WORLD TRADE ORGANIZATION

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Committee on Trade and Development
Seventh Special Session

NOTE ON THE MEETINGS OF 7 AND 18 OCTOBER 2002

Chairman: H.E. Mr. Ransford Smith (Jamaica)

Subjects discussed:

A. ADOPTION OF THE AGENDA

1. The Chairman said that the draft agenda for the meeting was contained in airgram WTO/AIR/1913 of 27 September 2002. He indicated that the second point of Agenda Item F should read "universal or differentiated treatment" and not "universal or differential treatment". A submission from the delegation of Hungary (TN/CTD/W/16) was added to Agenda Item C.

2. The agenda as amended was adopted.

B. WORK PROGRAMME

3. The Chairman stated that the Indicative Schedule of Meetings and Programme of Work (Indicative Work Programme) for the Special Session of the Committee on Trade and Development (Special Session) had been introduced at the informal meeting of the Special Session held on 23 September 2002. Six meetings, both formal and open-ended informal, were proposed to be held between September and December 2002. Four of these meetings were to be held as close as possible to meetings of other WTO bodies in order to facilitate discussion of the Agreement-specific proposals. Another two meetings would be utilized to discuss the remaining Agreement-specific proposals in thematic clusters, and the systemic and cross-cutting issues. The Indicative Work Programme also proposed discussions on the Monitoring Mechanism for Special and Differential (S&D) treatment and on the incorporation of S&D treatment into the architecture of the WTO. A formal meeting was

proposed for early December 2002 to consider the Special Session's report to the General Council. The Chairman said that Members had been receptive to the Indicative Work Programme, although there were concerns about the timing of some of the meetings. Efforts had been and would continue to be made to improve the Indicative Work Programme. Meanwhile, the structure of meetings as outlined in the Indicative Work Programme could be followed. The scheduling of meetings had been raised the previous week at a meeting of the Trade Negotiations Committee (TNC). He also said that interpretation might not be available for some of the meetings being proposed to be held in proximity with meetings of other WTO bodies. In such a case, these meetings might have to be rescheduled.

4. The Chairman highlighted changes that had been made to the Indicative Work Programme. The Annexes of the Indicative Work Programme now listed the proposals made by Members under each thematic cluster. The following dates and topics of discussion were proposed for meetings of the Special Session scheduled in proximity to meetings of other relevant WTO bodies: 17 October 2002 to discuss the Agreement on Technical Barriers to Trade (TBT); 23 and 24 October 2002 to discuss the Understanding on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 (GATT 1994) (Anti-dumping Agreement), the General Agreement on Trade in Services (GATS) and the Agreement on Safeguards; 4 and 6 November 2002 to discuss the Agreement on Subsidies and Countervailing Measures (SCM Agreement) and the Agreement on the Application of Sanitary and Phytosanitary Measures (SPS Agreement); 12 November 2002 to discuss the Understanding on Rules and Procedures Governing the Settlement of Disputes (DSU); and 21 November 2002 to discuss the Agreement on Agriculture. At the formal meeting scheduled in late November 2002, Members would discuss the remaining cross-cutting issues and Agreement-specific proposals in thematic clusters, as well as S&D treatment and its incorporation into the architecture of WTO rules. Moreover, he indicated that the report to the General Council would be considered during the formal meetings on 2 and 3 December 2002. He also requested delegations to provide responses to the Agreement-specific proposals before 31 October 2002 in order to facilitate the discussions in the meetings that were scheduled before that date.

5. The representative of India said that an effort to secure better scheduling of the meetings of the Special Session had been discussed at the TNC, following which the Chairman of the TNC had asked one of the Deputy Directors-General to look into the issue. His delegation would accept the Indicative Work Programme subject to possible changes following the consultations to be held by the Deputy Director-General. His delegation preferred all meetings scheduled according to the Indicative Work Programme to be formal meetings. If this was not possible, then his delegation would request that a record be made of the discussions in all the meetings and that record be circulated to all Members.

6. The representative of Canada said that the meeting on 4 and 6 November 2002, which dealt with the SCM Agreement was not in proximity with the meeting of the Committee on Subsidies and Countervailing Measures (SCM Committee) on 31 October to 1 November 2002 and it may therefore be difficult for the experts to attend that meeting of the Special Session.

7. The representative of the United States suggested that the meeting with respect to the SCM Agreement be held during the week of 21 October. That would facilitate anti-dumping experts to be available for the meeting since many Governments used the same experts for issues related to anti-dumping as well as subsidies and countervailing measures.

8. The Chairman agreed with the suggestion made by the representative of the United States and said that he would take into account the views that had been expressed with relation to the Indicative Work Programme.

C. INTRODUCTION OF SUBMISSIONS (TN/CTD/W/13, TN/CTD/W/14, TN/CTD/W/15)

9. The representative of the European Communities, while introducing his delegation's submission (TN/CTD/W/13), stated that it was important to identify means to assist developing countries in utilising S&D treatment provisions, especially through information flows and technical assistance. The objective was to assist developing countries ensure synergy and coordination and ensure that S&D provisions would be more effective. It should not only be a backward-looking exercise on the existing provisions and his delegation also attached importance to the forward-looking aspects, that is, how the exercise would fit into the Doha Development Agenda and the architecture of the WTO rules. It was important not to loose sight of these goals while the Special Session conducted the review of existing S&D provisions. He referred to the link between the S&D work programme and other elements of the Doha Development Agenda. He underlined the importance of not losing sight of work in other bodies which had a similar character and addressed similar issues with the Special Session. His delegation had attempted in its submission to indicate to Members how it had intended to address individual provisions, Agreements and Agreement-specific proposals. The intention was to have them considered on their merit and in line with the mandate for that exercise. He also stated that the Special Session should discuss the overall objectives of S&D treatment. The Special Session had not arrived at a point where it could choose whether the overall objective should be full integration or permanent exclusion. It would be necessary at each discussion of individual proposals or during the generic discussions, to keep this in mind. He said that when effectiveness of S&D treatment provisions was discussed, it was important to ask "effective for what"? The analysis of S&D treatment objectives was the tool which would allow the Special Session to improve the present approach. Such an approach could transcend the provision-based approach which some Members saw as a priority in their work. He said that the ability of developing countries to benefit from S&D treatment provisions was closely linked to interaction with other instruments, particularly technical assistance, and his delegation welcomed the emphasis which other delegations had included in their submissions on that particular point. He affirmed that there had to be further discussion on that issue. His delegation would make an effort to ensure that the parameters it had used for technical assistance were in line with the overall objective of making S&D treatment provisions more effective. The underlying assumption was that an approach was needed which ensured integration and not exclusion. The Special Session had to find ways which would make it easier for developing countries to participate in the multi-lateral trading system (MTS). His delegation believed that such an approach excluded a two or three-tier system.

10. The representative of Switzerland said that their proposal (TN/CTD/W/14) had three parts: the first part concerned principles or guidelines for implementation of S&D treatment provisions; the second part dealt with the organization of the discussion; and the third part concerned the Monitoring Mechanism. With respect to the first part, his delegation believed that differential treatment was an essential feature of the MTS. In some cases, there was a need for countries to get an exception from a specific rule for a specific period of time. However, there should not be permanent exemptions since all countries should at some stage integrate into the MTS. Regarding the question of country groups, he said that his delegation could not find an economic and trade rationale to the distinctions made in present international agreements. The Special Session had to return to the basics in considering country groupings. This meant that countries in a similar economic and trade situation should be treated in a similar way in international agreements. If that was not done, then it would mean that certain countries were being discriminated against. There should be a way of not only having a group of Least-Developed Countries (LDCs) but to also include other countries which were in a similar situation in terms of the way they were treated in international rules. That did not imply that in specific circumstances, where that was justified, there should not be a specific rule, for instance, for net food-importing countries. The Special Session should be able to technically examine the structure of countries and their problems and use the rules in that sense. That same reasoning also applied to the question of graduation, which should be applied pragmatically and specifically. Members should not forget that although S&D provisions were important, they did not represent the core of WTO

Agreements. Regarding the organisation of the discussion, the representative of Switzerland said that his delegation's proposals appeared to be taken into account in the Chairman's proposal. His delegation believed that it would have been better to have engaged negotiating groups directly and to have had more time for that discussion. There were certain aspects for which it would have been easy for the Special Session to find solutions, whereas for others it might have taken more time. That could have been reflected in the way clusters had been organized. His delegation had excluded the discussion on the generalised system of preferences (GSP) from its proposal. Several proposals had been made in that regard and those proposals should be taken up. However, the discussion on the GSP had some difficulties. One problem was that it was difficult to discuss the GSP until his delegation knew more about the concessions which could be made in the discussion of the general negotiations. It was important to discuss the predictability of GSP schemes and the guidelines for these schemes followed by Members. His delegation believed that for many poor countries those issues were important and therefore believed that a special session should be organized to discuss those issues. Regarding the Monitoring Mechanism, he said that his delegation had made suggestions on how to implement the Monitoring Mechanism proposed in the submission by the African Group (TN/CTD/W/3/Rev.1) with two goals in mind. The first goal was to find a way to verify whether the opportunities granted by S&D treatment provisions had been utilised by developing countries. That would indicate how to change those provisions in the future. The second goal was to find a way to use flexibility in transition periods to implement trade rules. He said that there had to be a way to verify whether technical assistance helped a Member to build up institutions which were required to implement trade rules. Referring to Intellectual Property, Sanitary and Phytosanitary Measures (SPS) and customs evaluation he said that there had to be a way to replace the present legal rule by an active process in which action plans would be decided with the consultation of the Member on a specific process in order to insure the implementation of these provisions. The Special Session could then discuss the results of that process from time to time. His delegation realised that such a proposal implied an activist position and more of a technical dialogue than a general discussion. This would have cost implications and the budgetary aspects and institutional details would have to be discussed. His delegation was convinced that the Special Session should not forego an important instrument to deal with S&D provisions because of technical concerns.

11. The representative of Paraguay said that the proposal submitted by his delegation (TN/CTD/W/15) proposed a structuring and organizing of discussions on S&D treatment divided into subject areas as set out in the report to the General Council (TN/CTD/3). His delegation proposed that, within the parameters of the Doha Ministerial Declaration mandate and based on the report of the Special Session to the General Council and with a view to analysing and examining the issues and cross-cutting proposals, the Special Session organise its work by dividing the themes to be analysed into two distinct pillars. The core of the aims and purposes of S&D treatment were presented in paragraph 5 of TN/CTD/W/15. In paragraph 8 of the same document, the interaction and impact of the implementation of principles and rules of the WTO were presented. In that context, his delegation welcomed the fact that TN/CTD/W/14, which had been presented by the delegation of Switzerland, had many similarities to his delegation's approach. His delegation however, differed on what was stated in paragraph 9(b) of TN/CTD/W/14, in which a different time-frame than the one agreed upon in the Special Session and the General Council was proposed. That proposal lengthened the time-period for solving those problems. Moreover, it was not advisable to connect S&D treatment with the ongoing agricultural and market access negotiations. S&D treatment was not an end to itself, but rather a means towards free and fair trade. It was intended to benefit developing countries, and hence should not be detrimental to developing countries. His delegation was concerned that the implementation of the 1979 Decision on Differential and More Favourable Treatment, Reciprocity and Fuller Participation of Developing Countries (WT/L/304) (Enabling Clause), with and without obtaining waivers from the General Council, was causing major economic injuries to his country. The Enabling Clause had been adopted in 1979 before Paraguay had become a member of the GATT. His delegation was not claiming a new interpretation of the Enabling Clause. It only wanted the provisions of paragraph 3 of the Enabling Clause to be respected. His delegation wished to avoid a

situation wherein benefits or advantages granted to developing countries, hurt Paraguay. His delegation was of the view that the principle of flexibility should not produce injury for other Members. If that occurred, then the affected developing country could either oppose the waiver or receive acceptable compensation. A third option would be that the same benefits were granted to the affected developing country. His delegation felt that all Members must fulfill and ensure compliance with the rules and regulations in force. Principles and rules were established in the WTO, such as Article I of GATT 1994 which provided for non-discrimination. However, the WTO recognized three levels of economic development of Members: developed countries, developing countries and LDCs. He added that compliance with trade rules would guarantee growing stability, which would encourage Members to further liberalize international trade.

12. The representative of Hungary apologised for the late submission of the concept paper by his delegation (TN/CTD/W/16). The submission had been prepared in reaction to certain ideas which had emerged during the implementation of the work programme entrusted to the Special Session. As part of that work, the delegation of Paraguay had submitted a proposal on the Enabling Clause contained in TN/CTD/W/5. The main thrust of that proposal was to ensure the proper implementation of the Enabling Clause in order to make sure there was no discrimination amongst developing countries, when providing access through national GSP regimes. Paragraph 10 of that proposal specified certain criteria that were being used by GSP-providing countries to differentiate among developing countries. Several of the criteria dealt with the level of economic development and competitiveness of beneficiary countries. The proposal made by the delegation of Paraguay asserted that the use of such indicators was based on "subjective, arbitrary and unilateral positions" and gave rise to discrimination among developing countries. It was in this context that his delegation had submitted questions in its communication of July 2002 (TN/CTD/W/10) and had requested written replies from the delegation of Paraguay. The most important question that had been raised was: "Does it follow from the proposal that if a GSP providing country wishes to avoid granting such preferences to richer countries, the only way is to abolish its scheme altogether, or does Paraguay see any legal way to limit the availability of preferences to those WTO Members with a lower level of economic development?" The answer that they had received from the representative of Paraguay was that: "No, within the scope of the Enabling Clause, Paraguay does not see any legal way to limit the availability of preferences to those WTO Members with a lower level of economic development and we think at the same time granting preferences to richer countries." That answer had been subsequently supported by a number of developing countries. The implications of the answer provided by the delegation of Paraguay were far-reaching, especially for GSP providing countries at an intermediate level of development, such as Hungary. With a per capita gross domestic product (GDP) of approximately US$5,000, his country was in the group of upper middle income countries. His delegation was therefore not able to support an interpretation of the Enabling Clause which would leave a country like his to either provide trade benefits to countries that were richer than itself, or to stop operating a GSP system altogether. The first option would be totally unjustifiable from an economic, political and even moral aspect. International rules should not oblige countries to provide economic assistance to countries that were more developed than themselves by offering them unilateral preferential market access conditions. Such an obligation would not be acceptable to his Government and to the public at large. The second alternative would be equally unfortunate, as it would force countries like his to terminate their GSP schemes, which had existed for 30 years. The provision of preferential market access conditions for developing countries was one of the most tangible and effective means of supporting the development process of countries at a lower level of economic development. His Government therefore feared that if the interpretation proposed by the delegation of Paraguay was accepted, then developing countries which needed preferential market access would stand to lose. The acceptance of the proposed interpretation would also have systemic implications for the WTO, as then it would become necessary to review the current practice of self-classification in the developing country group. His delegation felt that these concerns were not specific to Hungary alone, as there were at least two groups of WTO Members at a comparable level of economic development which faced a similar dilemma. These were WTO Members which operated GSP schemes and had not

declared themselves as developing countries. On top of that, there were more advanced developing countries which may have considered the establishment of a GSP system in favour of their poorer developing country partners. It was against that background that the submission by his delegation had examined the origin and intent of the Enabling Clause, which was the legal basis for national GSP schemes. The purpose of his delegation's concept paper was to contribute to the clarification of the debate on the Enabling Clause with a view to making its provisions more precise, effective and operational, as was required by the mandate of the Special Session.

13. Due to differences in characteristics and circumstances of both providers and beneficiaries of GSP, the Enabling Clause had inbuilt flexibilities for the shaping of national GSP schemes. Firstly, the establishment and maintenance of a GSP system was not mandatory: the Enabling Clause permitted any WTO Member who wished to set up a GSP regime to deviate from Article I of GATT 1994. Secondly, paragraph 3 of the Enabling Clause stated that GSP schemes should be designed and, if necessary, modified to respond to the needs of developing countries. That paragraph provided the basis for taking into account differences in development levels as well as in the development, financial and trade needs of individual developing countries. The flexibilities embodied in the above provisions had become increasingly important over the past decades. The term "developing" country had never been defined and the original practice of self-selection remained applicable to date. Over the years, a number of developing countries at a higher level of development had caught up with some of the GSP-providing countries and some had even overtaken them in terms of overall economic development or sectoral competitiveness. Despite these changes, no WTO Member had changed its self-classification or renounced its developing country status. That was the reason for the current situation, where there were a number of GSP-providing countries like Hungary, whose level of development was below that of countries which classified themselves as "developing". The Hungarian legislation which established Hungary's GSP scheme had foreseen that possibility and it therefore contained a limitation on the scope of beneficiaries based on their level of development. Under that legislation, his Government was obliged not to provide GSP benefits to countries with a higher level of economic development - as measured by per capita GDP levels - than its own. Thus, the Hungarian GSP regime, like that of a number of other GSP providers, contained at least two of the criteria mentioned in the proposal by the delegation of Paraguay, namely development indices and graduation. According to that proposal, those criteria were discriminatory and illegal and the representative of Paraguay had stated that Members should not be allowed to use such criteria. That interpretation was not acceptable to his delegation, which had in its submission proposed some concepts to avoid these two negative alternatives. In order to clarify the commitment stemming from the Enabling Clause, WTO Members should adopt an agreed interpretation which would indicate that the terms "developing country" and "less-developed country" had equivalent meaning and that the subsequent use of the term "developing country" did not change the original intent of the Enabling Clause. That intent was to provide a legal possibility for more developed countries to grant trade preferences only to less-developed countries than themselves. Furthermore, in that interpretation it could be indicated that it would not be discriminatory in the context of the Enabling Clause if the GSP scheme of a Member did not cover countries which were more developed than itself. The concept paper submitted by the delegation of Hungary enumerated options as to how to give practical effect to the proposed interpretation of the Enabling Clause, and thereby maintaining the flexibility for the operation of national GSP schemes.

14. Continuing, the representative of Hungary said that the first option was the relative approach, which would mean that a WTO Member would not be obliged to provide GSP benefits to Members with a higher level of development, as measured by an agreed set of economic indices. Such an approach would make it easier for more advanced developing countries, whose level of economic development was comparable, for example, to that of Hungary, to operate GSP schemes and provide preferential market access to less advanced developing countries. However, the relative approach also had a number of deficiencies. Firstly, it would result in a complex structure, as each GSP provider would have a different set of GSP beneficiaries, depending on the relative relationship of development

indices. That would create transparency problems and the predictability of GSP benefits would be limited. Also, the list of beneficiaries of national GSP schemes would change constantly. Furthermore, as the economic indices used for establishing the relative development position of countries would be expressed in an internationally used currency, any change of exchange rate would overturn the relative relationship. That could result in turning more developed countries into less developed ones and vice versa, and would require corresponding changes in the lists of GSP beneficiaries. The Hungarian delegate stated that the second option, the absolute approach, would solve many of the deficiencies mentioned above. It would be based on the establishment of a uniform threshold defined by agreed economic indices, above which a Member could not claim benefits from GSP providing countries. Such an approach would simplify the definition of GSP beneficiaries and make the whole process more transparent. Furthermore, by having a uniform list of beneficiaries, there would be a higher level of coherence among national GSP schemes. While the effects of economic changes or currency movements would not be eliminated, their effect on the list of GSP beneficiaries would be limited. Thus, there would be a higher level of transparency and predictability for both GSP providers and beneficiaries. However, such an approach would also have some disadvantages. Firstly, it may be difficult to get consensus on the principle and on any specific level of economic indicators. The setting up of any threshold level would exclude or include a country from the common list of beneficiaries of all national GSP schemes and thus from all such preferential trade benefits. Furthermore, considering some WTO Members operated GSP schemes with low levels of development, a low common threshold would have to be established and many of the present GSP beneficiaries may therefore be eliminated from such a uniform list. The representative of Hungary continued that the third option, a combined approach, could preserve the positive elements of both alternatives. There could be an agreed threshold of development under which Members were entitled to GSP benefits, but it could be supplemented by a rule based on the relative approach. That rule could be that Members would not claim benefits from GSP providers which were less developed than themselves. Such an approach would make it easier to agree on a uniform threshold level, as it would be substantially higher than what may be agreed upon under the absolute approach. That method may not solve all the difficulties but it would provide a more predictable and equitable outcome, and more flexibility to deal with borderline cases. His delegation hoped that its concept paper was a useful contribution to the issues raised by the delegation of Paraguay.

15. The representative of Sri Lanka said that her delegation was of the view that the discussion on the GSP schemes required a separate session. The Enabling Clause and GSP schemes touched on the two very important instruments in GATT history, namely tariffs and sectoral competitiveness. However, there were other proposals pertaining to the non-tariff barriers such as SPS, TBT, anti-dumping and subsidies. Her delegation wanted UNCTAD to be present at the proposed separate discussion on the Enabling Clause and the GSP, since the GSP was implemented by UNCTAD.

16. The Chairman stated that a timing difficulty existed in terms of the Special Session's schedule. He said that the delegation of Switzerland had made a reference regarding deferring the discussion on the Enabling Clause. As he understood it, the delegation of Switzerland had proposed that that discussion be deferred until such time as the market access negotiations on agricultural and non-agricultural goods were more advanced. The problem was that that was likely to be after the December deadline of reporting to the General Council. Another difficulty was that other cross-cutting issues, were linked to the Enabling Clause. The Chairman stated that there was also a small difficulty in terms of the proposal just introduced by the delegation of Hungary since it was not yet available as an official document. Members might need time to reflect on the elements contained in that submission. The Special Session would need to therefore return to that discussion at a later stage; but it would need to be taken up as indicated in the schedule.

17. The representative of Paraguay thanked the delegation of Hungary for their submission. He thought it was a positive step and an important contribution towards addressing some of the problems associated with the Enabling Clause. He clarified that in Part V of TN/CTD/W/5/Add.1, his

delegation had addressed the principles of non-discrimination and flexibility. As he had mentioned earlier, his delegation was flexible in that regard. His delegation simply believed that granting privileges or concessions to certain developing countries in a way that caused damage to other developing countries was not consistent with the Enabling Clause. His delegation supported the proposal made by the representative of Hungary to look for a solution to facilitate a better understanding and interpretation of the Enabling Clause. He therefore reiterated that he accepted the invitation by the representative of Hungary for discussion of the issue together with any other country that had a direct interest in the matter, so that they could find a formula which satisfied everybody.

18. The representative of Colombia said that her delegation had concerns with connecting a discussion on a system of preferences with a discussion on the Enabling Clause. Her delegation understood the Enabling Clause to be a legal instrument through which *inter alia* preferences could be granted. It was based on a complex analytical process, and a separation of the two issues was required.

19. The representative of India reminded Members of the mandate of the Special Session, namely to make the non-mandatory provisions mandatory and to see how the mandatory provisions could be made more effective, precise and operational. The discussions should focus on those two elements. He agreed with the Chairman's comment in the meeting of the TNC held the previous week that the resolution of S&D issues would be a litmus test for the commitment given to development-related issues on addressing the problems of development in the Doha Work Programme.

20. The representative of Norway said that her delegation sympathised with the proposal made by the delegation of Switzerland with respect to the consideration of GSP schemes and its connection with the agricultural and market access negotiations. However, the discussion on GSP schemes concerned many cross-cutting issues and should be included in the discussions on cross-cutting issues. She said that questions on GSP schemes could be taken up in the ongoing negotiations on agriculture and market access in their respective negotiating fora.

21. The representative of Malaysia said that his delegation would have difficulties in agreeing to the request for further meetings. There was no need to have a separate discussion on the Enabling Clause. The delegations of Paraguay and Hungary had both raised important systemic and trade issues which had to be discussed. He added that those issues could be discussed together with other cross-cutting issues. He emphasized that the issues raised by the delegations of Paraguay and Hungary on the GSP were separate and distinct, and not part of the Doha Ministerial Declaration mandate.

D. DISCUSSION OF AGREEMENT-SPECIFIC PROPOSALS (GATT 1994, AGREEMENT ON TEXTILES AND CLOTHING, AGREEMENT ON TRIMS, AGREEMENT ON IMPORT-LICENSING PROCEDURES, DECISION ON MEASURES CONCERNING THE POSSIBLE NEGATIVE EFFECTS OF THE REFORM PROGRAMME ON LEAST-DEVELOPED AND NET FOOD-IMPORTING DEVELOPING COUNTRIES) IN THEMATIC CLUSTERS

22. The Chairman invited delegations to discuss the Agreement-specific proposals in the three thematic clusters as envisaged in the Indicative Work Programme, namely (1) provisions aimed at increasing the trade opportunities of developing country Members; (2) provisions under which WTO Members should safeguard the interests of developing country Members; and (3) flexibility of commitments, of action, and use of policy instruments. The specific proposals to be discussed within those clusters had been listed in Annex I of the Indicative Work Programme of 2 October 2002. He invited Members to commence discussions on the first item under the first cluster, namely GATT 1994, Article XXXVI.2-5 and the proposal by the African Group (TN/CTD/W/3/Rev.2, paragraphs 38-39).

23. The Chairman said that the point of the thematic clusters was to draw upon the themes of the clusters during the discussions of the proposals. He therefore also referred Members to the other provisions and proposals within Cluster 1, namely Article XXXVII.1(a) of GATT 1994 and Article XXXVIII.2(c) and 2(e) of GATT 1994 and the proposal by the African Group contained in paragraphs 40 and 41 of TN/CTD/W/3/Rev.2 respectively. Additionally, for the Agreement on Textiles and Clothing (ATC), there were two proposals on Article 2.18. One by the African Group in paragraph 68 of TN/CTD/W/3/Rev.2 and the proposal by the LDCs, contained in paragraphs 43-46 of TN/CTD/W/4/Add.1.

24. The representative of Kenya said that the proposal by the African Group (TN/CTD/W/3/Rev.2) did not aim to overhaul the WTO Agreements. The aim was to clarify some of the S&D treatment provisions discussed so as to make them effective and ensure that developing countries benefited from them.

25. The representative of Japan said that his delegation understood that Members were obliged to make a conscious effort to give effect to what was stipulated in Article XXXVI.2-5 of GATT 1994. However, it was unrealistic to expect Members to take action to fulfil all the expectations of developing countries arising from Article XXXVI.2-5 of GATT 1994. His delegation was unclear as to what the proposal by the African Group aimed to achieve by suggesting objective criteria and setting targets. If the proposed review was based on the assumption that Article XXXVI.2-5 of GATT 1994 constituted binding commitments, his delegation could not accept it.

26. The representative of Australia said that his delegation interpreted the African Group's proposal on Article XXXVI of GATT 1994 as proposing binding commitments for Members, so as to ensure delivery of the provisions in paragraphs 2-7 of Article XXXVI of GATT 1994. His delegation felt that many of the issues covered in the African Group's proposal were not the sole responsibility of developed countries. His delegation had concerns about how binding commitments for developed country Members could diminish the obligations of developing country Members to play a part in their own development. The objective should be to provide leeway for developing countries and LDCs which had particular disadvantages, to set in place institutional arrangements to implement WTO Agreements and provisions and to obtain special treatment, where specified in WTO Agreements. His delegation could not agree with the suggestion that developed countries needed to take prime responsibility for identifying the needs of developing countries and LDCs. His delegation would consider strengthening commitments for increased market access for products from developing countries as contained in paragraph 4 of Article XXXVI of GATT 1994. However, it had concerns about revisiting commodity price stabilization as outlined in the second part of that paragraph. He said that the proposal by the African Group relating to Article XXXVII.1(a) of GATT 1994 called for a binding commitment on the reduction and elimination of barriers to products of particular export interest to less-developed Members, including customs duties and other restrictions which differentiated unreasonably between primary and processed products. That was already an important concept in the liberalization of agriculture and had been taken into account in the reduction of tariffs on tropical products during the Uruguay Round. That proposal could be considered once the Special Session had agreed on some of the cross-cutting issues. The proposal was broad and his delegation needed more information on issues such as the likely recipients and the time frames. The Special Session had to carefully consider making such commitments binding as they were not part of specific agreements and might affect rights and obligations across a range of WTO Agreements. He said that it would be more valuable to improve and strengthen commitments within specific Agreements. His delegation had no comments to make on the proposal in respect of the ATC.

27. The representative of Norway said that her delegation supported the basic objectives and principles enunciated in the African Group's proposal on Article XXXVI of GATT 1994. Those were to ensure that developing countries and LDCs experienced a rapid and sustained expansion of export earnings and secure a share in international trade commensurate with the needs of their economic

development. However, her delegation was not sure how making those provisions into binding commitments Members would contribute, in practical terms, to that end. In the WTO, Members could negotiate and reach an agreement on improved market access for developing country Members and LDCs. However, in order to achieve all the objectives laid out in Article XXXVI of GATT 1994, concerted efforts with other international organizations were also needed, not least in terms of technical assistance and capacity building. Bilateral donors also had an important role to play in that sense. The Government of Norway had implemented tariff and quota free market access for all products from LDCs as of 1 July 2002. In the negotiations on continuing the agriculture reform process, the Government of Norway had proposed that special attention be paid to products of particular interest to developing countries when tariff reductions were considered. In the Negotiating Group on Market Access for non-agricultural products, her delegation had proposed that the modalities for negotiations should include specific provisions to facilitate S&D treatment, and that such provisions, *inter alia*, should include substantial reductions and, where possible, the elimination of tariffs on products of interest to developing countries. Those provisions should also include at a minimum: elimination of tariffs on products of importance to LDCs; no reciprocal tariff concessions from LDCs; and tariff reductions in line with their level of development for other developing countries, particularly through the use of differentiated coefficients in the different elements of a formula. Her delegation believed that that was the means to secure the objectives contained in the proposals of the African Group. Her delegation believed that the proposal by the African Group to review the provisions of Article XXXVI of GATT 1994 twice every year should be included in the discussion on the proposed Monitoring Mechanism. With respect to the proposal in paragraph 40 of TN/CTD/W/3/Rev.2 on Article XXXVII of GATT 1994, she stated that the provisions of paragraph 1 of Article XXXVII of GATT 1994 should be seen in the light of the new round of trade negotiations. During those negotiations, Members should pay special attention to products of particular export interest to developing countries and LDCs. The result of those negotiations would be incorporated as binding commitments and should ensure predictability, stability and transparency. Her delegation was uncertain as to what was meant by the phrase "leave shall be sought in the General Council by the concerned developed country Members" (in paragraph 40 of TN/CTD/W/3/Rev.2) as the results of the negotiations would provide binding commitments for all Members. She said the Special Session had to agree on modalities that contain specific commitments to facilitate S&D treatment. In the Negotiating Group on Market Access for non-agricultural products, her delegation had argued that modalities should include specific provisions to ensure the achievement of goals on S&D treatment incorporated in the Doha Ministerial Declaration mandate. Her delegation was currently working with Norwegian companies to identify difficulties encountered with respect to non-tariff barriers (NTBs). Her delegation welcomed comments from developing countries on the specific NTBs that should be addressed. With respect to Article XXXVIII of GATT 1994 and the African Group's proposal set out in paragraph 41(a) and (b) of TN/CTD/W/3/Rev.2, her delegation noted the information in WT/COMTD/W/77/Rev.1/Add.4. She asked whether there was a need for specific guidelines as to how that collaboration could be made more effective. Her delegation did not want to propose further studies, but wanted to make sure that any possible overlap was avoided. It was not for the Secretariat to provide guidelines on discernible rates of growth in actual market access and targets to be achieved over the short and medium term. Her delegation had no comments on the proposals with respect to the ATC and did not have any problems with the LDCs' proposal (TN/CTD/W/4/Add.1) in that regard.

28. The representative of Japan said that Article XXXVII.1 of GATT 1994 stipulated that Members should give effect to the provisions of paragraphs (a)-(c) of that Article to the fullest extent possible. Article XXXVII.2 set out the procedures to address concerns of Members on the implementation of Article XXXVII.1. Article XXXVII.3 stipulated the obligations of Members in this regard. His delegation did not believe that the proposal by the African Group (TN/CTD/W/3/Rev.2) on Article XXXVII.1 of GATT 1994 was appropriate since it proposed changing the existing obligations in those provisions. With respect to the proposal by the African Group on Article XXXVIII of GATT 1994, he said that although that Article did not set any

guidelines as to the reporting of actions taken, his delegation thought it would require an excessive burden on the part of the WTO Secretariat. The African Group's proposal was too ambitious in the targets and time-frames that it set for possible action. His delegation thought that Article 2.18 of the ATC had been extensively discussed in the Council for Trade in Goods, which had reported to the General Council in July 2002. The Council for Trade in Goods was expected to examine how to deal further with the issue and there was therefore no need to spend time on the proposals relating to the ATC.

29. The representative of Switzerland stated that Articles XXXVI, XXXVII, and XXXVIII of GATT 1994 were important because they put the WTO Agreements into context. He said that it was clear that many of the aspects that were covered had already found concrete expression. However, his delegation believed that those provisions should remain as best endeavour provisions. To make them legally binding would not necessarily result in concrete improvements. As the delegation of Norway had proposed, such provisions should, together with other S&D treatment provisions, be part of a monitoring process. Members could review, consult on, and organize studies on those matters. Also, some of those provisions alluded to a situation in the international sphere which required updating. He referred to the example of commodity agreements, which had been an important part of international trade relations in the past. It was his understanding that the methods and the thinking about such agreements had changed. Unfortunately, the problems had remained, namely, that there was a high volatility of commodity prices. That was a current topic that had to be discussed. At the same time, the methods which were employed in those provisions could not be replicated in the present situation. To simply declare those provisions binding to the extent that they referred to industrialized countries, was not the right tool to deal with the problem.

30. The representative of Hungary said that the Special Session would have to cover trade-related and trade opportunity-related issues under Agenda Item F - the cross-cutting issues. Under Cluster 1, "opportunities" were understood as the situations where the more favourable conditions allowed for certain results, for example certain results related to export performance of developing countries. If the African Group's proposal to make the objectives of Article XXXVI of GATT 1994 binding were implemented, a situation could arise where instead of providing appropriate conditions and opportunities, the outcomes would be made binding. The African Group had proposed in paragraph 38(a) to bind developed country Members to a commitment to "ensure a rapid and sustained expansion of export earnings of the developing and least-developed country Members". He asked how organizations which dealt with rules of trade could ensure outcomes in a binding manner and asked how commitments to ensure specific trade flows could be made, because that would mean that Members would have to ensure an increase in export earnings as well as in the gross share of world trade of certain Members. That kind of principle would transform the WTO into a planned trade organization. He said that the proposals were not considering the opportunities but the results. He said that the problem with the African Group's proposal relating to paragraph 9 of Article XXXVI of GATT 1994 was that they were proposing that the phrase in paragraph 9 used in relation to paragraphs 2 to 7 of Article XXXVI, should be understood to mean that the provisions of paragraphs 2 to 7 were binding commitments on the part of developed country Members, which was different from making those commitments binding to the contracting parties. That meant that not only would a certain provision be made mandatory but it would also mean a basic redrafting of an important Article and the commitments contained therein. A point that his delegation had raised in its submission was that when considering binding commitments that favoured certain groups of countries, there was no problem when that related to LDCs which belonged to a clearly defined category. However, when considering binding commitments that favoured developing countries, it was difficult to determine who the intended beneficiary countries would be and who the providing countries would be. He asked whether his Government would be obliged to contribute to the increased share of world trade of all developing countries. Those were important questions that needed to be answered. When considering binding commitments, it needed to be clear who the beneficiaries and providers were. He pointed out that sub-paragraph 1(a) of Article XXXVII of GATT 1994 already contained some

specific commitments relating to the reduction and elimination of barriers. He said that GSP schemes, to a large extent were aimed at achieving those outcomes and a number of Members had reduced and eliminated all barriers to trade from LDCs, without any restrictions. Therefore, when considering how the objectives of Article XXXVI could be put into effect it was important to consider the content of national GSP schemes.

31. The Chairman said that the representative of Hungary's point on the Enabling Clause was one that Members could reflect on. The Enabling Clause was listed among the cross-cutting issues because when the proposal regarding the Enabling Clause was put forward, Members appeared to be of the view that there were certain issues raised by that proposal and that the systemic issues needed to be addressed along with the other cross-cutting issues. He pointed out that the heading "Provisions aimed at increasing the trade opportunities of developing country members" had not been suggested by the African Group. Any anomaly between that heading and the African Group's proposal was the responsibility of the Chairman and the Secretariat.

32. The representative of the United States said there was a long standing practice of trying to address market access issues through GSP schemes, preferential arrangements of different kinds and the waiver process. She said that that was appropriate and demonstrated the commitment of Members to those issues. Market access via unilateral preference programmes was one way in which many countries had pursued development objectives as well as through the current negotiations in agriculture, services and non-agricultural market access, which would be critically important in advancing those particular objectives. Ministers in constructing Part IV of GATT 1994 had focussed on the objective of integrating developing countries into the system and her delegation agreed with the delegations of Paraguay, the European Communities, Switzerland and others that the integration of developing countries into the MTS should be the key objective. Part IV of GATT 1994 contained a series of objectives to help Members focus on how to increase participation of developing countries into the MTS, taking into account their special needs and interests and the necessity of working with other institutions to ensure that trade fostered development. That was essentially what her delegation believed that Members had agreed upon in the Doha Development Agenda. She said that in agriculture, the question of market access was no longer a North-South issue. Many of the concerns outlined in Part IV of GATT 1994 were shared among Members at different levels of development. She asked the proponents to consider how some of the specific objectives of the Doha Development Agenda might be practically reached in the ongoing negotiations. The discussions on the tools available for negotiations, as well as the collaboration with other institutions was worth pursuing but needed to be pursued carefully in order to respect the institutional mandates of the different organizations. In that respect the work of the World Bank, the WITS Programme and the expertise of the International Trade Centre (ITC) could be informative.

33. She went on to say that while her delegation had doubts about the value of transforming many of the provisions into legally binding provisions, it shared the objectives in Part IV of GATT 1994 and welcomed the opportunity to continue to explore practical ways to enable Members to pursue those objectives through negotiations. She said that the Monitoring Mechanism could be a possible way of achieving that and it was worth exploring further. Her delegation did not see how making these provisions binding would help in a practical way. Her delegation would prefer to find a practical approach and hoped others would do the same. She said that the proposal relating to the ATC was similar to a number of proposals which had already been discussed in detail in the implementation debate, and more recently in the Council for Trade in Goods. Her delegation felt that it would be useful for Members to review the records of those discussions rather than repeat them. There were some real questions regarding who would obtain less access as a result of those proposals, which could particularly disadvantage Members in the Western Hemisphere and in Africa. In the light of the differing views, she asked the proponents whether they wished to reflect further as to their interests in eroding existing preferences by accelerating the guaranteed access provided by the ATC phase-out schedule.

34. The representative of Canada said that her delegation believed that the first three Articles under discussion were covered by document WT/COMTD/W/77/Rev.1/Add.4, which showed the various GSP schemes and the benefits that developing countries were receiving from those schemes. She noted that a number of Governments, including her own, had announced duty-free and quota-free access for products from LDCs. Her delegation expected to see further movement by all Members in this regard, in the context of the negotiations. The second representative of Canada said that his delegation noted that the ATC was in its eighth year of its ten-year schedule agreed to in the Uruguay Round. Therefore, he questioned the appropriateness of disrupting the adjustment process built in the ATC. Since 1995, his Government had met and exceeded its obligations under the ATC and, as a result of the LDC Market Access Initiative announced the previous summer, his Government had removed all quota restrictions on imports of textile products from LDCs. He asked Members to take that into account when considering the implementation proposals related to the ATC. His delegation had, in an autonomous fashion, delivered on the idea that was behind the LDC proposal (TN/CTD/W/4/Add.1, paragraphs 43 to 46) with respect to Article 2.18 of the ATC. With respect to paragraph 56(a) of the African Group's Proposal regarding the interpretation of the adjustment of growth rates built into Article 2.18 of the ATC, he said that his delegation submitted that the interpretation of that Article had to be made on the basis that the advancement of a growth period meant that whatever growth rate was prescribed for Stage 2, would be applied in Stage 1, and that the growth rate that was forecast for Stage 3 would be applied in Stage 2. That was how his delegation had understood and implemented Article 2.18 of the ATC. Therefore, his delegation had some difficulties with the proposal made by the African Group and felt that the Council for Trade in Goods would be the best forum to examine those issues.

35. The representative of Argentina said that his delegation shared the spirit behind the African Group's proposal contained in paragraphs 38-39 of document TN/CTD/W/3/Rev.2, with respect to paragraphs 2-7 of Article XXXVI of GATT 1994. As other delegations had stated the proposal recognised that the processes in Article XXXVI of GATT 1994 were complex processes. In this context all the protagonists had a limited role. His delegation suggested that Members identified the attitudes and behaviours necessary to achieve the objectives and that were attributable to a defined set of actors. Based on that definition, binding rules could be drawn up, which would be complex and time-consuming. It was impossible to deal with that in the meeting considering the limited time that Members had. However, Members could reflect on the possibility of considering that definition as part of the mandate of the Monitoring Mechanism. Based on past experiences, the Monitoring Mechanism could identify conducts or behaviours in connection with paragraphs 2-5 of Article XXXVI of GATT 1994 and draw up binding provisions. His delegation supported the African Group proposal that related to Articles XXXVI to XXXVIII of GATT 1994 (TN/CTD/W/3/Rev.2, paragraphs 38 to 41). However, his delegation was not in a position to comment, at that time, on the proposals made by the African Group and the LDCs, relating to the ATC.

36. The representative of New Zealand said that, at that stage her delegation would not comment on the proposals relating to the ATC. She said that her Capital had found it difficult to constructively analyse the proposals in the absence of an understanding of the real development needs and problems that had driven each individual proposal. As a result, she said that her delegation would appreciate any information on those specific needs and problems that would help it consider the proposals. With respect to the proposal on Article XXXVI of GATT 1994, she said that her delegation endorsed what the representative of Australia had said, that Article XXXVI of GATT 1994 was clearly directed at all Members, not just developed country Members. Her delegation could not accept a proposal that would exclude developing countries from any responsibility under that article. WTO Members at different stages of development would play different roles, commensurate with their abilities. However, the richer developing countries should assist with the development of poorer countries and all developing countries needed to take action to secure their own development objectives. With respect to the proposal in paragraph 39 of the African Group submission (TN/CTD/W/3/Rev.2), she said that other delegations had noted the possibility of the Monitoring Mechanism examining that

issue. Her delegation supported that idea and she said that it was something that was worth further exploring. She noted as had other delegations, that with respect to the proposal contained in paragraph 40 relating to Article XXXVII of GATT 1994, practical improvements in market access and other areas of interest to developing countries needed to be secured through the Doha negotiations. Like the delegation of the United States, her delegation had always looked at effective and practical means to secure improvements in those areas through negotiations, rather than by making provisions binding when it was unclear what their practical contribution would be. With respect to the proposal on Article XXXVIII of GATT 1994 contained in paragraph 41, she said that her delegation shared some of the concerns that the representative of Japan had raised with respect to the resource burden of such reporting requirements. She questioned whether such reports would not duplicate work undertaken in other bodies, in particular with respect to the follow-up programme of work emerging from the United Nations Conference on Financing for Development. Coherence issues were already being addressed under that follow-up programme. While that did not preclude WTO involvement, her delegation noted that it was a wider inter-agency collaborative process of which the WTO was one agency.

37. The representative of Mexico said that his delegation shared the underlying concern in the proposals made by the African Group. His delegation believed in the importance of S&D treatment provisions, as well as provisions that were meant to achieve enhanced development for Members. However, there were still questions as to the benefits that the proposals on S&D could generate. His delegation did not see how making some of those provisions binding would improve the situation for developing countries. It was necessary to clearly define what was being sought through those proposals, because it was not clear that transforming those provisions into binding provisions would generate the effects that the African countries and the LDCs sought. Making those provisions binding meant that Members would have to consider what sanctions would apply in the case of non-compliance. If the provisions were binding, but there were no visible sanctions then those provisions would not be effective. He agreed with the representative of Switzerland and other delegations that the implementation of those S&D provisions could be reviewed under the Monitoring Mechanism.

38. The representative of the European Communities said that his delegation agreed with the comments that had been made by the representatives of Japan, the United States, Switzerland and Canada. The objective of the provisions being discussed under Cluster 1 was to increase the trade opportunities of developing country Members. That was the objective of the Doha Development Agenda. However, that could not be interpreted as creating binding commitments only for developed country Members. With respect to Article XXXVI, he reiterated that the words "jointly and individually" in paragraph 9 of that Article required the conscious and purposeful efforts of all Members. That principle applied to all Members and could not be made binding on developed country Members only. He reminded Members that the European Communities was going to review its GSP system in 2004 and that it had already given unrestricted access to LDCs in their "Everything-but-Arms" Agreement. He said that his delegation agreed with what the representative of the United States had said, namely that market access was no longer a North-South issue, it was also a South-South issue, and that regional cooperation and market access were important. He sought clarification with respect to the meaning of the phrase "leave shall be sought in the General Council" contained in paragraph 40 of document TN/CTD/W/3/Rev.2. As far as Article XXXVIII was concerned, his delegation had no problem with undertaking studies and producing reports but was not very keen for too much formalization of the process. His delegation had difficulty accepting that the General Council should provide guidelines for development indicators and goals. In his delegation's perception that was the responsibility of the individual developing countries themselves. With respect to the proposal contained in paragraph 41 of document TN/CTD/W3/Rev.2, his delegation believed that the Council for Trade in Goods, and not the Special Session, should be the forum to deal with those issues.

39. The representative of Sri Lanka referred to the comments made by previous speakers that paragraph 9 of Article XXXVI of GATT 1994 placed a responsibility on all Members and that there should be no separation made between the obligations of the developed and developing country Members. She said that when Part IV of GATT 1947 was introduced in 1964, there were only two categories of countries: developed and less-developed Contracting Parties. What used to be the "less-developed Contracting Parties" included LDCs. Initially there was no division among the "less-developed" countries but subsequently the LDCs had been recognised as a separate category. For that reason, paragraph 9 of Article XXXVI of GATT 1994 needed to be read in conjunction with paragraph 4 of Article XXXVII of GATT 1994 which provides that "less-developed Contracting Parties" – that meant the developing countries and LDCs who were recognised at that time as one category – "agree to take appropriate action in implementation of the provisions of Part IV for the benefit of the trade of other less-developed Contracting Parties, in so far as such action is consistent with their individual present and future development, financial and trade needs taking into account past trade development as well as the trade interests of less-developed Contracting Parties as a whole." Delegations who continued to say that there should be legally binding obligations from both groups of countries should reconsider whether their statements were appropriate in the above context. In response to the question posed with respect to the meaning of the phrase "to ensure a rapid and sustained expansion" in the African Group's proposal contained in paragraph 38(a) of document TN/CTD/W/3/Rev.2, she said that it was her understanding that when a trade opportunity was provided to developing countries there should be a certain degree of predictability to it. The word "ensure" meant that it would be predictable that a particular preference would be maintained and for instance market access would not be hindered by other measures. She said that the representative of Hungary had mentioned, with respect to paragraph 4 of Article XXXVI of GATT 1994, that if Members were to go back to the previously agreed commodity trade agreements, Members would be going backwards. She reminded Members that the successive Agreement on Cocoa had been recently concluded and that there were many commodity producing countries who had participated in that commodity agreement and secured more predictable market access through it. The World Bank had a similar concept using forward contracts. It meant that exporters from developing countries would be permitted to secure a price for their commodities before goods were delivered. Regarding the views by some Members that most of the concerns outlined in Article XXXVIII of GATT 1994 had been addressed under the GSP schemes only related to tariff reductions. Article XXXVIII of GATT 1994 also related to other measures. Article XXXVII of GATT 1994 referred to "non-tariff import barriers" and paragraph 3 of that Article referred to "other measures". It was not only tariffs that were of concern, but also the removal of NTBs on products that were of interest to developing countries. Since GSP schemes primarily related to the reduction of tariffs, she did not see how Members could say that the GSP schemes would deal with other measures. With respect to the comment made by the representative of Australia that the Uruguay Round Mid-term Review had considered the liberalization of the trade of tropical products from developing countries, in order to facilitate the diversification of economies of developing countries and LDCs, she said that diversification included both horizontal and vertical diversification. Diversification from primary to processed products was required. She asked what action the past Uruguay Round process had been taken to address tariff escalation. That was an issue which Members had addressed in the agriculture and non-agricultural tariff negotiations. However, Members had to identify the basic parameters so that those concerns were incorporated in the new negotiations. There were other concerns raised with respect to making the provisions in Part IV of GATT 1994 binding and she said that it was important to consider how those could be amended. She recalled that Part IV of GATT 1994 was very comprehensive and when a Member found that the provisions of, say Article XXXVIII of GATT 1994, had not been implemented then that Member could resort to some form of remedy through consultations. However, the problem with Part IV of GATT 1994 was that because it was a best endeavour clause, most Members could not resort to the remedies provided by the Article. That was why developing country Members maintained that the provisions should either be made mandatory or legally binding, in order to permit developing country Members to resort to the remedies provided therein.

40. The representative of India said that he would respond to some of the points raised. First, there had been some suggestions that some of the proposals should be considered in the larger context of the ongoing negotiations in the Doha Work Programme. He said that the task assigned to the Special Session was to look at the existing provisions on S&D and see how they could be made mandatory, effective, precise and operational. The proposals made by the African Group and LDCs fell into that category, which was why his delegation did not see why those provisions could not be discussed in the Special Session and why they should be taken up in the negotiating groups. Second, there was a suggestion that some of those issues might have already been addressed in the Decision on Implementation-Related Issues and Concerns taken at the Doha Ministerial Conference. In his delegation's view, that Decision had not fully resolved all the issues and some residual points needed to be addressed. They were after all S&D provisions and the Special Session was competent to deal with them. Third, there had been an interesting suggestion made by one delegation when commenting on the proposals on the ATC, that Members should also consider the possible implications for other countries and how the proposals would erode preferences that were currently being given by some Members to certain developing countries. In that context, among the regions that were identified as likely to be affected was the African region. He had been surprised at that comment as it was the African Group's proposal and they would have considered its implications before they had tabled it. In that connection he asked those Members which extended preferences and entered into RTAs with certain groups of countries, whether they took into account the possible erosion of tariff preferences and the likely impact on market access for developing countries of the RTAs they entered into.

41. The representative of Kenya requested that delegations that had raised specific comments or questions with respect to the African Group's proposals provide them in writing. He said that one delegation had said that some of the proposals by the African Group were not realistic and another delegation had said that they were too ambitious. He enquired whether those delegations could inform his delegation what type/level of proposals should be made so as to be deemed realistic. Another delegation had said, with respect to the proposal on binding commitments, that it wished to know which developing countries would be the beneficiaries. He said that it was his understanding that S&D treatment was for developing countries, that was clear in the WTO Agreements and the African Group was not attempting to introduce a new definition of developing countries. He said that there had also been some suggestions that the proposals should be dealt with in the existing negotiating bodies. He reminded Members that paragraph 44 of the Doha Ministerial Declaration clearly indicated that the Ministers had mandated the Special Session to make the provisions precise, effective and operational. That was not possible unless those provisions were further clarified, interpreted, and in some cases made binding. That was the only way, otherwise they would remain best endeavour clauses. One delegation had said that S&D provisions were better dealt with if they remained best endeavour clauses. However, experience had shown, that those provisions had not been effective, and developing countries including LDCs had not been able to benefit from them because of the vagueness of their language. He asked that delegation to provide an alternative proposal, because if those provisions remained as best endeavour clauses then it meant that Members would not make any progress. The issues would be left as they were and he considered that to be defying the mandate given by Ministers at the Doha Ministerial Conference. With respect to the Monitoring Mechanism, he said that the African Group considered the Monitoring Mechanism to be a mechanism that would oversee the effectiveness and operationalisation of the S&D provisions. But the S&D provisions had to first be made precise before invoking the Monitoring Mechanism to consider whether they were being satisfactorily implemented or not. He warned against Members envisaging the Monitoring Mechanism as the answer to all the issues relating to the provisions.

42. The Chairman asked Members to address Cluster 2 - Provisions under Which WTO Members Should Safeguard the Interests of Developing Country Members. He said that at least three of the paragraphs could be cross-referenced to Cluster 1. He said that Cluster 2 included proposals relating to the Decision on Measures Concerning the Possible Negative Effects of the Reform Programme on

Least-Developed and Net Food-Importing Developing Countries (NFIDCs), the ATC and on the Agreement on Import Licensing Procedures.

43. The representative of Canada said that paragraphs 6, 7, and 9 of Article XXXVI of GATT 1994, as well as paragraphs 1 and 2(a) to (d), and (f) of Article XXXVIII of GATT 1994, referred to relationships with other organisations. Her Government believed that there had been close cooperation between the Contracting Parties and international lending agencies, so that they could contribute to alleviating the burden on less-developed Contracting Parties. Donor contributions to concessional facilities at the World Bank and regional development banks were elements of that cooperation. She said that document WT/COMTD/W/77/Rev.1/Add.4 captured the efforts made by Members to advance the provisions of Article XXXVIII of GATT 1994. Work in the WTO, UNCTAD and the ITC, as well as the regional development banks, was taking place to develop export potential of developing countries and facilitate access to export markets. The World Bank and the IMF had recently reviewed the development of world trade and made recommendations to member countries on enhancing the growth of trade of LDCs. With respect to Article 6.6 of the ATC, she said that until September 2002 her Government had not invoked any transitional safeguards. If her Government were to invoke transitional safeguards, they would take into account the provisions of that Article.

44. The representative of Japan said that his delegation would comment on the proposals contained in paragraphs (b), (c) and (d) of Cluster 2. As for the proposals contained in paragraph (a) of the cluster, he believed that his delegation's comments under Cluster 1 already covered that. With respect to the Decision on Measures Concerning the Possible Negative Effects of the Reform Programme on LDCs and NFIDCs, he said that it was his delegation's understanding that the studies carried out by the inter-agency panel had not resolved the issue relating to the fund, and that the issue was scheduled to be discussed in the future General Council Meetings. Therefore, his delegation believed that the discussion in the Special Session should not focus on those issues. He said that the proposal on grant food aid should be examined with reference to different types of situations, especially those that required large amounts of food aid. His delegation believed that non-grant food aid should be provided on concessional terms for emergency and humanitarian purposes. In any case, the discussion on the amount of food aid should take place in agencies such as the Food and Agricultural Organisation (FAO) and the World Food Programme (WFP). With respect to the proposal on Articles 6.6(b) and 6.6(c) of the ATC, he said that the issues had been already examined under Cluster 1 and priority should not be given to those proposals. Article 6.6(b) and (c) stipulated the need to take account of the interests of exporting countries, particularly LDCs, in applying transitional safeguards. However, that Article did not set obligations such as the one that had been proposed that no safeguard measures should be taken against small volume exporting country members. Neither did that Article state that restrictions should not be imposed on small share exporting Members or LDCs. His delegation could therefore not accept the proposal by the African Group, as it attempted to change the obligation set forth in Article 6.6 of the ATC. With respect to paragraph 56(d) of the African Group proposal (TN/CTD/W/3/Rev.2), he said that his Government had already introduced a duty-free scheme on textile imports from LDCs.

45. He went on to say that in paragraph 42 of the Doha Ministerial Declaration, as referred to in the African Group's proposal, Members' commitments to quota-free market access for products originating from LDCs did not include developing country Members. It was not clear to his delegation what the second sentence in the proposal contained in paragraph 56(d) of the African Group's proposal meant. He therefore asked the proponents for clarification on that part of the proposal. He said that Article 1.2 stipulated, in general terms, the need to take into account the economic development objectives and financial and trade needs of developing country Members. The S&D treatment provisions were found in Articles 2.2, 3.5(a)(iv) and 3.5(j) of the Agreement on Import Licensing Procedures which aimed to respond to those needs of developing country Members. With respect to Articles 3.5(a)(iv) of the same Agreement, he said that his delegation believed that the

existing Article 1.2 was operational and could meet the needs of developing country Members to avoid any additional administrative or financial burden. His delegation requested that Members proposing amendments to the Agreement on Import Licensing Procedures fully explain the difficulties that they had faced in that respect. His delegation maintained its position that any amendments to the existing provisions of the Agreement should be made in the relevant negotiating body. His delegation's understanding was that the issue raised in the African Group's proposal on Article 3.5(j) of the Agreement on Import Licensing Procedures had not been raised or discussed in the Committee on Import Licensing and he asked the proponents to explain their concerns.

46. The representative of Australia referring to Article XXXVII.1(b) and (c), and 3(a) to (c) of GATT 1994, said that those were general principles, rather than specific commitments. It was difficult to monitor and enforce such paragraphs. Her delegation preferred to keep those as guiding principles for Members, with more specific commitments outlined in individual agreements. In relation to Article XXXVIII.1, 2(a), (d), and (f) of GATT 1994, the African Group's proposal had raised a number of complex issues. In her delegation's view, the proposal seemed to place responsibility upon the Committee on Trade and Development (CTD) for a number of development-related issues that were the responsibility of other organisations. She also noted that the Secretariat had produced an Annual Report on Developing Country Participation in the Global Economy and wondered if that research work could be enhanced to cover some of those issues. For instance, developing countries could be invited to submit a report that would take stock of their development and could supplement the work of the Secretariat. It was necessary to see how much of the work was carried out by the WTO Secretariat, especially in terms of collaboration with other agencies, and the efforts being made across-the-board to mainstream trade into development strategies. Her delegation was sympathetic to concerns expressed by LDCs and NFIDCs regarding the effectiveness of the Decision on Measures Concerning the Possible Negative Effects of the Reform Program on LDCs and NFIDCs. Her Government recognised that food security was a fundamental concern, and supported the provision of food aid and technical assistance to reduce poverty, promote rural development and agricultural productivity, and improve access to food. To facilitate greater food security for developing countries and NFIDCs, her delegation supported revising and strengthening the existing WTO provisions. However, her delegation questioned whether the establishment of a new loan facility to address short-term financing difficulties, would be the most effective use of available resources, for those countries that were experiencing higher than normal food import bills. Global trade liberalisation in agriculture and domestic agricultural reform policies, in combination with sustainable agricultural and fisheries development, would be the most appropriate way of improving the food security situation of developing countries and net food importing developing countries. In terms of the African Group's proposal on Article 1.2 of the Agreement on Import Licensing Procedures, it was difficult for her delegation to comment as it was unclear what it would mean in practice. Members needed to ensure that their import licensing regimes were non-discriminatory. She asked for clarification of the meaning of "adverse effects". Her delegation however, agreed in principle to the African Group's proposal on Article 3.5 of the Agreement on Import Licensing Procedures. They considered that it would be worth exploring further, including looking at the practical impact of the proposal. With regard to the proposal by the delegation of Thailand, she recognised that it was open to further consideration. Her delegation wished to know whether this proposal would be in the best interests of developing countries and LDCs, who might also wish to obtain such information, not just from developed countries but from other developing countries and LDCs. With respect to Article 3.5(j) of the Agreement on Import Licensing Procedures, she said that the effect of the proposed changes was unclear to her delegation. In her delegation's view, administrative arrangements that tended to differentiate between developed and developing countries, could raise concerns.

47. The representative of Switzerland, commenting on the proposal concerning the Decision on Measures Concerning the Possible Negative Effects of the Reform Programme on Least-Developed Countries and NFIDCs, said that the establishment of a special revolving fund had been examined by

his Government, and they were in contact with the IMF, the World Bank and other financial institutions in order to see whether this problem could be solved in the context of credits and financing from those institutions. The inter-agency report in July 2002 was not conclusive on the issue, so they had to continue exploring various options. On the other hand, they were in favour of food aid being in grant form on a cash basis and on the need to maintain food aid levels. With respect to Articles 6.6(b), 6.6(c) of the ATC, his delegation did not have much to say since Switzerland was not part of the multi-fibre agreement and had no quotas. However, they were not sure whether it was worthwhile having long negotiations on the ATC, as it would end in two years. It was better to concentrate on Agreements and provisions that had a longer life. With respect to the proposal on Article 1.2 of the Agreement on Import Licensing Procedures by the African Group, he questioned the meaning of "expeditious". They appreciated the proposal but needed to know more before they could make any comments on it. With respect to the proposal on Article 3.5(a) of the Agreement on Import Licensing, they thought that the proposal did not go in the right direction. With respect to the proposals on Article 3.5(j) of the Agreement on Import Licensing Procedures, he indicated that his delegation was studying its implications. They hoped to come up with some proposals or solutions, so that the issue of discrimination in allocating quotas, could be addressed. They were not certain that a solution would be forthcoming and so preferred to keep it as a "should" provision, not a "shall" provision.

48. The representative of the United States said that Article XXXVI, XXXVII and XXXVIII of GATT 1994 were aspirational in nature. They preferred to keep the Articles as guiding principles, as her delegation found it difficult to envision how objectives or joint action by Members or international collaboration laid out in Part IV of GATT 1994 could be made binding. Her delegation's experience had shown that market forces and domestic policy had a greater impact on commodity prices than buffer stocks or other such efforts of Governments. Her delegation was unsure what a binding commitment would achieve, since it was beyond the ability of any single Member to influence stability in product prices or product diversification. With regard to the issue of net food-importing countries, her delegation understood it to be an important issue for a number of developing countries and smaller economies. Specific attention had been given to this issue by Ministers at Doha, and later in the Committee on Agriculture. Her delegation's record on food-aid stood for itself. Food aid was provided under the guidelines outlined in the Marrakesh Agreement. The United States were consistently the largest provider of food-aid around the world, accounting for more than half of total food-aid flows. However, it would not be appropriate to bind food-aid commitments in a donor's WTO schedule. The schedules reflect bindings related to trade commitments, not to aid. There were other international institutions such as the International Grains Council that addressed food-aid more appropriately. Her delegation would be interested in hearing other delegations' views in that regard. With respect to the proposal for Article 6.6(b) of the ATC, she said that the current agreement adequately safeguarded small suppliers and LDCs. The transitional safeguards could only be invoked on a Member-by-Member basis. Such imports should not be accumulated for the application of a safeguard. The ATC already required that particular attention be given to the interests of LDCs and small suppliers in the application of transitional safeguard mechanisms. Therefore, her delegation was more interested in understanding the practical problems that may have arisen with this provision, so as to have a better understanding of the concerns that Members had in this regard. With respect to the proposals on Articles 1.2, 3.5(a) and (j) and Article 4 of the Agreement on Import Licensing Procedures, her delegation noted that encouraging discussion on these issues in the technical bodies would bring an added dimension to the challenges in these areas. She said that in addition to the contribution that the Committee on Import Licensing could make because of its expertise in import licensing procedures, the Special Session should also note that these proposals had practical implications on the ongoing agricultural and market access negotiations, where licensing procedures play a specific role. In the context of market access negotiations and existing obligations on Members to provide data for tariff negotiations and for the integrated database, a number of delegations had offered technical assistance to ensure that Members were assisted in this regard. That would also help Members analyse and consider what their export opportunities might be. With regard to mandatory

allocation in licensing, her delegation appreciated the desire by developing countries and LDCs to gain enhanced access to new licenses. They were however not convinced that a change of language of the provision, from "should" to "shall", would achieve that result. However, an improvement to the current system would encourage efficient production through market mechanisms. Her delegation inquired how the licenses would be allocated amongst developing countries. However, those issues would need to be examined further, including in the context of their implications for some of the ongoing negotiations.

49. The representative of Canada said that her delegation supported food-aid in full grant form and was seeking binding commitments to that effect in the WTO agricultural negotiations. With regard to short-term difficulties in financing normal levels of commercial imports, her delegation was committed to examining existing or new mechanisms that could suitably respond to rising food import bills. The most effective way to address concerns with regard to the possible negative effects of the reform programme on the availability of food supplies would be to address issues like agricultural productivity and infrastructure in those countries, in the context of their aid programme. That was part of the reason why Canada was placing additional emphasis on agriculture, water, and the environment in her Government's aid programmes. In that regard, her Government had committed six billion dollars in new and existing resources in the next five years to support Africa's development. Commenting on the Agreement on Import Licensing Procedures, she said that making the Articles mandatory, would not address the real issue of improving developing countries' capacity to produce export products, including the need to meet foreign standards and regulations. Her delegation saw three issues that needed to be addressed with respect to the proposals that had been made: firstly, she asked whether the proposals would raise Most Favoured Nation (MFN) concerns. Secondly, mandatory special consideration for developing countries would be extremely difficult to define and it would leave developed Members uncertain about the extent of their obligations to developing countries. Thirdly, new proposals might have the effect of moving closer to a world of increased country reserves, which should be avoided.

50. The representative of Kenya said that some Members had requested more information, especially regarding the proposals relating to the NFIDCs and to the Agreement on Import Licensing Procedures by the African Group. Several delegations had also pointed out the work being conducted by the Committee on Agriculture for NFIDCs. He said his delegation would like to remind the Special Session of the mandate given by the Ministers, which required that S&D treatment provisions be made more precise, effective and operational. That task should not be confused with what was happening elsewhere in other Committees. He mentioned that during the meeting, Members had also said that they were taking action with respect to some of the areas that the African Group had proposed. However, it was not what had been done in the past or what was intended to be done in the future that had importance; the important matter was to make the provisions operational. A permanent solution was necessary to address some of those concerns. S&D treatment could not be the complete cure, but it would be the right step towards solving some of the problems. Reference had also been made to the use of negotiating bodies. Each negotiating body, like the CTD in Special Session, had its own specific role in making the existing provisions more precise, effective and operational, but that did not mean that the proposals should be considered only in those bodies.

51. The representative of India said that he had noted the views expressed by various delegations on the proposals contained in TN/CTD/W6. His delegation believed that making those provisions mandatory would help developing countries, and especially LDCs, increase their share in world trade and make operational the preamble of the Marrakesh Agreement. He also noted the references made by delegations regarding the linkage between the Special Session and the ongoing negotiations in agriculture and market access. The representative of Kenya had clarified that the Special Session had a clear mandate given by the Ministers at Doha to review S&D treatment provisions with a view of strengthening them and making them precise, effective and operational. Regarding specific questions

raised by Members on the proposal made by his delegation, he requested that those questions be sent in writing.

52. The representative of Thailand, referring to questions raised by the delegations of Japan, Australia and the United States, said that her views on the issue were similar to those put forth by the delegations of Kenya and India. Her delegation had proposed an amendment to Article 3.5(a) of the Agreement on the Import Licensing Procedures in view of the mandate given by the Ministers to make S&D treatment provisions operational, precise and effective. Her Government really wanted to know whether it was mandatory for developing countries to bear the administrative costs associated with complying with the provisions of that article.

53. The representative of the European Communities said that the implementation of Articles XXXVI to XXXVIII of GATT 1994 should remain autonomous, otherwise it would be difficult to implement those provisions. The entire Doha Work Program would make progress on implementation-related concerns. There were ongoing discussions in other WTO bodies on the question of food and NFIDCs. Despite the requests by other delegations to discuss those issues in parallel in the Special Session, his delegation did not have anything further to add to comments it had already made on the Revolving Fund and the Decision on Measures Concerning the Possible Negative Effects of the Reform Program on LDCs and NFIDCs. With respect to import licensing procedures, he said that his delegation did not understand what value the proposals would add in practice. His delegation was aware of the difficulties in discussing import licensing procedures and also of their impact on negotiations on agriculture. Before fully understanding and making progress on that issue, more discussions were required. He said that his delegation did not understand the legal effect of the proposed change of words from "should" to "shall" in Article 1.2 of the Agreement on Import Licensing Procedures.

54. The representative of Kenya said that his country was a NFIDC not because of choice but because of the trade policies of developed countries. It was true that the issues relating to NFIDCs were being discussed in other WTO committees and other fora, but the Special Session had to come up with specific recommendations on S&D treatment by 31 December 2002. The work going on in other committees did not necessarily have the same time-frame.

55. The Chairman said that there had been a good exchange of views on Cluster 2. Those views would facilitate a fuller engagement on the specific issues touched upon in the proposals. He then opened the floor for comments on Cluster 3 - Flexibility of Commitments, of Action, and Use of Policy Instruments.

56. The representative of Japan said his delegation felt that the proposal on Article XVIII of GATT 1994 was too general for further discussions and requested proponents indicate the background for that proposal. The proposal established rules and specified that developing country Members and LDCs could be exempted from those obligations that they found cumbersome. His delegation could not accept such a proposal. With regards to the proposal on Article XVIII.A of GATT 1994, his delegation questioned the meaning of the statement "they shall not be required to offer or make compensatory adjustments that are inconsistent with their development needs or would unreasonably strain their resources", contained in paragraph 36 of TN/CTD/W/3/Rev.2. In his delegation's view, the question whether "compensatory adjustment" was necessary should be subject to the judgment of Members and such decision should be made based on individual requests for compensatory adjustment. His delegation was also not clear as to the necessity of introducing measures that allowed a period of three months for exporters, as suggested in the second sentence of the proposal. As for the proposal on Article XVIII.B of GATT 1994, his delegation believed that short term financial flows were important indicators for examining the state of external results. His delegation was therefore not clear as to the background of the proposal and requested further clarification from the proponents. The measures taken under Article XVIII.B of GATT 1994 should not exceed the limits set forth in

that same Article. It was therefore difficult to accept the proposed period of not less than three years. With regard to the proposal of Article XVIII.C of GATT 1994, his delegation would become aware of the difficulties small economies faced through the discussion in the Dedicated Session of the CTD. His delegation felt that it was difficult to apply disciplines for a limited Membership only and that that practice led to the creation of the dual disciplines in multilateral trade rules. His delegation believed that the lack of capacity suffered by small economies should be addressed by technical assistance and capacity building activities. With regard to the proposal on Article 4 of the Agreement on Trade-Related Investment Measures (TRIMs), his delegation believed that Members had the right to take measures to safeguard their external financial situation, namely their Balance-of Payments. However, such measures were to be taken as stipulated by WTO Agreements. His delegation believed that the period of temporary deviation should be determined on a case-by-case basis and therefore the proposed fixed period of not less than six years was difficult to accept.

57. The representative of Australia said that her delegation would consider the proposal on Article XVIII of GATT 1994 but requested background information in order to determine the objectives of the proposal. In relation to Article XXXVI.8 of GATT 1994, she noted that the paragraph on non-reciprocity had been utilized during the Uruguay Round and was reflected in the extent of bindings on industrial products and on the average level of tariffs of developing country Members. Her delegation sought further clarification on the benefits that would accrue from making that commitment binding, given its current usage. With regard to the proposal on Article 4 of the Agreement on TRIMs contained in paragraph 59(a) of TN/CTD/W/3/Rev.2, she noted that the proposal expanded the grounds on which developing country Members could temporarily deviate from GATT provisions. Article 4 of the Agreement on TRIMs provided the extent to which a Member could temporarily deviate from Articles III and XI of GATT 1994. Therefore, she requested clarification on the objectives of the proposal. The proposal contained in paragraph 59(b) of TN/CTD/W/3/Rev.2 suggested that a six year period should apply to the phrase in Article 4, "free to deviate temporarily from the provisions of Article 2". Her delegation sought clarification as to whether the proposal suggested a longer period than what was in existence in the Agreement on TRIMs, or whether a blanket exception was being sought.

58. The representative of the European Communities drew Members' attention to the ongoing discussion of Article XVIII in other fora, such as the Committee on Balance-of-Payments and the CTD. He said that his delegation did not have conclusive data that suggested that there was not enough flexibility within Article XVIII of GATT 1994. His delegation felt that eliminating compensation requirements would be an inducement to use the flexibility in Article XVIII in ways which would not always lead to the pursuit of development objectives. A careful balance would have to be looked at. Some of the proposed ideas might re-surface, although his delegation disapproved of the proposed time-frames. His delegation was willing to look at the proposal from the delegation of St Lucia (TN/CTD/W/8) in more detail. He noted that paragraph 35 of the Doha Ministerial Declaration warned against the creation of sub-categories of WTO Members and said that in his delegation's view, that should also apply to individual S&D treatment proposals. His delegation agreed with the statement made by the delegation of Australia on reciprocity with respect to Article XXXVI.8 of GATT 1994. He did not see the need for more action in that respect, as it was already applied in practice. He requested the proponents to explain why they needed to go back to Article XXXVI.8. On the TRIMs proposals, his delegation did not understand the reference made in paragraph 59(a) of the African Group proposal to the Decision on Implementation – Related Issues and Concerns. His delegation would apply Article 4 of the Agreement on TRIMs consistently with the Decision on Implementation – Related Issues and Concerns and was therefore not sure whether further action was required on that issue. His delegation felt that the freedom to deviate from the provisions of Article 2 of the Agreement on TRIMs for the proposed six years was not in the spirit of that Agreement. In case of deviation, the existing procedures should be followed. He also noted that a general review of the Agreement on TRIMs was underway in the Council for Trade and Goods. In his delegation's view, that was the forum where a holistic approach could be taken on the functioning,

objectives, and the development relevance of provisions of the Agreement on TRIMs. He also noted that many developing country Members had abolished their TRIMs, and therefore requested proponents to comment on their problems in that field.

59. The representative of Canada, commenting on Articles XVIII and XXXVI.8 of GATT 1994, said that S&D treatment was meant for integration into the world trading system and that her delegation did not wish to see protectionism equated with development. She said that Members adhered to WTO obligations because the disciplines imposed thereby enhanced Members' collective ability to trade and prosper. That did not mean that rigid and inflexible policies should be adopted. In her view, Article XVIII struck the appropriate balance by allowing exceptions where Members felt it warranted. Her delegation felt that the record on granting exemptions was good, but it did not wish to see exemptions granted automatically and without justification. Members also had to consider whether they were proceeding down a path which would leave developing countries with few, if any, significant obligations to each other. As regards Article 4 of the Agreement on TRIMs, her delegation agreed with the comments by the delegation of the European Communities and also wished to have further explanation on the necessity of the proposal. In her view, the intention of paragraph 1.1 of the Decision on Implementation – Related Issues and Concerns would be taken into account when reading Article XVIII of GATT 1994, whether directly or through Article 4 of the Agreement on TRIMs. There was no need for explicit reference to the Decision on Implementation – Related Issues and Concerns in Article 4 of the Agreement on TRIMs.

60. The representative of the United States commenting on Article XXXVI.8 of GATT 1994, said that they understood many Members were concerned with the issue of reciprocity, especially with respect to concessions to developing countries. The current levels of binding showed that some Members had higher bound rates, as compared to the applied rates of duty. The question was whether that had had a positive effect on their development strategies. It could be argued that the lack of predictability in the tariff regimes had resulted in a long-term negative consequences for their economic development and trade competitiveness. In the area of subsidies, there had been extensive debate on reciprocity and competitiveness, including on the use of indicators to determine when a country had become competitive. The question was how Members could include that concept into the discussions of the Special Session. With respect to Article 4 of the Agreement on TRIMs, she noted that the flexibility in the TRIMs Agreement had been used. Her Government had given up to an additional four years of transition. In her view, it was appropriate to assess and meet the needs of developing countries on a case-by-case basis. With regard to the six year blanket waiver, her delegation believed that Article 4 of the Agreement on TRIMs allowed developing countries to use TRIMs during a balance-of-payments crisis, which under normal circumstances would be inconsistent with the Agreement. It was important that once a Member had met the relevant procedural and substantive obligations, the Committee on Balance-of-Payments would consider the merits of each application on a case-by-case basis. That was an example of matching individual development needs with recourse to S&D treatment. A blanket six years transition period, that allowed developing countries to rely on Article 4 of the Agreement on TRIMs beyond the term of the balance-of-payment crisis, would cause an imbalance of the rights and obligations among Members. She requested Members to inform her delegation of the practical problems that they encountered with the Agreement on TRIMs.

61. The representative of Kenya noted that one delegation had said that the proposals were too general and difficult for discussions. Another delegation had said that exemptions from certain obligations were not possible. However, S&D treatment provisions were exemptions to the rule. He therefore requested clarification as to what that particular delegation had meant. He reminded Members that the Ministers had given the Special Session its mandate because S&D treatment provisions had not yielded the expected results. His delegation did not think that the Special Session could make S&D treatment provisions operational, by referring them to other Committees. The Special Session should fulfil its mandate and not refer issues to other Committees, especially in the

light of the December deadline. He requested Members to provide alternatives instead of mere criticism, if they considered the African Group's proposal unacceptable.

62. The Chairman requested delegations to put their questions to the proponents in writing. That would facilitate the process of response and engagement.

E. MONITORING MECHANISM

63. The Chairman said that on 31 July 2002, the General Council had agreed to establish a Monitoring Mechanism for S&D treatment. It had further instructed that the functions, structure and terms of reference, be elaborated by the Special Session for the General Council's approval, taking into account the proposals made by the African Group, and the discussions that had taken place thereon in the Special Session. As a first step and in order to facilitate discussions, the Secretariat had prepared a synopsis of the proposals made and discussions held on the Monitoring Mechanism during the period from May to July 2002. That synopsis was contained in JOB(02)/138. At his request, the Secretariat had also indicated some issues that might need to be considered as the discussions proceeded. A number of ideas and suggestions had also emerged on the Monitoring Mechanism and were contained in TN/CTD/M/3, TN/CTD/M/4, TN/CTD/M/5 and JOB(02)/91.

64. The representative of the United States said that her Government continued to support the development of an appropriate Monitoring Mechanism. The main purpose of such a mechanism would be to focus on how Members could collectively integrate into the MTS. Such a mechanism should be practical and established with existing resources, and therefore avoid new and potentially duplicative burdens on Members. The Monitoring Mechanism should be tied more closely to the ongoing work of other Committees, as many concerns under discussion in the various Committees were related to the implementation of existing provisions. The Monitoring Mechanism perhaps could also provide an opportunity to raise concerns about the implementation of S&D treatment provisions, and to monitor whether existing S&D treatment provisions were meeting the desired objectives. She recommended that attention be given to the coordination among the CTD, the Monitoring Mechanism and the TNC, especially for those areas that were under negotiations.

65. The representative of Canada supported the Monitoring Mechanism including the proposals made by the delegation of Switzerland contained in TN/CTD/W/14. In order to measure progress in the implementation of S&D treatment provisions, it was necessary that the various stages in the transition periods of different Members be considered and Members' actions towards implementation should be reviewed. In that regard, the Trade Policy Review Mechanism (TPRM) could be of help. In order to operationalize such a review mechanism, individual Committees and Working Groups could be given particular roles and the mechanism should be a simple one.

66. The representative of Paraguay said that he supported the decision taken to establish a Monitoring Mechanism. Such a mechanism could be useful in assisting all Members to integrate more directly into the MTS. It should be flexible and should not be a cumbersome administrative body that would require greater WTO financing.

67. The representative of Norway stated that the General Council had given the Special Session the mandate to elaborate the functions, structure and terms of reference of the Monitoring Mechanism for S&D treatment. The function of the Monitoring Mechanism was to regularly evaluate the utilisation and effectiveness of S&D provisions. That evaluation could be undertaken in a number of ways. A general approach could be to consider all S&D provisions in a comprehensive manner, or WTO Agreements could be dealt with individually. The evaluation could also be conducted on a Member-by-Member basis as proposed by the delegation of Switzerland in TN/CTD/W/14. It could also include a periodic analysis of the extent to which a developing country was able to benefit from

S&D treatment provisions included in different Agreements. That necessitated a regular WTO monitoring committee which would evaluate the implementation of specific Agreements for better utilisation of S&D treatment provisions. Where S&D treatment provisions were not sufficiently clear and not implemented in accordance with their objectives, developing countries would be required to identify situations based on their national experiences. It would be important to have the developing countries at the fore of the issue. Her delegation was unclear about the contents of paragraph 12 of TN/CTDW/14 which indicated that the WTO Secretariat could help Members set benchmarks for the use of S&D treatment provisions. A comprehensive way of approaching the issues was to have a Monitoring Mechanism that required the preparation of regular country profiles identifying detailed, quantified needs and opportunities relating to S&D treatment provisions. That, however, would require additional Secretariat resources. Her delegation had previously made a proposal regarding financial and technical assistance for the future, which should be looked at. The Monitoring Mechanism could be established as a subsidiary body of the CTD and should be open-ended for participation of all WTO Members. Her delegation was willing to appoint a bureau as suggested by the African Group, and was interested in having more information about the functions envisaged by that Group for the bureau.

68. The representative of Australia said that she supported the idea of establishing a Monitoring Mechanism. The mechanism would be an effective devise for measuring the utilisation of provisions based on the proposal made by the African Group. The short-term focus of the mechanism could be to evaluate and assist Members in the utilisation and effectiveness of S&D provisions. An additional focus could be setting up a framework for initiating and considering recommendations made by the CTD on compliance with S&D treatment obligations.

69. The representative of the European Communities said that he was willing to start the debate on the implementation of the Monitoring Mechanism, but was concerned about the practical details for establishing such a device. The overview provided by the Secretariat in JOB(02)/138 identified a number of mutually incompatible ideas. His delegation was interested to know how delegations wished to handle those differences. The guidance of a number of over-arching principles would be useful in that regard. A coherent approach to monitoring S&D provisions was required to ensure that efforts would not be duplicated. The Special Session should be aware of the efforts being made in other Committees and have a holistic approach to the S&D issue. He said that paragraph 51 of the Doha Ministerial Declaration would also be a useful guide, as it identified issues that were relevant to development. It was important to focus on what was being done in both developed and developing countries, in order to implement the provisions as they had been intended when they had been drafted. That would give a full picture of utilisation and effectiveness of the proposal by the African Group in paragraph 10 of TN/CTD/W/3/Rev.1/Add.1. He stated that in the entire effort of establishing a mechanism, management would be a very important concern and it was important to ensure that existing resources were utilised optimally. Referring to the request by delegations to involve existing Committees, he said that the TPRM had a country-specific and not Agreement-specific approach which required a lot of expertise to integrate the different information systems. It would be negligent not to take into account the work of other Committees that had S&D as a standing item or as a specific item on the agenda. Trade Policy Reviews (TPRs) could bring additional evidence from individual countries, however to reconcile two existing mechanisms required further discussion. There was also a possibility of using existing information which was available in organizations like the United Nations Development Program (UNDP) or the World Bank. These organisations could help Members to understand the implementation of S&D treatment provisions and guide the Members in changing various proposals and agendas into results. The proposal made by the delegation of Switzerland had significant implications on the WTO, including financial ones.

70. The representative of India stated that on 31 July 2002, the Special Session had been given the task to elaborate and formulate a structure for the Monitoring Mechanism proposed by the African

Group. The mechanism should be a body competent to look into complaints on the S&D treatment provisions and direct the relevant Members to effectively implement them.

71. The representative of Malaysia stated that the Special Session had been given the task to formulate a framework for the Monitoring Mechanism. It should be a simple and efficient structure without major financial implications or changes to the structure of the WTO Secretariat. In paragraph 12 of document TN/CTD/W/14 submitted by the delegation of Switzerland, it was not clear as to who was being referred to in the phrase "each country in the WTO". He enquired whether the reference was being made to all Members of the WTO. Moreover, if the proposal involved changing the nature of the Secretariat, his delegation was not willing to support that. His delegation supported a simple structure that examined both developed and developing countries alike, as had been earlier stated by the representatives of Australia and the European Communities. The intention of the Monitoring Mechanism was to examine whether the developed countries were adhering to their S&D treatment obligations such as Article 66.2 of the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS). It was important to consider whether the S&D treatment provisions were under-utilised and whether there should be a penalty for such under-utilisation. Members like Malaysia would in principle like to avail themselves of all S&D provisions, but as an export-oriented economy, many S&D treatment provisions would not be available to it and therefore not invoked by it. Lack of technology, resources and expertise could be the main reasons for the non-invocation of S&D provisions. Therefore, in subsequent Rounds of negotiations, Members like his should not be discriminated against for the non-utilisation of such provisions. However, neither the concept of peer review discussed in paragraph 13 of TN/CTD/W/14, nor its implementation implications were clear. The peer review would be a mammoth task for the Special Session. There was already a transitional review mechanism for some acceding countries. Expanding such a review for all developing countries would need to be considered.

72. The representative of Mexico stated that his delegation supported the Monitoring Mechanism approved by the General Council. His Government was in the process of reviewing the submissions on the structure and procedure of the mechanism, and would make suggestions and recommendations to the Special Session as the discussion moved forward. In principle, his delegation shared the views of some delegates that the mechanism should be flexible, simple, and capitalise on existing resources. Many developing country Members had expressed their concern about the difficulties they encountered in attending a large number of meetings.

73. The representative of Switzerland said that the Special Session should avoid being specific on the structural issues and should concentrate primarily on the goals of the mechanism. It should first be decided what was intended to be achieved from the mechanism. Different options could be considered to effectively implement the mechanism and to provide opportunities to developing countries in the implementation of S&D provisions. Previously, S&D provisions had been best-endeavour provisions without much effect, and could not be implemented because of the lack of technical assistance required for their implementation. Provisions that were closely related with technical assistance needs, should be identified in order to lead to better solutions. For example, in the Bretton Woods Institutions, there were concerns about international guidelines and standards for the financial sector, including corporate governance. Mechanisms were established in those institutions to help countries implement those international guidelines. Indeed, this depended much on member countries' cooperation. In addition, to ensure effective implementation, there should be follow-up action plans. There was evidence available in the WTO context which could be utilised, for example information available in the Customs Valuation Committee and in the TPRs. He added that for some Members there would be additional information from the rules evaluation unit, training and other forms of information, which could then be fed into the proposed system. Such a system, for simplicity's sake, should be country based and could not be based on different Agreements. It was important to consider that such a surveillance system would have an additional cost. Nevertheless, this cost need not be borne by the WTO Secretariat, since external funding could be found. Such a

scheme could also function for a limited number of countries that had problems with implementing S&D provisions. No goal could be achieved by re-organizing the work of only some Committees alone. There was a definite need to have more contact with Members.

74. The representative of Argentina said that his government supported the setting up of a Monitoring Mechanism. However, there was work to be done as far as the structure of the Mechanism was concerned. An open-ended committee parallel to the CTD was the appropriate forum to ensure a simple and less costly structure. The role and functions of such a body could include the evaluation of the implementation of S&D provisions and, more particularly, the issuance of recommendations from the CTD and/or General Council to Members.

75. The representative of Kenya said that his delegation welcomed the support of Members on the proposals made regarding the functioning and structure of the Monitoring Mechanism. In previous discussions, additional information had been provided by the African Group regarding the structure and functions of the Monitoring Mechanism. The specific decision for setting up the Monitoring Mechanism could be adopted by the General Council, and modelled upon other Decisions taken to establish WTO Committees, such as the Decision Establishing the Committee on Regional Trade Arrangements. He supported the intervention made by the delegation of Malaysia regarding the structure of the Monitoring Mechanism, and stated that it should be an open-ended mechanism to which all Members could participate. Such a mechanism should be purely Member-driven and not Secretariat-driven. He recommended that the Mechanism should operate like other WTO Committees and Bodies.

76. The representative of Philippines stated that there was a need to critically analyse the proposal made by the representative of Switzerland. It was pertinent to look at the section of the proposal which suggested that the Secretariat should advise Governments on S&D provisions for necessary remedial action. His delegation did not support the proposal that the WTO Secretariat should have to take the burden to advise Members to improve compliance with WTO obligations. It should be clarified how the peer review could be made a legal commitment in WTO Agreements, keeping in mind the DSU and other enforcement provisions. As far as funding from donors was concerned, the question arose as to whether that would not lead to donor-driven activities. He added that in the intervention made by the delegation of Kenya, it was not clear whether the delegation of Kenya was proposing that another committee be created or that existing Committees should be capitalized upon. The enhanced role of the CTD in performing the monitoring function should be considered instead of the creation of a new committee.

77. The representative of China said that his Government supported the establishment of a Monitoring Mechanism as it could be helpful to refer to utilisation of S&D provisions in the WTO Agreements. A standing body could be established within the CTD, which could make recommendations both to the developing and developed Members. The monitoring body could work closely with all other relevant bodies involved in monitoring functions. His delegation would study the proposals from other Members in more detail and return to the issue in the future.

78. The representative of Hong Kong, China said that his Government supported the establishment of a Monitoring Mechanism. He said that the Special Session should further explore the objectives and organization of the Mechanism. He supported the comments made by the delegation of Malaysia regarding the utilization of the S&D treatment provisions and enquired whether the Monitoring Mechanism would aim to monitor the utilisation of all S&D provisions, or only the mandatory S&D provisions. He stated that it would be useful to explore the reason for utilising or not utilising such provisions for various countries. In that regard the TPRs would be a useful exercise also.

79. The representative of Sri Lanka said that there was need to further clarify the objectives of the Monitoring Mechanism. Her delegation had looked into the proposals made by the African Group on the issue, but in light of those proposals, and after listening to the discussions, her delegation believed that the objective of the Monitoring Mechanism should be to give effect to the objectives outlined in Part IV of GATT 1994 and also to the S&D provisions in the various WTO Agreements. The proposal of the African Group highlighted some of the functions of the Monitoring Mechanism. Nevertheless she believed that the functions of the mechanism would not be able to address all concerns which could ultimately come under the purview of the mechanism. Her delegation supported the comments from the delegation of Hong Kong, China, that before discussing utilisation, it was important to know what were the reasons were for non-utilisation, and why countries had or had not invoked the S&D treatment provisions. She believed that there should be a facility within the mechanism that would allow any developing country to bring to its attention the difficulties they faced in making effective use of the S&D treatment provisions. The particular delegations should be able to bring forth a case to the Monitoring Body. The mechanism should allow for consultations with non-compliant Members *vis a vis* the developing country. After evaluation of the situation, the mechanism should prescribe remedial action.

80. With regard to consultations, paragraph 5 of Article XXXVII provided for some form of consultations. Paragraph 2 of the same Article required countries to bring to the attention of other Contracting Parties situations where it was believed that the full utilisation of S&D treatment could not be exercised. Despite the fact that Articles XXII and XXIII of GATT 1994 provided Members with the opportunity to seek consultations and bring forth disputes, Part IV of GATT 1994 autonomously provided Members with the opportunity for consultations with no reference to Articles XXII and XXIII of GATT 1994. That situation had been recognized as a genuine concern, since many developing countries were not involved in disputes. It would therefore allow those countries to reach an amicable solution. The opportunity was now being provided to developing countries to implement those consultations through the Monitoring Mechanism. It should therefore be included as one of the functions of the Monitoring Mechanism. On the structure of the mechanism, her delegation shared the views expressed by the representatives of the Philippines, Kenya and others, that the CTD was the proper platform to have the mechanism established. Her delegation was flexible as to whether the mandate of the CTD should be extended to include functions of the Monitoring Mechanism, or whether the mechanism should operate under its existing structure. One function under Part IV of GATT 1994 given to the CTD was outlined in paragraph 2(d) of Article XXXVIII of GATT 1994. It required the establishment of a mechanism in order to have a continual review of the development of world trade with special reference to the rate of growth of trade of less-developed Contracting Parties. The CTD was conducting the evaluation as a fixed item of its agenda. Her delegation would develop some ideas with respect to the administrative arrangements relating to the mechanism and its modalities.

81. The Chairman stated that there had been a good exchange on the Monitoring Mechanism, though further consultations and discussions would be necessary.

F. CROSS-CUTTING ISSUES

82. The Chairman introduced Agenda Item F, "Cross-Cutting Issues". Five issues were tabled for discussion under this Agenda Item: (1) principles and objectives; (2) single-tiered, two-tiered, or multi-tiered structure of rights and obligations; universal or differentiated treatment; (3) issues related to graduation; (4) trade preferences and related issues, including the Enabling Clause; and (5) utilization. Having recalled that Annex II of the Special Session's report to the General Council (TN/CTD/3) contained a table of submissions by some Members on cross-cutting issues, he opened the floor for comments on the issue of principles and objectives of S&D treatment.

83. The representative of Japan noted that his delegation had made a submission (TN/CTD/W/11) which was listed in Annex II of document TN/CTD/3. The first of the principles and objectives listed in that submission was the need "to make special and differentiated consideration towards developing Members". In relation to the second point, he noted that Article XXXVI of the GATT 1994, on "Principles and Objectives", recognized that the basic objectives of the Agreement included raising standards of living and the progressive development of the economies of all contracting parties, and that the attainment of those objectives was particularly urgent for less-developed contracting parties. His delegation therefore understood the principles and objectives set forth in Article XXXVI of the GATT 1994 as a prerequisite for the discussion on S&D treatment provisions. The principles and objectives of S&D treatment provisions were there to accommodate the difficulties faced by each Members in fulfilling the obligations set forth in the WTO Agreements, without damaging the integrity of that Agreements. In order to accommodate the difficulties faced by each Member, S&D treatment provisions needed to allow for some flexibility.

84. The representative of the European Communities again made reference to the submission by his delegation (TN/CTD/W/13) which laid out in detail the reasons why that a discussion on principles and objectives of S&D treatment was necessary to fulfil the mandate contained in paragraph 44 of the Doha Ministerial Declaration and paragraph 12 of the Decision on Implementation-Related Issues and Concerns. He said that during that meeting Members had discussed several Agreement-specific proposals without really coming to a convergence of views on them, and his delegation believed that that was precisely due to a lack of clear understanding as to the objectives of the whole exercise, and the principles which should guide the implementation and application of the individual S&D treatment provisions. He referred to what he considered a fundamental principle, the fact that the ultimate objective of the exercise was to integrate developing countries into the multilateral trading system (MTS). He believed that from that common understanding Members could derive a number of important points when looking at individual proposals, for example that it would not be enough to give transition periods without additional flanking measures which would ensure that transition periods would be used in a way conducive to the integration of developing countries into the MTS. Members should ask themselves whether the proposals that had been made were conducive to integration, were neutral, or distracted from it, and in order to answer that kind of questions a common approach was required. He recognized that an understanding that the intent of the exercise was to reduce exclusion and foster integration could only be a very general bench-mark, but he believed a thorough debate on that point was necessary.

85. The representative of Canada said that her delegation believed that the principles and objectives of S&D treatment were fundamental to the discussion on S&D treatment. The aim of S&D treatment was to facilitate the full integration of Members into the world trading system and the implementation of obligations to achieve commonly held objectives. To that end, S&D treatment was best targeted to a specific country's trade, development and financial needs. The delegation of Canada had therefore proposed the Trade Policy Review as a mechanism which could be useful in that regard, since it could look at what technical assistance was being provided or could be provided with respect to specific obligations. At the same time S&D treatment should reinforce the adoption of sound economic policies and open trade policies, since these could help secure the economic growth and prosperity sought by developing countries. It was therefore necessary to strengthen S&D treatment provisions which reinforced other development efforts. Her delegation thought that some S&D treatment provisions might in effect delay development or go in an opposite direction to the intended one, and it was therefore necessary to review these.

86. The representative of the United States said that her delegation agreed that the goal of S&D treatment was integration, and that this purpose should underpin all the work on S&D treatment. Her delegation was in favour of a process for implementing S&D treatment with a practical focus. She therefore agreed with the suggestion by the representative of the European Communities to consider whether the individual provisions helped, were neutral or distracted from the objective of integration.

Her delegation also believed that it was critically important to link the work on S&D treatment with technical assistance. In that respect, she believed that comments about the Integrated Framework and other mechanisms, to try to ensure that the work on S&D treatment related to national development programmes were highly relevant. She thought it was necessary for Members to be also looking forward, and what they were considering was forward-looking in the context of the negotiations that they were undertaking. Members should look at practical steps to be undertaken in the context to those negotiations, and not just look at the Uruguay Round Agreements. The focus should be on quality and practicality.

87. The representative of India said that the principles and objectives of S&D treatment were clearly laid out in the existing Agreements: Part IV of the GATT 1994 and the Enabling Clause. The question of S&D treatment arose because of the different levels of development amongst WTO Members. There were countries with a per capita income of USD150, and countries with a per capita income of more than USD40,000. Every Member of the WTO was expected to abide by the same set of obligations and rules. However, it was impossible for a country at a lower stage of development to subscribe to and abide by rules which in the normal course it might not be able to comply with given its present stage of development. S&D treatment was meant to address that disparity. It was necessary to look back 40 or 50 years; at that time some Members had provisions to promote external trade which enabled them to reach the top of the ladder, and now developing countries wanted to climb the same ladder in order to reach the top. That was precisely why S&D treatment was provided for. He thought that all developing country Members believed in integrating into the MTS, and they were only asking for understanding and consideration until they reached the stage of development already attained by their developed partners. In response to the intervention by the delegation of Canada, he pointed out that the suggestion for doing away with some of the S&D provisions was contrary to the mandate given by Ministers in the Doha Ministerial Declaration.

88. The representative of Sri Lanka said that Part IV of the GATT 1994 provided guidelines on the principle and objectives of S&D treatment. The delegations that believed those principles and objectives to be insufficient should specify the areas in which they felt they were insufficient, so that responses could then be provided to them. Responding to a previous intervention, she said that having better national policies and regulations was an obligation undertaken by all Members, not only developing country ones. It was not the mandate of the Special Session to assess whether developing country Members had fulfilled their obligations with respect to their national policies and regulations and it did not seem constructive to engage in that discussion in the Special Session. Her delegation was looking forward to more information from Members, particularly where they felt that Part IV of the GATT 1994 should be strengthened.

89. The representative of Thailand noted that her delegation had already emphasized that the principles and objectives of S&D treatment were clear, and were stipulated in Part IV of the GATT 1994; no discussion on that issue was needed. Nevertheless, she noted that her delegation too wished to see developing and least-developed country Members integrated into the WTO system, and believed that was the reason why Members were discussing S&D treatment in the Special Session of the CTD. She said that the remarks by the representative of the European Communities, who had suggested that some proposals might distract from the aim of integrating developing countries into the system, and that by the representative of Canada, who had said that some S&D provisions could delay such integration, were not clear to her. As to the issue of graduation, her delegation felt that it was irrelevant at a time when developing countries were still struggling with the fact that the existing S&D treatment provisions had not been fully operationalized. Her delegation was therefore opposed to any proposal on graduation. That being said, her delegation fully supported the proposal by Paraguay on the Enabling Clause, since the provision of trade preferences by Members was clear evidence of non-compliance with the conditions laid down in the Enabling Clause. Since the submission from Hungary had just been received, her delegation would comment on it at the following meeting.

90. The representative of Kenya said that the African Group believed that its submissions had covered in detail the issue of principles and objectives of S&D treatment. The African Group had clearly identified some of the principles and objectives of S&D treatment in its first submission (TN/CTD/W/3), and had then made a supplementary submission (TN/CTD/W/3/Rev.1/Add.1) with further explanations, as had been requested by Members. His delegation therefore thought that the issue of the principles and objectives of S&D treatment was clear, and it was time to move on to consider substantive matters. The principles and objectives of S&D treatment were already firmly part of the WTO rules. Indeed, in Doha Ministers had reaffirmed that "provisions for special and differential treatment are an integral part of the WTO Agreements", and there was therefore no need to discuss this issue any further. The principles and objectives of S&D treatment had been clearly set out, first in the GATT 1947 and then in the WTO Agreements. The African Group submissions were also very clear about the principles and objectives of S&D treatment. The Special Session should therefore focus on the substantive proposals.

91. The representative of the European Communities said that his delegation found it difficult to accept that the principles and objectives of S&D treatment as laid down in Part IV of the GATT 1994 and the Enabling Clause should not be discussed, since some of the proposals which the Special Session had been considering questioned the basic approach set out therein. His delegation was not pushing for a long debate on graduation, common or differentiated responsibility, or on a two-tiered or multi-tiered system. However, those issues would not go away, and they were being discussed in other *fora* as well, for example in connection with the discussions on small economies and those on the Agreement on Subsidies and Countervailing Measures. He doubted that the Enabling Clause or Part IV of the GATT 1994 would provide a full answer on the issues raised. He clarified that his delegation did not want to question what was already in Part IV of GATT 1994 or the Enabling Clause, but believed that a refinement of those principles and objectives would be helpful. In addressing some of the problems that had been raised. The existing principles and objectives did not address issues such as the role of technical assistance in the overall development policy of developing countries; the delivery of technical assistance by donors in a coherent way with initiatives by other international institutions; the relationship between obligations in present and future WTO Agreements and their link with capacity-building and transition periods. All those issues were relevant to a discussion on specific S&D treatment provisions, but on none of them there seemed to be a common understanding among Members. According to his delegation the matter had not been exhausted, and it would come up again when discussing Agreement-specific proposals.

92. Before adjourning the meeting, the Chairman reminded Members of the request by the proponents that the questions on Agreement-specific proposals be provided in writing. Moreover, given the lack of time, he suggested that some pluri-lateral consultations be held to follow-up on the discussions Members had had on the monitoring mechanism, before addressing the issue again in a formal meeting. It was so agreed.

93. Resuming the meeting on 18 October 2002, the Chairman opened the floor for any additional contribution that Members may wish to make on the issue of principles and objectives of S&D treatment.

94. The representative of the European Communities said that there had been no announcement in the Committee on TBT about the meeting of the Special Session of the CTD which had been held on 17 October 2002 to discuss TBT issues. Some of the experts had not been informed of that meeting. He appealed to all delegations to inform their experts of the meetings of the Special Session being held back-to-back with meetings of other WTO bodies, in order to ensure full participation, as well as for the Chairman to make sure they were informed.

95. The Chairman noted the concern expressed by the representative of the European Communities. He indicated that a notification had been sent to all delegations, requesting that they

inform their experts of the meeting, and that the Chairpersons of these bodies would also be informed in writing.

96. The representative of Bulgaria reiterated his delegation's support for a review of the S&D treatment provisions with a view to strengthening them and making them more precise, effective and operational. However, his delegation believed that such a review was only possible on the basis of objective criteria and economic indicators. In his delegation's view, countries should be given rights, privileges and flexibilities in the fulfilment of obligations, on the basis of objective criteria - not subjective criteria. If Members provided special rights or privileges without knowing who the holders of such special rights or privileges would be, they would not really be strengthening S&D treatment for disadvantaged Members. Maintaining the uncertainty about the beneficiaries of S&D treatment weakened its efficiency and credibility and undermined the very legal system on which S&D treatment was based. If S&D treatment was to take the form of special rights and privileges, it was necessary to know to whom those rights and privileges belonged. If the practice of "self-selection" was followed, with the corresponding right of other Members to reject the claim for S&D treatment made by individual Members, the result was legal uncertainty. That uncertainty, and not the fact of granting rights and privileges based on objective criteria and economic indicators, could be divisive. He pointed out that there were various ways of avoiding the uncertainties linked to this issue. When it came to single-tiered, two-tiered or multi-tiered structures of rights and obligations, and universal or differential treatment, there was no single answer. In each particular case, one had to consider whom some special right or privilege would benefit. One way would be to define, on a case-by-case basis, the beneficiaries of each S&D treatment provision, on the basis of objective criteria and economic indicators. But since those questions would be recurring, it would be useful to adopt a general definition of the category of developing countries, on the basis of economic indicators and/or objective criteria. That would ensure more efficient work, not only in the Special Session of the CTD, but also in other areas, since that question arose repeatedly in the various WTO bodies, both negotiating and regular bodies. Agreeing on a definition of developing country Members would greatly help the work mandated by the Doha Ministerial Declaration.

97. The representative of Paraguay said that Agenda Item F concerned one of the central issues with respect to S&D treatment. Given the fact that it was spelt out in various items, his delegation wished to emphasize that what all Members aimed at was to achieve a generalized welfare for their people. Because of that, it was important to carry out the exercise mandated by the Doha Ministerial Declaration. One of the exercises mandated in order to achieve the four aims laid down in paragraph 44 of the Doha Ministerial Declaration, was to reflect on the essence of S&D treatment, the objective of the MTS and the aims of establishing a fair, equitable and predictable trading system. Those ideas were briefly laid out in paragraphs 5 and 6 of his delegation's submission circulated as document TN/CTD/W/15 and were presented in greater detail in their previous submissions, circulated as documents TN/CTD/W/5, TN/CTD/W/5/Add.1 and TN/CTD/W/5/Add.2. He said he believed it would be useful to share with delegations the political and economic experience of Paraguay, and its participation in the MTS, which certainly coincided with that of many other developing country Members. In 1989, Paraguay had embraced a democratic system of government, and engaged in building a legal infrastructure of trade regulations, which, following recommendations of international institutions and the main trading partners, would allow it to emerge from the geographical isolation caused by its nature of land-locked country, as well as to emerge from its political isolation. The Government of Paraguay had believed in market economy as a tool for development, and continued to do so. After long negotiations, and with political will, Paraguay joined the MTS, and was one of the original Members of the WTO. Throughout the process, Paraguay continued to open its markets to free competition, accepted the conditions imposed by international financial institutions and the assistance and recommendations received from its main trading partners, in order to open its economy to foreign investments and free trade. Paraguay had liberalized its economy and applied WTO rules, and all the efforts that it required for a small and vulnerable country. Notwithstanding that, Paraguay had not really benefited because of a trading system which prevented

it from developing a minimum industrial basis; due to tariff peaks and increasingly complex market access mechanisms and measures; and because its main trading partners still applied domestic subsidies which distorted the agricultural products market. The identity of Paraguay was not a matter of doubt: Paraguay was a developing country. In that respect he mentioned the Secretariat report circulated as document WT/COMTD/W/100/Add.1, which in a disaggregated analysis highlighted the real situation of Paraguay. Paraguay's exports had been falling steeply in the last years, and its share in multilateral trade was below that of many LDCs. Because of that Paraguay thought that a discussion on S&D treatment measures was necessary. His delegation recognized the need for some flexibility and therefore had suggested, even in its last submission (TN/CTD/W/15), various options in order to avoid a situation on whereby providing S&D treatment to certain developing country Members one caused damage or injury to other developing country Members, or, if that was unavoidable, to make sure that other options were available. One option was to oppose the waiver, without any flexibility; a second option was for the Member which had suffered a minor injury to receive adequate compensation, whereby flexibility would be ensured; a third option would be for the Member suffering injury to be given the benefit from the same S&D treatment measures. Including those options in an understanding as part of a mechanism which could be discussed with a view to being adopted at the Fifth Ministerial Conference, could give vulnerable economies an alternative when an S&D treatment measure caused them injury. His delegation was once again raising that point within the framework of the application of the Enabling Clause.

98. The representative of Venezuela commented on the evolution of the concept of S&D treatment, since its inception as a preference in 1947 and until it began to change into an adjustment process. One therefore went from the provisions of the GATT as they stood in 1947, to the addition of Part IV in 1964, the Enabling Clause of 1979, the Tokyo Round Agreements, and up to the Uruguay Round Agreements, to then get to what was stipulated in the Doha Ministerial Declaration. The focus of S&D treatment should be on instruments which would make it possible for developing country Members to successfully integrate into world markets, and not merely to comply with the trade rules in force. It was necessary to recover a positive concept of S&D treatment, whereby priority would be given to preferential instruments that supported the development of local industries, for example through investment, technology and market access. The trend since the Uruguay Round had been to favour waivers, transition periods and technical assistance. But even though those instruments were necessary and could in some areas counteract the existing imbalances between industrialized Members and developing country Members, they were not adequate to solve the structural imbalances that were the main reason why S&D treatment was needed. With respect to the issue of quantitative criteria, her delegation thought it was important to avoid any such quantitative and linear criteria, because they were *per se* discriminatory. The assessment of S&D treatment from a development perspective should be carried out avoiding the use of graduation criteria as a basis. That was because one observed a tendency to use classical quantitative criteria, such as per capita income, GDP and volume of trade, which resulted in grouping countries in categories that were not necessarily in line with their trade capacity and the competitive position of their economies. It would be important to use sectoral criteria, which would allow adapting S&D treatment to the each Member's competitiveness. A sectoral approach might be better than the linear application of one principle - but that was a theoretical discussion. Such a mechanism would require basic indicators to determine the need for S&D treatment with respect to each of the WTO rules; she added that that was only her immediate reaction to what had been said. She reiterated that S&D treatment could not be limited to measures which supported waivers, or to only part of the conditions; for instance it could not be limited to the Enabling Clause only. Special & Differential treatment was more complex than that, which was the reason why the task of the Special Session of the CTD was a difficult one.

99. The representative of Korea said that there seemed to be only a fine line between the issue of principles and objectives on the one hand, and differentiation of developing countries and graduation on the other. As the previous speakers, his delegation also wished to express its views on the issue of further differentiation between developing countries. The representative of Bulgaria had stated that

the establishment of new criteria for defining, or differentiating amongst developing countries would facilitate the work of the Special Session and other negotiating groups. In its submission circulated as document TN/CTD/W/13, the delegation of the European Communities had raised the possibility of a more differentiated application of S&D treatment, and had suggested that that issue should be discussed in the Special Session. The representative of Switzerland had gone further by advocating a transparent differentiation, on the basis of per capita income and trade participation. They had also talked of the possibility of applying measures on a country-specific basis instead of a country-group basis, and finally the establishment of graduation criteria. WTO Members were classified into developed and developing countries on the basis of self-declaration, and developing countries were in turn divided into LDCs and non-LDCs. His delegation did not see any problem with the current system, which was based on self-declaration and the dualistic approach. There was no denying that there were big differences in the level of development among developing country Members, and, in accordance with their level of development, developing country Members had been participating more fully in the framework of rights and obligations, in line with the 1979 Decision on Differential and More Favourable Treatment, Reciprocity and Fuller Participation of Developing Countries. His delegation was of the view that the question of further differentiation of developing countries and the establishment of graduation criteria fell outside the mandate of the Special Session. The Doha Ministerial Declaration mandate related to the S&D treatment provisions *per se*, and not to the establishment of criteria for further differentiation or graduation. The efforts of the Special Session should be focused on devising ways and means to strengthen S&D treatment provisions in a precise, effective and operational way and not to look at issues such as graduation and/or differentiation among developing countries.

100. The representative of Mexico agreed with the representative of Korea that the Doha mandate clearly did not provide for the possibility of discussing graduation. His delegation did not think that graduation was an immediate problem, or that it had a relationship with the need to examine how S&D treatment provisions could be strengthened and made more operational. Referring to the submissions made by the delegations of Switzerland and the European Communities on graduation, he said that, as the representative of Venezuela had indicated, there were no clear criteria which could distinguish between one developing country and another. Reflecting upon the fact that Mexico was certainly a large economy, but with forty million poor people, one realized that there were no sufficiently clear and specific criterion which would enable it to be appropriately classified. There was no point in that discussion, nor did his delegation intend to give any argument on the irrelevance of graduation for fulfilling the mandate laid down in the Doha Ministerial Declaration. However, his delegation would be willing to engage in a constructive dialogue on that issue, without any prejudice to the outcome of such discussion, and especially without that issue hampering the discussion of specific proposals on S&D treatment. His delegation believed that raising the issue of graduation could distract attention from the specific issues that had to be discussed in the framework of the Doha Ministerial Declaration. He therefore requested flexibility from the delegations who had made submissions in that respect, so that the Special Session could engage in discussing the specific proposals rather than continuing a dialogue which would lead nowhere. His delegation shared the point of view expressed by the delegation of Paraguay, and therefore supported the statement and the submissions made by the delegation of Paraguay in that respect.

101. The representative of Japan said that S&D treatment provisions were important tools to enable developing countries and LDCs to participate effectively in the MTS. The key elements of S&D treatment provisions included transitional periods for implementing obligations, technical assistance, and temporarily deviation from commitments. One had to have recourse to these elements without damaging the balance between the rights and obligations in the WTO Agreements, thus maintaining the integrity of those Agreements. In his delegation's view, S&D treatment provisions should be flexible enough to meet the needs of countries at different levels of development, in order for them to fulfil the common obligations set forth in the existing agreements. However, those flexibilities should not lead to a two-tiered or multi-tiered structures of rights and obligations. His

delegation could not accept any notion which would allow the establishment of a two-tiered or multi-tiered structures of rights and obligations. With respect to graduation, his delegation believed that all Members were obliged to make every effort within their capacity to fulfil the obligations laid down in the WTO Agreements, regardless of their level of development. It was natural that the level of fulfilment of those obligations would be different depending on the levels of development and capacity of each Member. A flexible approach to S&D treatment provisions, in line with the individual needs of Members, was necessary and appropriate in order to strengthen the level of fulfilment of obligations and thus strengthen the MTS. His delegation believed that "one-size-fits-all", or "automatic-type" application of S&D treatment provisions would damage the existing system based on self-selection. If the need for a "one-size-fits-all" application of S&D treatment was raised, his delegation would need to raise the issue of graduation. He referred to interventions by previous speakers calling for criteria for re-grouping, which would help tailor a more effective application of S&D treatment to the specific needs of certain groups of Members who shared similar difficulties in implementing certain provisions, and said that his delegation believed that a careful examination of the requests for waivers or extensions of transition periods would be more appropriate to take into account the precise level of capacity of each country. Therefore Members should review the existing S&D treatment provisions, and then consider the mechanisms set forth in each WTO Agreement. That would enable Members to consider in a constructive manner how S&D treatment provisions could be strengthened.

102. The representative of Barbados agreed that the discussion on cross-cutting issues should not excessively detour the Special Session from its pursuit of the clear mandate set out in paragraph 12 of the Decision on Implementation-Related Issues and Concerns. She said she would refrain from commenting on the specific merits of the principle of universal or differentiated treatment, but wished to note that if the Special Session was led to examine any differences which existed among developing country Members, then it had to recognize that the needs and interests of Members varied fundamentally, due to specific circumstances and characteristics such as size, vulnerability to external shocks and share of world trade. Such factors directly influenced a country's ability to participate effectively in the MTS, and consequently impacted on its level of development. In a hypothetical debate on differentiation, her delegation would have difficulties in accepting in the WTO the use of bench-marks drawn from other international organizations. Her delegation was specifically concerned about the increasing mention of the criterion of GNP per capita. In her delegation's view, GNP per capita was a flawed parameter, because it hid more than it revealed. It did not shed any light on a country's level of development, income distribution, extent of poverty, or on the diversification and size of its economy, the size of its domestic market, the ability to adjust to external shocks, etc. For example, the GNP per capita indicator did not reveal that Barbados had a share of world trade of around zero percent. The fact that the concept of graduation was being raised in the WTO caused alarm in her Capital. In her delegation's experience, graduation processes had been based on criteria which might be best described as spurious. Therefore, her delegation agreed that the issue of graduation had no place in the WTO, and thus had no place in the ongoing debate either.

103. The representative of Colombia reiterated that the discussion had to focus on the mandate laid down in the Doha Ministerial Declaration and paragraph 12 of the Decision on Implementation-Related Issues and Concerns. Regarding the proposal made by the representative of Paraguay on the Enabling Clause, her delegation wished to ask that the Special Session approach that topic with caution, due to the implications that it had for many WTO Members. Her delegation could not understand why it was being proposed that the recourse to a waiver from the rule of non-discrimination be non-discriminatory. The two existing instruments, the Enabling Clause and waivers, accepted discrimination; her delegation therefore supported the statement made earlier by the representative of Hungary, on the existence of flexibility within the Enabling Clause, both for those granting preferences and for those receiving them. Her delegation also appreciated the idea expressed by the delegation of Hungary, that S&D treatment granted under the Enabling Clause should be granted on a dynamic basis. On the other hand, her delegation had great difficulty understanding the

concept of waivers as described in document TN/CTD/W/5/Add.1. That idea had been drawn from the interpretation of a sentence of the Enabling Clause which read "... to respond positively to the development, financial and trade needs of developing countries". She stressed that that sentence was the basis for the granting of waivers. Her delegation wished to know on what basis the delegation of Paraguay interpreted differently paragraph 3(c) of the Enabling Clause. Her delegation did not share the political and economic distinctions that the delegation of Paraguay was making, because it believed there was no scope for such distinctions in the spirit of the Enabling Clause. She emphasized that the Enabling Clause, as well as waivers, provided for the use of appropriate instruments to address Members' concerns. In the case of the Enabling Clause, the consultations aimed at addressing the difficulties and issues which may arise. As for waivers, consultations were provided for in the event of the nullification or impairment of any advantage accruing to a Member.

104. The representative of Lithuania expressed his delegation's strong support for the work on S&D treatment for developing country Members, as well as for strengthening the appropriate provisions of the WTO Agreements. His delegation agreed that the issue of graduation from the application of S&D treatment, or the issue of a non-differentiated vs. differentiated application of S&D treatment, depending on the specific needs, interests and circumstances of developing countries, was an important subject for further consideration. The discussion on those issues was useful, since it could help identify ways to strengthen S&D treatment in a more precise manner. The most important issue for his delegation was the level of economic development of the countries that would benefit from S&D treatment. In that respect, he said that it was not easy for Lithuania to give special benefits to Members which enjoyed a higher level of development. He noted that some developing countries were twice as rich as Lithuania, and that Lithuania's GDP per capita was USD3,400. Without appropriate graduation, it seemed that his Government should apply S&D treatment to countries that were significantly richer than Lithuania. His delegation supported the written submission and the statement made by the representative of Hungary with respect to the GSP. The arguments put forward by Hungary were very valid; not admitting a differentiated application of GSP, depending on the level of development, could harm trade-related development policies of middle-income countries. With respect to the principle of self-selection to obtain the status of developing country Member in the WTO, he drew Members' attention to the fact that that process was not always automatic in the WTO. Some countries that wished to accede to the WTO as developing countries had not been allowed to do so. Instead, they were being treated as developed countries and did not have access to S&D treatment. Those aspects needed to be carefully taken into account while discussing the specific needs, interests and circumstances of developing country Members and the strengthening of S&D treatment.

105. The representative of Malaysia agreed that the real work of the Special Session was being ignored, in the pursuit of a hypothetical discussion which questioned the pillars of the global trading system itself. The mandate of the Special Session was clearly set out in the Doha Ministerial Declaration, and it was evident that the Special Session was not focusing on it, by holding that discussion. Her delegation found the discussion on graduation and differentiation puzzling, since all developing countries, although at different stages of development, were aiming at the goal of achieving developed country status, and once developed country status was achieved, there would be no need for S&D treatment. The objective of the mandate was to further assist developing countries to achieve developed country status, and attaining such a goal would make S&D treatment unnecessary. The purpose of those who advocated categorization and graduation was not clear. During that week’s discussions in the Council for TRIPS, developed, transition economy Members had claimed the right to the use of the solution set out in paragraph 6 of the Declaration on the TRIPS Agreement and Public Health, although it had been advocated that that solution only be reserved for some developing countries. If Members aimed at improving the economic situation of developing countries and their participation in the global trading system, it was necessary to find ways to strengthen S&D treatment provisions. Her delegation urged Members to focus on the mandate to improve the economic conditions of WTO Members by improving the effectiveness of S&D treatment provisions.

106. The representative of Hungary said that it was difficult to follow the discussion, and particularly to understand the artificial differentiation which some delegations drew between practical issues of S&D treatment and issues of theory or hypothetical discussions. It was difficult to draw a border-line and establish to what extent an issue was theoretical and to what extent it was practical. Under the same heading, "Cross-Cutting Issues", there was, on the one hand, the general issue of differentiation among developing countries, including graduation, which could be called a question of principle, the issue of trade preferences linked to developing country status, and the Enabling Clause which was instead a specific Decision with rather specific consequences. In order for work to progress, artificial borders had to be avoided and the Special Session should consider the existing mandate, which spoke referred to "all" S&D treatment provisions, and did not differentiate between S&D provisions in principle or in practice. It would be difficult even to say whether Part IV of the GATT 1994 was an S&D provision in principle or one with practical implications. It was a mix of both, and the same applied to the Enabling Clause. He wished to turn to the issues discussed, and show that they were all linked. The task of the Special Session was to consider proposals to make certain S&D provisions mandatory and then to consider the legal and practical consequences of doing so. In response to that mandate, the delegation of Paraguay had put forward a specific idea related to the Enabling Clause; the idea was to make it mandatory not to differentiate in any way among developing country Members in their possibility to access GSP benefits, regardless of the criteria which could be used. The delegation of Paraguay had presented its view in a logical manner, but the final consequence of that analysis had systemic implications for countries like his. The ideas expressed by the delegation of Paraguay were not even limited to the Enabling Clause. In the case of each S&D treatment provision whereby Members were required to transfer rights and benefits of material value to other Members in a non-discriminatory manner, the question would arise as to whether that was an obligation under the WTO Agreements, and whether it was the original intent of the Enabling Clause for poorer countries to support richer ones. The latter was the implication of making S&D provisions mandatory, because such an approach meant that as soon as a country self-elected itself as developing country Member, it had automatic access to all S&D treatment benefits from countries which had not declared themselves as developing, irrespective of their real economic situation. In his delegation's view that issue would have to be addressed. In its paper (TN/CTD/W/16) his delegation had traced the origins of Part IV of GATT 1994 and the Enabling Clause, and he hoped that his delegation had been able to prove that it was not by accident that the term "less-developed" country had been originally used. "Less-developed" meant less-developed than another country, since there were more developed countries and less developed ones. The problem was that with the differentiated rate of development in the world economy, the original relationships had been overturned, changing more developed countries into less developed ones, and *vice versa*. That some developing countries had became richer than some developed market economies was to be commended; the problem however was that those changes had not been reflected in S&D treatment provisions or in their practical application. Those same countries still demanded that Members poorer than them be obliged to provide them economic assistance, in the form of S&D treatment or trade benefits. Issues of sovereignty were being touched upon: his delegation did not question countries' rights to call themselves developing, since there was no criteria to prevent them from doing so. However, if those countries had the sovereign right to call themselves developing countries, other countries had the sovereign right to accept or refuse that self-classification. A balance of sovereignty was needed, since there were no different classes of sovereignty among countries. Therefore, his delegation could not accept that the self-election criterion could not be questioned, and that on that basis no benefit could be denied because it would be considered as discrimination. His delegation could not accept the consequences of making S&D provisions mandatory, and therefore enforceable through dispute settlement. The problem was that the absence of a definition of the term "developing country", and the clear refusal to agree on a specific definition of it. The category of developing country Member seemed to be an eternal one; once a country had categorised itself as developing, then that categorization lasted for eternity, and it was not possible to mention graduation. He drew Members' attention to an UNCTAD document in which the UNCTAD Trade and Development Board had dealt with the problems of LDCs and graduation from LDC status. LDC status was defined by

what a delegation had called "spurious" criteria, based on per capita GDP and other indices. Since LDCs might graduate from such a status, as had happened in the case of Botswana, he could not understand why it was not possible to graduate from the developing country status. His delegation did not consider graduation as an issue of theoretical value; as they had shown with respect to the Enabling Clause, it had rather practical consequences. Another example was that of recent proposals by several developing country Members and groups of developing country Members in the context of the Dispute Settlement Understanding (DSU) review, according to which a developed country Member, in the event that it lost a dispute with a developing country Member, would be liable to pay the legal expenses incurred by the developing country Member. A transition economy Member with a USD1,000 GDP per capita would be thus forced to pay the legal expenses of a developing country Member with a USD20,000 GDP per capita. Those were not theoretical issues.

107. The representative of China said that his delegation agreed with previous speakers that the Special Session should focus on the mandate set out in the Doha Ministerial Declaration. That discussion should not lead to a debate on graduation, which was a comprehensive issue that was not only trade-related. His delegation considered it inappropriate to go into such an in-depth discussion in the Special Session.

108. The delegation of the European Communities said that his delegation, although not a demandeur in that respect, believed it was useful to discuss differentiation or a limited graduation in greater detail. His delegation agreed with those delegations according to which graduation was not a hypothetical issue, but an important one which could be discussed on a more abstract level because it was easy to anchor that debate in the real world. He was pleased that no questions such as whether something could be done for LDCs only, low-income countries only, or small economies only, had been posed when individual proposals were discussed. Those questions could be asked for with respect to all the individual proposals, and that would make the discussions even harder. A rigid application of the existing principles might not yield maximum benefits for developing countries. The rigid application that was demanded for GSP, for example, could lead Hungary not to maintain its GSP scheme. The same was true on other issues that had been discussed. If there were no waivers for some of the schemes operated, those schemes would disappear. Some people might consider it a good thing, but he was not sure if that would make the over-all situation better. There were many reasons why flexibility was needed in a number of areas. He recalled the fact that the same issues were being discussed elsewhere, like in the case of the implementation debate on Article 27.4 of the Agreement on Subsidies and Countervailing Measures (SCM), where Members were discussing differentiation on the basis of income and other criteria. The debate needed to be approached in a holistic manner, which meant that not only the rules should be considered. There was more to S&D treatment in the WTO than the rules as such, for instance technical assistance. He had been informed that 111 countries had put in requests for technical assistance under the Trust Fund in 2002, and he was not sure that all of them really needed technical assistance. Apart from the case of LDCs, there were no further criteria to direct technical assistance to those Members which possibly needed it most, and he asked delegations whether they did not think that discussing that kind of issue would be useful. Regarding the rules, he shared what the representative of Malaysia had said, i.e. that the objective was to achieve a system where every Member was a developed one; he believed that was the opinion of all Members, and that therefore nobody would wish to argue for permanent differentiation on the rules side. He did not however agree with the representative of Malaysia that discussing cross-cutting issues detracted from the debate. His delegation would propose an approach in the near future to further structure the debate on cross-cutting issues, taking into account some of the points that had been raised during that meeting. His delegation wished to look at some of the agreements in a holistic way to answer the questions of whether more differentiation on the rules, benefits or technical assistance side was needed, and what kind of criteria could help. That did not answer the pertinent questions that had been posed by delegations, some of which had gone very far conceptually, like in the case of the latter part of the paper submitted by the delegation of Hungary, which, although limited to GSP, contained interesting ideas on how to avoid the relative or absolute one-size-fits-all

approach. He also took note of the ideas which the representative of Venezuela had put forward on sectoral approaches, and the comments on the value or non-value of GDP indicators. It was too early to conclude on any of the issues raised, but that debate would be useful to shed some more light on the individual question of whether a specific provision should be changed in one way or another, and on how to improve the effectiveness of S&D treatment.

109. The representative of the United States said that her delegation shared the view that an artificial distinction between the theoretical and practical elements of S&D treatment should be avoided. The representative of Hungary had given practical examples of why it was important to look at elements of principle and practice together; her delegation considered it integral to the discussion on how to consider strengthening S&D treatment provisions. The Special Session should consider how to create a dynamic, not static, approach to S&D treatment. Members' economies were dynamic, development levels were dynamic, and Members should find ways to introduce that concept of dynamism. Historically, as others had noted, a number of approaches had been used. The representative of Venezuela had spoken about the sectoral approach, which had been used in the context of negotiation results, as well as of accessions, and the representative of the European Communities had mentioned the discussion on differentiation in the context of the SCM Agreement. She noted that in the history of the GATT and the WTO, S&D treatment had been approached in the context of negotiations through the nature of the requests, and what Members were willing to accept in terms of offers. All those possibilities had to be considered. The Special Session should consider ways to ensure that the concept of S&D treatment was a dynamic one and helped WTO Members. The submission made by the delegation of Switzerland raised important issues related to differentiation. It focused on the fact that differential treatment should be consistent with an individual country's trade, financial and development needs. As had also emerged from the discussions in that meeting, the problem arose with how to determine what was consistent with development needs and what methodologies should be used to do so. Her delegation was not in favour of a one-size-fits-all approach, and did not believe that the existing approach of self-election helped attain the purpose of ensuring full participation in the system of rights and obligations. Her delegation believed that that concept had been lost, and was concerned that it could in fact be used to limit the depth of S&D treatment, particularly in a system which was open-ended.

110. The representative of Hong Kong, China said that her delegation agreed with other delegations that, given the complexity and political sensitivity of the issue, graduation should not be discussed; the Special Session should concentrate on the mandate set out in the Doha Ministerial Declaration, and therefore, as the representative of Korea had said, should focus on how to strengthen S&D treatment provisions.

111. The representative of Jamaica referred to the proposal by the delegation of Paraguay that the underlying principles of non-discrimination and flexibility of the Enabling Clause be adhered to and respected by Members. She stated that if more favourable treatment or preferences were extended by developed countries to developing countries, it should generally be done on a generalised and non-discriminatory basis through the Enabling Clause, in accordance with the letter and spirit of its provisions. In its proposal, the delegation of Paraguay sought to strike a balance between the principles of non-discrimination and flexibility by stating that flexibility was an important principle and it should not be applied in a manner that was injurious to third parties. She reiterated that her delegation saw no fundamental contradiction between the Enabling Clause, Article IX of the Marrakesh Agreement Establishing the World Trade Organization (Marrakesh Agreement) and Article XXV of GATT 1994. Both those articles provided a legal basis on which Members might seek to obtain a waiver from Article I of GATT 1994. Those two articles also provided a level of flexibility in the WTO system. In her delegation's view, given the provisions of Article IX of the Marrakesh Agreement and Article XXV of GATT 1994, the proposal by the delegation of Paraguay would have the effect of limiting its flexibility and eroding the provisions of those two articles. Her delegation found that unacceptable. With respect to differentiation, real differences existed among

developing countries and for that reason her delegation supported S&D treatment targeted to the specific needs of groups of countries, specific sectors, or even individual countries. That was what her delegation understood by differentiated treatment. Her delegation did not believe a one-size-fits-all approach had been, or would be effective. The fact that her delegation supported differentiated treatment did not mean that it did not recognise that all developing countries required S&D treatment.

112. The representative of India said that there was confusion about who the proponent of the discussion on cross-cutting issues was. He recalled that there had been three delegations who had insisted on such a discussion and were now reluctant to acknowledge that request. Since the Special Session had already debated on that issue, he would let it pass. There was a recognition that the levels of development of various countries were different. The representative of Bulgaria had asked about the definition of categories of countries. His delegation felt that a definition was implied in the WTO Agreements, where developed countries, LDCs and developing countries were recognised, and to which a new discussion on small economies had been added. He suggested that Members wait for the outcome of the discussion. That should not be the focus of the work of the Special Session, which was set up pursuant to a decision taken at the Doha Ministerial Conference. Like many delegations, his delegation agreed that the discussion on cross-cutting issues was extraneous to the work of the Special Session. Many points had been raised about universal or differentiated treatment. He said that Members had forgotten that many of the existing agreements did provide for differentiated treatment. He was not referring just to S&D treatment provisions alone but also to the Agreement on Agriculture which provided differentiated treatment in favour of one set of countries, the Agreement on Textiles and Clothing, and the SCM Agreement which provided differentiated treatment to those listed in its annex. He asked Members to recognise the fact that under Article XXIV of GATT 1994, regional trade agreements (RTAs) had been sanctified. RTAs provided differentiated treatment between parties to the RTA and non-parties to the RTA. All such differentiation derived legitimacy from existing agreements, as did S&D treatment. There was no difference between S&D treatment and the differentiated treatment which had been referred to. The representative of Venezuela had made a suggestion with respect to sectoral criteria. His delegation had serious reservations on what had been suggested. The representative of Japan had maintained his delegation's position of the previous day indicating it could not accept any new two-tiered structure of rights and obligations. He hoped that the representative of Japan would agree with him in the Committee on Agriculture if he argued on the same lines. The representative of Lithuania had referred to the process of self-selection which was an accepted criterion in the WTO. He sympathised with the acceding countries who were not given that option. The discussions in the Special Session however, should be limited to what had been assigned to it by the Ministers at the Doha Ministerial Conference. The representative of Hungary had asked whether it was for the poorer countries to help the richer countries. He agreed with the representative of Hungary, but sought clarification on the same line with respect to agriculture and textiles, because that was in fact the implied effect of differentiation in those two agreements.

113. The representative of India stated that reference had been made to the number of countries that had requested technical assistance for 2003. He recalled that, at the first General Council meeting after the Doha Ministerial Conference, the representative of the European Communities had mentioned that the word "developed" appeared more than fifty times in the Doha Ministerial Declaration and that the words "technical assistance" also appeared many times in many paragraphs. It had been touted as the biggest achievement of the Doha Ministerial Conference. He found it surprising that when developing countries submitted their requests to give effect to what was assured to them prior to the Doha Ministerial Conference, they were being questioned as to why they needed technical assistance. Whenever a new issue came up, developing countries would be promised technical assistance. However, when a request was submitted, Members were told to limit their requests to only two per country. He was surprised that the representative of the European Communities had mentioned that they intended to submit a proposal on cross-cutting issues at a later date. Ideally, this should have been done before the meeting where those issues were to be taken up.

He asked when the paper would be made available. Another delegation had said it would make a proposal on principles and objectives. That paper had not been received. If the Special Session proceeded in that way, he did not know what would be achieved by 31 December 2002. A point had been made about the dynamic economic processes and the need for dynamic approaches. He agreed and hoped that that argument would be useful when issues on which developing countries were not interested in, came up for discussion. He hoped that the delegation of the European Communities would accept the same arguments in that context. A point had been made about the need for a larger debate on S&D treatment because it was going to be discussed in the various negotiating groups. He thought that there had been a misunderstanding regarding the role of the Special Session. Its purpose was to examine S&D issues and make them more precise, effective and operational, not to embark on an advisory role, or to proffer advice to other negotiating groups on the principles or objectives of S&D treatment, or on universal or differentiated approaches to S&D treatment. The Special Session needed to concentrate on its work and leave the other work to the relevant WTO bodies.

114. The representative of Brazil said that there was no reason for graduation to be discussed in the Special Session under the Doha Ministerial Declaration mandate, as had been said by many delegations. The mandate was clear, namely to strengthen S&D treatment and to make the provisions effective and with real value. The debate on the issue of graduation in this forum would not contribute to the cause of developing countries. Instead, it would distract the attention from the main purpose of the mandate. He supported the delegations of Mexico, Korea, India and others who did not consider it appropriate to discuss that topic in the Special Session. The principles and objectives of S&D treatment and graduation could be looked at another time. Non-compliance with the Doha Ministerial Declaration mandate would send a negative signal to other negotiations. His delegation supported the statement made by the representative of Paraguay that the Enabling Clause had to be fully respected, particularly with regard to the principle of non-discrimination. Any preference granted to a developing country should not be at the cost of another developing country, and if that happened, then some type of compensation should be envisaged.

115. The representative of Norway said that he understood how sensitive the issue under discussion was because the questions of differentiation and graduation had a long history in the WTO. It was important for delegations to fulfil the Doha Ministerial Declaration mandate. However, the Special Session had to also analyse how to fulfil that mandate. No-one really wished to address the question of differentiation as an issue in itself. There was a political commitment among Members to fulfil the Doha Ministerial Declaration mandate and to make the S&D provisions more operational. However, he questioned whether it could be done without looking into further differentiation. Differentiation already existed; the LDCs had been given special rights in many cases; so differentiation was not an entirely new concept. He agreed with the representative of Jamaica, and said that she had made a number of good suggestions on the issues to be analyzed. He was not taking a stand on what the final result should be, but if Members ignored that issue, he was not optimistic about the results of the ongoing work programme. He urged Members to approach the underlying issues with an open mind, so as to come up with something that would satisfy all Members. He hoped that his comments would not be seen as an effort to take away some of the rights from the more advanced developing countries. It was instead a question of granting further rights and possibilities to the most disadvantaged developing countries.

116. The representative of Paraguay requested that the delegation of Colombia submit its questions in writing. He said that his delegation had stated in its submission (TN/CTD/W/5/Add.1) that S&D treatment should be fair and equitable. In paragraph 17 of that document, reference had been made to the Enabling Clause. Paragraph 3(a) of Enabling Clause read "any differential and more favourable treatment provided under this clause: (a) shall be designed to facilitate and promote the trade of developing countries and not to raise barriers to or create undue difficulties for the trade of any other Contracting Parties." His delegation's view was that when S&D treatment was granted to a developing country, it should not injure or harm the interests of another developing country. His

delegation was requesting that this rule be complied with, because according to the Enabling Clause, waivers should not be granted if they caused injury to another country. A number of arguments had been put forward regarding the difficulties with some waivers. The representative of Colombia had indicated that it did not agree with those arguments. His delegation did not agree with those waivers either. The arguments put forward in paragraph 13 of TN/CTD/W/5/Add.1 regarding waivers were of an economic and political nature, had been taken from the TPRs. Those arguments had arisen from a number of observations and analyses that had been conducted and had been put forward by developed countries when requesting waivers from Article I of GATT 1994. If his delegation's proposals were not acceptable, as some delegations had indicated, they should suggest an alternative proposal. He asked whether Members could ignore the existence of the systemic problem. He believed that S&D treatment's essence was to assist countries in their development, and if that treatment injured other developing countries, then a solution should be found. A discussion on graduation was not feasible. The conditions were inappropriate, and there was no decision in this regard. His delegation had proposed alternatives which would provide a solution to a problem that was economic in nature, but which had its origin in political decisions.

117. The Chairman took note of the request made by the delegation of Paraguay and requested that questions be put in writing to facilitate responses. He reminded Members that at the earlier discussion on 7 October 2002, it had also been requested that Members provide their questions in writing, in order to facilitate their response.

118. The representative of Pakistan said that the different approaches in the submission by the delegation of Hungary included a relative approach, an absolute approach and a combination of the two. He suggested Members looked at those approaches but avoid the deflectionary approach at this stage of the debate. He agreed with some of the ideas that had been put forth, for example that differentiation or graduation could not be permanent. The representative of the United States was correct in saying that economies and development were dynamic and that the Special Session should look at a dynamic approach. However, the question was whether the Special Session was the right place to undertake such an exercise. The idea should be to focus on development so that some of the mistakes made in the Uruguay Round of Multilateral Negotiations were not repeated. The Uruguay Round Agreements presupposed that developing countries implement their obligations within a specified time-frame. The level of development and the obligations of developing countries had not been linked. Developing countries should not make the same mistake in future negotiations. The objective of the present exercise was to make the existing S&D provisions concrete and operational, and that is what the Special Session should be doing. If there was deflection from its mandate, the Special Session would miss the deadline of December 2002. The Special Session had to focus on making existing provisions concrete and operational, while the other issues should be left for future negotiations. In that regard, he drew Members' attention to the proposal submitted by a group of developing countries on a S&D framework agreement. That could be discussed in a broader discussion where Members evolved dynamic approaches to S&D treatment.

119. The representative of Canada believed that the discussion on cross-cutting issues revealed the challenge that the Special Session was facing. It was clear that there were diverse views not only in terms of issues like graduation, but also about the underlying principles and objectives of S&D treatment. His delegation did not believe that the debate was a theoretical one. In his opinion, the willingness of Members to produce papers was useful and would help the consideration of those issues. For his delegation, the aim of S&D treatment was to facilitate the full integration of developing countries into the world trading system and to ease the implementation of the obligations in pursuit of commonly held objectives. His delegation believed that S&D treatment was best targeted to country-specific trade, financial and development needs. At the same time, S&D treatment should reinforce the adoption of sound economic and open trade policies.

120. The representative of Japan, in response to the question by the representative of India, stated that the intervention he had made responded to the second tiret under Agenda Item F.

121. The representative of the European Communities reminded delegations that this meeting of the Special Session was a continuation of the meeting on 7 October 2002, where his delegation had made a statement on the importance of cross-cutting issues. That statement would be reflected in the minutes of that meeting and would be available to Members. In that sense, the representative of India would not be misled that his delegation was not interested in cross cutting issues, and was not a "demandeur" in this area. Secondly, with respect to technical assistance, the point that he had made did not reflect any lack of willingness and readiness of his delegation to contribute and provide technical assistance. However, the capacity of the Secretariat for providing such technical assistance was limited. Hence, the more the requests, the more difficult it would be to allocate the resources. His delegation had already submitted a paper on cross-cutting issues, and reserved the right to respond with a second paper. His delegation wished to contribute to the discussion and felt that no delegation had a monopoly to interpret the Doha Ministerial Declaration mandate in a way that they wanted. His delegation took note that other Members thought that they were going too far, but his delegation held a strong belief that that discussion on cross-cutting issues was necessary to have good results in all areas of the Special Session's work.

122. The representative of Venezuela regretted that the delegation of India had misconstrued her delegation's statement. Her delegation had referred to the historical context of the negotiations and the positive definition of S&D treatment, which according to her delegation was included in the mandate. Her delegation had then referred to graduation. Her delegation wished to avoid a debate on criteria for graduation. She said that there could be other options to consider, especially since it would be unfair if graduation was based only on statistical indicators. She had stated that S&D treatment should not be limited exclusively to some issues that had been mentioned in the debate, for instance waivers and the Enabling Clause, since these issues were only one part of S&D treatment provisions.

123. The representative of Australia said that the discussions had been very fruitful and that there were a number of issues that had been raised on which his delegation wished to see discussions continue. His delegation had been focussing on looking at the Agreement-specific proposals and in trying to meet the deadlines that were set in July 2002. There was no doubt that the cross-cutting issues and the discussion thereon were important. The representative of Japan had put in context many of the types of questions that his delegation considered important. His delegation wished to remain engaged in the discussion on cross-cutting issues, while simultaneously continuing with the consideration of the Agreement-specific proposals.

124. The representative of Hungary said that his delegation had a different opinion to that of the delegation of Pakistan, which felt that the submission by the Hungarian delegation had little to do with the work of the Special Session. He affirmed that the Enabling Clause was fundamental to the practical implementation of S&D treatment provisions, and that specific proposals had been made on ways to strengthen it. He summed up the debate in three points. First, according to the delegation of Paraguay and some other Members, those GSP providers that did not extend GSP benefits to all developing countries, they would discriminate among developing countries. Consequently, that caused damage even to richer developing countries than themselves, because they did not extend benefits to them. Second, it was possible to request a waiver assuming that compensation was paid to those countries which did not enjoy GSP benefits. Third, there was a situation where poorer GSP providers gave economic assistance to richer ones, not through GSP benefits, but through financial compensation. The reason for listing those three points was to show that his delegation could not consider the waiver approach to be a solution. On the other hand, his delegation was willing to work with other Members to find acceptable solutions. The representative of Norway had made a good point when he had mentioned that the discussion was important for making the existing S&D

treatment provisions more effective, precise and operational. The views of the representative of Jamaica supporting the flexible understanding of those provisions could help the Special Session take a direction which would provide benefits for the majority of Members.

125. The representative of Estonia shared the concerns expressed by the representative of Hungary and was of the view that the issue needed to be further discussed and analysed in the Special Session. Her delegation found the comments on the negotiating history of the Enabling Clause to be helpful, and that the three options presented in the concept paper from the delegation of Hungary provided a useful basis for further examination of that issue.

126. The Chairman said that the debate had been nuanced, interesting and informative and that the Special Session would need to return to it at some point in time. Although the Special Session may need to return to the item of utilisation at a later stage, he would nevertheless entertain comments that Members might wish to make on utilisation at this stage.

127. The representative of Kenya said that the question of utilisation of S&D provisions had arisen on several occasions during the deliberations. His delegation believed that the review of the utilisation of S&D treatment would be an important function of the Monitoring Mechanism, once it had been established and had become operational. The real issue that needed to be addressed was to look at the reasons for non-utilisation of S&D treatment provisions. His delegation would suggest some of the reasons for non-utilisation and encouraged other delegations to provide information that might be of assistance in that regard. One of the causes for non-utilisation was that there economic policy-making was incoherent. The flexibility allowed through S&D treatment was often discouraged under the structural adjustment programmes that the international financial institutions recommended to developing countries, when they sought monetary and development assistance. The provisions were also written in a language that at times made them difficult to enforce. Sometimes, there had also been a lack of response when developing countries requested technical and financial assistance in order to operationalize some of the provisions, particularly those related to standards. This issues had not been looked into. At the same time, his delegation believed that the issue of utilisation should not derail the Special Session from the mandate which it was supposed to execute, namely making the S&D provisions precise, effective and operational.

128. The representative of the United States said that utilisation of the various S&D treatment provisions could provide useful inputs as Members considered the individual proposals that had been put forward. One could not assume that if a provision was good or bad if it had not been used. The concept and practical issues related to utilisation were important, especially since her delegation had asked for more information on existing problems, in light of the individual experiences related to the implementation of the various provisions. More details were needed on where the problems actually existed. Only then would it be possible to judge why those provisions had not been used. That would be a valuable part of the discussions. Her delegation agreed with delegations that had suggested that the Monitoring Mechanism would be a useful tool in looking at the use of provisions and the existing problems and helping Members ascertain why they were not being used.

129. The representative of Hungary said that he supported the ideas expressed by the representative of Kenya that it was necessary to not only consider the legal issues, but also the economic effects of implementing the S&D treatment provisions. At the first session of the Special Session, on 5 March 2002, his delegation had proposed a brief informative summary of the GSP regimes. The Chairman, in his comments in paragraph 49 of TN/CTD/M/1, had expressed the view that information already existed about GSP regimes and that Members could utilise that information. A brief factual summary prepared by the Secretariat would give a good overview of GSP regimes and would provide information on who the providers and beneficiaries were. His delegation envisaged a short and factual paper which could be used for subsequent work. He thought that when the Special

Session returned to the issue of utilisation, it might be worthwhile considering the preparation of such a background paper.

130. The Chairman said that the Special Session would have to return to some of the cross-cutting issues, including utilisation, at a future date.

G. OTHER BUSINESS

131. The Chairman drew Members' attention to the changes made to the Indicative Work Programme since the meeting of the Special Session on 7 October 2002. Those changes were reflected in the documents which were made available to Members. The meetings to be held on 23 & 24 October 2002 had to be changed to 21 & 23 October 2002 due to interpretation not being available on those dates. As suggested, the discussions on the proposals received for the SCM Agreement had been rescheduled to be held with the Anti-Dumping Agreement, as some delegations had indicated that their experts on anti-dumping were the same experts who dealt with subsidies and countervailing measures. As indicated in the invitation for that meeting (WTO/AIR/1931/Rev.1) the discussion on those Agreements would be held on 21 October 2002, while the discussions on the GATS and the Agreement on Safeguards would be held on 23 October 2002. There would be no meeting on 4 November 2002, though on 6 November 2002, the proposals on the SPS Agreement would be discussed as previously indicated. The discussions on the proposals received for the Agreement on Agriculture had now been scheduled to be held on 20 November 2002 and not 21 November 2002 as previously indicated. That was because the Special Session had now been given the whole day of 21 November 2002 to meet. Therefore the next discussion on cross-cutting issues and Agreement-specific proposals based on clusters could take place on that date. There would also be discussions on the incorporation of S&D treatment into the architecture of WTO rules.

132. The Chairman stated that he was still awaiting feedback on the possibility of holding another all-day meeting in late November/early December 2002 for the Special Session to discuss and consider its report to the General Council. He recalled that while discussing the schedule of meetings on 7 October 2002, a suggestion had been made that all back-to-back meetings of the Special Session with other WTO bodies, be convened as formal meetings. He understood that that suggestion had been primarily made with the intention of ensuring that a record of those meetings was available, especially for Members that may be unable to attend any of the meetings. Accordingly, a total of five back-to-back meetings, had now been deemed to be formal meetings and included in the revised indicative schedule of meetings. However, as Members were aware, preparing minutes of formal meetings was a very time consuming affair and the Special Session had already met formally a large number of times. He therefore asked Members whether it would be acceptable to them if only a summary record of the discussions in these formal meeting was kept. That would provide a ready reference of the discussions and yet not require the diversion of all resources to minute writing. It was so agreed. By closing the meeting, he reminded delegations that the next formal meeting of the Special Session was scheduled for 21 and 23 October 2002 at 1.00 p.m. on both days.