

**Committee on Trade and Development
Nineteenth Dedicated Session on the Monitoring
Mechanism on Special and Differential Treatment**

NOTE ON THE MEETING OF 17 NOVEMBER 2023

Chairman: H.E. Dr. José R. Sánchez-Fung (Dominican Republic)

1. ADOPTION OF THE AGENDA	1
2. MONITORING OF SPECIAL AND DIFFERENTIAL PROVISIONS.....	1
A. Statement by the Chairman	1
3. OTHER BUSINESS	5

1. ADOPTION OF THE AGENDA

1. The Chairman said that the proposed agenda for the 19th Dedicated Session on the Monitoring Mechanism (MM) on Special and Differential Treatment (S&D) of the Committee on Trade and Development (CTD) was contained in Airgram [WTO/AIR/COMTD/MMSDT/17/Rev.1](#) of 7 November 2023. He noted that this Airgram had been prepared in line with the new measures that were being implemented to improve the functioning of the CTD. Among other things, the Airgram contained a simpler and more straightforward numbering system for agenda items. It also contained a hyperlink to access the annotated draft agenda which had been prepared for the present meeting, and which had been circulated in document [JOB/COMTD/MMSDT/1](#). At the 122nd Regular Session of the CTD which would be held later in the day, he would be saying more about these and other measures that were being implemented to improve the functioning of the Committee.

2. The agenda was adopted.

2. MONITORING OF SPECIAL AND DIFFERENTIAL PROVISIONS

A. Statement by the Chairman

3. The Chairman said that, at the Ninth WTO Ministerial Conference (MC9) held in Bali in December 2013, Ministers decided to establish the Monitoring Mechanism (MM) on Special and Differential Treatment (S&D). The Decision establishing the MM was contained in document [WT/MIN\(13\)/45](#) – [WT/L/920](#). According to the Decision, the MM was to act as a focal point within the WTO to analyse and review the implementation of S&D provisions. The Mechanism was to review all aspects of implementation of S&D provisions with a view to facilitating the integration of developing and least developed Members into the multilateral trading system (MTS). The Mechanism operated in Dedicated Sessions of the CTD. The present meeting was the 19th Dedicated Session on the MM, and it appeared that the situation remained unchanged from the last meeting, which was held in July 2023. For one thing, the monitoring of special and differential provisions in the Mechanism was to be undertaken on the basis of written inputs or submissions made by Members, as well as on the basis of reports from other WTO bodies to which submissions by Members could also be made. However, as Members were well aware, no written submissions had yet been made in the MM. Furthermore, paragraph 12 of the Decision establishing the MM stated that "The Mechanism shall be reviewed three years after its first formal meeting, and thereafter as necessary, taking into account its functioning and evolving circumstances". This review had still not taken place. As had been previously highlighted, delegations had expressed different perspectives on the question of the review. He wished to take this opportunity to urge Members to come to a common

understanding on how to move forward with the Monitoring Mechanism. As he had said before, if it was felt that informal discussions facilitated by the Chairperson could help Members come to this common understanding, he would be happy to organize such discussions.

4. The representative of Pakistan delivered the following statement:

5. Let us rewind by two decades to realize why we agreed to the establishment of the MM in the first place, and then contemplate on why things have not changed for most developing countries and least developed countries (LDCs) during this period. The S&D provisions within the WTO were introduced with the understanding that they play a pivotal role in fostering equitable and inclusive global trade by recognizing the unique challenges faced by developing countries and LDCs. These provisions acknowledge the varying levels of development among Members and aim to provide tailored measures that allow developing countries and LDCs the flexibility needed to integrate into the MTS. The MM was established in accordance with the Bali Ministerial Decision to review S&D provisions in all aspects of implementation, with a view to facilitating the integration of developing countries and LDCs into the MTS. However, it has always encountered challenges in achieving its intended objectives. Despite the mandate calling for a review three years after its inaugural meeting, we find ourselves without any significant progress. We believe there is a need for a comprehensive review of the Mechanism to identify the root causes of its limited effectiveness – be it in the form of its mandate, its terms of reference (TORs), or its operations for improving the efficacy of the initiative. At our last meeting, Norway proposed to develop a model submission template that can be worked out with the help of the Secretariat. We believe this to be a useful solution. We have used similar approaches in other Committees and working groups on food security, where Members developed a questionnaire last year after the Twelfth WTO Ministerial Conference (MC12) to identify the needs and challenges faced by LDCs and net food-importing developing countries (NFIDCs). We believe that this can be a constructive way to move our work forward in this Committee.

6. The representative of Norway delivered the following statement:

7. I would like to thank Pakistan and also reiterate the concrete suggestion that Norway made at the last meeting. It is very unfortunate that the MM has not been used according to its mandate. It is a lost opportunity for informed discussions on trade and development within an agreed framework. The ongoing process in the Special Session of the CTD (CTD SS) – regarding the G90 Agreement Specific Proposals (ASPs) on the Agreement on the Application of Sanitary and Phytosanitary Measures (SPS Agreement) and the Agreement on Technical Barriers to Trade (TBT Agreement) – shows that it could be helpful to use the MM to shed light on some of the S&D provisions in these two Agreements. This would include information on how they work for Members, with the aim of moving the process forward. A review could therefore be useful. It would also be helpful to try to have a concrete template or a format that could work for Members.

8. The representative of India delivered the following statement:

9. The MM was created as per the 2013 Ministerial mandate for the review of S&D provisions. The Mechanism was to complement, and not replace, other relevant mechanisms or processes in other bodies of the WTO. Today is the 19th meeting of the MM, and we know that the Mechanism has not worked. The Mechanism was to be reviewed three years after its first formal meeting, which was held in July 2014. Therefore, the Mechanism should have been reviewed after July 2017. That did not happen. Members should review the MM to figure out why it has not worked, and then report to the General Council for further deliberation, as is considered appropriate. In my delegation's view, this would require an assessment of what the MM could do, and the difference between the mandate of the MM and that of the CTD. We should assess how the MM's mandate is superior to that of the CTD, given that the CTD already has a mandate to review of S&D provisions. Members need to be clear on how the MM's mandate could be made superior – or is already superior – to the CTD's mandate, including as a focal point. Members should assess if there are concerns with the mandate of the MM, its TORs, or its general design and report back to Ministers at the Thirteenth WTO Ministerial Conference (MC13). While we propose a review of the Mechanism, we are not suggesting abandoning the Mechanism. The purpose of the review would be to assess in what manner the MM could be utilized for the purpose of strengthening S&D provisions, and whether there is a need to change its TORs – for example, to clearly delineate its role from that of the CTD. For this purpose, direction can be sought from the General Council and Ministers, as necessary.

10. The representative of the European Union delivered the following statement:

11. The European Union believes that the use of the MM would be helpful and would complement the discussions taking place in the CTD SS. A review could help in that direction. The European Union would be interested to participate in it, which could contribute to refining some language. This is because some Members say that the Mechanism has not worked or has a problem with its functioning. I would say that it has not been used. There are some nuances that we could perhaps usefully look at. I have to give further thought to the idea of reviewing the Mechanism now. I would also very much like to hear comments from the members of the G90 on this. I heard Pakistan and India, but since I see a link with the work of the CTD SS – and not just the CTD – it would be interesting to hear from the G90, and in particular the LDCs.

12. The representative of the United States delivered the following statement:

13. The United States is very clear in maintaining that we do not support the review of a Mechanism that has never been used. As we have said previously, we can only draw the conclusion that a lack of submissions suggests that Members are not yet able to articulate their problems in utilizing existing S&D provisions. The MM was established as a focal point within the WTO to analyse and review the implementation of S&D provisions. We continue to believe in the analytical, fact-based approach that the MM requires. According to this approach, a Member needs to describe the specific problems it is having in utilizing a specific S&D provision. This approach, which entails an analytical and focus-based analysis, can help drive more productive and specific discussions on the implementation of existing S&D provisions – including the successes and challenges that remain in utilizing them. We continue to believe that Members should at least give it a try and use the MM. A country that is having difficulties can come forward with its specific challenges, and possible options for solutions can be discussed. The United States has no objection to the Chair holding consultations on the MM. We look forward to revamping this debate.

14. The representative of India delivered the following statement:

15. This is a brief intervention regarding the Ministerial mandate to review the Mechanism. In the minutes of the first meeting of the MM, it was clearly mentioned that the Mechanism would be reviewed three years after that meeting. However, we see that there are interpretations being imposed by Members on the review, even though the Ministerial directions are very clear. Members and the Chair need to consider what exactly is the mandate from Ministers, including with regard to the review of the Mechanism.

16. The representative of Brazil delivered the following statement:

17. The proposal made by Norway is interesting in the sense that we can work together with the SPS and TBT Committees. We had a good meeting a few weeks ago on the S&D provisions in the SPS and TBT Agreements. G90 members described the practical problems they face with SPS measures, and possible solutions. I think it is a good start. I appreciate your suggestion to hold informal discussions. My delegation will be ready to engage.

18. The representative of Fiji delivered the following statement:

19. I note that Members support having the MM in place. There are perhaps practical approaches that could be taken, but delegations need to understand the background. Small delegations in particular are not able to cover all areas of work in the CTD. It may be useful if the Secretariat could prepare an overview of what has been discussed in the context of the MM, including the proposals that have been made and the measures that have been taken. Such an overview could potentially help Members in mapping a workable way forward.

20. The representative of South Africa delivered the following statement:

21. I speak on behalf of South Africa, and not the G90. My delegation shares the view, as already expressed by others, that the MM has not been optimally used – if it has been used at all – and that there could still be value in it. The idea of undertaking an assessment or reflection of why it has not worked could be explored. However, we would like to reiterate that we do not view the Mechanism as an alternative avenue to the negotiations taking place in the CTD SS. The mandate of the CTD SS

is to review and negotiate S&D provisions with a view to strengthening them and making them more precise, effective and operational. The MM can at best play a complementary role. There is no agreement or common understanding of what the purpose or role of the MM is. A good place to start discussions among Members may be on what the MM is mandated to do.

22. The representative of Nigeria delivered the following statement:

23. I would like to echo the statement by South Africa. I would also like to share my thoughts on some of the comments that have been made today. Some Members appear to have the view that, until the MM is operationalized, there will be no clarity on the kinds of difficulties countries face in utilizing S&D provisions. This seems to be an attempt to weaken the mandate of the CTD SS. If there is no clarity, then what is being negotiated in the CTD SS? The representative from South Africa has made the point that the mandate of the CTD SS is clear and distinct. It is pursuant to this mandate that the G90 tabled its ASPs. While Members consider ways to operationalize the MM, it will be important to not undermine the mandate of the CTD SS.

24. The representative of Ecuador delivered the following statement:

25. Ecuador considers the Committee's discussions on this issue to be highly relevant. In this context, we support having discussions on the SPS and TBT Agreements with a view to obtaining specific inputs that may be useful for reaching a common understanding on the MM. Market access for the exports of developing countries and LDCs – a substantial majority of which are agricultural products – is important for the growth and development of these countries, in particular as they are sensitive to the SPS and TBT measures applied by their trading partners. We believe that discussions could better reflect the concerns and priorities of developing countries and LDCs, so that the MM will allow for a more effective and practical application of S&D based on the issues identified. A better understanding of Members' realities is needed in order to make S&D a more precise, effective and operational tool. Informal consultations organized by the Chair could be useful in moving the discussions forward.

26. The representative of Egypt delivered the following statement:

27. Today is the CTD's 19th Dedicated Session on the MM on S&D, and yet the discussions sound like Members are negotiating something new. However, the idea of the MM came from the African Group in 2002. I agree with South Africa and Nigeria that we should not mix the mandate of the MM with that of the CTD SS. The MM's mandate is found in the Bali Ministerial Decision which established the Mechanism. Ministers decided on the scope and the TORs. They were clear when they said that the Mechanism will complement and not replace other relevant review mechanisms or processes in other bodies. Here, I believe they were referring to the CTD SS and its mandate. The Decision goes on to say that the MM shall review all aspects of implementation of S&D provisions. Members therefore need to assess the implementation of S&D provisions and see to what extent these provisions are relevant or fit for purpose. There should be a start to this. I suggest this start should come from the Secretariat's document on the implementation of S&D provisions. Where there is a lack of implementation, Members can then react in line with the mandate of the Mechanism. The Decision further states that the Mechanism will not alter, or in any manner affect, Members' rights and obligations under the WTO Agreements. The scope of the Mechanism is therefore very limited compared to the CTD SS. The MM is to focus on the implementation of existing S&D provisions, to see whether they are functional and fit for purpose. According to the Decision, the monitoring of S&D provisions in the Mechanism shall be undertaken on the basis of written inputs or submissions made by Members. In this regard, a lot of submissions and proposals concerning S&D provisions have been made. Since the Mechanism is the focal point within the WTO to analyse and review the implementation of S&D provisions, it may be necessary to prepare a compilation for the MM of the various ideas and proposals. Let us start doing our job in the MM in the way that it was mandated, without having to affect the mandates of other bodies. Although negotiations taking place in other bodies can reconsider the balance of rights and obligations, this is not something that can be done in the MM. We don't have to mix things up.

28. The representative of the European Union delivered the following statement:

29. I would like to thank the delegations that have shown an interest in this topic. The European Union considers it unfortunate that the Mechanism is not being used. We would

welcome developing countries drawing a benefit and use from it. I would like to clarify that when I mentioned other bodies, it was not to suggest that one body is superior to the other, that one can replace the other, or that the mandates should be confused. I think "complementarity" is an important word. We do not need distrust when a Member wants to try to make something work. There is no hidden agenda.

30. The representative of Japan delivered the following statement:

31. Japan is encouraged to hear the interventions of the previous speakers, especially the very useful intervention by Egypt. I think that the Mechanism should be operationalized, and that Members should look at the language contained in the Decision establishing the Mechanism. As regards the scope of the Mechanism, the Decision provides that the coverage shall extend to all S&D provisions contained in multilateral WTO Agreements, Ministerial and General Council Decisions. Regarding the operation of the Mechanism, the Decision states that the Mechanism shall operate in Dedicated Sessions of the CTD. In accordance with this Decision, the discussion at today's meeting has been very useful.

32. The representative of the Bolivarian Republic of Venezuela delivered the following statement:

33. I would like to support the statements which highlighted the importance of not mixing the mandates of various WTO bodies. It will be important to discuss in greater depth how to fulfil the specific mandate of the MM.

34. The representative of the United States delivered the following statement:

35. I would like to pick up from what the representative of the European Union said. There is no hidden agenda on the United States' side either. In the same spirit as the debate taking place in the CTD SS, we remain open to engage in a frank dialogue that is based on Members' specific needs. As long as Members can have this fact-based, precise, open and cooperative approach to the discussions, we are in it with you all.

36. The representative of Nigeria delivered the following statement:

37. I thank the European Union and the United States for their interventions. It is welcome to note that there is no hidden agenda. The representative of Egypt talked about submissions made to other bodies, which may shed light on the reasons why some S&D provisions have not been utilized by developing countries. I would like to seek the guidance of the Chair. If the Chair is agreeable, the Secretariat could be requested to make a compilation of these submissions, which can be used to advance the work in the MM.

38. The Chairman noted that some proposals had been made to take forward the discussions in the MM. He indicated that he would be contacting delegations on this matter to see how progress could be made.

39. The Committee took note of all interventions.

3. OTHER BUSINESS

40. No matter was raised under "Other Business".

41. The meeting was adjourned.
