



**Committee on Trade and Development  
Fifty-First Special Session**

**NOTE ON THE MEETING OF 24 NOVEMBER 2015, RECONVENED ON 4 DECEMBER 2015**

*Chairperson: Ambassador Tan Yee Woan (Singapore)*

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**A. ADOPTION OF THE AGENDA**

1. The agenda as contained in Airgram WTO/AIR/TN/CTD/3 of 17 November 2015 was adopted.

**B. REPORT BY THE CHAIR**

2. Under this agenda item, the Chairperson briefed Members on the work undertaken in the Special Session of the Committee on Trade and Development (Special Session) since the last formal meeting on 16 September 2015. She informed that the Special Session had held eight informal open-ended meetings during which the first reading of the G90 proposals contained in document JOB/DEV/29 - JOB/TNC/51 had been completed. In addition, she had held a number of bilateral, plurilateral and small-group meetings with the proponents (including the African Group, ACP Group and the LDC Group Coordinators and their focal points on development issues) and with other Members. This work had enabled the proponents to revise their proposals, as contained in document JOB/DEV/29/Rev.1 - JOB/TNC/51/Rev.1, taking into consideration some of the comments made by other Members. An initial reading of the set of revised proposals had also been completed during this intensive phase of work in the Special Session.

3. Based on those discussions, the Chairperson was able to identify nine proposals, (proposal numbers 2, 3, 4, 18, 19, 23, 20, 21 and 22) on which she felt there was a degree of convergence. Subsequently, five additional proposals (proposal numbers 8, 9, 17, 14, 16) were added to the list at the suggestion of the proponents, as they believed that finding solutions to the underlying issues in these proposals by Nairobi was extremely important for them. Later, another five proposals (proposal numbers 1, 6, 7, 5 and 15) were added to the list by the proponents, thereby increasing the list to 19 for consideration as Nairobi deliverables. She stated that the text-based discussions in the informal open-ended and small-group meetings helped take the negotiations to another level. While the positions still remained far apart, the discussion was focussed around specific textual suggestions – a commendable step forward. Notwithstanding this positive movement, there was need to address a couple of issues so as to develop a common understanding if tangible and concrete results were to be harvested at Nairobi.

4. The Chairperson explained that one of these issues was the eligibility/applicability of special and differential treatment (S&D) provisions or in other words, the scope of the beneficiaries of the S&D proposals. In that context, some Members had felt that the flexibilities being sought in the

G90 proposals, could at best be provided to the LDCs. While disagreeing with any notions of narrowing down the scope of S&D in WTO disciplines, other Members strongly believed that the basic premise of the S&D regime in the WTO was that it was available to all developing countries. These Members firmly believed that this must remain so. Therefore, any outcome on the G90 proposals, unless they were LDC-specific, must not be limited to LDCs or any other category of developing countries.

5. Furthermore, another generic issue on which Members had not been able to close the gaps was the perception of what was doable against the view of what was important. The Chairperson reported that it was clear from the various meetings that there were some proposals that were very important to the G90. But it had also been made equally clear by the other side that in their present form many of these proposals were not doable.

6. The Chairperson reported that despite outstanding systemic hurdles, progress had been made. There was much greater clarity on many of the underlying issues, especially relating to proposal numbers 2, 3 and 4. There had also been a fruitful discussion on some other proposals, including proposal number 19, where some textual proposals would be made. Likewise on proposal number 23, further bilateral discussions would need to be undertaken.

7. The Chairperson announced that she would continue with the text-based consideration of these proposals in small-group meetings. In order to be able to reconvene the meeting of the Special Session at short notice, she deemed it appropriate to suspend the current meeting at some stage. Having said that, the Chairperson opened the floor to Members which might wish to comment at that juncture.

8. The Ambassador of Barbados, speaking on behalf of the G90, stated that the Group had submitted its textual proposals in July 2015 as JOB/DEV/29 - JOB/TNC/51. The Group, after careful consideration and review of the 88 S&D proposals which had remained the focus of the Special Session meetings since 2001, had now come up with only 25 proposals that they considered as important.

9. Since the introduction of these proposals in July 2015, the Committee had undertaken a five-week first reading of the 25 proposals. During this time, the Group had not only take note of the support expressed by some Members, but had also listened to the questions and concerns expressed by other Members. In a true spirit of flexibility and accommodation, the G90 had made substantive revisions to the texts and had tabled them in the informal meeting of the Special Session on 10 November 2015. The revisions dealt with both technical aspects and systemic concerns expressed by some Members.

10. She stated that at the last informal meeting of the Special Session, it had been assessed that there were two types of proposals which could form the basis for work in small-group consultations. These were: (i) proposals on which convergence could be reached based on the deliberations thus far held; and (ii) proposals that were considered to be of utmost importance to the proponents. The G90 had further identified five additional proposals for discussion in the small-group meetings with the hope of reaching an agreement on them for the WTO's 10<sup>th</sup> Ministerial Conference (MC10). She went on to state that the G90 wished to highlight that the discussions on these proposals was without prejudice to the Group's overall position on the 25 S&D proposals.

11. The Ambassador of Barbados was very firm in saying that the Special Session should continue to pursue what was meaningful, based on the real needs of the G90, rather than what was considered by some Members as doable. In this regard, she stressed that meaningful solutions on proposals specific to LDCs and those for non-LDC developing countries would be an important element of a credible outcome in Nairobi.

12. She further added that the G90 continued to value the fundamental principles of the multilateral trading system (MTS). She, on behalf of the Group, expressed commitment to working with all Members so as to find mutually satisfactory solutions that would address the underlying issues in the proposals without undermining the MTS. For the G90, S&D was one of the fundamental principles of the WTO and it needed to be preserved. The Group's negotiating strategy had continued to be guided by paragraph 44 of the Doha Declaration which stated that

"all special and differential treatment provisions shall be reviewed with a view to strengthening them and making them more precise, effective and operational" as well as paragraph 12 of the Doha Ministerial Decision on Implementation-Related Issues and Concerns, which instructed the Special Session to identify those S&D provisions that were already mandatory in nature and those that were non-binding in character. The mandate was to consider the legal and practical implications of converting those non-binding S&D provisions into mandatory provisions.

13. The representative of the European Union stated that her delegation had repeatedly reaffirmed its support to the centrality of development in the MC10 outcomes. While appreciating the amount of work that had gone into the revised proposals and the attempts of proponents to accommodate Members' concerns, she stated that most of the problems that they had highlighted in the first reading had unfortunately not been addressed in the revised text. Therefore, the revised proposals still remained unrealistic. In her view, many of the proposals in their current form would still overturn some basic WTO rules, and undermine the predictability, internal balance and effectiveness of the MTS. Another issue was that the proposals still targeted, in greatest part, all developing countries. The EU acknowledged that LDCs and other vulnerable Members might need further flexibilities, but these flexibilities would become meaningless if they were also made available to big emerging economies.

14. She further stated that her delegation fully supported the need to have S&D and less-than-full reciprocity for developing countries. However, it would not be possible for the EU to agree to proposals that eroded basic WTO principles, such as the stability of bound rates or the recognition that some forms of subsidies were trade distorting. Nor would the EU ever accept to provide further indiscriminate flexibilities to a vast majority of WTO Members, regardless of their actual needs and level of development. She added that slightly more than two weeks separated Members from the MC10, and that they should all be open-minded and switch into a problem-solving mood. Focusing on LDCs would be the best way to find some convergence in the very little time left and deliver benefits to the weakest WTO Members. She stated that her delegation had tabled possible compromise language on some proposals in line with their belief that making MC10 a success was in the interest of all WTO Members, especially the least developed among them. She added that the EU would continue to engage constructively in the work of the Special Session.

15. Finally, she stated that the EU had heard some calls to postpone discussions on those proposals where agreement was not foreseeable on post-Nairobi work. Her delegation believed that although discussion on S&D would have to continue after Nairobi, it should not be based on proposals where landing zones were clearly not in sight.

16. The representative of India stated that the S&D provisions, which were an integral part of the MTS, were meant to enable developing countries and LDCs to meaningfully integrate into the MTS so as to derive maximum economic benefits. Ministers at Doha had given a clear mandate as contained in paragraph 44 of the Doha Declaration to review all S&D provisions with a view to strengthening them and making them more precise, effective and operational.

17. He added that this mandate would not cover an exercise in redefining the scope of beneficiaries of the S&D regime in the WTO. In this connection, he said that his delegation would like to draw the attention of Members to paragraph 44 of the Doha Declaration that also noted the Framework Agreement on Special and Differential Treatment (WT/GC/W/442) proposed by a group of developing countries, including India. In quoting from paragraph 1 of document WT/GC/W/442, he stated:

"The recognition of inherent inequality of 'players' in the Multilateral Trading System and the special needs and development concerns of the developing countries figured, for the first time, in the Havana Charter. The concept of Special and Differential treatment is a fundamental building bloc of the multilateral trading system. It was conceived in acknowledgement of the fact that developing countries are at a very different stages of economic, financial and technological developments and therefore have entirely different capacities as compared to developed countries in taking on multilateral commitments and obligations. It had, therefore, been accepted that special advantages and flexibilities must be provided to developing countries so that they are able to adopt appropriate national policies to support their trade regime. In essence, therefore, Special and Differential treatment provisions are to be looked at not as exceptions to the general rules but more importantly as an integral and inherent objective of the multilateral trading system."

18. The representative of India further added that, as per the mandate, the scope of beneficiaries of S&D included all developing countries. There were no grounds for Members to import a discussion on differentiation among developing countries in the Special Session.

19. The representative of Australia stated that his delegation would continue to engage closely and constructively in the work of the Special Session. Australia welcomed the revision of the G90 proposals prepared by the proponents. While noting the modifications made by the proponents in accommodating Members' concerns, he highlighted his delegation's discomfort if the scope of S&D was not restricted to LDCs. He joined the EU in viewing this as a much-needed first step which acknowledged inescapable disparities between Members in their levels of development and integration into global trade. He felt that securing S&D outcomes premised on treating the world's largest exporter in the same manner as the world's 180<sup>th</sup> was difficult. On the post-Nairobi package, he questioned whether enshrining expectations of outcomes on proposals on which there are fundamental philosophical disagreements was in the best interest of the broader, long-term S&D agenda.

20. The representative of Canada stated that delivering an S&D outcome for MC10 remained a priority for her country. She appreciated the efforts made by the G90 in responding to Canada's comments and to the questions her delegation had submitted during the first reading. Unfortunately, her delegation's concerns were not met in the revised text. Regarding differentiation, Canada positively noted the efforts made by the proponents in clarifying the scope of application of some of the proposals, however, the formulations proposed were either imprecise or did not effectively serve to narrow the scope. In the absence of a clear, objective criteria to differentiate between developing countries, the delegation of Canada was only willing to look at an S&D outcome in Nairobi that was limited to LDCs.

21. She went on to state that there remained many proposals that would undermine core WTO principles, including some proposals identified by the G90 as priorities. Therefore, Canada would have great difficulty agreeing to a post-Nairobi work plan that would continue with such unproductive discussion. Continued inclusion of obligatory technical assistance in the G90's proposals was another difficult issue for Canada and, therefore, a non-starter. Finally, the G90 proposals still included provisions that aimed at limiting Members' rights to regulate in the public interest. In addition, some proposals seemed to make access demands that were extremely unrealistic. Acknowledging that the Chairperson had identified certain areas for further discussion, she was firm in saying that Members needed to be pragmatic and would need to engage constructively on the basis of the Chairperson's small package on S&D for LDCs for MC10. Failure to clearly show support for LDC Members would be a significant setback for the institution and its Membership.

22. The representative of Cameroon stated that his Government attached great importance to the S&D negotiations and expected concrete results in this area in Nairobi. He invited the WTO Membership to bear in mind the Doha Ministerial mandate on S&D, as contained in paragraph 44.

23. The representative of Nigeria stated that the ongoing discussions should be without prejudice to whatever Members were able to achieve in Nairobi and thereafter in the post-Nairobi process. Members needed to move away from rhetorics and work toward delivering concrete results that delivered benefits to the developing countries, in particular LDCs and SVEs. It was also necessary to have a clear understanding on a post-Nairobi work plan on what is left on the table. He stated that S&D remained the cornerstone of the Doha Development Agenda (DDA). It was Nigeria's expectation that a meaningful outcome on S&D would enable developing countries, in particular LDCs, to benefit more from the MTS.

24. The representative of Pakistan recognized that development was at the heart of the WTO and S&D remained critical to achieving that objective, as envisaged in paragraph 44 of the Doha Declaration. It was regrettable that despite G90 efforts to submit a revised text on the proposals for discussion, the desired level of flexibility by other Members had not been forthcoming. Having said that, he reiterated that Members must have a credible outcome on S&D at Nairobi so as to send a positive signal to the world, in particular to Africa, that the WTO was sensitive to the needs of developing countries, in particular its LDC Members.

25. The representative of Uganda stated that the level of development in the LDC countries was still low. Their share of manufacturing value added had actually declined from 2% in 1992 to 1% in 2012. The LDCs' contribution to world merchandise trade was at a meagre 1.23%. Their share in

world services trade was only 0.68%. Four hundred million of their people lived on less than one dollar a day. He recalled that in the S&D negotiations, Members had expected the G90 to show: (i) why the G90 needed to harvest outcomes on S&D; (ii) how beneficial would these outcomes be to them; and (iii) what particular problems would these address. The proponents had endeavored to respond to all these questions, including those related to systemic concerns raised by Members such as reverse consensus and the scope and duration of the flexibilities sought. The proponents had shown readiness to amend their own texts, including, as a sign of flexibility, in choosing to let some provisions be included in the post-Nairobi basket as a sign of flexibility. Unfortunately, the response from partners had not been commensurate to the degree of flexibility shown by the proponents.

26. He explained that some of the provisions were aimed at addressing issues that pertained to industrialization. In the case of most of the proposals, they had in fact, accommodated Members' concerns and recalibrated the ambition level in the revised text. The transition periods being sought for were in line with past practices in the Organization - the flexibilities sought in terms of transition periods were far shorter than what Members had granted in trade-related arrangements taking place elsewhere. He said that in seeking resolution of those S&D proposals, the proponents aimed to uphold the principles of transparency and predictability.

27. He went on to add that it was important that Members agreed to outcomes that would provide the requisite policy space for LDCs and SVEs that promoted industrialization. Such positive outcomes would help alleviate and create employment, thus contributing to improving the lives and livelihoods of their people, besides ultimately facilitating integration into the MTS. Furthermore, he indicated that proposals that might not find themselves in the Nairobi basket should be treated on a priority basis post-Nairobi.

28. The representative of Norway reiterated the importance that her country attached to development issues in the WTO, including the work in the Special Session. While acknowledging efforts made by the G90 in coming up with the S&D proposals and thereafter their revisions, Norway lauded the G90 work in coordinating such a large and diverse group of Members. Norway had a particular focus on identifying the needs of the LDCs and finding good and workable solutions to them. Norway was also trying to identify those proposals where Members might be in a position to offer something to developing Members in general. The representative of Norway indicated his delegation's readiness to continue discussions on the G90 proposals after MC10. Having said that, Norway was not in a position to support suggestions for textual revisions implying that the developing countries, LDCs and SVEs should be treated equally.

29. The representative of Switzerland stated that his delegation appreciated the Chairperson's and the G90's efforts in prioritizing the proposals for MC10. In highlighting particular difficulties, he stated that, first, the systemic concerns on a number of draft proposals had hardly been taken into account in the revised proposal. It was his delegation's view that S&D provisions could not be a way to walk back from longstanding WTO rules or to seek to rewrite those rules; neither should they weaken predictability and transparency – the core fundamentals of WTO rules. The second problem was the designation of potential beneficiaries from the possible outcomes on those S&D proposals. His delegation recognized the need for LDCs to benefit from S&D in WTO rules. However, differentiation was a critical issue when it came to dishing out benefits of S&D to developing countries. In Switzerland's view, S&D should only be given to those developing countries which demonstrated a specific need. It must also be a proportionate response to the economic needs of a developing country Member. In that context, the scope of the potential beneficiary countries needed to be clearly defined.

30. The representative of the United States stated that it was important for her country to find ways to enhance developing countries' integration in the MTS. In that context, the US remained committed to addressing the concerns that developing country Members had, but it could not agree to proposals that would bless the use of trade restrictive practices and permit walk-backs from existing commitments and the fundamental principles of the MTS simply for the sake of reaching an agreement for the Ministerial Conference. She stressed that Members needed to be realistic. The US appreciated the efforts of the proponents to identify those issues which were of most concern to them, but the discussions to date had revealed that there was no convergence on many of the proposals. In considering those proposals where agreement could be possible, her delegation also noted that, in order to reach agreement, Members had to be quite clear about who the proposal/text applied to. She indicated her delegation's willingness to consider a handful of proposals for LDCs only, so as to focus on those Members that needed those flexibilities the most.

Unfortunately, the scope of countries captured by the current formulations in the G90 proposals was far from clear.

31. With regard to the future S&D agenda, her delegation would be ready to discuss specific problems developing countries had with regards to S&D post-Nairobi, but his delegation believed the appropriate forum for this would be the Monitoring Mechanism. This institutional arrangement was established at Bali precisely for those kind of issues. The US felt disappointed that the Mechanism had not been utilized at all, given the time and effort invested into negotiating its structure and the mandate.

32. The representative of Egypt stated that in revising the proposals the G90 had taken into account the concerns of other Members. Egypt was open to discuss technical concerns in order to find solutions, but this work could be constrained if there were repeated calls to limit the beneficial results of S&D work to a certain group of possible beneficiaries. His delegation hoped that the S&D outcome emanating from the work in the Special Session, would benefit all Members of the G90.

33. The representative of Argentina stated that the focus of the Doha Round was development, or at least Argentina had been led to believe so. Nevertheless, just a few days from MC10, his delegation was disappointed with the lack of any concrete results in this area. He quoted Article XVIII of GATT which stated that contracting parties "recognize that the attainment of the objectives of this Agreement will be facilitated by the progressive development of their economies". But most of the S&D provisions had been identified and put forward by the G90, in fact, in their current formulation, curbed the progressive development of their economies. That was why the proponents had identified such provisions and put forward proposals which sought the strengthening of those provisions. It is a fact that for years, developed countries had employed those tools to promote their industrial development. It is a pity that the same instruments are now being denied to developing countries. Argentina believed that discussion on those issues should continue after Nairobi. Finally, he also cautioned against a debate that sought to create differentiation between developing countries.

34. The representative of Japan indicated that his delegation attached great importance to the development issues and to the S&D provisions as a means to promote the integration of the developing countries into the MTS. Having said this, he appreciated the proponents' efforts in tabling revised proposals. Nonetheless, he pointed to the fact that there still remained huge gaps between the proponents and the other Members on a number of issues. In any case, the delegation of Japan would remain constructively engaged in the discussions in the Special Session. He, once again, encouraged proponents to take into account what had been discussed in the past few weeks, including in the latest small-group discussions, and to work further on the proposals to review the substance of the proposals, as well as the scope of beneficiary countries.

35. The representative of Brazil confirmed the importance and the centrality of S&D in the WTO and to the MTS. He noted that some progress had been made in the discussions, but the pace had been quite modest. It was a matter of deep concern for Brazil that a general attempt was being made by some Members to exclude developing countries from the ambit of those proposals as a condition for extending even very limited concessions to the LDCs. Those were worrisome developments which seemed designed to effectively deny the principle of S&D to developing countries. His delegation agreed that LDCs' interests needed to be prioritized, but it was just as important to recall that S&D was applicable to all developing countries. A departure from that core principle would not be a wise step, as it would flatly contradict the spirit of the DDA and compromise one of the pillars of this Organization.

36. The representative of Nepal stated that the G90 had significantly revised its proposals in order to accommodate its partners' key concerns. While doing so, the G90 had demonstrated utmost flexibility in order to make the proposal more logical, convincing and doable. It was unfortunate to listen to some of the partners that the proposal did not fully address their concerns and were still unrealistic and ambitious – an assessment the G90 did not share.

37. The G90 was of the firm view that, if there was strong political commitment, willingness and determination on the part of partners, the proposals were both realistic and doable. The delegation of Nepal called upon Members to show flexibility and asked for their support and sympathy in order to harvest a meaningful outcome in Nairobi.

38. Responding to the opinion expressed by one delegation that the S&D proposal should be discussed in the Monitoring Mechanism, Nepal wished to clarify that the Monitoring Mechanism was not a negotiating forum, and it did not have any mandate to analyse S&D provisions which were structurally problematic. The G90 proposals had been prepared in line with the mandate of

paragraph 44 of the Doha Ministerial Declaration. In that respect Nepal believed that the Special Session was the appropriate forum to discuss those proposals.

39. The representative of Tanzania stated that so far the S&D regime of the WTO had not fully assisted developing countries, in particular LDCs, to participate effectively in the MTS. The main reason for this was that most of the S&D provisions were couched in best endeavor language and had not been fully operationalized. During the second reading of the revised 25 S&D proposals, Members had been able to identify some proposals on which consensus could be achieved through further discussions in the small group. Tanzania also encouraged Members to consider specific proposals in their totality, and not parts of the proposals, as submitted. Furthermore, the representative of Tanzania stressed that there should be a clear pronouncement that the remaining S&D proposals which Members would not be able to agree in Nairobi would be addressed in the post-Nairobi negotiations.

40. The representative of Korea, Republic of stated that his delegation was ready to follow the Chairperson's guidance to focus discussions on the prioritized list which reflected what had been discussed to date.

41. The representative of Chinese Taipei noted that some progress had been made in small-group discussions. It was very encouraging to hear the Chairperson state that nine proposals could be identified for possible convergence. He also cautioned that there would be no progress without compromise. Finally, he joined the delegations of India, Argentina and Brazil to stress that a debate on differentiation in the context of current Special Session work, needed to be avoided.

42. The representative of Saudi Arabia, Kingdom of stated that his delegation remained engaged to obtain meaningful and tangible results for Nairobi.

43. The Chairperson proposed that the Special Session take note of the statements made.

### **C. OTHER BUSINESS**

44. No issue was raised under other business.

45. The meeting was suspended.

### **D. RECONVENED SESSION**

46. The 51<sup>st</sup> Special Session of the Committee on Trade and Development (Special Session) was reconvened on 4 December 2015.

47. Resuming the suspended Special Session, the Chairperson recalled that the Special Session had been suspended to allow work to continue in informal small-group meetings with a view to making progress and then reconvene at short notice to take stock of the progress.

48. She informed Members that work had continued in a small-group format on an almost daily basis. In those meetings the Special Session had gone over all the 19 proposals identified for discussion. She recalled that she had sensed from the discussion in the informal open-ended meetings, that a degree of convergence was visible on proposal numbers 2, 3, 4, 18, 19, 23, 20, 21 and 22. In addition there was another set of ten proposals, 8, 9, 17, 14, 16, 1, 6, 7, 5 and 15, on which finding convergence seemed difficult, but the proponents, nonetheless, attached importance to them in the context of finding solutions by the Nairobi Ministerial. She stated that at the meeting on 2 December 2015, the G90 had announced its intention of prioritizing the proposals which the G90 felt could potentially be harvested at Nairobi. At the G90's request, this list was circulated as document WT/MIN(15)/W/31. From then on and in Nairobi the focus of the Special Session work would be on those 19 proposals.

49. In acknowledging that some progress in the Special session had been made, the Chairperson stated that it was far from done. Some proposals including those in the latest iterations reflected in document WT/MIN(15)/W/31 were clearly more mature than others. Members would need to continue their efforts with an open mind, a sense of flexibility and accommodation.

50. The Chairperson announced that in the following days before the MC10, she intended to continue meeting in a small-group format up to and including 8 December with the aim of fine tuning text on those proposals. The objective would be to finalize a potential package for Nairobi. The Special Session would also have to discuss the future course of action and agree on a mutually acceptable way forward on continuing consideration of the remaining S&D proposals.

51. The representative of Barbados, speaking on behalf of the G90, explained that the G90 had again prioritized the proposals and reduced the number to 15: the list included proposal numbers 1, 2, 4, 5, 6 and 7 (merged into one), 14, 15, 16, 17, 18, 19, 20, 21, 22 and 23. She added that for those proposals where the G90 could not find convergence, the Group maintained the original proposal as reflected in JOB/TNC/51/Rev.1 for discussion after Nairobi. The revised language on the 15 proposals was reflected in paragraph 14 of the revised G90 submission. In addition, the revision also tightened the scope where possible, by first introducing a definition, for example of SVEs, introducing a qualifier for developing countries or SVEs with capacity constraints and, in the case of proposal 4, suggested a two-tiered approach. The revision, in certain instances, also streamlined wording and removed expressions to provide clarity and address the concerns which had been raised by Members. However, all LDC specific proposals remained unchanged. In the case of proposal numbers 24 and 25, it was felt that they should be taken up after Nairobi.

52. She also stated that some Members had informed the proponents that their capitals were reviewing the revised proposals and would soon come back with suggestions, where needed. The proponents had also left a place marker in a footnote for proposal number 4 in light of some constructive comments by Australia. Similarly, the proponents awaited further suggestions from Australia on proposal number 2.

53. Thereafter she proceeded to highlight changes to each proposal in the revised submission.

54. On proposal number 1, the objectives of the G90 were to simplify the procedures to allow developing countries referred to in paragraph 4 of Article XVIII, in particular LDCs and SVEs, to be able to take infant industry measures to promote industrialization and positive socio-economic transformation. The proponents were happy that the proposal generated a lot of discussions in the Special Session. Accordingly, as a way forward, the proponents had decided to revise the proposal so as to address the key concerns raised by Members. The key elements of the proposal included a reference to Decision L/4897 of 28 November 1979, which allowed developing countries to take safeguard actions for development purposes. Proponents had also had a fresh look at the scope of Article XVIII as indicated in paragraph 4(a) and had placed more emphasis on the weakest Members of the WTO, in particular LDCs and SVEs. For the purpose of defining SVEs, the G90 had borrowed existing NAMA and agriculture texts.

55. On proposal number 2, the main objectives of the proponents were to simplify the procedures for invoking balance-of-payments (BOP) measures to enable them to achieve the objectives of paragraphs 2 and 9 of Article XVIII. The text suggested exclusion of short-term capital flows and the consideration of both the input from the IMF and the development policies of Members in any assessment of BOP situations. They proposed to maintain the scope to paragraph 4 (a) of Article XVIII and had placed special emphasis on LDCs and SVEs. They had also proposed that in making conclusions and proposals for recommendations for the General Council, the Balance-of-Payments (BOPs) Committee should consider the findings, facts, and other determinations provided by the IMF and should also take into account the overall economic context of the Member concerned.

56. On proposal number 4, the proponents had proposed a text that would ensure the participation of concerned developing countries and LDCs in any negotiations which envisaged modification of commitments. They had suggested that when a Member proposed to withdraw or modify a concession on a product, a developing country whose exports of that product constituted a major part of its total exports to the destination market of the Member invoking the provision should be deemed to have a substantial interest and in the case of an LDC a principal supplying interest.

57. On proposal number 21, the objectives of the G90 proposal were to ensure that there were legally binding commitments for developed countries to take concrete measures including providing adjustment and compensatory assistance to address the problem of preference erosion.

The proposal suggested that developed country Members granting preferences to LDCs must, and developing country Members granting preferences to LDCs should, endeavour to provide adjustment support measures in the trade, financial and technological fields to mitigate adverse effects on export earnings and enable them to cope with increased global competition.

58. On proposal number 20, the proponents were of the view that arrangements with the international financial institutions and the Regional Trade Agreements (RTAs) must not undermine the rights and flexibilities that were negotiated by the WTO Members, in particular the LDCs at the WTO. The G90 had proposed that LDCs should also be able to determine whether commitments and concessions they undertook were commensurate with their individual development, financial and trade needs or their administrative and institutional capacity. Members should also coordinate their work with international lending or development agencies with a view to ensuring that LDC Members were not subjected to conditionalities on loans, grants and official development assistance that were inconsistent with their rights under the WTO Agreements.

59. On proposal number 22, the original proposal from the G90 had sought clarity on the rights of developing countries under the Enabling Clause. It aimed to ensure that the G90 was consulted when developed countries designed preferential schemes and that the products of interest to developing countries were given increased market access. As a way forward, the G90 had now proposed that in formulating preferential schemes under paragraphs 2(a) and (d) of the Enabling Clause as well as other non-reciprocal preference schemes, developed country Members should take into account the needs of developing countries and LDC Members by consulting with them, with a view to ensuring that their products of export interest were accorded meaningful market access.

60. With respect to proposal number 5, the original proposal of the G90 was to build on the Bali Ministerial Decision on Duty-Free and Quota-Free (DFQF) Market Access for LDCs (WT/MIN(13)/44) and ensure that LDCs had 100% DFQF for all agricultural products. The proposal also sought that those commitments be included in the schedules, concessions and commitments. In that context, the G90 had proposed that developed country Members endeavoured and developing country Members declaring themselves to be in a position to do so should endeavour to inscribe their commitments on DFQF market access in accordance with Article II of GATT 1994 no later than six months after the date of this Decision. Members having difficulty to accord DFQF market access on all agricultural products should submit a list of the products to the Committee on Trade and Development for which DFQF market access was not provided.

61. On proposal numbers 6 and 7, the original objectives of the G90 were to ensure that additional flexibility was provided to enable the developing countries and the LDCs to comply with the Sanitary and Phytosanitary (SPS) Agreement and ensure that their exports were not excluded from the market of developed countries due to either lack of capacity to implement SPS measures or through the imposition of SPS measures in an arbitrary manner. Recognizing that Members have the right to impose measures in line with the SPS Agreement, the G90 had proposed that developed country Members, to the extent practicable, provide a 90-day comment period before the adoption of the measure; that a longer period of time be granted for LDC Members upon request; and that longer time-frames for compliance with the measure be accorded, to the extent practicable, to products of interest to developing countries, in particular SVE Members with capacity constraints and to the LDC Members so as to maintain opportunities for their exports.

62. Similar text was also put forward on proposal number 15 on the Technical Barriers to Trade (TBT) Agreement.

63. On proposal number 17, the original objectives of the G90 were to ensure that the LDCs were exempted from the TRIMS Agreement until they ceased to be LDCs. The objective was to enable them to use TRIMS to promote industrialization. In order to address the concerns raised by Members, the G90 had now proposed that LDCs be allowed to maintain or introduce existing measures that deviated from their obligations under the TRIMs Agreement. However, they would have to notify the Council for Trade in Goods (CTG) of such measures within five years. LDCs would be allowed to maintain these existing measures for seven years.

64. With respect to proposal number 19, the G90 text aimed at, among others, exempting the developing countries from complying with the requirement of a two-year interval period, as

prescribed in the Agreement on Safeguards. This would allow the developing countries to repeat the safeguard action on products that were previously subjected to similar measures. In addition, in the revised proposal, the G90 had now reviewed and recalibrated the collective import share criteria for a developing country to accommodate Members' concerns.

65. The G90 had also proposed that the following footnote be added to the Agreement on Safeguards: "Members shall comply with Article 9.1 of the Agreement on Safeguards by providing a specific list of the Members excluded from the safeguard measure and should include information on trade shares". Finally, the proposal suggested that when assessing the obligations of developing countries under Article 8.1 of the Agreement on Safeguards, Members must take into account the trade, development, finance and administrative circumstances of developing country Members, including the extent to which certain industries in the developing country Member were able to withstand a potential suspension of concessions by an affected exporting Member or potential further concessions by the developing country Member.

66. On proposal number 14, the objective of the proponents was to revive the right to use non-actionable subsidies in order to accelerate industrialization. Accordingly, the G90 had proposed that LDCs and SVEs should have the right to use non-actionable subsidies for a period of ten and eight years, respectively.

67. On proposal number 16, the original objective of the G90 proposal was to ensure that developing countries were exempt from the obligations in paragraph 1(b) of Article 3 of the Agreement on Subsidies and Countervailing Measures (ASCM) to allow them to use subsidies contingent on the use of domestic over imported goods. However, in order to address concerns raised by Members, the G90 had agreed to revise this proposal to limit its scope for the LDCs and SVEs.

68. On proposal number 18, which was specific to LDCs, the G90 had proposed concrete measures to be taken to address the issue of under-invoicing and to ensure that technical assistance was provided in a legally binding manner. As a way forward, the G90 had agreed to amend the proposed obligation on technical assistance into a best endeavour commitment. The G90 had also proposed that LDCs should be allowed to use minimum or reference values in certain circumstances.

69. On proposal number 23, the G90 wished to ensure that the right to food security was not undermined by trade rules. The revised proposal had sought to ensure food security in LDCs and Net Food Importing Developing Countries (NFIDCs). The proposal stated that non-LDC Members did not apply any export restriction on any foodstuff imported by LDCs and NFIDC Members, if the exporting Member was a net exporter of the foodstuff concerned.

70. With regard to the other outstanding proposals, the G90 would request the Special Session to continue to examine the remaining proposals contained in JOB/TNC/51/Rev.1 with a view to achieving agreement on all of the specific proposals by July 2016. With regard to their general approach, the G90 would continue to pursue its objective of finding meaningful resolution on the proposals on the table in line with paragraph 44 of the Doha Declaration.

71. The representative of Norway recognized that the textual proposals were the result of concerted efforts that merged the priorities of a very large and diverse group of Members. However, given the level of ambition in the proposals and the differing views among Members, Norway seriously doubted that it would be possible to reach agreement on a comprehensive draft decision by Nairobi. It had become apparent during the small-group consultations, that some of the proposals seemed to have a better chance of succeeding, while others had extremely slim chances of becoming part of an outcome. Norway was pleased to see that the G90 had, for the time being, taken away some of the proposals that seemed most difficult for Members to work on. It was also encouraging to note that the G90 had amended its proposals based on some of the textual suggestions other Members had made during the discussions. She reiterated that Norway had a particular focus on finding good and workable solutions for the LDCs. However, Norway was not in a position to support suggestions for textual revisions implying that LDCs and SVEs should be treated equally.

72. The representative of the United States stated that his delegation did not feel encouraged about the situation in which the Group had thus far found itself. The difficulty was not due to process failure, or lack of good faith or effort on the part of anyone. It was rather because of the fact that the Group disagreed in their perceptions relating to a much more basic question on the relationship of trade rules to development. The US would not be convinced that raising barriers or exempting Members from longstanding WTO commitments was good for development. Nor would the US be convinced to accept proposals that sought to significantly rewrite the basic rules of the WTO. By the same token, the US had no expectation that Members of the G90 that disagreed with the US perspectives would suddenly come around to believe that the existing rules could and had been proven to advance development objectives.

73. He went on to state that beyond these overarching fundamental questions, the Group had been hindered by a lack of pragmatism demonstrated over the course of these discussions. Despite the willingness of the US and others to work on a small subset of the proposals, the proponents had difficulty adapting to this approach, and had continued to persist with proposals that Members, from the outset, had said were non-starters. Further, it was clear that the fundamental question of the proposed scope of beneficiaries remained a major hurdle in the discussions. He explained that if obstacles were primarily technical or legal, Members might find a way. But what they were really confronted with in the discussion on specific proposals was a clash of perspectives and philosophies. He stated that after 14 years of discussions in the Special Session, the time had come to pause and fundamentally rethink how to approach this.

74. The representative of Cameroon stated that he took note of the statements that had been made and supported the presentation made by the representative of Barbados on behalf of the G90. He had listened carefully to the interventions by the delegations of Norway and the US. His delegation would like to highlight the fact that efforts had been made on both sides but convergence had not been reached so far.

75. The representative of the European Union stated that some of the reasons why common ground on the proposals on the table had not been reached were technical, and that work should continue to try to overcome them. Nonetheless, some of the disagreements touched more fundamentally on what was understood by S&D. For the EU, S&D was a privileged, special lane that led to a better integration in the WTO rulebook – not a motorway leading to open-ended exemptions from certain key WTO principles. The EU acknowledged that LDCs and other vulnerable Members might need further flexibilities *vis-à-vis* current S&D provisions, but these flexibilities would become meaningless if they were also made available to big emerging economies that played a dominant role in world trade.

76. The representative of India appreciated the efforts of the G90 in tabling the revised proposals. As a preliminary observation he stated that his delegation had listened to some Members that spoke about the scope of S&D. In the revised proposal, even the proponents had tightened the scope by including a definition of SVEs. He wished to make it clear that S&D provisions were an integral part of the MTS and were meant to enable developing countries and LDCs to meaningfully integrate into the MTS. The mandate in paragraph 44 of the Doha Declaration did not cover a redefinition of the scope of beneficiaries. By definition all developing countries fell under the ambit of S&D beneficiaries. India did not agree to import a discussion on differentiation between developing countries in the negotiation on S&D.

77. The representative of El Salvador did not see that the proposals were suggesting a new category of Members. It was clear that the SVEs shared many of the challenges that LDCs had to face and that was the reason why the G90 had included this group among the beneficiaries.

78. The representative of China stated that the Doha Round was a development round, so development and LDC issues should be an integral part of it. In addition, China fully supported the statement made by India.

79. The representative of Egypt stated that clearly the level of ambition has been significantly lowered in the revised proposals. Having said that, Egypt wished to make it clear that it would not consider further dilution of those proposals. Furthermore, Egypt believed that in order to be effective, S&D provisions should introduce measures with a clear focus on results and designed to answer the needs of beneficiary countries at the national level. Priority should be given to the

countries with the greatest needs, but the concerns of all developing countries should be addressed.

80. The representative of Chinese Taipei echoed India's views on differentiation.

81. The representative of Japan took note of the modifications in the new revised text which had, to some extent, reflected the concerns and questions Japan had during the previous sessions. However, there were huge gaps between the proponents and other Members in terms not only of substance but also of the scope of beneficiary countries. A number of proposals still contradicted the fundamental rules under the WTO and, therefore, had no chance of convergence. Diverse views continue to exist with regard to two fundamental issues, namely the scope of the beneficiary countries and the way ahead after Nairobi. Under such circumstances it was still a very challenging task for Members to tackle the remaining issues with the time available from now on to Nairobi.

82. The representative of Nigeria stated that his delegation associated itself with what was said by the representative of Barbados and also shared the sentiments expressed by the representatives of Cameroon and Egypt. He said that Members should work towards meaningful results, by Nairobi, for LDCs and SVEs as well as for the developing countries. Any attempt to narrow down the scope of S&D would be counterproductive.

83. The representative of Nepal stated that the revised proposals were realistic and doable provided there was strong political commitment and conviction from Members. The proposals would bring economic benefits to developing countries and the LDCs and would help them better integrate into the MTS. He added that the revised proposals reflected flexibility and accommodation on the part of the G90. It was now up to other Members to reciprocate and extend support to the needs of the poor and weak Members.

84. The representative of Dominica, speaking on behalf of the Organisation of Eastern Caribbean States (OECS) stated that S&D was a basic principle of the WTO and the MTS to which OECS attached great importance. The OECS fully agreed that S&D was aimed at benefitting all developing countries. It was clear that the needs of the weakest and poorest Members had been emphasized in the G90 proposals, while not undermining the rights of other developing countries.

85. The Chairperson proposed that the Special Session take note of the statements made.

86. The meeting was adjourned.

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