

# WORLD TRADE ORGANIZATION

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Committee on Trade and Development  
Special Session

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## ORGANIZATION OF WORK

### Communication from Paraguay

The following communication, dated 12 September 2002, has been received from the above delegation.

#### I. TASKS AND NEW DEADLINES

1. There are two deadlines to be met and two very important tasks to accomplish if the Special Session of the Committee on Trade and Development is to proceed expeditiously to fulfil its mandate. First, Members should provide detailed responses to the various Agreement-specific proposals no later than 31 October 2002, and second, Members, via this Committee, should report to the General Council with clear recommendations for a decision no later than 31 December 2002.

#### II. PROPOSAL FOR STRUCTURING AND ORGANIZING THE DISCUSSION ON SPECIAL AND DIFFERENTIAL TREATMENT

2. In view of the above, and to order matters for consideration in appropriate clusters, we have five major themes or matters to be settled and decided, namely:

- (a) To analyse and examine the various cross-cutting issues and proposals, according to the terms established in the Report of the Special Session of the Committee on Trade and Development to the General Council (TN/CTD/3), Annex II, "Table of Submissions by Some Members on Cross-Cutting Issues";
- (b) to determine, for the General Council's approval, the functions, structure and terms of reference of the Monitoring Mechanism for special and differential treatment, taking into account the proposals made by the African Group;
- (c) to examine other proposals on institutional arrangements submitted by the African Group and the Group of Least-Developed Countries (LDCs);
- (d) to present to the General Council proposals on criteria for technical and financial assistance and training, for inclusion of the agreed elements in future technical assistance plans; and
- (e) to consider how special and differential treatment may be incorporated into the architecture of WTO rules, in accordance with Paragraph 12.1(iii) of the Ministerial Decision on Implementation-Related Issues and Concerns.

3. The delegation of Paraguay therefore proposes that, within the parameters of the mandate and the recommendations approved by the General Council, on the basis of the Report of the Committee on Trade and Development and in order to address theme (a) above – i.e. to analyse and examine the various cross-cutting issues and proposals – we should organize the work by dividing the topics and analysing them under the following two headings:

Heading 1. To analyse and examine the operativeness, accuracy and effectiveness of all the specific Agreements, with a view to making them more precise and to strengthening them if Members conclude that there is a need to do so. The analysis and examination should be conducted on the basis of the proposals already made, as well as those arising over this new period and those presented in response to proposals already made.

Heading 2. To analyse and examine the consequences and effects of applying special and differential treatment to developing countries within the context of the Enabling Clause. In this case, the analysis and examination should be conducted according to specific modalities and criteria, including:

- (a) those of an economic nature: (i) competitiveness criteria; (ii) specialization and development indices; (iii) sectoral and country graduation;
- (b) those of a political nature: (iv) linking the benefits to non-trade issues, such as environmental and social (labour) standards; (v) intellectual property rights; and (vi) the fight against narcotic drugs.

4. Members have agreed that the deadline for the above is 31 October 2002.

### **III. FOCUS AND BACKGROUND OF THE AIMS AND PURPOSES OF SPECIAL AND DIFFERENTIAL TREATMENT**

5. When the GATT was created, the primary objective was to build a "freer and fairer trading system" through the elimination of tariffs and other barriers to trade. The GATT functioned on the basis of following three principles:

- (a) Application of most-favoured-nation treatment to all Members; multilateralism and hence non-discrimination;
- (b) expansion of trade through the reduction of trade barriers; and
- (c) unconditional reciprocity between all Members.

6. Experience showed that such principles did indeed contribute to freer trade but that mechanisms needed to be established to achieve the other, equally crucial, objective of "fairer trade". In recognizing such a need, the developed countries affirmed their belief that it was fair and equitable to accord special and differential treatment to the developing countries, in order also to ensure the latter's full and effective integration in the multilateral trading system.

7. In the substantive discussions on special and differential treatment, Members also agreed that it should not raise new barriers to trade for other contracting parties. This led to the adoption of the Enabling Clause as a mechanism for improved management of the Generalized System of Preferences (GSP). The Enabling Clause authorizes "*preferential tariff treatment accorded by developed contracting parties to products originating in developing countries in accordance with the GSP*", as

agreed and harmonized under the Decision of 25 June 1971 on the Generalized System of Preferences, which provides that preferences must be "*generalized, non-reciprocal and non-discriminatory*".

#### IV. INTERACTION AND IMPACT OF THE IMPLEMENTATION OF WTO PRINCIPLES AND RULES

8. Some delegations seeking to help developing countries make the best possible use of special and differential treatment provisions hold that it is wrong to take the approach that such treatment should apply in a generalized, non-reciprocal and non-discriminatory manner. The argument they use to explain their doubts about the validity of this approach is that the developing countries stand at different levels of development.

9. The multilateral trading system is based on principles, rules and regulations that were agreed and are now in force. As the Paraguayan delegation sees it, all Members – i.e. both developed and developing country Members – must comply and ensure compliance with the existing rules and regulations of the multilateral trading system.

10. In addition to the principle of non-discrimination, these rules among others establish three levels of economic development of Members, that is, the developed countries, the developing countries and the least-developed countries. This is a matter on which we agree.

11. The delegation of Paraguay does not see special and differential treatment as an end in itself. Special and differential treatment is a means of building a freer and fairer trading system; it should thus provide positive answers for all the developing countries.

12. We therefore agree that some of the waivers from Article I of the GATT are necessary and are in conformity with the provisions of the Enabling Clause, such as those provided for in paragraph 6 of the Clause: "*Having regard to the special economic difficulties and the particular development, financial and trade needs of the least developed countries (LDCs) ...*". This is confirmed in paragraph 8, which states that "[p]articular account shall be taken of the serious difficulty of the least developed countries in making concessions and contributions in view of their special economic situation and their development, financial and trade needs".

13. In this context, it is worth recalling the Paraguayan delegation's clarification, distributed as document TN/CTD/W/5/Add. 1, which states that "[t]he delegation of Paraguay sees no contradiction between the principle of non-discrimination and the principle of flexibility. Non-discrimination is the general norm and is based on Article I of the GATT 1947, i.e. equality of treatment based on the most-favoured-nation clause. It should also be remembered that "the elimination of discriminatory treatment" (non-discrimination), apart from being rooted in a principle recognized in various Decisions and Agreements of the WTO multilateral system, constitutes an objective clearly expressed in the third paragraph of the preamble to the 1947 General Agreement on Tariffs and Trade.

14. Flexible action is possible under this basic principle and objective, but the limit to such flexibility is that it should not cause injury to third parties, because such injury, if it occurs, destroys the balance between the principles of non-discrimination and flexibility. It is unacceptable that, in order to help some, allegedly under the principle of flexibility, others should be injured. This is discrimination, not flexibility.

15. As Members of the WTO, we all accept the principle of flexibility, but we do not accept that the application of that principle to some should cause injury to others. If such injury occurs, two optional lines of approach are available to the aggrieved developing country Member: (i) The adoption of opposition to the waiver without applying flexibility; and (ii) the acceptance of reasonable compensation for a lesser injury, involving the application of flexibility.

16. The implementation of existing trade standards and rules, without discrimination and by applying positive flexibility, is a guarantee of increasing stability that encourages nations to advance along the road towards trade liberalization. This is how the Paraguayan delegation sees the question of compatibility and balance between these two principles in accordance with WTO rules and standards, within a fair, equitable and predictable trading framework.

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