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NOTE ON THE MEETING OF 21 AND 25 NOVEMBER 2002

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

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A. ADOPTION OF THE AGENDA

1. The Chairman said that the draft agenda for the meeting was contained in airgram WTO/AIR/1965/Rev.1 of 20 November 2002. Under "Other Business" he proposed to report on the consultations held on the Monitoring Mechanism for special and differential (S&D) treatment. He also said that he would indicate some ideas on the way forward to the December 2002 General Council meeting, at which time the Special Session was mandated to report to that body.

2. The agenda was adopted.

B. INTRODUCTION OF NEW SUBMISSION

3. The Chairman said that the second item on the agenda was the introduction of submissions made by Members. Since the last formal meeting, on 12 November 2002, two submissions had been received, from the European Communities (TN/CTD/W/20) and Canada[1], respectively. He suggested that those submissions be introduced, although he noted that delegations had not had time to examine the Canadian submission. He recalled that three submissions had been introduced at the last meeting, by Canada, the African Group and the United States, and were contained in TN/CTD/W/17, TN/CTD/W/18 and TN/CTD/W/19 respectively.

[1] This communication, dated 21 November 2002, was subsequently issued as document TN/CTD/W/21.

4. The representative of the European Communities said that his delegation's submission (TN/CTD/W/20) built upon their previous submission (TN/CTD/W/13), and aimed at instilling a holistic approach in the debate on S&D treatment. That applied in particular to that part of their submission which dealt with cross-cutting issues, especially technical assistance and transition periods. Section D was the core part of the submission and presented a set of general parameters that could be useful for the debate. Those working assumptions were the kind of criteria that his delegation applied when considering individual Agreement-specific proposals. In his delegation's view, the results on individual proposals would not be coherent, and could even at times be contradictory, unless there was a comprehensive approach to the examination of S&D treatment provisions. By putting forward those criteria his delegation did not intend to deflect, replace or delay the consideration of specific proposals. The proposed criteria were explained in paragraph 12 of document TN/CTD/W/20. The first criteria, laid out in paragraph 12(a) of the paper, was that the overall objective of the exercise was to help the economic development of developing countries and work towards their full integration into the multilateral trading system. Secondly, paragraph 12(b) indicated that S&D treatment provisions should be viewed as a step towards a common system of rights and obligations, and not as a parallel or second-class system. Thirdly, his delegation believed that S&D provisions should be an operational part of the integration process and should be temporary in nature, as indicated in paragraph 12(c). He noted that the last sentence, which referred to "criteria for graduation out of specific S&D treatment provisions", was also relevant to the issue of differentiation. Paragraph 12(d) indicated his delegation's belief that S&D treatment should be trade-expanding and not trade-restrictive. A fifth guideline, indicated in paragraph 12(e), was the need to address the issue of utilization of S&D provisions, and to evaluate what had, or had not, worked in the past in connection with individual Agreement-specific proposals. Paragraph 12(f) noted that S&D treatment was currently based on the categorization of developing and least developed countries (LDCs), with some minor exceptions. His delegation was open to the possibility of looking at a more refined categorization; that might allow Members to avoid the generally applicable one-size-fits-all rule, which sometimes made it very difficult to extend the benefits of S&D treatment to all Members concerned. His delegation realized that it was a sensitive issue, but believed it needed to be faced. That view was reinforced in the following point of their paper, paragraph 12(g), which indicated the need to develop simple and transparent criteria that objectively reflected the different institutional capacities of Members. Paragraph 12(h) outlined the need to evaluate the consequences of granting S&D treatment to all developing countries, irrespective of their individual level of development. That paragraph also addressed the way in which LDCs were currently treated. The issue of graduation was also touched upon. Paragraph 12(i) stated the need for a clearly articulated relationship between the commitments, length of transition periods and technical assistance. There should be a combined approach to help developing countries implement commitments, particularly new ones; making implementation dependent, to some extent, on the provision of technical assistance would reduce the concerns that developing countries with limited capacity had about implementation of new commitments in the WTO context. Sub-paragraph 13(b) and (f) in Section E of document TN/CTD/W/20 referred to transition periods and technical assistance, respectively. His delegation believed that transition periods were useful when their objectives were justified and measurable. The usefulness of transition periods would be further enhanced if technical assistance was available. The current approach to transition periods, which had been instituted at the end of the Uruguay Round, had not operated satisfactorily and Members faced a number of problems when transition periods expired. Section F of the paper highlighted issues with respect to how his delegation saw the way ahead. He noted that the views expressed in the submission which was to be introduced by the delegation of Canada were somewhat similar to his delegation's views on the work in the following months in the Special Session.

5. The representative of Canada agreed with the representative of the European Communities that there were many similarities and complementarities between the two submissions. In its submission his delegation had outlined the views that guided its analysis of the Agreement-specific proposals and cross-cutting issues. The submission also discussed the role of S&D treatment in the

WTO, and identified the place for the Monitoring Mechanism within the S&D framework. At page 5 of the paper some precepts were laid out which his delegation saw as being horizontal issues which needed to be considered when assessing S&D provisions and the proposals that had been made. These precepts included transparency; Member-specific flexibility; co-operation; efficiency and effectiveness. He indicated that another paper[2] would be submitted which outlined his delegation's proposed methods for addressing the Agreement-specific proposals and cross-cutting issues.

6. The representative of Cuba said that his delegation would have appreciated receiving the documents from the delegations of the European Communities and Canada earlier. If Members had received those documents when the LDCs had made their submission, the debate would have been a richer one, and possibly Members would have been in a position to meet the July 2002 deadline. The new submission by the delegation of the European Communities outlined some important aspects of the debate, which were worth a more in-depth examination. Like the delegation of Canada, the delegation of the European Communities had also addressed the issue of utilization. His delegation had already expressed concern about the focus that some delegations had given to the issue of utilization, and believed that utilization could not be evaluated on the basis of mere numbers and results to be compiled in a table. The issue of utilization had to be looked at in a much wider context, and was linked to the number of S&D treatment provisions which were of a "best-endeavour" nature, as well as to the limited capacities on which developing and especially least-developed country Members could count to understand fully the Uruguay Round Agreements. Some Members still had problems with the interpretation and application of a number of provisions, including S&D treatment provisions. In connection with graduation, his delegation understood the concern expressed by some Members with respect to the different levels of development among developing countries. Those differences existed, but his delegation's concern was that if the Special Session embarked on the examination of such a complicated issue, which was not within the Doha mandate, it would not be in a position to comply with the new December 2002 deadline. His delegation believed it was important to aim at fulfilling the Doha mandate, which was to make S&D treatment provisions more precise, effective and operational.

7. The representative of the Philippines welcomed the submission made by the delegation of the European Communities; that contribution was important in relation to S&D architecture in the existing WTO context. Members were engaged in a fundamental attempt to change the S&D architecture which had been inherited from GATT and was present in the WTO. His delegation appreciated the fact that, in paragraph 12(a) of that submission, the delegation of the European Communities had accepted the fact that S&D was not solely for integration, and that the initial step towards integration was to ensure the economic development of developing countries. He added that economic development had more fundamental underpinnings than only the issue of integration. In the coherence paper, for example, Members had been informed that the relationship between trade, finance, structural and macroeconomic policies was essential in a holistic approach to development. Those issues operated at the national, regional and international levels in an inter-connected way. That was the first premise that needed to be considered if the delegation of the European Communities extended the debate to that issue. With respect to the present status of S&D treatment his delegation was concerned that Members were being asked to consider the issue of graduation, under the principle that one size did not fit all; a sub-categorisation was therefore being recommended. Graduation was an issue that went beyond the mandate of the Special Session, and which his delegation believed to be complex and difficult to resolve. In addition, his delegation did not see how it related to the issue of development.

8. The representative of the Republic of Korea noted that the submission made by the delegation of the European Communities concentrated on the issue of further differentiation among developing countries, including graduation. From a technical point of view, those issues went beyond the Doha

[2] Subsequently issued as document TN/CTD/W/22.

Ministerial mandate. Paragraph 50 of the Doha Ministerial Declaration stipulated that the principle of S&D treatment should be fully taken into account in the Doha Development Agenda negotiations. The guidelines provided in TN/CTD/W/20 were therefore not necessary for the discussions on S&D treatment. Differentiation amongst developing countries was not the fundamental problem with the existing S&D treatment provisions. The main problem was the ineffectiveness of the provisions. That was the reason why Ministers had given a mandate to strengthen S&D provisions and make them more precise, effective and operational. He agreed with the delegation of the Philippines that the issue was a complex one and might distract the efforts of the Special Session, which was working under a tight deadline.

9. The representative of Paraguay made some preliminary comments with respect to the submissions from the European Communities and Canada. He noted that the paper submitted by the European Communities proposed ways to make S&D treatment provisions more precise, effective and operational which did not fall within the mandate, and which would not ensure that S&D treatment became more effective in the short-term as mandated by the Doha Ministerial Conference. With respect to flexibility, which both the delegations of the European Communities and Canada had referred to in their submission, his delegation thought that those delegations were addressing the proposal by his delegation on the Enabling Clause[3] in a holistic manner. He agreed with the representative of the Philippines that a proposal for graduation in that connection complicated the debate. Paraguay's identity was clear, and was that of a developing country. He asked Members to take into account the proposal his delegation had made on the application of a provision, the effects of such application, and on what they understood flexibility to mean. His delegation had made a proposal on the application of an existing provision; the documents which had been submitted at the meeting did not provide a response to their proposal, except in a general way.

10. The representative of Zambia noted that paragraph 10(a) of document TN/CTD/W/20 addressed the matter of the complexity of issues involved in S&D treatment, and the consequent need for additional time. He noted that the LDCs had expressed similar concerns in other WTO fora and that their concerns had not been taken into account.

11. The representative of Switzerland referred to the intervention by the representative of Korea, who had indicated that the reference to differentiation in the paper by the European Communities could be an obstacle for discussion. Given the limited time available, he said that it might not be a good idea to discuss the issue of differentiation. However, he agreed that the issue of differentiation amongst developing countries was a problem that would need to be addressed. The extent of concessions and the extent to which differential treatment could be effective and binding would depend on some flexibility to look into the countries which were really concerned by differential treatment. The Special Session should not have a fundamental discussion on that, but should try to verify whether a provision was a good one or whether there was some room for change, with respect to the groups of countries it addressed. A more fundamental discussion might be required at a later stage, since ignoring the issue might prevent consensus on important elements of the negotiations.

12. The representative of Poland noted that during the discussions delegations had referred to the Doha Ministerial Declaration, including the mandate on S&D treatment provisions contained therein. The validity and systemic importance of S&D provisions was not being questioned, but the Doha Ministerial Declaration was the beginning of the process, not the end of it. The Doha Ministerial Declaration had instructed Members to work in order to give substance to some of the S&D treatment provisions. Members should therefore not neglect a thorough discussion on the notion of S&D treatment, which like any notion associated with the WTO was subject to evolution. Such a discussion would be useful in order to achieve positive results in that round.

[3] Document TN/CTD/W/5 and that series; and document TN/CTD/W/18.

13. The representative of Brazil said that the submission by the European Communities contained interesting elements that could help the work of the Special Session. He agreed with the delegations of Cuba, the Philippines, the Republic of Korea and Paraguay that there was no mandate to discuss graduation in the Special Session, and that Members should not lose sight of the specific proposals. However, his delegation recognized that the issue of graduation was important and believed that it could be addressed in another context.

14. The representative of the European Communities welcomed the comments made with respect to the submission he had just introduced. The comments indicated that while there were some differences of views as to what the mandate was, and how the issues highlighted in that paper should be addressed, nonetheless those issues seemed to be relevant in a wider context. His delegation was not a *demandeur* for a debate on differentiation or graduation, but was of the view that it would be difficult to find solutions to some of the issues raised without determining whether the response could or should be the same for all developing countries. He gave the example of the debate on Article 27.4 of the Agreement on Subsidies, and said that although he did not think Members had a mandate to discuss further differentiation in that context, they had discussed it, because they considered that introducing some form of differentiation was necessary to fulfil their implementation mandate. He agreed with a number of delegations that the wider concept of coherence that was being discussed in other WTO bodies should not be ignored. His delegation's submission addressed, in Section E, the concerns raised by those Members who were wary that his delegation intended to deflect the debate and waste time discussing theoretical principles and objectives. His delegation was trying to find a way to address the existing proposals, since there was a need for common guidelines in order to achieve coherent results.

C. CROSS-CUTTING ISSUES

Coherence

15. The Chairman, having welcomed the Director-General to the meeting, invited delegations to move to agenda item C, Cross-Cutting Issues. The four issues tabled for discussion under that agenda item were coherence, bench-marks, technical assistance and capacity building, and transition periods. He proposed that these be discussed individually, and noted that Annex II of the report to the General Council (TN/CTD/3) adopted in July 2002 listed Members' proposals relating to each of those cross-cutting issues. Discussions on some cross-cutting issues were also contained in the minutes of the Special Session. He opened the floor for discussion of the first issue, which was coherence. As indicated on page 6 of document TN/CTD/3, the proposals in respect of coherence had been made by the African Group and the LDCs, and were contained in documents TN/CTD/W/3/Rev.2 and TN/CTD/W/4 respectively.

16. The representative of Cuba said that coherence among international organizations was of vital importance for both the formulation and implementation of economic policies. His delegation believed that coherence made it possible for developing countries to comply with a large number of requirements, by allowing them to use the limited resources available more effectively, and not to duplicate efforts. Close coordination between international organizations would make it possible to profit from the comparative advantage of each institution in each sphere, so as to ensure results which would be more practical, realistic and effective. His delegation shared the criterion indicated in the African Group proposal (TN/CTD/W/3/Rev.2) in connection with the important role that UNCTAD could have, specifically in collaborating towards the attainment of the international development objectives.

17. The representative of the Philippines said that the document "Towards Greater Coherence" (WT/WGTDF/W/17), which had been introduced in the Working Group on Trade, Debt and Finance,

was important and should be considered when discussing coherence. He quoted paragraph 10 of that paper, which read: "as emphasized …the relationship between trade, debt and finance and other global economic parameters has to be seen in a holistic manner embedded in the issue of how to mobilize development finances and resources for development". Paragraph 11 added: "this "holistic approach" …is in the spirit of the Monterrey Consensus, which … mentions that 'in the increasingly globalizing world economy, a holistic approach to the inter-connected national, international and systemic challenges of financing for development. It says also "that international trade is an engine for international development"". Trade therefore needed to be mainstreamed into the work of the various international financial institutions. The work done over the past three years, and the vision of the new Director-General in that regard, would take the discussion much further. The World Bank had indicated that they had a desk officer on trade and the Doha Development Agenda. With respect to the IMF/World Bank Poverty Reduction Strategy Process, the issue of mainstreaming trade into the process was already at an advanced stage. His delegation was encouraged by the progress made and hoped that it would provide the other pillars necessary for the integration of developing countries into the mainstream of trade. He also hoped that it would help with the objective of poverty alleviation and the broader objectives of development.

18. The Chairman thanked the representative of the Philippines for drawing the meeting's attention to the document submitted to the Working Group on Trade, Debt and Finance and noted its possible relevance to the Special Session of the CTD.

19. The representative of Zambia indicated that the LDCs had made three proposals on coherence. The first proposal, contained in paragraph 59 of document TN/CTD/W/4/Add.1, called for the General Council to "devote one session annually for the examination of the interaction and compatibility between global economic policy making and policy flexibility". The second proposal focused on the need to ensure that the Bretton Woods conditionalities and WTO commitments were complementary. The third proposal referred to the need to ensure that the Working Group on Trade, Debt and Finance and the Working Group on Trade and Transfer of Technology were given specific mandates. He requested Members to consider adopting those proposals.

20. The representative of Switzerland agreed that the proposals introduced by the representative of Zambia on behalf of the LDCs were important. Trade and the activities of the IMF and the World Bank in developing countries were means which had to lead to better welfare and for instance to reach the Millennium Goals. It was important to his delegation that the activities of those international institutions should be coherent. He noted that coherence could not be a linear process, i.e. it could not mean that the IMF and the World Bank would have to implement WTO trade guidelines. Coherence could not be understood to imply that if the IMF or the World Bank suggested that a country should lower its agricultural tariffs, which were below the bound or applied rates, WTO Members would say that that went beyond the mandate of the IMF. Each institution had its role. The WTO set boundaries and thresholds which were valid for all countries or major groups of countries, and did not promote specific country-based development programmes. The Bretton Woods Institutions, on the other hand, did discuss specific policy paths with countries, in order for those countries to achieve sustainable growth and poverty reduction. There were no sanctions if a country did not follow the conclusion of those discussions, except that there might be a reduction of the financing amounts in case of a strong disagreement – which some might consider to be a sanction. It was normal for there to be differences in views and interpretations in different institutions. However, there clearly needed to be efforts by the Bretton Woods Institutions and the WTO to look at policies, rules and the development of rules together, and to know about each other's activities. In addition, there was a need to examine how the WTO negotiating process and the rules Members followed could lead to growth and to poverty reduction. His delegation therefore agreed that the General Council could annually discuss the aspects of the activities of the different institutions at a global level, also in an effort to verify whether the policies that were being followed were relevant for development and how they should be changed, if the case be. That type of dialogue on coherence would be most effective if it was also conducted at

the country-level, and not only within global groups and strategies. In that connection, he referred to the proposal by the LDCs which came under "Bench-marks"; the LDCs were proposing that the Working Group on Trade, Debt and Finance annually examine the development policies of a number of LDCs, and examine how the Bretton Woods Institutions and the WTO framework assisted in their development. That type of discussion could also lead Members to look at S&D treatment and the use of trade rules by LDCs. His delegation agreed with the proposal, and suggested that the discussion not only address the concerns of LDCs, but also consider other low-income countries and some other developing countries.

21. The representative of the United States agreed that the issue of coherence was important for all Members. Her delegation agreed with the delegations of the Philippines and Switzerland that the work undertaken in the Working Group on Trade, Debt and Finance had been a good start in helping Members seize the issue of coherence. The work in that Group had demonstrated that there was a linkage between the WTO and other international institutions, and had underscored the importance of commitment by all Members towards implementing their WTO obligations. Her delegation recognized that Members had to find further opportunities to improve the relationship and coordination between the WTO and other international organizations. Her delegation had indicated, in a submission on the Monitoring Mechanism (TN/CTD/W/19), that it was important to monitor the coherence component and the work of other international institutions, and that this exercise should be undertaken through the Monitoring Mechanism. The Director-General's activities in the area were welcome, and should continue. The different prerogatives, strengths and focuses of the various institutions needed to be kept in mind, and the right combination needed to found, for the scarce resources to be used effectively.

22. At this stage, the Chairmanship of the Special Session was temporarily handed over to Ambassador Toufiq Ali of Bangladesh, Chairman of the regular session of the Committee on Trade and Development. He chaired the proceedings until the conclusion of agenda item C.

23. The representative of the European Communities noted that Members agreed that additional work was required on the issue of coherence, but the difficulty lay in agreeing on concrete ways to implement coherence. With reference to the proposal by the LDCs on the General Council devoting an annual session to coherence, he noted that the General Council had previously held meetings on coherence issues, and therefore that would not be a completely new initiative. His delegation had supported those discussions, which had for instance touched upon issues of autonomous liberalisation. His delegation welcomed the proposal of the LDCs, but was interested in examining how that session could be structured in order to produce the best outcome, and noted that the Working Group on Trade, Debt and Finance might not be the only one willing to give an input in such exercise. The second proposal by the LDCs concerned cooperation with the Bretton Woods Institutions. Article III.5 of the WTO Agreement outlined the specific function of the WTO to cooperate with the Bretton Woods Institutions. Progress in that regard could be made if it was clearly understood that the activities were enhanced and fully supported by Members, and that Members, domestically and through their representation in those international institutions, ensured coherence. The third proposal called for a specific mandate to be given to the Working Group on Trade, Debt and Finance and the Working Group on Trade and Transfer of Technology, for those bodies to assess the implementation of coherence and the development of specific bench-marks. Members needed to determine which *forum* would be most appropriate to consider LDCs' proposals. The Sub-Committee on LDCs could take up that issue in a more concise way, since the expertise on LDCs issues was there.

24. The representative of Canada supported the approach which was being proposed by the representative of the European Communities. Her delegation was also of the view that the comments made by the delegation of Switzerland were relevant, and that the issue of coherence needed to be considered in a wider-context and not only with reference to the LDCs. There was a need to choose the correct *forum* for the purpose of the proposal contained in paragraph 59(c) of

document TN/CTD/W/4/Add.1. Her delegation however was of the view that the Special Session could support the proposal contained in paragraph 59(a) since it was already an ongoing matter within the WTO. Her delegation firmly supported coherence.

25. The representative of Zambia said that Members seemed to have reached consensus on the three proposals made by the LDCs, and that it appeared only necessary to define the details with respect to the *forum* for discussion and a few other aspects. He suggested that the proposals be adopted and that Members focus on the details later on.

26. The representative of the United States said that her delegation was not at that time able to accept the LDCs' proposals, but was broadly interested in continuing discussions on them. There was a need for additional work on some details of those proposals, the outcome of which might influence what was acceptable to her delegation. She said that the discussion on those proposals could be continued during the consultations that were to be held the following week.

27. The Chairman said he would indicate to Ambassador Ransford Smith (Chairman of the Special Session of the CTD) that there was a request for including that item in the following week's consultations. He noted the broad agreement expressed by the delegation of the United States on continuing the discussions of the LDCs' proposals on coherence, specifically with respect to the details which had to be defined.

Bench-marks

28. The Chairman proceeded to the second cross-cutting item on the agenda, that of bench-marks. He drew Members' attention to the fact that the LDCs in their submission circulated as document TN/CTD/W/4, had put forward specific proposals with respect to bench-marks. Those proposals were at page 7 of document TN/CTD/W/4.

29. The representative of Zambia said that the LDCs were concerned with their proposals being re-introduced and discussed at meetings, without any concrete action being taken, and wished to see concrete action with respect to their proposals. He was aware that the LDCs had made numerous proposals – both on cross-cutting issues and specific Agreements. Given the deadline by which the Special Session had to fulfil its mandate, the LDCs were of the view that the Special Session should take concrete decisions on issues which were relatively easy to agree upon, and then proceed to other issues which were more controversial.

30. The representative of Canada requested the LDCs to clarify how the proposed bench-marks would be used and in what context. Her delegation had previously expressed support for some of those concepts, but needed additional precise information.

31. The representative of the United States joined the delegation of Canada in requesting clarification. Her delegation saw bench-marks in a different context from that considered by the LDCs. Bench-marks had worked as an opportunity to combine transition periods with technical assistance, to further help implementation, and had been used in a variety of other contexts, for example customs valuation. Her delegation believed that they could help to find incremental steps forward. However, it was not clear to her delegation how the bench-marks proposed by the LDCs would be used. Her delegation would welcome some clarification about the purpose of the proposed bench-marks.

32. The representative of the European Communities asked how the LDCs envisaged the proposed bench-marks to fit into the ongoing process of the Integrated Framework (IF), which had a fixed way of functioning, with roundtables, donors making contributions, trade-integration studies, etc. The first proposal on bench-marks, at paragraph 28 of the LDCs' submission (TN/CTD/W/4), referred

to the level of resources provided by WTO Members compared to requirements. He enquired whether that meant that there would be something like a bench-mark of 30% of identified overall financing needs. The second bench-mark proposed, "Increase in the value and share of new export products in total exports of LDCs" was not a country-specific one which could be included in the IF, but rather a general bench-mark. The proposal for a specific increase in exports to be met within a particular timeframe might receive some support as a political commitment, but as a bench-mark it would be difficult to operationalize. His delegation saw the proposed bench-marks rather as being overall objectives that Members wished to achieve and recognized to be important. He was not sure how it would be possible to quantify those objectives or qualify them using bench-marks, or how such approach would operate within the existing structure of the assistance provided to LDCs, particularly the IF. His delegation therefore joined those who asked for more information, in order to examine further what could be done with respect to those proposals by the LDCs.

33. The representative of Zambia indicated that the proposal for benchmarks started on page 6 of TN/CTD/W/4, and referred to paragraph 2(v) of the Decision on Measures in Favour of Least-Developed Countries which stated that Members "shall be accorded substantially increased technical assistance." The LDCs were of the view that such requirements had not been fully implemented and it was difficult to judge the extent to which the requirements of special and differential treatment provisions had been met. The LDCs requested that modalities be introduced to ensure that the mandatory provision are implemented. He enquired what was harmful about the proposal to other Members, since the goal of the proposal was to substantially increase technical assistance; an objective that had not been met so far. With respect to the actual implementation of benchmarks, his delegation was of the view that Members could at that stage discuss the principles, and leave the details for later.

34. The representative of the United States noted that the meeting was considering cross-cutting issues. There was a specific proposal relating to the use of benchmarking in the context of technical assistance and the IF, but the broader issue of how benchmarking was used for a range of S&D issues also needed to be addressed. She said she wanted to ensure that all the cross-cutting components of that issue were addressed within the Special Session, and that the discussion did not focus solely on the LDCs' proposal. She reiterated that benchmarking had a role in assisting Members with implementation and more active participation in the everyday activities of the WTO. She hoped that both elements would be kept in mind as Members continued to discuss the issue of benchmarking.

35. The representative of Canada said that with respect to the IF and the Joint Integrated Technical Assistance Programme (JITAP) – with both of which her Government was actively involved – her delegation was firmly committed to results-based management, monitoring and reporting. In order for that to be done, baselines and benchmarks needed to be in place. Her delegation was actively working to ensure that these were included in both programmes. Her delegation therefore was of the view that what the LDCs were requesting in their proposals could be provided in the context of those programmes.

36. The representative of Switzerland said that his delegation was also not clear about the LDCs' proposal with respect to benchmarks. Benchmarks were useful, since they encouraged Members to examine how a specific country was developing and the extent to which trade rules contributed to its development. The problem of linking benchmarks to technical assistance efforts was one related to causality. It was important to enhance the technical assistance efforts through various channels, and efforts in that regard were being made within the IF. However, it was difficult to relate technical assistance efforts, and their impact, to the proposed benchmarks, since the latter were more general in nature. It was possible that technical assistance contributed to improving the benchmarks, but many other efforts being made in that regard also needed to be considered. With respect to the implementation and monitoring of technical assistance efforts, he pointed out the need for country-specific monitoring regarding the IF within each country following the studies, action plans

and priority setting and trade-related investment projects. Members needed to decide when, and how, the results of the monitoring and programmes would be delivered within the WTO context. It also needed to be decided, if country-specific reviews should be considered following technical assistance under the IF and also decide whether to look at this together with technical assistance from other means such as, such as technical assistance provided directly by the WTO, JITAP and bilateral programmes – for which a databank was being developed. Members therefore needed to decide if periodic analysis was required on a country-basis with respect to the amounts and effects of technical assistance. If that was to be done, the method would need to be determined, including the criteria with which technical assistance efforts would be measured. Some of the benchmarks proposed by the LDCs may be included in such an exercise.

37. The Chairman proposed that he would inform Ambassador Smith (Chairman of the Special Session) of the views Members had expressed on benchmarks, and noted that according to some Members, benchmarks would be desirable in certain areas such as the IF and JITAP. He said there might be a need to further clarify where benchmarks should exist, and what their nature should be, and those discussions could perhaps be carried on in informal consultations.

38. The representative of the European Communities in response to the suggestion made by the Chairman, enquired whether it would not be preferable to request the bodies which dealt with those issues, such as the IF Steering Committee or the JITAP Donor's Group, to pursue those discussions.

39. The representative of Switzerland wondered whether Members should just deal with JITAP and the IF, or rather with all forms of technical co-operation provided to LDCs and developing countries. In that regard, the Special Session could ask the various Committees which were responsible for the different programmes to make sure they established benchmarks to assess the impact of the activities they were pursuing. Secondly, it would be useful to know to what extent the CTD, or other WTO bodies concerned with the issue of technical assistance, should review the global effort of technical assistance. That review could be carried out using the benchmarks which were provided and followed by the different WTO bodies that dealt with technical cooperation issues. Thirdly, it would be useful to know the extent to which a monitoring mechanism for S&D treatment should pay special attention to technical assistance efforts which have been provided as an element of S&D treatment. The monitoring mechanism could therefore provide a tool for an overview of technical cooperation; the actual location of the monitoring mechanism, be it in WTO, CTD or a subsidiary body, still had to be decided. The discussions on the results of technical assistance efforts would be seen as an output of the monitoring effort.

40. The representative of Norway said that he did not understand what the LDCs were seeking to achieve with the proposed benchmarks. He thought that the reason for the discussion was to examine the potential of promoting sustainable development of LDCs and other developing country Members. This was to be done taking into consideration the fact that the WTO was not a development organization and that each Member had the primary responsibility for its own sustainable economic development. He therefore had thought that when the Special Session would discuss benchmarks, Members would look at whether the WTO provisions were working in the right direction, and were conducive to the trade opportunities and the development of each developing country Member. However, after examining the LDCs proposals he admitted he had misunderstood them. He therefore requested the delegation of Zambia to clarify what sort of benchmarks were being considered, if the resources for technical assistance were looked at from the perspective of what the WTO should do to ensure that Members become fully integrated into the world trading system and take active part with full rights and obligations.

41. The representative of Zambia said that LDCs were not satisfied with the way the issues they had raised were being handled in the Special Session. The LDCs expected some positive results from the consideration of their proposals. He could not understand why every time the LDCs made

proposals, other delegations were confused and considered their proposals not clear. That had been the trend during the S&D discussions.

42. The Chairman indicated that he would report to Ambassador Smith the views which had been expressed. He noted that some degree of support for benchmarks had emerged, although the question had also been raised of how and where the benchmarks should be applied, and which Committee should examine them. He would also suggest that the consultations on that matter continue.

Technical assistance and capacity-building

43. The Chairman indicated that the third point of the agenda with respect to cross-cutting issues was technical assistance and capacity building. He drew Members' attention to the fact that the General Council, in adopting the report on 31 July 2002, had instructed the Special Session to "submit the proposals on criteria for technical and financial assistance and training, referred to in paragraph 9 of document TN/CTD/3, to the CTD in Regular Session, for inclusion of any agreed elements in future Technical Assistance Plans". These proposals had been submitted to the Chairman of the Committee on Trade and Development (CTD) in the regular session. Two proposals had been submitted with respect to technical assistance and capacity building – one by the African Group and one by the United States - and they were contained in TN/CTD/W/3/Rev.2 and TN/CTD/W/9 respectively.

44. The representative of Cuba said his delegation appreciated the elements put forward in the African Group proposal (TN/CTD/W/3/Rev.2) with respect to technical assistance and capacity-building. In approaching that issue one had to start from the principle that technical assistance and capacity-building programmes had to be structured in close coordination with the demands by the beneficiary countries. At the same time it was necessary that the objectives of those programmes focus on the areas in which the beneficiary countries had the greatest needs. The short-term focus had to be complemented by long-term objectives, for the beneficiary countries to be able to increase their production capacity, efficiency and a certain amount of economic self-sufficiency in specific sectors, within a reasonable delay. Technical assistance and capacity-building programmes had to aim at attaining an increase in the institutional capacity of beneficiary countries, so that the results of such programmes yielded stability and had a multiplying effect. His delegation believed that those principles had to be taken into account during the preparation of technical assistance and capacity-building programmes.

45. The representative of Switzerland, said his delegation agreed to the criteria in Annex I of TN/CTD/3 as they corresponded to the request of the delegation of Cuba to focus on ownership, individual countries and the institutional development in developing countries. The translation of technical assistance goals took place with the different programmes that were previously mentioned – namely, WTO technical assistance efforts, the IF, JITAP, bilateral activities and other efforts. There was a long way to reach the objectives that were implicit in the proposals. In order to have a global approach of technical assistance efforts towards S&D treatment and the effect on development, it would be necessary to ensure that the monitoring process being established for S&D led to results which indicated how the support and technical assistance through the various means was of high quality and was adequate for developing countries and LDCs and therefore provided a tool to measure the effects of those efforts. That would be a way to operationalize such efforts envisaged by the WTO.

46. The representative of the European Communities said that the discussions had indicated the need for additional work on technical assistance issues. The WTO had already done some work in this regard, and the Special Session could therefore give guidance for the discussions that would take place in different *fora* with respect to WTO plans. As a result of the experiences in developing the 2003 Technical Assistance Plan, his delegation was of the view that some of the criteria were already included in the questionnaires which the WTO Secretariat used in order to receive requests on

technical assistance needs. That would facilitate the development of a framework of criteria, within a demand-driven approach, which would be considered when beneficiaries were developing their requests/proposals and when donors were accepting a project or placing funds into the Doha Development Agenda Trust Fund. Some of the criteria should therefore be more closely examined; he agreed with the previous delegations that had indicated that the first eight points included in the African Group proposal on the criteria for technical and financial assistance (Annex I of TN/CTD/W/3/Rev.2) were a good basis from which to do additional work. His delegation did, however, have some reservations in connection with the last two points contained in that Annex.

47. The representative of Canada said her delegation was supportive of the criteria, and wanted to discuss them further. She noted that they had been referred to the CTD and had been used in the deliberations for the 2003 Technical Assistance Plan. The proposals by the European Communities could be taken into account during the discussions for the 2004 Technical Assistance Plan. Her delegation also saw a link between the discussion under "Technical assistance and capacity building" and the discussion under the previous agenda item, "Bench-marks". She added that her delegation was of the view that some of the ideas of the LDC paper could be taken into consideration and incorporated into the whole concept of criteria. The LDCs' proposals led the discussion even further than the results that had been monitored, and should be taken into consideration.

48. The representative of Zambia indicated that the African Group representative might speak regarding that issue later.

49. The Chairman indicated that he needed to consult with Ambassador Smith on the issue, as there were some elements which were being discussed in the CTD Regular Session, such as the 2003 Technical Assistance Plan. There needed to be an understanding of what had to be discussed in the Special Session and in the Regular Session of the CTD.

Transitional periods

50. The Chairman said that the last point under cross-cutting issues was transitional periods. Two proposals had been submitted in that regard – one by the African Group and one by the United States - and they were contained in TN/CTD/W/3/Rev.2 and TN/CTD/W/9 respectively.

51. The representative of Canada indicated that transition periods were most meaningful when the situation of specific Members was taken into account, and when they were specific to Agreements and proposals that were under consideration in various WTO bodies, including Negotiating Groups. That view was similar to that outlined in the submission by the United States.

52. The representative of Switzerland, with respect to the African Group proposal contained in paragraphs 23 and 24 of TN/CTD/W/3/Rev.2, stated that his delegation agreed with the statement contained in paragraph 24(a), i.e. that transition periods should not be arbitrarily set or inadequate and should be based on objective criteria. There was a problem with the application of transition periods in some countries, and a standard rule with a fixed period for every country was not sufficient. Transition periods often implied that a country was able to establish a new institution which required resources. In addition, the time required to implement specific rules could be considerable. That time could vary depending on the country and there was therefore a practical problem - beyond the compliance with WTO rules – of how to establish such institutions and how to make them function. That could be achieved not only by fixing a specific time period for implementation, but also by having an active dialogue with the country through a monitoring mechanism under S&D or through WTO technical assistance efforts to help the country establish the institution. Following that, it would be the responsibility of the Secretariat and Members to ensure that those deadlines were kept and the extensions granted. That had been efficiently done by some Committees, such as the Committee on Customs Valuation, and his delegation suggested that other Committees do likewise. His delegation

did not agree with the proposal in paragraph 24(b) that Members should always have the right to extend transition periods. Extensions should be specifically discussed and justified in the relevant Committee or the CTD. The monitoring mechanism for instance could be the forum for such a discussion.

53. The representative of the United States supported the comments that had been made by the representative of Switzerland, many of which were reflected in her delegation's paper (TN/CTD/W/9). Her delegation did not believe that there was a one-size- fits-all model, but believed that transition periods were an important part of the work of the WTO. Combining the concept of benchmarking, transition periods and technical assistance was a good idea. Progress had been made by some of the Committees with respect to transition periods, and she agreed that the Committee on Customs Valuation could be used as a model. It was worth seeing how that model could be used in encouraging other Committees to consider it. Her delegation was also uncomfortable with the automaticity that was suggested in paragraph 24(b) of the African Group submission (TN/CTD/W/3/Rev.2). There were a number of ways in which Members could improve the way they utilized transition periods, and that issue needed to be focused on when carrying out further work on S&D.

54. The representative of the European Communities said that paragraphs 23 and 24 of the African Group paper (TN/CTD/W/3/Rev.2) took up the types of arguments that had previously been put forward on the issue of differentiation. If one was serious about according transition periods in an objective way in relation to the various needs of developing countries, it would inevitably result in different transition periods for different countries. If those issues were considered with the intention of having the best results from integration into world trade, then some of the results would be differentiated. Many points had been raised with respect to the link between transition periods and technical assistance. In TN/CTD/W/20, his delegation had raised the point that transition periods only made sense if there was a way of putting in place administrative arrangements as well as technical assistance and appropriate monitoring mechanisms during this period. He agreed with the delegation of Switzerland that Members needed to refrain from seeking solutions as proposed in paragraph 24(b) of the African Group paper, not because his delegation had economic problems with providing endless transition periods on request to some countries, but because it would not meet the WTO's objectives. There was a need to integrate countries into the multilateral trading system and not give permanent derogations which would not enhance trade.

55. The representative of Japan said that his delegation agreed with many of the points that had been raised by previous speakers. The issue of transition periods was important because his delegation believed that Members could discuss the interrelationship of the various cross-cutting issues, including benchmarks and capacity building activities, that were linked to transitional periods. The tools available to Members needed to be used in a combined way in order to make the transition periods shorter than anticipated.

56. The representative of Norway said that his delegation associated itself with the comments made by the representative of Switzerland. The goal of transition periods should be to ensure the full implementation of the obligations at the end of the transition period.

57. The representative of Egypt said that although his delegation believed that the essence of the African Group proposal was in paragraph 23, the focus by most other delegations had been on paragraph 24 of TN/CTD/W/3/Rev.2. It would be a positive achievement if Members could agree to paragraph 23(a), (b) and (c) since there had been no clear objections to them. Developed country Members had not perceived the proposal contained in paragraph 24(a) in the way the African Group had intended. Paragraph 24 was an attempt to ensure that the transition periods were in accordance with what they were proposing in paragraph 23.

58. The representative of Canada said that her delegation could agree with what the representative of Egypt had just said, but with the addition of the *caveat* made by the representative of Norway, with respect to the purpose and ultimate goal of transition periods, and the inclusion of some of the linkages that had been mentioned by other delegations. Her delegation could also agree with those parts of paragraph 24(a) which related to transition periods not being set arbitrarily.

59. The representative of Uganda said that if Members could agree on paragraph 23 of TN/CTD/W73/Rev.2, then Members would be clear on what the objective of the transition periods were. The appropriate legislation and institutional mechanisms could be put in place; however the proposal in paragraph 23(b) was still critical. That was due to the fact that developing countries requested extensions of transition periods. One of the critical objectives of the transition periods was to prepare developing and least-developed countries in a way that enabled them to utilise the institutions so that they could benefit from the multilateral trading system. Paragraphs 23(b) and 24(b) were therefore linked.

60. The representative of Mauritius agreed with the comments made by the representative of Egypt. His delegation did not agree with the request by the delegations of Switzerland, Norway and Canada for an addition to be made to paragraph 23 of the African Group submission (TNCTD/W/3/Rev.2). In paragraph 23(b) the African Group was not considering the obligations in isolation. That paragraph stated that the African Group wished "to attain a level of socio-economic development commensurate with obligations ..." and it was therefore not correct to state that transitions were being sought in abstract of the obligations. He was not sure if an addition to paragraph 23 to ensure full obligations would add more clarity. The proposals had come forth on an informed basis and weighed judgement. In that way, paragraph 23(b) adequately addressed the question of obligations.

61. The representative of the European Communities said his delegation had taken note of the proposal to take action on paragraphs 23 and 24 of the African Group paper (TN/CTD/W/3/Rev.2). In Principle, his delegation believed, that some guidance on the issue of transition periods based on the discussions was positive. However, his delegation's lawyers needed to consider the current text closely. The current text implied that the proposal would apply to transition periods which were granted to developing countries by developed countries - for example in the area of Sanitary and Phyto-sanitary (SPS) Measures. Paragraph 23 stated that "transition periods shall be designed to provide developing … country Members with a period of time … ". The phrase "transition periods" were not further qualified. He did not think Members had intended to reopen the debate that had been conducted on Article 10.2 of the SPS Agreement, but rather to discuss transition periods granted to developing countries in the area of TRIMs or Customs Valuation to facilitate implementation. Paragraph 23 could be interpreted in many ways and should therefore be clarified before it was adopted. This was crucial in order to clarify its meaning and so as to avoid unlimited derogations. The term "socio-economic level" in that paragraph was also vague. He was not certain that Members wished to grant endless transition periods to a country that was not developing. He did not consider it to be the right message to be sent. There were a number of issues which started with the legal form of an adoption into the fine tuning of the text, which all Members had a common interest of considering closely. The ideas which had been discussed and taken up by the delegation of Switzerland, and the delegation of the United States in its paper, could be worked out and presented as a result of the work of the Special Session. He was not saying that he could not accept the proposals, he was just giving a note of caution.

62. The representative of Korea, commenting on transition periods, said that his delegation believed that flexibility should be granted to developing countries so that they could implement their obligations in an appropriate way. However, Members needed to be careful with respect to the unconditional extension of transition periods.

63. The Chairman said that the discussions under that agenda item had advanced the debate on issues of concern to developing country Members within the WTO. It was evident that those discussions needed to continue, as the Special Session progressed with the work on S&D treatment.

D. AGREEMENT-SPECIFIC PROPOSALS

64. The Chairman introduced the fourth agenda item, which was discussion of the Agreement-specific proposals grouped within the four clusters laid out in Annex II to the Indicative Schedule of Meetings and Programme of Work, circulated on 18 October 2002. The four clusters were: Cluster 4 - Transitional time periods, Cluster 5 - Technical assistance, Cluster 6 - Provisions relating to least-developed country Members, other than those already included in Clusters 1 – 5, and Cluster 7 - Proposals on provisions not included in the previous 6 Clusters, as per the classification in document WT/COMTD/W/77/Rev.1. He reminded Members that the Decision on Notification Procedures, which did not appear in the Indicative Schedule of Meetings and Programme of Work, would also be discussed under Cluster 7. He therefore introduced Cluster 4, "Transitional time periods", under which tabled for consideration were proposals on Article 5 of the Agreement on Trade-Related Investment Measures (TRIMs), made by the African Group and the LDCs and contained in TN/CTD/W/3/Rev.2 and TN/CTD/W/4 respectively, and proposals on paragraphs 1 and 2 of Article 20 of the Agreement on Implementation of Article VII of the GATT 1994, and on Article 5 of the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), both made by the African Group and contained in document TN/CTD/W/3/Rev.2. He opened the floor for comments on the proposals falling within Cluster 4.

65. The representative of the European Communities, commenting on the proposals on the Agreement on TRIMs, said that an open-ended and unconditional exemption for LDCs from an Agreement which confirmed fundamental principles of Articles III and XI of the GATT 1994 would be difficult to accept. He said that was also due to development policy reasons, since such exemption from the TRIMs Agreement could cause those countries to be regarded as second class investment destinations. He noted that WTO rules already provided possibilities to deviate from some of the provisions of the TRIMs Agreement, in specific cases, and flexibility had always been shown when requests seemed to be well-founded and the necessary time was given. He also recalled the work done on those issues in the Council for Trade in Goods. On the proposal about removing the contradiction between the time-bound derogation in the Agreement on Subsidies and Countervailing Measures and Article 2.1(b) of the Agreement on TRIMs, he noted that the result would be a general exemption granted to LDCs, which his delegation was not in favour of. On the proposal on Article 65.4 of the Agreement on TRIPS he noted that only few developing country Members had made use of the extended transition period until 2005 for certain products under that Agreement. He added that the situation was different for LDC Members, for which the extension of the transition periods was expressly foreseen under Article 66.1; in the case of LDC Members there already was an extension for patents and other protection on pharmaceutical products until at least 2016. In relation to the proposal made on the Customs Valuation Agreement (CVA), which sought the extension of the minimum value decisions which had been taken, without any conditions, his delegation believed that the well-working approach followed in the Committee on Customs Valuation should be pursued. His delegation could assure any developing country Member which faced those problems and followed the well-established procedures in the Committee on Customs Valuation that tailor-made solutions for their particular problems would be continued to be found in that Committee.

66. The representative of the United States, commenting on transition periods and waivers under the Agreement on TRIMs, noted that at that stage only one LDC Member and three low-income developing country Members had notified TRIMs, and only one of the low-income countries had requested an extension when the transition period had ended. Since very few Members had chosen to utilize that extension process in the past, her delegation was sceptical about the idea that absolute

exemption or renewed extensions constituted a necessary or particularly helpful approach. A number of other requesting developing country Members had recently received up to four additional years, and her delegation considered that process to be working well. Her delegation thought that, for proposals like the one for six year waivers related to the balance-of-payments (BOP) crisis, there existed sufficient provisions in the BOP context to address the problem raised. The value that the proposal would add was unclear: in a crisis situation it did not seem appropriate to look at other provisions. It rather seemed advisable to deal with those kind of problems within the BOP context, and to do so matching individual development needs with the recourse to specific additional treatment. Proposals on extensions under the TRIMs Agreement therefore did not seem useful. With respect to the proposals addressing the TRIPS Agreement, her delegation agreed with the delegation of the European Communities: Members had already provided an extension until 2016 for the LDC Members, and a further extension, particularly an automatic one, would not give the right signal, nor help developing country Members' technology base, which seemed to be the purpose of the proposal. Bench-marks should be used to identify on an individual basis the legal and infrastructural needs required to implement the Agreement and put in place a plan of action that would help with that process. Her delegation was concerned that the transition periods should be used effectively, and not simply to delay taking action; the bench-marking role in that respect was particularly important. Referring to the discussions on incentives for private enterprise to transfer technology, she said that for her delegation that raised the question of whether the proposal created the proper incentives for the timely implementation of the Agreement on TRIPS, which would in fact bring them investment. With respect to the proposal on exclusive marketing rights, her delegation wondered whether something which was part of the Vienna Convention should be changed.

67. The representative of Japan noted, as previous speakers had, that most LDC Members had not notified their programme related to the TRIMs Agreement, and that no LDC Member had requested an extension of the transition period to date. Given the fact that requests to extend the transition period had been approved under the existing Article 5.3, LDC Members had an option to request such an extension. He therefore questioned the basis for the proposal. He quoted Article 65.4 of the TRIPS Agreement, to stress that it was only applicable to product patents. The transition period of five years was specifically allowed because of the broad coverage of product patents. Areas of technology other than those covered by product patents did not have the same nature, and it was therefore understood that a developing country Member had an obligation to extend patent protection to areas of technology other than product patents, after 1 January 2000. His delegation therefore considered it inappropriate to retract the obligation regarding patent protection for areas of technology other than those covered by product patents, once such obligation had come into effect. With respect to the proposal on the CVA, developing country Members' requests for delays in the application of the Agreement had been accepted so far, on a case by case basis. In that sense they could accept the proposal, but they could not accept it if developing country Members would not accept consultations on an individual basis.

68. The representative of Canada, commenting on the African Group proposal on Article 3 of the Agreement on TRIMs, said that in his delegation's view Articles XII, XVIII and XIX of GATT were not exceptions but rather derogations and therefore Article 3 of the TRIMs Agreement did not refer to them: Article 3 referred to Articles XX and XXI of GATT, as *General* and *Security Exceptions*. The proposal on Article 20 of the CVA would allow a developing country Member to delay adherence to the CVA for however long it believed it necessary to protect its development, financial and trade needs; his delegation was not in favour of proposals that would indefinitely postpone developing country Members' adherence to Agreements, since that ran counter to the intent of helping developing country Members integrate into the multilateral trading system. The CVA already provided for a five years' delay for adherence to the Agreement itself and, as mentioned, under the Work Programme established within the Doha Development Agenda, the Committee on Customs Valuation was developing a valuation system based on a positive approach reflecting both commercial reality and the need for effective administration by Customs services.

69. The representative of Kenya noted the comments received on the African Group proposals. Most of them were not encouraging, since they did not seem to address the problems faced by developing and least-developed country Members. The Doha Development Agenda required that requests for flexibility be addressed, in order for it to actually be a "Development" Agenda. In relation to the requests for extension, and the comments that had been made on developing country Members "not having come forward" with such requests, he noted that the proposal itself was a way to come forward: 53 African countries were coming forward together and requesting an extension. With respect to the Agreement on TRIPS he noted that the extension up to 2016 for LDCs, albeit positive, only covered pharmaceutical products. It had also been said that not many countries had made a request for an extension under the CVA, but he noted that with that proposal they were now making "a request" as a group. Some Members had earlier thought that they could perhaps manage without an extension, but then found out that they could not. He said that what they were proposing was in line with the mandate contained in the Doha Ministerial Declaration. He therefore asked delegations to look at the proposals again, so that they could respond positively before the end of the year.

70. The Chairman introduced proposals made under Cluster 5, "Technical assistance". Two proposals were tabled for consideration under that cluster, *viz.* a proposal on paragraph 3 of Article 20 of the CVA, made by the African Group and contained in TN/CTD/W/3/Rev.2, and a proposal on Article 67 of the Agreement on TRIPS, which had been made by the LDCs and was contained in TN/CTD/W/4/Add.1. He then opened the floor for comments on those proposals.

71. The representative of the European Communities said that they had already made commitments with respect to Article 20.3 of the CVA at the Doha Ministerial Conference, and that that Article was already mandatory. His delegation was open to looking into the possibility of establishing trade-related technical assistance (TRTA) on an even firmer footing, especially as an element to support implementation by developing country Members during transition periods, but was concerned with the way the proposal had been put forward. Large amounts of money were being spent by the various providers of technical assistance for the transition periods to be meaningful. Concerning the proposals by LDCs on Article 67 of TRIPS, he said that a number of technical cooperation programmes in the field of intellectual property rights were already being implemented to help Members bring their legislation in line with the Agreement on TRIPS, make full use of the flexibility which the Agreement already afforded, and build domestic administrative capacities. He noted that their offer for technical assistance in that field had received very few takers until then.

72. The representative of Canada echoed the comments made by the representative of the European Communities concerning the efforts already made on technical assistance. The proposals on the CVA and the TRIPS Agreement however implied open-ended budget and financial obligations which his Government would find difficult to accept.

73. The representative of the United States asked what the added value of binding obligations on technical assistance in the customs valuation area would be. There had been an active and cooperative effort in the Committee on Customs Valuation to develop practical measures to address specific problems of individual Members: that problem-solving approach was working. Her delegation wanted that work to continue. She shared the views expressed by the representative of the European Communities on the proposal on TRIPS, and added that every year developed country Members had compiled a report on technical assistance programmes in all the areas covered in the LDCs' proposal: she therefore wondered what the proposal would add. She however said that if that reporting did not meet the existing needs, the issue could be addressed in the context of the Monitoring Mechanism, if the latter came into being.

74. The representative of Japan, referring to the proposal on CVA, noted that they had already implemented technical assistance, and said it would be beneficial to exchange views on the technical

assistance that each Member had provided, and to make a Technical Assistance Plan which reflected developing country Members' needs. Japan had a positive attitude and wanted to know what the actual problems with past practice were. He had similar comments concerning the proposal on Article 67 of the TRIPS Agreement: as a developed country Member Japan had been providing technical cooperation, and reporting on that; interested Members could refer to IP/C/W/377 for the latest update. His Government could consider a concrete request, within its abilities, but did not really understand the benefit that the proposal would provide.

75. The representative of Switzerland noted the general agreement amongst Members on the thrust of both proposals. In the case of the proposal on the CVA, however, it was impossible for industrialized countries to agree to the binding nature of technical assistance. The latter, like GSP, was by its very nature discretionary. What that would imply in terms of the holder of the obligation was also unclear to him. That could be an engagement in moral terms, but not in legal terms, and commitment to it could be measured in terms of the efforts which had been made. Concerning the proposal on Article 67 of the Agreement on TRIPS, he said that all the points made in the proposal were valid, as was the general introduction; there was already a good potential for technical assistance from WIPO, and Switzerland was determined to expand and improve its bilateral technical assistance programmes in that field. He hoped that through the databank on technical assistance, which was then slowly becoming available, and other databanks which already existed, one would be able to know where the needs were, as well as where other agencies were already involved. That type of effort would need to be reviewed in the WTO later on.

76. The representative of Kenya said that there was one important proposal they had made on technical assistance which had not been touched upon. The LDCs had identified a problem and had asked for technical assistance to address their supply-side constraints so that they could benefit from the WTO Agreements. He asked the delegations which had taken the floor how they had addressed the supply-side constraints with technical assistance programmes. He recalled paragraph 44 of the Doha Ministerial Declaration, and asked Members how S&D treatment provisions could be made more effective and operational without being made binding, since making them effective and operational implied instilling some certainty in them.

77. The representative of Canada said that the issue of supply-side constraints was a broader one, which seemed to go beyond the limit of the two proposals they were discussing. Canada approached that issue through organizations such as the ITC and joint efforts such as JITAP and the IF, which would result in specific programmes of action regarding supply-side constraints, and was developing programmes with other organizations to address supply-side constraints.

78. The representative of the European Communities noted that there were budgetary processes which required Members to plan financial commitments in advance: a commitment to link the provision of technical assistance to the forthcoming demand, without further specifications, would be difficult to accept for any WTO Member. He thought there were better ways to tackle that issue; his delegation was willing to look into the possibility of providing for well-defined cases in which technical assistance could be automatic or binding. He noted that the issue of supply-side constraints was not very evident in the context of the TRIPS Agreement, since the latter protected in particular intellectual property rights within WTO Members. However, some of the technical assistance programmes did work on enforcement, for instance protecting producers of local music in some African States, thus allowing an industry to develop and be competitive enough to eventually export its product, whilst that might not be possible as long as there was no adequate intellectual property rights protection.

79. The Chairman introduced Cluster 6, "Provisions relating to least-developed country Members, other than those already included in Clusters 1-5". Eight proposals fell under that cluster, two of which had already been discussed under previous clusters. Six proposals were therefore tabled for the

meeting's consideration at that stage, *viz.*: a proposal by the LDCs on Article 66.1 of the TRIPS Agreement, contained in document TN/CTD/W/4/Add.1, one by the African Group on Article 66.2 of the same Agreement, contained in document TN/CTD/W/3/Rev.2, and three proposals on the Decision on Measures in Favour of Least-Developed Countries, two by the African Group and one by the LDCs, which were in documents TN/CTD/W/3/Rev.2 and TN/CTD/W/4, respectively. He then opened the floor for delegations to comment on those proposals.

80. The representative of the European Communities commenting on the LDCs' proposal on Article 66.1 of the TRIPS Agreement, noted that the Article had been carefully drafted at the time, and already provided flexibility for duly motivated extensions; his delegation therefore did not think the suggested change was justified. General automatic extensions were not in the interest of any WTO Member. Concerning the first part of the African Group proposal on Article 66.2 of the Agreement on TRIPS, in which it was proposed that incentives be given through laws and other administrative instruments, he noted that appropriately the TRIPS Agreement did not specify the exact means by which the incentives should be provided: the proposal in that respect did not seem practical. On the proposal that incentives should effectively operate as a motivation to transfer technology, he noted that it would be difficult to guarantee that result, although his delegation shared the purpose. Firms' motivations depended on their business strategy, and the absorption capacity of the beneficiary country was also relevant; an *obligation de résultat* would therefore be difficult to achieve in that context. Still on the same proposal, and specifically on the part which concerned reporting requirements, he noted that Articles 7 and 8, *Objectives* and *Principles*, were not operational in themselves, and therefore could not be subject to a particular implementation report, and that all Members had to comply with Articles 7 and 8, not just developed country Members. His delegation was more open on the proposed reporting requirement on the implementation of Article 66.2. With respect to the last two points of the same proposal, his delegation favoured a broad definition of technology, but thought it was not appropriate to include trade secrets. He also sought clarification as to why private enterprises were not regarded as beneficiaries in that context. With respect to the Decision in Measures in Favour of Least-Developed Countries, he felt uneasy with the open-ended exemption proposed by the African Group, i.e. for the LDCs not to be required to "...comply with obligations or commitments that are prejudicial to their individual development, financial or trade needs, or their administrative and institutional capacity". Virtually all WTO Agreements provided for transitional TA, to address specific needs in connection with the fulfilment of obligations. WTO Agreements and obligations were generally supportive of development. With respect to the proposal by the African Group on paragraph 2 of the Decision he said his delegation found it difficult to accept that LDCs "always be entitled to extensions for their transition periods as they may require", and noted that Members had already looked at prolongations of time periods on a case-by-case basis, and would do so again. His delegation however insisted that those prolongations should be limited in time and the applicant Members should always present a plan on the steps they intended to take for the implementation of the Agreement in question. He said that was linked to the overall objective of integration into the WTO system. His delegation did not have problems with the part of that proposal which related to technical assistance: they shared the objectives stated therein.

81. The representative of Canada agreed with most of what the representative of the European Communities had said. He added that the net effect of the proposal on the Decision on Measures in Favour of Least-Developed Countries would be for the LDCs to be entitled to ignore any WTO obligation, an outcome which his delegation did not find constructive. Similarly, his delegation did not agree with the proposals to grant LDC Members automatic extensions of their transition periods, as they might require.

82. The representative of Kenya said it was necessary for Members to ask themselves with what assignment they had been entrusted by the Ministerial Conference, whether it was to make S&D provisions more precise, effective and operational, or merely to recount what they were doing to help developing and least-developed country Members; the distinction was important. He wanted to know

what Members were doing to fulfil the mandate: since for example the only element of the proposal on Article 66.2 of the Agreement of TRIPS which seemed acceptable to Members was that concerning the reports to be made, he enquired whether Members thought that would make the provision more effective and operational than what it was.

83. The representative of Malaysia, commenting on the proposal made by the LDCs on Article 66.1 of the TRIPS Agreement, noted that the existing provision read: "The Council for TRIPS shall, upon duly motivated request by a least-developed country Member, accord extensions of [the transition] period". The point in the LDCs' submission was to further clarify the meaning of the phrase "duly motivated", so as to simplify the procedure. The Special Session of the CTD should clarify that provision. Concerning the second paragraph of the LDCs' submission on Article 66.1 of the Agreement on TRIPS (paragraph 54 of TN/CTD/W/4/Add.1), her delegation did not have any particular comment, but noted that Article 66.1 said that the reason for a transition period was to provide flexibility to create a viable technological base for LDCs, and that the TRIPS Agreement was a minimum standards agreement providing intellectual property protection. If an LDC Member sought an extension of the transition period, it might be doing so because it had been unable to build a viable technological base. Therefore the issue of how the non-application of the TRIPS Agreement could lead to improving a country's technological base should be given further attention, so as to help LDCs implement the TRIPS Agreement in the proper time. If LDCs were seeking an extension it meant that there were some problems, and it was incumbent upon the TRIPS Council to provide the assistance necessary to enable them to establish a viable technological base.

84. The Chairman then introduced Cluster 7, "Proposals on provisions not already included in the previous 6 clusters, as per the classification in document WT/COMTD/W/77/Rev.1". He opened the floor for comments on the proposals falling under Cluster 7, and suggested that the meeting start by considering those concerning the six Understandings.

85. The representative of Canada, commenting on the proposal by the LDCs on the Understanding on Balance-of-Payments Provisions of the GATT 1994, said that his delegation would not be opposed to exploring a simplification of consultation procedures for LDCs at the Committee level. His delegation considered the last part of the proposal by the African Group on the same Understanding to be too constraining, since taking it to the extreme implied that consultations could be delayed indefinitely. They had in principle no particular difficulty with the proposal on the Understanding on the Interpretation of Article XXIV of the GATT 1994. The proposal by the African Group on the Understanding in Respect of Waivers of Obligations under the GATT 1994 seemed to entail possible implications for other developing countries, but his delegation had no difficulties in principle with the proposal, and believed it was possible to reach a consensus on it in the Special Session. His delegation was however interested in other developing country Members' views on it. With respect to the proposals by the LDCs on the Understanding in respect of Waivers of Obligations under the GATT 1994, his delegation had already voiced its difficulty in accepting automatic and self-granted waivers. He also sought clarification on the intended meaning of "sympathetic" consideration.

86. The representative of the European Communities noted that what was at stake in the proposal on the Understanding on the Interpretation of Article II.1(b) of the GATT 1994 was the definition of duties and charges. Such a definition already existed in Article VIII of GATT, which stipulated that they had to be commensurate with the services provided. His delegation believed that exporters of all Members had an interest in maintaining that definition, instead of trying to have two possible definitions. He therefore asked the proponents to reflect on whether it was in their interest to pursue that proposal. He then sought more information on the implications and final objectives of the proposal on the Understanding on the Interpretation of Article XVII of the GATT 1994, namely whether it was seen as a departure, exception or addition to the existing provision. What was being proposed by the LDCs in respect of the Understanding on Balance-of-Payments Provisions of the

GATT 1994 was already the practice in most cases. As to the proposal by the African Group on the same Understanding, he shared the hesitations expressed by Canada. His delegation was sympathetic to looking closer at the clarification sought in the first part of the proposal by the African Group and the LDCs on the Understanding on the Interpretation of Article XXIV of the GATT 1994. However, his delegation wished to add the recognition that the benefits of regional integration increased with the increase of mutual liberalization. He noted that the issue of the relation between the Enabling Clause and Article XXIV was already under consideration in the Negotiating Group on Rules. He said that the third element of the proposal on that Understanding, i.e. the question of special treatment to LDCs in regional trade agreements, was best considered in the Negotiating Group on Rules. With respect to the proposals on the Understanding in Respect of Waivers of Obligations under the GATT 1994, his delegation believed that in principle all requests for waivers should be considered on their individual merits, as was normally done. However, they were willing to look at a general provision which would be applicable only to LDCs, and would commit Members to consider waivers for LDCs in a particularly expeditious and sympathetic way, having regard to the purpose of the waiver sought and any conditions which Members might wish to attach to the granting of such waivers. Turning to the proposal on the Understanding on the Interpretation of Article XXVIII of the GATT 1994, calling for urgent consideration to be given to a re-balancing of the relative rights of small and medium-sized exporting Members, he noted that Article XXVIII had always been subject to difficult negotiations, and he therefore sought more specificity from the African Group as to exactly what re-balancing they were looking for; which Members could be deemed to be "small and medium-sized exporting Members"; and what justification they gave for that proposal, in view of the general reluctance expressed about differentiation as well as in view of the discussions on small economies, in the context of which Members had a mandate not to create a new subcategory.

87. The representative of the United States, taking up first the proposal on the Understanding on the Interpretation of Article II 1(b) noted that revenue considerations were a clear concern for developing country Members, and the Special Session of the CTD should consider having a detailed discussion in conjunction with the Negotiating Group on Market Access on ways to address that issue, in a manner consistent with the Understanding. Her delegation believed that the proposal would rewrite a valuable achievement of the Uruguay Round Agreement, i.e. Members' commitment not to raise trade barriers through other duties and charges, and was concerned that the proposal would lead in the opposite direction to that of lowering barriers. She referred to studies which concluded that revenue considerations could be addressed within discipline, and it was in that context that her delegation was concerned about the proposed approach. Nevertheless they were interested in hearing more about revenue issues. She asked what the African Group was trying to accomplish with the proposal on the Understanding on the Interpretation of Article XVII of the GATT 1994. Her delegation was not sure that exclusive import monopolies could do more than competition in achieving the goals which had been defined, and therefore sought more clarity and possibly further discussions on those items, since they disagreed fundamentally with the direction in which the proposal would take Members. With respect to the proposals on the Understanding on Balance-of-Payments Provisions of the GATT 1994, she noted that simplified procedures had been most commonly used for developing and LDC Members for a number of years. However, the BOP procedures had to balance the desire to simplify proceedings and the rights of a Member to request consultations in light of its trade interest. Her delegation shared the view expressed by the representative of Canada that requiring consensus was a fair balance in that respect. With regard to the issue of the three year minimum period, her delegation believed that each BOP conclusion was unique, and that Members should continue to use the current procedure, using information from the IMF and Members. Turning to the two proposals on the Understanding on the Interpretation of Article XXIV of the GATT 1994, she noted that they both addressed the relation between the Enabling Clause and Article XXIV. Her delegation believed that the Enabling Clause made it clear that Article XXIV disciplines were relevant, and did not think that those provisions were intended to hinder or discourage developing country Members from entering into such agreements. The established criteria were based on the economic principle of encouraging trade creation. She also

noted that the Negotiating Group on Rules was actively working in that area, and therefore that was an issue on which Members should continue to work within that body. She also expressed her delegation's particular interest in the notification requirements for Article XXIV agreements: they believed that transparency was very important and supported development efforts, rather than detracting from them. The proposal by the LDCs on the Understanding in Respect of Waivers of Obligations under the GATT 1994 was useful and Members could benefit from a review of the utilization of waivers by the LDCs, since her delegation was not aware of any specific instance in which requests for waivers had not been given sympathetic consideration or granted expeditiously. Because of the need for more clarity on how that process could work her delegation could be open to considering it, but was not sure about what problem Members were being asked to address. Similarly, she asked what the proposal by the African Group on the same Understanding was seeking. The issue raised in the proposal on the Understanding on the Interpretation of Article XXVIII of the GATT 1994 had been discussed in the Committee on Market Access and the Dedicated Session of the CTD on Small Economies, where her delegation had indicated an interest in trying to devise ways to address those issues in the future. The issue related to Article XIII however was a fundamental part of the Agriculture negotiations, and her delegation had tabled a proposal therein and believed that that issue should be ultimately addressed in that particular context.

88. The representative of Switzerland said that the purpose and implications of the proposal on the Understanding on the Interpretation of Article II.1(b) of the GATT 1994 were not clear to him, since the proposal seemed to imply that other duties and charges could be unbound for revenue reasons. His delegation would not have any problem with the proposal made on the Understanding on the Interpretation of Article XVII of the GATT 1994, except that they would take out the phrase "in protecting public policy", because it did not seem a necessary part of the sentence and the implications and usefulness of such a best-endeavour clause were unclear. However, his delegation would have no problem with that text. The proposal by the LDCs on the Understanding on Balance-of-Payments Provisions of the GATT 1994 could be considered, and his delegation was ready to look into it, although the consequences of that proposal did not seem completely clear to them. It seemed however that it would not impede full consultation procedures, and his delegation thought it was important to keep that option. In that connection, he said that the proposal on BOP by the African Group went too far, since in some cases full consultation procedures were very useful and necessary. With respect to the proposals on the Understanding on the Interpretation of Article XXIV of the GATT 1994, he shared the views expressed by other delegations, and acknowledged that the relation between Article XXIV of GATT and the Enabling Clause of 1979 was somewhat ambiguous and required interpretation; negotiations were underway in the Negotiating Group on Rules, and his delegation intended to follow them very closely. However, his delegation believed that there was some autonomy of the Enabling Clause with respect to Article XXIV, and in that sense the former provided some special right. Concerning the Understanding in Respect of Waivers of Obligations under the GATT 1994 his delegation believed that requests for waivers had to be examined thoroughly. Well argued development reasons were good reasons to provide a waiver, and in that sense they could agree, as the European Communities had said, to some general clause which expressed that. As others, he sought clarification on what was meant by the African Group with the phrase "other Members shall not prejudice the benefits under waivers". His delegation agreed with the thrust of the proposal on the Understanding on the Interpretation of Article XXVIII of the GATT 1994; there was a problem with respect to the rights of small and medium-sized exporting Members in their participation in negotiations and that issue should be taken up in negotiations. That might be related to the use of initial negotiating rights. He sought further information from the proponents as to how they saw the re-balancing actually taking place.

89. The representative of Kenya welcomed the positive comments made on some of the proposals. Regarding the African Group proposal on the Understanding on the Interpretation of Article II.1(b) of the GATT 1994 he clarified that since tariffs would come down as negotiations proceeded, and with them revenues on which Governments had been relying in the past for development purposes and to

meet other Government expenditure, and given the conditions that the IMF and the World Bank continued to impose on developing countries, the African Group was seeking to secure a source of revenue that would address their development concerns. That was in line with the Doha Development Agenda, and the charges were commensurate with the service that would be provided. Concerning their proposal on the Understanding on the Interpretation of Article XVII of the GATT 1994, the African Group thought that State Trading Enterprises (STEs) did have a role to play, especially in some of the developing countries, such as those of Africa, where liberalization would merely entail replacement of the STEs by multinationals having very different objectives. He added that some STEs were used in order to achieve Government objectives such as rural development and alleviation of poverty, and that was what the proposal was referring to when calling for a recognition of their role in "protecting public policy in developing ... country Members". However, if that led to misinterpretation, they could reword the phrase for it to read "to meet development concerns and needs of developing and least-developed countries". He did not agree that their proposal on the Understanding on Balance-of-Payments Provisions of the GATT 1994 went too far, and was surprised that for the first time Members were against using consensus. Concerning the Understanding on the Interpretation of Article XXIV of the GATT 1994, he said that the African Group was aware that negotiations were ongoing on the issue. However, the mandate was to look at the existing Agreements as they were, in order to identify the areas which still needed to be operationalized and the means to do so. He thought it would not be advisable to wait until the negotiations were concluded, since that would mean 2005 at the earliest, while Ministers had clearly mandated the review of S&D treatment provisions to be completed by July 2002. He welcomed the comments which had been made on the Understanding in Respect of Waivers of Obligations. With respect to the proposal on the Understanding on the Interpretation of Article XXVIII, he said that the African Group was not trying to come up with a new classification of countries; since the proposal addressed a rebalancing of the rights and obligations of small and medium-sized exporting Members, it was in fact referring to volume of trade.

90. The representative of Switzerland asked the representative of Kenya how he thought that the rights of small and medium-sized exporting Members could be rebalanced in practice, since the proposal was a very general one. If the proponents could specify in which way the re-balancing was to take place the proposal could be agreed upon by December 2002, otherwise Members would have to look at how to include it in the modalities for the ongoing round.

91. The representative of Kenya asked for that question to be provided in writing.

92. The Chairman suggested that Members move to considering the proposals addressing the "Agreements" listed under Cluster 7, from 7(g) to 7(k), with the addition of the proposal by the LDCs on the Decision on Notification Procedures, which was contained in paragraphs 25 to 33 of document TN/CTD/4/Add.1.

93. The representative of the European Communities said that perhaps there was no need for him to comment on the proposal on the Agreement on Textiles and Clothing since the European Communities' record on that was known. With respect to the proposal on Article 3 of the Agreement on TRIMs, he said that it was clear that exceptions under the GATT 1994 should also apply under the Agreement on TRIMs, and he was therefore not sure whether any additional clarification was necessary in that respect. The proposal on Article 3.3 of the Agreement on Preshipment Inspection (PSI) concerned technical assistance, and his delegation had an open mind on it. He added that the first priority with respect to technical assistance should be that all PSI contracts include provision for effective technical assistance or transfer of skills, so that at the end of the contract the situation in the country concerned would have actually changed, and the Customs administration would by that time be fully prepared to take over from the PSI company. With respect to the proposal on the Agreement on Rules of Origin, his delegation supported developing country Members' desire to facilitate regional trade and create regional trade areas. Rules of origin would certainly play a part in the negotiations on

regional trade agreements underway in the Negotiating Group on Rules, since they fell within the "other regulations of commerce" under Article XXIV. His delegation thought that further discussions on that issue could not take place in isolation from the work being carried out in the Negotiating Group on Rules. As to the other element of the proposal, his delegation supported further participation of developing countries in the work of the World Customs Organization, and noted that there were some precedents in this regard with reference to participation in international standard setting organizations. His delegation was willing to look at whether those experiences could be repeated, especially as far as work on origin within the World Customs Organization was concerned. Finally, he noted that the proposal on the Decision on Notification Procedures showed a clear understanding of the fact that notification was an issue of transparency, and transparency was of equal importance to all Members. He recalled that a Working Group had been established after the Uruguay Round with the mandate to propose changes concerning notification obligations, and one of the results of its work had been the Notifications Handbook. His delegation wished to address the issue through two avenues: firstly, where possible, through the provision of technical assistance to help Members with notification, since in many areas notifications had an important function; secondly, since it was clear that for LDCs notification requirements were a burden, by looking at ways to simplify and reduce that burden in some cases. However, that should not be at the cost of transparency.

94. The representative of Australia said her delegation was open to the proposal on the Agreement on Rules of Origin as contained in paragraph 66(a) of the African Group submission. That was on the basis that Annex II of the existing Agreement recognized Members' rights to apply preferential rules of origin and established rules to ensure transparency and consistency in the application of them, and it was for parties to the preferential agreements to negotiate rules of origin consistent with their trade policy objectives. However, her delegation recognized that there was an overlap with other negotiating groups, and therefore a need to take the bigger picture into account. Her delegation was also open to the suggestion made in sub-paragraph (b) of the African Group proposal on rules of origin. She noted that developing and least-developed countries were already able to participate in those bodies. Many African countries were already actively involved in the World Customs Organization, and WTO membership was not a prerequisite for participation therein. Her delegation would seek to look at further ways to encourage participation by developing and least-developed countries in those *fora*.

95. The representative of the United States noted that the proposal by the African Group on the Agreement on Textiles and Clothing was similar to proposals already discussed in the implementation debate and in the Council for Trade in Goods, and a large amount of information had been provided in those discussions; she therefore did not think that it would be useful to carry on that debate in the Special Session. With respect to the proposal by the African Group on Article 3 of the Agreement on TRIMs, she expressed concern that it could undermine the very purpose of the Agreement. Concerning the proposal on the Agreement on PSI, she agreed with the representative of the European Communities that if PSI services were to be used, it was important that they be used only as a transition system, and that components of technical assistance be embedded in PSI contracts. Her delegation had had concerns about PSI at the time of the Uruguay Round and remained sceptical about the task they were fulfilling. One of her delegation's main concerns had been that PSI services should not be used to conduct customs valuation: her delegation believed that Members, and not PSI entities, should be held accountable for adhering to WTO obligations. Experience had shown that PSI arrangements had often created new problems, particularly in the area of market access, including unreasonable delays, absence of transparency and insupportable increases in the transfer price by preshipment contractors. Her delegation understood the underlying problem, but believed that a better approach would be to address the issue in the context of trade facilitation, or the Committee on Customs Valuation. With regard to the proposal on the Agreement on Rules of Origin, she was not sure about how participation of developing country Members in the World Customs Organization and the Technical Committee on Rules of Origin was different from those countries' treatment in standard-setting organizations. It was helpful to try to ensure that developing countries participate in those

processes, but what the proposal was suggesting, and how it would help, was unclear. Concerning the proposal on notification requirements, she agreed with previous speakers about the real importance of notification, in order to ensure transparency and predictability in trade policy. Her delegation recognized that there might be a need to simplify the notification requirements, but rather than having an across-the-board approach to the issue, it was important to see where the problems were, and what type of notification the proponents thought should be undertaken less frequently. Her delegation was open to looking at the issue, but sought more precision rather than the blanket approach which the proposal appeared to be suggesting.

96. The representative of Switzerland, commenting on the proposal on notification procedures, acknowledged that it was important to reduce the burden of notifications for some Members, but that needed to be done in a way which would not affect transparency; technical assistance could also provide some support for that purpose. The proposal on the Agreement on Rules of Origin was a good one, and his delegation did not have any major problem with it. With regard to the Understanding on the Interpretation of Article XXIV of the GATT 1994, he associated himself with the statement by the representative of Australia. In respect of PSI, his delegation believed that technical assistance could be very important. Agreements with PSI agencies should include provision for technical assistance, so that the need for the external support of PSI agencies would not be perpetuated, and the countries would be able to carry out the inspections by themselves, when the contract ended. Concerning the proposal on the Agreement on Textiles and Clothing, he noted that Switzerland did not participate in any restriction. In that sense his delegation saw favourably an acceleration of market access for textiles and clothing, but that had to be decided by the Members concerned.

97. The representative of Canada echoed the comments of Switzerland and Australia regarding the proposal on rules of origin; his delegation had no major opposition to the proposals, but shared the question the United States had asked with respect to the second part of the proposal, and wondered what it aimed at achieving that could not be achieved by Members getting involved with the bodies concerned. His delegation was open to looking at the simplification of notification procedures, but shared the *caveat* put forth by the representative of the United States that since there were many differences between the various notification procedures, depending on the Agreement, work on them needed to be done in the Agreement-specific areas. He drew attention to the proposal by Canada on SPS measures, which attempted to safeguard transparency and the value of notification, while assisting developing country Members with the burden of notification. A similar approach could also yield results in other areas, such as TBT.

98. The representative of Kenya welcomed the positive comments made on the proposals, especially that on the Decision on Notification Procedures. He hoped that the kind of simplification which Members were talking about would be commensurate to the means of the group of Members which had put forward the proposal. In response to those who had said that they were doing some very good work with respect to rules of origin, he encouraged Members to ensure that as many developing and least-developed countries as possible could participate in the discussions ongoing in the World Customs Organization or the Technical Committee on Rules of Origin. He hoped it was clear that they were asking for assistance so that they could participate effectively and understand how those rules developed. He felt encouraged by the positive comments, and hoped for agreement on some of the proposals, if not all.

E. CONSIDERATION OF HOW S&D TREATMENT CAN BE INCORPORATED INTO THE ARCHITECTURE OF WTO RULES (PARAGRAPH 12.1 (III) OF THE DECISION ON IMPLEMENTATION-RELATED ISSUES AND CONCERNS)

99. The Chairman suggested that in the time available before the meeting was adjourned Members take up agenda item E, "Consideration of how S&D treatment may be incorporated into the architecture of WTO rules". A number of proposals or comments relating to the possible content of that agenda item had been made during the discussions in the Special Session of the CTD, and a group of developing country Members had submitted a proposal on a Framework S&D Agreement before the Doha Ministerial Conference, which was referred to in the Ministerial Decision. He believed that was a complex issue, and, given the scarce time available before the Special Session had to report to the General Council, it was likely that there would be a necessity to revert to that item in the future. He however urged Members to address that issue, and opened the floor for their comments.

100. The representative of Pakistan recalled that during the preparation of the Fourth Session of the Ministerial Conference twelve countries had submitted the proposal for a Framework Agreement on S&D treatment. The perception reflected in the paper was that of the twelve countries who had voiced their views in the preparative process, but he believed it was widely shared among developing and least-developed countries. He drew Members' attention to paragraph 14 of the proposal, the last sentence of which stated that the Doha Ministerial Conference should have recognized the importance of that issue and agreed to the negotiation of such a Framework Agreement on S&D. The proponents had therefore wished to obtain much more at the Doha Ministerial Conference than what they did. They however believed that was the appropriate agenda item under which to discuss the Framework Agreement, in order to build effective S&D treatment into the architecture of the WTO rules. The basic issue was that the proposal on the Framework Agreement had been tabled because of the dissatisfaction with the less than meaningful nature of the Uruguay Round S&D provisions. The existing architecture of WTO rules, and the very nature of those rules, did not give much on the S&D front. The point had been repeatedly made in the WTO that those were best-endeavour clauses. Since the paper had been introduced in the preparatory process for the Doha Ministerial Conference it would be only necessary for him to touch upon some of the salient features of it. The paper started by noting that there had been a recognition of the inequality among the players in the multilateral trading system, and that the aim of S&D treatment was to help less developed countries to better benefit from, and integrate into, the multilateral system. The reason for developing country Members' dissatisfaction was that there had been a major shift in the Uruguay Round in how the concept of S&D treatment was approached: the thrust had been shifted from enhanced market opportunities to the granting of transition periods and technical assistance. There was an assumption that the level of development had no relationship with the level of rights and obligations in the multilateral trading system, as well as that the same policies could be applicable to countries at various levels of development. Due to those assumptions, it was thought that granting short transition period and technical assistance to developing country Members would be an adequate form of S&D treatment. He added that whilst an element of the Uruguay Round Agreements was the enforceability of WTO provisions through the binding dispute settlement mechanism, that enforceability was not applicable to S&D provisions. The mentioned shift in the thrust of S&D treatment, from enhanced market opportunities to provision for transition periods and technical assistance, and the lack of any mechanism to ensure an effective implementation of S&D treatment provisions, had been a major cause of concern for developing country Members. The proposal on the Framework Agreement reiterated the imperative of undertaking a thorough review of the concept of S&D treatment, which was the kind of exercise the Special Session of the CTD was engaged in. Members needed to be able to establish, under the Framework Agreement, a concrete and binding S&D regime. Such S&D regime had to be responsive to the development needs of developing country Members, focus on enhancing market access opportunities for developing country Members and provide policy options by unlocking their growth and development potential. Paragraph 13 of the proposal on the Framework Agreement addressed the short term solution to the problem of S&D, which consisted in suitably amending the Agreements in

the light of the experience of developing country Members. In that connection, he believed that Members had usefully spent their time during that meeting over that aspect of the S&D debate. As to the long term solution, the proponents believed it was necessary to institutionalize and rationalize the adoption and application of S&D provisions in the various WTO Agreements, through an elaboration of an umbrella agreement on S&D treatment, which would include provisions reflecting the objectives and principles of S&D treatment. Some of the elements for such an agreement were envisaged in paragraph 15 of the proposal, such as that S&D treatment had to be mandatory and legally binding through the dispute settlement system of the WTO, and that there needed to be an evaluation of the development dimension of any future agreement - including an assessment of how the agreement concerned would facilitate the attainment of development targets, and the financial, capacity building and technical assistance implications of its implementation. The envisaged agreement would also need to provide for transition periods to be linked to objective criteria, like the level of industrial development and the human development index, for developing country Members not to be expected to prohibit policies which would promote growth and development, and for the concept of single undertaking not to be automatic for developing countries. He emphasized the need to conclude such a Framework Agreement, and to reflect its concepts, principles and guidelines in any future WTO Agreement.

101. The representative of the European Communities said his delegation attached great importance to that element of the Work Programme. He referred to document WT/COMTD/W/77/Rev.1, and in particular to paragraph 12 on page 7, which explained what the provisions falling under the category "Flexibility of commitments, of action and use of policy instruments" related to. The last sentence of paragraph 12, on page 8, read: "The main exception is the GATS, where in addition to individual provisions, flexibility is built into the overall structure of the agreement which provides for flexibility on an individual case-by-case basis through negotiated commitments". That was what they referred to as the bottom-up approach of the GATS. He had intended to draw Members' attention to that category of "Flexibility of commitments", or adequate differentiation of commitments, because he believed that in the future Members would have to look at those examples in order to ensure the best integration in the world trading system. He had already stated that for the future Members needed to look at a flexible system like the one of the GATS, and that was part of a discussion which Members would have to pursue, but he thought that was also a relevant part of the ongoing negotiations. His delegation was therefore interested in taking up that issue as soon as work on some more pressing matters was completed in the Special Session.

102. The representative of Canada briefly introduced the paper called "Moving forward on the Proposals", which was a suggestion by her delegation on how Members could move forward in the Special Session. She asked Members to take it into consideration for the meeting scheduled for the following Monday.

103. The Chairman suggested that Members complete the agenda at the meeting scheduled for the following Monday, 25 November 2002. He urged Members to look in particular at the issue of the Way Forward and table any ideas they had in that respect during that meeting, so that the remaining days could then be spent in finalizing the work of the Special Session. If necessary, Members could discuss the Way Forward in informal mode. With those remarks, he adjourned the meeting.

F. INPUTS FROM OTHER WTO BODIES ON SPECIAL AND DIFFERENTIAL TREATMENT

104. The Chairman recalled that the General Council had, on 31 July 2002, recommended that the Special Session of the CTD continue, within its mandate, the analysis and examination of the various Agreement-specific proposals, utilizing, as appropriate, the expertise available in other WTO Bodies and negotiating groups, including through requesting and receiving reports from those bodies. He drew attention to the responses received from the Chairs of the other WTO Bodies to the request by

the Special Session to be kept informed of any issues related to S&D treatment within their respective bodies. By 25 November 2002, 22 such responses had been received. Of these responses, seven bodies had indicated that the issue of S&D treatment had either not been discussed at all, or that there had been no substantive discussions on the issue within their bodies. These bodies were: the Council for Trade in Goods, the Working Party on State Trading Enterprises, the Committee on Trade in Civil Aircraft, the Committee on Rules of Origin, the Working Group on Trade, Debt and Finance, the Textiles Monitoring Body and the Committee on Customs Valuation. Some of these bodies had drawn attention to background information and documentation that might be useful to the Special Session. The Committee on Customs Valuation had provided information on its technical assistance activities and had reported on the implementation-related aspects of its work.

105. With regard to the other 15 bodies that had responded, the Committee on Agriculture had indicated that discussions had been held on the implementation of Article 10.2 of the Agreement of Agriculture, and on how to make implementation of the Decision on Measures Concerning the Possible Negative Effects of the Reform Programme on Least-Developed and the Net Food-Importing Developing Countries more effective. The Special Session of the Committee on Agriculture had indicated that informal work had been undertaken on possible modalities in the areas of export competition, market access and domestic support. The Committee on Sanitary and Phytosanitary Measures had indicated that the implementation of S&D treatment provisions of the SPS Agreement had been a standing agenda item for the last four years. In 2002, the issue of S&D treatment has been specifically addressed by Members in the context of the Committee's work on transparency provisions. The Negotiating Group on Market Access had indicated that it had received a number of submissions which referred to S&D treatment. The Working Group on Transfer of Technology had indicated that development issues had been raised and a submission identifying S&D provisions which related to trade and transfer of technology had been submitted to the Working Group. The Committee on Balance-of-Payments Restrictions, the Committee on Safeguards and the Committee on Trade-Related Investment Measures had drawn attention to their reports which would be submitted to the Trade Negotiations Committee on their respective "implementation-related issues". The Committee on Subsidies & Countervailing Measures and its subsidiary body, the Working Party on Subsidy Notifications, had reported on their work programme with respect to implementation-related issues. The Working Group on Implementation was currently the body involved in examining the implementation-related issues within the context of all the on-going anti-dumping discussions. That group was examining Article 15 of the Anti-Dumping Agreement with the view to drawing up recommendations on how to operationalize that article which related to the treatment of developing countries in the application of anti-dumping measures. The Committee on Anti-Dumping Practices hoped to be in a position to report to the upcoming General Council meeting on that issue. The Working Group on the Relationship between Trade and Investment had indicated that the issue of development provisions in a possible multilateral investment framework had been discussed in July 2002, and the Working Group had also identified a number of documents which may be of interest to the Special Session. Finally, reports had also been received from the Working Party on GATS Rules, the Committee of Participants on the Expansion of Trade in Information Technology Products and the Trade Policy Review Body.

106. The Special Session took note of the responses that had been received and agreed they would be referred to in its report to the General Council, and that any relevant information received in that regard would be utilised.

G. OTHER BUSINESS

107. The Chairman said that, at the meeting of 7 October 2002, he had indicated to Members that he would hold plurilateral consultations on the Monitoring Mechanism for S&D treatment. He recalled that in July 2002 the General Council had agreed to establish such a Monitoring Mechanism

and had instructed the Special Session to elaborate, for the General Council's approval, the functions, structure and terms of reference of the Mechanism. In the plurilateral consultations, there had been discussions on a number of elements relating to its establishment. While some widely shared views had emerged, there were still some important areas of difference of opinion. Participants in the consultations had generally appeared receptive to the view that the Mechanism should monitor the implementation and utilization of S&D provisions; that other WTO Committees should keep S&D treatment as a standing or regular item on their agendas; and that the Mechanism should receive inputs for its work from Members, other WTO Committees and bodies, and relevant international organizations, such UNCTAD, ITC, and the World Bank. There also seemed to be a widely shared view that the General Council could consider, probably on an annual basis, and possibly in special session, the report by the Monitoring Mechanism on the implementation and utilisation of S&D treatment provisions. Some Members had emphasized that the structure to be agreed for the Mechanism should be simple, streamlined, and should not be administratively burdensome. However, there was less convergence of views on the institutional structure of the Monitoring Mechanism. The general view was that it should be an open-ended body. However, some Members believed that the monitoring of S&D should be carried out in the regular meetings of the CTD, or by the CTD meeting in Dedicated Sessions. Other Members were of the view that a Sub-Committee of the CTD should be established for that purpose. There were also significant differences of opinion on the timing for the coming into force of the Mechanism. Some Members wanted that to be immediate, and saw a role for the Mechanism in respect of the monitoring of emerging S&D treatment provisions in the current Doha negotiations. Others saw the objective of the Mechanism as that of monitoring the implementation of the strengthened provisions which they expected to emerge from the Ministerial mandate in paragraph 44 of the Doha Ministerial Declaration and paragraph 12 of the Decision on Implementation-Related Issues and Concerns. Those Members believed that the timing of the coming into force of the Mechanism should be dependent on the outcome of the discussions on the Agreement-specific proposals that were before the Special Session. The Chairman said that he would continue his consultations with a view to reaching Agreement on the structure, functions and terms of reference of the Mechanism, as instructed by the General Council.

108. The representative of India thanked the Chairman for briefing Members on the consultations which had been held. His delegation had participated in the consultations, and had even then expressed the view that if one looked at the mandate given, Ministers had asked that they explore ways of strengthening S&D provisions with a view to making them precise, effective, and operational. The origin of the Monitoring Mechanism was the African Group's submission (TN/CTD/W/3/Rev.1/Add.1) which had explained that the Monitoring Mechanism was a way of operationalizing the S&D provisions which had been made effective and precise. The first priority in his delegation's view was therefore to focus on the Agreement-specific proposals with a view to making those provisions effective and precise. Only following that, could his delegation be in a position to decide on the structure and functions of the Monitoring Mechanism. Once the first phase of the work was over, his delegation would develop specific proposals, if necessary in the form of a paper, on what the Monitoring Mechanism should attempt to do.

109. The Chairman said that in his report he had sought to indicate that there were some Members who were of the view that the Monitoring Mechanism should come into force immediately; that the primary objective in the establishment of the mechanism has been to monitor the implementation of the strengthened provisions which had emerged from the Doha mandate; and he had also indicated that some Members were of the view that the coming into force of that mechanism should depend on the outcome of the discussions on the Agreement-specific proposals in the Special Session. He had not tried to capture the views of any specific delegation, but was of the opinion that his report had been indicative of the views that had been expressed by Members. He understood the representative of India's view that the coming into force of the Mechanism should await the outcome of the proposals on the Agreement-specific proposals that were before the Special Session. He recalled however, that the mandate from the General Council on 31 July 2002 had instructed the Special

Session to proceed to elaborate the terms of reference, structure and functions of the Mechanism and it was in that context of course that he felt he had a responsibility to proceed with that task.

110. The representative of Switzerland said that he thought they should proceed to the next item. His delegation believed that the discussions on the Monitoring Mechanism could be held in parallel to the other discussions on S&D treatment. There was no causality between the two steps but in fact, they were two reinforcing processes. He said that the longer the Special Session waited with respect to putting into place a Monitoring Mechanism, the more difficult it would be to improve some of the S&D treatment provisions. That discussion had already been held and unfortunately, there was no consensus on that, and the issue could be addressed during the discussions on the "Way Forward".

111. The representative of Canada agreed with the representative of Switzerland that the meeting should not dwell on the Monitoring Mechanism. The African Group, which had originally proposed the Monitoring Mechanism, had also proposed several functions for the mechanism. Paragraph 16 of TN/CTD/W/23 stated that one of those functions was " … the regular evaluation of the utilization and effectiveness of the S&D treatment provisions with the view to ensuring that they are fully utilized". That left the possibility open for an earlier launch of the Mechanism, which her delegation supported.

112. The representative of Mexico supported what had been said by the representatives of Switzerland and Canada. The possibility of defining the organization, terms of reference and structure of the Monitoring Mechanism was in no way incompatible with conducting the examination of the Agreement-specific proposals. He noted that the Monitoring Mechanism could even begin its activities with respect to the existing S&D provisions; that was legally compatible with paragraph 12 of the Decision on Implementation-Related Issues and Concerns. It was important to be able to move the discussion forward in that direction.

113. The representative of Kenya said that the representative of Canada was correct that the African Group had proposed the regular evaluation of the utilization and effectiveness of S&D treatment provisions with a view to ensuring that the provisions were duly utilized and any problem arising was effectively addressed. The African Group had thought that that would have happened after the finalization of the Special Session's work on Agreement-specific proposals, in July 2002. The African Group agreed with the statement by the representative of India, that since the Special Session had not concluded its work on Agreement-specific proposals, Members should not rush into establishing the Monitoring Mechanism.

114. The representative of Pakistan said that his delegation totally associated itself with the statement made by the representative of India, and the similar one by Kenya. The representative of Switzerland had said that there was no causality between work on Agreement-specific proposals and on the Monitoring Mechanism. However, his delegation was of the opinion that without agreement on the Agreement-specific proposals, it was unclear what the Monitoring Mechanism would monitor. It was therefore more logical to first reach an agreement on the Agreement-specific proposals and then establish a Monitoring Mechanism to monitor how they were faring.

115. The representative of Korea said that the General Council had already agreed in principle to establishing a Monitoring Mechanism. His delegation agreed with the delegations of Switzerland, Canada and Mexico, and did not see anything wrong with the Mechanism being established as soon as possible.

116. The representative of Indonesia said that his delegation fully supported the views expressed by the delegates of India and Kenya concerning work on the Monitoring Mechanism. There had been no significant progress in the discussions on the specific S&D provisions up to then, and he agreed that before one could address the Monitoring Mechanism more progress was needed in the discussions on S&D provisions.

117. The representative of the European Communities said that he was somewhat worried with the comments that had just been made. He noted that Members had taken a decision in July 2002 to establish a Monitoring Mechanism. On the other hand, paragraph 18(a) of the new African Group submission (TN/CTD/W/23) proposed that a specific decision be prepared and adopted, formally setting up the Monitoring Mechanism. He believed that was a clear contradiction, since either Members had already decided in July 2002 to set up a Monitoring Mechanism, or they had not and therefore needed to take a new decision. His delegation was open to either view, but believed a clarification was necessary, particularly from the sponsors of the submission circulated as document TN/CTD/W/23. Secondly, he noted that the African Group submission circulated as document TN/CTD/W/3/Rev.1/Add.1 used language such as "to assist the CTD discharging its mandate". It would be difficult in the face of those explanations to conclude that Members had not been led into a good faith effort to establish the Monitoring Mechanism before July 2002. Members had decided to do so and then define the details.

118. The representative of Kenya in response to the representative of the European Communities noted that paragraph 18(a) of TN/CTD/W/23 also clearly stated that "a specific decision formally setting up the Monitoring Mechanism should be prepared and adopted by the General Council after the finalization of the Agreement-specific proposals". He did not think that the General Council had set a date for putting in place the Mechanism. The Special Session needed to finish its work on Agreement-specific proposals, and establish the Mechanism when it had a role.

119. The representative of Cuba said that his delegation shared the concerns expressed by the delegations of India, Kenya, Pakistan and Indonesia, based on the limited human resources available to their delegations. In spite of those limitations they had devoted some time to analysing the proposals under consideration. The Special Session had not made significant progress in that regard and there was therefore a need for more time to complete the analysis. His delegation's fear was that yet additional time would be needed to consider the Monitoring Mechanism at the same time as the Agreement-specific proposals, and there would be no significant progress in either area. Even though some delegations had made the point that there was no causality between those two elements of their work, dealing with them in parallel would be detrimental to the possibility of achieving positive results in the evaluation of the Agreement-specific proposals. His delegation therefore agreed with other delegations that the Special Session should focus on the Agreement-specific proposals and then address the Monitoring Mechanism.

120. The representative of India said that the mandate of the Special Session was to strengthen S&D treatment provisions with a view to making them more precise, effective and operational. Another aspect of the mandate was to examine the non-mandatory provisions to see how they could be made mandatory. The representative of Kenya had answered the specific point made by the delegation of the European Communities. Priority should be given to the Agreement-specific proposals, as implied in the July 2002 decision of the General Council.

121. The representative of the United States indicated that their submission[4] on the Monitoring Mechanism defined a broader range of issues, including monitoring the results that would come out of the Special Session's deliberations. She was aware of the frustration of many of the Members with the limited progress made in some aspects of the Special Session's work. Her delegation agreed with the representative of Switzerland that the most important thing was to decide how to make progress on those issues. However, she agreed with other delegations that if some progress could be made reasonably rapidly, and some concrete results could be achieved, Members should not preclude themselves the possibility of starting a process on monitoring. Despite that fact that her delegation had made a rather detailed proposal, setting up a Monitoring Mechanism did not need not be complicated. There were a number of submissions in that regard, for instance from the African Group

[4] Subsequently issued as document TN/CTD/W/19.

(TN/CTD/W/3/Rev.1/Add.1 and TN/CTD/W/23), the delegation of Switzerland (TN/CTD/W/14) and her delegation (TN/CTD/W/19). She asked Members to be flexible so that the option could be kept open for the Special Session to complete its work on both items by the end of 2002.

122. The representative of Switzerland enquired when the Special Session would consider the first stage of reinforcing and evaluating the S&D treatment to be complete. He believed that Members should consider that issue when discussing the "Way Forward". His delegation hoped that Members did not think that the first stage would be completed only when a successful result was achieved for all proposals. If the Special Session was going to conduct its work in stages, Members needed to clearly define those stages.

123. The representative of China supported the proposal made by the representative of India and Kenya. It was necessary to focus on the S&D treatment provisions and achieve a meaningful result before devoting attention to the establishment of a new body.

124. The representative of Egypt noted that discussions had revealed two points of view on the issue. The delegations of the European Communities and Switzerland were of the view that the Mechanism could be discussed in parallel with the Agreement-specific proposals. Other Members, led by the delegations of India and Kenya, were of the view that it was necessary to first conclude the discussions on the Agreement-specific proposals and then look at the Mechanism. His delegation believed that the view expressed by Pakistan, that discussions on the Agreement-specific proposals had to be finished first in order to have something to monitor, was more convincing. His delegation supported the views and arguments put forward by the representatives of India, Kenya, Pakistan and other developing countries.

125. The representative of Uganda said that his delegation's view was that the Special Session should first agree on meaningful Agreement-specific proposals, in compliance with the mandate. Contrary to what the representative of Switzerland had said, his delegation did not expect full acceptance of the LDCs' proposals. However, his delegation did expect a reasonable percentage of those proposals to be accepted, which would indicate to those outside the WTO that the Special Session had meaningfully carried out its mandate to address the problems which had been raised by developing and LDC Members. These Members were not looking for full acceptance, but were certainly not expecting complete lack of acceptance. The Agreement-specific proposals should be dealt with first, and the discussions on the Monitoring Mechanism should follow.

126. The representative of Zimbabwe acknowledged that the General Council in July 2002 had made a decision with respect to the Monitoring Mechanism, but noted that it had been on the understanding that the discussion of the Agreement-specific proposals would be completed before addressing the Mechanism. If Members agreed on the Agreement-specific issues, then the Monitoring Mechanism could be effective.

127. The representative of Malaysia said that her delegation also supported the view expressed by the delegation of Kenya that the Special Session should address the Agreement-specific proposals before considering the Monitoring Mechanism. She shared the argument put forward by the delegation of Kenya, i.e. the need to first have some concrete outcome on S&D treatment provisions, so that the Monitoring Mechanism could have a specific role in that respect. Her delegation therefore agreed that at that stage of the deliberations the focus should be on the Agreement-specific proposals.

128. The representative of Argentina said that his delegation agreed that it was necessary to approach the issue under consideration with flexibility, and to make as much progress as possible in all areas. However, his delegation was sensitive to the arguments put forward by the delegations of India, Pakistan, Kenya and others, and was in favour of the solution they were proposing. Those delegations had noted the need to take account of the resource constraints, particularly the lack of time,

and the need for small delegations to prioritize their work. Those delegations had also stressed that it would be logical to start with the substantive issues, in that case the Agreement-specific proposals, and subsequently address the institutional mechanisms with which Members would follow-up on the agreed proposals.

129. The representative of Colombia said that her delegation's approach was flexible. However, her delegation agreed with the delegations of India, Kenya and others that it was necessary to first define the substantive issues, and then discuss the institutional ones. It was important to define the functions that the Monitoring Mechanism would have to carry out, before agreeing on the institutional arrangements for it.

130. The representative of Paraguay recalled that, in previous discussions on the establishment of the Monitoring Mechanism, his delegation had expressed its concerns with the establishment of a new WTO body and the costs that would imply. His delegation had been flexible, and had agreed to the establishment of a new body, which had been approved by the General Council, as noted by the delegation of the European Communities. However, his delegation agreed with the of delegations of India, Kenya, Pakistan and others, that before establishing the Monitoring Mechanism it was necessary to discuss its functioning and organization. That would require a series of meetings. Small delegations, like his, were facing serious problems in trying to attend all the meetings, and launching those consultations merely for the process in the Special Session to yield some result would not be effective. His delegation believed that there was much to be discussed with respect to S&D treatment, and that, once established, the Monitoring Mechanism would have important work to do. At that stage however, Members needed to concentrate on the mandate given to the Special Session, that of analysing all proposals, Agreement by Agreement, as was being done.

131. The representative of Australia said that his delegation was disappointed that the Monitoring Mechanism had suddenly become a bargaining chip for the future work of the Special Session. He noted that a large number of meetings had been convened to discuss the Agreement-specific proposals and a large amount of work had been done on them, whilst two small meetings had been organized on the Monitoring Mechanism. His delegation was concerned that the broad level of support that had been there for the Monitoring Mechanism, as something that Members could move forward on, seemed to be no longer as strong as it had been. In particular, he recalled previous discussions and the July 2002 report to the General Council (TN/CTD/3), which seemed to recognize that the Monitoring Mechanism was an area where agreement amongst Members was possible, while in no way diminishing the importance that all Members attached to the Agreement-specific proposals. His delegation believed that the Monitoring Mechanism had potentially an important role to play in connection with the Agreement-specific proposals, and therefore did not disagree with other Members who saw it having that role. There were other functions that the Monitoring Mechanism could usefully carry out, relating to possible implementation and utilization of S&D treatment, for instance with respect to technical assistance requests. His delegation believed that Members could move forward on those two issues at the same time, and given the high level of support that there had been up to that point for the Monitoring Mechanism, Members should continue to consider how to take that matter forward while at the same time giving detailed attention to the Agreement-specific proposals.

132. The representative of Morocco said that his delegation associated itself with the delegations of Kenya, India and Pakistan. They believed that a logical way to structure the work in the Special Session, and one which would be in compliance with the mandate in paragraph 44 of the Doha Ministerial Declaration, would be for Members to first examine the substantive issues, namely the various Agreement-specific proposals. After that, Members could examine the Monitoring Mechanism.

133. The representative of Brazil said that the Monitoring Mechanism still had his delegation's full support, notwithstanding the fact that Members had different ideas about how it should be made

operational. Members needed to be careful, because the Mechanism could function in favour of the interests of developing country Members, or against it, depending on how its terms of reference were defined. The primary purpose of the mandate in connection with the proposal for a Monitoring Mechanism was to help developing country Members participate in the multilateral trading system, and at the same time take into account the development perspective. In that context his delegation associated itself with those of India, Pakistan, Kenya and others in believing that Members had to first consider and complete the analysis of the Agreement-specific proposals. After that his delegation would be committed to and interested in examining the proposal for the Monitoring Mechanism.

134. The representative of Japan noted that some delegations had referred to the mandate given by the Doha Ministerial Conference and had focused somewhat on the Agreement-specific proposals. During the debate up to July 2002, Members had difficulties with the pace of progress over the Agreement-specific proposals, and had focused to some extent on the Monitoring Mechanism, responding positively to the proposal made by the African Group. He was therefore surprised by the debate which had taken place during that meeting. His delegation was in favour of establishing the Monitoring Mechanism. Agreement-specific proposals were being discussed in parallel, and no delegation had suggested placing less priority on them; priority was on both the Monitoring Mechanism proposal and the Agreement-specific proposals.

135. The representative of Norway was surprised that the idea of the Monitoring Mechanism was no longer flying. She believed that the issue at stake was one of sequencing. Developing country Members did not want to establish a Monitoring Mechanism before knowing what the Mechanism would have to monitor. On the other hand, her delegation did not see how the Mechanism could be established without doing so in parallel with the ongoing work on Agreement-specific proposals. Before developed country Members made commitments with respect to the Agreement-specific proposal, they would need to know what the Monitoring Mechanism would look like. A parallel discussion on the Agreement-specific proposals and the Monitoring Mechanism was the only way in which Members could make progress.

136. The representative of Chile said that his delegation was open to trying to make progress in all areas, including the Monitoring Mechanism. It was however necessary to be pragmatic. If there was a parallel discussion, Members would get to a point in which further progress would be impossible, until they had a clear view of the S&D provisions which they could address. His delegation was therefore sensitive to the points which the delegations of India and Pakistan had raised, and believed that what the representative of Norway had said was not completely relevant. That was because while progress could be made with respect to the Monitoring Mechanism, it would be impossible to complete discussions on it until there was a clear agreement on some Agreement-specific proposals.

137. The representative of Kenya noted that the delegation of Norway had reminded Members that S&D treatment had been on the table for a long time. He had a document indicating that those issues had been raised by developing countries in 1982. The mandate given by the Doha Ministerial Conference was clear. The Monitoring Mechanism should come into effect when Members reached the stage of making S&D treatment provisions operational, whilst to date the Special Session had not even made them precise and effective. Members needed to be realistic and first work on the Agreement-specific proposals, and when that work was completed they could establish a Monitoring Mechanism. At that stage it would have a role. His delegation could not accept the idea of focusing on the Monitoring Mechanism and leaving the Agreement-specific proposals aside.

138. The representative of Djibouti said that the ideas presented by the developing countries were legitimate ones. Before creating the Monitoring Mechanism Members needed to know the areas they were going to address. Pursuant to paragraph 44 of the Doha Ministerial Declaration, Members had to find a solution. His delegation associated itself with the statements of the representatives of India,

Kenya and Pakistan, who had indicated that before discussing the Mechanism it was necessary to know what progress had been made on the Agreement-specific proposals.

139. The Chairman reminded Members that those discussion were based on a report he had made under the agenda item "Other Business", and that they were in no way for approval of the terms of reference or the functions of the Mechanism. The report he had made was with respect to two plurilateral consultations on the Monitoring Mechanism that he had held approximately a month apart. In that report he had indicated that there were still important areas of difference. Those differences included various views as to when the Mechanism should come into force, as well as its structure - namely whether it should be a Sub-Committee or a dedicated session of the CTD.

140. The representative of Mexico said that the position taken by many developing country Members with respect to the Monitoring Mechanism surprised him. It was the only concrete and specific proposal on which the Special Session could agree, and Members should be satisfied since it gave another perspective. It was not necessary to discuss whether one issue had to be addressed before the other one: the discussions on both issues could be held in parallel. He asked delegations to be flexible. His delegation attached great importance to the Monitoring Mechanism, since it was closely and directly linked to paragraph 44 of the Doha Ministerial Declaration, inasmuch as it was a way to strengthen S&D treatment. His delegation did not see any obstacle to holding parallel discussions both on the Monitoring Mechanism and the Agreement-specific proposals.

141. The representative of Canada noted that in both the Doha Ministerial Declaration and the Decision on Implementation-Related Issues and Concerns the reference was to provisions on S&D treatment, not proposals. Her delegation was not trying to denigrate in any way the importance of the approximately 85 or 120 proposals - depending on how they were counted – which were before the Special Session. Those proposals however only referred to about 50 S&D treatment provisions. There were actually 155 provisions on S&D treatment and her delegation's understanding was that Members had a mandate and a responsibility to look at them. One of the ways to do that would be to set up a system to monitor the progress being made. Members had had about 22 reports on the work ongoing in other Committees, many of which did not provide much detail. Her delegation wondered how Members could monitor and keep track of the provisions and the ongoing work, even in the Special Session, unless they set up something that would allow them to know with detail what was happening in the WTO Committees, Working Groups and eventually Negotiating Bodies. Instead of having only one Mechanism, it might be necessary for instance to have two bodies - one to look at the existing provisions, and the other to look at what was in the proposals. A process needed to commence to keep track of the developments in the various bodies.

142. The Chairman said there had been an interesting discussion on this issue. He emphasized that he had felt that it was the Chairman's responsibility to initiate consultations pursuant to the instructions given by the General Council in July 2002. Two plurilateral consultations had been held, and the report which had been distributed to Members sought to reflect the views and the status as had emerged from those two plurilateral consultations. These certainly did not reflect a unanimity of views. There had been no concurrence as to precisely what might be the terms, structure and functions of the Monitoring Mechanism, although a number of views had emerged during the plurilateral consultations. There was only one more formal meeting left, and that was to consider the report to the General Council. There was a pressing need for Members to work on Agreement-specific proposals, and it was the Chair's intention to continue to do so. He also informed Members that the usual written report to the TNC on the work of the Special Session was to be submitted for the meeting of the TNC scheduled for the 4 to 6 December 2002. That report, which was normally submitted to the TNC under the Chairman's responsibility, would inform the TNC of developments since the previous report in September.

143. The Chairman suggested that the meeting go into informal mode to discuss the second aspect of agenda item G, namely the "Way Forward". It was so agreed.

144. Later, resuming in formal mode, the Chairman said that delegations had made useful interventions on the work of the Special Session over the next few weeks. In his view, the task of the Special Session was to recommend decisions on as many of the Agreement-specific proposals as possible, and *inter alia*, make recommendations on the future work of the Special Session. He would seek to identify possible proposals based upon the discussions held, the nature of the responses to those proposals, and the level of receptivity that Members had shown. He would seek to identify proposals on which Members could engage more fully over the next few days with a view to making recommendations to the General Council. He emphasized that, if he did that, it would be without prejudice to any proposals that might not be included in the plurilateral consultations, and would not indicate a position on the importance of any proposal. It was also clear to him that the Special Session needed to take decisions regarding the future work, in the event that Members would not be able to finalise all the proposals that were before them. Decisions would also need to be taken with respect to other important areas, such as the institutional issues and the incorporation of S&D treatment into the architecture of WTO rules. Members therefore needed to show goodwill and try to agree on as many Agreement-specific proposals as possible, and to take decisions on the Way Forward. He proposed to have an open-ended informal meeting on 2 December 2002, with a formal meeting on 3 December 2002, at which the report could be considered for adoption. Efforts would be made to prepare a draft report by 29 November 2002.

145. It was so agreed.