

Committee on Trade and Development  
Special Session

Original: English

## SPECIAL AND DIFFERENTIAL TREATMENT PROVISIONS

### Joint Communication from the African Group in the WTO

#### Revision

The following communication has been received from the above delegation on 7 June 2002.

## I. INTRODUCTION

### The Mandate

1. The Doha Ministerial Declaration<sup>1</sup> put appropriate emphasis on operationalising and strengthening special and differential treatment provisions. In paragraph 44 of the Declaration, Ministers noted the proposal in document WT/GC/W/442 by a group of developing countries for a Framework Agreement on Special and Differential Treatment. Paragraph 44 of the Doha Ministerial Declaration states:

*44. We reaffirm that provisions for special and differential treatment are an integral part of the WTO Agreements. We note the concerns expressed regarding their operation in addressing specific constraints faced by developing countries, particularly least-developed countries. In that connection, we also note that some Members have proposed a Framework Agreement on Special and Differential Treatment (WT/GC/W/442). We therefore agree that all special and differential treatment provisions shall be reviewed with a view to strengthening them and making them more precise, effective and operational. In this connection, we endorse the work programme on special and differential treatment set out in the Decision on Implementation-Related Issues and Concerns.*

2. This mandate is further elaborated in the Decision on Implementation Issues and Related Concerns<sup>2</sup> in paragraph 12 on cross cutting issues, which states:

*12.1 The Committee on Trade and Development is instructed:*

*(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*

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<sup>1</sup> WT/MIN(01)/DEC/1

<sup>2</sup> WT/MIN(01)17

*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.*

*The work of the Committee on Trade and Development in this regard shall take fully into consideration previous work undertaken as noted in WT/COMTD/W/77/Rev.1. It will also be without prejudice to work in respect of implementation of WTO Agreements in the General Council and in other councils and committees.*

3. The case for special and differential treatment in the WTO has long been recognised and a series of provisions in the agreements attest to this. Credit must be given to Members and the WTO as an institution in giving due priority to special and differential treatment and taking appropriate measures within their respective scope. But on the whole the operationalisation, implementation or compliance with these provisions has been less than fully satisfactory and this is the reason the Ministers mandated further work in the Committee on Trade and Development. The Note prepared by the Secretariat in document WT/COMTD/W/77/Rev.1 is a comprehensive exploration of the special and differential treatment provisions in the WTO Agreement and how Members and the WTO as an institution have implemented them. Having considered the Note, the conclusion agreed by the Ministers is that further work should be done to operationalise and strengthen the provisions.

#### Meaning and Forms of Special and Differential Treatment

4. Special and Differential Treatment is a core principle of the WTO framework, and is to be distinguished from that generally available under the WTO Agreements to other Members. It is accorded exclusively to developing and least developed countries.

5. Provisions in the WTO Agreements show the variety of forms that special and differential treatment takes. Some of these forms include:

- (a) Specific regimes or provisions for the right of developing country governments to assist their domestic industries, such as Article XVIII of GATT 1994.
- (b) Fast track and flexible regimes or procedures in enforcement of the rights of or against developing countries and in requirements on developing countries, such as the Decisions referred to in the DSU for procedures where developing and least developed countries are involved in the disputes, or the special procedures under the Subsidies and Anti-dumping Agreements.
- (c) Waiver for collective efforts among developing countries to accord preferential treatment to one another; usually done in the context of broad programmes for economic cooperation and economic development.

- (d) Provision for special measures by developed countries to provide preferential market access for products from developing countries. Part IV of GATT 1994 and the Enabling Clause place emphasis on access to developed country markets for products of export interest to developing countries under provisions that could be made more binding.
- (e) Inclusion in the objectives and principles of the agreements in terms of targets to be achieved. Article IV of GATS envisages that developing countries need to have an equitable share in services trade and developed countries should assist them to take up available opportunities. Generally, the principles of the WTO as stated in the preamble to the WTO Agreement include the recognition of the need for positive efforts to ensure that developing and least-developed countries secure a share in the growth of international trade commensurate with their development needs.
- (f) Inclusion in the agreements of provisions requiring developing and least-developed countries to undertake only such commitments or obligations as are consistent with their development needs and within their means, such as Part IV of GATT 1994 and the Decision on Measures in Favour of Least-Developed Countries.
- (g) Provisions for technical assistance to developing and least-developed countries.
- (h) Provisions for transition periods for developing and least-developed countries.
- (i) Binding obligations to address important needs. Article 66.2 of the TRIPS Agreement provides for technology transfer to least-developed countries in mandatory terms or under binding provisions.

6. Of these various forms of special and differential treatment, some have tended to be more effective or meaningful than others but the entire scheme of the provisions and the present approach need fundamental improvement.

- (a) Provisions on special regimes according developing and least-developed country governments certain rights notwithstanding the general provisions of agreements (that is, (a) to (c) above), have been meaningful to the extent that some governments have been able to resort to them. But it has been common for governments to be prevailed upon to give up rights available or policy flexibility under the WTO Agreements. In this regard, coherence in global economic policy making and implementation would be necessary to ensure the use of the flexibility allowed developing and least-developed countries.
- (b) Inclusion in the objectives and principles of the WTO agreements as well as appeals to developed countries to accord special and differential treatment to developing and least-developed countries ((d) to (g) above) has served to demonstrate the need for operationalising the provisions, for they have remained largely unimplemented. In this regard, the provisions on objectives and principles could be made more directive in nature, and supported by clear and precise obligations and rights to operationalise them.
- (c) Transition periods ((h) above) for developing and least developed countries have on the whole been inadequate. It is likely that this inadequacy has resulted from the subjective or rather arbitrary manner the length of the transition periods has been determined and the lack of proper programmes designed to phase in transition periods. In this regard, transition periods should be determined in an objective manner that relates to the actual process of adjustment and development to social

economic levels that ensure equitable and beneficial participation in the relevant agreements; and the right to obtain extensions of transition periods could be made straightforward and unconditional for developing and least developed countries that would need such extensions.

- (d) Provision for mandatory obligations ((i) above) has been useful in demonstrating that special and differential treatment can take the form of binding obligations that can be operationalised in accordance with established practice in the WTO that however can be improved upon for instance through better reporting and monitoring procedures. In this regard, cross-cutting reporting and enforcement procedures are important if they come with the necessary authority to require compliance with recommendations.

#### Action to Take

7. The various categories of special and differential treatment suggest various ways to improve the provisions on the basis both of the experience with the provisions and of the need for better ways to achieve the objectives of the WTO as an institution boldly aiming to improve living conditions of people particularly in developing and least-developed countries. Special regimes on rights of developing and least-developed country governments need to be fully recognised and respected by all Members in their policies within the framework of the WTO and other organisations. To this end, there is need to clarify and highlight the various provisions giving developing and least-developed country governments certain rights relating to special and differential treatment within the WTO framework. The non-binding provisions need to be made binding in order to provide some means and improve prospects for securing their implementation. The mandatory obligations need to be highlighted so that they can be implemented immediately and unconditionally. The approach to technical assistance and transition periods should be re-considered to ensure that the objectives are satisfactorily achieved. Transition periods should primarily function as adjustment periods along well-defined and adequately funded schedules or phases. In addition to making the special and differential treatment provisions binding, it is important that they are effectively operationalised. This requires an exercise to be undertaken and a decision taken on the details and means of making the provisions stronger, more precise, more effective and more operational through a process of refining the language of the provisions, detailing out some elements of operationalising the provisions, and setting-up appropriate institutions and mechanisms for monitoring and enforcement.

8. In this exercise, it is well to bear in mind that these special and differential treatment provisions were already negotiated in the adoption of existing agreements. They were included as part of the settlements negotiated and arrived at, with the clear understanding that the balance they aimed to achieve was necessary and constituted benefits for developing and least-developed countries within the meaning of the WTO Agreement. This entitled developing and least-developed countries to legitimate expectations that these obligations relating to special and differential treatment would be faithfully implemented and complied with. Impeding the attainment of these benefits relating to special and differential treatment is an issue for the WTO as an institution to resolve and to do so efficaciously.

9. Two ways in which special and differential treatment provisions could be made mandatory or confirmed to be mandatory are:

- (a) Through amendment to the language used in special and differential treatment provisions of the Agreement in question; and/or
- (b) Through authoritative interpretation of special and differential treatment provisions of the WTO Agreements, under Article IX:2 of the WTO Agreement and the Doha mandate on special and differential treatment.

10. There is need for amendment of the special and differential treatment provisions of WTO Agreements to convert non-mandatory provisions into mandatory ones. In essence, amendment of the relevant provisions would involve replacing the terms "should" or "may" with the term "shall", while leaving the rest of the provisions mostly unchanged. However, in some cases, amendments to strengthen the provisions could require re-writing the language of the provisions or deletions of some phrases therein.

11. Authoritative interpretation of the special and differential treatment provisions of WTO Agreements would convert non-mandatory provisions into mandatory ones, especially where their meaning despite the wording indicates that they are of a directive or binding nature, through adopting interpretations to be applied to specific provisions. The interpretations would define the meaning to be put to specific provisions and would become part and parcel of the provisions. Since the General Council has the authority to adopt authoritative interpretations of the provisions of a WTO agreement, a draft decision(s) to adopt such interpretations could be adopted by the Committee on Trade and Development, and forwarded to the General Council (through the CTG) in order to formalise the change.

12. Article IX:2 of the WTO Agreement requires that adoption of authoritative interpretations should not be used in a manner that undermines the provisions on amendment of the WTO Agreement. In this regard, it is important to point out that the Ministerial Declaration and the Decision contain the mandate to re-write or rephrase the provisions for purposes of making them stronger, more precise, more effective and operational.

## **II. CROSS CUTTING ISSUES**

13. The operationalisation of special and differential treatment provisions requires:

- (a) Clear legal rights to enforce the provisions as binding obligations;
- (b) Provisions setting out the details and mechanisms for implementing and complying with the binding provisions;
- (c) Appropriate institutions to determine issues concerning implementation and compliance with the obligations, and to make authoritative recommendations that Members are to comply with; it being understood that these institutions include the Committee on Trade and Development and its subsidiary bodies as well as the Dispute Settlement Body and the General Council;
- (d) Capacity to, successfully initiate and pursue actions in the institutions, obtain recommendations, and enforce compliance with the recommendations;
- (e) Monitoring mechanisms to follow up implementation and compliance with relevant provisions, regularly produce reports on developments, and undertake sensitisation activities to promote implementation and compliance with the obligations; and
- (f) Regular evaluation in the Committee on Trade and Development, the General Council, and the Ministerial Conference, with a view to ensuring the attainment of the objectives and compliance with the principles of special and differential treatment.

14. Accordingly, Members should adopt a decision(s) in accordance with the mandate under paragraph 44 of the Declaration and paragraph 12.1 of the Decision on Implementation Issues and Related Concerns adopted by Members at the Fourth Session of the Ministerial Conference, as proposed in this document.

### Principles

15. Special and differential treatment as long recognised in GATT and the WTO, is a right for developing and least developed country Members. Developed country Members and the WTO as an institution, by itself or in collaboration with other organisations, are to accord special and differential treatment to developing and least developed country Members in view of their development needs and resource constraints.

16. The development needs of developing and least-developed country Members require special domestic policies, measures and laws as well as direct assistance for enhanced access to global and regional markets, domestic implementation of obligations, administrative and continuous compliance with obligations, and enforcement of their rights under the agreements. Resource constraints in the form of human, financial, and institutional shortfalls require technical, financial and various types of assistance to supplement domestic resources and establish or strengthen domestic institutions.

17. The operation of special and differential treatment provisions needs to be improved upon against the background of current provisions, enhancing their strengths and redressing their weaknesses. The mandatory provisions should be implemented immediately and unconditionally. The best endeavour provisions should be understood to be binding and enforceable, and likewise any special and differential treatment provisions should be included in future agreements with the full knowledge that they will be clearly enforceable. The decisions(s) adopted in this regard and all provisions for special and differential treatment will be among the covered agreements so that the Dispute Settlement Body can enforce them under the Dispute Settlement Understanding.

### Objectives

18. Special and differential treatment is an integral part of the WTO Agreement, including the Multilateral Trade Agreements. Accordingly, it is provided for and shall be faithfully operationalised in order to improve living conditions in the developing and least-developed country Members and to effectively secure their equitable and beneficial participation in the multilateral trading system, fully gaining from development opportunities opened up. Special consideration shall always be given to the level of development of the Members.

19. Special and differential treatment shall aim, to address and resolve the imbalances between developed country Members and developing and least developed country Members, to ensure equity in the totality of obligations and rights, to support developing and least developed country Members to undertake adjustments that are necessary for them to meaningfully benefit from the agreements, to effectively ensure the success of export and production diversification programmes of developing and least developed country Members, and to secure for them market access in the multilateral trading system that will facilitate their rapid economic development;

20. Assistance to developing and least developed country Members shall be coherent with their broad development needs. In this regard, it shall be part of and fit within the comprehensive solutions and programmes adopted by those Members; and it shall not be piecemeal, isolated nor inconsistent with their long term programmes and needs. Assistance shall provide short and long-term solutions to the problems faced by developing and least developed Members to implement and comply with their obligations and exercise their rights.

### Capacity building

21. In addition to solving the problems of implementation and compliance, developing countries' capacity to negotiate should also be improved. Capacity refers to capacity to implement and comply with the agreement, capacity to negotiate on any issues arising from but particularly those relating to the operation and improvement of the agreement, capacity for domestic industries to compete in the

multilateral trading system, and capacity for domestic institutions to protect the public interest in areas directly related to the agreement.

22. Binding commitments to be operationalised under clearly scheduled programmes and activities necessary for any social economic, institutional, legal and other adjustments in favour of developing and least-developed country Members to ensure they have all the requisite capacity shall be a condition precedent for the adoption of any agreements relating to the World Trade Organisation.

#### Transition periods

23. Transition periods shall be designed to provide developing and least-developed country Members with a period of time that is adequate,

- (a) To carry out institutional changes and adjustments that may be necessary for them to address their supply side and other resource constraints;
- (b) To attain a level of socio-economic development commensurate with obligations under and that enables them to beneficially and equitably participate in the agreements; and
- (c) To attain socio-economic growth and development rates that will sustainably ensure continuous improvement in living conditions.

24. Accordingly,

- (a) Transition periods shall not be arbitrarily set or inadequate. They shall be based on objective criteria, and a preponderance of studies acceptable to all Members that show undoubted projections and conclusions, that demonstrate under a clear schedule of progress the attainment of the required capacity and of socio-economic development levels for purposes of the agreements; and
- (b) Developing and least-developed country Members shall always have a right to extend transition periods provided that they shall notify the World Trade Organisation and when requested commence consultations in the relevant councils and committees.

#### Special and differential treatment obligations

- 25. (a) Provisions for special and differential treatment shall always be implemented and complied with immediately and unconditionally.
- (b) This Decision shall be included in the covered agreements within the meaning of the Dispute Settlement Understanding.
- (c) Without prejudice to the rights of Members to enforce special and differential treatment in accordance with the Dispute Settlement Understanding, any Member who considers that any provision for special and differential treatment is unlikely to be or is not being implemented or complied with, may notify a monitoring body of the Committee on Trade and Development, which shall make recommendations to Members.
- (d) Notwithstanding any provision in the Agreements of the World Trade Organization, special and differential treatment shall be included in agreements with the clear understanding and on the basis that they shall be fully binding on Members and enforceable by developing and least developed country Members.

- (e) In any Agreements that have objectives and principles of a special and differential treatment nature, the substantive provisions shall detail out in binding obligations the operationalisation of those objectives and principles.
- (f) Special and differential treatment commitments shall be inscribed in schedules of commitments or concessions of Members. A Member considering that any commitment it makes of a special and differential treatment nature should not be inscribed in its schedule of commitments or concessions shall first obtain the consent of other Members in the General Council in order for that Member to be excluded from the requirement under this paragraph to inscribe special and differential treatment commitments in Members' schedules of commitments or concessions.

#### Monitoring of Implementation and Compliance

- 26. (a) Special and Differential Treatment Monitoring Body shall be established under the Committee on Trade and Development, to monitor the implementation of and compliance with special and differential treatment provisions in accordance with this Decision and all relevant Agreements of the WTO, facilitate consultations and co-operation among Members, and advise the Committee on Trade and Development.
  - (b) The Committee on Trade and Development shall keep special and differential treatment provisions under review and shall make recommendations on their implementation.
27. The Annexes shall be an integral part of this Decision, and the Committee on Trade and Development may recommend to the General Council modifications as necessary.

#### Training Programmes

28. The planning and provision of technical and financial assistance including the formulation of training programmes such as seminars and workshops, shall be in accordance with and meet the criteria set out in Annexes I and II respectively to this Agreement.

#### Mandatory Provisions

29. The provisions set out in Annex III to this Decision are mandatory obligations, which shall be implemented immediately and unconditionally. Developed country Members shall notify the laws, measures and policies they adopt in this regard, and report semi-annually on how they are implementing them to the Committee on Trade and Development. Where the obligations fall upon developed country Members individually or collectively, the Dispute Settlement Understanding shall govern the enforcement procedures.

#### Currently Non-Mandatory Provisions

30. (a) The provisions set out in the Annex IV to this Decision shall be binding and enforceable obligations in favour of developing and least developed country Members that, accordingly, may request the Special and Differential Treatment Monitoring Body of the Committee on Trade and Development to make recommendations to secure compliance, including through action for enforcement in accordance with the Dispute Settlement Understanding. Where the obligations fall upon developed country Members individually or collectively, the Dispute Settlement Understanding shall govern the enforcement procedures.



- (b) Developed country Members shall adopt laws, measures and policies to implement the provisions in Annex IV, and shall notify them and report semi-annually to the Committee on Trade and Development on how they are implementing them.

### Coherence in International Organisations

- 31. (a) The provisions on increasing trade opportunities and safeguarding the interests of developing and least developed country Members, in Annexes III and IV to this Decision, shall be implemented and operationalised individually and collectively by the Members and by the WTO through the Secretariat and co-operating institutions particularly UNCTAD, on the basis of objective criteria that shall be designed to clearly assist the evaluation of progress and the extent of attainment of the goals of increasing trade opportunities and safeguarding the interests of developing and least developed country Members.
  - (b) The WTO shall, in collaboration with other intergovernmental organisations, aim within its mandate to facilitate the achievement of the international development goals agreed in the Millennium Declaration.
32. Necessary resources shall be set aside specifically for implementing this Decision.
33. The provisions in Annexes III and IV to this Decision set out certain rights of developing and least developed country Members in terms of flexibility of commitments, action and use of policy instruments. Members shall respect these rights in their laws, measures and policies pursued under bilateral and regional arrangements as well as within the WTO and other organisations, to promote coherence in global policymaking and implementation.

## **III. AGREEMENT-BY-AGREEMENT**

### **General Agreement on Tariffs and Trade 1994**

#### **Article XVIII**

##### **Proposal**

34. It is understood that the provisions of this Article aim to promote the rapid development of domestic industries and the needed adjustments where domestic industries experience difficulties in developing and least developed country Members. Therefore, this Article shall be implemented, interpreted and applied by Members and in all the WTO processes in a manner that fully supports the attainment of these goals. In particular, developing and least-developed country Members shall not be subjected to cumbersome requirements or conditions, or to any requirements and conditions that would undermine the attainment of these goals. In determining whether any requirements or conditions are cumbersome, the views of the developing and least-developed country Members concerned shall be fully accommodated and shall not be prejudiced or rejected except with the consensus of all Members.

35. It is further understood that Members will consider at the 5<sup>th</sup> Session of the Ministerial Conference the elaboration of a multilateral framework on the provisions of Article XVIII and Part IV of GATT 1994.

### **Article XVIII:A**

#### **Proposal**

36. It is understood that where developing or least-developed country Members wish to modify or withdraw concessions under Article XVIII:7, they shall not be required to offer or make compensatory adjustments that are inconsistent with their development needs or would unreasonably strain their resources. In particular, they shall not be required under paragraph 7(a) to make or offer unreasonable compensatory adjustments, and compensatory adjustment shall be adequate within the meaning of paragraph 7(b) where the developing and least-developed country Members modifying or withdrawing the concession offer to adopt measures that allow a period of 3 months for exporters based in the Members affected to undertake necessary adjustments.

### **Article XVIII:B**

#### **Proposal**

37. It is understood that short term financial flows shall not be included in determining the external reserves or surpluses of Members and financial instability shall be duly taken into account as a problem to be addressed over a reasonable period of time when measures under Article XVIII: B shall be maintained. The reasonable period of time shall not be less than 3 years, taking into account differences in industry types.

### **Article XXXVI**

#### **Proposal**

38. The phrase "shall be a matter of conscious and purposeful effort" in paragraph 9 used in relation to paragraphs 2 to 7 of Article XXXVI, and read together with paragraph 8 of Article XXXVI, shall be understood to mean that the provisions of paragraphs 2 to 7 are binding commitments on the part of developed country Members in favour of developing and least-developed country Members to,

- (a) ensure a rapid and sustained expansion of the developing and least-developed country Members;
- (b) ensure that developing and least developed country Members secure a share in the growth in international trade commensurate with the needs of their economic development;
- (c) provide the maximum market access to products of export interest to developing and least-developed country Members and take measures to stabilise and improve conditions in world markets for these products particularly measures to attain stable, equitable and remunerative prices;
- (d) assist in the diversification of the economies of developing and least-developed country Members; and
- (f) ensure coherence in global economic policymaking and implementation in a manner that ensures that gains and opportunities in the multilateral trading system are supported and not undermined by programmes implemented by international lending agencies and vice versa;

- (g) It is further understood that this Decision shall be without prejudice to the acquis under any preferential regime governing the exports of developing and least-developed country Members by developed country Members.

39. Accordingly, implementation of the provisions of Article XXXVI shall be subject to reviews twice in every 12 months, in the Committee on Trade and Development. In the reviews, objective criteria shall be used to determine whether the implementation is meaningfully attaining the objectives set out in the provisions, in light of specific targets set by the Committee on Trade and Development.

#### **Article XXXVII**

##### **Proposal**

40. Paragraphs 1 and 3 of Article XXXVII provide for binding obligations and it is understood that the commitments set out shall be fully implemented and where it is felt that this would not be possible, leave shall be sought in the General Council by the concerned developed country Members on the basis of consultations on specific grounds advanced.

#### **Article XXXVIII**

##### **Proposal**

- 41. (a) It is understood, under Article XXXVIII of GATT 1994, that the WTO shall arrange with the United Nations and its agencies, and with all international and regional organisations that have observer status in WTO bodies, to annually provide studies and reports pertaining to elements indicated in Article XXXVIII to the Committee on Trade and Development, which shall deliberate on them and report with recommendations to the General Council.
- (b) The studies and reports, and the recommendations to the General Council shall provide guidelines on, development indicators and goals, desirable rates of growth in actual market access levels for products of export interest to developing and least-developed country Members, targets to be achieved over the short and medium terms, measures to be taken in the WTO framework and by other international organisations as well as the assistance required by developing and least-developed country Members to ensure the achievement of goals and targets, and deal with any relevant matters.

#### **Understanding On Article II:1(b)**

##### **Proposal**

42. "Other duties or charges" shall not be construed or applied in a manner that prejudices the right of developing and least-developed country Members to levy duties or charges to meet their requirements relating to government revenue and administrative expenses.

#### **Understanding On Article XVII**

##### **Proposal**

43. Members agree that state trading enterprises may have a significant role to play in protecting public policy in developing and least-developed country Members.

### **Understanding On Balance of Payments Provisions of GATT 1994**

44. Articles 8 and 12 of the Understanding on Balance-of-Payments are special and differential treatment provisions and their effect in part is that, in the case of developing and least-developed country Members, full consultation procedures (BISD 18S/48-53) shall only be used when it is not appropriate to use the simplified consultation procedures (BISD 20S/47-49). It shall be upon Members preferring full consultation procedures to show why they are appropriate and the Committee shall only use full consultation procedures with the consent of all Members.

### **Understanding On Article XXIV of GATT 1994**

Proposal

45. It is understood that this Understanding shall not prejudice the right of developing and least-developed country Members to enter arrangements for mutual reduction or elimination of tariffs and non-tariff barriers to their trade, in accordance with the Decision of 28 November 1979 (Enabling Clause) (BISD 26S/203).

### **Understanding On Waiver of Obligations under GATT 1994**

Proposal

46. It is understood that waiver of obligations in accordance with Article IX of the WTO Agreement shall be for the benefit of, Members seeking the waiver, or those that the waiver is sought for. Other Members shall not prejudice the benefits under waivers sought in favour of developing or least-developed country Members.

### **Understanding on the Interpretation of Article XXVIII of GATT 1994**

#### **Paragraph 1**

Proposal

47. In the context of the provisions of paragraph 1 of the Understanding on Article XXVIII of GATT 1994, urgent consideration shall be given to a re-balancing of the relative rights of small and medium-sized exporting Members.

### **Agreement on Agriculture**

#### **Article 6.2**

48. It is understood that the permitted subsidies under Article 6.2 shall, be without limitation as to amount, and include any programmes in developing and least-developed country Members for, *inter alia*, promoting food security and rural development, and assisting resource poor or low-income farmers.

#### **Article 14**

Proposal

49. It is understood that measures covered by the Agreement on the Application of Sanitary and Phytosanitary Measures shall not be used as disguised restrictions against the trade of developing and least-developed country Members. Members shall biannually report to the Committee on Agriculture

any measures taken under the Agreement on the Application of Sanitary and Phytosanitary Measures that affect any products from developing and least-developed country Members.

#### **Article 15.1**

Proposal

50. It is understood that where developed country Members are to take measures of a special and differential treatment nature, they shall embody in their schedules of commitments or concessions specific special and differential treatment commitments in favour of developing and least-developed country Members, which shall be binding commitments. It is further understood that this Decision shall be without prejudice to the *acquis* under any preferential regime governing the exports of developing and least-developed country Members by developed country Members

#### **Article 15.2**

Proposal

51. It is understood that:

- (a) transition periods under the Agreement shall be extended for developing and country Members that face adjustment difficulties; and
- (b) developing and least-developed country Members shall have the right to modify their commitments if this is found necessary to protect the public interest in ensuring food security and alleviating rural poverty.

#### **Decision on Measures Concerning the Possible Negative Effects of the Reform Programme on Least-Developed and Net Food-Importing Developing Countries**

Proposal

52. It is understood, in the context of the Decision on Measures Concerning the Possible Negative Effects of the Reform Programme on Least-Developed and Net Food-Importing Developing Countries and of the Ministerial Decision on Implementation Issues and Related Concerns, that developed country Members shall embody in their schedules of commitments undertakings on, contributions to a revolving fund for normal levels of food imports, providing food aid in fully grant form, and maintaining food aid levels consistently with recommendations and rules under the Food Aid Convention.

#### **Agreement on Sanitary and Phytosanitary Measures**

Article 9.2

Proposal

53. (a) The phrase "substantial investments" in Article 9.2 shall be construed relative to resources of concerned government departments in developing and least-developed country Members and to their development needs. Any changes that would require additional resources to existing levels of current expenditure or their restructuring, or additional training or staffing, shall be construed to amount to "substantial investments".

- (b) Where the importing Member does not actually provide such technical assistance, that Member shall withdraw the measures immediately and unconditionally; or the importing Member shall compensate the exporting developing country Members for loss resulting directly or indirectly from the measures.
- (c) It is understood that technical assistance shall be fully funded technical assistance and shall not entail financial obligations on the part of the exporting developing and least-developed country Members.
- (d) It is agreed that the WTO shall recommend that impact assessments shall be conducted to determine the likely effect on the trade of developing and least-developed country Members for any proposed standards before adoption, and if the impact would be adverse, the standards would not become applicable until it is established that developing and least-developed country Members that would be affected have acquired the capacity to beneficially comply with them.

#### **Articles 10.1 and 10.4**

##### **Proposal**

54. (a) The requirement to "take account of the special needs of developing country Members, and in particular least developed country Members" in Article 10.1 shall be understood to mean that Members shall either withdraw measures that adversely affect any developing and least-developed country Members or which they find difficult to comply with, or shall provide the technical and financial resources necessary for the developing and least-developed country Members to comply with the measures.
- (b) The requirement shall be further understood to mean that Members shall always initiate consultations in the Committee whenever they propose or intend to take any measures that are likely to affect imports from developing and least-developed country Members. In the consultations, Members shall establish whether or not the proposed or intended measures, if justified under the Agreement, would adversely affect any developing and least-developed country Members.
- (c) Members shall establish a facility within the Global Trust Fund for ensuring that:
- (i) developing and least-developed country Members have the financial and technical capacity to meet the requirements under the Agreement;
  - (ii) delegations from developing and least-developed country Members attend and effectively participate in meetings of the Committee and relevant international standard setting organisations;
  - (iii) developing and least-developed country Members effectively utilise the flexibility under the Agreement; and
  - (iv) measures adopted under the Agreement do not contravene the rights of developing and least developed country Members.
- (d) It is understood that technology transfer and any technical and financial assistance under the Agreement to developing and least-developed country Members shall be cost free.

### **Article 10.3**

#### **Proposal**

55. The phrase "the Committee is enabled to grant such countries" shall be understood to mean that the Committee shall grant such countries, and the phrase "specified, time-limited exceptions" shall be understood to refer to periods of not less than 3 years notwithstanding any provision in any WTO Agreements and in any case such periods such be adequate for developing and least-developed country Members to undertake any adjustments necessary for them to comply with the provisions of the Agreement. The phrase "taking into account their financial, trade and development needs" shall mean that the periods shall objectively relate to the time and resources necessary for developing and least-developed country Members to undertake necessary adjustments to comply with the provisions of the Agreement.

### **Agreement on Textiles and Clothing**

### **Articles 2.18 and 6.6**

#### **Proposal**

56. (a) In the context of paragraph 4 of the Ministerial Decision on Implementation Issues and Related Concerns adopted on 14 November 2001, (and in part as recommendations to the CTG) it is understood that "advancement by one stage" means the cumulation of the current and the succeeding stages, and "equivalent changes" refers to changes that are not less favourable than the cumulation. In determining equivalent changes, proposals made by developing and least-developed country Members shall be accepted unless there are compelling reasons, which shall be recorded and examined by the Textiles Monitoring Board.
- (b) The phrase "differential and more favourable treatment" in Article 6.6(b) shall mean that no safeguard measures shall be taken against exports of Members that constitute a small volume or a small percentage of total textile and clothing imports. In this regard "small" shall be understood to refer to imports from any developing and least-developed country Member that are less than 10 per cent of the total textile and clothing imports of a Member. It is understood in this regard that there shall be no cumulation of imports from developing or least-developed country Members in determining volumes of imports for purposes of measures against imports under the Agreement.
- (c) The phrase "special consideration" in Article 6.6(c) shall be understood to mean that no restrictions shall be imposed on such exports of such developing and least-developed country Members.
- (d) It is understood that in accordance with paragraph 42 of the Declaration of the Fourth Session of the Ministerial Conference, textile and clothing exports of least-developed country Members shall be accorded duty free, quota free treatment by developed country Members. It is further understood that this Decision shall be without prejudice to the acquis under any preferential regime governing the exports of developing and least-developed country Members by developed country Members.

## **Agreement on Technical Barriers to Trade**

### **Articles 11 and 12**

#### **Proposal**

57. (a) It is understood that Article 11 contains binding obligations. In this regard, and recognising the importance of standardisation in promoting exports of developing and least-developed country Members, a fund shall be established into which contributions shall be made by Members to assist developing and least-developed country Members in implementing the Agreement. Members that propose to introduce new standards that are required to be notified under the Agreement, shall prior to adoption of the standard, deposit amounts into the fund in accordance with assessments by the Committee based on resource implications for developing and least-developed country Members in complying with such standards.
- (b) It is understood that reference to the special needs and difficulties of developing and least-developed country Members in Article 12 means that developed country Members shall provide full technical and financial assistance to developing and least-developed country Members that are to comply with standards in accordance with the Agreement.
- (c) It is understood that technical assistance shall be fully funded technical assistance and shall not entail financial obligations on the part of the exporting developing and least-developed country Members.
- (d) It is agreed that the WTO shall recommend that impact assessments shall be conducted to determine the likely effect on the trade of developing and least-developed country Members for any proposed standards before adoption, and if the impact would be adverse, the standards shall not become applicable until it is established that developing and least-developed country Members that would be affected have acquired the capacity to beneficially comply with them.
- (e) In paragraph 8 of Article 12 the phrase "the Committee ... is enabled to grant" shall be understood to mean that the Committee shall grant, and the phrase "specified, time-limited exceptions" shall be understood to refer to periods of not less than 3 years and in any case such periods such be adequate for developing and least-developed country Members to undertake any adjustments necessary for them to comply with the provisions of the Agreement.
- (f) Members shall establish a facility within the Global Trust Fund for ensuring that (i) developing and least-developed country Members have the financial and technical capacity to meet the requirements under the Agreement; (ii) delegations from developing and least-developed country Members attend and effectively participate in meetings of the Committee and relevant international standard setting organisations; (iii) developing and least-developed country Members effectively utilise the flexibility under the Agreement; and (iv) measures adopted under the Agreement do not contravene the rights of developing and least-developed country Members.
- (g) It is understood that technology transfer and any technical and financial assistance under the Agreement to developing and least-developed country Members shall be cost free.



## **Agreement on Trade Related Investment Measures**

### **Article 3**

#### Proposal

58. The provision in Article 3 of the TRIMs Agreement that all the exceptions in GATT 1994 shall apply, as appropriate, to the TRIMs Agreement, means that, co-operation arrangements, laws, measures and policies adopted on the basis of the provisions of GATT 1994 that operate as exceptions, apply to the provisions of the TRIMs Agreement. Such exceptions include:

- (a) co-operation arrangements among developing country Members under which certain preferential treatment is accorded to parties to the arrangements;
- (b) quantitative restrictions taken in accordance with among others Articles XII, XVIII and XIX of GATT 1994; and
- (c) measures taken to improve living standards in developing country Members under Article XVIII including programmes on incentives relating to domestic content requirements.

### **Article 4**

#### Proposal

59. (a) In accordance with paragraph 1.1 of the Ministerial Decision on Implementation-Related Issues and Concerns adopted at the 4<sup>th</sup> Session of the Ministerial Conference on 14 November 2001, which "reaffirms that Article XVIII of the GATT 1994 is a special and differential treatment provision for developing countries and that recourse to it should be less onerous than to Article XII of the GATT 1994", Members shall interpret and apply Article 4 of the TRIMS Agreement in a manner that fully supports measures taken by developing and least-developed country Members to safeguard the external financial position, the balance of payments, and sufficiency of reserves.
- (b) The phrase "free to deviate temporarily from the provisions of Article 2" that appears in Article 4 of the TRIMs Agreement shall, in view of the structural bottlenecks of developing and least-developed country Members, be understood to refer to a period of not less than 6 years.

### **Article 5.3**

#### Proposal

60. On the basis of the development, financial and trade needs of least-developed and other low income developing country Members, it is understood that the Council for Trade in Goods shall grant requests for extension of or for fresh transition periods from least-developed country Members, and from developing country Members that are eligible under the Agreement on Subsidies and Countervailing Measures to maintain subsidy programmes that may wholly or in part be covered by or have a relation to the TRIMs Agreement.

## **Agreement on Dumping**

### **Article 15**

#### Proposal

61. For purposes of Article 15 of the Agreement:

- (a) "Special regard", "special situation", and "essential interests of developing country Members", read together, shall be understood to require that developed country Members shall specifically take into account the development needs of developing and least-developed country Members particularly for sustainably maintaining or increasing market access for products of export interest to them.

In this regard:

- (i) the causal link between the fact of dumping and of injury on the one hand, to imports from developing and least-developed country Members on the other, shall be determined on a case by case basis taking into account the WTO goals of improving living standards in developing and least-developed country Members through growth in the trade of these countries, in a manner that demonstrates that the achievement of these goals in developing and least-developed country Members has duly been taken into account; and
  - (ii) coherence shall be ensured between the Anti-dumping, and the Subsidies and Countervailing Measures Agreements on the basis of the importance of sustainably maintaining or increasing market access for products of export interest to developing and least-developed country Members; and of maintaining their export competitiveness.
- (b) "Constructive remedies provided for by this Agreement" shall within the context of Article 15 be understood to include:
  - (i) consultations for mutually agreed solutions within the meaning of paragraph (a) above other than anti-dumping duties, price undertakings, or any action prohibited by the Agreement on Safeguards;
  - (ii) internal reforms in developed country Members regarding market conditions, and employment and investment conditions to improve competitiveness on the basis of fair competition rather than taking anti-dumping measures against imports; and
  - (iii) exploring solutions against anti-competitive practices if determined to have taken place, on the basis of taking into account and protecting the interests of domestic consumers, rather than taking any anti-dumping measures.

### **Agreement on Customs Valuation**

#### **Article 20.1-2**

Proposal

62. It is understood that delays of application of the Agreement provided for under Article 20 read together with Annex III and the Decision on Texts Relating to Minimum Values and Imports by Sole Agents Sole Distributors and Sole Concessionaires, shall be renewable whenever that is necessary to protect the development, financial and trade needs of developing and least-developed country Members as requested by the Members seeking such extensions.

#### **Article 20.3**

Proposal

63. It is understood that the technical assistance programmes provided for under paragraph 3 of Article 20 constitute binding obligations undertaken by developed country Members, which shall be implemented for as long as least-developed country Members remain classified as such.

### **Agreement on Preshipment Inspection**

#### **Article 3.3**

Proposal

64. Technical assistance for purposes of the Agreement shall address the concerns of developing and least-developed country Members or user Members relating among others to:

- (i) training customs and revenue officials to ensure that the objectives of preshipment inspection are achieved; particularly those relating to prevention of false declaration, wrong classification, and any fraud;
- (ii) ensuring that it is duly inspected consignments that are shipped to user Members; and
- (iii) regulation of preshipment entities.

65. In this regard, and in the context of the Agreement on Customs Valuation and of the Decision Regarding Cases Where Customs Administrations Have Reasons To Doubt The Truth Or Accuracy Of The Declared Value, it is agreed that customs authorities of Members shall closely co-operate with a view to fully assisting user Members achieve the objectives of the Agreement on Preshipment Inspection.

### **Agreement on Rules on Origin**

Proposal

66. (a) Regarding preferential rules of origin under the Common Declaration in Annex II to the Agreement, it is understood that in their arrangements for mutual reduction or elimination of tariff or non-tariff barriers, developing and least-developed country Members may adopt rules of origin designed to achieve trade policy objectives relating to their rapid economic development, particularly through generating regional trade.

- (b) Participation of developing and least-developed country Members in the World Customs Organisation and the Technical Committee on Rules of Origin shall receive the same consideration and support from the WTO as participation in standard setting organisations.

### **Agreement on Import Licensing Procedures**

#### **Article 1.2**

##### **Proposal**

67. It is understood that the requirement to take into account the "development purposes and trade needs of developing country Members" in Article 1.2 of the Agreement means that import licensing regimes shall be designed in a manner that prevents adverse effects to the trade of developing country Members. In this regard, the regimes shall specifically be expeditious in relation to the trade of developing country Members.

#### **Article 3.5**

##### **Proposal**

- 68. (a) The last sentence of subparagraph (a)(iv) of Article 3.5 stating that "developing country Members would not be expected to take additional administrative or financial burdens on this account" shall be construed to mean that developing country Members shall not be required to take any measures additional to existing measures.
- (b) The word "should" in subparagraph (j) of Article 3.5 shall be replaced with "shall" wherever it appears, and the provision shall be construed to require that priority in licence allocation shall be accorded to importers from developing and least-developed country Members.

### **Agreement on Subsidies and Countervailing Measures**

#### **Article 27.1**

##### **Proposal**

69. It is therefore understood that developing country Members shall have a right to use subsidies as may be necessary for their economic development. Extensions shall be granted under Article 27.4 of the Agreement bearing in mind the important role subsidies play in the economic development of developing country Members.

#### **Article 27.4**

##### **Proposal**

- 70. (a) "Inconsistent with its development needs" refers to where otherwise prohibited or actionable subsidies would clearly not benefit any domestic industry.
- (b) It is understood that developing country Members shall not be prevented from seeking extensions on grounds of not strictly following the time frames in Article 27.4 and the Decision on Procedures for Extensions Under Article 27.4 for Certain Developing Country Members (G/SCM/39).

#### **Article 27.8**

##### **Proposal**

71. It is understood that in consultations and in any proceedings, there shall be no presumption of serious prejudice whatsoever including on the basis of any percentage or amount of subsidisation where developing country Members grant subsidies; and that any serious prejudice shall be demonstrated exclusively by positive evidence.

#### **Article 27.9**

##### **Proposal**

72. It is understood that nullification and impairment in cases of actionable subsidies that developing country Members grant or maintain, shall be construed to mean only the displacement or impediment of imports of a like product into the market of the developing country Member or injury to a domestic industry in the market of the importing Member.

#### **Article 27.13**

##### **Proposal**

73. It is understood that Article 27.13 covers any privatisation programmes undertaken within the period from 1 January 1995 and that developing country Members may grant or maintain the subsidy programmes under Article 27.13 to ensure good adjustment of their economies. It is further understood that "limited period" refers to a period of not less than 8 years.

#### **Article 27.15**

##### **Proposal**

74. "Interested developing country Member" shall be construed to refer to any developing country Member regardless of any subsidy programmes maintained, on the basis that developing country Members have an abiding interest in the use and operation of subsidies due to their importance in the rapid economic development of developing country Members.

#### **Agreement on Safeguards**

#### **Article 9.1-2**

##### **Proposal**

75. It is understood that paragraphs 1 and 2 of Article 9 of the Agreement are respectively:

- (i) a binding prohibition against taking safeguard measures against products from developing country Members that do not exceed 3 per cent of imports of a Member; and
- ii) a binding right for developing country Members to extend safeguard measures for an additional two years and to take fresh safeguard measures against products previously the subject of safeguard measures.

### **Decision on Measures in Favour of Least Developed Countries**

#### **Paragraph 1**

Proposal

76. It is understood that least-developed country Members, notwithstanding any provision of any WTO Agreement, shall not be required to implement or comply with obligations or commitments that are prejudicial to their individual development, financial or trade needs, or their administrative and institutional capacity.

#### **Paragraph 2**

Proposal

77. (a) It is understood that notwithstanding any provision of any WTO Agreement, least-developed country Members shall always be entitled to extensions for their transition periods as they may require.
- (b) It is understood that technical assistance to least-developed country Members shall aim among other things to remove any supply side constraints to benefits under all WTO Agreements, such as benefits of market access opportunities and development of domestic productivity.

### **Decision on Differential and More Favourable Treatment, Reciprocity and Fuller Participation of Developing Countries, of 28 November 1979**

Proposal

78. (a) In formulating schemes under paragraphs (a) and (b) of clause 1 of the Enabling Clause, developed country Members shall consult under the auspices of the Committee on Trade and Development with developing and least-developed country Members with a view to ensuring that products of export interest to developing and least-developed country Members are accorded meaningful market access that will achieve the objectives set out in Article XXXVI of GATT 1994.
- (b) In this regard, developed country Members shall show to the Committee on Trade and Development how they have included in the programmes specific products of particular export interest to developing and least-developed country Members and taken measures to ensure meaningful market access.
- (c) Meaningful market access shall be construed in accordance with targets set or adopted from time to time in the Committee on Trade and Development.
- (d) The Enabling Clause provides developing and least-developed country Members with the right to enter regional or global arrangements for the mutual reduction or elimination of tariffs or non-tariff barriers. It is understood that the arrangements can be for reduction or elimination of tariffs or non-tariff barriers, and that with regard to reduction or elimination of tariffs no WTO body or Members can prescribe any criteria relating to the arrangements. Members shall respect any such arrangements as an exercise of rights that developing and least-developed country Members have under the WTO Agreement.

- (e) It is understood that this Decision shall be without prejudice to the *acquis* under any preferential regime governing the exports of developing and least-developed country Members by developed country Members

### **General Agreement on Trade in Services**

#### **Article IV**

##### Proposal

79. (a) The Committee on Trade and Development shall set periodic benchmarks on financial and technical cooperation and other mutual arrangements under which developed country Members shall accord to developing country Members treatment and concessions designed to ensure:
- (i) the strengthening of the capacity, efficiency and competitiveness of domestic services of developing country Members and designed to effect technology transfer to developing country Members;
  - (ii) access by domestic services of developing country Members to distribution channels and information networks for developed country markets; and
  - (iii) liberalisation of market access in sectors and modes of supply of export interest to developing country Members.
- (b) It is agreed that developed country Members shall reserve quotas for supply of services by developing country suppliers in sectors that developing country suppliers have interests, and that developed country Members shall not adopt horizontal limitations with respect to movement of natural persons and shall over a period of 2 years phase out the limitations they maintain at the adoption of this decision.
- (c) It is agreed that developed country Members shall twice every 12 months:
- (i) report to the Council for Trade in Services on how they are implementing and complying with targets set by the Committee on Trade and Development for the operationalisation of Article IV;
  - (ii) the Council for Trade in Services and the Committee on Trade and Development shall make recommendations to developed country Members to ensure the implementation of Article IV.
- (d) It is agreed that the commitments or concessions under the General Agreement on Trade in Services, shall reflect a proportion of, at least 40 to 60 in short term actual gains, for developing and developed country Members respectively, provided that special attention shall be demonstrably accorded to the interests of developing and least-developed country Members.

#### **Article V: 3**

##### Proposal

80. The references to "flexibility" and "more favourable treatment" with respect to agreements for liberalisation of trade in services among developing country Members, shall be understood to mean

that the agreements shall not be required to comply with the rules set out in Article V provided that the agreements are entered into within the framework of or form part of wider economic liberalisation or regional integration programmes.

## **Article XXV**

### **Proposal**

81. It is agreed that technical co-operation for developing and least-developed country Members requires the WTO to conclude arrangements with relevant international and regional institutions or organisations to provide frameworks for addressing the supply side and infrastructural constraints of developing and least-developed country Members, and their development needs, in services sectors.

## **Agreement on Trade Related Aspects of Intellectual Property Rights**

### **Articles 65, 66.1, 70.8, 79.9**

### **Proposal**

82. (a) It is understood that developing country Members shall be entitled to extensions beyond the additional 5 year period under Article 65.4 relating to other areas of technology required to be protected under the TRIPS Agreement.
- (b) For purposes of the requirement to grant exclusive marketing rights during transition periods, it is understood that there is a clear distinction between "patent rights" on the one hand and "exclusive marketing rights" on the other. The two shall not confer the same rights. Patent rights as set out in Article 28 of the TRIPS Agreement are the following: "to prevent third parties not having the owner's consent from the acts of making, using, offering for sale, selling, or importing for these purposes the (patented) product" as well as the products obtained directly by the patented process. These rights conferred by a patent, are not the same rights as may be conferred by the grant of exclusive marketing rights. Members have the right and the freedom to define what constitutes exclusive marketing rights, and may do so in light of any interpretations that the General Council or the TRIPS Council may adopt. It is understood also that there is no requirement to grant exclusive marketing rights until and only if marketing approval is granted.

### **Articles 7, 8, 66.2**

### **Proposal**

83. (a) It is agreed that in implementing Article 66.2:
- (i) developed country Members shall give incentives to enterprises and institutions in their territories through their laws or other administrative instruments;
  - (ii) the incentives shall be of a magnitude and nature that will effectively operate as motivation to transfer technology to least-developed country Members taking into account the actual conditions in the least-developed country Members and the difficulties expressed by the enterprises and institutions; and



- (b) The incentives shall take any appropriate forms provided that the forms shall effectively operate as incentives to motivate the enterprises and institutions to transfer technology to least-developed country Members.
- (c) Developed country Members shall report on their implementation of Articles 7, 8, and 66.2 of the Agreement, according to a reporting schedule to be regularly drawn up by the TRIPS Council. The reports shall be evaluated in the TRIPS Council to establish whether or not the implementation is achieving the objectives of building sound technological bases in developing and least-developed country Members
- (d) "Technology" for purposes of the Agreement shall include equipment, knowledge and skills including their tacit forms and trade secrets, practical and theoretical training, and insights into the history and global context of innovations and processes relating to particular technologies.
- (e) Accordingly, it is understood that co-operation arrangements between enterprises and institutions of developed country Members on the one hand and research and other learning institutions in developing and least developed country Members on the other, shall be essential components of implementing the Agreement. The reporting shall indicate implementation in terms also of arrangements with the research and learning institutions.

#### **Dispute Settlement Understanding**

##### **Article 4.10**

###### **Proposal**

84. It is understood that:

- (i) in consultations, requests by developing and least-developed country Members to be involved shall always be accepted; and
- (ii) in the proceedings developed country Members shall present evidence of, and in the written decisions the panels and the Appellate Body shall indicate, how special attention has been given to particular problems and interests of developing country Members during the stage of consultations.

##### **Article 8.10**

###### **Proposal**

85. It is agreed that in disputes between a developing country Member and a developed country Member, at least one panellist shall be from a developing country Member.

##### **Article 12.10**

###### **Proposal**

86. It is agreed that:

- (i) consultations within the period set for consultations and consultations that may be extended under the Dispute Settlement Understanding, may only be declared as concluded with the consent of all parties involved in the consultations; and

- (ii) "sufficient time for the developing country Member to prepare and present its argumentation" shall be understood to be a period of not less than 6 months or the longer period requested by the developing country Member.

#### **Article 12.11**

##### **Proposal**

87. It is understood that Article 12.11 of the Dispute Settlement Understanding requires the panel, in reaching a decision, to fully take into account the special and differential treatment provisions that appear in any covered Agreements that are raised or that are relevant in the dispute.

#### **Article 21.2, 21.7, and 21.8**

##### **Proposal**

88. Paying "particular attention" to the "interests of developing country Members" in paragraph 2, and consideration of "what further action the DSB might take" in paragraph 7, shall be understood to require that recommendations made by the Dispute Settlement Body and their implementation and surveillance shall address:

- (i) any economic or trade loss suffered by the developing country Member, by requiring that the developed country Member pay monetary compensation or make some other form of compensation to the developing country Member; and
- (ii) any difficulties that a developing country Member may face in seeking to enforce compliance with the recommendations of the Dispute Settlement Body, through authorising collective suspension by the rest of the WTO Membership of obligations to the Member against which recommendations were made. It is understood that under such authorisation any Member may suspend any obligations to the Member against which suspension is authorised.

#### **Article 24.1**

##### **Proposal**

89. The requirement to "exercise due restraint in raising matters under these procedures involving a least developed country Member" shall be understood to mean that panels shall before proceeding with the case first determine whether the Member bringing the case has given particular consideration to the special situation of the least-developed country Member. In this regard, the panel shall take into account all relevant factors including, the value of any alleged nullification or impairment, the possible harm to the economy and resources of the least-developed country Member that could result from the case, and the capacity in the circumstances of the least-developed country Member to effectively deal with the case.

#### **Article 27.2**

##### **Proposal**

- 90. (a) It is understood that notwithstanding the establishment of the Advisory Centre on WTO Law, the Secretariat shall provide qualified legal experts to developing country Members to assist them in disputes.

- (b) The requirement for "continued impartiality of the Secretariat" in paragraph 2 shall be understood to mean that the qualified legal expert made available to assist a developing country Member in a case shall assist the country for the duration of the case and not continue to be counsel for the country after the case.

**Final Remark**

91. This proposal is without prejudice to, individual country positions, and to additional proposals that the Africa Group may submit.

## ANNEX I

### Criteria for Technical and Financial Assistance

1. Technical and financial assistance shall be country driven. In this regard, training courses shall be sustainable. Sustainability shall require, inter alia,
  - (a) follow up training,
  - (b) readily useable local infrastructure for keeping current on relevant developments in the field, and
  - (c) the targeting of different knowledge levels of trainees in a manner that increasingly equips developing and least developed country Members with progressively higher levels of skills in all relevant fields.
2. The long-term and integral components of capacity building shall include the establishment of reference and research libraries, the introduction of relevant courses in institutions of learning at university level, and the planned and predictable availability of opportunities for training in other jurisdictions so as to have domestic skills conversant with regimes of other Members;
3. Training shall be relevant to identified priorities and effective in directly helping the redress of bottlenecks faced by Members. In this regard it shall be directed towards addressing,
  - (a) implementing obligations,
  - (b) effectively participating in negotiations on a consistent basis,
  - (c) achieving the clear and unequivocal inclusion of their concerns in instruments adopted by WTO bodies,
  - (d) equitably taking up and utilising opportunities availed under the multilateral trading system and other market access arrangements; and
  - (e) achieving acceptable or high levels of domestic economic growth.
4. Capacity building shall aim for the attainment in developing country Members of projected levels of skills required in government departments, in diplomatic missions and their line ministries, and in negotiating teams. The developing country Member concerned shall establish the appropriate levels. The levels shall relate inter alia to experience and training of individuals in relevant disciplines and the number of personnel.
5. Transparent, inclusive, fair, and fully accepted institutional arrangements for ensuring the proper functioning of capacity building programmes and activities shall always be in place as a condition precedent for the commencement of transition periods.
6. There shall be,
  - (a) prior assessment and costing of implementation, and of compliance and adjustment requirements of developing and least developed country Members under each or every agreement;

- (b) the determination of ability to meet these requirements; and
  - (c) the prior establishment of binding rules on the subsequent execution of modalities for meeting these requirements bearing in mind that these requirements will have financial, human resource, and socio-economic implications.
7. Capacity building shall assist,
- (a) a proper integration in developing country Members among all relevant government departments to address the cross-cutting and multi-disciplinary nature of WTO obligations and rights,
  - (b) the establishment of a functioning link between developing country capitals and their Geneva missions, and
  - (c) mechanisms for co-ordinating capacity building activities in Geneva and in the capitals that come under the auspices of participating donor facilities including the WTO secretariat.
8. The success of capacity building shall not be reckoned or assessed on the basis of the quantity of money pledged or spent; nor on the basis of the number of technical missions, or of seminars and workshops. In this regard, the success of capacity building shall be assessed taking into account all the criteria in this Annex and the objectives of the WTO.
9. (a) With respect to negotiations, capacity building shall aim to provide practical material and skills on how to negotiate and on issues for consideration, rather than only further introductory courses and seminars designed for new or mid-career government officials. While the trade policy courses should continue, there shall be courses designed for government officials with a good working knowledge of the WTO system, aimed at assisting the internalisation of negotiating procedures and mechanisms in relation to their issues and priorities as individual Members or regions or groups of Members.
- (b) In this regard and with respect to capacity building for decisions on negotiations to be taken at the 5<sup>th</sup> Session of the Ministerial Conference, capacity building shall not take the form of persuading developing country officials on positions they should take particularly on the Singapore issues of investment, competition, transparency in government procurement and trade facilitation. Rather, it should aim for the in-depth internalisation of issues and all options relating to investment, competition, transparency in government procurement, trade facilitation and other related issues.
10. With respect to new obligations proposed in negotiations, the general guidelines shall be that existing domestic laws shall not need to undergo major changes. Where any major changes would be required, new obligations will be considered only if the Members already have in place the relevantly skilled people, the institutional framework and financial resources to undertake the required changes.

## ANNEX II

### Criteria in the Formulation of Seminar and Workshop Programmes

1. Seminars shall target the different knowledge levels on WTO agreements of government officials in and issues of concern for developing and least country Members, and specific elements of WTO work programmes. It is understood that new officials or officials unfamiliar with the WTO Agreement may benefit from introductory courses and seminars. And it is understood that officials that have been working on WTO matters for a while and who may be the government negotiators, will need seminars that explore issues and options for country positions at some length and with some detail, rather than generalisations or introductions.
2. Seminars shall have a degree of continuity, through follow up seminars and continuous access to current literature. This continuity shall not be in the form of mere repetition of the seminars previously given, but of building upon previous seminars into deeper discourses and research coursework. So, the preparation of seminars for a capacity building programme should have a long-term framework, with projected results or products in terms of trained officials and levels of training to be attained over a given framework of time. It would be upon governments and their officials to try to ensure that the officials benefit from this continuity.
3. Seminars shall normally be situated or localised in the territories of Members and regions, in addition to those that are given at the WTO secretariat. When situated in territories of Members and regions, they shall be directly linked into the curricula of institutions of high learning particularly at university level. Some seminars should be given as part of the courses at these institutions of learning. University teaching staff should be involved as trainers on seminars given to government officials and civil society. And the seminars should be scheduled within or make part of the long-term capacity building programmes within the country or region.
4. Seminars and workshops shall include the specific subject of special and differential treatment, to assist in ensuring that the provisions are utilised to the maximum.

## **ANNEX III**

### **Mandatory Special and Differential Treatment Obligations**

#### **Provisions aimed at increasing the trade opportunities of developing country Members**

- GATT 1994: Article XXXVII:1(a) and 4; Article XXXVIII:2(c) and 2(e).
- Agreement on Textiles and Clothing: Article 2.18.
- GATS: Article IV:1 and IV:2

#### **Provisions under which WTO members should safeguard the interests of developing country Members**

- GATT 1994: Article XXXVI:9; Article XXXVII:1(b) and (c), 2(a) and (b)(i), 3(a)-(c), and 5; Article XXXVIII:1, 2(a), (b), (d), (f).
- The Decision on Measures Concerning the Possible Negative Effects of the Reform Programme on Least-Developed and Net Food-Importing Developing country Members: Paragraphs 3(i)-(ii); Paragraph 4; and Paragraph 6.
- Application of SPS Measures: Article 10.1; Annex B, paragraph 2; Annex B, paragraph 9.
- Textiles and Clothing: Article 6.6(b), 6.6(c) and Annex, paragraph 3(a).
- Technical Barriers to Trade: Article 10.6; Article 12.1; Article 12.2; Article 12.3; Article 12.5; Article 12.8; Article 12.9; Article 12.10.
- Implementation of Article VI of GATT 1994: Article 15.
- Implementation of Article VII of GATT 1994: Annex III.5.
- Decision on Texts Relating to Minimum Values and Imports by Sole Agents, Sole Distributors, and Sole Concessionaires: Text 1
- Import Licensing Procedures: Article 1.2.
- Subsidies and Countervailing Measures: Article 27.15.
- Agreement on Safeguards: Article 9.1.
- Understanding on Rules and Procedures Governing the Settlement of Disputes: Article 8.10; Article 12.10; Article 12.11; Article 21.7; Article 21.8.
- GATS: Article XV.1 and Article XIX.3.

#### **Technical Assistance**

- The Decision on Measures Concerning the Possible Negative Effects of the Reform Programme on Least-Developed and Net Food-Importing Developing country Members: Paragraph 3 (iii).
- Application of SPS Measures: Article 9.1 and 9.2
- Technical Barriers to Trade: Article 11.1; Article 11.2; Article 11.3; Article 11.4; Article 11.5; Article 11.6; Article 11.7; and Article 12.7.
- Implementation of Article VII of GATT 1994: Article 20.3.
- GATS: Article XXV:2 and Paragraph 6(c) of the Annex on telecommunications.
- TRIPS: Article 67.
- Understanding on Rules and Procedures Governing the Settlement of Disputes: Article 27.2

#### **Least-developed country Members**

##### **PROVISIONS AIMED AT INCREASING TRADE OPPORTUNITIES:**

- The 1999 Decision on waiver for preferential tariff treatment of LDCs
- TRIPS Agreement: Article 66.2.

Decision on Measures in Favour of Least-Developed country Members: paragraph 2(ii) (second sentence) and paragraph 3.

PROVISIONS AIMED AT SAFEGUARDING THE INTERESTS OF LEAST-DEVELOPED COUNTRY MEMBERS:

- Agreement on Agriculture: Article 16.1 and 16.2. (Least-developed and Net Food-Importing Developing country Members).
- Agreement on Textiles and Clothing: Article 6.6(a).
- GATS: Article IV:3 and XIX:3.
- Understanding on Rules and Procedures Governing the Settlement of Disputes: Article 24.1 and 24.2
- Decision on Measures in Favour of Least-Developed country Members: paragraphs, 2(i), and 2(iv).

TECHNICAL ASSISTANCE:

- Technical Barriers to Trade: Article 11.8
- Decision on Measures in Favour of Least-Developed country Members: Paragraph 2(v).



## **ANNEX IV**

### **Currently Non Mandatory Special and Differential Treatment Obligations**

#### **Provisions aimed at increasing the trade opportunities of developing country Members**

- GATT 1994: Article XXXVI.2-5.
- The Enabling Clause: para 2(a).
- Agreement on Agriculture: Preamble.
- GATS: Preamble.

#### **Provisions under which WTO members should safeguard the interests of developing country Members**

- GATT 1994: Article XXXVI:6 and 7.
- Application of SPS Measures: Article 10.2 and Article 10.4.
- Decision on Texts Relating to Minimum Values and Imports by Sole Agents, Sole Distributors, and Sole Concessionaires: Text 2.
- Import Licensing Procedures: Article 3.5 (a)(iv); Article 3.5 (j).
- Subsidies and Countervailing Measures: Article 27.1
- Understanding on Rules and Procedures Governing the Settlement of Disputes: Article 4.10; Article 21.2
- GATS: Preamble; Article XII.1

#### **Least-developed country Members**

##### **PROVISIONS AIMED AT INCREASING TRADE OPPORTUNITIES:**

- Enabling Clause: paragraph 2d.
- Agreement on Textiles and Clothing: Footnote to Article 1.2
- Decision on Measures in Favour of Least-Developed country Members: paragraph 2(ii) (first sentence).

##### **PROVISIONS AIMED AT SAFEGUARDING THE INTERESTS OF LEAST-DEVELOPED COUNTRY MEMBERS:**

- Decision on Measures in Favour of Least-Developed country Members: paragraph 2(iii).
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