informal small group consultation was held on 15 June on three of the Agreement-specific proposals, namely proposal no. 13 on Article XVIII of the GATT and proposal nos. 24 and 25 on Article 10.3 of the Agreement on Sanitary and Phytosanitary Measures (SPS Agreement). He had decided to focus on these proposals, because it was his sense that they still required a lot of work. Based on the informal consultations and the discussions that had taken place at the last formal meeting, he had revised the language on Article XVIII. This language was available to Members at the back of the room. Similarly, on proposal nos. 24 and 25 on Article 10.3 of the SPS Agreement, he had held informal consultations on the basis of the revised language tabled by New Zealand. This language had been useful in that it proposed an alternative formulation to the time by which the SPS Committee should take a decision to grant specified, time-limited exceptions to developing countries from their obligations under the SPS Agreement. On these proposals, he had also put together a revised text which was also available at the back of the room. The revised texts on the proposals relating to Article XVIII and Article 10.3 of the SPS Agreement were in no way definitive or final. They were

simply an attempt to capture some of the constructive elements that had come up in the discussions that Members had had so far. He had not held informal consultations on proposal nos. 28, 29 and 30 relating to Article 3.5 of the Agreement on Import Licensing Procedures, because there already existed a fair degree of convergence on these proposals.

4. He recalled that he had carried out some informal consultations on proposal no. 79 on Article 10.2 of the SPS Agreement. Due to the divergences that existed, as well as the fact that it would be difficult to reach convergence on the basis of the language that was currently on the table, he had been inclined to set that proposal aside. However, India, the proponent of the proposal, had put forward some revised language which was also available at the back of the room. He would, therefore, also devote some time to that proposal. Members would begin by taking up proposal no. 13 on Article XVIII, followed by proposal nos. 24 to 25 on Article 10.3 of the SPS Agreement and, finally, proposal no. 79 relating to Article 10.2 of the SPS Agreement.

5. The meeting continued in an informal mode and reverted back to a formal mode to address proposal no. 79 on Article 10.2 of the SPS Agreement.

6. The representative of India recalled that when his delegation had introduced its proposal on Article 10.2 of the SPS Agreement, it had clarified that the proposal was based on practical problems faced by exporters from developing countries when having to comply with onerous and expensive SPS measures introduced by other Members. His delegation had also clarified that it was seeking a period of at least six months to comply with restrictive SPS measures. This did not relate to liberalizing measures nor did it relate to "emergency" measures which were already provided for under the SPS Agreement. SPS measures of many developed countries restricted market access to products from developing countries. In complying with the SPS measures of developed countries, Indian exporters from mainly small and medium enterprises were forced to incur very high costs. He gave the example of the Indian marine sector which had, over the past couple of years, suffered on account of having to comply with SPS measures of some developed countries. During 2003 and 2004, the Indian marine sector had had to spend large amounts of money to comply with the EU's food safety requirements. In the late 1990s, in order to comply with EU requirements, the Indian Export Inspection Authorities invested large amounts to improve their laboratories. The laboratory operated by the Marine Products Export Development Authority had to install new HPLC-MS/MS equipment in order to perform laboratory analysis of antibiotic residues. Article 10.2 of the SPS Agreement stated that "where the appropriate level of sanitary or phytosanitary production allows for the phased introduction of new sanitary or phytosanitary measures, longer time-frames for compliance should be accorded on products of interest to developing country Members so as to maintain opportunities for their exports". However, the implementation of this provision was not satisfactory. In its review of the operation and implementation of the SPS Agreement, the SPS Committee had recognized this but had not suggested any concrete measures to overcome the problems that developing countries were facing. The main reason for the ineffective implementation of the provision was the manner in which the provision had been drafted. Unless and until the provision specified a time-period to be accorded to developing countries to comply with new measures, Article 10.2 would remain a best endeavour clause whose implementation would not address developing country concerns. It was logical to assume that producers in exporting countries would begin to undertake steps to comply with new measures only after the consultation process had been exhausted and the concerned Member had indicated its intention to finally promulgate an SPS measure, whether in the form that it was originally notified or in an amended form as a result of the consultations. That interval was as critical, if not more so, to ensure that SPS measures did not act as trade barriers. If such a period was not provided for, new SPS measures initiated by Members could very easily result in the temporary restriction of exports, particularly from developing countries.

7. He went on to say that a number of countries had differences over tolerance limits for pathogens, pests, weeds, pesticide residues and other substances relating to agro-products. The difficulty was that all these issues related primarily to cases where the importing countries set limits which the exporting countries found difficult to meet. As such, these acted as non-tariff barriers. This was more so the case when importers introduced measures that went beyond health concerns and other established SPS norms. The GATT and the SPS Agreement permitted governments to set their own product standards to protect human, animal or plant health. Though both the GATT and the SPS Agreement specified that this should not be used as a protectionist tool, this was unfortunately seldom the case unless challenged. Article 20 of the GATT categorically stated that self-determined norms should not be discriminatory in nature or used as disguised protectionism. The SPS Agreement went a step further and stipulated that standards and regulations must be based on science and should be applied only to the extent necessary to protect human, animal or plant life. There had been specific instances where notifications had been issued on the last day of a month, indicating the next month as the date of entry into force of a new measure, providing practically no time for Members to comply with the proposed measure. One reason for this was that the Agreement did not specify what should be deemed to be the sufficient time-period between the notification of a proposed measure and its entry into force. While recognizing the need for flexibility in urgent circumstances, his delegation felt that this was an issue which needed to be addressed when reviewing the Agreement.

8. The representative of Australia said that while the proposal by India was in textual form for the first time, it did not appear to be different from previous iterations and did not address the core problem that her delegation had identified, and that others had shared, on the concept of a mandatory minimum time-frame of six months for compliance by developing countries to new SPS measures. The fact that the mandatory minimum time-frame would only be provided upon request did not overcome the problem because that time-frame would still have to be provided, if requested. That meant that Members would not be able to set their own scientifically-based SPS measures and implement them in a manner and time-frame consistent with the risk that they identified. It appeared, from some of the comments made by the delegation of India, that one of the major problems facing some developing countries in meeting SPS requirements of developed countries was the underutilization of the existing flexibility in Article 10.2. Her delegation did not believe that seeking to strengthen the existing provision by stipulating a mandatory minimum time-frame would necessarily address that problem. It could in fact, as had been mentioned in the past, have the adverse effect of Members deciding not to provide any phase-in period in order to avoid providing the minimum six months. It could also lead to disputes. She recalled that Ministers at Doha had stated that "no country should be prevented from taking measures for the protection of human, animal or plant health at the levels it considers appropriate". For the reasons she had mentioned, her delegation still considered that the Chairman's assessment made at the last formal meeting was valid, that is, that there was little prospect for reaching agreement on that proposal.

9. The representative of the United States agreed with the assessment made by the representative of Australia. She said that her delegation was already meeting its obligations under Article 10.2 of the SPS Agreement and efforts had been, and were being made to allow Members time to comply with new SPS measures. These efforts were being made in good faith to ensure that Article 10.2 was more than a best endeavour clause. Where a certain degree of protection was allowed, that applied to planned changes for SPS requirements necessary to address national needs, measures implemented in response to unanticipated events and measures adopted to implement international standards. The proposed "not less than six months" in a sense was meant to replace the word "normally" in paragraph 3.1 of the Doha Decision on Implemented-Related Issues and Concerns, effectively creating a mandatory minimum time-period for developing country Members to comply with new measures. That was something that her delegation could not agree to.

10. The representative of Egypt said that Members could not deny the importance of granting developing countries longer time-frames to comply with SPS measures imposed by importing Members. Article 10.2 and paragraph 2 of Annex B of the SPS Agreement provided longer time-frames for compliance with SPS measures. The idea of introducing an obligation to grant longer time-frames for compliance was already contained in paragraph 2 of Annex B of the SPS Agreement. However, despite that obligation, Members did not fulfil it. Article 10.2 did not apply to all SPS measures, it applied to non-emergency measures which could be phased in. When new measures were introduced, a developing country exporting Member would probably seek the least time possible to comply with a measure in an attempt to preserve its market share. Where a country could not comply within six months, it could request the importing Member to grant a minimum of six months to enable it to comply with the new measures. This would, of course, be granted "upon request" as stated in the proposal and would not be applicable to all cases in which new measures were introduced. The proposal was attempting to ensure balance in the SPS Agreement.

11. The representative of Pakistan lent her delegation's support to the proposal and reiterated that amongst the numerous SPS-related measures, the issue of time-frame for compliance represented a small part of the problems faced by developing countries. The proposal related to the phased introduction of new measures. These measures were limited to non-emergency measures and a request would be required for longer time-periods to comply. The proposal represented realistic needs and perhaps her delegation would provide examples of some of the problems exporters in Pakistan faced in this regard.

12. The Chairman urged the key stakeholders with an interest in the proposal to consult with one another. Without that, it would be difficult to bridge what he considered to be a fairly conceptual divide on the proposal.

13. He concluded the discussions by summarizing the status of work on the Agreement-specific proposals. Of the 16 remaining Agreement-specific proposals to be addressed in the Special Session, he said that Members had so far come up with revised language on six of the proposals, namely proposal 13 on Article XVII, proposals 24 and 25 on Article 10.3 of the SPS Agreement, and proposals 28, 29 and 30 on Article 3.5 of the Agreement on Import Licensing Procedures. On the seventh proposal, proposal 79 on Article 10.2 of the SPS Agreement, India had tabled revised language. The revised language on these proposals represented work in progress and was not yet agreed. It was clear that Members would need to build on the progress already made and continue small group consultations on the basis of that language. He encouraged those Members which still had concerns on the proposals to reach out to one another to move the process forward. With respect to the remaining nine proposals, despite Members having addressed those proposals both in an informal and formal context, they had not been able to make progress. As he had mentioned in his report to the General Council on 7 May 2007, there were wide divergences on these proposals and it was his view that it would be difficult to reach convergence on them on the basis of the existing language. He saw no value in continuing discussions on those proposals as that would only lead to a repetition of known positions. He had also mentioned that it was his intention to set aside those nine proposals and take no further action on them for the time being.

14. The representative of Kenya said that he did not believe that setting aside the nine proposals was the best solution. There were perhaps some Members that wished to see them set aside, but those proposals were important to the Members that had tabled them. He suggested that the Chairman reconsider his position. He said that the African Group had, at one stage, considered setting aside some of the proposals if Members were able to reach convergence on the proposal relating to Article XVIII. However, on the basis of the revised language that the Chairman had tabled on Article XVIII, it was not clear whether Members were going to get there. His delegation, therefore, had a desire to address those nine proposals. Perhaps Members needed to take some time to reflect and consider whether some progress could be made after the summer break.

15. In response to the representative of Kenya, the Chairman stated that paragraph 4 of page two of his report to the General Council on 7 May, read "On the remaining 9 Agreement-specific proposals, wide divergences still exist and it is my view that it will be difficult to reach convergence on the basis of the existing language. For this reason, I have urged and I continue to urge Members to put forward new ideas or table alternative language so as to take the process forward. It is my assessment that until and unless Members do so, there would be no value in continuing discussions on these proposals as this would only lead to a repetition of positions already known". It was on this basis that he had made the decision to set aside the nine proposals and take no further action on them for the time being. His position still stood which meant that if there was an interest in pursuing any of the proposals, then it would be helpful to the process, the Chairman and the Members for new ideas or alternative language to be put forward. He had not received any new ideas or alternative language that would help take the process forward. As mentioned by the representative of Kenya, it was perhaps necessary for Members to take some time to reflect. However, when Members resumed their work, they would need to reach out to one another and provide alternative language on some of the proposals. Absent alternative language, the exercise would involve a repetition of positions.

16. The Chairman went on to say that under this agenda item, Members would, as they had in the past, consider the duty-free quota-free (DFQF) market access decision adopted at the Hong Kong Ministerial Conference. He recalled that at the last formal meeting, the least-developed countries (LDCs) had indicated that experts from their capitals would be available to meet with interested stakeholders on the DFQF market access issue, including on rules of origin. Outreach between the different stakeholders was something he had always encouraged as he considered it important to take the process forward. He asked whether the LDCs or other stakeholders wished to brief Members on any bilateral consultations they may have held on the DFQF market access issue.

17. The representative of Lesotho said that the LDC Group had not been successful in securing meetings to address the issue of product coverage and rules of origin issues. However, the DFQF issue remained important to the LDCs and the Group would continue to work towards ensuring that the decision was implemented effectively. The LDCs wished the issue to remain on the agenda of future meetings of the Special Session.

18. The representative of Bangladesh said that, at the meeting of the Regular Session of the CTD held the previous day, Members had discussed the initiatives taken by the Government of Canada to provide DFQF market access to the LDCs along with flexible rules of origin. The LDCs appreciated the review process that took place in the Regular Session of the CTD, but were of the view that the Special Session, as well as other relevant negotiating bodies, were the appropriate fora to negotiate the DFQF issue. The LDC Group had tabled two submissions, one on market access and the other on rules of origin to the Special Session as well as the Special Session of the Committee on Agriculture and the Negotiating Group on Market Access. It was unfortunate that the LDCs were yet to receive any substantive feedback or reactions from Members on those submissions. The EC was the only Member that had submitted detailed technical questions on the rules of origin submission. The LDCs appreciated this. The LDC Group had repeatedly requested the Chairman to facilitate dialogue on the DFQF issue with the key stakeholders and appreciated the efforts that had been made in this regard. However, he urged the Chairman to intensify his efforts. He said that the demand for DFQF market access by the LDCs was logical and genuine. It was something they continued to push for because the livelihood of their people depended on it. The rationale of DFQF market access was acknowledged by all WTO Members and the LDCs were requesting developed country Members and developing country Members declaring themselves in a position to do so, to implement the commitment made by their Ministers. He acknowledged that some developed country Members had already fulfilled their commitments, regardless of the fact that the Round was yet to be concluded. The LDCs appreciated the steps taken by the Government of Japan to provide DFQF to LDCs from 1 April 2007. Other Members including the EC, Canada, Australia, Norway and Switzerland were already providing DFQF market access to the LDCs even before the decision had been adopted. He urged other

developed country Members to provide DFQF market access to the LDCs on an expedited basis. A number of developing country Members, including India and Brazil, had informed Members that they were undertaking domestic processes to see how they would implement the decision. The LDCs welcomed these efforts and hoped to receive further information on progress on these domestic processes, as well as information on when the LDCs could expect these countries to implement the decision. It was clear that granting full DFQF market access to LDCs would not benefit them if it was accompanied by complicated and stringent rules of origin. He urged Members to consider and engage on the LDCs' submission on rules of origin. It was common knowledge that the LDCs' share of world trade was negligible. Providing the LDCs with DFQF, along with simple and transparent rules of origin in developed and developing country markets, would not affect domestic producers in the developed and developing countries or these countries' access to other markets. The LDCs stood to benefit largely from DFQF market access and would hopefully be able to further integrate into the multilateral trading system.

C. THE MONITORING MECHANISM

19. The Chairman recalled that at the last formal meeting, Members had engaged in constructive discussions on the possible elements of a Monitoring Mechanism on the basis of the non-paper he had circulated at the formal meeting held on 26 April 2007. At the last formal meeting held on 5 June 2007, it was his sense that the majority of Members felt that the non-paper provided a good basis for further work. There was also a feeling that that there was a need to fine-tune some of the elements contained therein. On the basis of those discussions, he had further revised the non-paper keeping in mind the various comments that had been made at the formal and informal meetings. While a copy of the revised non-paper had been made available, he said that he did not expect Members to engage in comprehensive discussions as they had not had enough time to consider it. He did, however, wish to hear Members' initial reactions on it. He recalled that the last discussions on the non-paper, had focused on bullet three of the scope of the Monitoring Mechanism which was related to the sub-bullets of the structure relating to the two levels at which the Monitoring Mechanism would function. His sense was that the other elements contained in the non-paper were by and large acceptable to delegations, notwithstanding some fine-tuning which might be needed when the non-paper was translated into a decision. He explained that the third bullet of the scope had been deleted and its elements merged into the structure. The second phrase of the second bullet which read "aimed at improving the implementation and effectiveness of S&D provisions" had been taken from the third bullet of the scope. With respect to the two levels at which the Monitoring Mechanism would function, the options provided in the revised non-paper left open the question as to whether the monitoring would take place in a Sub-Committee or in dedicated sessions. That was a question on which Members would need to further reflect. There had been some discussion on whether submissions should be made directly to the General Council and, as a result, he had reformulated the second sub-paragraph which now stated that submissions would be made either to the dedicated sessions or the Sub-Committee. Also, recommendations would now be made by the CTD to the General Council. He reiterated that the revised non-paper built on what Members had been discussing since April 2007. He said that like the Agreement-specific proposals, the revised text would probably require some informal consultations in a small group context. However, it would be helpful to hear Members' initial reactions on the paper.

20. The discussions continued in an informal mode.

21. While Members considered the revised non-paper as a useful basis to continue work on the Monitoring Mechanism, a number of clarifications were sought on some of the elements contained therein. Positions differed on whether the Mechanism would be limited to monitoring the implementation and effectiveness of special and differential treatment (S&D) provisions in the existing agreements or whether it would also monitor the implementation and effectiveness of S&D provisions that would result from the Doha Round of negotiations. In one Member's view, regardless

of what would be decided as its scope, the Monitoring Mechanism would need to be forward looking, dynamic and not duplicate the work of the Special Session. The need for the Mechanism to be simple and practical was reiterated.

22. Thereafter, the meeting reverted to a formal mode.

23. The Chairman said that the discussions had been useful in that they had highlighted those areas on which further work was required.

D. OTHER BUSINESS

24. The Chairman announced that this was the last meeting that he would be chairing. No other issue was raised under Other Business.

25. Members thanked the Chairman for his tireless efforts in taking the S&D work programme forward.

26. The meeting was accordingly adjourned.