WORLD TRADE ORGANIZATION

RESTRICTED

WT/COMTD/W/77
25 October 2000

(00-4433)

Committee on Trade and Development

IMPLEMENTATION OF SPECIAL AND DIFFERENTIAL TREATMENT PROVISIONS IN WTO AGREEMENTS AND DECISIONS

Note by Secretariat

I. INTRODUCTION

1. This Note has been prepared at the request of the Committee on Trade and Development (CTD) pursuant to the decision by the CTD at its 29th Session on 28 July 2000. The objective of this paper is to provide an overview of the implementation of special and differential treatment provisions of the WTO agreements and decisions. It builds on, and updates, information contained in WT/COMTD/W/35 and WT/COMTD/W/66. Where available, information relating to the measurement of the implementation of specific provisions is provided, along with comments and statements made by Members regarding the implementation of specific provisions in the various WTO bodies overseeing the implementation and administration of the different WTO agreements.

The structure of the paper is as follows: Section II consists of a general overview of special and differential treatment across the whole range of WTO agreements. The typology used to classify special and differential treatment provisions is introduced, and a breakdown of special and differential treatment provisions by type and agreement is provided. Information is given regarding whether data exist to measure the implementation of the various special and differential treatment provisions. Section III consists of a series of tables, which for each WTO agreement, states the special and differential treatment provisions specific to each of them, and records information concerning their implementation (including, where available, numerical data on the extent of implementation) along with the statements made by Members.

II. OVERVIEW

A. SPECIAL AND DIFFERENTIAL TREATMENT: A TYPOLOGY

2. The universe of special and differential treatment consists of 145 provisions spread across the different Multilateral Agreements on Trade in Goods; the General Agreement on Trade in Services; The Agreement on Trade-Related Aspects of Intellectual Property; the Understanding on Rules and Procedures Governing the Settlement of Disputes; and various Ministerial Decisions. Of the 145 provisions, 107 were adopted at the conclusion of the Uruguay Round, and 22 apply to least-developed country Members only.

3. For the purposes of this paper, the various special and differential treatments provisions have been classified according to the following six-fold typology which has been developed by the Secretariat:

(i) provisions aimed at increasing the trade opportunities of developing country Members;

(ii) provisions under which WTO Members should safeguard the interests of developing country Members;

(iii) flexibility of commitments, of action, and use of policy instruments;

(iv) transitional time periods;

(v) technical assistance;

(vi) provisions relating to least-developed country Members.

4. It will be recalled that this typology was used in document WT/COMTD/W/66 to collate and present information communicated by Members in response to a questionnaire sent out by the Secretariat in December 1998.

5. Table [1] provides a numerical breakdown of special and differential treatment provisions by type and by agreement. The column on the far left marked "Total by Agreement" gives the total number of special and differential provision by agreement across the different types of category, while the row marked "total by type" gives the total number of special and differential treatment provisions by each of the six types across the different agreements. Provisions under which WTO Members should safeguard the interest of developing country Members (49 in total) are the most numerous in the WTO agreements, followed by flexibility provisions (30 total). Provisions aimed at expanding the trade opportunities of developing country Members are the least common, with twelve such provisions across the range of WTO agreements.

6. The tables in Section III present detailed information on an agreement by agreement basis on the implementation of special and differential treatment provisions, based on information communicated by Members.[1] The information available provides the opportunity to ascertain to what extent the implementation of special and differential treatment provisions can be measured. The precise nature of the data on the basis of which such measurements can be made depends on the type of special and differential treatment provision considered. For instance, in the case of provisions relating to transitional time periods, the relevant data are based on notifications to the secretariat by Members which invoke recourse to such transition time periods. In the case of provisions relating to technical assistance, data used are communications by Members on the delivery of technical assistance activities pursuant to the relevant provisions of the different WTO agreements. The available data show that some measurement of implementation can be provided for nearly 80 per cent of all special and differential treatment provisions of the WTO agreements. In the remaining cases, no objective information was available to provide any degree of measurement of the implementation of special and differential treatment provision.

B. DATA RELATING TO THE IMPLEMENTATION OF SPECIAL AND DIFFERENTIAL TREATMENT PROVISIONS

7. The following points need to be borne in mind when considering data on the implementation of special and differential treatment provisions. First, the data may be incomplete: this implies that even though it is possible to determine whether the implementation of a particular provision is measurable, the full extent of its actual implementation may not be adequately captured by the data currently available. Secondly, the fact that it is not currently possible to measure the implementation of some provisions does not necessarily mean that the implementation of such provisions is inherently unmeasurable. And finally, the issue of measurement is quite separate from any qualitative discussion on the implementation of special and differential treatment. The data provided do not prejudge whatever conclusion Members may wish to reach on matters such as the effectiveness of the implementation of special and differential treatment, or the concerns Members may have with regard to the operation of special and differential treatment provisions. Such aspects of the discussion are captured in Section III, which, in addition to data, documents views expressed by Members on the implementation of special and differential treatment provisions.

8. Provisions aimed at increasing the trade opportunities of developing country Members: As shown in table 1, there are twelve such provisions in total across the following four agreements and one decision: GATT 1994 (Articles XXXVI-XXXVIII); Agriculture; Textiles and Clothing; the GATS; and the Enabling Clause. These provisions all consist of actions to be taken by Members in order to increase the trade opportunities available to developing countries. In eleven of the twelve cases, data are available to measure implementation.

[1] Notifications; Formal Communications; Reports by Panels, the Appellate Body, and arbitrators; Reports of the Trade Policy Review Body; and Reports of Formal Meetings.

9. Provisions under which WTO Members should safeguard the interests of developing country Members: As shown in table 1, there are 49 such provisions across the following 13 WTO agreements and two decisions: Part IV of GATT 1994; Application of SPS Measures; Textiles and Clothing; Technical Barriers to Trade; Implementation of Article VI of GATT 1994; Implementation of Article VII of GATT 1994; Import Licensing Procedures; Subsidies and Countervailing Measures; Safeguards; GATS; TRIPS; the Understanding on Rules and Procedures Governing the Settlement of Disputes; the Decision on Measures Concerning the Possible Negative Effects of the Reform Programme on Least-Developed and Net Food-Importing Developing Countries and the Decision on texts relating to Decision on Texts Relating to Minimum Values and Imports by Sole Agents, Sole Distributors and Sole Concessionaires.

10. These provisions concern either actions to be taken by Members, or actions to be avoided by Members, so as to safeguard the interests of developing country Members. Data are available to measure the implementation of 33 of the 49 provisions. Each of the agreement cited above contains at least one special and differential treatment provision in this category, for which data exist to measure implementation, and in no case is the proportion of provisions for which data exist to measure implementation lower than 50 per cent.

11. Flexibility of commitments, of action, and use of policy instruments: As shown in table 1, there are 30 such provisions across the following nine different WTO agreements: GATT 1994 (Article XVIII and Article XXXVI); the Agreement on Agriculture; Technical Barriers to Trade; Trade-Related Investment Measures; Subsidies and Countervailing Measures; GATS; Understanding on Rules and Procedures Governing the Settlement of Disputes; GATT 1994 Article XVIII; and the Enabling Clause.

12. These provisions relate to: actions developing countries may undertake through exemptions from disciplines otherwise applying to the membership in general; exemptions from commitments otherwise applying to Members in general; or a reduced level of commitments developing countries may choose to undertake when compared to Members in general. Data are available to measure the implementation of such measures in 27 out of 30 cases. The extent to which developing country Members currently have recourse to flexibility provisions in varies across the range of agreements: for example, while two developing country Members currently have recourse to the provisions of Article XVIII:B, data on commitments under the GATS show that developing country Members have made extensive use of the flexibility provisions available to them.

13. Transitional Time Periods: As shown in table 1, there are 18 such provisions across the following eight agreements: Agriculture; Application of SPS Measures; Technical Barriers to Trade; Trade-Related Investment Measures; Implementation of Article VII of GATT 1994; Import Licensing Procedures; Subsidies and Countervailing Measures; and Safeguards.

14. These provisions relate to time bound exemptions from disciplines otherwise generally applicable.[2] It is to be noted that some transition time periods in different agreements have elapsed. In some cases, the relevant provision, in addition to specifying a time-period, include modalities through which an extension might be sought. Data exist to measure the implementation of 16 out of 18 of these provisions. In the case of one provision (Article 9.2 of the Safeguards Agreement) information is not available owing to the fact that Members would have recourse to this provision only after January 2003. The extent to which developing country Members have made recourse to transitional time periods varies across the range of agreements: for instance, 56 developing country members have had recourse to transition time periods under Article 20.1 of the Customs Valuation

[2] In the case article 10.2 of the SPS agreement, the transition time-period in question relates to longer time-frames for compliance to be accorded to products of interest to developing countries with SPS measures introduced by Members.

Agreement, while nine developing country Members are currently seeking an extension of the transition time-period under Article 5.3 of the TRIMs agreement.

15. Technical Assistance: As shown in table 1, there are 14 such provisions across the following six different agreements and one ministerial decision: Application of SPS Measures; Technical Barriers to Trade; Implementation of Article VII of GATT 1994; GATS; TRIPS; Understanding on Rules and Procedures Governing the Settlement of Disputes; and the Decision on NFIDCs. Data exist to measure the implementation of 13 out of 14 of these provisions.

16. Provisions relating to least-developed country Members. As shown in table 1, there are 22 such provisions across seven agreements and three decisions: the Agriculture; Textiles and Clothing; Technical Barriers to Trade; Trade-Related Investment Measures; GATS; TRIPS; Understanding on Rules and Procedures Governing the Settlement of Disputes; the Enabling Clause; the Decision on Measures in Favour of Least-Developed Countries; and the Waiver for preferential market access for LDCs.

17. These provisions, whose applicability is limited exclusively to the LDCs, all fall under one of the above five types of provision: five fall into the category of provisions aimed at increasing trade opportunities; 11 in the category of provisions under which WTO Members should safeguard the interests of developing country Members; one relating to the flexibility of commitments, of action, and use of policy instruments; three in the category of transition time periods, and two in the category of technical assistance, LDCs. Data exist to measure the implementation of 17 of these 22 provisions. All the other provisions which apply to developing countries in general, as well as provisions of the Decision on NFIDCs and paragraph 27.2 (a) of the agreement on Subsidies and Countervailing Measures, apply to LDCs.

C. TABLE 1: SPECIAL AND DIFFERENTIAL TREATMENT PROVISIONS BY TYPE AND AGREEMENT

Agreement	(i) Provisions aimed at increasing the trade opportunities of developing country Members	(ii) Provisions that require WTO Members to safeguard the interests of developing country Members	(iii) Flexibility of commitments, of action, and use of policy instruments	(iv) Transitional time periods	(v) Technical assistance	(v) Provisions relating to measures to assist least-developed country Members	Total by Agreement
Agriculture and Decision on NFIDCs	1	4	9	1	1	3	14 5
Application of SPS Measures		2		2	1		5
Textiles and Clothing	1	3				2	6
Technical Barriers to Trade		6	1	1	7	1	16
Trade-Related Investment Measures			1	2		1	4
Implementation of Article VI of GATT 1994		1					1
Implementation of Article VII of GATT 1994 and Decision on Texts Relating to Minimum Values and Imports by Sole Agents, Sole Distributors and Sole Concessionaires		1 2	2	4	1		8 2
Preshipment inspection							0
Rules of Origin							0
Import Licensing Procedures		3		1			4
Subsidies and Countervailing Measures		2	8	6			16
Safeguards		1		1			2
GATS	1	1	2		2	1	7
TRIPS		2			1	3	6

Agreement	(i) Provisions aimed at increasing the trade opportunities of developing country Members	(ii) Provisions that require WTO Members to safeguard the interests of developing country Members	(iii) Flexibility of commitments, of action, and use of policy instruments	(iv) Transitional time periods	(v) Technical assistance	(v) Provisions relating to measures to assist least-developed country Members	Total by Agreement
Understanding on Rules and Procedures Governing the Settlement of Disputes.		7	1		1	2	11
GATT 1994 Article XVIII			3				3
GATT 1994 Article XXXVI	**4**	**3**	**1**				8
GATT 1994 Article XXXVII	**2**	**6**					8
GATT 1994 Article XXXVIII	**2**	**5**					7
Enabling Clause	1		2			1	4
Decision on Measures in Favour of Least-Developed Countries						7	7
Waiver preferential tariff treatment of LDCs.						1	1
Total	12	49	30	18	14	22	145

III. SPECIAL AND DIFFERENTIAL TREATMENT: INFORMATION BY AGREEMENT

A. GENERAL AGREEMENT ON TARIFFS AND TRADE 1994

General Comments with Respect to the General Agreement on Tariffs and Trade 1994

WTO tariff concessions undertaken by developing country Members under Article II of GATT 1994 have generally been implemented over a longer or extended timeframe compared to developed countries. To date, the Secretariat has no information about any WTO Member who has had difficulty in implementing tariff cuts according to their schedules of concessions and there are no statements to that effect in the relevant WTO Committees. Furthermore, Members that have difficulty in implementing WTO tariff concessions can renegotiate these concessions under Article XXVIII procedures which are available to all WTO Members and commonly utilized for various reasons. However, in the TPRM, at least one developing country Member has stated that technical assistance would be needed to renegotiate tariff concessions made prior to the Uruguay Round. (WT/TPR/S/27 3, page 9)

Article XVIII

Provision	Comment
Flexibility of commitments, of action, and use of policy instruments	
Section A 7. (a) If a contracting party coming within the scope of paragraph 4 (*a*) of this Article considers it desirable, in order to promote the establishment of a particular industry with a view to raising the general standard of living of its people, to modify or withdraw a concession included in the appropriate Schedule annexed to this Agreement, it shall notify the CONTRACTING PARTIES to this effect and enter into negotiations with any contracting party with which such concession was initially negotiated, and with any other contracting party determined by the CONTRACTING PARTIES to have a substantial interest therein. If agreement is reached between such contracting parties concerned, they shall be free to modify or withdraw concessions under the appropriate Schedules to this Agreement in order to give effect to such agreement, including any compensatory adjustments involved.	The provision has not been invoked by developing country Members since the WTO Agreement came into force.
(b) If agreement is not reached within 60 days after the notification provided for in subparagraph (*a*) above, the contracting party which proposes to modify or withdraw the concession may refer the matter to the CONTRACTING PARTIES which shall promptly examine it. If they find that the	

Provision	Comment
contracting party which proposes to modify or withdraw the concession has made every effort to reach an agreement and that the compensatory adjustment offered by it is adequate, that contracting party shall be free to modify or withdraw the concession if, at the same time, it gives effect to the compensatory adjustment. If the CONTRACTING PARTIES do not find that the compensation offered by a contracting party proposing to modify or withdraw the concession is adequate, but find that it has made every reasonable effort to offer adequate compensation, that contracting party shall be free to proceed with such modification or withdrawal. If such action is taken, any other contracting party referred to in subparagraph (*a*) above shall be free to modify or withdraw substantially equivalent concessions initially negotiated with the contracting party which has taken the action.	
Section B 8. The contracting parties recognize that contracting parties coming within the scope of paragraph 4 (*a*) of this Article tend, when they are in rapid process of development, to experience balance of payments difficulties arising mainly from efforts to expand their internal markets as well as from the instability in their terms of trade. 9. In order to safeguard its external financial position and to ensure a level of reserves adequate for the implementation of its programme of economic development, a contracting party coming within the scope of paragraph 4 (*a*) of this Article may, subject to the provisions of paragraphs 10 to 12, control the general level of its imports by restricting the quantity or value of merchandise permitted to be imported; *Provided* that the import restrictions instituted, maintained or intensified shall not exceed those necessary: (a) to forestall the threat of, or to stop, a serious decline in its monetary reserves, or (b) in the case of a contracting party with inadequate monetary reserves, to achieve a reasonable rate of increase in its reserves. Due regard shall be paid in either case to any	Since the WTO came into effect, five developing country Members have ceased recourse to Article XVIII:B. Two Members still had recourse to the provisions in 2000. See also section on the Understanding on Balance-of-Payments Provisions of GATT 1994.

Provision	Comment
special factors which may be affecting the reserves of the contracting party or its need for reserves, including, where special external credits or other resources are available to it, the need to provide for the appropriate use of such credits or resources. 10. In applying these restrictions, the contracting party may determine their incidence on imports of different products or classes of products in such a way as to give priority to the importation of those products which are more essential in the light of its policy of economic development; *Provided* that the restrictions are so applied as to avoid unnecessary damage to the commercial or economic interests of any other contracting party and not to prevent unreasonably the importation of any description of goods in minimum commercial quantities the exclusion of which would impair regular channels of trade; and *Provided* further that the restrictions are not so applied as to prevent the importation of commercial samples or to prevent compliance with patent, trade mark, copyright or similar procedures. 11. In carrying out its domestic policies, the contracting party concerned shall pay due regard to the need for restoring equilibrium in its balance of payments on a sound and lasting basis and to the desirability of assuring an economic employment of productive resources. It shall progressively relax any restrictions applied under this Section as conditions improve, maintaining them only to the extent necessary under the terms of paragraph 9 of this Article and shall eliminate them when conditions no longer justify such maintenance; Provided that no contracting party shall be required to withdraw or modify restrictions on the ground that a change in its development policy would render unnecessary the restrictions which it is applying under this Section.	
Section C 13. If a contracting party coming within the scope of paragraph 4 (*a*) of this Article finds that governmental assistance is required to	Since the WTO Agreement entered into force, one developing country Member cited this provision during a dispute.

Provision	Comment
promote the establishment of a particular industry with a view to raising the general standard of living of its people, but that no measure consistent with the other provisions of this Agreement is practicable to achieve that objective, it may have recourse to the provisions and procedures set out in this Section.	

Understanding on Balance-of-Payments Provisions

General Comments with Respect to the Understanding on Balance-of-payments Provisions

The Committee on Balance-of-payments Restrictions agreed to a request from a least-developed country Member for the postponement of full consultations, due before May 1999, to the year 2000, because of problems caused by flood devastation. Simplified consultations took place in May 1999 and full consultations will be held in 2000.

In the context of a dispute, a developing country member argued that Article XVIII was the principle expression of special and differential treatment in GATT 1994. In its findings, the Panel ruled that the measures at issue applied by the developing country Member violated – inter alia- Articles XI:1 and XVIII:11 of GATT 1994 and were not justified by Article XVIII:B. [3]

Whereas 13 developing country Members were making use of Article XVIII in 1990, two developing country members – including one least-developed country Member – were doing so in 2000.

In the TPRM, the view has been expressed that, in implementation, hardly any distinction seemed now to be drawn between Article XII and Article XVIII:B of GATT 1994. (WT/TPR/M/33, paragraph 9)

Article XXXVI

Provision	Comment
Provisions aimed at increasing the trade opportunities of developing country Members	
2. There is need for a rapid and sustained expansion of the earnings of the less-developed contracting parties.	The current US Dollar value of developing country merchandise export earnings increased by a factor of nearly 69 between 1948, at the time of the inception of the GATT, and the establishment of the WTO in 1995. (WT/COMTD/W/65 – this document contains more detailed data on long and short term trends in trade of developing country Members).
3. There is need for positive efforts designed to ensure that less-developed contracting parties secure a share in the growth in international trade commensurate with the	The average trade weighted tariff on industrial imports from developing Members fell by 34 per cent following the conclusion of the Uruguay Round.

[3] WT/DS90/R

Provision	Comment
needs of their economic development.	A response to the provisions of paragraphs 3, 4 and 5 may be found in the maintenance of preferential tariff and other market access arrangements maintained under Members' GSP schemes, the GSTP, and other non-reciprocal preferential arrangements. (some of which have been notified in the WT/COMTD/N/-- series). See also the reference to improved preferential market access measures for least-developed countries under Section 7.1 above (Decision on Measures in Favour of Least-Developed Countries).
4. Given the continued dependence of many less-developed contracting parties on the exportation of a limited range of primary products, there is need to provide in the largest possible measure more favourable and acceptable conditions of access to world markets for these products, and wherever appropriate to devise measures designed to stabilize and improve conditions of world markets in these products, including in particular measures designed to attain stable, equitable and remunerative prices, thus permitting an expansion of world trade and demand and a dynamic and steady growth of the real export earnings of these countries so as to provide them with expanding resources for their economic development.	See also under section on the agreement on agriculture. The value of exports of agricultural products from developing countries increased from US Dollars 114 billion in 1990 to US Dollars 167 Billion in 1998 (G/AG/NG/W/6 refers).
5. The rapid expansion of the economies of the less-developed contracting parties will be facilitated by a diversification of the structure of their economies and the avoidance of an excessive dependence on the export of primary products. There is, therefore, need for increased access in the largest possible measure to markets under favourable conditions for processed and manufactured products currently or potentially of particular export interest to less-developed contracting parties.	See above. The share of manufactures in developing country exports rose from 52.1 percent in 1990 I to 64.8 per cent in 1997.

Provision	Comment
Provisions under which WTO Members should safeguard the interests of developing country Members	
6. Because of the chronic deficiency in the export proceeds and other foreign exchange earnings of less-developed contracting parties, there are important inter-relationships between trade and financial assistance to development. There is, therefore, need for close and continuing collaboration between the CONTRACTING PARTIES and the international lending agencies so that they can contribute most effectively to alleviating the burdens these less-developed contracting parties assume in the interest of their economic development.	Ministers adopted the Declaration on the Contribution of the World Trade Organisation to Achieving Greater Coherence in Global Economic Policy-making, which recognise, *inter alia* that difficulties the origins of which lie outside the trade field cannot be addressed through measures taken in the trade field alone. In November 1996 the General Council approved WTO agreements with the IMF and the World Bank. The agreements aimed to strengthen inter-agency relations. The High-Level Meeting for Least-Developed Countries' Trade Development in October 1997 endorsed the participation of six inter-governmental agencies including the IMF and World Bank in the Integrated Framework for Trade-Related Technical Cooperation for least-developed countries. In July 2000, the six core agencies agreed to make every effort to support the integration of trade, trade-related technical assistance, and capacity-building into the national development strategies and plans of LDCs. This would be ensured principally through such instrument as Poverty Reduction Strategy Papers (PRSPs) and would influence other development frameworks such as the United Nations Development Assistance Framework (UNDAF). In doing so, these efforts will ensure dynamic interaction and dialogue among LDCs, donors and agencies, fully respecting country ownership. (WT/LDC/SWG/IF/2)
7. There is need for appropriate collaboration between the CONTRACTING PARTIES, other intergovernmental bodies and the organs and agencies of the United Nations system, whose activities relate to the trade and economic development of less-developed countries.	A global arrangement for cooperation between WTO and the United Nations was concluded on 29 September 1995 by an exchange of letters between the Director-General and the UN Secretary General (WT/GC/W/10). See above

Provision	Comment
9. The adoption of measures to give effect to these principles and objectives shall be a matter of conscious and purposeful effort on the part of the contracting parties both individually and jointly.	See above
Flexibility of commitments, of action, and use of policy instruments	
8. The developed contracting parties do not expect reciprocity for commitments made by them in trade negotiations to reduce or remove tariffs and other barriers to the trade of less-developed contracting parties.	See above under paragraphs 3, 4 and 5. In addition, this provision was taken into account during the negotiations in the Uruguay Round. This is reflected both in the extent of bindings on industrial products and the average level of tariffs of the developing country Members.
Article XXXVII	
Provisions aimed at increasing the trade opportunities of developing country Members	
1. The developed contracting parties shall to the fullest extent possible - that is, except when compelling reasons, which may include legal reasons, make it impossible give effect to the following provisions: (a) Accord high priority to the reduction and elimination of barriers to products currently or potentially of particular export interest to less-developed contracting parties, including customs duties and other restrictions which differentiate unreasonably between such products in their primary and in their processed forms;	*A similar provision has been taken into account in the reduction of tariffs on tropical products during the Uruguay Round. See under Section 2.1 above (Agreement on Agriculture).*
4. Less-developed contracting parties agree to take appropriate action in implementation of the provisions of Part IV for the benefit of the trade of other less-developed contracting parties, in so far as such action is consistent with their individual present and future development, financial and trade needs taking into account past trade developments as well as the trade interests of less-developed contracting parties as a whole.	Announcements of new preferential market access measures in favour of least-developed countries were made by a number of developing countries at the High-Level Meeting on Integrated Initiatives for Least-Developed Countries' Trade Development in October 1997 and at t a meeting of the WTO's General Council in May 2000. One notification has been submitted under the waiver for the preferential treatment of last developed countries (WT/COMTDW/12). Market access conditions in 23 major markets, including 16 developing countries or transition economies, for the exports of least developed countries is recorded in documents WT/COMTD/LDC/W/16 and WT/COMTD/LDC/W/17.

Provision	Comment
Provisions under which WTO Members should safeguard the interests of developing country Members	
(b) refrain from introducing, or increasing the incidence of, customs duties or non-tariff import barriers on products currently or potentially of particular export interest to less-developed contracting parties; and (c) (i) refrain from imposing new fiscal measures, and (ii) in any adjustments of fiscal policy accord high priority to the reduction and elimination of fiscal measures, which would hamper, or which hamper, significantly the growth of consumption of primary products, in raw or processed form, wholly or mainly produced in the territories of less-developed contracting parties, and which are applied specifically to those products.	Prior to the establishment of the WTO, the implementation of this provision has arisen in the context of measures taken by some Members (for example see L/3573 and WT/COMTD/W/239).
2. (a) Whenever it is considered that effect is not being given to any of the provisions of subparagraph (*a*), (*b*) or (*c*) of paragraph 1, the matter shall be reported to the CONTRACTING PARTIES either by the contracting party not so giving effect to the relevant provisions or by any other interested contracting party. (b) (i) The CONTRACTING PARTIES shall, if requested so to do by any interested contracting party, and without prejudice to any bilateral consultations that may be undertaken, consult with the contracting party concerned and all interested contracting parties with respect to the matter with a view to reaching solutions satisfactory to all contracting parties concerned in order to further the objectives set forth in Article XXXVI. In the course of these consultations, the reasons given in cases where effect was not being given to the provisions of subparagraph (*a*), (*b*) or (*c*) of paragraph 1 shall be examined. (ii) As the implementation of the provisions of subparagraph (*a)*, (*b*) or (*c*) of paragraph 1 by individual contracting parties may in some cases be more readily achieved where action is taken jointly with other developed contracting parties, such consultation might, where appropriate, be directed towards this end.	No request for consultations has been made either by a Member giving effect to the provisions of sub-paragraphs a, b and c of paragraph 1 or by any other interested Member.

Provision	Comment
(iii) The consultations by the CONTRACTING PARTIES might also, in appropriate cases, be directed towards agreement on joint action designed to further the objectives of this Agreement as envisaged in paragraph 1 of Article XXV.	
3. The developed contracting parties shall: (a) Make every effort, in cases where a government directly or indirectly determines the resale price of products wholly or mainly produced in the territories of less-developed contracting parties, to maintain trade margins at equitable levels. (b) Give active consideration to the adoption of other measures designed to provide greater scope for the development of imports from less-developed contracting parties and collaborate in appropriate international action to this end.	
(c) Have special regard to the trade interests of less-developed contracting parties when considering the application of other measures permitted under this Agreement to meet particular problems and explore all possibilities of constructive remedies before applying such measures where they would affect essential interests of those contracting parties.	This provision has been incorporated into the Anti-dumping Agreement.
5. In the implementation of the commitments set forth in paragraph 1 to 4 each contracting party shall afford to any other interested contracting party or contracting parties full and prompt opportunity for consultations under the normal procedures of this Agreement with respect to any matter or difficulty which may arise.	

Article XXXVIII

Provision	Comment
Provisions aimed at increasing the trade opportunities of developing country Members	
(c) Collaborate in analysing the development plans and policies of individual less-developed contracting parties and in examining trade and aid relationships with a view to devising concrete measures to promote the development of export potential and to facilitate access to export markets for the products of the industries thus developed and, in this connection, seek appropriate collaboration with governments and international organizations, and in particular with organizations having competence in relation to financial assistance for economic development, in systematic studies of trade and aid relationships in individual less-developed contracting parties aimed at obtaining a clear analysis of export potential, market prospects and any further action that may be required;	The High-Level Meeting on Integrated Initiatives for Least-Developed Countries' Trade Development was in part a response to this provision. The Heads of the six core Agencies of the Integrated Framework for Trade-Related Technical Assistance to Least-Developed Countries to agreed: (i) to make every effort to support the integration of trade, trade-related technical assistance, and capacity-building into the national development strategies and plans of LDCs. This would be ensured principally through such instrument as Poverty Reduction Strategy Papers (PRSPs) and would influence other development frameworks such as the United Nations Development Assistance Framework (UNDAF). In doing so, these efforts will ensure dynamic interaction and dialogue among LDCs, donors and agencies, fully respecting country ownership. (ii) That this mainstreaming effort will be led and coordinated by the World Bank, according to the principles of the Comprehensive Development Framework, with participation and inputs from the other core agencies and other stakeholders. Building on initial Needs Assessments and subsequent work, this will involve formulating country-specific integration strategies as part of the mainstreaming process. These activities will feed into the World Bank Consultative Groups (CGs) and UNDP Round Table Meetings (RTs) where countries will present their medium-term policy frameworks and financing needs, including for trade-related assistance, for support by the donor community. (WT/LDC/SWG/IF/2)
(e) Collaborate in seeking feasible methods to expand trade for the purpose of economic development, through international harmonization and adjustment of national policies and regulations, through technical and commercial standards affecting production, transportation and marketing, and through export promotion by the establishment of facilities for the increased flow of trade	The work of the WTO/UNCTAD International Trade Centre is oriented towards meeting the objectives of this provision. The WTO Reference Centre Programme has contributed to the enhancing the flow of trade-related information to governments and business communities of 77 developing countries (figure accurate at time of writing).

Provision	Comment
information and the development of market research;	
Provisions under which WTO Members should safeguard the interests of developing country Members	
1. The contracting parties shall collaborate jointly, with the framework of this Agreement and elsewhere, as appropriate, to further the objectives set forth in Article XXXVI. 2. In particular, the CONTRACTING PARTIES shall: (a) where appropriate, take action, including action through international arrangements, to provide improved and acceptable conditions of access to world markets for primary products of particular interest to less-developed contracting parties and to devise measures designed to stabilize and improve conditions of world markets in these products including measures designed to attain stable, equitable and remunerative prices for exports of such products;	The Committee on Trade and Development provides a forum for Members to collaborate jointly in this regard. This matter has generally been considered in UNCTAD from the inception.
(b) seek appropriate collaboration in matters of trade and development policy with the United Nations and its organs and agencies, including any institutions that may be created on the basis of recommendations by the United Nations Conference on Trade and Development;	See comment in relation to (Article XXXVI:7).
(d) keep under continuous review the development of world trade with special reference to the rate of growth of the trade of less-developed contracting parties and make such recommendations to contracting parties as may, in the circumstances, be deemed appropriate;	The Committee on Trade and Development conducts regular reviews of the participation of developing countries in world trade. (see WT/COMTD/W/65)
(f) establish such institutional arrangements as may be necessary to further the objectives set forth in Article XXXVI and to give effect to the provision of this Part.	The WTO Committee on Trade and Development, was established in 1995. (see WT/L/46 for terms of reference).

1979 Decision of the Contracting Parties on Differential and More Favourable Treatment, Reciprocity and Fuller Participation of Developing Countries: "The Enabling Clause"

Provision	Comment
1. Notwithstanding the provisions of Article I of the General Agreement, contracting parties may accord differential and more favourable treatment to developing countries,[4] without according such treatment to other contracting parties.	
2. The provisions of paragraph 1 apply to the following:[5]	
Provisions aimed at increasing trade opportunities	
(a) Preferential tariff treatment accorded by developed contracting parties to products originating in developing countries in accordance with the Generalized System of Preferences.[6]	Implementation of this provision has been through GSP schemes as notified to the COMTD.
Flexibility of commitments, of action, and use of policy instruments	
(b) Differential and more favourable treatment with respect to the provisions of the General Agreement concerning non-tariff measures governed by the provisions of instruments multilaterally negotiated under the auspices of the GATT.	
(c) Regional or global arrangements entered into amongst less-developed contracting parties for the mutual reduction or elimination of tariffs and, in accordance with criteria or conditions which may be prescribed by the CONTRACTING PARTIES, for the mutual reduction or elimination of non-tariff measures, on products imported from one another	To date, 17 regional arrangements have been notified under the Enabling Clause
Provisions relating to least-developed country Members	
(d) Special treatment of the least developed among the developing countries in the context of any general or specific measures in favour of developing countries.	A number of GSP schemes provide for enhanced market access for least developed countries. Documents WT/COMTD/LDC/W/16 and WT/COMTD/W/17 provide data on market access for the 29 least-developed country members of the WTO.

[4] [11]The words "developing countries" as used in this text are to be understood to refer also to developing territories.

[5] It would remain open for the CONTRACTING PARTIES to consider on an *ad hoc* basis under the GATT provisions for joint action any proposals for differential and more favourable treatment not falling within the scope of this paragraph.

[6] As described in the Decision of the CONTRACTING PARTIES of 25 June 1971, relating to the establishment of "generalized, non-reciprocal and non-discriminatory preferences beneficial to the developing countries."

General comments with respect to the enabling clause

The use of the Generalized System of Preferences GSP is frequently referred to in the TPRM process without stating any difficulties. However, specific concerns raised in TPRM discussions with respect to (GSP) include the following:

- *That items of particular export interest for developing countries are not eligible for GSP benefits, or only partially included in the schemes, such as agricultural and textiles and clothing items;[7] (WT/TPR/M/13, page 11, WT/TPR/M/30, page 9, WT/TPR/S/32-2, pages 7,8, WT/TPR/M/32 25)*

- *That some GSP schemes ignore the factor-intensity of production in developing countries as certain labour-intensive chemical and textile products have been removed from the schemes; (WT/TPR/M/3, page 20)*

- *That certain schemes contain binding ceiling quotas on certain products;[8] (WT7TPR/S/32-2, pages.7-8)*

- *That not all exports of GSP-eligible goods from developing countries to preference giving countries actually benefit from preferential access; (WT/TPR/S/52-2, pages 22-23)*

- *That some GSP schemes in reality only benefit a few developing countries exporters of the few products covered by the scheme and that the benefits of the scheme therefore are highly skewed both in terms of the number of main beneficiaries and the range of products; (WT/TPR/M/32, pages 24,25)*

- *That imports under contractual or unilateral preferences, subject to emergency safeguards or zero-duty quotas have negative effects on preference schemes; (WT/TPR/M/3, page 15)*

- *That developing country exports have been progressively excluded from a number of GSP schemes as such exports have reached the competitiveness criteria defined by GSP-granting countries. The negative effects on the market position of certain developing country products have been magnified by the maintenance of benefits to competing countries; (WT/TPR/S/21-2, page 10)*

- *That specialization and development indices can lead to discrimination between developing countries competing for the same market. Such indices favour producers of raw materials and low-processed goods while penalizing more advanced suppliers; (WT/TPR/M/3, pages 6,7)*

- *That sector and country graduation are contrary to principles of non-discrimination and non-reciprocity that underpin the GSP and therefore alien to the original intentions underlying the GSP concept; (WT/TPR/M/3, page 19, WT/TPR/M/30, pages 9,10)*

[7] The following items were explicitly mentioned; walnuts, raw coffee, meat, dairy products, vegetables, cereals, cigars, silk, cotton, woven fabrics of cotton, footwear.

[8] The following items were explicitly mentioned: wood and articles thereof, leather articles, footwear, electrical machinery and equipment.

- *That the withdrawal, or the threat of withdrawal of preferences is used as leverage to obtain non-trade objectives. As recipient countries can not rely on the preferences, they have become less useful. The consequent uncertainty of access is a major concern to countries affected; (WT/TPR/M/16, page 9) and*

- *That linking the benefits to non-trade issues, such as environmental and social (labour) standards as well as intellectual property rights and the fight against drugs curtail the benefits under the scheme and introduce elements of discrimination and reciprocity into the GSP scheme. These aspects go against the fundamental principles of the GSP. (WT/TPR/M/3, pages 6, 7, 11, 15, 19, 20, WT/TPR/M/16 pages 16, 25, 29, WT/TPR/M/30, pages 6, 9, 10, 11, 15, 16, 17, 26)*

1999. Decision on waiver for preferential tariff treatment of Least Developed Countries

Provision	Comment
Provisions relating to measures to assist least-developed country Members.	
Subject to the terms and conditions set out hereunder, the provisions of paragraph 1 of Article I of the GATT 1994 shall be waived until 30 June 2009, to the extent necessary to allow developing country Members to provide preferential tariff treatment to products of least-developed countries, designated as such by the United Nations, without being required to extend the same tariff rates to like products of any other Member.	To date, 1 notification has been submitted under this decision (WT/COMTD/N/12/Rev.1).

The Agreement on Agriculture together with the Decision on Members Concerning the Possible Negative Effects of the Reform Programme on Least-Developed and Net Food-Importing Developing Countries, contain 18 special and differential treatment provisions. The special and differential treatment provisions of the Agreement and the Decisons jointly cover all six types of special and differential treatment provisions.

B. AGREEMENT ON AGRICULTURE:

1. Provisions aimed at increasing trade opportunities for developing countries:
One provision (the Preamble to the agreement).

2. Transition time periods:
One provision (Article 15.2).

3. Flexibility of commitments, of action, and use of policy instruments:
Nine provisions (Article 6.2; Article 6.4; Article 9.2(b)(iv); Article 9.4; Article 12.2; Article 15.1; Public stockholding for food security purposes: Annex 2, para. 3, footnote 5; Domestic food aid: Annex 2, para. 4, footnotes 5 & 6; Annex 5, Section B).

4 Provisions relating to measures to -developed country Members:
Two provisions (Article 16.1 and Article 16.2).

Provisions falling in categories 1 and 4 listed above cover positive actions to be taken by members with respect to developing country Members, including least developed countries. The right hand column provides information on their implementation. Provisions falling under categories 2 and 3 cover actions developing countries may take as a result of exemptions, time-bound or otherwise provided for in the agreement. With the exception of Article 12.2, available data show that developing countries made use of all provisions available in these two categories.

No specific concerns with respect to the practical implementation of existing special and differential treatment provisions have been raised during the formal meetings of the Committee on Agriculture.

However, during the process of Analysis and Information Exchange and in the context of the mandated agricultural negotiations various developing country Members submitted papers addressing the specific characteristics of rural economies, the role of agriculture in their social and economic development, and implementation issues. Several developing countries have highlighted the need to enhance the S&D provisions.

Under the notification requirements adopted by the Committee on Agriculture (G/AG/2), least-developed countries are to make notifications on domestic support only every two years; developing countries are to notify annually but the Committee on Agriculture may, upon request, set aside parts of the notification requirements. To date, there has been no such request.

Provision	Comment
Provisions aimed at increasing trade opportunities	
Preamble *Having agreed that in implementing their commitments on market access, developed country Members would take fully into account the particular needs and conditions of developing country Members by providing for a greater improvement of opportunities and terms of access for agricultural products of particular interest to these Members, including the fullest liberalization of trade in tropical agricultural*	Schedules of developed country Members show greater-than-average reductions in tariffs on a range of products of particular interest to developing countries (e.g. average tariff reduction of 43 per cent for tropical agricultural products) and often their accelerated implementation. Document G/AG/NG/S/10 dated 10 June 2000 gives an overview of tariff information on a range of agricultural products that were identified by

Provision	Comment
products as agreed at the Mid-Term Review, and for products of particular importance to the diversification of production from the growing of illicit narcotic crops;	developing countries as being of particular interest to them.
Transition time periods	
Article 15.2 *Developing country Members shall have the flexibility to implement reduction commitments over a period of up to 10 years. Least-developed country Members shall not be required to undertake reduction commitments.*	Used by developing and least-developed countries in the establishment of Schedules
Flexibility	
Article 6.2 *(Domestic Support Commitments). In accordance with the Mid-Term Review Agreement that government measures of assistance, whether direct or indirect, to encourage agricultural and rural development are an integral part of the development programmes of developing countries, investment subsidies which are generally available to agriculture in developing country Members and agricultural input subsidies generally available to low-income or resource-poor producers in developing country Members shall be exempt from domestic support reduction commitments that would otherwise be applicable to such measures, as shall domestic support to producers in developing country Members to encourage diversification from growing illicit narcotic crops. Domestic support meeting the criteria of this paragraph shall not be required to be included in a Member's calculation of its Current Total AMS.*	Developing countries took account of the provision in the establishment of their Schedules. Documents G/AG/NG/S/1 and Corr. 1 (dated 13 and 25 April 2000), G/AG/NG/S/2 (dated 19 April 2000) and G/AG/NG/S/12 show the extent to which Members have actually taken recourse to this exemption from domestic support reduction commitments. Data for 1995-1997 show that total notified outlays under this provision amounted respectively to 2.5 Billion US Dollars, 2 Billion US Dollars, and just under 1 Billion US Dollars for the three years in question. (This represented respectively, 7.1 per cent, 8.2 per cent, and 4.5 per cent of total notified domestic support provided by the Members in question.). Twenty Members notified zero outlays under this provision in 1995, as compared to 25 and 23 in 1996 and 1997 respectively. For two members in 1995, outlays under this provision represented 100 percent of all notified domestic support, as compared to three Members in 1996 and two in 1997.
Article 6.4 (b) *(Domestic Support Commitments- calculation of current total AMS) For developing country Members, the de minimis percentage under this paragraph shall be 10 per cent*	Developing countries took account of the provision in the establishment of their Schedules. Actual use of this provision is reflected in document G/AG/NG/S/2 and G/AG/NG/S/12. In 1995 , total notified outlays falling under this provision amounted to just under 7 billion US Dollars, or 20 per cent of notified domestic support.
Article 9.2(b)(iv) *(Budgetary outlays for export subsidies)* *The Member's budgetary outlays for export subsidies and the quantities benefiting from such*	Developing countries took account of the provision in the establishment of their Schedules.

Provision	Comment
subsidies, at the conclusion of the implementation period, are no greater than 64 per cent and 79 per cent of the 1986-1990 base period levels, respectively. For developing country Members these percentages shall be 76 and 86 per cent, respectively.	All 10 developing country Members which have export subsidy reduction commitments (Brazil, Colombia, Cyprus, Indonesia, Israel, Mexico, Romania, Turkey, Uruguay and Venezuela) have used the flexibility to apply a lower rate of reduction
Article 9.4 *During the implementation period, developing country Members shall not be required to undertake commitments in respect of the export subsidies listed below, provided that these are not applied in a manner that would circumvent reduction commitments:* *subsidies to reduce the costs of marketing exports of agricultural products, including handling, upgrading and other processing costs, and the costs of international transport and freight; and* *providing internal transport charges on export shipments terms more favourable than those for domestic shipment.*	Developing countries took account of the provision in the establishment of their Schedules. Several notifications show recourse to these two types of subsidies (G/AG/N/-- series).
Article 12.2 (Diversification of export prohibitions and restrictions) *The provisions of [Article 12.1] shall not apply to any developing country Member, unless the measure is taken by a developing country Member which is a net-food exporter of the specific foodstuff concerned.*	No developing country has notified the introduction of such a measure.
Article 15.1 *In keeping with the recognition that differential and more favourable treatment for developing country Members is an integral part of the negotiation, special and differential treatment in respect of commitments shall be provided as set out in the relevant provisions of this Agreement and embodied in the Schedules of concessions and commitments.*	The Schedules of developing countries and least-developed countries reflect the flexibility on ceiling bindings, longer implementation period and lower reduction commitments in tariffs, domestic support and export subsidies.
Annex 2, para. 3, footnote 5 *(Public stockholding for food security purposes)* *For the purposes of paragraph 3 of Annex 2, governmental stockholding programmes for food security purposes in developing countries whose operation is transparent and conducted in accordance with officially published objective criteria or guidelines shall be considered to be in conformity with the provisions of this paragraph, including programmes under which stocks of foodstuffs for food security purposes are acquired and released at administered prices, provided that the difference between the acquisition price*	Developing countries took account of the provision in the establishment of the Schedules. Document G/AG/NG/S/2 shows that this particular category of government assistance has been implemented by several developing countries.

Provision	Comment
and the external reference price is accounted for in the AMS.	
Annex 2, para. 4, footnotes 5 & 6 *(Domestic food aid)* *For the purposes of paragraphs 3 and 4 of Annex 2, 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 shall be considered to be in conformity with the provisions of this paragraph.*	Developing countries took account of this provision in the establishment of the Schedules. Document G/AG/NG/S/2 shows how this particular category of government assistance has been implemented by several developing countries.
Annex 5, Section B *The provisions of Article 4.2 shall also not apply with effect from the entry into force of the WTO Agreement to a primary agricultural product that is the predominant staple in the traditional diet of a developing country Member and in respect of which the following conditions, in addition to those specified in paragraph 1(a) through 1(d), as they apply to the products concerned, are complied with: (a) minimum access opportunities in respect of the products concerned, as specified in Section I-B of Part I of the Schedule of the developing country Member concerned, correspond to 1 per cent of base period domestic consumption of the products concerned from the beginning of the first year of the implementation period and are increased in equal annual instalments to 2 per cent of corresponding domestic consumption in the base period at the beginning of the fifth year of the implementation period. From the beginning of the sixth year of the implementation period, minimum access opportunities in respect of the products concerned correspond to 2 per cent of corresponding domestic consumption in the base period and are increased in equal annual instalments to 4 per cent of corresponding domestic consumption in the base period until the beginning of the 10th year. Thereafter, the level of minimum access opportunities resulting from this formula in the 10th year shall be maintained in the Schedule of the developing country Member concerned; (b) appropriate market access opportunities have been provided for in other products under this Agreement. In the event that special treatment under paragraph 7 is not to be continued beyond the 10th year following the beginning of the implementation period, the products concerned shall be subject to ordinary customs duties, established on the basis of a tariff*	The Schedules of Korea and the Philippines reflect recourse to this provision.

Provision	Comment
equivalent to be calculated in accordance with the guidelines prescribed in the attachment hereto, which shall be bound in the Schedule of the Member concerned. In other respects, the provisions of paragraph 6 shall apply as modified by the relevant special and differential treatment accorded to developing country Members under this Agreement.	
Provisions relating to least-developed country Members	
Article 16.1 *Developed country Members shall take such action as is provided for within the framework of the Decision on Measures Concerning the Possible Negative Effects of the Reform Programme on Least-Developed and Net Food-Importing Developing Countries.*	Information on actions undertaken within the framework of the decision is to be found in the following section
Article 16.2 *The Committee on Agriculture shall monitor, as appropriate, the follow-up to this Decision.*	The Decision has been on the agenda of virtually every meeting of the Committee. Please see the following section on the Decision for further information.

C. DECISION ON MEASURES CONCERNING THE POSSIBLE NEGATIVE EFFECTS OF THE REFORM PROGRAMME ON LEAST-DEVELOPED AND NET FOOD-IMPORTING DEVELOPING COUNTRIES:[9]

1. Provisions under which WTO Members should safeguard the interests of developing country Members:
Four provisions: (the Decision on Measures Concerning the Possible Negative Effects of the Reform Programme on Least-Developed and Net Food-Importing Developing Countries, paragraphs 3(i) and paragraph 3 (ii); 4 and 5.

2 Technical assistance:
One provision (the Decision on Measures Concerning the Possible Negative Effects of the Reform Programme on Least-Developed and Net Food-Importing Developing Countries, paragraph 3(iii).

All the provisions of the Decision cover positive actions to be taken by members with respect to developing country Members, including least developed countries. The right hand column provides information on their implementation.

General comments

The follow-up of the Decision has represented an important part of the work of the Committee on Agriculture. The Decision has been on the agenda of virtually each meeting. At an early stage, the Committee agreed on various practical arrangements: (i) an annual review of the implementation of the Decision; (ii) notification requirements, notably for developed country Members, for actions taken under the Decision; (iii) the establishment of a WTO list of net-food importers, which comprises currently all least-developed countries as defined by the United Nations and 19 developing country Members. In addition to the annual reviews of the Decision in the Committee on Agriculture, the Committee made specific recommendations to the Singapore Ministerial Conference (SMC) which were adopted. The relevant provisions of the Decision as well as the recommendations and their follow-up are set out below.

In the course of the work of the Committee on Agriculture related to the implementation of the Decision, several Members intervened, with developing countries raising the following issues and concerns: the critical importance of food security; recognition of the crucial role played by international trade in achieving national food security objectives; recognition of the successful conclusion of the new Food Aid Convention (FAC); the desirability for more Members to join the FAC as this would be a concrete way to assist LDCs and NFIDCs to honour the commitments made by Ministers at Marrakesh and Singapore; concern over declining levels of cereal and non-cereal food aid; the reduction of trade-distorting protection and support would help many developing countries to improve their export performance and thus their ability to finance their food security needs; the lack of progress with negotiations on export credits in the framework of the OECD. Some net food-importing developing countries expressed concern that their expectations have not been met in areas like concessional finance, since access to existing facilities remains subject to certain conditions or continues to be linked to balance-of-payment difficulties.

[9] The WTO list of net food-importing developing countries as it currently stands: Barbados, Botswana, Côte d'Ivoire, Cuba, Dominican Republic, Egypt, Honduras, Jamaica, Kenya, Mauritius, Morocco, Pakistan, Peru, Saint Lucia, Senegal, Sri Lanka, Trinidad and Tobago, Tunisia and Venezuela (G/AG/5/Rev.3, dated 28 June 1999, refers).

Provision	Comment
Provisions under which WTO Members should safeguard the interests of developing country Members	
Paragraph 3(i) *To review the level of food aid established periodically by the Committee on Food Aid under the Food Aid Convention 1986 and to initiate negotiations in the appropriate forum to establish a level of food aid commitments sufficient to meet the legitimate needs of developing countries during the reform programme.*	The SMC agreed that, in anticipation of the expiry of the current Food Aid Convention (FAC) in June 1998 and in preparation for the renegotiation of the FAC, action be initiated in 1997 within the framework of the FAC to develop recommendations with a view towards establishing a level of food aid commitments, covering as wide a range of donors and donable foodstuffs as possible, which is sufficient to meet the legitimate needs of developing countries during the reform programme. In response, since January 1997, several meetings have taken place within the framework of the FAC, including meetings with net food-importing developing and least-developed countries as well as potential new food aid donors. This process culminated with the advent of the new FAC which entered into force on 1 July 1999. Under the new Food Aid Convention 1999, the minimum annual volume and value commitments of FAC members amount to a total of 4.895 million tonnes (wheat equivalent) and €130 million, respectively. Although food aid shipments of grain fell from 10.4 million tonnes in 1992/93 to 5.8 million tonnes in 1996/97, shipments exceeded, except in 1994/95, FAC members' combined minimum annual commitments in this period. In 1998/99, food aid shipments by FAC donors reached an estimated 8.1 million tonnes, 2 million tonnes more than in 1997/98 and 2.8 million tonnes more than the aggregate annual minimum commitment under the FAC 1995. Document G/AG/NG/S/3, dated 25 April 2000, pp. 2-8, refer.
Paragraph 3(ii) *To adopt guidelines to ensure that an increasing proportion of basic foodstuffs is provided to least-developed and net food-importing developing countries in fully grant form and/or on appropriate concessional terms in line with Article IV of the Food Aid Convention 1986.*	The SMC agreed that the recommendations referred to above should include guidelines to ensure that an increasing proportion of food aid is provided to least-developed and net food-importing developing countries in fully grant form and/or on appropriate concessional terms in line with Article IV of the current FAC, as well as means to improve the effectiveness and positive impact of food aid. Document G/AG/NG/S/4, Section 2, and Table 6 of document G/AG/NG/S/3 show that this recommendation is largely followed by all food donor Members.

Provision	Comment
Paragraph 4 *Ensure that any agreement relating to agricultural export credits makes appropriate provision for differential treatment in favour of least-developed and net food-importing developing countries.*	Ministers reaffirmed the commitment at the SMC. In the negotiations on an understanding regarding agricultural export credits currently undertaken within the framework of the OECD, consideration is given to this commitment. See also paragraph 33, document G/AG/NG/S/3.
Paragraph 5 *As a result of the Uruguay Round certain developing countries may experience short-term difficulties in financing normal levels of commercial imports and that these countries may be eligible to draw on the resources of international financial institutions under existing facilities, or such facilities as may be established, in the context of adjustment programmes, in order to address such financing difficulties. In this regard, Ministers take note of paragraph 37 of the report of the Director-General to the CONTRACTING PARTIES to GATT 1947 on his consultations with the Managing Director of the International Monetary Fund and the President of the World Bank (MTN.GNG/NG14/W/35).*	At the SMC it was agreed that WTO Members, in their individual capacity as members of relevant international financial institutions, take appropriate steps to encourage the institutions concerned, through their respective governing bodies, to further consider the scope for establishing new facilities or enhancing existing facilities for developing countries experiencing Uruguay Round-related difficulties in financing normal levels of commercial imports of basic foodstuffs. At the meetings of the Committee on Agriculture, the World Bank and the IMF have consistently reaffirmed that they are in a position to meet relevant requests from existing facilities. See also document G/AG/NG/S/3, pp. 10-15.
Technical assistance	
Paragraph 3(iii) *To give full consideration in the context of their aid programmes to requests for the provision of technical and financial assistance to least-developed and net food-importing developing countries to improve their agricultural productivity and infrastructure.*	The SMC called on developed country WTO Members to continue to give full consideration in the context of their aid programmes to requests for the provision of technical and financial assistance in this light. Document G/AG/NG/S/4, Section 3, describes the financial and technical assistance activities extended to least-developed and net food importing developing countries since 1995, as notified by food aid donor Members. In addition, Attachment 6 of G/AG/NG/S/3 provides an overview of spending on bilateral technical and financial assistance programmes as notified by Members, including in a number of cases funding given to multilateral organizations and other aid programmes.

D. SANITARY AND PHYTO-SANITARY MEASURES.

Special and Differential Treatment provisions under the SPS Agreement fall under three broad categories:

1 Provisions under which WTO Members should safeguard the interests of developing country Members
Two provisions (Article 10.1 and 10.4).

2 Transitional time periods:
Two provisions (Article 10.2 and 10.3).

3 Technical assistance:
One provision (Article 9).

General comments

In its report on the review of the SPS Agreement, the Committee noted that it had no information on the extent to which the special and differential treatment provided for in Articles 10.1 and 10.2 had been accorded to developing country Members, nor information on the extent to which developing country Members had made use of any special and differential treatment accorded to them.[10] The Committee also noted the proposals submitted by some developing country Members in the context of the review and encouraged Members to further the practical implementation of Articles 10.1 and 10.2. In particular, the Committee stressed that Members should, in accordance with the provisions of Article 10.2, accord longer time-frames for compliance on products of interest to developing country Members.

In various statements and submissions, it had been suggested that either Article 10 of the Agreement should be made mandatory and/or that specific guidelines should be developed since this Article had not been widely implemented.[11] Another issue raised was that as developing countries lack access to technologies developed abroad for achieving standards acceptable to importing countries, developed country Members should take these constraints into account while formulating their SPS measures.

As part of its regular consideration of issues of concern to developing country Members, the SPS Committee agreed to focus its discussions in June and November 2000 on the implementation of the special and differential provisions of the agreement. A background paper was prepared by the Secretariat drawing attention to the concerns that had been previously identified.[12]

Some Members stated that it was important for developing country members to provide concrete examples of needs in respect of special and differential treatment, and notably how existing provisions for special and differential treatment had failed to meet the needs and expectations of developing country Members.[13]

[10] G/SPS/12 refers.
[11] G/SPS/R/15, paras. 34-37, G/SPS/GEN/85 and G/SPS/GEN/128 refer.
[12] G/SPS/W/105
[13] G/SPS/R/19

Provision	Comment
Provisions under which WTO Members should safeguard the interests of developing country Members	
Article 10.1 *In the preparation and application of sanitary or phytosanitary measures, Members shall take account of the special needs of developing country Members, and in particular of the least-developed country Members.*	Some developing country Members expressed the view that although Article 10.1 provided that the special needs of developing countries shall be taken into account in the preparation and application of SPS measures, this had rarely been done. Some developing country Members proposed that if an SPS measure created a problem for more than one developing country, then it should be withdrawn. It was suggested that if an SPS measure created problems for several developing countries but could not be withdrawn, the country adopting it should reconsider it and provide the necessary technical assistance to enable developing countries to adapt. The view was expressed that developing country constraints such as lack of adequate infrastructure, technology, finance and skilled manpower led to difficulties in complying with trading partners' SPS measures. This resulted in restricted market access, especially since countries often found it difficult to adjust to frequently changing SPS measures. Another view, expressed by a developing country member, was that for developing countries, compliance with commitments under the SPS Agreement was not necessarily hindered by lack of financial resources, equipment or sophisticated infrastructures, but by a lack of understanding of the Agreement, the absence of an operational framework for the authorities responsible for administering the Agreement; and by limited participation in competent bodies and in the WTO's SPS Committee.[14]
Article 10.4 *Members should encourage and facilitate the active participation of developing country Members in the relevant international organisations.*	The timing of SPS Committee meetings has taken into account the meetings of the main standards setting organisations. For instance, SPS Committee meetings have been held back-to-back with the Codex Alimentarius Commission's meetings, to enable food security experts to combine both meetings in one trip. Some developing country Members stressed that the participation of developing countries in international standard-setting bodies remained inadequate, and that as a result, international standards were often adopted without taking into

[14] G/SPS/W/105 refers

Provision	Comment
	account the problems and constraints facing developing countries. The point was made that active participation in standard setting required adequate institutional infrastructure, human and financial resources and effective follow-up capabilities. Some Members proposed that WTO Members should establish a joint fund with the purpose of assisting developing countries to increase their participation in the work of the SPS Committee and in the international standard-setting bodies. A group of developing country Members suggested that standards should only be recognized by the Agreement if the participation of countries from different geographical areas and levels of development had been ensured in their formulation, and if the specific conditions prevailing in developing countries had been taken into account.[15] Some developing country Members reported to the Trade Policy Review Body that although developing countries participate in the policy-making committees of international bodies such as the Codex Alimentarius they are grossly outnumbered in these deliberations, at times resulting in standards development not conducive to their implementation. An observer from Codex, reporting to the SPS Committee on the twenty-third session of the Codex Alimentarius Commission in July 1999, emphasized that 103 member countries had participated, including a large number of developing countries.[16]
Transitional time periods	
Article 10.2 *Where the appropriate level of sanitary or phytosanitary protection allows scope for the phased introduction of new sanitary or phytosanitary measures, longer time-frames for compliance should be accorded on products of interest to developing country Members so as to maintain opportunities for their exports.*	Several developing country Members highlighted that there was little information regarding whether Members were, in fact, providing longer time frames for compliance on products of interest to developing countries.[17] In its review of the operation and implementation of the Agreement, the SPS Committee noted that it had no information on the extent to which the provision had been applied to developing country Members, nor how the latter had made use of it. Other developing country Members suggested that Article 10.2 should be modified to include a mandatory period of at least 12 months between the date of notification and the entry into force

[15] G/SPS/GEN/128, G/SPS/GEN/W/85, G/SPS/R/19 and G/SPS/W/105
[16] G/SPS/W/105, G/SPS/R/19 and WT/TPR/G/33 refer.
[17] G/SPS/R/15, paras. 34-37, G/SPS/GEN/128 refers.

Provision	Comment
	for SPS measures on products from developing countries.[18] Some Members informally supported the view that Article 10.2 had not been complied with, and proposed making it more binding, if necessary. The point was made by a developed country Member that while importing countries were not willing to compromise public health, governments were willing to be flexible in finalising regulations, and implementation dates were commonly extended.[19]
Article 10.3 *With a view to ensuring that developing country Members are able to comply with the provisions of this Agreement, the Committee is enabled to grant to such countries, upon request, specified, time-limited exception in whole or in part from obligations under this Agreement, taking into account their financial, trade and development needs.*	To date, no request has been made under Article 10.3. One Member proposed extending the transition period during which developing and least-developed countries could delay the implementation of the Agreement, as this would allow developing country Members to gradually bring their standards into conformity with international standards, while also giving them time to forge equivalence agreements with developed country Members. This could be done in the context of Article 10.3, which provided for time-limited exceptions.[20]
Technical assistance	
Provision	Comment
Article 9.2 *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 view was expressed that special and differential treatment provisions would be effective only if they were complemented by sufficient technical assistance to strengthen developing countries' ability to deal with scientific issues, especially risk assessment, and to improve laboratory facilities and technologies needed to comply with SPS obligations.[21] In the review of the operation and implementation of the Agreement, the Committee stressed the need for increased technical assistance and cooperation, in particular with regard to human resource development, national capacity building, and transfer of technology and information, particularly by way of concrete, "hands on" assistance. Technical assistance needs and activities are discussed at each regular meeting of the SPS Committee. A questionnaire was circulated to all Members requesting information on their technical assistance activities in the SPS

[18] G/SPS/W/105 refers
[19] G/SPS/R/19
20 G/SPS/GEN/85 refers.
[21] G/SPS/R/19 and G/SPS/GEN/128.

Provision	Comment
	area, as well as on their specific requests for technical assistance. [22] Information on a large number of technical assistance projects has been received.[23]

[22] G/SPS/W/101
[23] G/SPS/GEN/143 and Add.1, and G/SPS/GEN/181

E. AGREEMENT ON TEXTILES AND CLOTHING

The Agreement on Textiles and Clothing includes 6 special and differential treatment provisions, which can be categorised as follows:

1. Provision aimed at increasing the trade opportunities of developing country Members: One provision (Article 2.18).

2. Provisions under which WTO Members should safeguard the interests of developing country Members:
Three provisions (Article 6.6(b), 6.6(a) and Annex, paragraph 3(a)).

3. Provisions relating to least-developed country Members:
Two provisions (the Footnote to Article 1.2, and Article 6.6 (a)).

Provision	Comments
Provisions aimed at increasing trade opportunities	
Article 2:18 *As regards those Members whose exports are subject to restrictions on the day before the entry into force of the WTO Agreement and whose restrictions represent 1.2 per cent or less of the total volume of the restrictions applied by an importing Member as of 31 December 1991 and notified under this Article, meaningful improvement in access for their exports shall be provided, at the entry into force of the WTO Agreement and for the duration of this Agreement, through advancement by one stage of the growth rates set out in Article 2:13 and 2:14, or through at least equivalent changes as may be mutually agreed with respect to a different mix of base levels, growth and flexibility provisions. Such improvements shall be notified to the TMB.*	Members have noted that Article 2.18 should be implemented both within the context and general meaning of the ATC which was liberalization of trade and the purpose of the special provisions regarding small suppliers, that is to provide significant increases in access to them in terms of advancement by one stage of the growth rates with a view to contribute to the future possibilities of developing their trade. The view has been expressed that the term "advancement by one stage" in Article 2.18 does not mean substitution of the second stage growth factor for the first stage growth factor, that the stages have cumulative effect, therefore the growth factor for Stage 2 is to be applied in addition to the Stage 1 growth factor increase. (G/L/224, paragraph 44). Concerns have been raised that in the implementation of Article 2.18 the methodologies used by only one of the Members maintaining restraints of increasing the respective growth rates first by 16 per cent and then by 25 per cent had fulfilled the requirements of Article 1.2, and that two Members maintaining restraints had applied only a 25 per cent increase. (G/L/224, paragraph 44).

Provision	Comment
Provisions under which WTO Members should safeguard the interests of developing country Members	
Article 6:6(b) *Members whose total volume of textile and clothing exports is small in comparison with the total volume of exports of other Members and who account for only a small percentage of total imports of that product into the importing Member shall be accorded differential and more favourable treatment in the fixing of the economic terms provided in Article 6: 8, 6:13 and 6:14. For those suppliers, due account will be taken, pursuant to Article 1:2 and 1.3, of the future possibilities for the development of their trade and the need to allow commercial quantities of imports from them.*	With respect to Article 6.6(b) concern was expressed that in the application of safeguard measures by a Member, involving Members considered to be small suppliers, account had not been taken of the specific requirement in Article 6.6(b) to provide differential and more favourable treatment. (G/L/224, paragraph 44).
Article 6.6(c) *With respect to wool products from wool-producing developing country Members whose economy and textiles and clothing trade are dependent on the wool sector, whose total textile and clothing exports consist almost exclusively of wool products, and whose volume of textiles and clothing trade is comparatively small in the market of importing Members, special consideration shall be given to the export needs of such Members when considering quota levels, growth rates and flexibility.*	No safeguard action had been taken against any wool producing exporting country whose economies are dependent on the wool sector.
Annex, point 3, para (a) *Actions under the safeguard provisions in Article 6 of [the Agreement on Textiles and Clothing] shall not apply to: developing country Members' exports of handloom fabrics of the cottage industry, or hand-made cottage industry products made of such handloom fabrics, or traditional folklore handicraft textile and clothing products, provided that such products are properly certified under arrangements established between the Members concerned.*	No safeguard action has been taken against such products.
Provisions relating to least-developed countries	
Article 1.2, footnote *To the extent possible, exports from a least-developed country Member may also benefit from [Article 1.2: Members agree to use the provisions of paragraph 18 of Article 2 and paragraph 6 (b) of Article 6 in such a way as to permit meaningful increases in access possibilities for small suppliers and the development of commercially significant trading opportunities for new entrants in the field of textiles and clothing trade.*	In the last review, one developed country Member said its quotas with a particular least-developed country Member had high quota growth rates, another developed country Member said that it had no restraints and applied zero tariffs. With respect to the treatment of the least-developed country Members, it has been pointed out that some least-developed countries have benefitted from the provisions of Article

Provision	Comment
	2.18 while one Member had not, and that this was discriminatory as between least-developed countries and inconsistent with the objectives of the ATC. The importance of taking into account the special concerns of the least-developed Members in order to ensure improved market access for their products was stressed in this regard. (G/L/224, paragraph 48)
Article 6.6(a) *In the application of the transitional safeguard, particular account shall be taken of the interests of exporting embers as set out below: least-developed country Members shall be accorded treatment significantly more favourable than that provided to the other groups of Members referred to in this paragraph, preferably in all its elements, but at least in overall terms.*	No safeguard action has been taken against any LDC.

F. THE AGREEMENT ON TECHNICAL BARRIERS TO TRADE

The Agreement on Technical Barriers to Trade contains provisions under five of the six categories of Special and Differential Treatment. The 17 provisions for special and differential treatment can be classified as follows:

1. Provisions under which WTO Members should safeguard the interests of developing country Members:
   Seven provisions (Article 10.6; Article 12.1; Article 12.2; Article 12.3; Article 12.5; Article 12.9; and Article 12.10).

2. Flexibility of commitments, of action, and use of policy instruments:
   One provision. (Article 12.4)

3. Transition Time Periods: 1 provision (Article 12.8)

4 Technical Assistance:
   Seven Provisions. (Article 11.1; Article 11.2; Article 11.3; Article 11.4; Article 11.5; Article 11.6; Article 12.7)

5 Provisions relating to measures to assist least-developed country Members:
   One provision (Article 11.8).

General comments

The subject of special and differential treatment will be an integral part of the Second Triennial Review of the implementation and operation of the agreement conducted by the Committee. For the second triennial review, to proposals by developing countries have been put forward specifically relating to developing countries' technical assistance needs (G/TBT/W/142 and G/TBT/W/146). Other Members have submitted comprehensive proposals which have included sections on technical assistance (see G/TBT/W/133; G/TBT/W/138; G/TBT/W/139; G/TBT/W/140; G/TBT/W/143). The Committee held a Workshop on Technical Assistance and Special and Differential Treatment with a primary focus on technical assistance in July 2000, back to back with the Committee meeting (G/TBT/SPEC/14). The purpose of the Workshop was to provide the opportunity for Members that require technical assistance to inform the Committee and relevant organizations of any difficulties they encountered in the implementation and operation of the Agreement, and of the kind of technical assistance they might need.

The Secretariat prepared a study (see G/TBT/W/103) to establish the state of knowledge concerning the technical barriers to the market access of developing country suppliers, especially small and medium sized enterprises (SMEs), as a result of standards, technical regulations and conformity assessment procedures.

The Secretariat has circulated a compendium of the written contributions by international standardizing bodies and international systems for conformity assessment procedures on how account is taken of the special problems of developing countries in such bodies and systems. (G/TBT/W/106).

Provision	Comment
Provisions under which WTO Members should safeguard the interests of developing country Members	
Article 10.6 *The Secretariat shall, when it receives notifications in accordance with the provisions of this Agreement, circulate copies of the notifications to all Members and interested international standardizing and conformity assessment bodies, and draw the attention of developing country Members to any notifications relating to products of particular interest to them.*	Under Article 10.6, the Secretariat circulates to all Members copies of notifications covering those products indicated by developing country members as being of particular interest to them. (G/TBT/W/124).
Article 12.1 *Members shall provide differential and more favourable treatment to developing country Members, through the provisions of this Article, as well as through the relevant provisions of other Articles of this Agreement*	
Article 12.2 *Members shall give particular attention to the provisions of this Agreement concerning developing country Members' rights and obligations and shall take into account the special development, financial and trade needs of developing country Members in the implementation of this Agreement, both nationally and in the operation of this Agreement's institutional arrangements*	One session of the workshop on Technical Assistance and Special and Differential Treatment in the context of the TBT Agreement dealt with the difficulties faced by developing country Members and their needs concerning the implementation and administration of the Agreement, focussing in particular on the following elements: (i) notification obligations; (ii) setting up of national enquiry points; (iii) implementation of the Code of Good Practice for the Preparation, Adoption, and Application of Standards by national standardizing bodies; (iv) preparation of technical regulations; and (v) submission of statements under Article 15.2. The results of the workshop are under consideration of the Committee as part of its second triennial
Article 12.3 *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.*	

Provision	Comment
Article 12.5 *Members shall take such reasonable measures as may be available to them to ensure that international standardizing bodies and international systems for conformity assessment are organized and operated in a way which facilitates active and representative participation of relevant bodies in all Members, taking into account the special problems of developing country Members*.	A session of the workshop on Technical Assistance and Special and Differential Treatment dealt with the following topics: (i) the possible difficulties encountered in relation to the use of certain international standards/guides; and (ii) the participation in international standardization activities. Another session of the workshop dealt with the following topics: (i) acceptance of conformity assessment results; (ii) the development of operational conformity assessment procedures; (iii) access to regional/international systems for conformity assessment; and (iv) capacity building in relation to conformity assessment procedures. Different developing country Members emphasised the importance of ensuring openness, impartiality and transparency in the development of international standards. The view was also expressed that in the process of development of international standards, the interests of developing country members were not always fully taken into account. [24]
Article 12:9 *During consultations, developed country Members shall bear in mind the special difficulties experienced by developing country Members in formulating and implementing standards and technical regulations and conformity assessment procedures, and in their desire to assist developing country Members with their efforts in this direction, developed country Members shall take account of the special needs of the former in regard to financing, trade and development.*	A session of the workshop of Technical Cooperation and Special and Differential Treatment dealt with: (i) development of human and institutional resource; (ii) ways by which technical regulations and standards of markets could best be met; and (iii) other capacity building matters.
Article 12:10 *The Committee shall examine periodically the special and differential treatment, as laid down in this Agreement, granted to developing country Members on national and international levels*.	The subject of special and differential treatment will be on the agenda of the second triennial review of the agreement.

[24] G/TBT/M/20

Provision	Comment
Flexibility of commitments, of action, and use of policy instruments	
Article 12:4 *Members recognize that, although international standards, guides or recommendations may exist, in their particular technological and socio-economic conditions, developing country Members adopt certain technical regulations, standards or conformity assessment procedures aimed at preserving indigenous technology and production methods and processes compatible with their development needs. Members therefore recognize that developing country Members should not be expected to use international standards as a basis for their technical regulations or standards, including test methods, which are not appropriate to their development, financial and trade needs.*	With the view to operationalize and implement the provisions of Article 12, at the First Triennial Review the Committee agreed to consider including the following matters in its future programme of work, which could be taken up during the next three years and reviewed during the Second Triennial Review of the Agreement: The use of measures to engender capacity building in developing country Members, including the consideration of measures relevant to transfer of technology to these countries, for the purpose of preparation and adoption of technical regulations, standards or conformity assessment procedures, taking into account their special development, financial and trade needs. The Committee noted that difficulties might be encountered in relation to the use of certain international standards as specified under Article 12.4, and that trade problems could arise through, *inter alia*, the absence of international standards, or their non-use due to possible out-dated content. It found that there was a need to examine these difficulties as well as the potential trade effects arising from international standards. An examination of these issues would also need to consider the extent to which the special development, financial and trade needs of developing countries Members had been taken into account, and the kind of technical assistance that might be needed in this respect.[25]
Transitional time periods	
Article 12:8 (…) *Accordingly, with a view to ensuring that developing country Members are able to comply with this Agreement, the Committee on Technical Barriers to Trade provided for in Article 13 is enabled to grant, upon request, specified, time-limited exceptions in whole or in part from obligations under this Agreement. When considering such requests the Committee shall take into account the special problems, in the field of preparation and application of technical regulations, standards and conformity assessment procedures, and the special development and trade needs of the developing country Member, as well as its stage of technological development, which may hinder its ability to discharge fully its*	No request for a time-limited exemption has been made under this Article.

[25] G/TBT/5, paragraph 18.

Provision	Comment
obligations under this Agreement. The Committee shall, in particular, take into account the special problems of the least-developed country Members.	
Technical assistance	
*Article 11:*1 *Members shall, if requested, advise other Members, especially the developing country Members, on the preparation of technical regulations.*	Various submission have been made in relation to technical assistance in general (see references in "general comments" section above).
Article 11:3 *Members shall, if requested, take such reasonable measures as may be available to them to arrange for the regulatory bodies within their territories to advise other Members, especially the developing country Members, and shall grant them technical assistance on mutually agreed terms and conditions regarding:* *(i)the establishment of regulatory bodies, or bodies for the assessment of conformity with technical regulations; and* *(ii)the methods by which their technical regulations can best be met.*	
Article 11:4 *Members shall, if requested, take such reasonable measures as may be available to them to arrange for advice to be given to other Members, especially the developing country Members, and shall grant them technical assistance on mutually agreed terms and conditions regarding the establishment of bodies for the assessment of conformity with standards adopted within the territory of the requesting Member.*	

Provision	Comment
Article 11:5 *Members shall, if requested, advise other Members, especially the developing country Members, and shall grant them technical assistance on mutually agreed terms and conditions regarding the steps that should be taken by their producers if they wish to have access to systems for conformity assessment operated by governmental or non-governmental bodies within the territory of the Member receiving the request.*	
Article 11:6 *Members which are members or participants of international or regional systems for conformity assessment shall, if requested, advise other Members, especially the developing country Members, and shall grant them technical assistance on mutually agreed terms and conditions regarding the establishment of the institutions and legal framework which would enable them to fulfil the obligations of membership or participation in such systems.*	The Committee has agreed to review the role of regional and international systems for conformity assessment as covered by Article 9 and how these systems could contribute to solving the problems of multiple testing and certification/registration for traders and industries, including in particular small and medium size enterprises. This exercise will also address the extent to which international guides and recommendations contribute to the establishment of these systems, and the possible technical assistance needed for developing countries to develop operational conformity assessment procedures within the context of Articles 11.6, 11.7 and 12.5.
Article 12.7 *Members shall, in accordance with the provisions of Article 11 (see above), provide technical assistance to developing country Members to ensure that the preparation and application of technical regulations, standards and conformity assessment procedures do not create unnecessary obstacles to the expansion and diversification of exports from developing country Members. In determining the terms and conditions of the technical assistance, account shall be taken of the stage of development of the requesting Members and in particular of the least-developed country Members.)*	At the workshop on Technical Assistance and Special and Differential Treatment, a number of presentations were made on the technical and financial assistance already being provided by national and international conformity assessment systems to developing countries. [26]
Provisions relating to least-developed country Members	
Article 11.8 *In providing advice and technical assistance to other Members in terms of Article 11:1 to 11:7, Members shall give priority to the needs of the least-developed country Members.*	

[26] G/TBT/SPEC/15 contains the programme workshop.

G. TRADE-RELATED INVESTMENT MEASURES

There are four special and differential treatment provisions in the TRIMS agreement, which fall into three separate categories as follows:

1. Flexibility of commitments, of action, and use of policy instruments:
   One provision (Article 4).

2. Transitional time periods:
   Two provisions (Article 5.1 and 5.2).

3. Provisions relating to least-developed country Members:
   One (Article 5.2). It should be noted that the provision for least-developed countries is a modified version of the transition time-period provision available to all developing countries.

All special and differential treatment provisions under the TRIMs agreement relate to actions developing countries may take as a result of time-bound exemptions. The information in the right hand column shows the extent to which developing countries have had recourse to these provisions.

Provision	Comment
Flexibility of commitments, of action, and use of policy instruments	
Article 4 (Developing Country Members) *A developing country Member shall be free to deviate temporarily from the provisions of Article 2 to the extent and in such a manner as Article XVIII of GATT 1994, the Understanding on the Balance-of-Payments Provisions of GATT 1994, and the Declaration on Trade Measures Taken for Balance-of-Payments Purposes adopted on 28 November 1979 (BISD 26S/205-209) permit the Member to deviate from the provisions of Articles III and XI of GATT 1994.*	In the TRIMs Committee a developing country Member cited this provision as justifying some measures it has taken; some other Members questioned this justification. (G/TRIMS/M/9, paragraphs 30-37 and G/TRIMS/M/10 paragraphs 16-22).
Transitional time periods	
Article 5:2 *Each Member shall eliminate all TRIMs which are notified under Article 5.1, within two years of the date of entry into force of the WTO Agreement in the case of a developed country Member, within five years in the case of a developing country Member, and within seven years in the case of a least-developed country Member.*	Notifications under Article 5.1 have been submitted by 26 Members. For most Members having made notifications, the Article 5.2 transition period for elimination of the TRIMs expired on 1 January 2000. Issues that have arisen with respect to Article 5 include the question of what measures should be notified under Article 5.1, as well as the question of whether TRIMs notified after the deadline are still entitled to benefit from the transition period. (WT/G/TRIMS/M/2-7)

Provision	Comment
Article 5:3 *On request, the Council for Trade in Goods may extend the transition period for the elimination of TRIMs notified under Article 5.1 for a developing country Member, including a least-developed country Member, which demonstrates particular difficulties in implementing the provisions of this Agreement. In considering such a request, the Council for Trade in Goods shall take into account the individual development, financial and trade needs of the Member in question.*	As of 1 October 2000, nine developing country Members have requested extensions of the transition period pursuant to Article 5.3. In the Council for Trade in Goods there has been discussion on how these requests might be handled. (G/C/M/41 G/C/M/42 and G/C/M/43). At its meeting of 8 May 2000, The General Council agree to direct the Council for Trade in Goods to give positive consideration to individual requests presented in accordance with Article 5.3 by developing countries for extension of transition periods for implementation of the TRIMs Agreement. (WT/GC/M/55).
Provisions relating to least-developed country Members	
Article 5.2 *Each Member shall eliminate all TRIMs which are notified under Article 5.1 […]within seven years in the case of a least-developed country Member.*	One least-developed country Member notified TRIMS under Article 1. To date, no request for extension has been received.

H. AGREEMENT ON IMPLEMENTATION OF ARTICLE VI (ANTI-DUMPING) OF THE GATT 1994

The agreement on the implementation of Article VI contains one provision for the special and differential treatment of developing country members (Article 15), which falls under the category of provisions under which WTO Members should safeguard the interests of developing country Members.

General comments

It was alleged that the proliferation of anti-dumping measures directed against products from developing countries (particularly textiles and clothing) and the harassing effects of such measures has been raised. Some developing countries have emphasised that Members who have reasons to take anti-dumping action should do so with care and responsibility and ensure that any action was in compliance with the Agreement, so as not to unnecessarily disrupt trade between Members

Provision	Comment
Provisions under which WTO Members should safeguard the interests of developing country Members	
Article 15 (Developing Country Members) *It is recognized that special regard must be given by developed country Members to the special situation of developing country Members when considering the application of anti-dumping measures under this Agreement. Possibilities of constructive remedies provided for by this Agreement shall be explored before applying anti-dumping duties where they would affect the essential interests of developing country Members.*	Concerns have been expressed with regard to inconsistencies in the legislation of certain Members and the way in which such legislation was applied. In two separate cases, developing country Members contended that their rights under Article 15 had not been given full recognition. The developed countries whose actions were concerned disputed these contentions. The need has been expressed by a number of developing countries for the Committee on Anti-Dumping Practices to act with more teeth in the oversight of full and effective implementation of the Agreement by each Member. In addition, more attention should be given to the implementation of Article 15. (G/ADP/M/9 paragraphs 109 and 121; G/ADP/M/10; G/ADP/M/13 paragraph 83; G/ADP/M/15, paragraphs 97-103; G/ADP/M/16, paragraphs 66-79; G/ADP/AHG/W/68; and G/ADP/AHG/W/78). One developed country delegation stated that Article 15 was not void of content and that it had always adhered to it scrupulously. (G/ADP/M/9) One developed country Member commented during its Trade Policy Review that there was particular concern about the provisions relating to S&D treatment for developing countries. This Member, referring to Article 15 of the Agreement, stated that, while the Article

Provision	Comment
	provided for constructive remedies to be explored before applying anti-dumping duties where these would affect the essential interests of developing countries, it had never been implemented because it had not been clearly defined. (WT/TPR/M/33).

I. AGREEMENT ON IMPLEMENTATION OF ARTICLE VII OF THE GATT 1994, AND THE DECISION ON TEXTS RELATING TO MINIMUM VALUES AND IMPORTS BY SOLE AGENTS, SOLE DISTRIBUTORS AND SOLE CONCESSIONAIRES.

Agreement on Implementation of Article VII of the GATT 1994

The eight provisions for special and differential treatment under the Agreement fall under the following broad headings:

1. Provisions under which WTO Members should safeguard the interests of developing country Members:
   One provision (Annex III.5).

2. Flexibility of commitments, of action, and use of policy instruments:
   Two provisions (Annex III.3 and Annex III.4).

3. Transitional Time Periods:
   Four provisions (Article 20.1; article 20.2; Annex III:1; and Annex III.2).

4. Technical Assistance:
   One Provisions (Article 20.3)

In the course of the work of the Customs Valuation Committee, Members have made statements and/or taken action in regard, or pursuant to, a number of the special and differential treatment provisions listed above. The provisions in relation to which statements made or actions taken have been recorded by the committee are detailed below.

Provision	Comment
Provisions under which WTO Members should safeguard the interests of developing country Members	
Annex III:5 Certain developing countries may have problems in the implementation of Article 1 of the Agreement in so far as it relates to importations into their countries by sole agents, sole distributors and sole concessionaires. If such problems arise in practice in developing country Members applying the Agreement, a study of this question shall be made, at the request of such Members, with a view to finding appropriate solutions.	No request for a study has been made so far.
Flexibility of commitments, of action, and use of policy instruments	
Annex III:3 *Developing countries which consider that the reversal of the sequential order at the request of the importer provided for in Article 4 of the Agreement may give rise to real difficulties for*	Eighteen developing country Members, of which 3 least-developed country members, have invoked this paragraph.[27]

[27] G/VAL/2/Rev.10/Corr.2

Provision	Comment
them may wish to make a reservation to Article 4 in the following terms: *"The Government of …… reserves the right to provide that the relevant provision of Article 4 of the Agreement shall apply only when the customs authorities agree to the request to reverse the order of Articles 5 and 6."* *If developing countries make such a reservation, the Members shall consent to it under Article 21 of the Agreement*.	
Annex III:4 *Developing countries may wish to make a reservation with respect to Article 5:2 of the Agreement in the following terms:* *"The Government of …..... reserves the right to provide that Article 5:2 of the Agreement shall be applied in accordance with the provisions of the relevant note thereto whether or not the importer so requests."* *If developing countries make such a reservation, the Members shall consent to it under Article 21 of the Agreement.*	Eighteen developing country Members, of which 2 least developed country members, have invoked this paragraph.[28]
Transitional time periods	
Article 20.1 *Developing country Members not party to the Agreement on Implementation of Article VII of the GATT (Tokyo Round), may delay application of the provisions of this Agreement for a period not exceeding five years from the date of entry into force of the WTO Agreement for such Members. Developing country Members who choose to delay application of this Agreement shall notify the Director-General of the WTO accordingly.*	This provision had been invoked by 56 developing countries (of which 12 least-developed countries). For 29 of these Members the provision expired on 1 January 2000 and for another 18, the provision during the year up to September 2000.
Article 20:2 *In addition to paragraph 1, developing country Members not party to the Agreement on Implementation of Article VII of the GATT (Tokyo Round), may delay application of paragraph 2(b)(iii) of Article 1 and Article 6 for a period not exceeding three years following their application of all other provisions of this Agreement. Developing country Members that choose to delay application of the provisions specified in this paragraph shall notify the Director-General of the WTO accordingly.*	This provision has been invoked by 48 developing countries (of which 11 are least-developed countries).
Annex III.1	

[28] G/VAL/2/Rev.10/Corr.2

Provision	Comment
The five-year delay in the application of the provision of the Agreement by developing country Members provided for in paragraph 1 of Article 20 may, in practice, be insufficient for certain developing country members. In such cases a developing country Member may request before the end of the period referred to in paragraph 1 of Article 20 an extension of such period, it being understood that the Members will give sympathetic consideration to such a request in cases where the developing country Member in question can show good cause.	A total of 20 Members have requested extensions under this provision, and one Member requested a second extension; thirteen of which have been granted. The duration of extensions granted range from 1 year to two years.
Annex III.2 *Developing countries which currently value goods on the basis of officially established minimum values may wish to make a reservation to enable them to retain such values on a limited and transitional basis under such terms and conditions as may be agreed to by the Members.* *(please also refer to Decision on texts relating to minimum values and imports by sole agents, sole distributors and sole concessionaires.)*	Seventeen developing country Members have reserved their rights to retain minimum values under Annex III.2. The Committee has adopted four Decisions containing the terms and conditions under which four Members may continue to use minimum values while applying the Agreement.
Technical assistance	
Article 20:3 *Developed country Members shall furnish, on mutually agreed terms, technical assistance to developing country Members that so request. On this basis developed country Members shall draw up programmes of technical assistance which may include, inter alia, training of personnel, assistance in preparing implementation measures, access to sources of information regarding customs valuation methodology, and advice on the application of the provisions of this Agreement.*	In April 1998, the Committee on Customs Valuation published an inventory of all technical assistance activities undertaken up to that time by WTO and WCO, on the basis of information made available to the Secretariat. Activities relating to 52 Members were listed. It was noted that "It is likely that many activities have not been included for lack of information". (G/VAL/W/25). The Secretariat prepared a checklist of priority activities for technical assistance to assist Members in identifying gaps in activities aimed at the implementation of the Agreement (G/VAL/W/30). A number of developed country Members have, in the context of the Committee on Customs Valuation, provided information on technical cooperation activities provided to developing country members.[29] One developing country Member also drew attention to the technical cooperation activities it had carried out. [30] One developed country Member identified the following key principles with regard to the delivery of technical assistance: the full participation by the recipients for demand driven assistance; the establishment

[29] G/VAL/M/12; G/VAL/W/36; G/VAL/W/37 and Add.1; G/VAL/W/48; and G/VAL/W/49.
[30] G/VAL/M/14

Provision	Comment
	of priorities and identification of specific problem areas; the need to improve coherence between the relevant donors .[31]

J. DECISION ON TEXTS RELATING TO MINIMUM VALUES AND IMPORTS BY SOLE AGENTS, SOLE DISTRIBUTORS AND SOLE CONCESSIONAIRES.

The decision contains two provisions for special and differential treatment, both of which fall under the category of Provisions under WTO Members should safeguard the interests of developing country Members.

Provision	Comment
Provisions under which WTO Members should safeguard the interests of developing country Members	
Decisions on Texts Relating to Minimum Values and Imports by Sole Agents, Sole Distributors and Sole Concessionaries: Minimum values: Text 1 *Where a developing country makes a reservation to retain officially established minimum values within the terms of Annex III:2 and shows good cause, the Committee shall give the request for the reservation sympathetic consideration. Where a reservation is consented to, the terms and conditions referred to in Annex III:2 shall take full account of the development, financial and trade needs of the developing country concerned.*	Please refer to section on Annex III.2 of the document (page 49)
Text II *A number of developing countries have a concern that problems may exist in the valuation of imports by sole agents, sole distributors and sole concessionaires. Under Article 20:1 (mentioned in Section 2.7 of this document), developing country Members have a period of delay of up to five years prior to the application of the Agreement. In this context, developing country Members availing themselves of this provision could use the period to conduct appropriate studies and to take such other actions as are necessary to facilitate application.* *In consideration of this, the Committee recommends that the Customs Co-operation Council assist developing country Members, in*	

[31] G/VAL/W/71

Provision	Comment
accordance with the provisions of Annex II, to formulate and conduct studies in areas identified as being of potential concern, including those relating to importations by sole agents, sole distributors and sole concessionaires.	

K. AGREEMENT ON IMPORT LICENSING PROCEDURES.

The Agreement includes four special and differential treatment provisions, which can be classified as follows:

1. Provisions under which WTO Members should safeguard the interests of developing country Members:
   Three provisions (Article 1.2; Article 3.5 (a)(iv); Article 3.5(j)).

2. Transitional Time Periods:
   One provision (Article 2.2, footnote 5.)

Provision	Comment
Provisions under which WTO Members should safeguard the interests of developing country Members	
Article 1.2 General Provisions *Members shall ensure that the administrative procedures used to implement import licensing regimes are in conformity with the relevant provisions of GATT 1994 including its annexes and protocols, as interpreted by this Agreement, with a view to preventing trade distortions that may arise from an inappropriate operation of those procedures, taking into account the economic development purposes and financial and trade needs of developing country Members.*	This matter has not been raised in the Committee on Import Licensing. However, this provision has been invoked in dispute settlement cases. For example see WT/DS169/R
Article 3:5(a)(iv) Non-automatic Import Licensing *Members shall provide, upon the request of any Member having an interest in the trade in the product concerned, all relevant information concerning where practicable, import statistics (i.e. value and/or volume) with respect to the products subject to import licensing. Developing country Members would not be expected to take additional administrative or financial burdens on this account.*	

Provision	Comment
Article 3.5 (j) Non Automatic Import Licensing *In allocating licences, the Member should consider the import performance of the applicant. In this regard, consideration should be given as to whether licences issued to applicants in the past have been fully utilized during a recent representative period. In cases where licences have not been fully utilized, the Member shall examine the reasons for this and take these reasons into consideration when allocating new licences. Consideration shall also be given to ensuring a reasonable distribution of licences to new importers, taking into account the desirability of issuing licences for products in economic quantities. 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.*	This matter has not been raised in the Committee on Import Licensing. However, this provision has been invoked in dispute settlement cases.
Transitional time periods	
Article 2:2 footnote 5 Automatic Import Licensing *A developing country Member, other than a developing country Member which was a Party to the Agreement on Import Licensing Procedures done on 12 April 1979, which has specific difficulties with the requirements of Article 2:2 subparagraphs (a)(ii) and (a)(iii) may, upon notification to the Committee, delay the application of these subparagraphs by not more than two years from the date of entry into force of the WTO Agreement for such Member.*	Twenty-four developing country Members had invoked the delayed application provisions since the entry into force of the WTO Agreement. The two-year period of delay allowed under the Agreement has expired for all these Members, and accordingly the obligations of Article 2.2(a)(ii) and (a)(iii) apply to all current WTO Members. It is recalled that the invocation of the above provisions does not exempt Members from the obligation to notify under Articles 1.4(a), 8.2(b) and 7.3 of the Agreement. (G/LIC/W/14)

L. AGREEMENT ON SUBSIDIES AND COUNTERVAILING MEASURES

The agreement on Subsidies and Countervailing Measures contains 16 special and differential treatment provisions some of which fall into more than one of the following categories:

1. Provisions under which WTO Members should safeguard the interests of developing country Members:
   Two provisions (Articles 27.1; and 27.15).

2. Flexibility of Commitments, of action, and use of policy instruments:
Ten provisions (Articles 27.2 (a) and Annex VII; Article 27.4; 27.7; 27.8, 27.9; 27.10; 27.11, 27.12, and 27.13). It should be noted that article 27.2(a) is applicable to a subset of developing countries, listed in Annex VII, and not developing countries as a whole.

3. Transitional Time Periods:
Seven provisions (Article 27.2 (b); Article 27.3; Articles 27.4 and 27.14 ; Article 27.5; Article 27.6; and Article 27.11).

Articles 27.4, 27.6 and 27.11 are listed in both the flexibility and transition time periods category, as their hybrid nature combines characteristics of both these categories.

In addition to these provisions applicable to developing countries, or a sub-group thereof, are four provisions (Articles 29, 1-4) which apply to members in the process of transformation from a centrally planned into a market, free-enterprise economy.

Provision	Comment
Provisions under which WTO Members should safeguard the interests of developing country Members	
Article 27.1 *Members recognize that subsidies may play an important role in economic development programmes of developing country Members*	In relation to the Asian economic crisis, some developing country Members have requested that Article 27.1 should take its relevant meaning, so that Members in crisis could be allowed to recover, before additional burden is placed on them. (G/SCM/M/16)
Article 27:15 *The Committee shall, upon request by an interested developing country Member, undertake a review of a specific countervailing measure to examine whether it is consistent with the provisions of 27:10 and 27:11 as applicable to the developing country Member in question.*	No such request has been received by the SCM Committee.
Flexibility of commitments, of action, and use of policy instruments	
Article 27, paragraph 2(a) *The prohibition of paragraph 1 (a) of the Article 3 shall not apply to developing country members refered to in Annex VII.* *Annex VII (Developing Country Members, referred to in paragraph 2(a) of Article 27) The developing country Members not subject to the provisions of Article 3:1 (a) under the terms of Article 27:2 (a) are: (a) Least-developed countries designated as such by the United Nations which are Members of the WTO. (b) Each of the following developing countries which are Members of the WTO shall be subject to the provisions which are applicable to other developing country Members according to Article 27.2 (b) when GNP per capita has reached $1,000 per annum; Bolivia, Cameroon, Congo,*	In the Committee on Subsidies and Countervailing Measures, there was a complaint by a developing country Member that it should have but had not been included in Annex VII(b) which lists developing country Members not subject to certain provisions of the Agreement on Subsidies and Countervailing Measures. (G/SCM/M/13, paragraphs 103-111). Another concern raised with respect to Annex VII(b) was that the criterion for inclusion was based on a measure of GNP per capita and that a developing country could be deleted from the list as the GNP per capita exceeded the allowed value, but that, due to a changed exchange rate, the country could fall back below. (G/SCM/M/15

Provision	Comment
Côte d'Ivoire, Dominican Republic, Egypt, Ghana, Guatemala, Guyana, India, Indonesia, Kenya, Morocco, Nicaragua, Nigeria, Pakistan, Philippines, Senegal, Sri Lanka and Zimbabwe	paragraph 68). The Committee on Subsidies took note that the GNP per capita per annum of four developing countries have exceeded the figure listed in Annex VII(b).
Article 27.4: *please refer to following section.*	
Article 27.7 *The provisions of Article 4 shall not apply to a developing country Member in the case of export subsidies which are in conformity with the provisions of Article 27:2 through 27:5. The relevant provisions in such a case shall be those of Article 7.*	This provision has been invoked in the dispute settlement context. (WT/DS/46/R)
Article 27:8 *There shall be no presumption in terms of Article 6.1 that a subsidy granted by a developing country Member results in serious prejudice, as defined in this Agreement. Such serious prejudice, where applicable under the terms of Article 27:9, shall be demonstrated by positive evidence, in accordance with the provisions of Article 6:3 through 6:8.*	In the context of a complaint by two developed country Members concerning subsidies provided by one developing country Member, the Panel held that because there was more than 5 per cent subsidization of the product at issue (one of the forms of subsidization referred to in Article 6.1), a serious prejudice claim could be brought against the subsidizing developing country Member on the basis of positive evidence. The Panel went on to find that, on the basis of the positive evidence, the developing country Member's subsidies at issue had caused serious prejudice, through significant price undercutting, to the interests of one of the complainants. (WT/DS54/R-WT/DS55/R-WT/DS59/R-WT/DS64/R). [Note: Pursuant to Article 31, Article 6.1 applied for a period of five years from the date of entry into force of the WTO Agreement, and could have been extended for a further period by consensus of the SCM Committee. At the end of the five-year period, no such consensus was reached.]

Provision	Comment
Article 27:9 *Regarding actionable subsidies granted or maintained by a developing country Member other than those referred to in Article 6:1, action may not be authorized or taken under Article 7 unless nullification or impairment of tariff concessions or other obligations under GATT 1994 is found to exist as a result of such a subsidy, in such a way as to displace or impede imports of a like product of another Member into the market of the subsidizing developing country Member or unless injury to a domestic industry in the market of an importing Member occurs.*	This provision has not been invoked so far in the dispute settlement context.
Article 27:10 *Any countervailing duty investigation of a product originating in a developing country Member shall be terminated as soon as the authorities concerned determine that: (a) the overall level of subsidies granted upon the product in question does not exceed 2 per cent of its value calculated on a per unit basis; or (b) the volume of the subsidized imports represents less than 4 per cent of the total imports of the like product in the importing Member, unless imports from developing country Members whose individual shares of total imports represent less than 4 per cent collectively account for more than 9 per cent of the total imports of the like product in the importing Member.*	
Article 27:11 *For those developing country Members within the scope of Article 27:2(b) which have eliminated export subsidies prior to the expiry of the period of eight years from the date of entry into force of the WTO Agreement, and for those developing country Members referred to in Annex VII, the number in Article 27:10(a) shall be 3 per cent rather than 2 per cent. This provision shall apply from the date that the elimination of export subsidies is notified to the Committee, and for so long as export subsidies are not granted by the notifying developing country Member. This provision shall expire eight years from the date of entry into force of the WTO Agreement.* *(Article 27.10 (a): Any countervailing duty investigation of a product originating in a developing country Member shall be terminated as soon as the authorities concerned determine that: the overall level of subsidies granted upon the product in question does not exceed 2 per cent of its value calculated on a per unit basis).*	Five of the countervailing duty legislative notifications reviewed by the Committee include provisions relating to such favourable treatment. Additionally, twenty-seven Members have notified the Committee that the full text of the Agreement on Subsidies and Countervailing Measures has been incorporated into their domestic legal systems.

Provision	Comment
Article 27:12 *The provisions of Article 27:10 and 27:11 shall govern any determination of de minimis under Article 15:3.*	
Article 27:13 *The provisions of Part III (Actionable Subsidies) shall not apply to direct forgiveness of debts, subsidies to cover social costs, in whatever form, including relinquishment of government revenue and other transfer of liabilities when such subsidies are granted within and directly linked to a privatization programme of a developing country Member, provided that both such programme and the subsidies involved are granted for a limited period and notified to the Committee and that the programme results in eventual privatization of the enterprise concerned.*	The Committee received and discussed one notification made pursuant to this provision. (G/SCM/N/13/BRA and Corr.1)
Transitional time periods	
Article 27.2 (b) *The prohibition of Article 3.1(a) shall not apply to: other developing country Members for a period of eight years from the date of entry into force of the WTO Agreement, subject to compliance with the provisions in Article 27:4.*	
Article 27.3 *The prohibition of Article 3.1 (b) shall not apply to developing country Members for a period of five years, and shall not apply to least developed country Members for a period of eight years, from the date of entry into force of the WTO Agreement. (Article 27:3)*	Four developing country Members have invoked this provision when notifying pursuant to Article 25. (G/SCM/Q2/IND/5; G/SCM/Q2/NGA/4; G/SCM/Q2/PHL/5; and G/SCM/Q2/SEN/6).
Article 27.4 *Any developing country Member referred to in Article 27:2(b) shall phase out its export subsidies within the eight-year period, preferably in a progressive manner. However, a developing country Member shall not increase the level of its export subsidies, and shall eliminate them within a period shorter than that provided for in this paragraph when the use of such export subsidies is inconsistent with its development needs. If a developing country Member deems it necessary to apply such subsidies beyond the eight-year period, it shall not later than one year before the expiry of this period enter into consultation with the Committee, which will determine whether an extension of this period is justified, after examining all the relevant economic, financial and development needs of the developing country Member in question. If the Committee*	In the context of a dispute between a developing country Member and a developed-country Member, the Panel held that Article 27 does not displace Article 3.1(a) of the SCM Agreement unconditionally, but, rather, that the exemption for developing countries from the application of the Article 3.1(a) prohibition on export subsidies is conditional on compliance with the provisions in Article 27.4. This finding was not appealed. A report by the Appellate Body held that, " it is clear that the conditions set forth in paragraph 4 [of Article 27] are *positive obligations* for developing country Members, *not* affirmative defences." It concurred with the Panel Report which stated that "it is for the complaining Member to demonstrate that the developing country Member in question is not in compliance with at least one of the elements laid out in

Provision	Comment
determines that the extension is justified, the developing country Member concerned shall hold annual consultations with the Committee to determine the necessity of maintaining the subsidies. If no such determination is made by the Committee, the developing country Member shall phase out the remaining export subsidies within two years from the end of the last authorized period.	Article 27.4." (WT/DS46/R and WT/DS46/AB/R).
Article 27.14 *The Committee shall, upon request by an interested developing country Member, undertake a review of a specific countervailing measure to examine whether it is consistent with its development needs.*	No such request has been received by the SCM Committee.
Article 27.5 *A developing country Member which has reached export competitiveness in any given product shall phase out its export subsidies for such product(s) over a period of two years. However, for a developing country Member which is referred to in Annex VII and which has reached export competitiveness in one or more products, export subsidies on such products shall be gradually phased out over a period of eight years.*	No developing country Member has notified having reached export competitiveness.
Article 27.6 *Export competitiveness in a product exists if a developing country Member's exports of that product have reached a share of at least 3.25 per cent in world trade of that product for two consecutive calendar years. Export competitiveness shall exist either (a) on the basis of notification by the developing country Member having reached export competitiveness or (b) on the basis of a computation undertaken by the Secretariat at the request of any Member. For the purposes of this paragraph, a products is defined as a section heading of the Harmonised System Nomenclature. The Committee is to review the operation of this provision (i.e Article 27:6) five years from its date of the entry into force.)*	In the context of the mandated review of the operation of Article 27.6, it was noted by developed country members and one developing country Member that the Committee on Subsidies and Countervailing Measures had had no experience to date with the operation of the mechanism for determining export competitiveness in a product, as there had been no notification from any Member that it had reached export competitiveness as defined, nor had any Member requested that the Secretariat perform a calculation to determine whether another Member had reached export competitiveness. Three developed country Members contended that the definition of a product as a product section heading under the Harmonised System was too broad.
Article 27.11 *(please refer to previous section)*	

M. AGREEMENT ON SAFEGUARDS.

The Agreement on safeguards contains two special and differential treatment provisions:

1. Provisions under which WTO Members should safeguard the interests of developing country Members:
One provision (Article 9.1 and Footnote 2).

2. Transitional time periods:
One provision (Article 9.2).

Provision	Comment
Provisions under which WTO Members should safeguard the interests of developing country Members	
Article 9.1 and footnote 2 *Safeguard measures shall not be applied against a product originating in a developing country Member as long as its share of imports of the product concerned in the importing Member does not exceed 3 per cent, provided that developing country Members with less than 3 per cent import share collectively account for not more than 9 per cent of total imports of the product concerned.* *and footnote 2:* *A Members shall immediately notify an action taken under Article 9.1 to the Committee on Safeguards.*	The following issues have arisen with regard to Article 9.1 of the Agreement on Safeguards: Opposition was voiced over the manner in which one Member had applied Article 9.1 of the Safeguards Agreement, to exclude one developing Member from eligibility under Article 9.1 on the grounds that that Member was not included in the preference-giving Member's list of GSP beneficiaries. (G/SG/M/9 and G/SG/M/14). In addition, there have been requests for details regarding two developing country Members' application of Article 9.1's requirement to exclude from application of a measure imports from developing countries with small import shares. (G/SG/M/13) In the context of the imposition of a safeguard measure, a developing country member imposing the measure indicted that certain developing country members were covered by the measures because their share of total imports exceeded three per cent, consistent with Article 9.1 of the Agreement on Safeguards. (G/SG/M/14).
Transitional time periods	
Article 9.2 Developing Country Members A developing country Member shall have the right to extend the period of application of a safeguard measure for a period of up to two years beyond the maximum period provided for in Article 7:3. Notwithstanding the provisions of Article 7:5, a developing country Member shall have the right to apply a safeguard measure again to the import of a product which has been subject to such a measure, taken after the date of entry into force of	There has been to date no recourse to this provision.

Provision	Comment
the WTO Agreement, after a period of time equal to half that during which such a measure has been previously applied, provided that the period of non-application is at least two years.	

N. GENERAL AGREEMENT ON TRADE IN SERVICES

The GATS contains 8 special and differential treatment provisions. Their classification can be broken down as follows:

1 Provisions aimed at increasing trade opportunities:
Two provisions (Article IV:1 and Article IV:2)

2 Provisions under which WTO Members should safeguard the interests of developing country Members:
One provision (Article XIX:3)

3 Flexibility of commitments, of action. and use of policy instruments:
Two provisions (Article V:3; and Article XIX:2).

4 Technical Assistance:
Two provisions (Article XXV:2 and Paragraph 6 of the Annex on Telecommunication).

5 Provisions relating to least developed country Members:
One Provision (Article IV:3).

Provision	Comment
Provisions aimed at increasing trade opportunities	
Article IV:1 *The increasing participation of developing country Members in world trade shall be facilitated through negotiated specific commitments, by different Members pursuant to Parts III and IV of this Agreement, relating to: (a) the strengthening of their domestic services capacity and its efficiency and competitiveness, inter alia through access to technology on a commercial basis; (b) the improvement of their access to distribution channels and information networks; and (c) the liberalization of market access in sectors and modes of supply of export interest to them*	A developing country member stated that developed countries should adopt commercially meaningful commitments in areas of interest to developing countries to make Article IV meaningful and effective (S/C/M/38, paragraph 42). Some developing country Members stated that developing countries had experienced serious difficulties in participating in the international trade in services. (S/C/M/39 paragraphs 10,11, 17, 20, 21, 23, 24). One developing country Member stated that it appeared that developed countries continued to dominate services trade and that the expected improvement in participation of developing countries had not taken place. This indicated the need for special and more favourable treatment of developing countries and suggested that developed countries had offered service providers

Provision	Comment
	of developing countries inadequate access, whereas those of developed countries had been able to penetrate developing countries' markets. (S/C/M/34, paragraph 37). Data indicate that there were 100 horizontal limitations with respect to mode 4, compared to 20 for Mode 2. A developed country member expressed the view that it was important that developing countries identified sectors of interest to them and that Members considered the role of market opening in services for the growth and the integration of a country in the global economy. (S/C/M/35 paragraph 36, and S/C/M/38, paragraph 35). Other developing country Members pointed to the need to make Article IV operational. A developed country Member stated that the primary means of accomplishing the objectives of Article IV was to ensure that consumers in developing countries – service suppliers, manufacturers, and farmers, as well as individuals – had to affordable, high-quality, innovative services that meet their needs and budgets. Some of these services will be provided on a cross-border basis, but most will be provided through commercial presence. For this reason, it should be in a country's economic interest to remove restrictions and provide guaranteed access for foreign service providers to enter its market through branches, subsidiaries, representative offices, and other forms of commercial presence. (S/C/W/119)
Article IV:2 *Developed country Members, and to the extent possible other Members, shall establish contact points within two years from the date of entry into force of the WTO Agreement to facilitate the access of developing country Members' service suppliers to information, related to their respective markets, concerning:(a)commercial and technical aspects of the supply of services; (b)registration, recognition and obtaining of professional qualifications; and (c)the availability of services technology.*	All developed country Members, and many developing country Members have established contact points. A developed country Member expressed the view that not all relevant Members had complied with the notification provision in Article IV:2, regarding contact points. (S/C/M/43, paragraph 41 and S/C/W/ 148). Two developing country Members stated that for example, it may be useful for Members to review the operation of the contact points provided for in Article IV.2. (S/C/W/120) At meeting of the Council for Trade in Services on 26 May it had been agreed that, based on notifications by Members, the Secretariat would produce a listing of enquiry points as required by Article III:4 and of contact points as required by Article IV:2 of the GATS.

Provision	Comment
	It had also been agreed that such listings would be placed on the WTO Internet site.
Provisions under which WTO Members should safeguard the interests of developing country Members	
Article XIX:3 *For each round, negotiating guidelines and procedures shall be established. For purposes of establishing such guidelines, the Council for Trade in Services shall carry out an assessment of trade in services in overall terms and on a sectoral basis with reference to the objectives of this Agreement, including those set out in paragraph 1 of Article IV. Negotiating guidelines shall establish modalities for the treatment of liberalization undertaken autonomously by Members since previous negotiations, as well as for the special treatment for least-developed country Members under the provisions of paragraph 3 of Article IV.*	At the request of the Council, the Secretariat prepared a background note on the assessment of trade, to complement its work on statistics (S/C/W/27) and the economic effects of services liberalisation (S/C/W/26 and S/C/W/26/Add.1). Accordingly, the Secretariat prepared a note on Recent Developments in Services Trade (S/W/C/94), which together with other existing documents was meant to assist the Council in its assessment of trade in services. The Secretariat also produced an informal note on "Developmental Aspects of Services Liberalization." Several delegations also presented written submissions. On the basis of these documents Members had been conducting an assessment of trade at the Council meetings held between December 1998 and October 1999.
Flexibility of commitments, of action, and use of policy instruments	
Article V:3 *Economic Integration (a) Where developing countries are parties to an agreement of the type referred to in Article V:1, flexibility shall be provided for regarding the conditions set out in Article V:1, particularly with reference to Article V:1(b) thereof, in accordance with the level of development of the countries concerned, both overall and in individual sectors and sub-sectors. (b) Notwithstanding Article V:6, in the case of an agreement of the type referred to in Article V:1 involving only developing countries, more favourable treatment may be granted to juridical persons owned or controlled by natural persons of the parties to such an agreement.*	It was felt that there was no need to clarify what was meant by special and differential treatment of developing countries in Article V. (S/C/M/35 paragraph 46) In response to a question, it was clarified that the need for flexibility with respect to coverage of such agreements when a developing country was involved was a point certainly raised and taken note of in the reports of the CRTA. (S/C/M/46, paragraph 35)

Provision	Comment
Article XIX:2 *Negotiation of Specific Commitments The process of liberalization shall take place with due respect for national policy objectives and the level of development of individual Members, both overall and in individual sectors. There shall be appropriate flexibility for individual developing country Members for opening fewer sectors, liberalizing fewer types of transactions, progressively extending market access in line with their development situation and, when making access to their markets available to foreign service suppliers, attaching to such access conditions aimed at achieving the objectives referred to in Article IV.* (see section on Article IV).	In the Uruguay Round, and the follow up negotiations on basic telecommunications and financial services, developing country Members. have made use of flexibility appropriate to their level of development by in the making of commitments. For instance, of the 99 Members who have made commitments on 80 sectors or fewer of the Sectoral Classification List, 98 are developing country Members. (S/C/W/94). Use has been made of time-delayed commitments (phase ins) in some sectors.
Technical assistance	
Article XXV:2 *Technical Co-operation Technical assistance to developing countries shall be provided at the multilateral level by the Secretariat and shall be decided upon by the Council for Trade in Services.*	On 25 June 1999, the Services Council held a special Information Session on Telecommunication Services. The Information Session examined in depth technical assistance to developing countries on regulatory issues such as the establishment of an independent regulator, interconnection and competitive safeguards. Experts from other international intergovernmental organizations including the International Telecommunications Union and the World Bank participated as well as national regulators from capitals. On 26 May 2000, the Council for Trade in Services adopted the text of the cooperation agreement between the International Telecommunication Union and the World Trade Organization (S/C/9/Rev.1). Subsequently, the ITU Council also adopted the text at its annual session held on 19-28 July. Paragraph 6 of the agreement states that the WTO and ITU secretariats will endeavour to cooperate on matters relating to technical assistance and technical cooperation. A developing country Member stressed the importance of technical assistance, which should not only be a donor/recipient process, but also a sharing of resources and a cooperative commitment. XXV:2. (S/C/M/39, paragraph 24). One delegation stressed that technical assistance was particularly needed by those Members who were undertaking regulatory reforms. That delegation was already involved in providing technical assistance in the telecommunications

Provision	Comment
	sector. (S/C/M/31 paragraph 28)
Annex on Telecommunications: paragraph 6(c) In cooperation with relevant international organizations, Members shall make available, where practicable, to developing countries information with respect to telecommunications services and developments in telecommunications and information technology to assist in strengthening their domestic telecommunications services sector.	
Provisions relating to least-developed country Members	
Article IV:3 Increasing Participation of Developing Countries *Special priority shall be given to the least-developed country Members in the implementation of Article IV:1 and 2. Particular account shall be taken of the serious difficulty of the least-developed countries in accepting negotiated specific commitments in view of their special economic situation and their development, trade and financial needs.*	

O. THE AGREEMENT ON TRADE-RELATED ASPECTS OF INTELLECTUAL PROPERTY RIGHTS

The TRIPs agreement contains four provisions relating to special and differential treatment, which can be classified in the following four categories:

1. Transitional Time Periods:
   Two provisions (Article 65.2 and 65.4)

2. Technical assistance:
   One provision (Article 67)

3. Provisions relating to least-developed country Members:
   Three provisions (part of the Preamble to the Agreement; Article 66.1; and 66.2).

Provision	Comment
Transitional time periods	
Article 65:2 *A developing country Member is entitled to delay for a further period of four years the date of application, as defined in paragraph 1, of the provisions of this Agreement other than Articles 3, 4 and 5.*	Extensive use has been made of the transition periods provided for developing and least-developed countries in Articles 65 and 66 of the TRIPS Agreement. Generally, no difficulties with respect to the use of these provisions have been raised in the TRIPS Council, though the extension of transition time-periods has been discussed elsewhere. The transition period for developing countries under Article 65.2 expired on 1 January 2000. At its meeting of 20-21 October 1999, the Council agreed that, for the review of the national implementing legislation of Members for whom the general transitional period under Article 65 of the Agreement would expire on 1 January 2000, procedures would be used as had been employed in the reviews of legislation that had taken place so far (for concise procedures, see JOB(99)/ 6928). The first review meeting took place in June 2000 (see item D(ii) of IP/C/M/27), and further such meetings will take place in November 2000 and in the year 2001.
To the extent that a developing country Member is obliged by this Agreement to extend product patent protection to areas of technology not so protectable in its territory on the general date of application of this Agreement for that Member, as defined in paragraph 2, it may delay the application of the provisions on product patents of Section 5 of Part II to such areas of technology for an additional period of five years. (Article 65.4)	A number of issues have arisen in regard to compliance with the related "mailbox" and exclusive marketing right provisions of Article 70.8 and 70.9. This matter has figured regularly on the agenda of the TRIPS Council (see IP/C/M/26 and IP/C/M/27). Moreover, it has been the subject of four invocations of the dispute settlement mechanism relating to three separate matters, one of which was settled with a mutually

Provision	Comment
	agreed solution (IP/D/2/Add.1), another of which was the subject of two Panel Reports (WT/DS50/R, WT/DS79/R) and an Appellate Body Report (WT/DS50/AB/R) and the last of which is at the consultation phase (IP/D/18). One developing country Member stated upon the adoption of a report of the Appellate Body (WT/DS50/AB/R) which concluded that it had not fulfilled its obligations under the TRIPS Agreement that the overall effect of the reports of the Panel and the Appellate Body appeared to dilute, to a certain extent, what developing countries had considered to be the flexibilities available to them under the transitional provisions of the TRIPS Agreement. (WT/DSB/M/40, page 7).
Technical assistance	
Article 67 *In order to facilitate the implementation of this Agreement, developed country Members shall provide, on request and on mutually agreed terms and conditions, technical and financial cooperation in favour of developing and least-developed country Members. Such cooperation shall include assistance in the preparation of laws and regulations on the protection and enforcement of intellectual property rights as well as on the prevention of their abuse, and shall include support regarding the establishment or reinforcement of domestic offices and agencies relevant to these matters, including the training of personnel.*	Considerable attention has been given by the TRIPS Council to the provision of technical cooperation pursuant to Article 67 of the TRIPS Agreement. This issue has been a regular item on the agenda of the Council's meetings, with a view to monitoring compliance with the obligation contained in Article 67, sharing information on the technical cooperation possibilities available and providing an opportunity to identify any needs not adequately being addressed. Developed countries have provided, on an annual basis, for a special technical cooperation review meeting normally held in September of each year, reports on their technical and financial cooperation activities of relevance (most recently in documents IP/C/W/203 and addenda). Furthermore, they have notified contact points in their administrations for technical cooperation on TRIPS. (IP/N/7, revisions and addenda). No significant concerns regarding the adequate availability of technical cooperation have been formulated in the TRIPS Council. Intergovernmental organizations with observer status in the TRIPS Council have also provided written information on their technical cooperation activities relating to TRIPS matters (IP/C/W/202 and addenda 1-6), as has the WTO Secretariat (IP/C/W/201).
Provisions relating to least-developed country Members	
Preamble *Recognizing also the special needs of the least-developed country Members in respect of*	

Provision	Comment
maximum flexibility in the domestic implementation of laws and regulations in order to enable them to create a sound and viable technological base	
Article 66.1 *In view of the special needs and requirements of least-developed country Members, their economic, financial and administrative constraints, and their need for flexibility to create a viable technological base, such Members shall not be required to apply the provisions of this Agreement, other than Articles 3, 4 and 5, for a period of 10 years from the date of application as defined under Article 65.1. The Council for TRIPS shall, upon duly motivated request by a least-developed country Member, accord extensions of this period.*	(see previous section on transition time periods).
Article 66:2 *Developed country Members shall provide incentives to enterprises and institutions in their territories for the purpose of promoting and encouraging technology transfer to least-developed country Members in order to enable them to create a sound and viable technological base.*	In response to an invitation by the TRIPS Council to developed country Members to supply information on how Article 66.2 of the TRIPS Agreement is being implemented, information has been provided in writing by developed country Members (the number includes 12 member States of the European Union). The following broad categories of incentives have been notified: (i) Export and investment promotion for developed countries' enterprises, including investment protection and promotion agreements, market prospecting, investment advice and finance and fostering business partnerships; (ii) Export finance for developed countries' enterprises, including loans, export guarantees and credits and risk capital; (iii) Tax credits and other financial incentives for developed countries' enterprises, including those for investment in technology and investment in developing countries; (iv) Loans and other support for enterprises in developing countries; (v) Infrastructure projects in developing countries including those with a technology component or the provision of resources, equipment, training and advice; (vi) Policies of promoting the use of particular technologies, including technologies that are beneficial to the environment; (vii) Provision of technical assistance and expertise to developing countries; (viii) Conduct of research and development; (ix) Provision of information and contacts, including administrative, product and technical information and organization of business meetings; (x) Provision of education and training to developing countries' nationals; (xi) Bilateral aid; (xii)

Provision	Comment
	Regional intergovernmental assistance programmes; (xiii) Contributions to multilateral technical cooperation funds; (xiv) General policies regarding technical and other assistance to developing countries and least-developed countries. One developing country Member said that much of the technical assistance detailed in the developed country Members' submissions did not necessarily comply with the specific requirements of Article 66.2. [32] A least-developed country Member also questioned the relation of the incentives notified to obligations under Article 66.2, and queried how they fit into a multilateral format, given that most were based on bilateral initiatives, and added that the measures listed did not target LDCs as they included all countries.[33] The question of how to put notification and monitoring of the implementation of Article 66.2 on a more systematic basis and how to facilitate full compliance with its provisions is also under discussion in the context of the special session of the GC devoted to implementation issues.

[32] IP/C/M/27, paragraph 48.
[33] and IP/C/M/27, paragraph 49.

P. UNDERSTANDING ON RULES AND PROCEDURES GOVERNING THE SETTLEMENT OF DISPUTES.

The Understanding on Rules and Procedures Governing the Settlement of Disputes contains 11 provisions relating to special and differential treatment, which can be classified as follows:

1. Provisions under which WTO Members should safeguard the interests of developing country Members:
Seven provisions. (Article 4.10; Article 10.8; Article 12.10; Article 12.11; Article 21.2; Article 21.7; and Article 21.8.)

2 Flexibility of commitment, of action, or use of policy instruments:
One provision (Article 3.12).

3. Technical assistance:
One provision (Article 27.2)

4 Provisions relating to least-developed country Members.
Two provisions (Article 24.1 and Article 24.2)

General comments with respect to the dispute settlement understanding

In the review of the Dispute Settlement Understanding, developing countries have raised doubts as to the effective access of developing countries to the dispute settlement process and the lack of clarity regarding the manner in which the special and differential treatment provisions are implemented. It has been suggested that certain special and differential treatment Articles of the DSU are not articulated in specific terms and that this needed to be corrected. Articles 4.10, 8.10, 12.11, 21.2, 21.7 and 21.8 were specifically mentioned in this respect. Even though the words "shall" and "should" have been used, it is claimed that there is no way to ensure that such treatment is accorded to developing countries in practice. It was therefore reiterated that there seemed to be a need for developing a monitoring mechanism to check whether such requirements are adhered to. That may also be ensured by strengthening the language of for example Article 4.10 and Article 21.2 by replacing the word "should" by "shall". Additionally, it has been suggested that specific guidelines need to be evolved to ensure rigorous implementation of provisions in favour of developing countries. (Job No. 6645, paragraph 319)

It has been stated that, as some Members have in-house legal services with WTO jurisprudence expertise while other Members, especially developing country Members, lack both familiarity with WTO law and legal experts to handle a case, it would not only seem fair but also consistent with the due process principle of the DSU that a Member should be able to include private counsel in its delegation to advocate its views and advise on legal matters before a panel and the Appellate Body. (Job No. 6645, paragraph 142)

The view has been expressed that rather than promoting the idea of private law firms representing the national interests of developing country Members, the WTO should concentrate its efforts on identifying mechanisms aimed at strengthening the institutional framework of those countries, in particular by promoting the technical development of their human resources. (Job No. 6645, paragraph 141)

In a dispute, a developing country Member complained that if the Panel did not reconsider its position on third party requests and allowed third parties to present arguments in support of their legitimate trade interests as the process unfolded, third party developing country Members would not be able to adequately protect their interests in keeping with the commitments under the WTO

Agreement which encouraged growth and development "in a manner consistent with their respective needs and concerns at different levels of economic development." (WT/DSB/M/19 page 4)

Provision	Comment
Provisions under which WTO Members should safeguard the interests of developing country Members	
Article 4:10 *During consultations Members should give special attention to developing country Members' particular problems and interests.*	One developing country Member complained that its request for consultations with another Member (developed) had been disregarded, thus discriminating against and impairing its interests in deviation from the provisions of Article 4.10 of the DSU. " (WT/DSB/M/7, page 2).
Article 8.10 *When a dispute is between a developing country Member and a developed country Member the panel shall, if the developing country Member so requests, include at least one panellist from a developing country Member.*	On a number of occasions, panelists from developing countries have been included on the request of developing country Members.
Article 12.10 *In the context of consultations involving and measures 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 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 allow sufficient time for the developing country 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.*	In a dispute, a developing country defendant contended that the process raised a number of questions in relation to the DSU such as (i) the real difficulties faced by developing countries on the insistence by a developed country that consultations be held only in Geneva; (ii) the meaning and significance of the consultations stage; (iii) whether a Member could decide unilaterally that consultations had been concluded in particular since Article 12.10 of the DSU provided that "In the context of consultations involving a measure taken by a developing country Member, the parties may agree to extend the period established in paragraphs 7 and 8 of Article 4." (WT/DSB/M/2, page 4).
Article 12.11 *Where one or more of the parties is a developing country Member, the panel's report shall explicitly indicate the form in which account has been taken of relevant provisions on differential and more-favourable treatment for developing country Members that form part of the covered agreements which have been raised by the developing country Member in the course of the dispute settlement procedures.*	Panel reports show that this provision has been taken into account: for example, see: WT/DS135/R/Add.1;WT/DS161/R; WT/DS46/R; WT/DS64/R; WT/DS70/RW; WT/DS90/R; and WT/DS/141.

Provision	Comment
Article 21.2 *Surveillance of Implementation of Recommendations and Rulings: Particular attention should be paid to matters affecting the interests of developing country Members with respect to measures which have been subject to dispute settlement.*	
Article 21.7 *If the matter is one which has been raised by a developing country Member, the DSB shall consider what further action it might take which would be appropriate to the circumstances.*	
Article 21:8 *If the case is one brought by a developing country Member, in considering what appropriate action might be taken, the DSB shall take into account not only the trade coverage of measures complained of, but also their impact on the economy of developing country Members concerned.*	This provision has been taken into account in cases brought before the DSB (see for example WT/DSB27/ARB/ECU.) It has been pointed out that the Article does not oblige the other party to the dispute to accept such an offer. It was therefore suggested that a sentence could be added saying that the parties to the dispute shall enter into such a process, in good faith, in accordance with the provisions of Article 5. (Job 6645, paragraph 317)
Flexibility of commitments, of action, or use of policy instruments	
Article 3:12 *Notwithstanding Article 3:11, if a complaint based on any of the covered agreements is brought by a developing country Member against a developed country Member, the complaining party shall have the right to invoke, as an alternative to the provisions contained in Articles 4, 5, 6 and 12 of this Understanding, the corresponding provisions of the Decision of 5 April 1966 (BISD 14S/18), except that where the Panel considers that the time-frame provided for in paragraph 7 of that Decision is insufficient to provide its report and with the agreement of the complaining party, that time-frame may be extended. To the extent that there is a difference between the rules and procedures of Articles 4, 5, 6 and 12 and the corresponding rules and procedures of the Decision, the latter shall prevail.*	To date this provision of the DSU has not been used by any developing country

Provision	Comment
Technical assistance	
Article 27.2 *While the Secretariat assists Members in respect of dispute settlement at their request, there may also be a need to provide additional legal advice and assistance in respect of dispute settlement to developing country Members. To this end, the Secretariat shall make available a qualified legal expert from the WTO technical cooperation services to any developing country Member which so requests. This expert shall assist the developing country Member in a manner ensuring the continued impartiality of the Secretariat.*	It has been stated that there is a need to review the application of Article 27.2 of the DSU to make it more operational and effective in extending assistance with respect to dispute settlement matters to developing countries. It has been suggested that the budget of the Secretariat needs to be further supplemented to enable the Secretariat to hire full time consultants and to upgrade the posts of legal officers so that experienced personnel can be employed for this purpose. The legal advisors should constitute an independent legal unit within the Secretariat in order to ensure the neutrality required of the Secretariat itself. It has also been stated that the concept of "neutrality" of the WTO Secretariat needs to be more clearly defined and perhaps more loosely implemented as a strict implementation of "neutrality" limits the nature and scope of legal services made available to the developing Member countries and prevents legal advisors of the WTO from effectively helping developing country Members in defending or pleading a case. Another suggestion was to establish a trust fund to finance strategic alliances with lawyers' offices or private firms to expand the scope of consultancy and advisory services. (Job 6645, paragraphs 327-339)
Provisions relating to least-developed country Members	
Article 24:1 *At all stages of the determination of the causes of a dispute and of dispute settlement procedures involving a least-developed country Member, particular consideration shall be given to the special situation of least-developed country Members. In this regard, Members shall exercise due restraint in raising matters under these procedures involving a least-developed country Member. If nullification or impairment is found to result from a measure taken by a least-developed country Member, complaining parties shall exercise due restraint in asking for compensation or seeking authorization to suspend the application of concessions or other obligations pursuant to these procedures.*	No least-developed country has been involved in disputes as complainants or respondents, or as third parties in panel proceedings.

Provision	Comment
Article 24:2 *In dispute settlement cases involving a least-developed country Member, where a satisfactory solution has not been found in the course of consultations the Director-General or the Chairman of the DSB shall, upon request by a least-developed country Member offer their good offices, conciliation and mediation with a view to assisting the parties to settle the dispute, before a request for a panel is made. The Director-General or the Chairman of the DSB, in providing the above assistance, may consult any source which either deems appropriate.*	No least-developed country has been involved in disputes as complainants or respondents, or as third parties in panel proceedings.

Q. LEAST-DEVELOPED COUNTRIES

Decision on Measures in Favour of Least-Developed Countries

Provision	Comment
Paragraph 1 If not already provided for in the instruments negotiated in the course of the Uruguay Round, notwithstanding their acceptance of these instruments, the least-developed countries, and for so long as they remain in that category, while complying with the general rules set out in the aforesaid instruments, will only be required to undertake commitments and concessions to the extent consistent with their individual development, financial and trade needs, or their administrative and institutional capabilities. The least-developed countries shall be given additional time of one year from 15 April 1994 to submit their schedules as required in Article XI of the Agreement Establishing the World Trade Organization.	The period was further extended until December 1995. 21 least-developed countries became original WTO Members in accordance with this Ministerial Decision, and their schedules were annexed to the Marrakesh Protocol.
Paragraph 2 (i) Expeditious implementation of all special and differential measures taken in favour of least-developed countries including those taken within the context of the Uruguay Round shall be ensured through, *inter alia*, regular reviews (which currently take place in the Committee on Trade and Development).	The Committee on Trade and Development conducted reviews at its meetings in September 1996 and November 1997.
Paragraph 2 (ii) To the extent possible, MFN concessions on tariff and non-tariff measures agreed in the Uruguay Round on products of export interest to the least-developed countries may be implemented autonomously, in advance and without staging.	On the occasion of the High-Level Meeting on Integrated Initiatives for Least-Developed Countries' Trade Development held on 27-28 October 1997, Canada in the context of simplification of its tariff, announced that it intends to accelerate to 1998 most of its Uruguay Round tariff reductions currently scheduled for implementation on 1 January 1999.
Consideration shall be given to further improve GSP and other schemes for products of particular export interest to least-developed countries.	On the occasion of the High-Level Meeting, 13 Members, both developed and developing, made announcements of steps they had or would be taking to improve preferential market access measures for least-developed countries. At a meeting of the General Council in may

Provision	Comment
	2000, the four largest trading partners proposed to implement both tariff-free and quota-free treatment, consistent with domestic requirements and international agreements, under their preferential schemes, for essentially all products originating in least-developed countries. Nine other members announced that they had taken, or were intending to take, measures to improve the access of LDCs to their markets: These measures were in addition to those which have already been taken by a number of Members since the 1997 High-Level Meeting for LDCs or indeed earlier. Please also refer to section on waive relating to preferential tariff treatment of least-developed countries by developing countries.
Paragraph 2 (iii) The rules set out in the various agreements and instruments and the transitional provisions in the Uruguay Round should be applied in a flexible and supportive manner for the least-developed countries. To this effect, sympathetic consideration shall be given to specific and motivated concerns raised by the least-developed countries in the appropriate Councils and Committees.	See, inter alia, articles 15.2, 16.1 and 16.2 of the Agreement on Agriculture; Article 1.2 plus footnote and Article 6.6(a) of the Agreement on Textiles and Clothing; and Articles 66.1 and 66.2 of the TRIPs agreement.
Paragraph 2 (iv) In the application of import relief measures and other measures referred to in paragraph 3(*c*) of Article XXXVII of GATT 1947 and the corresponding provision of GATT 1994, special consideration shall be given to the export interests of least-developed countries.	
Paragraph 2 (v) Least-developed countries shall be accorded substantially increased technical assistance in the development, strengthening and diversification of their production and export bases including those of services, as well as in trade promotion, to enable them to maximize the benefits from liberalized access to markets.	The High Level Meeting endorsed the "Integrated Framework for Trade-related Technical Assistance, including for Human and Institutional Capacity-Building, to Support Least-developed Countries in Their Trade and Trade-related Activities" (WT/LDC/HL/1/Rev.1). The Framework seeks to increase the benefits that least-developed countries derive from the trade-related technical assistance available to them

Provision	Comment
	from the six organizations involved in designing this Framework: IMF, ITC, UNCTAD, UNDP, World Bank and WTO, as well as from other multilateral, regional and bilateral sources.
Paragraph 3: To keep under review the specific needs of the least-developed countries and to continue to seek the adoption of positive measures which facilitate the expansion of trading opportunities in favour of these countries.	Please refer to the relevant subsections above on actions taken pursuant to the 1997 HLM on High-Level Meeting on Integrated Initiatives for Least-developed Countries' Trade Development; decisions taken with regard to the operation of the Integrated Framework; and market access mesures undertaken pursuant to the 1997 HLM or announced in the General Council. The section below on the 1999 Decision on preferential tariff treatment for least-developed countries also refers.

1999 Decision on waiver for preferential tariff treatment of Least Developed Countries

Provisions relating to measures to assist least-developed country Members	
Provision	Comment
Subject to the terms and conditions set out hereunder, the provisions of paragraph 1 of Article I of the GATT 1994 shall be waived until 30 June 2009, to the extent necessary to allow developing country Members to provide preferential tariff treatment to products of least developed countries, designated as such by the United Nations, without being required to extend the same tariff rates to like products of any other Member.	To date, 1 notification has been submitted under this decision (WT/COMTD/N/12rev1).