

**Committee on Trade and Development
Special Session**

**DRAFT
REPORT TO THE GENERAL COUNCIL**

Revision

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:

- (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. In December 2002 this deadline was extended and the Special Session was directed to report to the General Council by the date of the General Council's first meeting of 2003, that is 10-11 February 2003.

4. The Special Session of the CTD met nine times during this period - 7 & 18 October, 17 October, 21 & 23 October, 6 November, 12 November, 20 November, 21 & 25 November, 3 & 20 December 2002, and [6 February 2003]. Fifteen submissions were received from Members. These addressed a range of issues such as the Enabling Clause, the Monitoring Mechanism, the 'Way Forward', 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. These meetings were dedicated to discussions on the Agreement-specific proposals in the relevant areas. Annex II contains a list of Agreements on which proposals relating to specific provisions were discussed at each of these meetings. 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

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 the various WTO bodies have been circulated to Members.

7. While the level of engagement increased significantly, and meetings benefited from the back-to-back format and the involvement of capital-based participants, differences amongst Members, continued to be apparent, including 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 ongoing negotiations in some of these areas. 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. 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, so as to make them more precise, effective and operational and/or mandatory. The non-mandatory and imprecise character of many S&D provisions was also cited frequently as being a source of difficulty in utilizing these provisions.

9. However, on some proposals, the responses given indicated the possibility of agreeing on ways and measures to meet the concerns identified. Based on these responses the Chairman, on his own responsibility, identified a number of proposals on which it seemed that it may be possible to make recommendations for an immediate decision. The consultations in December 2002, and later in January-February 2003, focussed on these proposals in an effort to find convergence on the language for possible recommendations. At the same time other proposals identified by the proponents were also subjected to detailed consideration by the Membership during this period. These intensive consultations have resulted in recommendations for decision in respect of some of these Agreement-specific proposals. 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, in the period up to July 2002. 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. In considering the report of the Special Session of the CTD in July 2002, 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 4 of the Doha Ministerial Declaration and paragraph 12 of the Decision on Implementation-Related Issues and Concerns.

11. The cross-cutting issues were considered in two meetings held on 7 & 18 October 2002, and on 21 & 25 November 2002. Discussions took 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, there are evidently major differences of opinion on most cross-cutting issues. Some Members felt that these were important and, in some cases, fundamental issues, which should be examined in greater depth. These Members felt that an improved understanding on these issues would facilitate consensus on the Agreement-specific proposals. Other Members felt that the principles and objectives of S&D treatment were already reflected in Part IV of GATT 1994 and also questioned whether these issues were within the

mandate of the Doha Ministerial Declaration and of the Decision on Implementation-Related Issues and Concerns.

12. There were further discussions on the Enabling Clause as a result of additional submissions on this issue. Many Members emphasized the importance of the non-discriminatory application of the Enabling Clause to all developing countries. Some Members referred to the need to ensure that special and differential treatment, including through waivers, should not prejudice the interests of other developing countries although the special situation was recognised. 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, in some cases, differentiation amongst developing country Members would be necessary if special and differential treatment was to be made effective and targeted. Others felt that any such flexibility should not prejudice the rights of other developing country Members. The question of 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. A large number of Members however disagreed, saying that any attempt to differentiate amongst, or define a developing country went beyond what the Ministers had mandated at Doha.

IV. THE MONITORING MECHANISM

13. In July 2002, the General Council agreed to establish a Monitoring Mechanism for special and differential treatment. It 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. A number of new submissions were introduced, and possible elements relating to the establishment of the Monitoring Mechanism discussed. There was convergence of views on some matters, such as the structure and possible role of the Mechanism and the sources of information for it to conduct its work. However, some important areas of difference, including on the institutional structure of the Mechanism and the timing for its coming into force, remain. 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. Other Members have expressed the view that the first task is to strengthen special and differential provisions in accordance with the mandate 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

14. 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.

15. 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

16. 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 this matter. Elements of a possible Framework Agreement on special and differential treatment were introduced. There was also a reference to the GATS-type modalities as a possible approach towards incorporating special and differential treatment into the architecture of WTO rules. It should be noted that some of the elements put forward and the 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

17. Although the Special Session has considered many of the Agreement-specific proposals, both in open-ended informal meetings and smaller plurilateral consultations, positions could not be bridged on most of them.

18. An important area of difference has been the interpretation of some aspects of the Doha mandate. While Members recognized the importance that Ministers attached to the S&D work programme, and accepted the need to review all S&D provisions "with a view to strengthening them and making them more precise, effective and operational", there were significant differences on how this could be achieved. Some Members considered that one way to make S&D provisions more precise, effective and operational, was to make them mandatory by changing the existing language of some of the 'best endeavour' provisions, and that doing so was part of the mandate. Others did not wish to consider amending the text of the Agreements or otherwise altering what they considered to be the existing balance of rights and obligations. Some delegations held the view that such proposals might be best referred to negotiating bodies, while others did not consider that this was a course consistent with the Doha mandate. They expressed the view that proposals could in any event be raised directly in negotiating groups and other bodies.

19. Many Members expressed concern that they would be unable to maintain the rigorous pace of work that had been taking place in the Special Session, since they would need to focus on an increasing number of other critical issues during the run-up to the Cancún Ministerial Conference.

20. Accordingly, the Special Session recommends that:

- (i) the General Council approve the recommendations on the Agreement-specific proposals contained in Annex III.
- (ii) in regard to the remaining Agreement-specific proposals, the General Council agrees to

Option I

direct the Special Session to continue work on the proposals and to report to the General Council with clear recommendations for a decision by [31 July 2003].

Option II

instruct the Special Session to suspend discussions on the proposals. In doing so, the General Council recognises that Members, if they so wish, may pursue any of these Agreement-specific proposals in the negotiating groups or other WTO bodies.

Option III

instruct the Special Session to refer proposals that relate to issues in the on-going negotiations or the Doha Work Programme to the respective negotiating groups and other WTO bodies. The General Council also directs that the work on Agreement-specific proposals that have not been referred be [suspended] [continued in the Special Session].

- (iii) the General Council 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. Cross-cutting issues may also be discussed during the course of this work.
- (iv) 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.
- (v) in view of the fact that the Special Session could benefit in its continuing work from receiving reports from other WTO bodies on their consideration of S&D issues, the General Council instruct these bodies to provide such reports to the Special Session of the CTD.

21. The General Council instructs the Special Session to report on all aspects of its work to the General Council in July 2003.

ANNEX I

**SUBMISSIONS RECEIVED IN THE SPECIAL SESSION OF
THE COMMITTEE ON TRADE AND DEVELOPMENT
AUGUST 2002 – JANUARY 2003**

- TN/CTD/W/13, TN/CTD/W/20 and TN/CTD/W/26 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 and TN/CTD/W/22 from Canada
- TN/CTD/W/18, TN/CTD/W/23 and TN/CTD/W/28 (to be issued) from the African Group
- TN/CTD/W/19 and TN/CTD/W/27 (to be issued) from the United States
- TN/CTD/W/24 from Egypt

ANNEX II

**AGREEMENTS ON WHICH SPECIFIC PROPOSALS WERE DISCUSSED DURING
"BACK-TO-BACK" MEETINGS**

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 DECISION ARE BEING MADE

GENERAL AGREEMENT ON TRADE IN SERVICES (GATS)

Article IV:3

The General Council agrees that the information to be provided by Members shall indicate how the requirement that special priority be given to least-developed country Members in the implementation of paragraphs 1 and 2 of Article IV is being met, and that contact points, in this context, shall provide information of particular interest to services suppliers from least-developed country Members.

GENERAL AGREEMENT ON TRADE IN SERVICES (GATS)

Article XXV

The General Council instructs the WTO Secretariat to pursue with a view to concluding arrangements with relevant international institutions that have the technical assistance capacity to assist developing and least-developed country Members in addressing their supply-side and infrastructural constraints and their development needs in the services sector. This shall be without prejudice to the prerogative of the Council for Trade in Services to decide upon technical assistance to developing countries which shall be provided at the multilateral level by the Secretariat, in accordance with Article XXV.2.

AGREEMENT ON TRADE-RELATED ASPECTS OF INTELLECTUAL PROPERTY RIGHTS (TRIPS)

Article 67

The General Council agrees that technical and financial cooperation, in accordance with Article 67, shall be provided on request and on mutually agreed terms and conditions, with due consideration given to comprehensive programmes comprising such components as improving the relevant legal framework in line with the general obligations of the Agreement, enhancing enforcement mechanisms, increasing training of personnel at the various levels, assisting in the preparation of laws and procedures in an effort to encourage and monitor technology transfer, making use of the rights and policy flexibility in the Agreement, and strengthening or establishing coordination between intellectual property rights, investment and competition authorities.

The General instructs the Council for Trade-Related Intellectual Property Rights to annually review the state of implementation of the Agreement between the World Intellectual Property Organization and the World Trade Organisation, taking into account opportunities for technical assistance as provided for in the Agreement.

DIFFERENTIAL AND MORE FAVOURABLE TREATMENT, RECIPROCITY AND FULLER PARTICIPATION OF DEVELOPING COUNTRIES (ENABLING CLAUSE): DECISION OF 28 NOVEMBER 1979

The General Council confirms that the terms and conditions of the Enabling Clause shall apply when action is taken by Members under the provisions of this Clause.

GENERAL AGREEMENT ON TRADE IN SERVICES (GATS)

Article IV

Pursuant to Article IV.3 of the GATS, in all services negotiations, whether broad-based rounds of negotiations or separate negotiations on specific sectors, modalities shall be developed in order to allow the priorities of least-developed country Members to be presented and duly taken into account.

GENERAL AGREEMENT ON TRADE IN SERVICES (GATS) - ANNEX ON TELECOMMUNICATIONS

Paragraph 6 of the Annex on Telecommunications

The General Council instructs the Council for Trade in Services to put in place arrangements for prompt notification of any measures taken with regard to the implementation of subparagraphs (a) to (d) of paragraph 6 of the Annex on Telecommunications.

RULES RELATING TO NOTIFICATION PROCEDURES

Recognizing the practical difficulties faced by least-developed country Members in abiding fully by their notification obligations, the General Council instructs the Sub-Committee on Least-Developed Countries to examine possible improvements to the notification procedures for least-developed country Members, taking into account the experience regarding Secretariat produced reports that helped fulfil some of these requirements. In conducting its examination, the Sub-Committee shall seek the input of relevant WTO bodies, which may be in a position to advise on practical means for improving the notification procedures in relation to least-developed country Members, for example the possibility of longer timeframes, specified exemptions and simplified procedures for notifications, and cross-notifications. The Committee on Trade and Development shall forward the Sub-Committee's report to the General Council by 31 December 2003 for appropriate action.

UNDER-STANDING ON RULES AND PROCEDURES GOVERNING THE SETTLEMENT OF DISPUTES (DSU)

Article 8.10

Pursuant to Article 8.10 of the DSU, the General Council agrees that in disputes between a developing country Member and a developed country Member, at least one panellist shall be from a developing country Member, unless the developing country Member party to the dispute waives this right.

AGREEMENT ON RULES OF ORIGIN

In regard to preferential rules of origin under the Common Declaration in Annex II to the Agreement, the General Council agrees that in their arrangements for mutual reduction or elimination of tariff or non-tariff barriers, developing and least-developed country Members shall have the right to adopt preferential rules of origin designed to achieve trade policy objectives relating to their rapid economic development, particularly through generating regional trade.

Furthermore, the General Council instructs the Director-General to take action to facilitate the increased participation of developing and least-developed country Members in the activities of the Technical Committee on Rules of Origin of the World Customs Organisation as well as to coordinate with this organization in identifying technical and financial assistance needs of developing and least-developed country Members, and report to the Committee on Rules of Origin and the Council for Trade in Goods periodically, and the General Council as appropriate.

**DECISION ON MEASURES IN FAVOUR OF LEAST-DEVELOPED COUNTRIES
PARAGRAPH 2(v) –**

The General Council agrees that the WTO through its participation in the Integrated Framework and JITAP [and other relevant institutions] will work to ensure that supply-side constraints of the LDCs are identified in the Diagnostic Trade Integration Studies (DTIS) and are addressed in the implementation and follow-up taking into account the specific circumstances of each beneficiary country. The General Council also instructs the Sub-Committee of the LDCs to undertake a biennial review of the implementation of the DTIS and to monitor the possible impact of assistance that is targeted towards the diversification of exports from LDCs, including through comparing the composition and concentration of LDCs' export structures over time and across LDCs and through the establishment of other relevant indicators.

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