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SPECIAL AND DIFFERENTIAL TREATMENT FOR DEVELOPING COUNTRIES IN THE MULTILATERAL TRADING SYSTEM

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I. INTRODUCTION

1. Special and differential (s&d) treatment is a fundamental cross cutting issue for developing countries in the Multilateral Trading System (MTS). It is an integral part of the balance of rights and obligations in the Uruguay Round Agreements (URAs).

2. The way in which countries at different stages of development are treated in the MTS has been a crucial and in many cases a controversial issue in multilateral trade negotiations. Throughout the years, as liberalization commitments of developing countries deepened and the trade agenda broadened, s&d treatment grew in importance.

3. The interrelationship and linkages between trade and development have also evolved over the years. A number of developing countries have become more effectively integrated in the MTS and have become significant exporters of manufactured products as well as a wide range of processed and other high value agricultural products. Furthermore, developing countries have assumed greater commitments in the WTO, especially in areas like intellectual property, market access, services, technical barriers to trade and sanitary and phytosanitary measures. As a result of these developments the nature and focus of s&d treatment should develop to reflect the emerging needs in various areas based on the experience in the process of implementation of the URAs as well as the evolving needs for those developing countries, particularly LDCs, that have not been effectively integrated in the system.

4. At this crucial time in the development of the MTS when new negotiations are set to start by the year 2000, it becomes imperative to examine the following issues:

(a) have s&d provisions in various URAs been adequately implemented or exploited;

(b) did s&d provisions yield concrete benefits and were they sufficient to ensure that developing countries can implement their obligations in the WTO;

(c) did s&d treatment achieve its objectives and if not how can it be developed to do so and address the evolving needs and requirements of different developing countries in this regard;

(d) the experience of developing countries in their effort to take advantage of s&d provisions and how they can best share this experience as well as the role that the Secretariat of the WTO can play to assist developing countries to make the best possible use of s&d treatment.

5. The objective of this paper is the following:

(a) to identify s&d provisions that have not been implemented or those that have not been adequately implemented;

(b) to identify the difficulties that prevent developing countries from maximizing the benefits from the use and implementation of s&d provisions;

(c) to address how s&d provisions can enhance the trade position of developing countries and assist them in implementing their WTO obligations;

(d) to reach a number of conclusions that would guide future consideration of s&d treatment in the WTO and in future negotiations.

6. Needless to say, the coverage of the paper is not exhaustive of s&d provisions in the WTO. It has to be indicated as well that in some cases, as it will become evident from the paper, the information available does not allow for an adequate evaluation of specific provisions. This is one of the concerns that should be addressed in the course of our examination of the implementation of s&d provisions.

7. The following sections in this paper start with briefly addressing the reasons behind the continued importance that developing countries attach to s&d treatment. The paper then identifies the various categories of s&d provisions and analyzes the implementation of s&d provisions in a number of WTO agreements. The section on implementation addresses how various s&d provisions have been implemented and evaluates their effectiveness in achieving the objectives of s&d treatment. The paper also contains a number of suggestions on how to proceed in specific cases. Finally, the paper concludes with suggestions for a future approach to s&d treatment.

II. THE CONTINUED IMPORTANCE OF SPECIAL AND DIFFERENTIAL TREATMENT

8. The Final Act of the Uruguay Round contains many provisions according s&d treatment to developing countries. These provisions have different legal status as well as varying economic and trade implications. Different categories of s&d provisions will therefore require separate consideration. It is also recognized that the costs and benefits of s&d treatment can not be calculated accurately in many cases and that a number of s&d provisions may be of a safeguard type, i.e. they provide assurance to developing countries members that if they face difficulties they would be able to resort to policies and measures that would assist them in addressing these difficulties.

9. The reasons for the recourse and reliance by the MTS on s&d treatment remains valid for many developing countries and in particular LDCs. S&D treatment continues to be of crucial importance to the MTS for the following reasons:

- it represents a reflection of how the MTS accommodates members at different stages of development, since for the system to succeed, the particular circumstances and development needs of weaker members must be taken into account;

- it can contribute to the integration of developing countries in the MTS;

- it was devised as a tool that can promote the equitable distribution of benefits from the system;

- it made it possible for developing countries to assume additional obligations in the MTS since in the absence of s&d treatment many developing countries would have found it extremely difficult to accept strict disciplines and high levels of liberalization commitments and would have remained outside the system;

- it can also be considered as a means to compensate for some of the shortcomings of the system from the perspective of developing countries. These include the inadequate manner in which it deals with several sectors that are of export interest to them (e.g. textiles and clothing, agriculture, etc.).

III. DIFFERENT CATEGORIES OF SPECIAL AND DIFFERENTIAL TREATMENT

10. S&D provisions have been categorized in various ways. They are classified by some as falling into two broad categories: first, exceptions to the overall rules that apply to developed countries in the

system; and secondly, positive actions that are required by developed countries or by the WTO and other organizations. Another way to categorize s&d treatment is to distinguish between provisions that are related to the level of development and those that are not related to the level of development.

11. The main s&d provisions can be classified under the following categories:

(a) provisions aiming at increased trading opportunities for developing countries including through providing more favourable access to the markets of developed countries;

(b) provisions that require developed countries to safeguard the interests of developing countries when adopting certain measures;

(c) provisions giving developing countries some flexibility and policy discretion or that grant them more favourable thresholds or exempt them from obligations or disciplines which apply to developed country members;

(d) provisions for support measures by developed countries or by the WTO or other organizations including those related to technical and financial assistance;

(e) limited time derogation from the rules. These are provisions that allow developing countries to derogate from commitments for specific time periods with varying conditions that differ from one agreement to another and may differ as well between developing and least developed countries. In most cases, developing and developed countries will have comparable obligations at the end of these transitional periods.

IV. IMPLEMENTATION OF SPECIAL AND DIFFERENTIAL PROVISIONS

12. The preamble of the WTO Agreement recognizes the special needs of developing countries. Many other preambles in the Final Act of the UR contain similar objectives. However, provisions attempting to translate these objectives into concrete action are not many.

13. The references to LDCs are even more generous. It is stipulated that LDCs 'will only be required to undertake commitments and concessions to the extent consistent with their individual development, financial and trade needs or their administration and institutional capabilities.' Furthermore, LDCs benefit from relatively more generous s&d treatment as it will become apparent from the consideration of s&d provisions in various agreements.

14. Before addressing specific agreements and legal instruments it is necessary to address two issues of a general nature. The first is related to increasing trade opportunities for developing countries and the second is related to technical assistance.

15. Increasing Trade Opportunities for Developing Countries: A number of provisions aim at increasing trade opportunities of developing countries. These include:

(a) a recognition in the preamble of the WTO agreement of the special needs of developing countries particularly for positive efforts designed to ensure that they secure a share in the growth in international trade commensurate with their economic development needs;

(b) provisions that allow developed countries to provide trade preferences to developing countries;

(c) Article IV:1 of GATS that aims at increasing the participation of developing countries in trade in services through the liberalization in sectors and modes of supply of export interest to them;

(d) provisions in the Agreement on Textile and Clothing for more favourable growth factor for small exporters, new entrants and LDCs;

(e) provisions in the Decision on Measures in favour of LDCs for the consideration of improving preferential treatment for products of export interest to LDCs as well as the adoption of positive measures which facilitate the expansion of trading opportunity of LDCs.

16. Furthermore, one of the fundamental ways in which developing countries are exempted from WTO disciplines regarding market access is the principle of non-reciprocity in trade negotiations with developed countries in reducing tariff or removing other trade barriers. This principle is recognized in Article XXXVI of GATT 1994 and in the enabling clause. Consistent with these provisions, many developing countries have not bound their tariffs on industrial products to levels comparable to those of developed countries.

17. Similar provisions for non-reciprocity are included in GATS Article XIX:2 which states that "there shall be appropriate flexibility for individual developing countries Members for opening fewer sectors, liberalizing fewer types of transactions, progressively extending market access in line with their development situation..."

18. A number of developing countries, particularly in south-east Asia, have achieved substantial growth through export led development strategies. However, many developing countries, particularly in Africa and Latin America, have experienced declining share in the value of world merchandise exports over the last decade. In the period 1985 to 1996, the share in the value of world merchandise exports for Africa declined from 4.2% to 2.3%. The share of Latin America declined from 5.3% to 3.2%. Asia, on the other hand, witnessed an increase in the share of the value of merchandise exports from 20.8% to 25.6% in the same period.

19. Despite the progress achieved by a number of developing countries in expanding their manufacturing exports, a large number continue to rely on the export of primary products for a substantial part of their foreign exchange earnings and a high proportion of their GNP. In many developing countries over 75% of export earnings rely on primary commodities. In 1995, the share of primary commodities in exports was 64% for Africa, 49% for Latin America and 15% for Asia. The world average was around 24%. As for manufactured products, in 1995, the share of total exports derived from manufactured products was 28% for Africa, 50% for Latin America and 83% for Asia. The world average was around 76%. The reliance on primary commodity exports creates two sets of problems: volatility of export earnings due to the volatility in commodity export prices; and long term deterioration in the terms of trade of primary product exporting countries. These deteriorating terms of trade impose higher social and economic costs on developing countries. It has been argued that declining terms of trade in developing countries and the rising terms of trade for developed countries is in effect a transfer of income from developing to developed countries.

20. These few examples demonstrate the weaknesses and vulnerability of the trade situation in developing countries in terms of the share of world merchandise exports, the composition of trade flows, and terms of trade. This represents a major challenge to the MTS and to the manner in which the system would be able to develop s&d treatment in the future.

21. Under these conditions, the question then is how can trade become a tool that promotes convergence of standards of living and levels of development among various countries and regions

around the world and not widen the existing and even growing gaps and inequities. Concentration in this respect should focus on how to effectively implement and make the best use of provisions aiming at increasing trading opportunities of developing countries and how they can be improved in practical and pragmatic terms to achieve this objective.

22. Technical Assistance: Most WTO agreements include provisions to provide technical and in some cases financial assistance to developing countries. The main objectives of such assistance is to help developing countries to develop their trade capacity and to meet their obligations in the WTO.

23. WTO technical cooperation activities have recently witnessed a number of positive trends. These are: the increase in the level of technical assistance activities, the increase in financial resources that were available for these activities, the increase in Africa's share in technical assistance provided by the WTO, the increased coverage of technical assistance of WTO Agreements and activities, and the increase in activities in relation to the HLM on Integrated Initiatives for LDCs.

24. However, a number of difficulties and concerns have been identified:

- Only 25% of the technical assistance activities in 1997 have been financed through the regular budget. This would render the continued supply of such assistance highly unpredictable.

- There are also concerns about the capacity of the Secretariat to provide the necessary technical assistance to meet the growing demand for such assistance.

- A large percentage of technical assistance activities was provided through seminars. These are useful in the initial stages of implementation in order to increase awareness but the focus should be shifted to practical hands-on assistance, advisory missions to assist in the preparation of notifications and legislation and advice in relation to of the implementation of various WTO agreements and the most effective use of S&D provisions.

25. The evaluation of the availability, effectiveness, adequacy, scope and implementation of technical assistance is an issue that requires a separate consideration. However, it has to be indicated that the main question that should be addressed is the problem of overall adequacy of the technical assistance that is provided compared to the level of needs of developing countries and LDCs.

26. The following sections will address some of the most important s&d provisions in various URAs and decisions.

A. THE AGREEMENT ON AGRICULTURE

27. The preamble to the Agreement on Agriculture clearly states that s&d treatment for developing countries is 'an integral element' of the UR negotiations. The preamble also recognizes the potential problematic position of LDCs and Net Food Importing Developing Countries (NFIDCs) with regard to their non-trade concerns including food security.

28. Developing countries enjoy s&d treatment in the three main components of the Agreement, namely: market access, domestic support and export subsidies as well as regarding export restrictions.

29. The Agreement exempts least developed countries from making reduction commitments, i.e. reduction of tariffs, domestic support and export subsidies. This provision was used by all least-developed countries in the establishment of their schedules. Other developing countries will have the

flexibility to implement their reduction commitments over a period of 10 years as compared to the six-year implementation period. This provision was used by developing countries in their schedules.

30. There are lower rates of tariff and subsidy reduction for developing countries (other than least developed countries) in measures affecting agriculture, provided that the result is no less than two thirds of that specified for developed countries. These elements will be addressed in some detail in this section.

31. Domestic Support Commitments:

- Domestic subsidy was calculated by different countries. Non-exempt or trade distorting domestic support is reduced yearly from the overall level of such support in the 1986-1988 base period[1]. If a subsidy level is not indicated in the schedule, then no trade distorting subsidy can be provided beyond the de *minimis* levels. For developing countries, the de *minimis* percentage under Article 6:4(b) is 10% of the value of production of the product concerned compared with 5% for developed countries or 10% of total agricultural production in the case of non-product specific de *minimis* for developing countries compared with 5% for developed countries.

  Developing countries took account of this provision in the establishment of their schedules. Of the 42 domestic support notifications received from developing countries relating to the 1995 and 1996 implementation years, seven developing countries made use of the de *minimis* provision[2].

- Government measures of assistance, whether direct or indirect, to encourage agricultural and rural development programs of developing countries are exempt from reduction commitments in respect of domestic support commitments.

  Developing countries took account of the provision in the establishment of their schedules. Of the 42 domestic support notifications received from developing countries relating to the 1995 and 1996 implementation years, 19 developing countries made use of this provision[3].

[1] Countries are free to chose the products and the rates of reduction within the accepted annual total. This creates a high degree of uncertainty to other trading partners.

[2] 28 WTO members (counting the EU as one member) have Total AMS reduction commitment. 13 of these are developing countries. Other members are still required to notify under the domestic support chapeau every year (or every other year in the case of LDCs). Of the developing countries with Total AMS reduction commitment only one developing country is yet to submit a notification for the 1995 implementation year, 3 developing countries are yet to submit a notification for the 1996 implementation year and 6 developing countries are yet to submit a notification for the 1997 implementation year. 27 developing countries without Total AMS reduction commitments are yet to submit a notification for the 1995 implementation year, 54 are yet to submit a notification for the 1996 implementation year, and 48 are yet to submit a notification for the 1997 implementation year.

[3] 25 WTO members (counting the EU as one member) have export subsidy reduction commitment. 10 of these are developing countries. Other members are still required to notify export subsidy use every year. Of the developing countries with export subsidy reduction commitment only one developing country is yet to submit a notification for the 1995 implementation year, 2 developing countries are yet to submit a notification for the 1996 implementation year and 5 developing countries are yet to submit a notification for the 1997 implementation year. 40 developing countries without export subsidy reduction commitments are yet to submit a notification for the 1995 implementation year, 57 are yet to submit a notification for the 1996 implementation year, and 67 are yet to submit a notification for the 1997 implementation year.

- Governmental stockholding programs for food security purposes in developing countries whose operation is transparent and conducted in accordance with officially published objective criteria or guidelines are considered to be in conformity with the Agreement.

  Developing countries took account of this provision in the establishment of their schedules. Six developing countries notified the use of this provision.

- The provision of foodstuffs at subsidized prices with the objective of meeting food requirement of urban and rural poor in developing countries on a regular basis at reasonable prices is considered to be in conformity with the provisions of the Agreement.

  Developing countries took account of this provision in the establishment of their schedules. Six developing countries notified the use of this provision.

32. Export Subsidy Commitments:

- The member's budgetary outlays for export subsidies and the quantities benefiting from such subsidies, at the conclusion of the implementation period, should not be greater than 64% and 79% of the 1986-1990 base period levels, respectively. For developing countries these percentages are 76% and 86% respectively.

  Developing countries took account of this provision in the establishment of their schedules. All 10 developing countries which have export subsidy reduction commitments used the allowed flexibility to apply a lower rate of cut.

- During the implementation period, Article 9.4 stipulates that developing countries are not required to undertake commitments in respect of a number of export subsidies listed in the agreement[4].

  Article 9.4 primarily provides developing countries with flexibility which can be used during the implementation period. Of the 60 export subsidy notifications received from developing countries relating to the 1995 and 1996 implementation years, five developing countries made use of this provision.

- The provisions relating to disciplines on export prohibitions and restrictions will not be applied to developing countries, unless such a measure is taken by a developing country which is a net food-exporter of the specific foodstuff concerned.

  No developing country has notified the introduction of such a measure.

33. Market Access Commitments:

- in implementing commitments on market access, developed countries will take fully into account the particular needs and conditions of developing countries by providing for a greater improvement of opportunities and terms of access for agricultural products of particular interest to these countries, including the fullest liberalization of trade in tropical agricultural products and products of particular importance to the diversification of production from the growing of illicit narcotic crops.

[4] Subsidies to reduce the costs of marketing and providing internal transport charges on export shipments on more favourable terms compared to domestic shipment.

According to the WTO Secretariat, the schedules of developed countries show greater than average reductions in tariffs of products of particular interest to developing countries. However, what is important at this stage is to evaluate whether the scope of the product coverage of these reductions and the level of tariff reductions (on a product by product basis) were adequate. Moreover, to evaluate whether agricultural exports of developing countries have been increasing at an adequate rate as a result of these commitments. This will require a careful analysis of the trade statistics since the implementation of the URAs and compare it with figures that preceded the implementation in products of export interest to developing countries.

34. WTO members identified several difficulties with the implementation of the Agreement on Agriculture:

(a) Market Access Commitments:

- In many cases, tariffication resulted in tariff peak in the agricultural sector. In some cases, tariffs in the US, the European Union, Japan and Canada are prohibitive since they exceeded 200% for MFN trade above tariff quotas.

- The tariff reduction formula used during the UR negotiations was 36% reduction on average with a minimum required reduction by 15%. The current tariff levels and tariff reductions since the implementation process started should be analyzed in preparation for future negotiations and to examine whether members made larger reductions on products which already had low tariff rates and the minimum required reduction from highly protected products resulting in a greater tariff dispersion among agricultural products or not.

- The tariff rate quota system is supposed to ensure that a certain quantity of imports can enter the market at a lower tariff rate than the MFN rate. Many countries expressed concern on whether the tariff rate quota system has been used to achieve its initial objective.

- Tariff quota administration: Many problems regarding the administration of tariff rate quota were raised regarding its complexity and the use of diverse administrative procedures among members. There are no clear guidelines for the implementation of the tariff quota allocation system to address the specific situation in the Agreement on Agriculture to complement the general GATT rules and other instruments (such as GATT Articles III and XIII and the Agreement on Import Licensing Procedures) including in issues such as: the criteria for the eligibility of applicants for the tariff quota, product specifications to which tariff quota applies, validity period for import licenses, etc.

- Tariff quota fill: Under utilization of tariff quotas has not been uncommon. A more problematic situation is when a higher above-quota tariff rate had been levied on imports, even when the total import quantity had been below the quota quantity[5].

- Special Safeguard Provisions: Article 5 allows members that have tariffied the right to invoke a special safeguard (SSG) that does not require an injury test similar to that in other sectors. The SSG may be invoked on specifically designated products to face possible competition from an influx of cheaper imports. A number of problems have been identified in the application of both volume-based and price-based SSG. Those associated with the volume-

[5] Such a situation can occur, for example, when an import license holder does not import the quantity up to the allocated quota quantity, although the government considered that the quota was filled once quota allocation was made.

based SSG include the possible triggering of SSG as a result of tariff quota imports alone and the range of products covered by a single volume trigger. Those associated with the price-based SSG include the possibility of applying additional duties as a result of limited imports.

(b) Domestic Support Commitments:

The major objective was to bring domestic support to the agricultural sector under the multilateral trading rules and to gradually reduce government spending on trade distorting domestic support. Several problems have been identified with respect to the method of calculation of the current total Aggregate Measurement of Support (AMS), and the criteria for the Green Box measures. Concerns were raised that many gray area measures have been classified by some members as Green Box measures in order to exempt them from the reduction commitments.

(c) Export Subsidies Commitments :

The issues raised relate to the problems of the accumulation of non-used export subsidies and with the circumvention of export subsidy commitments.

35. It has to be indicated that many of these difficulties are not directly related to s&d treatment. However, some of them may be addressed through the current s&d provisions. This would apply for example to the implementation of commitments on market access by developed countries to take fully into account the particular needs and conditions of developing countries which is mentioned above to tariff quotas. It has to be indicated as well that several elements that are required for a comprehensive analysis of the implementation of the Agreement on Agriculture are not yet available such as the impact of the market access commitments and the effects of the implementation of the reduction commitments on world trade in agriculture. Analysis of the share of developing countries in the growth of trade in agriculture after the UR compared to the levels before the implementation process will be of significant importance for the evaluation of the situation and the preparation for future negotiations.

36. A number of approaches and proposals are likely to emerge from the experience gained in the process of implementation. These may include:

- limiting the flexibility of developed countries in future domestic support reductions to provide more predictability in relation to specific products;

- to reduce domestic support and export subsidies and to dramatically reduce the current prohibitive tariff levels particularly in products of interest to developing countries;

- substantially increasing tariff quotas and devise more precise principles and transparent procedures for the administration of tariff quotas in order to ensure that the market access opportunities and the scope for imports and competition with domestic products is effectively achieved; and

- addressing issues related to food security and assistance to LDCs and NFIDCs.

37. The WTO Secretariat has prepared a factual note in the context of the analysis and exchange of information process on the implementation of the special and differential provisions in the Agreement on Agriculture. It will be necessary to complement this note with an analytical examination of the implementation of these provisions.

B. THE DECISION ON MEASURES CONCERNING THE POSSIBLE NEGATIVE EFFECTS OF THE REFORM PROGRAM ON LEAST-DEVELOPED AND NET FOOD-IMPORTING DEVELOPING COUNTRIES (NFIDCs)

38. The Decision on NFIDCs contains mechanisms to ensure that the implementation of the results of the UR on trade in agriculture does not adversely affect the availability of food aid at a level which is sufficient to continue to provide assistance in meeting the food needs of developing countries, especially least developed and net food-importing developing countries.

39. The Decision includes provisions related to:

- the periodical review of the level of food aid to LDCs and NFIDCs.

- the establishment of a level of food aid commitments sufficient to meet the legitimate needs of LDCs during the reform program.

- the adoption of guidelines for ensuring that an increasing proportion of basic foodstuffs is provided to LDCs and NFIDCs.

- ensuring that any agreement relating to agricultural export credits makes appropriate provision for differential treatment to LDCs and NFIDCs.

- the possibility of drawing on the resources of International Financial Institutions (IFIs) in cases of short term difficulties in financing normal levels of commercial imports of LDCs and NFIDCs.

40. A number of activities took place regarding the implementation of this decision:

- an annual review of the implementation of the Decision;

- notification requirements, by developed countries, for actions taken under the Decision;

- the establishment of a WTO list of NFIDCs, which comprises currently the 48 least-developed countries as defined by the United Nations and 18 developing countries.

41. The Committee on Agriculture made specific recommendations which were adopted by the Singapore Ministerial Conference (SMC). They have been followed-up by the Committee on Agriculture since then. Despite these activities, no clear benefit has been identified by LDCs or the NFIDCs as a result of the implementation of the Decision. On the contrary, what we are witnessing is a source of deep concern.

42. According to the World Food Program, food aid deliveries for LDCs and NFIDCs have fallen drastically since the URAs were signed in 1994 when 7.3 million tonnes were provided. In 1995 food aid to this group fell to 4.9 million tonnes and in 1996 it dropped further to 3.9 million tonnes and an anticipated 3.4 million tonnes in 1997. There is no evidence that this reduction is justified by the gains in trade in agriculture in these countries or that this loss is compensated by increases in other aid programs listed in the Decision.

43. According to the Food and Agriculture Organization (FAO), food aid in cereals accounted for 64% of the cereal imports of LDCs in the mid-eighties. This level sharply declined to 36% in 1993/94 and 23% in 1997/98. This assistance declined for NFIDCs as well. These levels were 22% in the mid-eighties, 7.6% in 1993/94 and 2% only in 1997/98.

44. As prices increased in world markets between 1993/94 to 1995/96, LDCs and NFIDCs experienced a substantial increase in their cereal import bills which reached 85% for LDCs and 68% for NFIDCs. It is recognized that cereal prices have been declining which will probably ease the situation somewhat regarding the food bills of this group of countries. However, the conclusion that was reached by FAO is that the food security situation in LDCs and NFIDCs is not only precarious but that there are indications that their food import burden is likely to remain high.

45. In line with the recommendations of the SMC negotiations are currently underway in the framework of the Food Aid Committee/ International Grains Agreement on a new Food Aid Convention. These negotiations, which are scheduled for completion by the end of 1998, are focusing, inter alia, on the recommendations of the SMC concerning the level of food aid and concessionality guidelines, as well as the relevant recommendations of the FAO World Food Summit.

46. The modalities of the Decision will thus require a close reexamination. With declining food aid and in view of its highly unstable nature mainly due to the linkage with the varying levels of surplus production and price levels, the effectiveness of food aid in addressing the requirements of these countries is doubtful.

47. The possibility of drawing on the financial resources of IFIs has so far been inadequate. In 1995/96, during one of the sharpest food price increases in recent decades[6] a very few countries used the existing IMF Contingency and Compensatory Financing Facility (CCFF). Therefore, the practicality of using current financing mechanisms is in need of a careful reexamination. It is recognized, however, that the World Bank is expanding its lending for agriculture and rural development and has strengthened its rural development program to assist LDCs and NFIDCs including through enhancing food supplies and improving access to food.

C. THE AGREEMENT ON TECHNICAL BARRIERS TO TRADE (TBT)

48. Despite the fact that developing countries are not required to use international standards which are not appropriate for their development needs or which may hinder the preservation of indigenous technology, there are numerous activities particularly among developed countries in relation to standard setting and mutual recognition of standards which may effectively impose a requirement on developing countries to modify their standards to conform to those of developed countries regardless of the impact and actual need for these higher levels of standards from the perspective of developing countries.

49. The most important s&d provisions in the TBT Agreement are the following:

(a) According to Article 10.6 of the TBT Agreement, the Secretariat of the WTO should draw the attention of developing countries to any notifications relating to products of particular interest to them.

Despite this obligation, all what the Secretariat does is to circulate notifications indicating their product coverage to all WTO members. An effective mechanism should be devised to ensure the full implementation of this provision.

(b) According to Article 12 of the TBT Agreement, Members shall take into account the special development, financial and trade needs of developing countries in the implementation of this Agreement and in the preparation and application of technical standards to ensure that such

[6] For example, prices of cereals increased by around 40 to 50%.

technical standards do not create unnecessary obstacles to exports from developing countries. The Article stipulates also that Members shall ensure that international standardizing bodies examine the possibility of preparing international standards concerning products of special interest to developing countries.

There is no adequate information that would allow a comprehensive evaluation of the effectiveness of the implementation of this important provision. The TBT Committee agreed to invite Members, on a voluntary basis, to exchange information on the implementation of Article 12. The Committee also agreed to include a number of issues related to the follow up of the implementation of this provision in its future program of work, which could be taken up during the next three years and reviewed during the Second Triennial Review of the Agreement. These include issues related to capacity building in developing countries- to study technical barriers to market access of suppliers from developing countries, especially small and medium sized enterprises (SMEs)- to assess whether and how account is taken of the special problems of developing countries in international standardizing bodies.

(c) According to Article 12.5 of the TBT Agreement, Members shall ensure that international standardizing bodies are organized and operate in a way which facilitates active participation of all countries, taking into account the special problems of developing countries. Article 11.2 also includes provisions for technical assistance regarding the participation of developing countries in the international standardizing bodies.

Four years after the implementation of the TBT Agreement, the participation of developing countries in international standard setting bodies remains inadequate. The issue of active participation of developing countries in these bodies should be addressed from a wider perspective, namely that active participation requires adequate institutional infrastructure, human and financial resources and effective follow-up capabilities. The TBT Committee agreed to explore ways and means of improving the implementation of this provision. ISO has indicated that due to lack of resources, it was unable to respond positively to numerous technical assistance requests to contribute to the participation of developing countries in the activities of ISO.

(d) Technical assistance in the area of standards (both in the TBT and SPS Agreements) is of particular importance to developing countries. Article 11 of the TBT Agreement stipulates that technical assistance should be provided to developing countries in the preparation of technical regulations, the establishment of national standardizing bodies, regulatory or conformity assessment bodies, and the participation in international standardizing bodies. Developed countries should also provide technical assistance to developing countries on ways in which their technical regulations can best be fulfilled. Article 9 of the SPS Agreement indicates the areas of technical assistance requirements of developing countries including in the areas of processing technologies, training, research and infrastructure.

As mentioned earlier, the evaluation of technical assistance in this and other areas is an issue that requires a separate consideration that goes beyond the scope of this paper.

D. THE AGREEMENT ON SANITARY AND PHYTOSANITARY MEASURES (SPS)

50. The most important s&d provisions in the SPS Agreement are the following:

(a) According to Article 14 of the SPS Agreement, developing countries were permitted to delay the application of the provisions of this Agreement by two years. LDCs were given five years.

Developing countries and LDCs have benefited from the transitional period provided for in this Agreement.

(b) According to the paragraph 9 of Annex B of the SPS Agreement, the Secretariat of the WTO should draw the attention of developing countries to any notifications relating to products of particular interest to them.

The WTO Secretariat indicated that it has done so on several occasions. However, this provision has not been implemented in an effective or systematic manner. An effective mechanism should be devised to ensure the full implementation of this provision.

(c) According to Article 4 of the SPS Agreement, members should accept the sanitary or phytosanitary measures of other members as equivalent, even if these measures differ from their own, if it is demonstrated that they achieve an appropriate level of protection.

Several developing countries have reported that they have entered into consultations with other members and achieved bilateral recognition of the equivalence of specific SPS measures. However, a number of difficulties have been encountered by developing countries due to the inadequate implementation of this provision. Equivalence in technologically advanced countries has in itself become quite demanding and turns in some cases into a sanitary trade barrier to exports from developing countries. Furthermore, in practice, a number of developed countries are requiring 'sameness' rather than 'equivalence' of measures which is a source of concern to many developing countries. An evaluation of the means for the effective implementation of this provision is necessary and should be addressed in the course of the review of the SPS Agreement.

(d) According to Article 10 of the SPS Agreement, developed countries should take account of the special needs of developing countries in the preparation and application of sanitary or phytosanitary measures. Members should allow reasonable time between the publication and entry into force of an SPS regulation, in particular those affecting producers in developing countries. Longer time frames should be provided for compliance with new SPS measures for products of interest to developing countries.

The notification procedures for proposed SPS measures provide developing countries the possibility of identifying where they may have potential problems meeting new requirements affecting their exports, and provide them the opportunity to request a phased introduction of the proposed measures where this is possible.

(e) Article 10.4 stipulates that Members should encourage and facilitate the active participation of developing countries in the relevant international standard setting organizations.

The situation is similar to that in the TBT Agreement, the participation of developing countries in international standard setting bodies remains inadequate. It has to be indicated as well that standards are much more demanding in the area of SPS compared to that in the TBT Agreement. In this situation as well, the issue of active participation of developing countries in these bodies should be addressed from a wider perspective, namely that active participation requires adequate institutional infrastructure, human and financial resources and effective follow-up capabilities.

(f) The Agreement stipulates that where substantial investments are required for an exporting developing country to fulfill the SPS requirement of an importing country, the latter shall

consider providing technical assistance to permit the developing country to maintain and expand market access opportunities for the product involved.

Many developing countries, due to the lack of human, institutional and financial capacity, are unable to make use of this provision. It would be useful for the Secretariat to prepare a questionnaire to both developed and developing countries to identify whether any assistance has been provided in the context of this provision.

51. Developing countries are facing a number of difficulties in the area of standards, including:

- in the preparation of technical regulations,

- in ensuring the effective functioning of national standardizing bodies and bodies for conformity assessment,

- in evaluating how technical regulations of other members could best be met,

- in participating in international standard setting bodies,

- the inadequacy of infrastructure especially with regard to SPS services.

52. A number of ideas have been proposed in relation to the implementation of s&d provisions in the course of the review of the SPS Agreement several of which may also be relevant to the TBT Agreement. These should be addressed in a practical and pragmatic manner with a view to reaching concrete recommendations to operationalize these proposals in a manner that would address the difficulties facing developing countries in this area.

(a) in the area of transparency and notification requirements:

- to allow longer time periods to developing countries to comment on notifications and allow reasonable time between the notification and the date of entry into force of the measure,

- to provide more accurate description of notified measures and improving the description of deviations from international standards whenever this is possible,

- to establish a data base that incorporates members' SPS rules and regulations, standards and comments on notifications, and make it accessible on the internet.

(b) in the area of the special needs of developing countries including technical assistance:

- to adequately implement provisions related to the situation when substantial investments are required to fulfill SPS requirements of an importing country,

- to assist in strengthening human resource development, national capacity building, transfer of technology and develop more effective information exchange through technical assistance,

- to strengthen the participation of developing countries in standard setting bodies and monitor developments in standards of interest to them, since even when standards are developed multilaterally the participation of developing countries in most cases is nominal,

- to examine ways to encourage and facilitate mutual recognition arrangements.

E. THE SUBSIDIES AGREEMENT

53. The Subsidies Agreement includes a number of significant s&d provisions. This Agreement is of great importance to developing countries due to the widely held view that certain types of subsidies may be critical in the process of development.

54. The prohibition of export subsidies contingent upon export performance does not apply to LDCs. It does not apply also to certain developing countries identified in Annex VII(b) until such time as their per capita GNP reaches US $ 1,000 per annum[7]. However, if these countries reach export competitiveness in any product[8], they will phase-out such export subsidies over eight years. For the rest of the developing countries, the phase out period for export subsidies is eight years from the date of entry into force of the WTO Agreement, or within two years if export competitiveness is reached in any given product. No developing country has notified having reached export competitiveness. The period for phase-out may be extended if the Committee on Subsidies and Countervailing Measures determines that such an extension is justified.

55. The Agreement also establishes higher thresholds for what would be considered negligible import volumes in a countervailing duty investigation involving a developing country. There is a de *minimis* provision that no countervailing duty will be imposed on a product of an LDC or a developing country identified in Annex VII(b) with per capita income below $1,000 if the subsidy is less than 3% of its value. The threshold is 2% for other developing countries.

56. In respect of actionable subsidies, there is a presumption of the existence of serious prejudice in certain situations, such as, when the subsidy exceeds 5% or when it is given to cover the operating losses of an industry. This presumption does not apply to developing countries and the affected country has to demonstrate the existence of serious prejudice. With respect to other actionable subsidies by a developing country, these subsidies may not be challenged on serious prejudice grounds.

57. When subsidies are granted in a privatization program in a developing country, and such subsidies involve the direct forgiveness of debt, or cover social costs, in whatever form, including relinquishment of government revenue and other transfer of liabilities, the provisions of the Subsidies Agreement relating to actionable subsidies will not apply if certain conditions are met. These are: that the subsidies must be of a limited duration, they must be notified to the Committee on Subsidies, and that the result of the program is the privatization of the enterprise involved.

58. Under the Subsidies Agreement, three categories of specific subsidies are non-actionable. These are assistance to research activities, to disadvantaged regions within a country, and for necessary measures to adapt to new environmental regulations. These were included in the Agreement to address the particular interests of developed countries.

59. The provisions of the Agreement relating to presumption of serious prejudice and to non-actionable subsidies are being applied provisionally for five years and will be reviewed in the middle of 1999 to determine whether to extend their application as currently drafted or in a modified form. Given the fact that the financial capacity of developing countries to provide subsidies is limited and that their development, particularly in the industrial sector, may require subsidies; these also should be categorized as non-actionable under Article 8. These subsidies may include measures such as

[7] The $1000 threshold should be reexamined as well as the situation where a country exceeds the threshold for a number of years and then falls below that level another time.

[8] Export competitiveness exists when the export of a particular "product" (defined as a section heading of the Harmonized System Nomenclature) of a country reaches 3.25% of world exports.

cheaper finance, financial support for advanced technology, subsidy for diversification efforts or market development, etc.

F. THE AGREEMENT ON ANTIDUMPING

60. Exports of developing countries have been facing more frequent antidumping and countervailing measures. The frequent use of antidumping actions against exports from developing countries by major trading countries has become a matter of serious and growing concern. The uncertainty and restrictiveness of these measures have created trade disruption affecting not only particular consignments but also longer term trade in the targeted product. Benefits from trade liberalization have been considerably neutralized by the use of antidumping measures against competitive exports in a number of products.

61. Moreover, enterprises from developing countries, particularly SMEs, do not have the technical and legal capacity nor the resources to mount an effective defense. Furthermore, the assistance that developing countries can provide to their enterprises to defend their cases in an investigation process initiated by a developed country is very limited.

62. At the same time, the liberalization efforts of developing countries have led to a situation whereby their markets have become more contestable. But governments in many developing countries lack the expertise, capability and resources to effectively use antidumping and countervailing measures to protect the legitimate concerns of their domestic industries.

63. Article 15 of the Agreement on the Implementation of GATT Article VI on antidumping recognizes that special regard must be given by developed countries to the special situation of developing country members when considering the application of antidumping measures. There is no information available regarding the implementation of this provision.

64. Article 15 also stipulates that the possibility of constructive remedies should be explored before applying antidumping duties that would effect the essential interest of a developing country. Similarly, there is no information available regarding the implementation of this provision as well.

65. The manner in which the objective of Article 15 of the agreement on Antidumping on special regard for developing country members should be achieved is not specified. These special dispensations have not accrued to developing countries as clear guidelines have not been laid out on how these provisions are to be implemented in practice. The establishment of detailed binding guidelines is necessary in order to implement this Article to protect the trade interests of developing countries from trade harassment arising from frequent antidumping actions. These should address issues such as: raising the de *minimis* dumping margin for products exported from developing countries and raising the de *minimis* volume below which the injury may be considered to be insignificant for products exported from developing countries.

G. THE AGREEMENT ON TEXTILES AND CLOTHING

66. Developing Countries have encountered numerous difficulties in the implementation of the Agreement on Textiles and Clothing. They have expressed frustration at the manner in which this Agreement has been implemented. A number of these difficulties are associated with s&d treatment.

67. The Agreement stipulates, for example, that:

(a) the particular interests of the cotton-producing exporting countries should, in consultation with them, be reflected in the implementation of the provisions of this Agreement.

No specific measure bearing reference to this provision has been notified to the WTO.

(b) in the application of the transitional safeguard mechanism differential and more favourable treatment will be given to small suppliers, new entrants and least-developed countries.

No information has been provided in notifications of safeguard actions on the extent to which recourse was made to this provision in setting the parameters of such actions. This has been a major source of concern for many developing countries especially in light of the commitment in the Agreement to use the transitional safeguard 'as sparingly as possible' and which has obviously not been fully observed.

68. These examples are only demonstrative of the difficulties facing developing countries in this important sector in the context of s&d provisions.

H. THE AGREEMENT ON TRADE RELATED INVESTMENT MEASURES (TRIMs)

69. The TRIMs Agreement permits a developing country to deviate temporarily from a general provision requiring that no member will apply a number of trade related investment measures that are inconsistent with the provisions of Article III or Article XI of GATT 1994. Prohibited TRIMs are enumerated in an illustrative list that is annexed to the Agreement. The transitional period is five years for developing countries and seven years for LDCs. There is also a provision that allows for the possible extension of this transitional period.

70. Twenty five members submitted notifications in this regard (22 developing countries- 1 LDC and two countries in transition). Members submitting these notifications have to eliminate the notified TRIMs by the end of the transitional period. Developing countries that did not notify any TRIMs are not allowed to introduce any measures in the above mentioned illustrative list.

71. It is worth mentioning that a few developing countries have indicated that they may require an extension of the transitional period in the TRIMs Agreement.

I. THE AGREEMENT ON TRADE RELATED INTELLECTUAL PROPERTY RIGHTS (TRIPs)

72. The TRIPS Agreement has far reaching resource and skill implications for developing countries both in terms of access to and cost of technology imports from developed countries as well as successfully patenting and registering their technologies internationally.

73. Articles 65 and 66 of the TRIPS Agreement provide a time limited derogation to developing countries in fulfilling their obligations in a phased manner. Despite this transitional period, many developing countries will still find great difficulties in implementing the TRIPS Agreement due to weak institutional structures, the absence of the required expertise and lack of resources, financial and otherwise.

74. Technical and financial assistance to be provided to developing countries in accordance with Article 67 are of particular importance to allow them to be able to effectively implement their commitments in this Agreement. Due to this importance, the technical and financial assistance require a separate comprehensive evaluation which, as mentioned earlier, is beyond the scope of this paper.

75. According to Article 66.2 of the TRIPS Agreement, developed countries are expected to provide incentives to enterprises and institutions in their territories for the purpose of promoting and encouraging technology transfer to least developed countries. No concrete steps have been notified by

developed countries to the WTO in this regard. The Trips Council will be addressing this issue in its forthcoming meeting and it is hoped that developed countries would inform the Council of the measures taken to fulfill this obligation.

76. Article 9.1 of the TRIPS Agreement requires Members to comply with the Appendix of the Berne Convention (1971) which contains special provisions for developing countries. These provisions provide developing countries, inter alia, with some flexibility in the area of compulsory licenses for translations and reproductions subject to a number of notification procedures. These provisions are not used extensively. They have been invoked under the TRIPS Agreement by one WTO Member. They are currently used by five countries under the Berne Convention, of which four are WTO Members but still benefiting from the transitional period. However, these provisions may have made the use of translations and reproductions in developing countries more affordable in the area of education, the possibility of using them may encourage publishers to make licensing for translation and reproduction available in developing countries on reasonable conditions. This demonstrates the utility and usefulness of these provisions.

J. THE GENERAL AGREEMENT ON TRADE IN SERVICES (GATS)

77. The flexibility enjoyed by developing countries in the GATS Agreement is built in the structure of the Agreement itself. GATS dealt with the concerns of developing countries through emphasizing the principle of progressive liberalization in line with the development situation and allowed individual developing countries with the flexibility to open fewer sectors, liberalize fewer transactions and attach conditions to access to achieve their development objectives in the area of trade in services.

78. Furthermore, according to Article IV:1 of GATS, the increased participation by developing countries in trade in services is to be facilitated through the liberalization of market access in sectors and modes of supply of export interest to them. This provision stipulates that this objective should also be achieved through the strengthening of the domestic services capacity of developing countries as well as the improvement of their access to distribution channels and information networks.

79. The Council for Trade in Services is carrying out an assessment of trade in services with reference to the objectives set out in Article IV:1. It remains to be seen whether the commitments that were taken in the UR and subsequently have adequately and effectively achieved the objectives of Article IV and in particular the increased participation of developing countries in trade in services and the strengthening of the domestic services capacities of developing countries.

80. A number of concerns have been highlighted, for example, one of the most significant aspects of GATS is that it covers cross-border movement of service suppliers as an integral part of in trade in services. While commitments made by a few developed countries contain provisions for movement of natural persons with commercial presence, there have been very no meaningful liberalization in the mode of movement of natural persons without commercial presence. Due to the extremely limited nature of commitments undertaken, the benefits accruing to developing countries as a result of these commitments are likely to be marginal.

81. The GATS Agreement requires developed countries to establish special contact points to facilitate the access of service providers from developing countries to information related to their respective markets. Fifty developed countries have notified that they have established the stipulated contact points. It is not clear whether developing countries have been effectively utilizing the potential opportunities that may be provided through the use of information that may be provided by these contact points. It would be quite useful if the Secretariat prepares a paper on the basis of information to be provided by members on the experience of the functioning of these contact points.

Developed countries may provide information on the questions that were received and the nature of the responses that were provided. Developing countries may provide information on the possible benefits as a result of these inquiries and the responses received.

82. A number of sectors were agreements have been reached such as financial services and basic telecommunications are capital, technology and knowledge intensive. Developing countries therefore face constraints in increased participation in international trade in these sectors. These difficulties, as well as the identification of opportunities as well as the barriers and restrictions in sectors of particular interest to developing countries should be adequately addressed in the ongoing process in the Council for Trade in Services to prepare the ground for the next round of negotiations on services.

K. THE UNDERSTANDING ON RULES AND PROCEDURES GOVERNING THE SETTLEMENT OF DISPUTES (DSU)

83. It is recognized that the dispute settlement system has been functioning in a more effective and efficient manner compared with the situation before the UR. Moreover, there are a number of s&d provisions in the Understanding on Rules and Procedures Governing the Settlement of Disputes (DSU). However, the implementation of several of these provisions have proven difficult in practice. S&D provisions in the DSU include:

(a) in consultations under the DSU, members should give special attention to the particular problems and interests of developing country members (Article 4.10).

There are no clear indications as to how this provision has been implemented.

(b) if a complaint is brought by a developing country, that developing country may choose to apply certain other alternative procedures (Article 3.12).

To date, this provision has not been used by any developing country.

(c) when a dispute is between a developing and a developed country, the panel will, if the developing country so requests, include at least one panelist from a developing country member (Article 8.10).

Out of 20 panels involving disputes that included a developing country, 16 panels included panelists from a developing country. Of the 4 panels without a panelist from a developing country, 3 were agreed by consensus and one was chosen by the Director General.

(d) in the context of consultations involving a measure taken by a developing country, the parties may agree to extend the periods set for the establishment of panels (Article 12.10).

To date, this provision has not been used by any developing country.

(e) panels shall afford developing countries sufficient time to prepare and present argumentation (Article 12.10).

These time periods for submission of material are usually agreed by consensus. However, this provision has been cited but panels have not made any specific rulings in this regard.

(f) where one or more of the parties is a developing country, the panel's report will explicitly indicate the form in which account has been taken of relevant provisions on differential and

more favorable treatment for developing countries under the covered agreements (Article 12.11).

Panel reports did not indicate how account has been taken of relevant s&d provisions in a systematic manner. However, panels have examined relevant s&d provisions when they were invoked by developing countries in disputes against them.

(g) in surveillance of implementation of recommendations and rulings particular attention should be paid to matters affecting the interests of developing countries with respect to measures which have been subject to dispute settlement (Article 21.2).

There are no clear indications as to how this provision has been implemented.

(h) if the case is brought by a developing country, the Dispute Settlement Body, in considering what appropriate action might be taken, will take into account not only the trade coverage of measures under consideration in the dispute, but also their impact on the economy of the developing countries concerned (Article 21.8).

To date, no specific action has been taken under this provision.

(i) at all stages of the determination of the causes of a dispute and of dispute settlement procedures involving a least developed country, particular consideration will be given to their special situation, including the exercise of due restraint by the complaining party, and the offer of good offices, conciliation and mediation by the WTO Director-General or the Chairman of the Dispute Settlement Body (Article 24).

To date, no LDC has been involved in a dispute.

(j) special assistance and advice will be made available to developing countries in disputes (Article 27.2).

Technical assistance is provided to developing countries. However, it is very limited in nature and is not even close to the scope, size and kind of assistance required by developing countries in this respect.

84. It has to be indicated that in the time bound dispute settlement process it was not very clear how a number of these provisions would be implemented in practice such as giving special attention to the particular problems and interests of developing country members during consultations.

85. Another source of concern is that resorting to the dispute settlement body proved to be extremely expensive from the perspective of developing countries. Despite the improvements in the dispute settlement system and the larger involvement of developing countries in it, this system is not as accessible to developing countries as it should be. Bringing a dispute to the WTO is a legal intensive process which requires specialized expertise that is lacking in most developing countries. There have also been complaints from various developing countries on the difficulties they face in coping with the dispute settlement procedures. An independent legal body to assist developing countries, legally, substantively and financially to bring their cases to the dispute settlement mechanism would be necessary for them to be able to defend their interests in the MTS dispute settlement process.

L. LEAST-DEVELOPED COUNTRIES

86. LDCs are the least integrated group of countries in the MTS. Despite the generous s&d provisions in favour of LDCs they are facing fundamental difficulties in areas such as: implementing a number of substantive commitments in various Agreements, adequately understanding the full extent of their rights and obligations, and fulfilling their notification requirements.

87. In addition to the provisions that are mentioned in this paper and which benefit LDCs, a Ministerial Decision on Measures in Favour of LDCs was adopted in the context of the UR to address the concerns of LDCs. It included provisions that require implementing positive measures to facilitate the expansion of trade of LDCs, to provide special consideration of export interests of LDCs when applying import instruments, as well as provisions for increased technical assistance.

88. It was recognized that these provisions and measures were inadequate to address the difficulties facing LDCs and assist them in integrating in the MTS. This led to the decision in the SMC to convene a High Level Meeting on Integrated Initiatives for LDCs to address the difficulties facing least developed countries in the MTS. The meeting addressed market access issues as well as supply constraints and technical and financial requirements of LDCs. Thirteen WTO members, both developing and developed, made announcements of steps to improve market access conditions for LDCs.

89. The meeting also adopted the 'Integrated Framework for Trade-Related Technical Assistance, Including for Human and Institutional Capacity Building to Support LDCs in their Trade and Trade-Related Activities'. This framework seeks to increase the benefits that LDCs may derive from the technical assistance that is provided by the six organizations that were involved in the process: the IMF, ITC, UNCTAD, UNDP, World Bank and WTO, as well as other bilateral, regional and multilateral sources.

90. More importantly, round tables are being organized for individual LDCs to identify their technical and financial assistance needs in the areas of trade and trade related activities. For the first time, these six institutions are working in a coordinated manner to address the needs of individual LDCs in a comprehensive and coherent way.

91. This effort is welcome and is a step in the right direction. However, it is too early to reach a conclusive evaluation of the outcome of these activities. The follow-up of these activities should be one of the main priority areas in the future work of the WTO.

92. Before concluding this section on the implementation of s&d provisions, there are three additional issues of a general nature that require further consideration. These are:

- the adequacy of transitional periods;

- the strict interpretation of s&d provisions;

- s&d provisions in the context of accession negotiations.

93. **The strict interpretation of s&d provisions**: Developing countries have been witnessing a trend towards stricter interpretation of s&d provisions. This is a source of deep concern. A case in point is the manner in which a few developed countries are dealing with Article XVIII. There are two sets of rules to govern import restrictions for BOP purposes. Article XII which can be invoked by any WTO member while Article XVIII:B can be invoked only by developing countries. The difference between these two Articles is that Article XVIII:B permits import restrictions to the extent necessary

to deal with the 'threat' of serious decline in monetary reserves. It allows developing countries to impose quantitative restrictions on imports for BOPs reasons taking into account not only their foreign exchange reserves, but also the development needs of the economy. Article XII, on the other hand, may only be invoked if the threat is 'imminent' and the reserves 'very low'.

94. Article XVIII:B of GATT provided developing countries with a degree of flexibility in their trade regimes. However, more recently, assessments of the adequacy of foreign exchange reserves in practice are being made mainly on the basis of a comparison of the volume of reserves with the value of imports during the past few years. The development dimension is being sidelined and the distinction but Article XVIII:B and Article XII is becoming less and less apparent.

95. **The adequacy of transitional periods**: Transitional periods have been used in numerous URAs as we have seen earlier. To a large extent, transitional periods were chosen haphazardly and with no objective basis or linkage to the level of development (except for the variation of the period between developing and least developed countries). Transitional periods may be necessary and justified in cases when all what is required is time to adjust. It is also recognized that capturing the development perspective in the rules is a difficult challenge. However, the identification of the development perspective in various issues should be achieved and should emanate from real differences between the economic situations and requirements of economies at different levels of development which should then be translated into practical provisions. Hence, reliance on transitional periods should be complemented with adequate differential thresholds that are based on measurable development parameters and the necessary substantive exemptions that rely on specific criteria related to the level of development.

96. Generally speaking, developing countries have complied with the transitional periods and are determined to continue to do so. However, the possibility that some developing countries may not be able to comply with the transitional periods in WTO agreements due to genuine difficulties that they are facing in specific areas is an issue that will require careful consideration. A few developing countries have indicated that they may require an extension of the transitional period in the TRIMs Agreement. It is not clear whether all developing countries would be able to fully implement the provisions of the TRIPS Agreement at the end of the transitional period. The needs assessments undertaken in the context of implementing the Integrated Framework for Technical Assistance for LDCs suggests that numerous difficulties are yet to be addressed for this objective to be achieved. It seems that transitional periods in some cases have been excessively optimistic regarding the pace at which institutional and human capacity can be built in developing countries particularly in light of the fact that the level of assistance that is provided to achieve these objectives are inadequate. The system has to be flexible enough to be able to deal with such eventualities.

97. **S&D provisions in the context of accession negotiations**: Another source of concern is the declining sympathy for s&d treatment by a few developed countries which is manifested in accession negotiations. There is an increasing pressure by these developed countries on acceding countries to forego s&d provisions that they would have normally been entitled to enjoy. This has occurred already in a number of cases. If this trend continues then there may be varying obligations among developing countries with recently acceding developing countries at similar levels of development with the latter having a higher level of obligations in the system. This is a source of concern since this trend can negatively affect the credibility, cohesiveness and coherence of the MTS.

98. It has to be indicated as well that a number of exceptions benefit the producers in developed countries endorsing the assumption that in some cases special circumstances require specific consideration and that trade restrictions can be legitimate and appropriate instruments for development purposes. Even after the UR, developed countries have an advantage in the use of certain otherwise prohibited instruments in a number of areas, such as: the flexible use of import restrictions

in textiles and clothing until 2005, high levels of domestic support and exports subsidies in agriculture and the use of tariff quotas and in some cases the special safeguard provision to control market access in a number of agricultural products.

99. The Secretariat has produced an extremely useful factual paper on the implementation of WTO provisions in favour of developing countries (WT/COMTD/W/35) and we are looking forward to the analytical paper that is currently being prepared on this issue t the request of the Committee on Trade and Development.

V. CONCLUSIONS

100. In recent years, liberalization has been the hallmark of economic policy around the world. Virtually all governments, in developed and developing countries alike, adopted policies to deregulate, privatize and liberalize trade and investment regimes as well as widen the role of the private sector in economic activity. As liberalization commitments deepen and the multilateral trade agenda broadens, it becomes necessary to examine the role that s&d treatment can play and adapt and develop it to suit this new environment.

101. It is obvious from the preceding analysis that a number of s&d provisions have not been implemented, others have been partially implemented and a number of them have been adequately implemented. Numerous s&d provisions are vague and aspirational in nature and it is the collective responsibility of developed and developing countries alike to ensure that these provisions are translated into concrete benefits to developing countries.

102. This analysis also leads us to conclude the following:

(a) the state of implementation of many s&d provisions is a source of deep concern to many developing countries. The examination of the implementation of s&d provisions will therefore require a more systematic and in-depth consideration. There is a need to address the issue of special and differential treatment at three levels: a broad conceptual level to examine whether special and differential provisions have achieved their objectives and if not how can they be developed to do so. A detailed examination of the implementation of various s&d provisions in different WTO agreements, and finally to study the linkages between the conceptual and provision specific levels to ensure coherence in the approach to this issue and that the overall objectives are adequately achieved at the level of specific provisions;

(b) the deepening of liberalization commitments, the broadening of the multilateral trade agenda, and the experience of the implementation would confirm the necessity of strengthening s&d provisions in the URAs as well as continue to consider s&d treatment as a fundamental component of any future negotiations. The adherence to Part IV of GATT, and in particular the principle of non-reciprocity, both in letter and in spirit, will be of fundamental importance in this respect;

(c) the lack of information on the manner in which a number of provisions have been implemented requires seeking information from developed countries to allow WTO to monitor the implementation of specific provisions and undertake a comprehensive analysis of the situation. The objective should be to ensure a systematic flow of information that would allow the continuous monitoring of the implementation of various s&d provisions;

(d) provisions that are of a general nature and are expressed in best endeavour terminology should be clarified and made more precise and action oriented on the basis of a case by case analysis. This can be achieved through the establishment of guidelines, reaching

understandings, adopting the necessary decisions, etc. Whenever possible, measurable criteria for the evaluation of the implementation of these commitments should be devised. Clear s&d treatment based on objective criteria would enhance its transparency, effectiveness and more importantly its predictability;

(e) any overall review of the implementation of s&d provisions cannot ignore market access issues especially in light of the declining share of many developing countries, particularly in Africa, in the value of world merchandise exports. Adequate attention and follow-up should be given to provisions that aim at increasing trade opportunities for developing countries;

(f) in a number of Agreements where transitional periods are provided there is little evidence that countries have made sufficient progress to permit them to fully implement their obligations in time;

(g) s&d treatment should, as far as possible, be linked to measurable development parameters;

(h) Developing countries acceding to the WTO should not be forced to forego s&d provisions that they are entitled to enjoy,

(i) The WTO secretariat should assume a more active role in building awareness and disseminating information on the benefits of s&d provisions and assist developing countries, particularly LDCs, in making the most effective use of s&d provisions;

(j) The implementation of provisions granting developing countries more favourable thresholds should be examined in order to evaluate the adequacy of these thresholds and whether they should be refined or even reconsidered in light of the experience of implementation.

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