

**Committee on Trade and Development  
Special Session**

**DRAFT  
REPORT TO THE GENERAL COUNCIL**

**I. INTRODUCTION**

1. Paragraph 44 of the Doha Ministerial Declaration reaffirmed that "provisions for special and differential treatment are an integral part of the WTO Agreements" and directed that "all special and differential treatment provisions shall be reviewed with a view to strengthening them and making them more precise, effective and operational." Ministers also endorsed the Work Programme on special and differential treatment set out in the Decision on Implementation-Related Issues and Concerns, and as per paragraph 12.1 of the Decision directed the Committee on Trade and Development (CTD):

- (i) "to identify those special and differential treatment provisions that are already mandatory in nature and those that are non-binding in character, to consider the legal and practical implications for developed and developing Members of converting special and differential treatment measures into mandatory provisions, to identify those that Members consider should be made mandatory, and to report to the General Council with clear recommendations for a decision by July 2002;
- (ii) to examine additional ways in which special and differential treatment provisions can be made more effective, to consider ways, including improved information flows, in which developing countries, in particular the least-developed countries, may be assisted to make best use of special and differential treatment provisions, and to report to the General Council with clear recommendations for a decision by July 2002; and
- (iii) to consider, in the context of the Work Programme adopted at the Fourth Session of the Ministerial Conference, how special and differential treatment may be incorporated into the architecture of WTO rules."

2. In pursuance of this mandate the Trade Negotiations Committee (TNC) in its meeting held on 28 January - 1 February 2002, agreed that "...the review of all special and differential treatment provisions with a view to strengthening them and making them more precise, effective and operational provided for in paragraph 44 of the Ministerial Declaration shall be carried out by the Committee on Trade and Development (CTD) in Special Sessions."

3. The report of the Special Session detailing the work that had been carried out in this period up to July 2002, including recommendations for "the way forward" was considered and approved by the General Council on 31 July 2002. The General Council while accepting that "a large number of issues, including some that are complex, have been raised, both in the written submissions and the ensuing discussions", and that "a significant amount of work remains to be done before Members can agree on clear recommendations in a number of areas", instructed the Special Session of the CTD to

"proceed expeditiously to fulfil its mandate, as contained in paragraph 44 of the Doha Ministerial Declaration and paragraph 12 of the Decision on Implementation-Related Issues and Concerns, so as to be able to report to the General Council with clear recommendations for decision by 31 December 2002". The General Council gave further instructions regarding *inter alia* the consideration of the Agreement-specific proposals, the analysis and examination of cross-cutting issues, the establishment of the Monitoring Mechanism, consideration of proposals on institutional arrangements and on technical and financial assistance and training, and consideration of how special and differential treatment may be incorporated into the architecture of WTO rules.

4. After a series of informal consultations held in September 2002, the Special Session adopted an intensive indicative work programme, so as to fulfil the mandate given by the General Council. As a result, the Special Session of the Committee on Trade and Development (CTD) met [eight] times during this period, on 7 & 18 October, 17 October, 21 & 23 October, 6 November, 12 November, 20 November, 21 & 25 November, and [3 December 2002]. Twelve submissions were received from Members. These addressed a range of issues such as the Enabling Clause, the Monitoring Mechanism, the Way Forward (both to December 2002 and the Cancun Ministerial), and provided responses to questions raised during the consideration of proposals. These submissions are listed in Annex I. Five of the meetings were scheduled as close as possible to the meetings of other WTO bodies, in order to utilise the expertise in those bodies, and were dedicated to discussions on the Agreement-specific proposals that had been made in those areas. Annex II contains the list of Agreements discussed at each of these meeting. At the two meetings held on 7 & 18 October and 21 & 25 November 2002 there were discussions on (i) the remaining Agreement-specific proposals in thematic clusters based primarily on the categories identified in document WT/COMTD/W77/Rev.1; and (ii) systemic and cross-cutting issues. Discussions on the incorporation of special and differential treatment into the architecture of WTO rules, and consultations on the Monitoring Mechanism for special and differential treatment were also held during the period.

## **II. AGREEMENT-SPECIFIC PROPOSALS AND ISSUES**

5. The General Council had instructed the Special Session of the CTD to continue, within the parameters of the mandate contained in paragraph 44 of the Doha Ministerial Declaration and paragraph 12 of the Decision on Implementation-Related Issues and Concerns, the analysis and examination of the various Agreement-specific proposals and issues that had been raised in the written submissions and the discussions, and to do so: (a) on the basis of a possible ordering of these proposals for consideration in appropriate clusters; and (b) utilising, as appropriate, the expertise available in other WTO bodies and negotiating groups, and facilitating this through requesting and receiving reports from these bodies, and where feasible, through the holding of back-to-back meetings of the Special Session with the meetings of these bodies and groups.

6. In compliance with this instruction, the Agreement-specific proposals were considered in two ways. Firstly, proposals relating to certain Agreements were considered in meetings held as close as possible to the meetings of the respective WTO bodies. This was done in order to utilise the expertise in those bodies and these meetings were dedicated to discussions on the Agreement-specific proposals made in those areas. The remaining Agreement-specific proposals were considered in thematic clusters which were based primarily on the categories identified in WT/COMTD/W/77/Rev.1, namely (1) "Provisions aimed at increasing the trade opportunities of developing country Members", (2) "Provisions under which WTO Members should safeguard the interests of developing country Members", (3) "Flexibility of commitments, of action, and use of policy instruments", (4) "Transitional time periods", (5) "Technical assistance", (6) "Provisions relating to LDC Members, other than those already included in clusters 1-5" and (7) "Proposals on provisions not included in the previous 6 clusters, as per the classification in document WT/COMTD/W/77/Rev.1". In addition, as instructed by the General Council, reports were requested from the other WTO bodies and negotiating

groups on work that they might have done in regard to special and differential treatment. The responses received from 25 WTO bodies have been circulated to Members.

7. While the level of engagement increased significantly, and meetings benefitted from the back-to-back format and the involvement of capital-based participants, wide differences were apparent between the responses provided to many proposals and the views expressed by proponents as to the possible outcome they expected from the consideration of their proposals. There also continued to be notable differences of views on the *fora* in which some of the proposals should be considered, and differences as to what a “clear recommendation for decision” necessarily entailed in regard to the proposals.

8. During the discussions some Members noted that some proposals were already under consideration within other WTO bodies and could be best addressed in those bodies, including in the context of the negotiations. In regard to a number of other proposals, the view was expressed that these were of a nature that would affect the existing balance of rights and obligations and/or went beyond the Doha mandate. Many responses included requests for more information, and for clarification, especially in regard to the specific difficulties faced in utilizing existing S&D provisions to which changes were being sought. Other Members maintained that the Special Session was the appropriate *forum* to consider all proposals, and that the mandate given by Ministers, in their view, envisaged the possibility of making changes to provisions. The non-mandatory and imprecise character of many S&D provisions was cited frequently as being sources of difficulty in utilizing these provisions.

9. On some proposals, fewer in number, the responses given indicated the possibility of agreeing on ways and measures to meet the concerns identified. [Intensive consultations on these proposals resulted in a number of recommendations for decision. These proposed decisions are at Annex III].

### III. CROSS-CUTTING ISSUES

10. A number of systemic and institutional cross-cutting issues were raised both in submissions from Members, as well as in the discussion on those submissions. These included issues relating to the principles and objectives of special and differential treatment; a single or multi-tiered structure of rights and obligations; coherence; bench marking; technical assistance and capacity building; transition periods; trade preferences including the Enabling Clause; utilisation; and universal or differentiated treatment, including graduation. There was some discussion on most of these issues, in the period up to July 2002. Some Members felt that these were important and, in some cases, fundamental issues, which would need to be examined in greater depth. Other Members questioned whether these issues were within the mandate of the Doha Ministerial Declaration and of the Decision on Implementation-Related Issues and Concerns.

11. In July 2002 while considering the report of the Special Session of the CTD, the General Council instructed the Special Session to continue the analysis and examination of the various cross-cutting issues and proposals that were raised, within the parameters of the mandate contained in paragraph 44 of the Doha Ministerial Declaration and paragraph 12 of the Decision on Implementation-Related Issues and Concerns.

12. The cross-cutting issues were considered in two meetings held on 7 & 18 October 2002, and that held on 21 & 25 November 2002. There was vigorous discussion on some cross-cutting issues. Discussions have taken place on the principles and objectives of special and differential treatment, coherence, bench-marks, technical assistance and capacity building, transition periods, utilisation, trade preferences and related issues, including the Enabling Clause, differentiated treatment and graduation. While the discussions have shown convergent views in some areas, especially on the proposals relating to coherence and benchmarking, it is evident that there are major differences of

opinion on most cross-cutting issues, and these will require further discussion if there is to be any possibility of agreement.

13. There were further discussions on the Enabling Clause as a result of additional submissions on this issue by a number of Members. A number of aspects of this issue were discussed. Many Members emphasized the importance of the non-discriminatory application of the Enabling Clause to all developing countries. The need to provide special and differential treatment, including through waivers, in a manner that does not prejudice the interests of other developing countries was raised in a proposal and in the discussion. Some Members were of the view that there should be flexibility in the application of special and differential treatment, including through preferential treatment. They considered that some differentiation amongst developing country Members would be necessary if special and differential treatment was to be made effective and targeted. The issue relating to the definition of developing countries was also raised in this context, with some Members saying that such a definition was necessary to make special and differential treatment more precise, effective and operational and to confer legal predictability and certainty regarding the beneficiaries. Other Members however disagreed, saying that any attempt to define a developing country went beyond what the Ministers had mandated at Doha.

#### **IV. THE MONITORING MECHANISM**

14. In July 2002, the General Council agreed to establish a Monitoring Mechanism for special and differential treatment. It also instructed the Special Session of the CTD to elaborate for the Council's approval, the functions, structure and terms of reference of such a Mechanism, taking into account the proposals made by the African Group, and the discussions that have taken place thereon in Special Sessions of the CTD.

15. A number of possible elements relating to the establishment of the Monitoring Mechanism were discussed. There was convergence of views on some matters, such as aspects of the role of the Mechanism and the sources of information for it to conduct its work. Many Members emphasised that the structure to be agreed for the mechanism should be simple, streamlined, and not administratively burdensome. There was also a general receptivity to the view that the Mechanism should monitor the implementation and utilisation of special and differential provisions; that WTO Committees should keep special and differential treatment as a standing or regular item on their agenda; and that the General Council could consider, probably on an annual basis, and possibly in special session, the Mechanism's report on the implementation and utilisation of special and differential treatment provisions.

16. However, there are still some important areas of difference, including on the institutional structure of the Mechanism and the timing for its coming into force. The general view is that it should be an open-ended body. Some Members believe that the monitoring of special and differential treatment should be carried out by the Regular CTD, or by the CTD in dedicated sessions, while other Members are of the view that a Sub-Committee of the CTD should be established for this purpose. There are also significant differences of opinion on the timing for coming into force of the Mechanism. Some Members consider that the Mechanism should come into force immediately, or in the very near term. They see an immediate role for the Mechanism, including possibly in relation to ongoing work in the Doha process. A large number of other Members have expressed the view that the first task is to strengthen special and differential provisions and that this should be done before defining the modalities of operation of the Mechanism and deciding when it should come into force.

#### **V. TECHNICAL & FINANCIAL ASSISTANCE AND TRAINING**

17. The General Council had instructed the Special Session to submit the proposals on criteria for technical and financial assistance and training, to the CTD in Regular Session, for inclusion of any

agreed elements in future Technical Assistance Plans. This was to be done without prejudice to further discussion in this regard in the Special Sessions of the CTD.

18. The Special Session of the CTD has held additional discussions on technical assistance and capacity building. The proposal on the criteria for technical and financial assistance and training from the African Group was submitted to the CTD in Regular Session, and was taken account of in the consideration and finalisation of the elements of the Technical Assistance Plan for 2003. This proposal and suggested elements are also to be considered in future Technical Assistance Plans.

## **VI. INCORPORATION OF SPECIAL AND DIFFERENTIAL TREATMENT INTO THE ARCHITECTURE OF WTO RULES**

19. Finally, the General Council instructed the Special Session of the CTD 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. Only a preliminary discussion has been held on the matter of how special and differential treatment might be incorporated into the architecture of WTO rules. It should be noted that some of the elements put forward, and discussions held, with respect to some of the cross-cutting issues also appear to have a bearing on this work. This aspect of the mandate requires further discussion.

## **VII. THE WAY FORWARD**

20. The General Council mandated the CTD in Special Session to "report to the General Council with clear recommendations for a decision by 31 December 2002". The Special Session adopted an intensive work programme in order to fulfil this mandate. A total of eight formal and a large number of informal meetings were convened in this two and a half month period. A large number of issues and proposals remain unresolved. In part this has been because of the large number of Agreement-specific proposals that the Special Session has had to consider. The cross-cutting issues also led to an extensive, but inconclusive discussion on some issues relating to special and differential treatment.

21. However, there was a discernible movement on some issues. [Accordingly, it is recommended that the General Council approves the recommendations on the Agreement-specific proposals contained in Annex .....]

### **OPTION I**

22. Members could not agree on whether, or what recommendations to make on further work. Accordingly, the direction of the General Council is sought.

### **OPTION II**

23. A significant amount of work remains to be done. It is accordingly recommended that the General Council note that the Special Session has not been able to fulfil its mandate in accordance with the instructions given in July 2002 and extend the deadline until [..... date.....] for the Special Session to fulfil its mandate.

### **OPTION III**

24. A significant amount of work remains to be done, including through the rationalisation of the work. It is accordingly recommended that the Special Session of the CTD be instructed to continue, within the parameters of the mandate contained in paragraph 44 of the Doha Ministerial Declaration and paragraph 12 of the Decision on Implementation-Related Issues and Concerns, the analysis and examination of the various Agreement-specific proposals and issues that have been raised in the

written submissions and discussions. It is instructed that this further work be undertaken in the Special Session on the basis of an ordering of these proposals for consideration in the following three categories:

- (a) proposals that may be amenable to possible recommendations in the short term; and proposals for which there appears to be a significant measure of support, but in respect of which further process-related work involving the assistance of other bodies is required;
- (b) proposals on which substantial work is required to be carried out in the CTD in Special Session in the period after January 2003; and
- (c) proposals on which the Special Session could benefit from ongoing discussions in other bodies, since either the issues raised are already under consideration in those bodies, or because it would be difficult to take a decision in isolation of the ongoing negotiations in those areas.

It will be for the Special Session of the CTD to decide which Agreement-specific proposals will fall into which of the above-mentioned categories. The Special Session will also be kept informed, through interim and periodic reports, on the progress and outcome of the consideration of the proposals where the assistance of other WTO bodies has been sought.

25. It is recommended further that the Special Session of the CTD be instructed to continue, at the same time, within the parameters of the mandate contained in paragraph 44 of the Doha Ministerial Declaration and paragraph 12 of the Decision on Implementation-Related Issues and Concerns, the analysis and examination of the various cross-cutting issues and proposals that have been raised in the written submissions and the discussions.

26. It is recommended that the General Council also instruct the Special Session of the CTD to continue work on the functions, structure and terms of reference of the Monitoring Mechanism, taking into account the proposals made by the African Group, and the discussions that have taken place thereon in Special Sessions of the CTD. The decision on the timing for coming into force of the Monitoring Mechanism will be taken by the General Council at the time of the approval of the Special Session's recommendations on the functions, structure and terms of reference of the Mechanism.

27. It is recommended that the General Council also instruct the Special Session of the CTD to continue the examination of other proposals on institutional arrangements made by the African and LDCs Group.

28. It is recommended that the General Council further instruct the Special Session of the CTD to continue its work on 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.

29. The Special Session will report to the General Council with clear recommendations for a decision by [.....date .....].

---

ANNEX I

**SUBMISSIONS RECEIVED IN THE SPECIAL SESSION OF  
THE COMMITTEE ON TRADE AND DEVELOPMENT  
AUGUST – DECEMBER 2002**

- TN/CTD/W/13 and TN/CTD/W/20 from the European Communities
- TN/CTD/W/14 from Switzerland
- TN/CTD/W/15 from Paraguay
- TN/CTD/W/16 from Hungary
- TN/CTD/W/17, TN/CTD/W/21 (to be issued) and TN/CTD/W/22 (to be issued) from Canada
- TN/CTD/W/18 and TN/CTD/W/23 (to be issued) from the African Group
- TN/CTD/W/19 from the United States
- TN/CTD/W/24 (to be issued) from Egypt

**ANNEX II**

**AGREEMENTS DISCUSSED DURING "BACK-TO-BACK" MEETINGS**  
**17 October - 20 November 2002**

**17 OCTOBER 2002**

- Agreement on Technical Barriers to Trade

**21 & 23 OCTOBER 2002**

- Agreement on Implementation of Article VI of the GATT 1994 (Anti-Dumping)
- Agreement on Subsidies & Countervailing Measures
- General Agreement on Trade in Services
- Agreement on Safeguards

**6 NOVEMBER 2002**

- Agreement on Sanitary and Phytosanitary Measures

**12 NOVEMBER 2002**

- Understanding on Rules and Procedures Governing the Settlement of Disputes

**20 NOVEMBER 2002**

- Agreement on Agriculture



[ANNEX III

**AGREEMENT-SPECIFIC PROPOSALS ON WHICH RECOMMENDATIONS FOR CLEAR  
DECISION COULD BE MADE BY DECEMBER 2002**

.....  
.....  
.....]

\_\_\_\_\_