# WORLD TRADE ORGANIZATION

RESTRICTED

**TN/CTD/M/3**
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**Committee on Trade and Development**
**Third Special Session**

## NOTE ON THE MEETING OF 16 MAY 2002

*Chairman: H.E. Mr Ransford Smith (Jamaica)*

Subjects discussed:



### A. ADOPTION OF THE AGENDA

1. The Chairman noted that the draft agenda for the meeting was contained in airgram WTO/AIR/1787 of 1 May 2002. This draft agenda had been prepared in accordance with the agreement to facilitate structured discussions by focusing on pre-specified agreements and decisions. The Committee had requested to be kept informed of any issues related to special and differential treatment (S&D) within the other WTO bodies and the Chairman expressed his intention, under Other Business, to draw the attention of delegations to the responses received.

B. SPECIAL AND DIFFERENTIAL TREATMENT

**1. Identification of Provisions Members Consider Should be Made Mandatory**

2. The Chairman noted that, as agreed at the last meeting, he had sent a fax to all Members on 15 April 2002 outlining the allocation of agreements and decisions to be addressed at the current meeting and that of 14 June 2002. The Committee received two submissions from Members in response to that fax. Document TN/CTD/W/1 reproduces the submission by the delegations of Cuba, Dominican Republic, Honduras, India, Indonesia, Kenya, Pakistan, Sri Lanka, Tanzania and Zimbabwe. Document TN/CTD/W/2 was received from the same ten delegations and the delegations of Egypt and Mauritius. These proposals were circulated to Members before the meeting. He also indicated that two other sets of submissions had recently been received, one from Kenya on behalf of the African group of countries and the other from Uganda on behalf of the least-developed countries (LDCs). These submissions were available in English only. They were circulated prior to the meeting and their sponsors were requested to introduce them. The delegation of India had introduced several proposals at the previous meeting and it was the Chairman's understanding that the delegation of India wished these proposals to remain on the table. Proposals from the African Group and the Group of LDCs, received one day before the meeting, were also to be introduced. Given that delegations had only recently received these documents the Chairman suggested that the Committee agree upon an appropriate time at which to consider them substantively.

3. He continued by saying that, before moving to the introduction of proposals, delegations might recall that the background documents in the WT/COMTD/W/77 document series had been provided to delegations to facilitate discussion on the issue of special and differential treatment and to assist Members in their preparation of inputs. Members in the process of preparing submissions, as clarified at the last meeting, were at liberty to draw and expand upon the information provided in these documents. It was also anticipated that Members would utilize those documents as they saw appropriate in their discussions. The deliberations would not, however, be based upon these background documents. They would be based upon the submissions received from Members. It was noted that Agenda item B contains three sub-components. B(I) relates to the identification of those provisions which Members consider should be mandatory. Agenda item B(II) is a consideration of Members' inputs on the legal and practical implications of making non-mandatory provisions mandatory. Agenda item B(III) concerns the identification of how provisions might be made more precise, effective and operational. The Chairman recommended that the proposals be taken up in the order of the agreements and decisions previously circulated. He emphasized that it was not his intention to deter Members from submitting subsequent comments or proposals on these agreements and decisions. Given the time constraints upon the Committee he did, however, stress the need for efficiency. As already indicated, written submissions had been circulated to all Members. These submissions relate to the four agreements dealing with Sanitary and Phytosanitary Measures, Technical Barriers to Trade, Subsidies and Countervailing Measures and the Understanding on Rules and Procedures Governing the Settlement of Disputes.

4. The Chairman asked that proposals relating to the Agreement on Sanitary and Phytosanitary Measures be introduced. These proposals are contained in document TN/CTD/W/2, pages 3-5.

5. The representative of India wished briefly to introduce the entire document. Representatives of other delegations would then introduce its specific proposals. In the run up to the Seattle Ministerial Conference, a group of developing countries had placed before the General Council the need to examine the S&D provisions with a view to making them effective, mandatory, precise and operational. The reason was that many Members felt that they did not benefit from the operation of these provisions to the extent they had expected once these provisions had been incorporated into the various WTO Agreements. In the run up to the Doha Ministerial Conference issues relating to the S&D provisions were pursued in various bodies. The CTD also decided to handle the issue of S&D

provisions. Since sufficient progress on S&D had not been made in the CTD, the matter was further discussed at the Doha Ministerial Conference and a few decisions were then taken. The Doha Ministerial Declaration noted the concerns expressed regarding the operation of S&D provisions in addressing specific constraints faced by developing countries, particularly the LDCs, and reaffirmed that the provisions for S&D treatment were an integral part of the WTO Agreements. Ministers had agreed that all S&D provisions shall be reviewed with a view to strengthening them and making them more precise, effective and operational. They had endorsed the Work Programme on S&D treatment set out in the Decision on Implementation-Related Issues and Concerns contained in document WT/MIN(01)/17. That Decision instructed the CTD (a) "to identify those special and differential treatment provisions that are already mandatory in nature and those that are non-binding in character, to consider the legal and practical implications for developed and developing Members of converting special and differential treatment measures into mandatory provisions, to identify those that Members consider should be made mandatory, and to report to the General Council with clear recommendations for a decision by July 2002", and (b) "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". Pursuant to the above decisions at the Doha Ministerial Conference, the TNC gave the CTD Special Session the task of looking into the S&D provisions with a view to achieving the objectives outlined in the Doha Ministerial Declaration. Since then, the CTD Special Session has been examining the S&D provisions with a view to making them mandatory in cases where they were non-mandatory and to make them more precise, effective and operational than at present. In their submission his delegation, in cooperation with the delegations of Cuba, Dominican Republic, Egypt, Honduras, Indonesia, Kenya, Mauritius, Pakistan, Sri Lanka, Tanzania and Zimbabwe, were putting forward proposals for making S&D provisions, as they exist in some of the agreements, more precise, effective and operational. It was hoped that they would thereby be strengthened. The submission was an initial contribution and his and other delegations might submit additional proposals in due course. The contribution should be seen as aimed at facilitating the deliberations of the CTD Special Session. The co-sponsors reserved their right to modify or amend any of the proposals.

6. The representative of Kenya, on behalf of the African Group, drew the Committee's attention to the African Group proposal on S&D. This initial proposal from the African Group was circulated at the meeting. It would be circulated as a formal WTO document as soon as possible. The African Group would be submitting an additional comprehensive proposal on each and every agreement as listed in the Chairman's communication circulated on 15 April 2002. Work in the African Group on these additional proposals was at an advanced stage and would soon be completed. The present proposal, however, focussed on two main areas. The first was the African Group's views on the essence of S&D and the second its suggestions for a framework within which to organize and conduct the exercise. It was the view of the African Group that S&D provisions should aim to enable developing and LDC Member countries to address their developmental needs in the context of the WTO multilateral trading system. He therefore emphasized that the work should ensure the effective implementation of S&D provisions in keeping with the spirit of the Doha Development Agenda which in this regard had given a clear and broad mandate. The compilation by the Secretariat of all S&D provisions had been one important step forward. The African Group urged the Committee to adopt a clear framework for fully executing its broad mandate. The Committee was required to consider how to strengthen the S&D provisions and how to make them more effective. It was required to find additional measures for that purpose, where necessary, and to consider how to include S&D provisions in the architecture of the WTO Agreement in the context of the Doha Work Programme. While each agreement would be considered provision by provision, it was equally important to bear in mind that the CTD mandate required a broad approach that would facilitate the adoption of a comprehensive solution that would make all S&D provisions fully operational. In the African Group proposal, the African delegations suggested the first four elements of a framework in that regard.

There should be clear principles and objectives to guide the operation of all S&D provisions and an objective approach to all specific cross cutting issues such as technical cooperation and capacity-building as well as transition periods. Effective monitoring and review mechanisms had to be established within the Committee and the General Council. These mechanisms must function on the basis of clear targets and measurable performance criteria that could be regularly evaluated. The African Group would be happy to work with all delegations to develop a suitable framework. The African Group would also welcome substantive comments and discussion on its proposal and it would be happy to work constructively with the other delegations towards concluding the mandate given to the Special Session both expeditiously and comprehensively.

7. The representative of Uganda wished to introduce the proposal submitted by the LDC Group of countries. He invited all Members to ensure that the enterprise mandated by the Ministers at the Doha Ministerial Conference was finalized in a satisfactory and comprehensive manner. The LDCs attached great importance to the mandate of the CTD to strengthen and make effective and operational all the S&D provisions in all WTO Agreements and decisions. It represented an important opportunity to address concerns raised by the LDCs about certain imbalances and inequities in the WTO Agreements. The CTD exercise should aim, among other things, to find effective solutions to bottlenecks and other constraints to the capacity of LDCs to benefit from the multilateral trading system. Against that background the Group of LDCs presented a proposal that focused on the need for a comprehensive framework to make all S&D provisions fully operational and to incorporate them into the architecture of the WTO Agreements. The direct promotion of economic growth had to be the principal function of S&D. In their proposal, the African Group articulated the need to include comprehensive development provisions in all WTO Agreements, to adopt clear development benchmarks, to adopt special customs and standards procedures that would facilitate the growth of LDC exports, and to set up an instrument to make fully operational the commitments on providing duty-free and quota-free market access for products originating in the LDCs. The proposal was preliminary in nature and the LDC Group reserved its right to make additional proposals or modifications. In view of the concerns of the LDCs and the need for a framework approach, as put forward in the proposal, it was suggested that the Committee hold a Special Session devoted exclusively, or mainly, to the consideration and adoption of precise goals within the context of the multilateral trading system and to the framework elements necessary to strengthen S&D provisions to be incorporated into the architecture of WTO agreements . The LDC Group supported the approach, which included a substantive discussion on cross-cutting issues, proposed by the African Group. A full discussion of these proposals had to be broad and go beyond the conversion of "should" and "may" to "shall". The LDC Group agreed with statements that had already been made that such a conversion, while helpful, would not constitute a comprehensive and satisfactory solution to the concerns over the effectiveness and operation of S&D provisions. All S&D provisions should nevertheless be made binding. That a provision was binding meant that it was binding on individual Members and collectively on the WTO Membership. Binding meant that provisions conferring certain rights on LDCs and developing countries should be fully respected by all Members. While not directive in nature, the provisions should be construed to give LDCs specific rights that could not be questioned or undermined. The implications of strengthening S&D provisions should be viewed and considered in the context of addressing certain imbalances, particularly those affecting the LDCs, and the subsequent benefits available to all Members, particularly the LDCs. The LDC Group welcomed comments and discussion on its proposal.

8. The representative of Cuba said that the S&D provisions had been recognized since the creation of the Charter of Havana. They included a number of decisions and ministerial declarations as well as understandings which came from the subsequent rounds of negotiations, including Part IV of GATT 1994. The S&D provisions contained in the WTO Agreements should therefore not be interpreted as a series of concessions made to developing countries. The objectives included in the preamble to the Doha Ministerial Declaration were clear. One of these, as set out by the WTO Members, was to realize the greater participation of developing countries in international trade. So

S&D was a right which developing countries had acquired in order to improve their effective participation in the multilateral trade system. The provisions on S&D should therefore be considered as a bridge between the potential benefits to be derived from the WTO Agreements and the present level of LDC development. It was the fact that developing countries could not benefit from most of the objectives of the multilateral trading system that had motivated the introduction of the S&D provisions into the WTO Agreements. Many of them were not applied, however, as they were neither clear, binding, nor straightforward to implement. In parallel with a necessary increase in market access for products of export interest to developing countries, revision of the S&D provisions is, for these reasons one of the priorities for developing countries. The reality is that many developing countries remain dependent on a limited number of basic products for which world prices are in constant decline. These exports then face additional restrictions: sanitary and phytosanitary measures, technical barriers to trade, and anti-dumping measures, for example, measures which often fail to take into account provisions adopted in various WTO Agreements for their reduction or elimination. So it is necessary for a revision of S&D provisions to take into account the four objectives for the work on S&D provisions as stated at the Doha Ministerial Conference, i.e. strengthening them when required and making them precise, more effective and operational. Finally, her delegation considered that this work would not be completed if a follow-up mechanism were not created. Such a mechanism should ensure the effective implementation of all provisions and identify any difficulties arising from such implementation.

9. The representative of Pakistan said that at the Second Special Session of the CTD, held on 9 April 2002, Members had been requested to submit their written statements on how to improve S&D provisions. According to that decision, such proposals by Members must contain (a) an identification of the provisions that were to be made mandatory (b) indications of how provisions might be made more effective and operational and (c) the legal and practical implications of making provisions mandatory. The purpose of the exercise was to fulfill the mandate given at the Doha Ministerial Conference. If that objective was to be achieved, certain parameters for a quality test had to be identified to make it possible to analyze the provisions accordingly. One such parameter could be the objective sought when the provision had been adopted. It would then be possible to assess if the provision corresponded to the initial motivation for including it in the agreements. Second, the action required to meet the objective had to considered. Third, the party responsible for that action had to be identified. Fourth, it would be helpful to identify the beneficiaries of the action. Fifth, it would also be important to consider the time-frame for the action. This would respond to the question of which time-frame should be adopted in order for the beneficiaries actually to benefit from it. Sixth, and more importantly, an effective monitoring and evaluation mechanism should be established. Once the five above-mentioned elements had been dealt with, it would be important to establish such a monitoring mechanism to ensure that the action and elements identified were acted upon. An effective monitoring mechanism should contain an element of compliance to see whether a provision was enforceable, and if not enforced, whether the beneficiary deprived of a certain benefit could ensure compliance by taking the responsible party to dispute settlement. The analysis based on such a quality test should enable all Members to determine whether the existing provisions were satisfactory, whether they required improvements or clarifications in language, or whether a deeper review of the agreement would be necessary.

## 2. The Agreement on Sanitary and Phytosanitary Measures

10. The Chairman noted that there were three proposals pertaining to the Agreement on Sanitary and Phytosanitary Measures. They related to Articles 9.2, 10.1, 10.3.

11. The representative of Pakistan noted that document TN/CTD/W/1 reproduced the joint communication from the delegations of Cuba, Dominican Republic, Egypt, Honduras, India, Indonesia, Kenya, Mauritius, Pakistan, Sri Lanka, Tanzania and Zimbabwe. This communication contained various proposals on a few agreements. He would introduce the proposals relating to

Articles 9.2, and 10.3 of the SPS Agreement. The proposal on Article 10.1 would be introduced by the representative of Egypt. The stringent SPS requirements imposed by importing developed countries often constrained market access for developing countries and LDCs. However, the S&D provisions in the SPS Agreement had done little to protect the interests of developing countries. The text of Article 9.2 of the SPS Agreement reads: "Where substantial investments are required in order for an exporting developing country Member to fulfil the sanitary or phytosanitary requirements of an importing Member, the latter shall consider providing such technical assistance as will permit the developing country Member to maintain and expand its market access opportunities for the product involved". The provision reads "shall consider". And the reason why developing countries wished to make that provision obligatory, in order for it to become more effective and operational, was that developing countries and LDCs experienced problems fulfilling the SPS requirements of the importing developed countries. These problems stemmed from their lack of technical, infrastructural and financial capacity which had, in turn, contributed to the restriction of market access opportunities for the products involved. The sponsors of the document had a proposal for making the provision effective, operational and mandatory. The proposal contained two elements. The first was to make the provision mandatory by removing the word "consider" which currently appeared between the words "shall" and "providing", in order for it to read: " … the latter shall provide such technical assistance as will permit the developing country Member to maintain and expand its market access opportunities for the product involved". As the current wording implied an obligation only to consider with no real obligation to provide actual technical assistance, the sponsors of the proposal wished to delete the word "consider". The second step would be to add a sentence to the provision which would state that: "If an exporting developing country member identifies specific problems of inadequate technology and infrastructure in fulfilling the sanitary or phytosanitary requirements of an importing developed country Member, the latter shall provide the former with relevant technology and technical facilities on preferential and non-commercial terms, preferably free of cost, keeping in view the development, financial and trade needs of the exporting developing country". If the above proposals were accepted, the provision would be made effective and operational. He looked forward to a positive response to this suggestion from other Members.

12. The representative of the European Communities said that his delegation had received two documents with a document symbol beginning "TN". He asked what this meant since the CTD in Special Session was not a negotiating fora. His delegation believed that it was an error of the Secretariat to provide a symbol which classified it as a negotiation document. He asked for a correction to be made and for future documents to appear with a Special Session symbol which reflected the true status of the documents. His delegation welcomed the fact, however, that the Committee had a substantive amount of material to consider. As his delegation had received the specific proposals rather late he was not in a position to give its complete view. He nevertheless observed that making the provision mandatory did have a number of implications, notably financial, which trade negotiators might not be able to control. Analysis was therefore required as to how the proposal could be incorporated into the general way in which technical assistance was provided, and in particular whether such an obligation would be practically feasible given the budget constraints and budgetary procedures in place.

13. The representative of the United States said that, as the new proposals had not been submitted within the time-frame given, her delegation was not prepared to comment on them, but only on the proposal submitted at the last meeting. In terms of the process in general, she reiterated her delegation's belief that it was important to examine the utilization of the existing provisions and to identify the specific problems encountered by developing country Members. Some of the questions considered by her delegation, and which her delegation expected other delegations likewise to consider, included the question as to what the specific impediments actually were, if there were other developmental reasons for a provision not being used, if the suggested change would encourage greater participation of Members in the rules-based trading system, and if a given proposal would have any negative impact. Her delegation would address some of those elements in responding to the

proposals made by the delegation of India. Having seen the number of proposals made and having heard a number of delegations indicate an intention to submit more comprehensive proposals, possibly relating to every single agreement, her delegation was becoming increasingly convinced that the relevant WTO bodies dealing with the specific agreements would have to be more seriously involved.

14. The representative of Canada said that, although her delegation had not had the opportunity to analyze the document which it had just received, it nevertheless had a couple of general comments to add to the discussion. First, it supported the comments from the representative of the European Communities regarding the fact that the documents had been given the "TN" symbol. This classification was incorrect and her delegation wished to see it changed. Second, her delegation was prepared to comment on the original proposals put forward by the delegation of India but would wait for the appropriate moment in the agenda. Finally, proposals coming to the Special Session of the CTD which might lead to changes in the WTO Agreements or affect the negotiations launched at the Ministerial Conference in Doha, should be taken up for consideration and action either in the appropriate negotiating fora established by the Trade Negotiations Committee (TNC) or, as appropriate, in the relevant WTO Committee. The proposal before the Committee relating to Article 9.1 of the SPS Agreement should therefore be addressed in the SPS Committee.

15. The representative of Japan said that his delegation shared the concerns expressed by the previous speakers regarding the document symbol of the document before the Committee. As his delegation had only just received this document it needed more time to reflect on it. If future proposals were submitted before the meetings with such short notice then consideration and discussion of these proposal would of course be delayed. He therefore suggested that the Chairman urge Members intending to submit proposals to do so in sufficiently good time so as to allow other delegations the necessary time properly to consider them in advance of the meetings.

16. The Chairman said that at the last meeting the Committee had agreed to set a deadline for the submission of proposals and that this deadline was 2 May 2002. Regrettably the proposals had not been submitted on time. It was therefore recognized that a difficulty had been created by limiting the time available between the circulation of the proposals and the meeting itself. With respect to the proposals submitted just one day before the meeting, he said that the Committee would have to decide on when these should be taken up for substantive consideration. He also reminded delegations that the deadline for the submission of proposals for the next meeting was 31 May 2002, two weeks before the 14 June meeting. He encouraged all delegations to try to meet the deadlines.

17. The representative of Norway said that, with respect to the proposal on Article 9.2, her delegation agreed that exports from developing countries were often adversely affected by the introduction of new SPS or TBT regulations to which they had difficulties adjusting. Her Government would continue to focus on such problems and is currently working on concrete projects to see how the problems could be alleviated. She referred, in this context, to the meeting of the Committee on Trade in Environment on 21 March 2002 at which her delegation had raised and discussed this issue. The first proposal had been with delegations for a long time and it had also been issued as a formal WTO document. Her delegation agreed, however, with the comments made by the representative of the European Communities, who spoke of financial and budgetary constraints. Committing Members to provide financial assistance through the WTO Agreements was not the correct way to solve the problem. The second part of the proposal, relating also to the TBT proposal, was too far-reaching in its consequences and so could not be implemented. Governments could not be committed to provide exporting developing country Members with the technology that would normally be in the hands of private companies in the importing developed countries. She could not understand how such a proposal could be implemented or who should judge whether, in the context of commitments, technical assistance and technology transfer were sufficient. Therefore her delegation does not believe that committing Members through the WTO Agreements to provide relevant

technology and technical facilities on preferential and non-commercial terms is not the solution to the problem. The solution was rather the consideration of other aspects of assistance and capacity-building.

18. The representative of New Zealand said that it was useful that SPS provisions received early attention in the S&D context. His Government had also experienced how important SPS measures could be in terms of facilitating trade. Like other delegations, he had only recently seen the proposals. His Government's own practice might serve as an illustration. It acknowledged the importance of technical assistance in enabling developing countries better to cope with SPS requirements in markets. It had been active in providing such technical assistance. He knew from experience in a number of Pacific Island countries that such assistance had been extremely effective and that it had offered real commercial benefits to some of the countries concerned. His Government believed that technical assistance provided on agreement between two countries, on the basis of recipient country priorities and within an overall assistance programme, was the correct approach for trade-related SPS assistance. His guess was that Pakistan might have had access to the same sort of assistance. If Pakistan and other delegations sponsoring the proposal could elaborate on their own experience, however, it might help other delegations to respond to the proposal submitted. His delegation might have the same difficulties as those outlined by the representative of Norway in considering how the proposal could be managed within the regular technical assistance framework. The proposal seemed to imply a carve-out for trade-related infrastructure assistance that his Government would find difficult to manage. Regarding the process itself he said that the Chairman had mentioned his hope that proposals would have been available for the discussion at an earlier date. He appreciated that delegations were under pressure and were working to tight deadlines. Nevertheless it was difficult to respond substantively to proposals unavailable before the meeting. One specific idea that the representative of Malaysia had raised in other meetings, which his delegation had endorsed, and which he believed Committee secretaries were considering, was to ask for papers to be circulated to delegations by e-mail if they were submitted close to the meeting for which they were intended. Such a system would have a number of advantages. First, it would alert those delegates who were not checking the website twice a day that new documents had become available. Second, it would make it easier to get these documents immediately through to capitals and so to give the officers in capitals a chance to examine them and provide their comments, even if only a limited amount of time was available to them.

19. The representative of Korea said that the two proposals from the ten delegations and the 12 delegations would facilitate discussions. His delegation had not had sufficient time to examine the proposals in depth. However his remarks applied not only to Article 9.2 but also 10.1 and 10.3 of the SPS Agreement. If it were made mandatory to provide technology transfers and technical facilities, as well as to conduct consultations with all the developing countries prior to imposing SPS regulations or other technical requirements *vis-à-vis* developing countries, the provisions might effectively be rendered unoperational with regards to developing country exports. This would not be in line with the objectives of those agreements and nor would it be in line with the mandate under which the Committee was working, which was to make the provisions more operational. Any side effects of the proposed amendments would therefore need careful examination. The conversion of non-binding provisions into binding ones amounted to an amendment of the agreements concerned. Unless a change dealt with purely procedural aspects of the agreements, this normally meant a change in an existing balance of rights and obligations among Members. So the Committee needed to take a cautious approach in fulfilling its mandate. His Government was of the view that there was a need to ensure that any alteration of any provision did not result in a substantial change in the way the agreement concerned was being implemented. By substantial change his Government meant a situation where conversion would cause such confusion as to make the provisions in question unoperational *vis-à-vis* developing countries.

20. The representative of Chile said that the proposal on Article 9.2 was important with respect to the provision of technical assistance for the application of the SPS Agreement. It was understood that in order to be implemented the proposed change to the text, making it mandatory for developed countries to provide technical assistance to developing countries , required important financial investments.

21. The representative of India said that his delegation understood the spirit in which the proposals by the African and LDCs groups had been made. His delegation also recognized and understood the reasoning behind the proposals. His delegation had to study them further but could support most of them and would participate constructively when they were taken up for discussion. At the last meeting, on 9 April, his delegation had submitted some proposals for making mandatory some of the S&D provisions which were currently non-mandatory. These proposals related to Article 3.5(j) of the Agreement on Importing Licensing Procedures, Articles 10.2 and 10.4 of the SPS Agreement, and Articles 4.1 and 21.2 of the Understanding on Rules and Procedures Governing the Settlement of Disputes. He reconfirmed that these proposals were on the table and that his delegation looked forward to substantive comments from Members. He explained that he had not sent the document to the Secretariat for circulation among Members because of a misunderstanding. Members who had been present at the last meeting would recall that copies of the document had been circulated to all the Members at that time. Some comments had been made at the meeting regarding the late submission of the document. His delegation admitted to having been somewhat late in its submission. His delegation would attempt to meet the deadline for the next meeting. He went on to address the issue as to whether or not the document should carry the "TN" symbol. His delegation's understanding, following the decisions in the TNC in January/February 2002, was that the Special Session of the CTD was a negotiating fora. According to his recollection, paragraph 12 of the Ministerial Declaration clearly stated that outstanding implementation issues were part of the negotiations. Making S&D provisions operational and effective had been on the table, a reality reflected in the relevant documents brought out at the time of the Doha Ministerial Conference. S&D had there been identified as an outstanding implementation issue and he was certain that many of the other developing countries agreed with him in that regard. S&D was a negotiating issue. That was why the decision regarding the establishment of the CTD Special Session was part of the TNC decision, thus placing it clearly within the context of negotiations. Some delegations had mentioned that some of the proposals would involve amendments to agreements. He confirmed that this was the intention. As the CTD Special Session was in negotiating mode his delegation was looking at the issue in the context in which it had been considered in the run up to the Doha Ministerial Conference. The existing WTO Agreements would be considered as part of the negotiations. The proposals on S&D formed part of these negotiations and the possibility of subsequent amendments of already existing agreements. The Secretariat identified the authoritative interpretation of the existing provisions as an alternative way of proceeding. Both approaches were possible. His delegation looked forward to considering the approach favoured among a majority of Members.

22. Mr Patrick Low, Director, Development and Economic Research Division said that the symbol used on the documents for the Special Session was intended to reflect the fact that the CTD Special Session had been established by the TNC. It did not intend to prejudge the status of the Special Session with respect to whether or not it was a negotiating body. The Secretariat needed more guidance on which symbol to choose if it were going to do anything other than what it had done already which, according to the Secretariat, was simply to reflect that, without prejudging its status, the Special Session of the CTD came from the TNC.

23. The Chairman, in response to the statement by the Secretariat, suggested that it might be necessary to hold consultations before the next meeting in order to address the issue of the document symbol. If Members agreed to proceed in this way the Committee could continue developing its substantive comments on the proposals on the understanding that such consultations would be conducted before the next meeting.

24. The representative of Australia said that the proposals before the Committee provided delegations with a possibility to examine S&D more closely than had previously been possible. His delegation agreed on the need to consider ways to improve the effectiveness and utilization of S&D provisions. His delegation had not had enough time to study the specific proposals. However, they raised similar questions for his delegation, such as the open-ended funding nature of the SPS proposal, as those already mentioned by other delegations. The work should be done in close cooperation with other expert committees. There is a need for close involvement of the SPS Committee, especially in relation to the discussion of SPS issues,

25. The representative of Indonesia said that his delegation was one of the proponents of the proposals presented by a group of developing countries. He expressed his delegation's full support for the points made by the Members who introduced the proposals. His delegation looked forward to receiving reactions to the proposals from other Members and hoped that the proposals would contribute positively to the deliberations aimed at strengthening and making operational the S&D provisions.

26. The representative of Switzerland said that his delegation acknowledged the fact that the CTD had been instructed to review the S&D provisions. From a procedural point of view, however, he suggested that it perhaps made sense to consider proposals regarding S&D provisions for areas in which negotiations were under way in the respective negotiation bodies. It would be essential to consider the implications of making provisions mandatory and more effective from two angles. First in light of how they fitted into the agreement as a whole. This appeared to be most efficiently addressed by the experts on the agreement in question who would in any case also be the negotiators on the agreement. The second was the developmental angle. It had to be considered whether the proposed change actually brought a benefit in terms of economic development. In terms of analysis and recommendations, the CTD would appear here to be at a comparative advantage. Turning to the proposals he said that his delegation, like others, had not had sufficient time to consult with capital. He anticipated, however, that two questions relating to Article 9.2 of the SPS Agreement could be raised. One concerned the nature of the exact side effects of the proposal regarding Article 9.2. He asked whether the proposal meant that, if his Government had to take some SPS action, it would be forbidden from doing so on the grounds that it had provided insufficient technical assistance. Second, he asked as to exactly which countries were concerned. It was not clear whether the proposal related to all developing countries or only certain groups of developing countries.

27. The representative of Argentina said that the proposal by the delegation of Pakistan and the other co-sponsors touched upon a vital aspect of the SPS Agreement. His Government was still considering the proposal. As had been explained by the representative from Pakistan, he believed that the first step in dealing with the issue and the proposal was to address a real problem faced by developing countries, that of market access. Developing countries often suffered from not being able to accede to markets where new SPS measures had been imposed. Developing countries often lacked the technological and financial means to comply with new measures or standards. He had heard representatives of various delegations say that the issue had to be examined in light of what the collateral effects might be of rendering the article mandatory and in light of the effects on financing and transfer of technology. The possible future effects had to be examined in light of the present situation. The existing provisions had real and concrete effects in that they forced developing countries to make efforts to comply with sanitary and phytosanitary measures in order to maintain their market access. The current negative effects for developing countries should therefore be used as the starting-point, the perspective from which the provisions should be analyzed. It was the developed countries who had the technical capacity to provide technical assistance. Furthermore, with regard to the second paragraph in the proposal presented by the delegation of Pakistan and the co-sponsoring delegations, the possible financial impact, taking into account present financial implications with regard to SPS measures and future SPS standards for the exports of developing countries, had also to be evaluated. The proposal focussed on a real and concrete problem and not

only on possible future effects. The focus should be kept on the real effects of the proposals and provisions.

28. The representative of Cuba said that her delegation was one of the co-sponsors of the proposals and that her delegation supports all of the elements therein. She quoted from the document approved on 1 February by the Trade Negotiations Committee[1] whereby "The review of all special and differential treatment provisions with a view to strengthening them and making them more precise, effective and operational provided for in paragraph 44 of the Ministerial Declaration shall be carried out by the Committee on Trade and Development in Special Sessions". The Special Session of the CTD should therefore be considered as the appropriate forum in which to discuss S&D. There were also specific conditions for the review, as recommended by the Ministers. The proposals had been presented late and she therefore understood that some delegations required more time to reflect on them.

29. The representative of Venezuela said that her delegation agreed with the interpretation of the representative of Cuba regarding the conditions under which the Special Session of the CTD was discussing S&D. The outstanding implementation issues from the Doha Ministerial Conference were to be the subject of negotiations. Regarding the proposal by the delegation of Pakistan and others on Article 9.2 of the SPS Agreement, her delegation understood its motives and reasoning and supported these. The proposal fitted perfectly with the objectives of the SPS Agreement. Although the SPS Agreement recognized the importing country's right to impose SPS measures, existing trade flows, and particularly the participation of developing countries in import markets, had nevertheless to be preserved. Her delegation had taken note of the limitations mentioned by those delegations arguing the needs of importers and suggested that here the discussions should continue. The proposal with respect to Article 10.3 was also entirely within the objectives of the SPS Agreement. It was clear that many developing countries had encountered delicate problems in the implementation of this Agreement and it was only natural that the Committee, in the light of these difficulties, would authorize time extensions for compliance.

30. The representative of the United States submitted that delegations were not in negotiating mode in the Special Session of the CTD. She recognized that the TNC provided for a Special Session. In so doing, however, the TNC distinguished the CTD Special Session from those bodies that had been given a specifically negotiating remit. The Director-General, as Chair of the TNC, had also mentioned in his remarks at the meeting of 24 April 2002, that the report by the Chairman of the CTD Special Session would be without prejudice to the position of any Member on the nature of the Special Session of the CTD. Her delegation looked forward to the Chairman's consultations on this issue.

31. The representative of Canada said that on this point the views of its delegation concurred with those stated by the representative of the United States. She was prepared to abstain from engaging in a debate on this topic for the time being although her arguments were ready in anticipation of the Chairman's decision to take up the issue separately. She requested, however, that all delegations agree with the decision to take it up separately.

32. The representative of Pakistan said that his delegation was not pleased with the reaction received on the proposal that his and other delegations had submitted. He looked forward to a substantive discussion of the proposal in the coming days. Unless the perspective of the developed country delegations changed in relation to the proposal, their views would not satisfy its sponsors. Paragraph 2 of the Doha Development Agenda mentioned the need to put the developing countries at the heart of the WTO work programme, bringing the issue of development to its core. Much of the Doha Development Agenda related to technical assistance. There was a commitment by Ministers to

[1] TN/C/1.

put it at the heart of the work programme. The sponsors of the proposal only asked for a commitment with respect to the SPS Agreement. The representative of Argentina rightly pointed out that the real problem was one of market access. The present language of the Article ensured an obligation only "to consider". It contained no obligation to provide assistance to the developing countries: assistance sorely needed in view of their lack of infrastructure, technical, and financial capabilities. This was where the real problem lay. An acceptance of the proposal would contribute to enhancing the confidence of developing countries and LDCs in the system as well as in the Doha Development Agenda as a whole. In response to a question raised by one delegation, he said that the proposal would contribute to a better participation of the developing countries in the system. In addition to the enhancing confidence in the system among the developing countries it would also demonstrate that the developed countries were serious about addressing the needs of the developing countries. The developing countries and the LDCs needed more technical assistance in areas where they were facing specific difficulties - not in the areas in which the developed countries had an interest and in which they were pushing developing countries to enter into new obligations. Developing countries did not need much technical assistance in these areas. They needed technical assistance in the areas in which they already had obligations. For the Doha Development Agenda to be credible there had to be a clear commitment to provide technical assistance in the areas where developing country Members had real market access problems. In response to the statement that the proposal was an open-ended funding proposal he said that it was not. If it were agreed that the specific problems of a specific developing country in a specific product should be addressed, this could not be construed as an open-ended funding proposal. The exporters in his country had problems exporting fruits and vegetables to certain markets. These exporters needed technical assistance from those countries imposing standards. With the exception of a research plant which failed to result in any additional exports, it had been years since exporters from his country had last received meaningful technical assistance.

33. The representative of China added his delegation's voice to that of some previous speakers in saying that the nature of the work of the Special Session of the CTD was *per se* a negotiating process because it was within the framework and under the guidance of the Trade Negotiating Committee. It was the Trade Negotiating Committee itself which had given the Special Session of the CTD the mandate to negotiate. Otherwise it would not have been necessary to put the Special Session under the TNC. In addition, the work of changing non-mandatory provisions into mandatory ones and making the S&D provisions more precise, effective and operational was *per se* a negotiating process without which it would be impossible even to make the non-mandatory provisions mandatory. In order to make effective and operational those provisions currently lacking in precision, there had to be negotiations. If Article 9.2 of the SPS Agreement were not made mandatory as suggested in the proposal by India, Pakistan and other developing Members, it would be impossible for the developing countries fully to implement the SPS Agreement well and this, in turn, would affect their market access. Finally, without a satisfactory solution to the problems that the developing countries face in relation to S&D and other important issues, the entire negotiating process of the Doha Development Agenda would be difficult. In addition it would be impossible for the Round to be a Development Round.

34. The representative of Japan said that certain developing countries had expressed the sentiments that it was necessary to make the particular articles of the SPS Agreement mandatory and that it was necessary for developed country delegations to commit to extend technical cooperation to those countries facing difficulties in that area. He said that the developing country delegations should ask their capitals to come forward with their requests for technical cooperation for the coming couple of years. After such requests had been received from the developing countries they would be processed. That was how the developed countries operated. Therefore he did not believe that there was a lack of commitment to extend the necessary technical assistance in response to requests received from developing countries. The collection of requests from developing countries did not exclude any area. If developing countries felt in need of technical assistance in a field such as that of the SPS Agreement, they were free to register their request. If the debate were limited to one area of

the WTO's work the scope of technical assistance would be limited. However there are many other forms of technical cooperation and capacity building mechanisms outside the WTO. The WTO is developing a database in cooperation with the OECD (DAC). This database would enable developing countries to build up a picture of what had been implemented and what would be implemented in the future. His delegation wished to avoid such sentiments as those expressed by certain developing countries that, in not wishing to make the particular SPS Article mandatory, developed countries displayed a lack of commitment to technical cooperation.

35. The representative of the United States said that she had already mentioned that her delegation was not prepared to discuss the proposals introduced because of the inadequate period of time that had been available in which to scrutinize them. Her delegation was concerned, however, to avoid an unnecessary drama over issues that had not been properly discussed: there needed to be a fuller discussion of specific case examples and of what had already been done in such cases. It would be difficult to justify a response to the proposals without such an exercise having been undertaken. Her delegation had circulated a document in the SPS Committee (G/SPS/GEN/181) which concerned the technical assistance that her Government had been providing to developing countries. That document listed a number of projects which had been carried out in the SPS area. These projects were not listed in a comprehensive way, however, and numerous other projects remained ongoing. Some of these projects included infrastructure management in practical areas such as exiting port operations in Venezuela, a number of training programmes in Africa, an SPS distance learning programme and an introduction of international SPS measures, approval of a process for importing plants, animals and related products into the United States in the Caribbean, hurricane reconstruction assistance in Central America and the Caribbean, others involving Nicaragua, Russia, Estonia, China, Latvia, Lithuania, Chile, and the APEC region. Almost every region was covered and nor were these projects exclusive to WTO Members – they also included countries in accession. Her Government was serious about ensuring that technical assistance was made and that developing countries thereby gained necessary experience. But it might be helpful for her Government to know what the specific problems were so that then it could do better. It seemed odd to request governments to tell their budget entities that they are under an obligation impossible to meet. The objective was to make the provision more effective and operational. The way to do this was first to reach an understanding of the specific case problems. She noted that a number of developing countries were doing business with each other. She therefore asked if the obligations proposed were the type of obligations that developing countries wished to impose on each other. The provision itself did not restrict its analysis to importing developed countries. It also included developing countries. There had been many debates in the WTO and other fora about the amount of South-South trade and how beneficial that trade was to the economic development of developing countries.

36. The representative of Malaysia said that he hoped that the lack of responses to the proposal and the reference to its late submission was not an attempt to delay the process or the discussion on the proposals before the Committee. However, he did not believe this to be the case. His delegation was concerned with the process. Delegations were even discussing the symbol of the document. However, this should be the least interesting issue, especially bearing in mind the definite timeframe of July 2002 after which the Committee is supposed to present its recommendations to the General Council. The clarification by the Secretariat with respect to the symbol was good and should be quickly accepted so that energy and resources can then be devoted to the substantive discussions on the proposals. A second point of concern was that some delegations had the perception that discussions on S&D did not entail negotiations. This was surprising as when the implementation issues had been dealt with, over the last three to four years, it had been said that the issues required negotiations and therefore had to wait until delegations were actually in negotiations. The launching of a new round of negotiations had been agreed at the Doha Ministerial Conference. It was therefore strange to hear that S&D was a matter that did not call for negotiations. The mandate given by Ministers to the CTD spoke of reviewing, strengthening, and making effectively operational S&D provisions. Obviously implies the introduction of changes. The objective should be to address the

proposals and if there are difficulties in agreeing to them then other options should be considered. It should be in this spirit that the Committee proceeds with its discussions on the subject. Finally, one or two delegations had stated that it would be appropriate to have some of the proposals sent out to the relevant Committees. The CTD has a definite deadline of 31 July 2002. He was therefore concerned that if a process of sending out the proposals to other committees were to be followed, it might be difficult to rationalize such a process in order to meet the CTD deadline. If delegations agreed that the CTD was indeed the appropriate forum for discussion, it would seem fitting, especially for the major delegations who appeared to experience most difficulty with the proposals put forward by the developing countries, to invite their own experts to contribute to the CTD.

37. The Chairman said that the Committee had agreed that proposals would be put forward in the areas that had been identified for discussion. The present predominant objective was to see concrete reactions, including requests for more information if necessary, in response to the various proposals.

38. The representative of New Zealand said that his delegation shared the sense of urgency expressed by the representative of Malaysia in relation to meeting the July deadline and had come prepared substantively to discuss the proposals that he thought were going to be on the table at the meeting, namely those tabled by the delegation of India at the last meeting. On the question of referral to other committees, he shared the concerns expressed by others about the involvement of SPS experts. It made sense to continue to work as far as possible in the CTD on the basis of detailed briefings that could be used issue-by-issue by delegates who were not themselves experts in the field. However, delegations might collectively wish to note a possible need, as the deadline approached, to bring in their respective technical experts. And once delegations are involved in serious discussion on some of those points they may feel that they have reached the limit of how far the officers responsible for the CTD can go.

39. The representative of India said that the representative Japan had pointed out that a series of technical cooperation activities had been planned by the Secretariat based on demands put forward by developing countries. No delegation disputed that. These demands had been put forward in the context of what was contained in the Doha Ministerial Declaration. That Declaration identified specific areas in which technical cooperation would be provided, such as in the area of investment, where it was meant to assist delegations better to understand the implications of a multilateral investment agreement . The proposals for technical cooperation and the requests for it had been made in that context. What the co-sponsoring delegations were attempting to address through the proposal regarding Article 9.2 of the SPS Agreement was a specific problem relating to a specific provision of the SPS Agreement which could not be dealt with through the technical assistance programme funded from the Global Trust Fund. Second, the Japanese delegation had always maintained that the WTO was not a development organization and that the technical assistance provided by the WTO should be limited to providing training for personnel. Turning to the point made by the representative of the United States, he noted that the representative of the United States had listed technical assistance activities provided by her Government. His delegation appreciated these efforts despite the fact that his country's name had not figured in the list read out. She had effectively put across the difficulties faced by developing countries. The reason why his Government had approached the Government of the United States about technical assistance was because his Government faced a problem. The fact that many delegations did request technical assistance proves that there are serious problems to be addressed in the S&D process. What was said in the proposal was that the current Article only states that countries "should consider" providing technical assistance. But there is no guarantee that a request would lead to any actual assistance. The co-sponsors of the proposal wished to receive assurance on this score. That is why they propose that this particular phrase be changed to "shall provide", which would give an indication of finality in terms of the expected outcome of a request. This was the spirit in which the proposal had been put forward. The representative of the United States also requested details of all the problems faced. There was no need to go into detail as the Government of the United States had apparently been providing that type of technical assistance

already. This must have given them an idea of what the problems are. The representative of Pakistan mentioned that Pakistani exporters had problems exporting vegetables and fruits to certain countries. They had tackled the problem by asking, over a period of many years, for technical assistance. Their request had not met with any response. This was the sort of problem that the co-sponsors had had in mind when putting forward their proposal.

40. The representative of the United States referred delegations to document G/SPS/GEN/181, where India was mentioned on page 14 and where some of the assistance provided by the Government of the United States with respect to CODEX activities was listed. Another reference in that document concerned the work done in the South Asia region, which included India. The WTO Secretariat was in the process of establishing a database which would compile not just what the Government of the United States was providing, but also what other bilateral donors and multilateral institutions were providing. The establishment of such a database would provide delegations with a knowledge of the actual facts rather than making changes based simply on generalisations. Her delegation made these points because it was sensitive to the issue: it did not wish to be operating in conflict with its other responsibilities. As her delegation was refraining from prejudging the exact nature of the review, whether delegations were engaged in a negotiation or not, it would refrain from further comments on what the exact language should be. Nevertheless, changing "consider" into a "shall" obligation seemed strange. She observed that when she went to university she would have wished to see a "shall" clause when she filled out a grant form requesting student aid from the United States Government. She was confused about why and in what way the "shall" would actually increase the amount of assistance to developing countries and resolve their specific SPS problems when she thought that delegations were actually involved in a process to revamp and enhance all WTO technical assistance provided and to inform delegations of the provisions made available. Her delegation encouraged other delegations to review the material supplied and to inform her Government if there was anything it could do better. Such changes could then be introduced prior to her Government engaging in any kind of negotiation or amendment. As some delegations had mentioned, the bottom line was market access and the type of information and assistance necessary for developing countries to be able to operate under the agreements.

41. The representative of the European Communities said that the discussions were valuable as they helped his delegation to clarify how they wished to address the exercise. The proposal before the Committee had much in common with how his own delegation considered the issue. Delegations had returned, however, to the question of whether or not making a decision mandatory meant making it more effective. His delegation supported those delegations that had pointed out that the SPS and TBT standards issue was important and that the problems were real. The European Community and its Member States carried out a large amount of technical assistance. It was technically accurate to argue that the provision which stated "shall consider" was actually implemented. His delegation did much "considering". There were several bilateral efforts in addition to the efforts under the Trust Fund. Developing countries which had spoken were probably right to say that more could be done, however, even though it would be good to have a closer look at the facts. More could always be done. The real problem was how to achieve more and better technical assistance in the SPS fields so that developing countries could meet the standards which they were asked to meet. One proposal tabled suggested to make it an obligation to pay compensation once a problem had been identified. Given the budgetary implications and the way that such an obligation would operate, he was sceptical as to whether this was the right answer to the question. If somebody identified a problem there would immediately be an obligation to pay. But this could not be easily accomplished. He suggested that it might be better to get back to the real problem of how the providers of technical assistance could do more and better. If the Government of India had been disappointed so far, his delegation would attempt to do better so as not to disappoint the developing countries in the future. This was the type of discussion that delegations should have and he agreed with those who had requested more factual background. The new database would provide such data. Developing countries would be able to inform the providers of technical assistance in which areas they had requested technical assistance without receiving it and

why they still wished to get it, and the technical assistance providers would consider what they could do about it. If there was an obligation or a change in the SPS Agreement which would facilitate provision of technical assistance and give more urgency to it, his delegation would be open to its discussion. It would be difficult to turn it into a legal obligation, however, to be triggered by the identification of certain problems. This would be to set a precedent. And no government would actually wish to be faced by that sort of automaticity. The problem is nevertheless a real one and his delegation expressed itself willing to consider the solutions. This, in his view, is what the debate should focus on.

42. The Chairman said that the comments made by the European Communities fitted well into the three indents which the Committee was discussing; provisions which Members believe should be made mandatory, consideration of inputs on the legal and practical implications of making non-mandatory provisions mandatory, and the identification of how provisions might be made more precise, effective and operational. As indicated at the outset, Members were free to make comments on any of these indents in discussing the proposals submitted. The Committee had had an extensive initial exchange of views although it was clear that further discussions of the proposal were necessary. The next proposal related to Article 10.1 of the SPS Agreement and was to be introduced by the representative of Egypt. He recalled that there were three remaining proposals under the SPS Agreement, one on Article 10.3 to be introduced by the representative of Pakistan and two proposals relating to SPS Articles 10.2 and 10.4. which had been introduced at the last meeting by the delegation of India.

43. The representative of Egypt said that she wished to present a proposal submitted by a number of developing countries including her delegation to make more effective and operational Article 10.1 of the SPS Agreement. Experience had revealed that exports from developing countries had been affected by those SPS measures in place in the developed countries. This in itself ,despite its legitimacy, hindered the flow of developing country exports. The Agreement on SPS recognized and further mandated Members to take account of the special needs of developing countries. That mandate had not, however, secured the effectiveness and the operation of that article in a way that could help developing countries achieve their development policy objectives. The co-sponsors of the proposal were of the view that the language of that Article should be amended in such a way that it would deliver the required trade benefits for developing countries and LDCs through maintaining, *inter alia*, the current levels of exports and raising the technical capacities of developing countries to conform with the proposed measures. In that regard, the sponsors proposed that the following language be added to Article 10.1 of the SPS Agreement: "If an exporting developing country Member identifies specific problems in complying with a sanitary or phytosanitary measures of an importing developed country Member, the latter shall upon request enter into consultations with a view to finding a mutually satisfactory solution. In this regard, such special needs shall include: securing and enhancing current levels of exports from developing and least developed country members, maintain their market shares in their export markets, as well as developing their technological and infrastructural capabilities. While notifying a measure, Members shall, *inter-alia*, indicate the following: (i) systems and/or equivalent systems that could be used to comply with such a measure; (ii) the names of the developing and least-developed country Members that could be affected by the applied measure." This addition would make the operation of the Article more effective.

44. The representative of Chile said that each proposal had to be analysed on the basis of the collateral effects it would have, not only for developing countries, but also among developing countries. There were two elements in the first paragraph of the proposal with respect to Article 10.2 of the SPS Agreement. The first related to the drawing up of sanitary measures and the second to their application. The proposal focussed on the application of these measures. A mechanism was presented which was almost a legal mechanism for making the system operational through accelerated consultations once specific needs had been identified. The aim of these consultations was to find

mutually satisfactory solutions. His delegation questioned whether going through legal measures was the right way of finding solutions to the specific problems that exporting developing countries faced when entering the markets of developed countries. His delegation found both the suggested "consultations" and the suggested "mutually satisfactory solution" problematic and asked what would happen if a mutually satisfactory solution could not be found. The proposal might then lead to legal solutions which would have other effects upon the SPS Agreement.

45. The representative of Cuba requested a modification to the Spanish text. The proposal referred to a case in which an exporting developing country identified specific problems in complying with the sanitary and phytosanitary measures of an importing developed country Member. The Spanish translation, however, referred to an exporting developed country Member. This mistranslation could pose a problem as Spanish speaking delegations would have difficulty understanding exactly what the proposal meant.

46. The representative of Norway said that there was a real problem in that developing countries lacked, *inter alia*, the administrative, technical, infrastructural and financial capacities to comply with SPS measures in developed countries. It was important that technical assistance focused on these problems in order to attempt to surmount them. Her delegation questioned whether the proposal should be put into practice. An importing country could not be obliged to secure and enhance exports from other countries in disregard of its own national legislation under the SPS Agreement. In addition, committing to the maintenance of market shares, as was proposed, would imply agreement to manage trade through a quota system. Her delegation agreed, however, that efforts should be made to assist developing countries to comply with the SPS measures. With respect to notification her delegation asked whether a list of countries that could be affected by measures applied would cover only the status quo or whether it would also include potential exporters. The latter would go far beyond the scope of any reasonable notification requirement. If it only covered present exporting countries, however, such assistance could be discussed further.

47. The representative of New Zealand said that his delegation had always regarded the SPS Agreement as one of the landmark achievements of the Uruguay Round from the point of view of exporters of agricultural products, without distinction between developed and developing countries. As New Zealand had many major exporters of agricultural products his Government had been conscious of the value of the SPS Agreement in bringing predictability of access to those products. The Agreement also seemed to operate without a great deal of discrimination in terms of trade, whether it was North-South, South-North or South-South. The first paragraph of the proposal related specifically to exports from developing countries to developed countries. As drafted, it would only impose an obligation on developed countries to enter into consultations with a view to finding a mutually satisfactory solution. He asked the co-sponsors of the proposal how they regarded this in relation to some of the issues that arose in relation to South-South trade: a particularly important issue given the widely varying stages of development amongst developing countries and the size of some developing country markets for the products in question. He agreed with the concerns expressed by the representative of Norway regarding the reference, in the second paragraph of the proposal relating to Article 10.2, to the maintenance of market share. This was not a concept with which his delegation felt comfortable and it did not belong in the WTO. His delegation would resist any move in such a direction. Finally, the concept of making obligatory a call to enter into consultations with a view to finding a mutually satisfactory solution was one that his delegation had been able to accept in 2001 when it had been raised in the context of the lead-in period for new SPS measures. An agreement was recorded as Paragraph 3.1 of the Decision on Implementation-Related Issues and Concerns. He questioned whether the same approach, a legally binding obligation to enter into consultations with a view to finding a mutually satisfactory solution, was appropriate in the case of Article 10.1.

48. The representative of the United States said that when discussing issued related to "developing countries" her delegation recognized the lack of a specific definition. Some of the assistance provided by her delegation related to transition economies and other types of countries in need. And in general when the S&D provisions were used there was still a need to bridge the gap between the nature of the text and interpretation by those who would be its beneficiaries, without prejudice to views on how to define the respective beneficiaries in light of the specific provisions.

49. The Chairman said that a number of specific questions had been raised regarding Article 10.1 of the SPS Agreement. The delegation of Chile had raised some concerns and questions regarding the requirement for consultations towards a mutually satisfactory solution as had the representative of New Zealand. The delegations of New Zealand and Norway had also raised a number of issues which he asked the sponsors to reflect on and possibly respond to.

### 3. Article 10.3 of the SPS Agreement

50. The representative of Pakistan said that Article 10.3 of the SPS Agreement had been included in the SPS Agreement on the specific request of the developing countries. This provision recognized the possibility that the developing countries would not be able fully to comply with the provisions of the SPS Agreement even after the expiry of any transition period which might be granted. However sentence 1, line 2, of the provision stated that "… the Committee is enabled to grant to such countries, upon request, specified, time-limited exceptions in whole or in part from obligations under this Agreement, taking into account their financial, trade and development needs." One reading of this text suggests that the provision enables the SPS Committee to grant such exceptions whereas such exceptions might only rarely be granted in reality. Although Members might face problems in complying with the Agreement's obligations, few would make such a request because of the recommendatory language of the provision. The co-sponsors of the proposal suggested that, in order to make the provision mandatory, the word "shall" be inserted in place of "is enabled". The Article would then read: "With a view to ensuring that developing country Members are able to comply with the provisions of this Agreement, the Committee shall grant to such countries, upon request…". In granting such exceptions the Committee should also take into account the development needs of the Members. If such a change were to be accepted by Members it would render the provision purposeful, operative and mandatory, and would send the signal that the developing countries' needs were being taken into consideration.

51. The representative of Chile said that the fact that the SPS Committee was enabled to authorize exceptions to countries in difficulties in order for them to comply with their commitments meant that the SPS Committee was free to grant or not grant such exceptions. If the wording was changed it would mean that only the fact that a Member requested an exception would lead to that exception being authorized. It should be clear what the exact scope of such a change would be given that no analysis is provided. He asked whether it meant that the SPS Committee would act on or only support the requests.

52. The representative of New Zealand said that the proposal with respect to Article 10.3 of the SPS Agreement was sweeping in its scope. It would have the effect, as far as he understood it, of depriving the SPS Committee of its discretion to decline or to approve a request put forward by a developing country Member. This would have the practical effect of releasing a developing country Member from its obligations under the SPS Agreement. He did not expect his Government to be able to go along with such a sweeping proposal. He said that it would be useful if the proponents could explain the underlying objective and then give other delegations more detail as to how it might operate in practice. The proposal would have to be substantially modified in order to be taken seriously.

53. The representative of Malaysia said that some delegations had mentioned that the proposal would deprive the SPS Committee of its discretion to reject requests. The duration of exceptions would, however, be limited in time. The length of the exception granted to requesting Members was a form of discretion. If the exception requested was important and pressing to the Member requesting it, the SPS Committee might grant it for a longer time-period. In a case where the problem of the requesting Member was considered less important, however, the time-frame for the exception could be shorter. So the SPS Committee would to some extent have the discretion to consider requests on a case-by-case basis.

54. The representative of Canada said that, when considering the utilization made of the proposal (document WT/COMTD/W/77/Rev.1/Add.4), she had noted that no request had been made for the use of Article 10.3 of the SPS Agreement. Her delegation wondered whether this was a sign of the fact that countries had not yet considered it necessary to make use of the Article.

55. The representative of Japan said that his delegation shared the concern raised by the representative of Canada. He asked why, when no Member had attempted to use the Article in the past, could delegations assume that the Article was not operational and state that there was a need to change it.

56. The representative of United States said that her delegation concurred with the last intervention made by the representative of Canada. She also reiterated her delegation's concern that the Committee had not yet had any full discussion of the utilization of the provisions. Her delegation would, at the end of the meeting, table a proposal for the next meeting. This proposal would concern utilization and the document that her delegation had circulated in the Committee concerning the Secretariat's text on utilization.

57. The representative of the European Communities said that Article 14 of the SPS Agreement had given rather specific derogations for developing countries and LDCs at the time when the Agreement had been adopted. The real question was whether the proposed change to the Article could really be said to be in the best interests of developing countries. If the ultimate aim was to integrate developing countries into the System and to level the playing field for all others who did not wish to face discriminatory or more trade-restrictive than necessary SPS barriers, the way forward might not be through the proposed use of wholesale exceptions. Rather the opposite, perhaps. It was to consider the situation case-by-case and assist individual Members to apply the rules appropriately so as to create a level playing field for trade. The proposed change would not be an incentive to do that.

58. The representative of Norway said that the argument made for the change in the proposal did not show whether the current provision did in fact restrict the possibility of developing countries to get such exceptions. One of the reasons for the provision not having been utilized, might be the possibility of a negative impact on the exports of any Member using such an exception. It is therefore important to understand why the provision had not been utilized.

59. The representative of Pakistan said that the basis for the proposal was that it should be expected that a developing country would request exceptions only as and when it had genuine difficulties. With respect to the scope of the amendment, he said that the replacement of the words "is enabled" by "shall" was not intended to exempt developing countries from the examination to be conducted by the SPS Committee. The intention was rather that the SPS Committee should undertake a review or examination on a case-by-case basis and should grant an exemption, taking into account the development needs of the developing country in question, unless there were compelling reasons not to do so. There would be an examination by the SPS Committee. No waiver was being sought on that account. What was being sought, however, was the assurance that, if the developing country had cogent grounds to justify its request for an exception, it would be granted one. He said that he had

explained the reason for the current non-utilization of the provision in his introduction. The non-utilization was due to the recommendatory nature of the provision. If developing country Members had the assurance that, once approved, they would be granted an exemption, the utilization would probably be more encouraging.

60. The Chairman said that this intervention had made clear that in some respects the language of the proposal might need to be looked at. The Committee ended its preliminary exchange of views on Article 10.3 of the SPS Agreement.

**4. Article 10.2 of the SPS Agreement**

61. The representative of the United States said that the preliminary comments her delegation had made at the previous meeting were still valid. At the heart of any discussion of SPS, however, was the Members' overarching concern for the protection of human health. Making mandatory S&D provisions which would delay the implementation of SPS measures would affect the overall balance of the Agreement, the goal of which was the protection of human health. The provisions could not be considered out of context. They had to be seen in relation to their links to the rest of the Agreement. Putting aside those overriding concerns, her delegation believed that it would not be appropriate for the Special Session to consider a proposal to rewrite a decision which had been agreed to by Ministers only six months earlier. The proposal revised the Decision on Implementation-Related Issues and Concerns taken at the Doha Ministerial Conference. Her delegation was of the view that although the Special Session was engaged in the exercise, any proposal for longer timeframes for the introduction of new sanitary or phytosanitary measures had ultimately to be addressed by the appropriate specialists in the SPS Committee.

62. The representative of New Zealand said that his delegation had reservations about simply converting provisions that read "should" into mandatory provisions with the word "shall". The particular proposal relating to the revision of Article 10.2 of the SPS Agreement was an illustration of the limitations of any approach that sought to make S&D provisions more precise or effective simply by a change of word to make it mandatory. A fundamental feature of the SPS Agreement was that it recorded a Member's sovereign right to determine the appropriate level of protection. Accordingly, and regardless of whether or not a duty was expressed with the word "shall", the phrase "where the appropriate level of SPS protection allows" would still seem to allow Members sufficient flexibility to determine for themselves when the circumstances would be such that they should accord a longer timeframe for developing countries. It was his delegation's assessment that, in terms of benefit to developing countries, changing the word "should" to "shall" would have only a rather limited effect. With respect to the value of the longer timeframes, his delegation had detected in the proposal a presumption that longer timeframes were generally to the advantage of developing countries. However it was more complicated than that. Many new SPS measures could, in practice, be trade-facilitating rather than trade-limiting. One illustration of this being that it was possible that an importing Member could introduce conditions for the importation of a commodity from a wider range of countries than from which it had previously taken the product. If, in such an instance, there was a mandatory delay for developing countries, this seeming to be the implication of the proposal, developing countries could find themselves denied access to new markets.

63. The representative of Norway said that when her delegation had considered the Secretariat paper on changing non-mandatory provisions into mandatory ones, it had felt that it could consider supporting a change from "should" to "shall" in the context of Article 10.2 of the SPS Agreement, as long as the interpretation of "normally" was not altered. The proposal was made on two levels, however. Her delegation did not wish to reopen a negotiated text after such a short time. Delegations first had to be given the time necessary to evaluate the possible positive or negative effects of the Ministerial text agreed to at the Doha Ministerial Conference. The word "normally" was important. Acute situations did come up and Governments needed the safety net of being able to implement

measures at once and without making any special treatment for anyone. Her Government needed that sort of possibility to protect its population and most Governments needed it against health and environmental hazards. Her delegation is therefore reluctant to change what had been agreed upon at the Doha Ministerial Conference.

64. The representative of Pakistan said that Article 10.2 of the SPS Agreement remained one of the most important provisions in the SPS Agreement. It sought to address one of the most critical areas of difficulty faced by the developing countries, namely compliance with new SPS measures introduced by the importing trading partners. Developing countries had repeatedly stated that the introduction of new SPS measures had often resulted in a complete blockade of their exports since developing countries most often did not have the technical know-how and financial capacity immediately to put in place new systems in conformity with SPS measures adopted by the developed countries. This was the reason why developing countries requested additional time for compliance: their exports would otherwise be impeded by the introduction of new measures. During the last few years experience of SPS Agreement implementation has unfortunately shown that developing country exporters were rarely given the necessary additional timeframes in order to comply with new SPS measures. The introduction of new measures had, as a result, become synonymous with the loss, although temporary, of certain export markets. One of the main reasons for the non-use of the provision was the general, recommendatory nature of the exhortation to give additional time to developing country exporters. This is probably why the delegation of India has put forward its proposal to make the provision mandatory: the real benefits of the recommendatory exhortation given in that provision might then be provided to the developing countries. His delegation supported a favourable consideration of this proposal.

65. The representative of Argentina pointed out that Members had the sovereign right to set the appropriate level of protection for themselves under the SPS Agreement. The S&D provisions should not affect their right to protect the health of their citizens. But when a Member raised what it considered to be its appropriate level of protection, it had to provide developing countries with sufficient time to adapt to this change. The time-limit of 6 months had to take into account not only the time taken to apply a measure but also the fact that agriculture and most food commodities are dependent upon a one-year cycle. If appropriate level of protection in a Member country were going to change, therefore, this change should be acknowledged directly but only gradually introduced: a gradual introduction of such a change would at least allow the exporters of the developing countries the necessary time in which to adapt. This time-period would be symmetrical to the importing country's right to raise its level of protection. The situation would be eased with technical assistance which would assist the developing countries to adapt more easily to the appropriate levels of protection. Some emergency measures, depending on the sanitary position of the country, might still need to be considered. Nevertheless, when an importing country raises its appropriate level of protection it must allow sufficient time for the exporting developing countries smoothly to adapt to this change.

66. The representative of Venezuela said that the proposal from the delegation of India was positive as the objective was to protect the existing flows of trade. It was therefore in line with the goals of the multilateral trade system. No decision taken at the Doha Ministerial Conference had solved the problem of the uncertainty regarding the time-limit that would be given to developing countries to allow them to adapt to new standards.

67. The representative of Cuba said that his delegation considered Article 10.2 of the SPS Agreement to be one of its most important clauses . It addressed a critical area where developing countries were often faced with great difficulty in complying with new sanitary and phytosanitary measures introduced by the importing partners. Developing country exporters had the right to request more time to adapt to the introduction of new measures which often resulted in a complete blockage

of their exports. Sufficient time should be allowed for developing countries to acquire the financial capacity and human resources needed to be able immediately to comply with new measures.

68. The representative of Malaysia said that she was of the view that the representatives of Argentina and Cuba had raised some valid points regarding the Indian proposal and the adaptation to new SPS measures. New measures normally involved a change that could include changes to production methods, changes to the production facilities and could even involve a change of the entire production process from start to finish. Such complicated technical processes took a long time. Extended compliance periods would therefore be useful to developing country Members. In addition, the proposal only referred to extended time-periods for compliance with respect to products of interest to developing countries. The proposal was thus limiting the S&D treatment to products of interest to developing countries. It therefore merited consideration by Members.

69. The representative of Chile said that there were still too many missing elements for his delegation to be able to have a clear opinion on the proposal. The collateral effects associated with a response had, however, to be appropriate to the measure looked for. Developing countries did need an extended timeframe for compliance when a developed country raised its levels of protection. What concerned his delegation was how to get a good understanding of the situation in developed and developing countries and how to understand the possible extent of associated effects in a situation involving only developing countries.

70. The representative of Sri Lanka said that her delegation supported the proposals submitted by the delegation of India and some of the views expressed by others, in particular that developing countries needed time to adapt to new SPS measures imposed by developed countries. A number of studies had been undertaken within UNCTAD and other organizations on the procedural and logistical changes developing countries would have to make when adapting to new measures. Her Government had undertaken a study of how Sri Lankan exporters had tried to comply with new measures adopted by the developed countries. Most of the measures in place related to agro-based industries. The production chain could not be changed within a period of only six months. It usually required longer time-periods than that. That was only as far as the production was concerned. Costs were sometimes incurred relating to the training of personnel, however, as well as in changes to infrastructure and storage facilities. Her Government's assessment showed that the effects of new SPS measures on Sri Lankan spice exporters would mean lost export earnings of nearly US$2.2 million due to their inability to comply sufficiently swiftly with the new measures. The loss of employment must also be considered. Nearly 400,000 people were involved in the sector and many would lose their jobs. The cost of the necessary training alone amounted to US$1.9 million. These were examples of the additional costs that a developing country would have to incur. She asked how it could therefore be expected that a developing country would be able to meet new standards within a period of only six months. It was an impossible task. The period agreed to seemed inadequate. A longer time-period had to be considered. The study she had mentioned was also relevant to the issue discussed under Article 9.2 and Sri Lankan exporters had encountered difficulties with respect to Article 9.2 as well. These were concrete examples of real difficulties of the type that other delegations had asked for. In addition, there was currently an ongoing meeting in UNCTAD relating to the SPS agreement where other examples of the different types of difficulties faced by developing countries were provided. Contrary to the beliefs of those delegations who suggested that there was insufficient evidence to say that the SPS posed difficulties for the developing countries there is, in fact, ample evidence available, including numerous case studies.

71. The representative of India said that it was the type of problems mentioned by the delegations of Pakistan, Argentina, Venezuela, Cuba, Sri Lanka and Malaysia with respect to Article 10.2 of the SPS Agreement which had led to the tabling of the proposal. He said he wished to assure the Committee that human health took precedence over market access for his Government as well. Some comments had been made, during the course of the discussion, about acute situations, Members'

sovereign right to define adequate levels of protection, human health, and the term "normally" which his delegation had sought to delete from paragraph 3.1 of the Decision on Implementation-Related Issues and Concerns. He was of the view that none of the changes proposed related to the crucial parts of the provision in question. The most important point was how the provision began: "Where the appropriate level of sanitary and phytosanitary protection allows scope for the phased introduction of new SPS measures …". That was a crucial phrase which his delegation did not seek to amend. The subsequent phrases flew from the assumption that the measure of the appropriate level of SPS protection would allow for phased introduction. If it did not allow for that, the proposal his delegation had put forward would not take effect. An acute situation would clearly not satisfy the first condition as it did not allow for phased introduction. Similarly, if human health was going to be affected, there could probably not be allowance for a phased introduction of the measure. There was no need to focus only on that angle as that particular provision was to be left untouched. That clarification would hopefully address the concerns expressed by many delegations. His delegation's proposal did attempt further to modify the Decision arrived at in the context of the Doha Ministerial Conference, however, as his delegation believed that Decision to be insufficient. The proposal which his delegation had submitted, together with other delegations, as part of the implementation process did not contain the word "normally". When delegations had been faced with the situation of accepting that Decision or of having nothing at all, however, they had nonetheless considered it to be of some value. What his delegation currently sought to achieve was a further improvement of it.

**5. Article and 10.4 of the SPS Agreement**

72. The representative of the United States said that the comments her delegation had made earlier regarding assistance were linked to the proposal on Article 10.4 of the SPS Agreement. She emphasized that her Government was active in assisting the objective behind Article 10.4, and its revised version found in the Doha Decision on Implementation-Related Issues and Concerns. She reiterated her delegation's concern about revisiting Ministers' decisions from the Doha Ministerial Conference. That was one of the reasons why her delegation was not in a position to entertain the proposal. Positive results would flow from the action taken by the Ministers concerning the Article.

73. The representative of Canada said that her Government had given special attention to the Article in creating a specific mechanism to assist developing countries to participate in the relevant international institutions. It was organized by the Standards Council of Canada. If any delegation wished for further details her delegation would be happy to provide them.

74. The representative of Argentina said that his delegation saw the participation of developing countries in the three international organizations mentioned in the SPS Agreement as a point of real interest. His delegation was interested in the Government of Canada's initiative in that respect, and recognized the efforts which the Government of United States had made with regard to the participation of developing countries in the CODEX Alimentarius Commission. Nevertheless, something had to be done as, in the sessions in the CODEX Alimentarius Commission, the International Office of Epizootics (OIE), and the relevant international and regional organizations operating within the Framework of the International Plant Protection Convention, international standards were set and the measures taken where those standards were presumed to be in compliance with the SPS Agreement. That was why it was so important for developing countries to participate in the work of those organizations. Nobody had drawn up a list of participation of developing countries in the CODEX, for example, because the result would be surprising. It was necessary to work with the organizations to consider how participation could be improved given that many of the questions they dealt with had a direct impact on the SPS measures discussed within the WTO. This was an area that needed improvement.

75. The representative of the European Communities said that his delegation wished to make a general comment on both of the proposals. Although it had been clarified by the representative of

India that the reason why the proposals had not been formally circulated was because of a misunderstanding, his delegation had interpreted that as a sign of agreement with its views that it might not be good to reopen issues just recently settled, or to pursue the other issues on that settlement in the CTD while the DSU review was ongoing. The comments his delegation had made at the last meeting were still valid. As mentioned by the representative of Argentina, it would be useful to get more factual information as to what the effects of the Decision taken at the Doha Ministerial Conference were, and what the status was with respect to assistance provided. Such assistance is necessary to enable the active participation of developing countries in these organizations. Delegations would have to consider what, at a practical level, could be done to assist.

76. The representative of New Zealand said that there seemed to be agreement on the importance of achieving the fullest possible participation of developing countries in international standardizing bodies. The practical question that the Committee had to deal with was whether a change in the SPS Agreement, or an interpretation of it which would make participation almost mandatory, was the most effective way of doing so. There had been a number of discussions in both the TBT and the SPS Committee on that point. A variety of practical measures which could be undertaken to achieve that objective had been identified in those discussions. Considering those discussions in light of the SPS Agreement, the sort of mandatory formulation proposed would not deliver the practical benefits that he believed it sought to achieve.

77. The representative of Japan said that it was his delegation's understanding that the Director-General of the WTO was trying to facilitate the participation of the developing countries in the relevant international organizations based on paragraph 3.5 of the Decision on Implementation-Related Issues and Concerns. His delegation was interested in information regarding any developments with respect to that effort. His second point related to the fact that even though, from the WTO perspective, it was important to facilitate the participation of the developing countries in the work of these organizations, it was for these organizations themselves to decide to accept the participation of developing countries.

78. The representative of India said that some of the developing country delegations would respond to the offer made by the representative of Canada. The representative of Argentina had eloquently stated the importance of Article 10.4 to developing countries and also of the proposal. He said that many delegations had made the point that his proposal aimed to reopen the Decision on Implementation-Related Issues and Concerns almost before it had begun to be implemented. Paragraph 3.5 of that Decision stated "Takes note of the actions taken to date by the Director-General to facilitate the increased participation of Members at different levels of development in the work of the relevant international standard setting organizations as well as his efforts to coordinate with these organizations and financial institutions in identifying SPS-related technical assistance needs and how best to address them". That implied that action had been taken. A decision on that issue had been taken in the October 2000 Session of the General Council when Ambassador Bryn had been the Chairman of the General Council. The Director-General had since then been in touch with the other international standard setting organizations. There had not been much progress, however, despite the best efforts of the Director-General. Even the second part of paragraph 3.5 of the Decision on Implementation-Related Issues and Concerns only urged the Director-General to continue his co-operative efforts. That again implied that the Director-General had already been carrying out efforts and that he was only being asked to continue those efforts. His delegation's proposal emanated from its experience of the last year and a half when the Director-General had been pursuing the issue with the international standard-setting organizations. His delegation did not believe that the progress had been satisfactory and had therefore felt the need to submit the proposal.

## 6. Article 12.3 of the Agreement on Technical Barriers to Trade

79. The representative of Cuba said that she wished to introduce the proposal contained in document TN/CTD/W/2 regarding measures covered by the Agreement on Technical Barriers to Trade. Developed country markets had seen a proliferation of regulations and technical standards which had affected the market access for exports from developing country Members. They were affected in two ways. First, because the standards, regulations and the evaluation processes for compliance applied by importing countries were incompatible with the standards under the Agreement. Second, because developing countries did not have the technical and financial capacity to meet the standards, even though those measures might be in compliance with the Agreement. That was the reason why the group of sponsors had submitted the proposal. Furthermore, measures relating to the environment constituted an additional obstacle to exports from developing countries. Article 12 of the TBT Agreement referred in detail to S&D for developing countries. Those provisions either had not become a reality or had not been applied in a sufficient manner. That was why the delegations of Egypt, Honduras, India, Indonesia, Kenya, Mauritius, Pakistan, the Dominican Republic, Sri Lanka, Tanzania, Zimbabwe and Cuba had made the proposal on page 6 of document TN/CTD/W/2. The proposal was an addition to Article 12.3 of the TBT Agreement which stated that "Members shall, in the preparation and application of technical regulations, standards and conformity assessment procedures, take account of the special development, financial and trade needs of developing country Members, with a view to ensuring that such technical regulations, standards and conformity assessment procedures do not create unnecessary obstacles to exports from developing country Members." The sponsors of the proposal suggested that the following text be added: "If an exporting developing country Member identifies specific problems of inadequate technology and infrastructure in complying with the technical regulations and standards of an importing developed country Member, the latter shall provide the former with relevant technology and technical facilities on preferential and non-commercial term, preferably free of cost". That addition would make the special and differential treatment under that Agreement effective and operational. In view of the comments made with respect to other proposals, she said that the provisions on technical assistance which were in force would not be applicable to the additional provision proposed, taking into account the lack of technical and financial capacity and infrastructure of developing countries in order to comply with the new standards.

80. The representative of Canada said that there would be a discussion in the TBT Committee in June 2002, prior to the report that the Special Session of the CTD had to make in July 2002. There would be a full discussion of all outstanding implementation and other issues. It therefore seemed appropriate that the proposal might be dealt with in the TBT Committee at that time. In addition, she agreed with the points made earlier by other delegations regarding the fact that the proposal was for a sweeping and costly measure. It would therefore be difficult for most of the donor countries to comply with it.

81. The representative of Argentina noted that the technical regulations to which reference was made in the proposal seemed to be related to the provision of technology. The scope could be widened to include other types of technical regulations for those regulations to cause as little distortion as possible to trade. That would not require much in the way of financial resources and would still be an improvement to S&D.

82. The representative of Thailand said that her delegation supported the proposal presented by the representative of Cuba relating to Article 12.3. She had just received a preliminary proposal from her capital relating to Articles 12.4 and 12.6 of the TBT Agreement which would be submitted at a later stage. It was in the Thai language and had to be translated into English.

83. The representative of Norway said that she had in part referred to the TBT proposal when speaking about the proposal on the SPS Agreement. However, paragraph 5.4 of the Decision on

Implementation-Related Issues and Concerns urged "Members to provide, to the extent possible, the financial and technical assistance necessary to enable LDCs to respond adequately to the introduction of any new TBT measures…". It was prudent to see how the Decision from the Doha Ministerial Conference was followed up before the issue was discussed further. It was important to keep in mind that the TBT Committee would also be considering implementation.

84. The representative of Venezuela expressed her delegation's interest in the proposal. The problem identified therein reflected true concerns which affected the market access for many export products from developing countries.

85. The representative of Malaysia said that, as far as her delegation had understood, the discussion of the TBT Committee only related to the two implementation tirets on the table and would not relate to the proposal under discussion in the Special Session of the CTD. The proposal tabled in the Special Session of the CTD was better dealt with in the Special Session of the CTD.

86. The representative of Cuba agreed with the final comment made by the representative of Malaysia regarding the discussion which would take place in the TBT Committee. The Article 12.3 proposal should therefore be discussed in the Special Session of the CTD.

**7. Article 3.5(j) of the Agreement on Import Licensing Procedures**

87. The representative of India said that his delegation's proposal related to Article 3.5(j) of the Agreement on Import Licensing Procedures. The proposal aimed to address the last sentence of the provision, which read: "In this regard, special consideration should be given to those importers importing products originating in developing country Members and, in particular, the least-developed country Members". The use of the word "should" in that last sentence of the provision made the mandatory nature of the provision doubtful. It was this aspect of the provision that the proposal sought to address. What his delegation had suggested was that the provision be made mandatory to enable products originating from developing country Members to benefit from it. This could be done either through an authoritative interpretation or through an amendment which would change the word "should", in the last sentence, to "shall". Making the provision mandatory would help developing countries, especially the LDCs, to increase their market share for products of export interest to them, as envisaged in the preamble to the Marrakesh Agreement.

88. The representative of the United States said that her delegation understood the desire of developing countries and, in particular, of LDCs, to access new or non-utilized licences. Concern had been expressed in the context of the agriculture negotiations. That was also the forum where the issue should be treated. However she also suggested that the proposal advanced by the delegation of India might create some unintended consequences. For example, the mandatory distribution of import licences to developing countries might weaken previous market access concessions by allowing Members to allocate quotas to countries which had no production.

89. The representative of India said that his delegation believed that the Special Session of the CTD, and not the agricultural negotiations, was the right forum to address the issue.

90. The representative of Sri Lanka said that her delegation supported the Indian proposal. In response to what had been said by the representative of the United States, she said that her delegation's understanding of Article 4.2 of the Agreement on Agriculture was that Members should not maintain or revert to any measure of the kind that they had been required to be converted into ordinary customs duties. There was a footnote which suggested which measures were included, and that it included quantitative import restrictions. Members normally had a policy of adopting import licences when they had quantitative restrictions. The two went hand in hand. According to the current Agreement, most Members should already have eliminated those duties. Probably there would

not be any large implications and discussions should therefore continue in the Special Session of the CTD. Delegations should not prejudge future negotiations.

91. The representative of Venezuela said that the proposal did not clearly establish that the measure would apply only to developed countries who would provide the conditions for market access for the exports from developing countries. She asked whether the proposal applied to developed countries and developing countries or only to the former.

92. The representative of India said that the intention of the proposal was that it be applied exclusively to the developed countries and not to developed and developing countries alike.

**8. Article 27.1 of the Agreement on Subsidies and Countervailing Measures**

93. The representative of India said that on behalf of the delegations of Cuba, the Dominican Republic, Honduras, Indonesia, Kenya, Pakistan, Sri Lanka, Tanzania, Zimbabwe and his own, he wished to introduce the proposal contained in document TN/CTD/W/1 concerning Article 27.1 of the Agreement on Subsidies and Countervailing Measures. That was the first part of the Article and it was an overarching provision which reinforced what was contained in the rest of the Article. The text of the Article read: "Members recognize that subsidies may play an important role in economic development programmes of developing country Members". This laid down the basis for S&D for developing countries on the issue. The value of the recognition had been considerably diluted, however, by the use of the word "may" in the provision. There was a need for an unambiguous recognition of the role played by subsidies in developmental policies. The sponsors of the proposal sought to delete the word "may" from the text. If approved, the amended text would read: "Members recognize that subsidies play an important role in the economic development programmes of developing country Members". Since this was the fundamental basis for the S&D treatment outlined in detail in the rest of the Article, the change would be of value to developing countries. In the Tokyo Round, Article 14, part 3 dealt with developing countries and Article 14.1 read: "the signatories recognize that subsidies are an integral part of economic development programmes of developing countries". There was a clear recognition in the Tokyo-Round documents that subsidies were an integral part of the economic development programmes of developing countries. Further, Article 14.5 of the Subsidies and Countervailing Measures Agreement*/Supplement* of the Tokyo Round reads that: "A developing country signatory should endeavour to enter into a commitment to reduce or eliminate export subsidies when the use of export subsidies is inconsistent with its competitive and development needs". This wording gives priority to development needs more than anything else. It only requested the elimination of all such subsidies when they were inconsistent with the development needs of a developing country. These cited provisions were diluted in the Uruguay Round Agreements. He recognized that Article 27.1 of the Agreement on Subsidies and Countervailing Measures included rights and obligations of Members. However, the sponsors had submitted the proposal since it was an S&D provision meant to benefit developing countries and since it was the first sentence which provided a basis for the S&D treatment of the rest of the Article.

94. The representative of Chile asked whether all subsidies played an important role in the development of developing countries. If the "may" was eliminated from paragraph 1 of Article 27, as proposed, it would mean that all subsidies do. However, economic reality had shown that they did not. There had to be a recognition of the fact that there were different types of subsidies. Some would play an important role in the development of Members, but others would not. On the contrary, they might generate inefficiencies within the economies and ultimately hamper development. One additional aspect to be considered was that in spite of the fact that some subsidies played an important role in the development of countries, these subsidies had to be analysed, at least within the WTO, in terms of whether or not they were trade distorting . The challenge for developing countries that wished to use subsidies in their development policies was to find subsidies which would help those policies without distorting trade.

95. The representative of Ecuador said that the proposed change would, in a general way, authorize the use of subsidies by developing countries. One of the purposes of the WTO, however, was liberalization of trade and the elimination of protectionism. Generally speaking subsidies were, in addition, for those countries which could finance them: normally the smaller developing countries could not afford to do so. From the perspective of the developing countries there existed also the risk of distortion from subsidies that would affect international competitiveness, especially for like products. These would at the same time affect investment, the generation of employment, and the relationship between developed and developing countries. The language proposed reflects this argument. His delegation was not necessarily in opposition to the proposal. Nevertheless, there was a need to consider the issues in more depth and to evaluate the consequences of that type of mandatory language before taking any decision.

96. The representative of Switzerland sought clarification on two issues. First, it was proposed that instead of saying "subsidies may play an important role in economic development", the Article should state that "subsidies play an important role". He asked if the underlying assumption and reasoning of the proponents of the proposal was that any given subsidy *per se* was beneficial for development. He further asked whether it was not conceivable, as was implied in the current wording of Article 27.1, that some subsidies might do more harm than good for overall economic development. Secondly, he asked what the proponents concretely expected from the proposed change and in what sense the provision would become more effective after the proposed change was introduced. His delegation had repeatedly insisted that it was important to have a fundamental discussion on the objective of S&D. It would be helpful if the proposals could be analysed in greater depth in order more accurately to evaluate what might be achieved, in terms of economic development, by adopting the changes proposed within them.

97. The representative of Argentina said that his delegation shared the view, expressed by a number of other delegations, that the discussion should be extended to include agriculture.

98. The representative of Venezuela said that the proposal was positive. Non-actionable subsidies applied by developing countries in order to maintain their development objectives were important to her Government. At the Doha Ministerial Conference, Ministers had agreed to deal with this issue alongside paragraph 12 of the Ministerial Declaration. It had a specific negotiating mandate in paragraph 10.2 of the Decision on Implementation-Related Issues and Concerns. Developing countries needed instruments which could be used to improve their competitivity. The objective of these instruments is not only to improve traditional trade flows in commodities but also to promote the transformation of the economy's structure and to add value to their exports. Non-actionable subsidies are, in this respect, important. Maintaining the possibility for developing countries to use this type of subsidy had to be considered and utilized as a principle for S&D. The provisions of Article 8 of the Agreement on Subsidies and Countervailing Measures should also be part of S&D.

99. The representative of Paraguay pointed out that developing countries had trade relations both with developed and developing countries. Subsidies, rather than being beneficial, in many cases constituted obstacles to trade. They could distort trade and in general have a negative impact on multilateral trade liberalization, the principal objective of the WTO.. Any proposal suggesting that all subsidies are beneficial to development would not seem to comply to reality: subsidies could rather be prejudicial to development. So the suggested change did not seem appropriate and might even be disadvantageous for the development of multilateral trade.

100. The representative of the European Communities said that it was a fact that economic development took place without subsidization and that this needed to be more generally recognized. If the Article were phrased as suggested it would mean that all developing countries would be free to grant subsidies as they wished. It seemed to him unclear that this was necessarily what other developing countries wanted.

101. The representative of Japan said that Article 27.1 articulated the core principle of Article 27 taken as a whole since the following part, beginning from 27.2, contained the actual rights and obligations. He therefore asked the sponsors of the proposal for a clarification of the purpose of the proposed change and what they hoped to achieve by the amendment.

102. The representative of Norway subscribed to the previous comments made by the representatives of the European Communities, Japan, and Switzerland. He asked the sponsors if they believed that all subsidies always contributed to development. His delegation found it difficult, if not, to understand why they saw a problem with maintaining the word "may" in the sentence.

103. The representative of Ecuador said that, having considered the procedure established in the Doha Ministerial Declaration, he thought it important to highlight something that had been referred to in Article 27.4 with respect to export subsidies. There had been a number of discussions in the Subsidies Committee regarding which Members did or did not qualify for extensions of the time-period during which continued export subsidies were permitted. The new proposal would clear the way for anyone to use it: both the Members who complied with what was set out in the Doha Ministerial Declaration and the Decision on Implementation-Related Issues and Concerns, and those who did not. The consequences of the proposal needed further consideration. It had to be recognized, for example, that some subsidies can have a positive impact on the development policies of developing countries.

104. The representative of Korea, on behalf of his delegation, shared the concern expressed by the representative of Japan. As had been said in the proposal's introduction, paragraph 27.1 was the overarching paragraph, critical to the entire Article. And it therefore recognized the positive role that subsidies might play in the current development programmes of developing countries. On the basis of that recognition the following fourteen paragraphs of Article 27 provided for S&D for developing country Members. Article 27, paragraph 14, although dealing exclusively with export subsidies, does state that the Subsidies Committee should examine the extent to which such export subsidies conform with development needs. And if the nature of paragraph 1 were changed it would fall out of line with these subsequent paragraphs. Of course it could be questioned whether subsidies always played a positive role in the economic development programmes of developing countries. It was quite widely recognized, for example, that subsidies could have adverse affects on the long-term competitiveness of any industry concerned regardless of whether or not it was in a developing or a developed country.

105. The representative of Australia asked whether the proponents of the proposal considered that the proposed amendment of the text of Article 27.1 would change the obligations contained within Article 27 as a whole. He also wondered if the proponents considered that Article 27.1 was in isolation to the rights and obligations contained in Article 27. By presuming that subsidies play an important role in economic development programmes it might be difficult to argue that a developing country could not continue to subsidize a particular product or to continue with a particular export subsidy programme. His delegation finds it difficult to accept the argument that all subsidies play an important role in economic development. And likewise he agreed with some of the comments made on the possible implications of the proposed change in the area of agriculture. As the proposal would imply a significant change in the Subsidies and Countervailing Measures Agreement it should be considered by some of the experts of the Negotiating Group on Rules.

106. The representative of Colombia said that the proposals represented an interesting beginning to the debate. They related, however, to an issue to be debated in the Negotiating Group on Rules and it was important that they be maintained there in order for the technical experts to have the opportunity to give them their consideration.

107. The representative of the United States said that her delegation had serious concerns with the proposed change. Some of these were similar to those already mentioned by other delegations.

108. The representative of Sri Lanka said that her delegation had noted the questions and comments made by various other delegations to which it would come back with answers. With respect to the relationship with agriculture, referred to by some delegations, she said that the sort of parallelism employed could not in fact be made as the Agreement on Agriculture mentioned reductions of export subsidies while Article 27 of the Agreement on Subsidies and Countervailing Measures related to prohibitions. The agricultural negotiations had itself not yet progressed to a discussion of that kind. There was therefore no relation between the two issues.

109. The representative of Argentina said that the Doha Ministerial Declaration spoke of the elimination of export subsidies and a substantial reduction of domestic support in agriculture.

110. The representative of Sri Lanka agreed that the Doha Ministerial Declaration spoke of the elimination of export subsidies. But she said that no delegation knew how many years this would take. There also seemed to be different views on how to reach a total elimination. An agreement to prohibit certain subsidies, in respect to the Subsidies Agreement in particular, had already been established. This was not yet the case in respect to the Agreement on Agriculture. It might be the case in the future.

111. The representative of India said that, in response to some of the questions posed, his delegation did not consider agriculture subsidies to be good for development: they were good neither for the subsidy giver nor for other countries. Second, in response to the question of what the sponsors expected to achieve from the suggested amendment he said that, as explained in the beginning, Article 27.1 was an overarching provision which, if suitably strengthened, could reinforce the rest of the provisions of Article 27 which dealt with developing country issues. Third, a couple of delegations had mentioned the functioning of the proposed changes within the legal framework of the Subsidies Agreement. He responded that the joint proposal in no way undermined that framework. Whatever was done would be within the limits of the legal framework of the Subsidies Agreement. Fourth, some economic arguments had been adduced to state that subsidies might not always be good. This was a matter for debate: it was, however, a debate into which he did not wish to enter. Although he did recall that throughout 2001 there had been a series of short programmes on BBC television which looked at developments in the last century. Several of these programmes focussed on the "economic miracles" achieved by a number of countries in the Far East. Two reasons put forward to explain such success were, (1) that the development had been preceded by high levels of subsidies for industrial production and (2) that high levels of protective tariffs were maintained by these countries. They subsequently managed to reach a level of development from which they could ask others not to provide subsidies. But in terms of their own development the sponsors were far behind such countries. So it would be useful for developing countries, as an initial stage in economic growth, if they too were permitted to give some subsidies within the provisions of the Subsidies Agreement. What the sponsors of the proposal were seeking, therefore, was the reinforcement of the current provisions. And in particular they would like to see the current provisions reinforced within the existing ambit of the Subsidies Agreement.

## 9. Article 12.10 of the Understanding on Rules and Procedures Governing the Settlement of Disputes (document TM/CTD/W/2)

112. The representative of India wished to present the proposal contained in document TM/CTD/W/2 on behalf of Cuba, the Dominican Republic, Egypt, Honduras, Indonesia, Kenya, Mauritius, Pakistan, Sri Lanka, Tanzania, Zimbabwe and his own delegation. It related to Article 12.10 of the Understanding on Rules and Procedures Governing the Settlement of Disputes. The text of the provision reads: "In the context of consultations involving a measure taken by a developing country Member, the parties may agree to extend the periods established in paragraphs 7 and 8 of Article 4. If, after the relevant period has elapsed, the consulting parties cannot agree that the consultations have concluded, the Chairman of the DSB shall decide, after consultation with the

parties, whether to extend the relevant period and, if so, for how long. In addition, in examining a complaint against a developing country Member, the panel shall accord sufficient time for the developing Member to prepare and present its argumentation. The provisions of paragraph 1 of Article 20 and paragraph 4 of Article 21 are not affected by any action pursuant to this paragraph". This provision conceived of situations in which a developing country Member was a defending party in a dispute settlement proceeding. The other party to the dispute might or might not be a developed country Member. The provision was divided in two parts. The first related to consultation fees and the second to panel proceedings. The first part of the Article dealt with the extension of consultation periods by the parties themselves or by the DSB Chair. The next part directed the panel to give sufficient time to a developing Member country to prepare its defence. The final provision subjected that grant of time to the overall time frames set for dispute settlement proceedings. Since the word "shall" was used in the second and third sentences the provisions could be considered mandatory. But despite of the use of the word "shall" it was left to the discretion of the DSB Chairman to decide on (1) whether or not to grant an extension of the consultation period, and (2) on the length of any such extension. In the case of a panel, however, it did not seem to have any such discretion: the provision clearly stated that the panel shall allow sufficient time. But the paragraph does not give any guidance, either to the DSB Chair or to the panel, as to how much additional time should be given. The panel was therefore constrained by the last sentence, the sentence concerning application of overall time frames. In relation to developing country Members the provision thus seemed to be of limited practical use or was arguably inoperable. This was perhaps the reason, as rightly pointed out in the Secretariat's Note, why no developing Member had so far invoked the first part of the paragraph. His delegation had invoked the second part of the paragraph in the first stage of the panel proceedings in the dispute India-QRs (DS90) and had been allowed ten days additional time for preparation of its first written submission.

113. He continued by saying that the proposal comprised three parts. The first suggested that the words "whether" and "if so for how long" be deleted from the second sentence and replaced with the words "for not less than fifteen days in cases of emergency as envisaged in paragraph 8 of Article 4 and not less than thirty days in normal circumstances". If these initial amendments were agreed to, the second sentence should then read: "If, after the period has elapsed, the consulting parties cannot agree that the consultations have concluded, the Chairman of the DSB shall, after consultation with the parties, decide to extend the relevant period for not less than 15 days, in cases of urgency as envisaged in Paragraph 8 of Article 4, and not less than 30 days in other cases in normal circumstances". This suggestion gives guidance to the DSB Chair upon being approached by either Party to extend the period, in normal circumstances, by at least 15 or 30 days. In case of exceptional circumstances, the expression used in Article 21.4, they could exercise discretion so as to give more time to the Parties. The second suggestion put forward by the proponents was to introduce the words "not less than two weeks extra in normal circumstances" into the third sentence, after the expression "sufficient time", and for the word "argumentation" to be substituted by the words "first written submission and not less than one week extra thereafter at each stage of written submission or presentation". The sentence would thus read: "In addition, in examining a complaint against a developing country Member, the panel shall allow sufficient time, not less than two additional weeks in normal circumstance, for the developing country Member to prepare and present its first written submission and one additional week thereafter at each stage of written submission or presentation". This suggestion directs the panel to give additional time of at least two weeks for the first submission, one week each for the second submission, first and second oral presentations and for interim submissions, if any. The third part of the proposal was to rephrase the last sentence to: "The additional time taken above shall be added to the time frames envisaged in Article 20 and paragraph 4 of Article 21". This last suggestion seeks to extend the overall time frames to the dispute settlement proceedings involving a developing country Member as a defending party. These suggestions, once implemented, would make the provisions of Article 12.10 of the DSU effective, operational, and of value to developing country Members.

114. The representative of the European Communities said that his delegation welcomed the proposal although it had not yet had sufficient time to examine it. This was also the case for the other two proposals relating to the Understanding on Rules and Procedures Governing the Settlement of Disputes. His delegation would prefer to discuss them in the ongoing negotiations on DSU review.

115. The representative of the United States said that her delegation had not had sufficient time to study the proposals. Her delegation still maintained, however, that the proposal should be presented in the context of the DSU negotiations. It seemed odd to be negotiating one part of an issue in the Special Session of the CTD while a full review exercise taking place elsewhere. And except for some theoretical idea, i.e. that no developing country had taken advantage of the provision because it had not been changed to reflect some of the proposals put forward, the precise nature of the problem with utilization remained unclear. The given rationale did not seem to fit with the assessment of utilization.

116. The representative of Japan said that his delegation agreed with what had been said by the representatives of the European Communities and the United States. The proposals had to be presented to the DSU negotiations.

117. The representative of Pakistan pointed out that his delegation was a co-sponsor of the proposal. Several Members had mentioned that the proposal should be pursued in the context of the DSU Review currently underway in the Special Sessions of the DSB. Article 12.10 of the Understanding on Rules and Procedures Governing the Settlement of Disputes was an S&D provision. The Doha Ministerial Declaration had mandated the CTD to conduct a review of the S&D provisions. The S&D provisions should therefore be taken as a part of the overall review in which Members were engaged. An attempt to filter down or select provisions to be part of broader negotiations in different fora would not be acceptable to his delegation. The Special Session of the CTD was where Members were engaged in a review of the S&D provisions and the provision in question was an S&D provision. The basic examination of that provision should therefore be conducted in the Committee and it was up to the Committee to try to make it operational. The provision created two obligations: one was the possibility of extending the consultation period and the second was that enough time had to be granted, if need be, for a developing country to prepare its argumentation. The broader objective was to create favourable conditions that at the same time avoided the tight timelines that, especially when they lacked expertise in the area, constituted an additional burden on developing countries. Their lack of experience and limited capacity often meant that they had difficulty preparing for their submissions to the DSB. It was also difficult for them to find the relevant information and data adequately to prepare themselves. His delegation looked forward to a positive engagement on the issue from the members of the Committee .

118. The representative of United States asked whether the reference made by the representative of India to the panel proceedings in the dispute "India-QRs", when the delegation of India had received ten extra days for the preparation of its first written submission, was to be characterized as a problem. The delegation of India had invoked the provision and received ten extra days. That seemed to indicate utilization of the second part of the provision although it was still not clear why the other parts of the provision had never been invoked and so where the particular problems at issue were to be located.

119. The representative of India noted that the representative of the United States wished to know what had been the precise nature of the problem with respect to the panel proceedings in the dispute "India-QRs". It was a complicated case, the background of which she would already be aware. His delegation had asked for thirty additional days. It had received only ten extra days and this had created considerable difficulties for his delegation. What should be considered is what his delegation had suggested towards the end of its introductory comments. The provisions clearly stated that the provisions of paragraph 1 of Article 20 and paragraph 4 of Article 21 were not effected by any action

pursuant to that paragraph. This meant that the overall time-frame specified in the Understanding on Rules and Procedures Governing Settlement of Disputes would not be affected by the provision, at various stages, of extra time to developing countries. But this posed a serious problem as it reduced the time available to the panel to deliberate and decide upon an issue. The panel would naturally be reluctant to provide extra time to developing countries if this meant that its own time was then reduced. This was why the proponents had suggested that the overall time-frame should be extended by taking account within it of the extra time given to developing countries. He entirely agreed with what the representative of Pakistan had said about whether the issue should be discussed in the CTD or in the DSB Review. The CTD Special Session discussed all S&D provisions and the provisions in question were S&D provisions. They had been identified as such by the Secretariat and agreed by almost all delegations. The discussions had subsequently to be followed by negotiations in the Special Session of the CTD where they were being handled in a completely different context than in the Rules Negotiating Group. A point had been made about the low utilization of the provision. The low utilization was caused by a lack of certainty as to whether any benefit would finally be received. The language, for example, was vague: "shall decide after consultation with parties whether to extend". He had recent experience of this: experience dating back only six months to a moment at which he had approached his capital regarding whether or not his delegation should seek additional time. The officers in the capital had pointed out that, as there was no certainty of actually receiving an extension, it was better for the delegation simply to submit whatever it could by the original deadline. The existing language does not provide developing countries with any guarantee that they will be granted additional time. What the proponents had proposed was to rectify this difficulty by incorporating into the provision a certainty that, when the DSB Chairman or the panel was approached, extra time would be received.

120. The representative of Ecuador said that the proposals had been made from the positive perspective of the developing countries' point of view. Its purpose, based on their experience, was for developing countries to use their right to legitimate defence within appropriate time limits and deadlines. Such a purpose is in keeping with the real situation in developing countries. His delegation therefore supported the proposal. He also said that, with respect to reflection upon the appropriate forum, the issue under discussion came under the Special Session of the CTD for the reasons stated by the representatives of Pakistan and India. It was the right context regardless of the fact that a similar debate could be held in other appropriate fora of the WTO besides that of the Special Session of the CTD.

121. The representative of Argentina said that his delegation was not in a position to give an opinion. He would pass the issue on to his colleague dealing with dispute settlement issues in order for his delegation to give its opinion on a subsequent occasion.

## 10. Articles 4.10 and 21.2 of the Understanding on Rules and Procedures Governing the Settlement of Disputes

122. The representative of India wished to present his delegation's proposal relating to Article 4.10 of the Understanding on Rules and Procedures Governing the Settlement of Disputes. Article 4.10 reads: "During consultations Members should give special attention to developing country Members' particular problems and interests". The first part of the proposal aimed to make the provision mandatory by replacing the word "should" by "shall". The second part of the provision states that "special attention to be given to the particular problems and interests". But it does not go beyond that. His delegation had attempted to specify how the provision of special attention in the second part of the proposal could be made more substantive. His delegation had proposed that (a) if, in the context of developing country Members, the complaining party was a developed Member, seeking the establishment of a panel, it should be made mandatory for it to explain, in the panel request as well as in its submissions to the panel, the ways in which it had paid special attention to the particular problems and interests of the responding developing country; and (b) if the developed Member was a

defending party it should be made mandatory for it to explain, in its submissions to the panel, how it had addressed or paid special attention to the particular problems and interests of the complaining developing country; and (c) the panel, when adjudicating the matter referred to it, should also give its ruling on this parallel issue. These suggestions, when implemented, would make the provisions of Article 4.10 both more meaningful and of more value to developing countries.

123. He went on to say that his delegation's second proposal related to Article 21.2, which reads: "Particular attention should be paid to matters effecting the interests of developing country Members with respect to measures which have been subject to dispute settlement". This provision was part of the Article that required the DSB to ensure that the implementation of its rulings were kept under surveillance. The Article provides for the determination of a reasonable period of time for compliance with DSB rulings, for the periodic issuing of status reports and, in the case of disagreement, for initiation of further dispute settlement proceedings to determine whether the defendant Member had complied with DSB rulings. The first part of the proposal suggested the replacement of the word "should" by "shall" so as to make the provision mandatory. The second part of the proposal tried to clarify the phrase "matters effecting the interests of developing country Members". It was in this context that his delegation proposed that the provision, having been placed at the beginning of the long and important Article 21, should be interpreted as an overarching provision in all disputes involving a developing country Member and, as such, that it should be made mandatory for the panels and Appellate Body. If the defending party were a developing Member, and the complainant a developed Member, the normal reasonable period of time would be fifteen months. But if the measure at issue were the change of strategy provisions or the change of long held practice or policy, the reasonable period of time would be two to three years and the panel and the Appellate Body would indicate, as necessary, the requirement of an additional reasonable period of time. The second element of the proposal related to Article 21.5 procedures. The time for consultation of 21.5 panel proceedings should be increased from 90 to 120 days. The panels should give all due consideration, as any normal panel would, to the particular needs of the developing country Members. And the third part dealt with the filing of status reports which, his delegation suggested, should be done in alternate meetings rather than at every regular meeting. This would help to ease the otherwise considerable burden that they place upon developing countries. The third element of the proposal was that if a complaint was lodged by a developing Member against a developed Member, the defending developed country Member should, no matter what the circumstances, be given no more than a 15 day reasonable period of time. The existing 90 days time-limit for 21.5 procedures should be observed. there should be an obligation to compensate for continuing trade losses to the developing country complainant in the case of any further delay. These suggestions, if implemented, would make the provisions of the Article mandatory, effective, and operational.

124. The representative of the United States said that her comments applied to both proposals. The analysis of the proposals was to be made in light of the fact that the review and the mandate provided that the identification of what should be made mandatory, effective and operational would be on the basis of a consensus. Her delegation was of the view that the ultimate discussion of DSU proposals had, however, to be held within the Special Session of the DSB which is currently under way. There were numerous instances of disputes involving developing country defending parties in which the consultation period had been extended well beyond 60 days. Reasonable period of time requests had been dealt with on a case-by-case basis with special attention being given to developing countries. She questioned whether it would be constructive to establish a mandatory revision in the manner of a "one size fits all" approach. And her delegation was concerned that, while discussing time frames, numerous proposals were being made and discussions taking place in the DSU negotiations on the same point. Of course she looked forward to the results of these discussions as well. It was important to consider the impact of any proposal on the reality of the dispute settlement system. The rules should be applied in a manner that allowed for the efficient resolution of disputes. Any consideration of changes concerning time frames should therefore take this into account.

125. The representative of Canada said that her delegation was of the view that the technical experts in the DSU should review the proposals as they were already in the process of discussing these issues. With respect to Article 4.10, however, her delegation noted that in the Secretariat document WT/COMTD/77/Rev.1, only one developing country Member had made a complaint relating to the Article. This did not constitute evidence of a systemic problem. She wondered if other delegations had experienced difficulties as she would welcome more clarification on the issue of specific problems and interests. The same Secretariat document noted that that Article 21.2 had been referred to in arbitral awards and her delegation wondered what, regarding its inadequacy, had been the specific complaint in this instance. It was not clear how the effectiveness of the provision would be improved by making it mandatory.

126. The representative of Japan said that his delegation believed that the three proposals should be presented to the Special Sessions of the DSB for the same reasons as those given by Canada and the United States. With regard to the proposal concerning Article 21.2 he said that difficulties relating to the change of statutory revisions or the change of long held practice and policy would be almost the same for developed as for developing countries. There was therefore no compelling reason to distinguish between the time applied to the developing and the time applied to the developed countries.

127. The representative of Cuba said that, although his delegation was aware of the fact that Article 21.2 had rarely been used, his delegation did know of a case involving a developing country where the reasoning used had given cause for concern. This case involved an appeal, based on Article 21.2, for an extension to the period for compliance. The extension was justified by invoking the special situation of the country, however, which at the time had been experiencing economic problems. In the absence of special economic problems the extension of the time period could not have been justified. But this made the scope of the provision rather restrictive. And the same argumentation might be applied to any other developing country regardless of the economic situation at a given time. For this reason his delegation considered that the proposal was relevant and that the Special Session of the CTD should continue to discuss it.

128. The representative of India recalled that one delegation had mentioned that the reasonable period of time was considered on a case-by-case basis. This was precisely why the need existed to add certainty to the provision so that developing countries could then count on it. Second, the question had been asked as to whether there had been any specific problems. There had been problems in the dispute "India-QRs" during which his delegation had asked for a longer reasonable period of time without receiving it. Third, the question of reasonable period of time had been examined in two cases. It had not been examined in any great length, however, and he did not believe that the delegations in question had received full satisfaction. One case was the Indonesia auto case and the other was the Chile alcohol case. One delegation had said that, in the settlement of disputes, the aim should be to ensure that the rules were applied in an efficient manner. No delegation would wish to object to such a statement. All that his delegation wished for was to incorporate a certain flexibility into the system. Greater flexibility would help to address some of the problems and concerns of developing countries so that compliance with some of the DSB provisions would then seem less burdensome on them. Finally, a comment had been made on the proposal regarding Article 21.2 relating to changes in long held practices and policy, pointing out that it was as true for developed countries as it was for developing countries. This was possible. But on the other hand it was true, nevertheless, that developing countries had less capacity to absorb the economic shock than the developed countries and hence the suggestion that they be given a longer reasonable period of time. He had understood that one small aspect of the proposal on 21.2 had been tabled by a delegation in the DSB review. But none of the other points, as far as he was aware, had so far been put forward as formal proposals in the DSB review. He was therefore surprised to hear that the same proposals were being discussed in the DSB review.

129. The representative of the United States said that there were other proposals in the DSU concerning time-frames. Her delegation's comments had been part of the "review" of S&D provisions. Whatever was reported to the General Council in July 2002 had to be based on a common understanding. Proposals had been put forward in the Special Session of the CTD but at the same time there were also proposals concerning time-frames in the DSU.

130. The Chairman said that the Committee had reached the end of the examination of the proposals on the table. The Committee had considered eleven proposals and had had a useful exchange of views on them. The Committee would have to decide what to do next in moving forward the process of considering the proposals.

## C. OTHER BUSINESS

131. The Chairman observed that, as indicated at the beginning of the meeting, he would draw Members' attention to the responses received, from the chairs of the other bodies, to the Committee's request to be kept informed of any issues relating to S&D from within their respective bodies. He had indicated in April that the Committee had received responses from several bodies. Ten such responses had been received. Of these responses, five bodies had indicated that the issue of S&D had not been raised within their Committee. These bodies were the Committee on Trade and Environment, the Committee on Safeguards, the Committee on Trade and Civil Aircraft, the Committee of Participants and the Expansion of Trade and Information Technology Products and the Textiles Monitoring Body. The other five bodies, namely the Committee on Anti-Dumping Practices, the Committee on Subsidies and Countervailing Measures, the Committee on Sanitary and Phytosanitary Measures, the Committee on Agriculture and the Working Group on the Relationship Between Trade and Investment, had given updates on the status of S&D discussions in their respective bodies. The relevant documents were available at the back of the room. He urged Members to read these so that any questions or queries could be addressed at the next meeting of the Committee. He reminded delegations that the next formal meeting was scheduled for 14 June 2002 at which time the Committee would take up the agreements and decisions listed in the fax circulated on 15 April 2002. The Committee would also take up any proposals related to those agreements to have been circulated by that time. The deadline for the circulation of proposals was 31 May. He also recalled the draft work plan that had been circulated to Members. This had been discussed at the informal meeting of 19 March and which Members continued to work on it on an informal basis. It was his understanding that Members were in a position formally to accept this work plan and its schedule[2].

132. It was so agreed.

133. He continued by saying that a number of issues had been raised and that the Committee now had to reflect on how best to proceed. In terms of the proposals that had already been considered, including the proposals that had been submitted and the proposals introduced, he suggested that it might be necessary to have an informal meeting before 14 June to pursue further discussions. Since the proposals by the African group and the LDCs had already been formally introduced it might be useful, he thought, to include an exchange of views on them in an informal meeting prior to the next formal meeting. The other matter that the Committee had to address, as raised by the representative of the European Communities, was the question of the appropriate symbol to be given to the documentation. He undertook to hold informal consultations on this issue before the next meeting. He proposed that the Committee take up the question of the nature of the Special Session in an informal consultation, and that another informal meeting be scheduled for an initial exchange of views on the proposals from the African and the LDC Groups, as well as to receive further comments on the

[2] See Annex.

proposals already discussed. He made these proposals aware of the limited time-frame in which the Committee had to work. One formal meeting was scheduled for 14 June at which the Committee had a number of agreements and decisions to address. The Committee also had to address the fourth indent of its work plan which related to the ways in which developing countries, including LDCs, might be assisted in making best use of S&D provisions. He suggested that this issue also be put on the agenda of the next formal meeting on 14 June, in addition to the agreements and decisions which had been circulated in the facsimile message convening that meeting. It was his understanding that the proposals submitted by the Africa and LDC Groups would shortly be available in all three official languages of the WTO. Informal consultations could take place once these proposals were available in the three languages.

134. The representative of the United States asked if the intention was to translate the informal discussion on the Africa Group and LDC Group proposals into formal mode, as had been done with other proposals, or if it was simply to discuss them in informal mode. She asked if the full discussion of these proposals could be in formal mode and on the record rather than having a second formal discussion.

135. The Chairman said that the intention was to translate the informal discussions into formal mode. The objective was to get ahead with the work. What had been suggested by the representative of the United States would facilitate that. If the Committee were to have a second discussion in formal mode it would not save time. He asked if Members agreed to what he had suggested. What he suggested was to have an informal meeting at which the Committee would further consider the proposals already considered and to have a first consideration of the proposals that had been introduced by the Africa and LDC Groups. In addition there would be informal consultations on the question of the document symbol and the nature of the Special Session of the CTD. All this work would be undertaken before the next formal meeting scheduled for 14 June.

136. It was so agreed.

## ANNEX I

Committee on Trade and Development: Special Sessions

*Work Plan and Schedule of Meetings*

137. It will be recalled that paragraph 44 of the Doha Ministerial Declaration mandates that all special and differential treatment provisions shall be reviewed with a view to strengthening them and making them more precise, effective and operational. It will also be recalled that paragraph 12 of the Doha Decision on Implementation-related Issues and Concerns mandates the Committee on Trade and Development (CTD), *inter alia*, to identify the special and differential treatment provisions that Members consider should be made mandatory; to examine ways in which special and differential treatment provisions can be made more effective in their operation; and to consider ways in which developing and least-developed countries can be assisted in making best use of these provisions. The CTD was instructed to report to the General Council with clear recommendations for a decision by July 2002.

138. Pursuant to the Agreed Process on the work programme on special and differential treatment contained in WT/COMTD/36, the Special Session has four main tasks before it. They are:

(I) members to identify those provisions that they consider should be made mandatory.

(II) members to provide inputs on the legal and practical implications of making non-mandatory provisions mandatory.

(III) members to examine those provisions which could be made more effective in their operation. (This task could apply to both mandatory and non-mandatory provisions).

(IV) members to consider ways in which developing countries, including LDCs, may be assisted in making best use of S&D provisions. This should include through improved information flows.

139. Given the foregoing tasks, it is proposed that five meetings be held between April and July; each meeting will give focussed attention to the tasks identified above with due regard for flexibility in considering them given their inter-related nature. The dates proposed for these meetings are: 9 April, 16 May, 14 June, 2 July and the afternoon of 17 July.

The meeting on **9 April** would be devoted to:

A. (i) Members identifying the provisions they consider should be made mandatory; and (ii) considering inputs from Members on the legal and practical implications of making non-mandatory provisions mandatory.

The meetings on **16 May** and **14 June** would be devoted to:

B. (i) examining provisions which could be strengthened and made more effective, precise and operational (inclusive of mandatory and non-mandatory provisions); and (ii) considering ways, including through improved information flows, in which developing countries, particularly the least-developed countries, may be assisted to make best use of special and differential treatment provisions.

The two final meetings on **2 July** and the **afternoon of 17 July** would be dedicated to preparing and considering the recommendations of the Special Session. Open-ended informal consultations may be convened as agreed with due regard to the guidelines for the scheduling of meetings.

140. The information on mandatory provisions contained in WT/COMTD/W/77/Rev.1/Add. 1 and Add.2 and on the utilization of special and differential treatment provisions contained in WT/COMTD/W/77/Rev.1/Add.4 could assist Members, as appropriate, in the tasks listed at (I), (III) and (IV) above. As indicated in paragraph 2(a) of the Agreed Process, Members may also wish to consider WT/COMTD/W/77/Rev.1, in particular paragraph 20, with a view to structuring their inputs and discussions relating to the task listed at (III). Members may also find the information in WT/COMTD/W/77/Rev.1/Add.3 useful in providing inputs on the legal and practical implications of making non-mandatory provisions mandatory.

141. Updates from chairpersons of other WTO bodies, to which have been referred implementation-related issues which may have a bearing on the work of the Special Sessions of the CTD, will be provided as they become available.

142. Finally, it is recalled that Paragraph 12 (iii) provides for consideration, in the context of the work programme on special and differential treatment, to be given to how special and differential treatment may be incorporated into the architecture of WTO rules. This task is not bound by the July 2002 deadline. Given the work to be accomplished by July, this aspect of the work programme may be addressed after July 2002.