



**Committee on Trade and Development
Special Session**

**REPORT BY THE CHAIRPERSON OF THE COMMITTEE ON TRADE AND DEVELOPMENT IN
SPECIAL SESSION, AMBASSADOR TAN YEE WOAN (SINGAPORE),
TO THE TRADE NEGOTIATIONS COMMITTEE**

1.1. Members will recall that at the informal TNC/HODs meeting held on 7 May I presented a detailed report on the consultations that I had undertaken early this year. I had said that I intended to begin another round of consultations in variable geometry that would focus on some of the points highlighted in my report, and that in my view needed further exploration. With this in mind, on 16 May I sent a fax to Members announcing my intention to hold a second round of consultations from early June.

1.2. In the fax, I posed four questions that I thought would be useful to guide the consultations and to build on the issues and ideas that had emerged in my earlier consultations in April. The questions were the following:

1. How does the envisaged case study methodology of work differ from what the G90 have been doing in providing examples in the detailed elaborations on the 10 S&D proposals in the run up to MC11?
2. Since the case study methodology would require facts, data and other kinds of detailed preparation and engagement, will there be Members who would volunteer to be the subject of such case studies?
3. What are Members' views on some of the ideas that were flagged during the previous consultations, including: (i) that a country specific issue-based approach could benefit from the concrete examples that might be available in the Trade Policy Review (TPR) knowledge base; (ii) that the dispute settlement jurisprudence could be another source; and (iii) that lessons could be learnt from the work and experience of other intergovernmental organizations such as the World Bank, the IMF and other WTO Committees' work on development.
4. As far as the concerns over the heterogeneity of the group of developing country Members is concerned, the question is that while there could possibly be scope for creative S&D to be negotiated in future WTO trade rules, how could the suggestions for according S&D on a case-by-case basis and voluntary opt-out basis apply to current WTO trade rules?

1.3. Fifty-eight Members conveyed that they would attend the consultations, of which 45 eventually participated. I met these Members in three different groups in variable geometry on 4, 6 and 8 June 2018.

1.4. Even though some delegations responded directly to each of the posed questions, most of the discussions were free-flowing and interactive. Most delegations were open to any suggestions and new ways that could help unlock the current stalemate. Discussions centred primarily around the case-by-case and case study approaches. Some delegations that had already expressed a strong objection to such approaches seemed, nonetheless, prepared to listen.

1.5. Following are some of my take-aways from these consultations.

(a) Fresh approach

1.6. Some developing Members reiterated that instead of fresh approaches, what was needed was the will to make progress on the G90's agreement-specific proposals (ASPs). Compared with previous years, the G90 had already adopted a different approach to their ASPs in 2017. They had explained in detail and backed up with facts and figures on the concerns they were seeking to address and the solutions they proposed to make the S&D provisions more precise, effective and operational in line with paragraph 44 of the Doha Declaration.

1.7. One Member believed there was a misperception that all ten of the G90's ASPs were about seeking additional policy space or exemptions from obligations. On the contrary, only three ASPs pertained to policy space. For example, of the remaining ASPs those on SPS and TBT pertained to keeping the momentum of exports; those on Article XVIII A & C sought to improve on current procedures so as to make them user friendly for the developing country Members and the LDCs; the proposal on balance-of-payments was also about improving procedures under Article XVIII B with a view to take account of the development perspective and also to distinguish it from Article XII of GATT 1994.

1.8. Some Members believed a fresh approach was needed as there was a strong sense of fatigue from the repetitive discussion that rehashed old approaches in the CTD SS. The membership should seize on the greater willingness shown at MC11 to talk about trade and development to have a different discussion on development, and to find a way forward for a more productive dialogue. Some suggested that it would be useful to distinguish between existing and new rules. In this regard, some felt that fresh approaches could be considered for new rules and not for existing rules. Some cautioned against pursuing "new" approaches for current WTO provisions as it would upset the delicate balance of rights and obligations struck at the conclusion of the Uruguay Round; the S&D provisions could not be considered in isolation from the other provisions.

(b) Case-by-case approach and voluntary opt-out

Case-by-case approach

1.9. Some developing country Members firmly reiterated that consideration of a case-by-case approach did not fall within the purview of the CTD SS. Moreover, it departed from the principle of S&D for all developing country Members and hence contrary to the very foundation on which the multilateral trading system was built. S&D was a right, and developing Members did not need to prove/justify their case. It was up to them whether or not they wanted to exercise the right. Additional views that had been expressed against a case-by-case approach included the following:

- It would be tantamount to carrying a new accessions exercise or a new trade policy review, all of which were highly costly endeavours.
- It was possible that some Members might be in better position than others to obtain and present information for such a demanding and inquisitive exercise. Therefore, this could lead to a situation in which S&D might not necessarily be given to the most needy but only to the best prepared.
- It contravened the principle of S&D which was general in nature.

In the view of these Members, a case-by-case approach would not work, particularly when applied to existing rules.

1.10. Some developed country Members said that until the issue of differentiation among developing Members was addressed, discussion on S&D would not make any headway. Some developing country Members agreed with this view. Some delegations supported establishing clear criteria for differentiation.

1.11. Some Members said that before tackling differentiation, we should first engage on the substance of the issues the G90 wanted to address. Since any possible additional flexibilities would

likely vary from issue to issue, it would be more productive to consider differentiation at a later stage.

Voluntary opt-out

1.12. Members also discussed a possible opt-out approach wherein some developing country Members could opt-out of flexibilities they did not actually need. One Member believed that the concept of opt-out was not new, and was already embodied in paragraph 7 of the Enabling Clause. While some Members were open to exploring this possibility, it was felt that such approach should not, in any way, preclude any Member's right to benefit from the S&D available in the WTO Agreements. A bigger question was what the Membership would do in a situation if one Member decided not to opt-out from a provision while other Member(s) held the view that such Member should opt-out. Another related issue was whether this approach, which stemmed primarily from the three categories obligations methodology in the Trade Facilitation Agreement (TFA), should apply to current provisions or only to future agreements. Some delegations insisted that the S&D was premised on the principle that all developing country Members were eligible to benefit from the flexibilities in the WTO rules and that the mandate of the CTD SS specifically referred to the existing provisions. Referring to the TFA, some developing country Members said that it had validated that Members could be trusted not to seek flexibilities that they did not need.

(c) Case study methodology

1.13. There were many calls for proponents of a case study methodology to table proposals elaborating on the modalities and defining the parameters for carrying out the case studies.

1.14. While many developing country Members showed flexibility to try new approaches, they also insisted that the G90's proposals remained on the table and should be addressed with a fresh eye. Some believed that the information provided by the G90 on each ASP in the run-up to MC11 was exactly what was being proposed in a case study approach. There was also a suggestion that the case studies could be presented by the developed country Members to explain why they were against the ASPs. Questions were also raised as to the parameters of a case study and the need for good faith; some recalled past experience at other WTO bodies when studies could not proceed due to blockage by some.

1.15. Some Members, including proponents of a case study approach, said that though they did not know if a case study approach would work, they believed it was worth exploring as a way to focus discussions in a manner that would allow the membership to be able to better understand the problems being encountered and how the flexibilities being sought would pan out, rather than jumping into negotiations *per se*.

Difference from G90's approach last year

1.16. Some developed country Members explained why they had had difficulties with the G90's approach in 2017. For example, while it was good that the G90 had cited the cases of specific developing members when introducing the ASPs, there had not been any deeper discussion of the specifics of those situations, such as why certain trade restrictive measures were used, why the existing rules were considered more restrictive than necessary, and how the solution(s) proposed in the ASPs would help. One delegation said that any discussion on S&D must be guided by the following elements for the discussion to move forward:

- Identify the rule that needed to be more flexible and in what way.
- Identify in an explicit and concrete manner the challenges and handicaps that the existing rule posed.
- Carry out an economic analysis to determine the impact and implications of change/amendment in the rule and difference it would make if the rule was not changed/amended.
- Explain how the changes would affect other Members, including developing country Members and the LDCs.

- Establish the duration of the flexibility.
- Explicitly specify the Members to whom the flexibility would apply.

1.17. Furthermore, if one or a few developing country Members were affected, a better course of action could be to consider peace clauses or waivers, rather than a one-size-fits-all approach of seeking changes that will apply to all developing country Members. Other delegations also expressed similar views during the course of the consultations.

Volunteers and sources of information

1.18. With regard to the database and information contained in the TPR reports and the WTO jurisprudence or that might be available with other international organizations, most developing country Members and LDCs in particular highlighted that (a) it was unlikely that adequate information/data would be available in the TPR reports on the S&D provisions; (b) they were not the main users of the Dispute Settlement Mechanism; and (c) that, in any case, the information that could possibly be drawn would be very specific to one country or one issue, and, therefore, its utility was questionable. It was also mentioned that the information contained in the TPRs was cyclical and would not necessarily be up to date, apart from the fact that it would also apply to one Member or, at best, a very limited number of Members. One delegation said that when it had tried to introduce elements from other WTO Committees' discussions into the CTD SS in the run-up to MC11 it was rejected outright with the argument that such issues should be discussed in their respective specific committees and not in the CTD SS. In respect of other international organisations, delegations seemed open to exploring the possibility of benefitting from the information available with other organizations.

Not so burdensome as to be impossible

1.19. Some Members cautioned that coming up with the appropriate case studies should not be so burdensome as to be impossible. The burden for building case studies should not fall solely on those who might be the subject of the studies. Assistance for building the case studies could come from other Members, the Secretariat, academics or consultants.

1.20. Some Members emphasized that care should be taken to ensure no negative or unintended consequences for those who would be the subject of case studies.

(d) New suggestion

1.21. A fresh and interesting idea that emerged from the consultations was, that as a test case, the G90 could identify one or two of their ASPs to explore deeper the feasibility of a case study approach. There were further suggestions that the one or two ASPs to be chosen be the ones the G90 considers to be the most likely to get convergence by MC12. Work on the identified proposals would also help to guide and determine whether this modality could be replicated for the remaining ASPs or the Membership needed to consider different methodologies/approaches for different ASPs. Many delegations showed interest in this idea, and several, including from among developing country and LDC Members said that they would be willing to try it. It was, however, made clear that it was important that the G90, who were the proponents of the ASPs, agree to the initial identification/selection of the proposal(s) to test out possible methodologies.

(e) Broad trade and development discussion

1.22. One Member was convinced that it would be impossible to advance discussions in the CTD SS, regardless of approach or the number of ASPs to be considered. Instead, it was important to take time to discuss, as part of a broader conversation on trade and development, the fundamental disagreement on the relationship between trade rules and development. This Member believed trade rules were positive building blocks for development. The objective of S&D was the full implementation of WTO rules by every Member. If some Members had problems implementing some of the rules, the solution was to discuss the reasons and how these Members might overcome the problems. However, some developing Members did not share this view; instead, they believed that trade rules were onerous, unfair and anti-development, and that the objective

of S&D was to avoid commitments and certain rules. This Member said that progress on the issue of differentiation was vital for considering future work in the CTD SS.

1.23. Another Member suggested that we should think out of the box and engage in a fundamental relook of the overall approach to S&D, including, for example, why S&D could not be for all members, the administration of which would depend on whether their individual situations warranted it?

1.24. Most other Members said the CTD SS had a clear mandate as contained in paragraph 44 of the Doha Declaration, and work should continue accordingly. They agreed that the broader debate on trade and development had to take place, but not in the CTD SS and may be not even in the committee structures of the WTO. Several pointed out that this debate had been taking place in UNCTAD, and that several of the concrete ideas for S&D, such as GSP and the Enabling Clause had originated from prior discussions and consensus in UNCTAD. Nevertheless, one delegation said that this discussion should start in the CTD SS until Members decided what the appropriate forum should be.

(f) Conclusion

1.25. I believe that we are starting to have a different conversation that is worth pursuing further. The degree of engagement was good, and most Members seemed to be in a problem-solving mode. For example, the suggestion for a case study methodology was made in the spirit of trying to find ways for moving forward and elevate discussion. Regardless of where Members stand, most are prepared, on a non-prejudicial basis, to consider the feasibility of case study methodology to examine the issues of concern raised in the G90's ASPs.

1.26. Nevertheless, we are still at the level of generalities and in an exploratory mode. Some delegations were concerned about investing a lot of effort and time into considering new approaches, including the case study approach, only to conclude that it was not practicable. However, it was also pointed out that the situation at hand was between finding new ways forward to re-engage on substance, or continued disengagement on substantive discussions in the CTD SS. The need for good faith was essential.

1.27. My view remains that the G90 proposals tabled in 2017 merit a fresh look in their substance. It is only when we have an open-minded and deeper appreciation of what the substantive concerns are, that we may arrive at informed views as to the possible solutions to them. The G90's 2017 proposals had attempted to take into consideration the observations that had been made by Members on their proposals in the 2015 process. There was very little time to discuss the technical and substantive elements of the proposals in the run up to MC11, although lack of time was not the only factor contributing to the lack of engagement on the substance of the G90's proposals in 2017.

1.28. Of course, the new approaches being proposed would still need to be explored deeper, but I have sensed a change in the disposition of Members to discuss and engage after MC11 and the meeting in New Delhi.

1.29. It is also clear that if we do not address the broader trade and development issues it will be very difficult to get any results at MC12. Hence, whether or not they would be dealt with in the CTDSS, such discussions should start soon.

1.30. As for the way forward, I will continue my consultations with Members in various configurations and formats to narrow our focus and define our work methods for the CTD SS.

1.31. This concludes my report.
