

**Committee on Trade and Development  
Special Session**

**SPECIAL SESSION OF THE COMMITTEE ON  
TRADE AND DEVELOPMENT**

Report by the Chairman, Ambassador Thawatchai Sophastienphong (Thailand),  
to the Trade Negotiations Committee

**I. INTRODUCTION**

At the Hong Kong Ministerial Conference, Ministers mandated the Special Session of the Committee on Trade and Development (Special Session) to:

- expeditiously complete the review of all the outstanding Agreement-specific proposals and report to the General Council, with clear recommendations for a decision;
- resume work on all other outstanding issues, including on the cross-cutting issues, the Monitoring Mechanism and the incorporation of special and differential treatment (S&D) into the architecture of WTO rules and report on a regular basis to the General Council; and
- continue to coordinate its efforts with those bodies to which the 38 Category II proposals had been referred, which in turn had been instructed to complete consideration of these proposals and report with clear recommendations for a decision to the General Council.

**II. STATE OF PLAY**

Since the Hong Kong Ministerial Conference, the Special Session has focused on all elements of its work programme in line with the mandate contained in the Hong Kong Ministerial Declaration.

Agreement-specific Proposals

It may be recalled that at the Cancún Ministerial Conference, Members had reached an in-principle agreement on 28 Agreement-specific proposals.<sup>1</sup> These proposals, which are yet to be adopted are contained in Annex I to this report. Subsequently, at the Hong Kong Ministerial Conference five decisions were adopted in favour of the LDCs. As a result, there remained 16 Agreement-specific proposals for consideration in the Special Session.

Members have since focused mainly on seven of these proposals.<sup>2</sup> These include one proposal on Article 10.2 of the Agreement on Sanitary and Phytosanitary Measures (SPS Agreement), two proposals on Article 10.3 of the SPS Agreement and three proposals on Article 3.5 of the Agreement on Import Licensing. At the request of the proponents, work on the proposal relating to Article XVIII of the GATT has been put on hold while they consider revising the language on the

---

<sup>1</sup> Annex F of WT/MIN(05)/DEC.

<sup>2</sup> The remaining nine Agreement-specific proposals have been set aside for the time being and will only be taken up after Members put forward new ideas or alternate language.

proposal. Text-based discussions on the other six proposals have resulted in some progress being made and although we are not quite there, Members have definitely moved closer to reaching an agreement.

On the proposal relating to Article 10.2 of the SPS Agreement, some Members still remain concerned with the notion of agreeing to mandatory time-frames for developing countries to comply with their SPS obligations. This is an issue which has to be resolved. On the two proposals relating to Article 10.3 of the SPS Agreement, Members have been able to narrow their differences. New ideas and language put forward have enabled me to put together a revised text on these proposals. However, while there are still some concerns on the implications of certain words in the text, I do believe that we are not too far from convergence. The proposals relating to Article 3.5 of the Agreement on Import Licensing Procedures have enjoyed a greater degree of convergence with only one outstanding issue remaining in brackets. However, some clarifications have been sought on the intent of the proposal and further discussions will be required before the text can be agreed to. The language presently on the table and being considered by Members on these six proposals, is contained in Annex II to this report.

On the Category II Agreement-specific proposals, the Special Session has continued to coordinate its efforts with the bodies to which these proposals have been referred. The Chairs of the different bodies to which the Category II proposals have been referred have continued to provide regular updates to the Special Session on progress made in their respective areas. It has been brought to my attention that issues raised in a number of the proposals form an integral part of the ongoing negotiations. On others, progress has been somewhat elusive and this is an area where we need to further focus our efforts.

#### Duty-free Quota-free Market Access Decision

The LDCs have been pursuing issues related to the implementation of the duty-free quota-free (DFQF) market access decision in the Committee on Agriculture and the Negotiating Group on Non-Agricultural Market Access (NAMA). Consequently, both the draft modalities on Agriculture and NAMA include a section which seeks to ensure effective implementation of the Decision. Additionally, the LDCs have been addressing the issue of rules of origin bilaterally. I have periodically provided the LDCs with an opportunity to express their views and share the developments on issues related to the implementation of the Decision with other Members in the Special Session. In addition, the Regular Session of the Committee on Trade and Development has been carrying out a review of the steps that have been taken to implement the DFQF Decision. In this regard, a number of Members have provided information on the steps they are taking or have already taken to provide DFQF market access to goods originating from the LDCs.<sup>3</sup>

#### Monitoring Mechanism

Members have been considering the possible elements of a Monitoring Mechanism. Discussions have been based on a non-paper, a copy of which is contained in Annex III to this report. On the whole, the deliberations have been constructive and we have moved forward on a number of issues. In February, some Members tabled language which added certain elements to the text being considered. Their submission proposes the inclusion of a preamble and suggests that the Mechanism monitor the implementation and effectiveness of the proposals agreed to in principle at Cancún, as well as the proposals adopted in favour of the LDCs at the Hong Kong Ministerial Conference. In addition, the submission calls for the Mechanism to keep the work on the Agreement-specific proposals in the Special Session and other WTO bodies under review. Members are yet to engage in a substantive discussion on this submission.

---

<sup>3</sup> WT/COMTD/M/57-59, 61-65, 67-69.

### **III. ROAD MAP**

The coming months will be very important. The Special Session will need to continue to work on all elements of its work programme in line with the mandate contained in the Hong Kong Ministerial Declaration and to make recommendations for a decision to the General Council, as mandated, as soon as possible.

It is my view that on the Agreement specific proposals currently under consideration in the Special Session, Members will need to bridge their remaining differences and come up with specific recommendations for a decision. This will entail completing work on the proposals which Members have been considering over the past months. It is my intention to continue work on these proposals after the summer break on the basis of the language contained in Annex II. As for the other proposals, including that relating to Article XVIII of the GATT, I will take them up only after revised language has been tabled by the proponents.

It is important that progress is made on the Category II proposals, especially those which have not been addressed as part of the ongoing negotiations. I will continue to coordinate my efforts with those of the Chairs of the bodies addressing these proposals, in order to help expedite progress on these proposals. It is important that the different bodies come up with recommendations to the General Council for a decision at the earliest. I will continue working with the Chairs especially in relation to those proposals which may not get addressed as part of the ongoing negotiations in the different areas.

The Special Session will also continue with its work on the Monitoring Mechanism with the objective of reaching an agreement on the Mechanism's functions, structure and terms of reference. I intend to work on the basis of the non-paper contained in Annex III, as well submissions made by Members, with a view to further fine tuning the elements of the Monitoring Mechanism.

---

## ANNEX I

### **GATT 1994 - Article XVIII:C**

"The Ministerial Conference instructs the Council on Trade in Goods to develop and adopt procedures for recourse to Article XVIII:C. The concerns raised by developing countries, especially the least-developed countries, including those related to the suspension of concessions or other obligations under Article XVIII:C, shall be addressed."

### **GATT 1994 - Article XXXVI**

"The Ministerial Conference agrees that the Committee on Trade and Development shall annually review the implementation of Article XXXVI of GATT 1994, and report to the General Council with concrete recommendations, as agreed, no later than the last General Council of each year."

### **GATT 1994 - Article XXXVII**

"The Ministerial Conference agrees that any Member may initiate discussions in the Committee on Trade and Development on the basis of Article XXXVII and decides that a Member shall, upon request, provide a detailed explanation to matters raised in regard to the provisions under paragraph 1, with a view to reaching a solution that is satisfactory to all Members concerned."

### **GATT 1994 - Article XXXVIII**

"The Ministerial Conference instructs the Director-General to pursue and conclude cooperation arrangements as may be necessary to further the objectives set forth in Article XXXVI of the GATT 1994. The Ministerial Conference further instructs the Committee on Trade and Development to receive studies and reports from relevant international agencies and organizations that may assist Members in analyzing the development plans and policies of individual developing and least-developed country Members, export potential and market prospects over the short and medium terms, measures that could be taken in the WTO framework and by other international agencies and organizations as well as the assistance required by developing and least-developed country Members to help achieve their respective development goals."

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

"While acknowledging that the provisions of Article XVII of the GATT 1994 apply to all Members, Members recognize that state trading enterprises may have a significant role to play in promoting and protecting public policy objectives in developing and least-developed country Members."

### **Understanding on Balance-of-Payments Provisions of the GATT 1994 –Paragraph 8**

"The Ministerial Conference mandates the Committee on Balance-of-Payments Restrictions to examine ways and means of simplifying the administrative requirements within the full consultation procedures."

### **Enabling Clause**

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

### **Agreement on Agriculture – Article 15.2**

"The Ministerial Conference confirms that least-developed country Members remain exempt from reduction commitments, as provided in Article 15.2, unless decided otherwise by consensus."

### **PSI Agreement - Article 3.3**

"(a) The Ministerial Conference agrees that technical assistance for purposes of the Agreement on Preshipment Inspection shall address the concerns of developing and least-developed country Members relating among others to:

(i) training customs and revenue officials to promote and achieve the objectives of the Agreement on Preshipment Inspection through the activities defined in Article 1.3 of the Agreement, in order to ensure the proper inspection of consignments to be exported to the user Member, and the prevention of false declaration, wrong classification and any fraud;

(ii) regulation of preshipment entities.

(b) The Ministerial Conference further agrees that customs authorities of Members shall, in accordance with paragraph 8.3 of the Decision on Implementation-Related Issues and Concerns, closely cooperate 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."

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

"In regard to preferential rules of origin under the Common Declaration in Annex II to the Agreement, the Ministerial Conference 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 Ministerial Conference 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 Organization 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."

### **Agreement on Import Licensing Procedures – Article 1.2**

"It is understood that the requirement to take into account the "development purposes and financial and trade needs of developing country Members" in Article 1.2 of the Agreement means that the burden of the administrative procedures used to implement import licensing regimes shall be further reduced in order to facilitate trade of developing country Members and minimize possible adverse effects to their trade, including by making import licensing procedures as expeditious as possible."

### **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."

### **GATS - Article IV.3**

"The Ministerial Conference 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."

### **GATS – Article XXV**

"The Ministerial Conference 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."

### **GATS, Annex on Telecommunications – Paragraph 6**

"The Ministerial Conference 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."

### **TRIPS Agreement – Article 66.2**

"Members, having regard to Article 66.2 of the Agreement on Trade-Related Aspects of Intellectual Property Rights, and having regard to the decision of the TRIPS Council of 19 February 2003, contained in document IP/C/28, reaffirm that this decision be expeditiously implemented in a way that ensures the monitoring and full implementation of the obligations in Article 66.2."

### **TRIPS Agreement – Article 67**

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

### **TRIPS Agreement – Article 70.9**

"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. Patent rights are set out in Article 28 of the TRIPS Agreement. Exclusive marketing rights are not the same as patent rights. Members have the right to define exclusive marketing rights, so long as the definition accords with the meaning of the term in the TRIPS Agreement as interpreted under the rules of public international law. There is no requirement to grant exclusive marketing rights unless marketing approval is granted in that WTO Member for which exclusive marketing rights is sought."

### **Understanding on Rules and Procedures Governing the Settlement of Disputes – Article 8.10**

"Pursuant to Article 8.10 of the DSU, the Ministerial Conference 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."

### **Decision on Measures in Favour of Least-Developed Countries – Paragraph 2 (v)**

"The Ministerial Conference 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 Ministerial Conference also instructs the Sub-Committee on 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."

### **Rules Relating to Notification Procedures**

"Recognizing the practical difficulties faced by least-developed country Members in abiding fully by their notification obligations, the Ministerial Conference 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."

### **Enabling Clause**

"The Ministerial Conference agrees that in formulating schemes under paragraph 2(a), (b) and (c) of the Enabling Clause, and in furtherance of paragraph 3 thereof, developed-country Members will take into account, among other factors, the needs of developing and least-developed country Members and consult with them with a view to ensuring that their products of export interest are accorded meaningful market access. The Committee on Trade and Development will annually review the progress made in this regard and report to the General Council with recommendations, if any."

### **Review of Progress on Market Access for Least-Developed Countries**

"We recall paragraph 2(d) of the Decision on Differential and More Favourable Treatment, Reciprocity and Fuller Participation of Developing Countries, and Members' commitment to the objective of duty-free, quota-free market access for products originating from least-developed countries, as contained in paragraph 42 of the Doha Ministerial Declaration. The Ministerial Conference agrees to review the progress made in providing access to the least-developed countries on the above basis."

### **Decision on Measures in Favour of Least-Developed Countries – Paragraph 2 (ii)**

"Without prejudice to the binding commitments that may result from work under Paragraphs 13, 16 and 42 of the Doha Ministerial Declaration, and building upon our commitment in the Doha Ministerial Declaration, Members shall continue to expeditiously pursue the objective of duty-free and quota-free market access for products originating from [all] least-developed countries in a manner that ensures security and predictability. We urge Members to adopt and implement rules of origin so as to facilitate exports from least-developed countries."

### **Decision on Measures in Favour of Least-Developed Countries – Paragraph 2**

"We agree that:

(a) Taking into account their development needs, least-developed countries, following application, shall in principle be eligible for extensions of their transition periods; where relevant procedural provisions exist in the WTO agreements, those provisions shall apply.

(b) Technical assistance to least-developed countries shall aim among other things to remove their supply-side constraints which limit their ability to benefit from the WTO Agreements, including market access opportunities and development of domestic productivity. In this context, the Ministerial Conference also instructs the Director-General to consult other institutions on programmes/assistance related to supply-side constraints in least-developed country Members to determine what additional technical assistance may be made available."

### **Decision on Measures in Favour of Least-Developed Countries – Market Opportunities Enabling Clause– Paragraph 3(b)**

"Accepting that extension of differential and more favourable treatment to developing countries should not constitute an impediment to the reduction or elimination of tariffs on an MFN basis, but recognizing that as WTO Members pursue improved MFN tariff liberalization some Members may have concerns about adjusting to the loss of preferences, we agree that this issue be considered, in close coordination with other relevant international organizations, with a view to identifying possible ways, including targeted assistance programmes, by which LDCs should be assisted."

### **GATT 1994 – Article XVIII:B**

"In determining the need for taking measures under Article XVIII:B, full consideration shall be given to the impact of the volatility of short-term financial flows on the level of external reserves or surpluses of Members."



## ANNEX II

### Agreement-specific Proposals

#### **(24 - 25) SPS Agreement – Article 10.3**

The General Council agrees that with a view to ensuring that developing country Members are able to comply with the provisions of the SPS Agreement, they shall be eligible for specified, time-limited exceptions in whole, or in part, from the obligations under this Agreement. Any developing country with difficulties to comply with the provisions of the SPS Agreement may request such exceptions to the SPS Committee. In this regard, the SPS Committee shall give [positive and] expeditious consideration to such a request and take a decision [as appropriate] no later than at the third meeting at which the request is considered and in any case within 12 months, on any request made by such Members under Article 10.3 of the Agreement, taking into account their individual financial, trade and development needs. Furthermore, Members shall facilitate the provision of technical assistance either bilaterally or through the appropriate international organisations, if requested by a developing country Member in relation to its request for a specific time-limited exception.

#### **(28-30) Agreement on Import Licensing Procedures – Article 3.5**

While all Members shall endeavour to provide import statistics with respect to products subject to import licensing for the purpose of enhanced transparency, the General Council agrees that for purposes of subparagraph (a)(iv) of Article 3.5, developing country Members shall not be expected to do so in cases where this will cause them additional administrative or financial burden beyond their capacity.

The General Council further agrees that:

- (a) Article 3.5(j) of the Agreement implies [mandatory and] non-discretionary obligations on the part of the Members; and
- (b) In the allocation of licenses, special consideration shall be accorded to existing and new importers of products originating in developing, and in particular least-developed country Members.

#### **79) Proposal by India on Article 10.2 of the SPS Agreement**

Where the appropriate level of sanitary or phytosanitary protection allows scope for the phased introduction of new sanitary or phytosanitary measures, longer time-frames for compliance, not less than six months, shall be accorded, upon request, on products of interest to developing country Members so as to maintain opportunities for their exports.

## ANNEX III

### The Monitoring Mechanism

#### Structure

- A simple, practical and efficient mechanism, that complements other existing, as well as proposed monitoring mechanisms.
- Allows for a regular high-level review of [issues related to] special and differential treatment (S&D) in the WTO, aimed at improving the implementation and effectiveness of S&D provisions.
- Allows also for a bottom-up, horizontal and transparent process that would enable, *inter alia*, information sharing and compliance monitoring.
- Gives sufficient visibility to the importance of S&D issues in the WTO.
- To begin with, it will function at two broad levels:
  - At the first level, the monitoring process will take place in [dedicated sessions] [Sub-Committee] of the CTD. The review would take place on the basis of both submissions made directly to the [CTD] [Sub-Committee] by Members, as well as on the basis of reports received from the other WTO bodies, to which submissions can also be made.
  - At the second level, the General Council would review and take decisions, [as appropriate], on the basis of recommendations made by the [CTD] [Sub-Committee].
- The structure will be reviewed in the future, the first review taking place after three years, and thereafter when necessary, taking into account the actual functioning of the Mechanism, and evolving circumstances.

#### Scope

- Monitor the implementation and effectiveness of S&D provisions in the existing agreements in line with paragraph 44 of the Doha Ministerial Declaration.
  - Monitor the implementation and effectiveness of S&D provisions that will result from the Doha Round of negotiations.
  - [Provide a forum at which Members can raise any other issues related to the implementation and effectiveness of S&D provisions.]
-