WORLD TRADE ORGANIZATION

RESTRICTED

WT/COMTD/W/77/Rev.1/Add.4
7 February 2002

(02-0597)

Committee on Trade and Development

INFORMATION ON THE UTILISATION OF SPECIAL AND DIFFERENTIAL TREATMENT PROVISIONS

Note by the Secretariat

Addendum

I. INTRODUCTION

1. WTO Members adopted the Decision on Implementation-Related Issues and Concerns[1] at the Fourth Ministerial Conference in Doha. Paragraph 12.1 of that Decision instructs the Committee on Trade and Development to carry out a work programme on special and differential treatment. Pursuant to that Decision, the Committee on Trade and Development adopted a process for its work. The process is set out in document WT/COMTD/36. This note responds to the request by delegations, in paragraph 2(b) of document WT/COMTD/36 that "the Secretariat (...) provide information on utilisation of special and differential treatment provisions." This document should be read in conjunction with document WT/COMTD/W/77/Rev.1, and its Addenda 1-3.

2. The "utilisation" of special and differential treatment has, in this document, been assessed in two main ways: first by examining the extent to which developing country Members have had recourse to specific provisions allowing them greater levels of flexibility in commitments, action or use of policy instruments; have had recourse to longer transition time periods; or formulated requests for technical assistance. Secondly, the paper records information on the extent to which developed country Members have made use of WTO provisions specifying positive actions in favour of developing country Members: i.e. provisions seeking to expand the trading opportunities of developing countries; provisions seeking to safeguard the interests of developing countries; and provisions relating to technical assistance.

3. The aim of this document is to produce as quantifiable "information on utilisation of special and differential treatment provisions" as possible. Descriptive comments recording the points of view of Members and more qualitative information on processes established by Members in the WTO have been largely omitted, as these are reserved for a separate document of the implementation of WTO agreements. For each agreement a table is provided, with the text of the provision reproduced in italics in the left-hand column, and information regarding its utilisation in the right-hand column. Blank spaces indicate that no data are available. Document references are also given with respect to some provisions to allow the reader to explore these in greater detail.

4. The extent of information available varies greatly across agreements and types of provisions. Provisions relating to flexibility of commitment, of action and use of policy instruments, and provisions relating to transition time periods are the easiest to measure in term of utilisation, as they typically involve notification requirements, and are quantifiable. For instance, it is possible to put dollar values on domestic support measures, state the length of transition times and count the number

[1] WT/MIN(01)/17

of Members requesting extensions. However, it is more difficult to measure the utilisation of provisions which specify positive action. Such action is not always subject to notification requirements and such provisions are often either non-mandatory, or specify an "obligation of conduct" rather than an "obligation of result". Exceptions to this general norm include actions taken under the GSP, where, despite the irregular record of notifications by Members to the Secretariat, a substantial body of data is available.

II. UTILISATION OF SPECIAL AND DIFFERENTIAL TREATMENT: INFORMATION BY AGREEMENT

A. GENERAL AGREEMENT ON TARIFFS AND TRADE 1994

General Comments

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)

Understanding on Balance-of-Payments Provisions

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

The Understanding provides for technical assistance from the Secretariat to be provided upon request: one least-developed country received technical assistance under this provision in November 2000.

Article XVIII

Provision	Utilisation
Article XVIII: 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*	The provision has not been invoked by any developing country Member since the WTO Agreement came into force.

Provision	Utilisation
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.	
(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 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*	Since the WTO Agreement came into effect, most developing country Members have ceased to take recourse to Article XVIII:B. As of 2002, only one least-developed country still maintains restrictions under this provision but has been granted approval for a phase-out plan on a number of the restrictions. For certain remaining products, this least-developed country is seeking cover under Article XVIII:C.

Provision	Utilisation
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 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*	

Provision	Utilisation
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 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.*	Since the WTO Agreement entered into force, one developing country Member cited this provision during a dispute.

Article XXXVI

Provision	Utilisation
Article XXXVI: 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.	Not Applicable
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 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 section on the Enabling Clause for information relating to the GSP, and the reference to improved preferential market

Provision	Utilisation
	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.	Note: Commodity market stabilisation has long been the domain of the United Nations (in particular, UNCTAD) under whose auspices several international commodity agreements were concluded over a number of years. All have since failed. The International Conference on Finance for Development ("FfD"), scheduled for March 2002, will be considering this issue. In addition, see response to paragraph 3.
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 response to paragraph 3.

Provision	Utilisation
Article XXXVI: 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	Ministers adopted the Declaration on the Contribution of the WTO 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

Provision	Utilisation
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.	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).
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.	
Article XXXVI: 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. This provision was taken into account during the negotiations in the Uruguay Round and is reflected both in the extent of bindings on industrial products and the average level of tariffs of the developing country Members.

Article XXXVII

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 the Agreement on Agriculture below).
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.	(Refer to the section on least-developed countries below)
Article XXXVII: 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.*	

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.* *(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.*	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.
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.*	

3(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.	It should be noted that this provision has been incorporated into Article 15 of 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	Utilisation
Article XXXVIII: Provisions aimed at increasing the trade opportunities of developing country Members	
2(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 1997 High-Level Meeting on Integrated Initiatives for Least-Developed Countries' Trade Development was in part a response to this provision. (Please refer to the section on LDCs for further detail) The WTO Secretariat maintains such relationships with all relevant agencies, whether multilateral (e.g., World Bank, UNDP, regional development banks, OECD-DAC) or bilateral.
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	The work of the joint WTO/UNCTAD International Trade Centre (ITC) is oriented towards meeting the objectives of this provision. The WTO Reference Centre Programme has contributed to enhancing the flow of

Provision	Utilisation
export promotion by the establishment of facilities for the increased flow of trade information and the development of market research;	trade-related information to governments and business communities. To date, 103 reference centres have been established.
Article XXXVIII: 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. Note: This matter has generally been considered in UNCTAD from the inception.
2(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.
2(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)
2(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 its 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".

Information drawn from Trade Policy Reviews[2]

5. Under *Norway*'s GSP scheme, developing countries generally enjoy duty-free and unlimited access for exports of manufactures, except for certain textiles, clothing, and footwear products. The scope is more limited for agricultural products, where imports of non-sensitive agricultural products from developing countries are duty free, while imports of other agricultural products are subject to 10-50 per cent tariff reductions. Imports of industrial and agricultural products from least-developed countries are duty free with the exception of flour, grain, and feedingstuffs, to which tariff reductions of 30 per cent within indicative (import) limits are applied. The average tariff for imports from GSP ordinary beneficiaries was 5.3 per cent in 2000; the average tariff rate on imports from least-developed countries was 1.2 per cent, compared to an average MFN tariff in 2000 of 8.1 per cent. Norway's GSP scheme does not contain a graduation mechanism. Norway's imports from countries eligible for GSP treatment represented 60 per cent of total dutiable imports from developing countries in 1997 and the degree of utilization was 75 per cent. (WT/TPR/S/70, 23 May 2000)

6. *Poland* extends GSP preferences to 45 developing countries and to the 49 least-developed countries. Except for certain sensitive items (certain agricultural, textile, and electronic products; tobacco, cosmetics, cars, and precious metals), imports from developing countries are dutiable at tariff rates equivalent to 70 per cent of the MFN level. Imports from LDCs are duty free. (WT/TPR/S/71, 4 June 2000)

7. *The EU* introduced a revised GSP scheme for the period 1 July 1999 to 31 December 2001. The scheme is available to 146 independent developing countries (and a number of dependent territories). Hong Kong, China; Korea; and Singapore were "graduated" from the list of GSP beneficiaries. The product coverage includes processed agricultural products, fish, mining and industrial products. A lower degree of preference is granted to "very sensitive products" (many agricultural products, textiles and textile articles, iron and steel), for which the duty that applies is 85 per cent of the MFN rate; to "sensitive products" (many agricultural products, chemicals, plastics and rubber products, leather goods, footwear, wood and wood products, paper, glass, copper, appliances, and motor vehicles) for which the duty is 70 per cent of the MFN rate; to "semi-sensitive products", for which the duty is 35 per cent of the MFN rate. No duty applies to "non-sensitive products". Graduation from GSP benefits applies to country-product category combinations, plus any country whose share of a certain product in the EU's imports exceeds 25 per cent. The average tariff faced by GSP beneficiaries was 4.9 per cent in 2000; compared to a 6.9 per cent MFN rate. LDCs were faced with a 1.9 per cent average tariff.

8. GSP beneficiaries may apply to obtain the EU's special incentive arrangements for countries demonstrating adherence to certain internationally recognized core labour standards or to certain standards set by the International Tropical Timber Organization. The special incentives consist of: an additional preferential margin on covered agricultural products of 10 per cent of the regular duty for "very sensitive" products, 20 per cent for "sensitive" products and 35 per cent for "non-sensitive" products; an additional preferential margin on covered industrial products of 15 per cent of the regular duty for "very sensitive" products, 25 per cent for "sensitive" products, and 35 per cent for "non-sensitive" products; and 15 per cent of the regular duty for "graduated" agricultural products and 25 per cent for "graduated" industrial products. (WT/S/72, 13 June 2000)

[2] The reader is also refered to Secretariat note WT/COMTD/W/93, "The Generalised System of Preferences: A preliminary analysis of the GSP schemes in the Quad".

9. Under the Cotonou Agreement, the EU grants non-reciprocal trade preferences to imports of industrial and processed agricultural products originating from the ACP countries, and provides special market access under "commodity protocols" for a few products (bananas, rum, beef, veal, and sugar). The Cotonou Agreement abolishes Stabex, Sysmin, and the rum protocol of the Lomé Conventions. The current all-ACP non-reciprocal tariff preferences are maintained until 31 December 2007. They will be replaced by a set of Economic Partnership Agreements (EPAs) starting in 2008. These free-trade agreements are expected to be reciprocal and WTO-compatible and they will be implemented over 10 to 12 years. (WT/TPR/S79, 21 December 2000)

On 26 February 2001, the Council adopted Regulation (EC) 416/2001 – commonly referred to as the "Everything But Arms" (EBA) Regulation", granting duty-free access to imports of all products from LDCs, except arms and munitions, without any quantitative restrictions. The exception for arms is a traditional feature of the Community's scheme of generalized tariff preferences and is not specific for trade with LDCs. It has now become the only exception, as EBA covers all products, including even very sensitive agricultural products such as beef and other meat, dairy products, fresh and processed fruit and vegetables, maize and other cereals, starch, oils, processed sugar products, cocoa products, pasta, and alcoholic beverages. Only imports of fresh bananas, rice and sugar are not fully liberalized immediately. Duties on those products will be gradually reduced until duty-free access will be granted for bananas in January 2006, for sugar in July 2009 and for rice in September 2009. In the meantime, there will be duty-free tariff quotas for rice and sugar. These quotas will increase annually.

10. In fiscal year 2000, *Japan's* GSP scheme granted preferential duty-free entry on 74 agricultural products (on an HS 4-digit basis) and all manufactured products, except for 27 items listed in a negative list from 162 designated beneficiary countries and territories. About 4.7 per cent of Japan's global imports or about 8.5 per cent of imports from the GSP beneficiary countries and territories received GSP benefits in fiscal year 1999. Japan introduced a process of "partial graduation" in 1998, whereby products of beneficiary countries or territories that were classified as high income economies in the World Bank Atlas in the previous year and whose export products to Japan had strong competitiveness were excluded from the GSP. In April 2000, the Bahamas; Bermuda; Brunei; Cayman Islands; China; Chinese Taipei; Cyprus; Greenland; Guam; Hong Kong, China; Israel; Korea; Kuwait; Macau, China; Netherlands Antilles; New Caledonia; Qatar; Singapore; the United Arab Emirates; and the U.S. Virgin Islands were removed from Japan's list of GSP beneficiaries. This has substantial implications, since China, Korea and Chinese Taipei were the two main GSP beneficiaries in 1999. (WT/TPR/S 73, 28 August 2000)

11. Under *Switzerland and Liechtenstein's* GSP scheme, duty-free access is granted for seafood and manufactured products and for some agricultural products, and reduced tariff rates are granted on certain textile and agricultural products. Imports of certain agricultural products (mainly vegetables and preparations of vegetables, fruit, nuts, coffee, tobacco and other products of plants), and textile and clothing products (mainly items of HS chapters 55-63) from the least-developed countries are also duty-free. In 1998, the GSP utilization rate was 56 per cent and 62 per cent for least-developed countries. Around 45 per cent of total imports to the customs union under the GSP scheme in 1997 and 1998 were accounted for by China and India. (WT/TPR/S77, 6 November 2000)

12. *Canada's* market access regime for developing countries includes the system of tariff preferences granted under its "Generalized Preferential Tariff" (GPT) and CARIBCAN. In May 2000, the GPT was extended to Bosnia and Herzegovina, and to the former Yugoslav Republic of Macedonia. Approximately 2 per cent of total imports enter under GPT treatment, considerably less than the share of imports originating in GPT countries (13 per cent). This is because many Canadian MFN tariffs are duty free, and importers do not therefore need to claim GPT treatment. Although Canada's Least-developed Country Tariff provides duty-free access for close to 90 per cent of all tariff items, access to Canadian markets for some products of main interest to least-developed

countries (e.g. agri-food, textiles, and clothing) remains limited by high tariffs or quotas. In September 2000, Canada implemented an order expanding duty-free access for over 550 additional tariff lines. Refined sugar and out-of-quota agri-food products continue to be excluded, as well as most textiles, clothing, and footwear. (WT/TPR/S78, 15 November 2000)

13. Under the *United States'* GSP scheme, imports from beneficiaries were subject to an average tariff of 4 per cent, 1.5 percentage points below the average MFN tariff rate, in 2000. Labour provisions have been included in all U.S. unilateral trade preference programmes. Under the US GSP, a country may be excluded if it has not taken or is not taking steps to provide internationally recognized worker rights to its workers. For example, all GSP benefits to Belarus were suspended in July 2000 on these grounds.

14. The Trade and Development Act (TDA) of 2000, containing both the African Growth and Opportunity Act (AGOA) and the U.S.–Caribbean Basin Trade Partnership Act (CBTPA), offered improved market access for countries in sub-Saharan Africa and the Caribbean. Thirty-seven sub-Saharan African and 24 Caribbean countries have been designated as beneficiaries under the TDA. The AGOA offers eligible countries duty-free and quota-free U.S. market access for essentially all products through the GSP programme until 30 September 2008, and eliminates the GSP competitive-needs limitation.

15. The Caribbean Basin Initiative (CBI), in effect since 1984, provides eligibility for duty-free access, subject to strict rules of origin, to the U.S. market for a wide range of exports. However, items such as textiles, clothing and footwear, leather goods, canned tuna and petroleum and petroleum products are excluded. Preferences were expanded in 2000 through the United States–Caribbean Basin Trade Partnership Act (CBTPA), which, for a specified period, accorded the same preferential tariff and quota treatment granted to certain textile and apparel articles imported into the U.S. from NAFTA countries subject to several conditions. The Andean Trade Preferences Act (ATPA) was designed as an incentive for countries in the Andean region to move away from narcotics cultivation into other products. As a group, between 1991 and 1999 the four countries included (Bolivia, Colombia, Ecuador, and Peru) increased their exports to the United States by about 97 per cent and the benefits have now been extended to Venezuela.

16. Average tariffs under unilateral U.S. preference schemes tend to be significantly lower than the average MFN rate but still substantially higher than the average under the FTA's that the United States has concluded. Concessions granted under the ATPA and the CBERA result in average applied tariff of 2.7 per cent and 2.6 per cent, respectively. The major exclusions from preferential treatment are classified under the following sections: out-of-quota agri-food products; canned tuna; textile and textiles articles; petroleum; and footwear and headgear. (WT/TPR/S88, 15 August 2001)

17. *The Czech Republic and the Slovak Republic* grant Generalized System of Preferences (GSP) treatment to developing countries. In 2001, 98 developing countries and 48 least-developed countries were eligible for such treatment. Products considered sensitive to domestic production receive no preferences. These products are equivalent to about 56 per cent of all tariff lines, and cover mainly agricultural products, but also certain industrial products, such as mineral products, fertilizers, wood pulp, carpets, most footwear, umbrellas, and iron and steel. Less sensitive products, equivalent to 29 per cent of tariff lines, are dutiable at a preferential tariff of 50 per cent of the MFN rate, while non-sensitive products, equivalent to 15 per cent of tariff lines, enter duty-free. All products imported from least-developed countries are granted duty-free and quota-free access. (WT/TPR/S89, 19 September 2001, and WT/TPR/S91, 24 October 2001)

18. *Two examples of utilization as indicated in recent Trade Policy Reviews:*

19. *Costa Rica* enjoys unilateral concessions granted under the GSP, and the United States' Caribbean Basin Initiative (CBI). Costa Rican exports to the United States under the GSP are more limited than under the CBI. In 1999, only 150 products entered under the GSP. The EU's tariff preferences to Costa Rica under the GSP cover 89 per cent of Costa Rica's tariff range. Between exports to Canada, in the last five years, between 83 and 97 per cent of the total benefited from the Canadian GSP. (WT/TPR/S83, 9 April 2001)

The value of *Pakistan's* exports under the GSP schemes of several countries was US$2.2 billion in 1998/99, with the degree of utilization ranging from 12 per cent to 72 per cent depending on the donor. In October 2001, the EU proposed to Pakistan a package of trade concessions (15 per cent increase in quotas of textiles and clothing, removal of all tariffs on clothing until 2004) estimated at US$1.35 billion to increase its exports of textiles and clothing to this market; in return, Pakistan was to reduce its import duties by 5 per cent on textiles and clothing originating in the EU. (WT/TPR/S95, 21 December 2001)

Provision	Utilisation
1. Notwithstanding the provisions of Article I of the General Agreement, contracting parties may accord differential and more favourable treatment to developing countries,[3] *without according such treatment to other contracting parties.*	
2. The provisions of paragraph 1 apply to the following:[4]	
The "Enabling Clause": 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.[5]	Implementation of this provision has been through GSP schemes as notified to the COMTD. (please see section above on information drawn from WTO trade policy reviews). Document WT/COMTD/W/93 also provides a preliminary analysis of the GSP provisions of the Quad.
The "Enabling Clause": 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	To date, 17 regional arrangements have been notified under the Enabling Clause.

[3] [11]The words "developing countries" as used in this text are to be understood to refer also to developing territories.

[4] 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.

[5] 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."

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	
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, WT/COMTD/W/LDC/17 and WT/LDC/SWG/IF/14 and addenda provide data on market access for the 29 least-developed country members of the WTO.

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

Provision	Utilisation
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, 2 notifications have been submitted under this decision (WT/COMTD/N/12/Rev.1; and double-symbol document G/C/6, WT/LDC/SWG/IF/18).

B. AGREEMENT ON AGRICULTURE

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	Utilisation
Agreement on Agriculture: 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 products as agreed at the Mid-Term Review, and for products of particular importance to the*	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 developing countries as being of particular interest to them.

Provision	Utilisation
diversification of production from the growing of illicit narcotic crops;	
Agreement on Agriculture: 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 all developing and least-developed countries in the establishment of Schedules.
Agreement on Agriculture: 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/Rev.1 (March 2001) show the extent to which Members have actually taken recourse to this exemption from domestic support reduction commitments. In 1998, 16 developing countries notified subsidies benefiting from this exemption, totalling 1 billion US Dollars. This represented, on average, 7 per cent of their total notified domestic support.
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 documents G/AG/NG/S/2 and G/AG/NG/S/12/Rev1. In 1998, total notified support benefiting from the *de minimis* exemption amounted to 3.3 billion US Dollars, or 24 per cent of the total notified domestic support by the 12 developing countries in question.

Provision	Utilisation
Article 9.2(b)(iv) *(Budgetary outlays for export subsidies)* *The Member's budgetary outlays for export subsidies and the quantities benefiting from such 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.*	Developing countries took account of the provision in the establishment of their Schedules. 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. In 1998, four developing countries (Korea, Morocco, Pakistan and Tunisia) notified the use of export subsidies under this provision, totalling 12 million US Dollars. (See document G/AG/S/5/Rev.1 of 19 July 2001)
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,*	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	Utilisation
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 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*	The Schedules of Korea and the Philippines reflect recourse to this provision.

Provision	Utilisation
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 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.	
Agreement on Agriculture: 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 action undertaken within the framework of the Marrakesh Ministerial Decision is to be found in the following section.

C. DECISION ON MEASURES CONCERNING THE POSSIBLE NEGATIVE EFFECTS OF THE REFORM PROGRAMME ON LEAST-DEVELOPED AND NET FOOD-IMPORTING DEVELOPING COUNTRIES[6]

All the provisions of the Decision cover positive actions to be taken by Members with respect to developing country Members, including least-developed countries.

Provision	Utilisation
Decision on Measures Concerning the Possible Negative Effects of the Reform Programme on Least-Developed and Net Food-Importing Developing Countries: 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.*	Preliminary data for 2000/2001, the second year of the Food Aid Convention (FAC) 1999, indicated that FAC donors collectively supplied close to 10 million tonnes (wheat equivalent) to eligible recipients, exceeding significantly the FAC members' combined commitments made under the new convention. (See document G/AG/W/42/Rev.4)
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

[6] The WTO list of net food-importing developing countries as it currently stands is as follows: 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	Utilisation
	as means to improve the effectiveness and positive impact of food aid. Table 6 of document G/AG/W/42/Rev.4 shows that this recommendation is followed by all FAC donors (Argentina, Australia, Canada, EC, Japan, Norway, Switzerland, and the United States).
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.*	Negotiations on a proposed Sector Understanding on Export Credits for Agricultural Products amongst WTO Members which are participants to the OECD Export Credit Arrangement have been ongoing for a number of years. Members involved in these negotiations have informed the Committee that this work has reached an advanced stage, in the form of a proposed text which is acceptable to most, but not all of the participants concerned. This text makes provision for differential treatment in favour of least-developed and net food-importing developing countries. At the same time, work within the WTO on the issue of agricultural export credits, has been progressing in both the regular meetings of the Committee on Agriculture and in the Special Session Negotiations under Article 20 of the Agreement on Agriculture on the basis, *inter alia*, of the proposals that have been tabled and other inputs, including with respect to special and differential treatment in favour of developing countries. At the Doha Ministerial Conference, Ministers reaffirmed the commitment in paragraph 32 above and adopted a general understanding regarding procedures for the development of disciplines pursuant to Article 10.2 and the related provisions of the NFIDC Decision. (See G/AG/11, Part A paragraph 4, G/AG/6 and G/AG/8)
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*	At the annual monitoring exercise regarding implementation of the Decision held by the Committee on Agriculture in November of each year, the IMF has consistently stated that it had sufficient resources and saw no need to establish special Uruguay Round related facilities to address the financing needs of the net food-importers in times of high world market prices for food. The World Bank stated that the impact of the Uruguay Round on food prices was small and that it did not consider it necessary to establish a special UR adjustment facility. (See document G/AG/W/42/Rev.4, p. 14-15)

Provision	Utilisation
International Monetary Fund and the President of the World Bank (MTN.GNG/NG14/W/35).	
Decision on Measures Concerning the Possible Negative Effects of the Reform Programme on Least-Developed and Net Food-Importing Developing Countries: 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.*	No such requests have been made to the WTO Secretariat. The Secretariat has no information whether least-developed and net food-importing developing countries have made such requests to development partners bilaterally. Attachment 6 of document G/AG/W/42/Rev.4 summarizes the financial and technical assistance provided to least-developed and net food importing developing countries since 1995, as notified by donor Members.

D. AGREEMENT ON THE APPLICATION OF SANITARY AND PHYTO-SANITARY MEASURES

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.[7]

Provision	Utilisation
Agreement on the Application of Sanitary and Phyto-Sanitary Measures: 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.*	
Article 10.4 *Members should encourage and facilitate the active participation of developing country Members in the relevant international organisations.*	
Agreement on the Application of Sanitary and Phyto-Sanitary Measures: 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*	

[7] G/SPS/12 refers.

Provision	Utilisation
interest to developing country Members so as to maintain opportunities for their exports.	
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.
Agreement on the Application of Sanitary and Phyto-Sanitary Measures: Technical assistance	
Provision	Comment
Article 9.1 *Members agree to facilitate the provision of technical assistance to other Members, especially developing country Members, either bilaterally or through the appropriate international organizations. Such assistance may be, inter alia, in the areas of processing technologies, research and infrastructure, including in the establishment of national regulatory bodies, and may take the form of advice, credits, donations and grants, including for the purpose of seeking technical expertise, training and equipment to allow such countries to adjust to, and comply with, sanitary or phytosanitary measures necessary to achieve the appropriate level of sanitary or phytosanitary protection in their export markets.*	
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.*	

E. AGREEMENT ON TEXTILES AND CLOTHING

Provision	Utilisation
Agreement on Textiles and Clothing: 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*	Note: the information below is taken from document G/L/459. Utilisation of this provision in stage 1

Provision	Utilisation
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.	The TMB received notifications from Canada, the United States and the European Community on the improvements in access provided to those Members whose exports were subject to restrictions on 31 December 1994 and whose restrictions represented 1.2 per cent or less of the total volume of the importing Members' restrictions on 31 December 1991. The TMB understood that no exporting Member qualified under this provision in the case of Norway. Canada listed 16 Members which qualified for improved access under this provision, of which two were least-developed countries. The provision was also implemented for another Member in accession. The United States listed 22 Members which qualified for improved access under this Article, including one LDC. The European Community notified that two Members qualified for improved access under this Article. Utilisation in stage 2 Canada stated that in respect of the Members which qualified for improved access under Article 2.18, the growth rates for the restrictions in effect on 31 December 1997 would be increased by 27 per cent. The European Community stated that with regard to one beneficiary Member, the two restrictions notified under Article 2, had growth rates of 5 per cent and 7 per cent, which would become 9.21 per cent and 12.89 per cent, respectively, for the second stage of integration. The four restrictions concerning the other beneficiary Member, notified under Article 2, had growth rates of 7 per cent (for three) and 8 per cent (for the remaining restriction), which would become 12.89 per cent and 14.73 per cent, respectively, for the second stage of integration. The United States indicated that the growth rates for the restrictions applied against imports from small suppliers would be increased by 27 per cent for the second stage.

Provision	Utilisation
Agreement on Textiles and Clothing: 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.*	The TMB has received no information as to whether the Members on whom restrictions were introduced, under Article 6, actually fell within the definition in Article 6.6(b), and whether, consequently, the provisions of Article 6.6(b) had been taken into account. It would appear, however, that during Stage 2 (i.e. 1998-2001) the measures taken under Article 6 did not seem to affect the Members defined in Article 6.6(b).
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 was taken under Article 6 during Stage 2, as had been the case during Stage 1, affecting exports of wool products. This provision has, therefore, not been applied.
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 with respect to the identified products in this provision has been taken.
Agreement on Textiles and Clothing: 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*	Since no safeguard action has been taken by any Member on imports from any least-developed country Member during the period under review, this paragraph, therefore, has not applied.

Provision	Utilisation
textiles and clothing trade.	
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 least-developed country under this provision.

F. THE AGREEMENT ON TECHNICAL BARRIERS TO TRADE

Provision	Utilisation
The Agreement on Technical Barriers to Trade: 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*	
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*	

Provision	Utilisation
procedures do not create unnecessary obstacles to exports from developing country Members.	
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.*	
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.*	
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.*	

Provision	Comment
The Agreement on Technical Barriers to Trade:	**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.*	

Provision	Comment
The Agreement on Technical Barriers to Trade:	**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 obligations under this Agreement. The Committee shall, in particular, take into account the special problems of the least-developed country Members.*	No request for a time-limited exemption has been made under this Article.
The Agreement on Technical Barriers to Trade:	**Technical assistance**
Article 11:1 *Members shall, if requested, advise other Members, especially the developing country Members, on the preparation of technical regulations.*	In relation to Technical Assistance for TBT in general, the WTO Secretariat has compiled submissions made by Members since the beginning of 2001 (See Job(01)/128). Information is provided on the technical assistance needs and priorities identified by the 14 developing country Members, one of which is a least-developed country, that have submitted information. Information is also provided on the programmes and/or approaches to technical assistance of three donors, one of which is a developing country Member, based on their submissions.
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.*	

Provision	Comment
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.*	
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.*	
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.)*	

Provision	Comment
The Agreement on Technical Barriers to Trade: 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.*	

G. AGREEMENT ON TRADE-RELATED INVESTMENT MEASURES

General Comments

All special and differential treatment provisions under the TRIMs agreement relate to actions developing countries may take as a result of time-bound exemptions.

Provision	Utilisation
Agreement on Trade-related Investment Measures: 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 had taken; some other Members questioned this justification. (G/TRIMS/M/9, paragraphs 30-37 and G/TRIMS/M/10 paragraphs 16-22).
Agreement on Trade-related Investment Measures: 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 that made notifications, the Article 5.2 transition period for elimination of the TRIMs expired on 1 January 2000. For least-developed country Members, it expired on 1 January 2002.

Provision	Utilisation
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.*	10 developing country Members requested extensions of the transition period pursuant to Article 5.3. One subsequently informed the Council for Trade in Goods (CTG) of its intention to eliminate the measures in question, and no further action was taken with respect to its request for an extension. On 31 July 2001, eight developing country Members were granted extensions of the transition period to eliminate TRIMs to the end-2001, with the possibility of having further extensions to no later than end-2003. The extensions were provided through decisions of the Council for Trade in Goods under Article 5.3 in seven of the eight cases. (See G/L/460-466), and in the other case through a waiver under Article IX of the WTO Agreement. (See WT/L/410) On 5 November 2001, the CTG approved further extensions of the transition periods for these eight Members (G/L/497-504 and WT/L/441). Consultations are continuing on other requests for extensions of the transition period.
Agreement on Trade-related Investment Measures: 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

Provision	Utilisation
Agreement on Implementation of Article VI (Anti-dumping) of the GATT 1994: 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.*	No information exists with respect to the extent to which this provision has been implemented, however: • The Panel in *European Communities – Anti-Dumping Duties on Imports of Cotton-Type Bed Linen from India* was requested to rule whether the European Communities had complied with Article 15 of the AD Agreement. (WT/DS/141R) • The Panel ruled that, in the particular factual circumstances of the dispute, the EC had failed to act consistently with its obligations under Article 15.

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

General Comments

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.

Proposals made by some developing countries on the subjects of information exchange, cost of services, and Article 7 residual method were referred to the Customs Valuation Committee on 18 October 2000. On 31 July 2001, the Chairman of the General Council requested the Chair of the Committee on Customs Valuation to hold consultations on the basis of the report contained in document G/VAL/36 with the aim of suggesting to the Chairman of the General Council an appropriate course of action by 15 September.

Provision	Utilisation
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: 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.
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: 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 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."*	52 developing country Members, of which 13 least-developed country members, have invoked this paragraph. (See G/VAL/W/89)

Provision	Utilisation
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.*	50 developing country Members, of which 11 are least-developed country Members, have invoked this paragraph. (See G/VAL/W/89)
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: 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 was invoked by 56 developing countries (of which 12 least-developed countries). For 29 of these Members the provision expired on 1 January 2000, while for the other 27, the provision expired during the year up to July 2001. The General Council Decision of 15 December 2000 stated that: "Noting that the process of examination and approval, in the Customs Valuation Committee, of individual requests from Members for extension of the five-year delay period in Article 20.1 is proceeding well, the General Council encourages the Committee to continue this work." (WT/L/384)
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 46 developing countries of which 11 are least-developed countries.
Annex III.1 *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*	A total of 22 Members have requested extensions under this provision, eighteen of which have been granted and one Member requested a second extension. The duration of extensions granted range from six months to two years.

Provision	Utilisation
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.	
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.)*	13 Decisions containing the terms and conditions under which Members may continue to use minimum values while applying the Agreement have been adopted either by the Committee or by the General Council as Article IX waivers.
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: 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, although it was noted that activities might not 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. (G/VAL/M/12; G/VAL/W/36; G/VAL/W/37 and Add.1; G/VAL/W/48; and G/VAL/W/49). One developing country Member also drew attention to the technical cooperation activities it had carried out. (G/VAL/M/14). 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 of priorities and identification of specific problem areas; the need to improve coherence between the relevant donors. (G/VAL/W/71) In July 2001,

Provision	Utilisation
	the Committee adopted a Work Programme to reinvigorate its technical assistance activities. (G/VAL/W/82/Rev.1). Finally, upon completion of the Market Access Division Technical Assistance Programme for Customs Valuation, 47 missions were carried out from mid 1998 through 2001.

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	Utilisation
Decision on texts relating to minimum values and imports by sole agents, sole distributors and sole concessionaires: Provisions under which WTO Members should safeguard the interests of developing country Members	
Text I *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 the section on Annex III.2 of the document.
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 accordance with the provisions of Annex II, to formulate and conduct studies in areas identified*	

Provision	Utilisation
as being of potential concern, including those relating to importations by sole agents, sole distributors and sole concessionaires.	

K. AGREEMENT ON IMPORT LICENSING PROCEDURES

Provision	Utilisation
Agreement on Import Licensing Procedures: 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. (See WT/DS169/R for example)
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.*	
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*	This matter has not been raised in the Committee on Import Licensing. However, this provision has been invoked in dispute settlement cases.

Provision	Utilisation
consideration should be given to those importers importing products originating in developing country Members and, in particular, the leas-developed country Members.	
Agreement on Import Licensing Procedures: 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.*	24 developing country Members have 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

Provision	Utilisation
Agreement on Subsidies and Countervailing Measures: 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*	
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.
Agreement on Subsidies and Countervailing Measures: 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.*	

Provision	Utilisation
(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, Côte d'Ivoire, Dominican Republic, Egypt, Ghana, Guatemala, Guyana, India, Indonesia, Kenya, Morocco, Nicaragua, Nigeria, Pakistan, Philippines, Senegal, Sri Lanka and Zimbabwe	
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) 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 Article 27.4." (See WT/DS46/R and WT/DS46/AB/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

Provision	Utilisation
	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.]
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*	Six of the countervailing duty legislative notifications submitted to the Committee include provisions relating to such favourable treatment. Additionally, 27 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	Utilisation
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).*	
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)
Agreement on Subsidies and Countervailing Measures: 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.*	This provision has been invoked in the dispute settlement context. (WT/DS/46/R) (See comment on Article 27.4 in the following section)
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. (See 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*	At the Fourth Ministerial Conference, in Doha, Ministers agreed on procedures for requests that were made under SCM Article 27.4 for extension of the transition period for export subsidies. The list of the requests for extensions pursuant to Article 27.4, including requests made on the basis of the procedures in G/SCM/39, are identified in G/SCM/40/Rev.1 and Corr.1.