

Reference:

5 May 2003

To: Heads of Delegations

Dear Colleague,

As you will recall, I circulated on 7 April 2003 the attached document (JOB(03)68) in which, following consultations with Members, I had outlined my proposed approach for addressing the Agreement-specific proposals on special and differential treatment provisions.

As indicated therein I have subdivided these proposals into three distinct categories. This informal categorization is intended to facilitate the consideration of these proposals and does not imply a prioritization of the various proposals that have been made. Starting from next week I intend to hold informal consultations on the basis of this categorization. I would also like to inform you that, as suggested by some Members, a small group of Ambassadors will be helping me, as 'Friends of the Chair', in taking this process forward.

Yours sincerely,

Carlos Pérez del Castillo
Chairman, General Council

**GENERAL COUNCIL CHAIRMAN'S PROPOSAL ON AN APPROACH FOR
SPECIAL & DIFFERENTIAL TREATMENT**

As agreed by the General Council at its meeting on 10 February 2003, I have begun consultations, in coordination with the Chairman of the Committee on Trade and Development in Special Session, on how to take forward the review of all special and differential treatment provisions, with a view to strengthening them and making them more precise, effective and operational.

Members will recall that the Special Session of the Committee on Trade and Development has held a very large number of formal and informal meetings since January 2002 in an endeavour to address the various issues and proposals that Members have raised in this regard. In spite of the considerable time that has been spent in trying to come to agreements on these proposals, very little progress has been achieved, which has led to a growing sense of frustration among Members. While a number of reasons have been advocated for this state of affairs, no one would deny that, as part of the development dimension of the Doha Development Agenda, further efforts are required to ensure positive results on the work programme on S&D treatment.

There is a need to move forward and reverse the current situation. For these purposes it is necessary to look at these issues from a fresh perspective.

In the informal consultations I have held with Members in pursuance of the mandate given to me by the General Council, I have explored various ideas about a possible new approach. Some of the ideas are not necessarily new or original, but having weighed the pros and cons of different options, they provide, in my judgement, the best way to enable us to move forward.

The approach that I have outlined below is based on two fundamental premises.

First: In order to be successful, we need a prior understanding that all the S&D proposals that have been submitted by Members will be addressed. In other words, they all remain on the table and need to be considered by the membership. An essential point of this approach is that this consideration will be carried out without prejudging the results.

Second: In order to move forward and to address the large number of issues in an efficient manner, we need to come up with an informal categorization of the 88 Agreement-specific proposals submitted by Members. Such a categorization does not imply that certain proposals are being prioritized, since they will all be addressed by the membership.

Based on those two premises, I propose to divide the proposals into the following three broad categories:

Category I

Proposals on which, based on the discussions so far and the responses given by Members, there appears to be a greater likelihood of reaching agreement. This category will include the 12 Agreement-specific proposals which were already agreed in principle by Members in February 2003, and set out in Annex III of document TN/CTD/7. It will also include some other proposals considered in the recent past on which the responses given by Members, while by no means identical, encourage me to think that given some further work and flexibility, a positive outcome is possible. This category will, in addition, incorporate some other proposals which have not been the subject of in-depth discussion so far, but which have a developmental value that in my judgement makes it necessary that we try to address them and make progress, whether in their current form or otherwise. There would be around 35 proposals in this category.

In fulfilling the Ministerial mandate on S&D treatment, Members will undertake to engage substantially on these issues and, without prejudice to the outcome of the discussions thereon, would be willing to consider changes in the existing balance of rights and obligations and/or possible

amendments to existing texts of WTO agreements and decisions. The outcome of the process on this category of proposals should be considered as the possible result to be recommended for adoption at Cancun.

Category II

Proposals which have been made in areas that are currently under negotiation as part of the Doha Development Agenda, or being otherwise considered in other WTO bodies, and which, in my judgement, are likely to get a better response within the framework of the negotiations or at the technical level. These proposals relate to areas which have been specifically mandated for negotiations such as Agriculture, Services, DSU, Rules etc. and would also include proposals the operative part of which is being actively considered in other technical bodies. There would be around 40 proposals in this category.

In asking the concerned bodies to address these proposals, the General Council would instruct that these proposals be considered as soon as possible as part of the ongoing work and that these bodies report to the last meeting of the General Council before the Cancun Ministerial Conference, on their status and the progress made in this regard. These bodies will also be instructed that where Members are in a position to make recommendations, this shall be done without prejudice to the date of completing the negotiations, and that these recommendations can be subject to an early harvest.

Category III

Proposals on which we currently have wide divergences of views among Members, which have prevented any progress so far. In order to preserve the concepts rather than the form in which some of these proposals have been presented, a certain degree of redrafting of the original texts may be necessary for a more positive outcome. There would be around 15 proposals in this category.

Following on from the broad approach I have outlined above, it is my intention to circulate shortly a list of the Agreement-specific proposals divided into the three categories. I will then begin consultations on categories I and III with Members on this basis at the level of Permanent Representatives. It is understood that the process as a whole remains under the overall authority of the General Council.

AGREEMENT-SPECIFIC S&D PROPOSALS

(divided into three categories)

CATEGORY I (38)

(Proposals contained in Annex III of TN/CTD/7, on which Members have agreed in principle and proposals on which there appears to be a greater likelihood of making recommendations)

Proposals contained in Annex III of TN/CTD/7, which Members have agreed upon in principle and are not for discussion (12)

1) GATS - Article IV.3¹

"The General Council agrees that the information to be provided by Members shall indicate how the requirement that special priority be given to least-developed country Members in the implementation of paragraphs 1 and 2 of Article IV is being met, and that contact points, in this context, shall provide information of particular interest to services suppliers from least-developed country Members."

2) GATS – Article XXV

"The General Council instructs the WTO Secretariat to pursue with a view to concluding arrangements with relevant international institutions that have the technical assistance capacity to assist developing and least-developed country Members in addressing their supply-side and infrastructural constraints and their development needs in the services sector. This shall be without prejudice to the prerogative of the Council for Trade in Services to decide upon technical assistance to developing countries which shall be provided at the multilateral level by the Secretariat, in accordance with Article XXV.2."

¹ The proposal was originally made under Article IV.2.

3) Agreement on Trade-Related Aspects of Intellectual Property Rights – Article 67

"The General Council agrees that technical and financial cooperation, in accordance with Article 67, shall be provided on request and on mutually agreed terms and conditions, with due consideration given to comprehensive programmes comprising such components as improving the relevant legal framework in line with the general obligations of the Agreement, enhancing enforcement mechanisms, increasing training of personnel at the various levels, assisting in the preparation of laws and procedures in an effort to encourage and monitor technology transfer, making use of the rights and policy flexibility in the Agreement, and strengthening or establishing coordination between intellectual property rights, investment and competition authorities.

The General Council instructs the Council for Trade-Related Aspects of Intellectual Property Rights to annually review the state of implementation of the Agreement between the World Intellectual Property Organization and the World Trade Organisation, taking into account opportunities for technical assistance as provided for in the Agreement."

4) Enabling Clause (Decision on Differential and More Favourable Treatment, Reciprocity and Fuller Participation of Developing Countries)

"The General Council confirms that the terms and conditions of the Enabling Clause shall apply when action is taken by Members under the provisions of this Clause."

5) GATS – Article IV²

"Pursuant to Article IV.3 of the GATS, in all services negotiations, whether broad-based rounds of negotiations or separate negotiations on specific sectors, modalities shall be developed in order to allow the priorities of least-developed country Members to be presented and duly taken into account."

6) GATS, Annex on Telecommunications – Paragraph 6

"The General Council instructs the Council for Trade in Services to put in place arrangements for prompt notification of any measures taken with regard to the implementation of subparagraphs (a) to (d) of paragraph 6 of the Annex on Telecommunications."

² The proposal was originally made under Article IV.1.

7) Rules Relating to Notification Procedures

"Recognizing the practical difficulties faced by least-developed country Members in abiding fully by their notification obligations, the General Council instructs the Sub-Committee on Least-Developed Countries to examine possible improvements to the notification procedures for least-developed country Members, taking into account the experience regarding Secretariat produced reports that helped fulfil some of these requirements. In conducting its examination, the Sub-Committee shall seek the input of relevant WTO bodies, which may be in a position to advise on practical means for improving the notification procedures in relation to least-developed country Members, for example the possibility of longer timeframes, specified exemptions and simplified procedures for notifications, and cross-notifications. The Committee on Trade and Development shall forward the Sub-Committee's report to the General Council by 31 December 2003 for appropriate action."

8) Understanding on Rules and Procedures Governing the Settlement of Disputes – Article 8.10

"Pursuant to Article 8.10 of the DSU, the General Council agrees that in disputes between a developing country Member and a developed country Member, at least one panellist shall be from a developing country Member, unless the developing country Member party to the dispute waives this right."

9) Agreement on Rules of Origin

"In regard to preferential rules of origin under the Common Declaration in Annex II to the Agreement, the General Council agrees that in their arrangements for mutual reduction or elimination of tariff or non-tariff barriers, developing and least-developed country Members shall have the right to adopt preferential rules of origin designed to achieve trade policy objectives relating to their rapid economic development, particularly through generating regional trade.

Furthermore, the General Council instructs the Director-General to take action to facilitate the increased participation of developing and least-developed country Members in the activities of the Technical Committee on Rules of Origin of the World Customs Organisation as well as to coordinate with this organization in identifying technical and financial assistance needs of developing and least-developed country Members, and report to the Committee on Rules of Origin and the Council for Trade in Goods periodically, and the General Council as appropriate."

10) Decision on Measures in Favour of Least-Developed Countries – Paragraph 2 (v)

"The General Council agrees that the WTO through its participation in the Integrated Framework and JITAP [and other relevant institutions] will work to ensure that supply-side constraints of the LDCs are identified in the Diagnostic Trade Integration Studies (DTIS) and are addressed in the implementation and follow-up taking into account the specific circumstances of each beneficiary country. The General Council also instructs the Sub-Committee of the LDCs to undertake a biennial review of the implementation of the DTIS and to monitor the possible impact of assistance that is targeted towards the diversification of exports from LDCs, including through comparing the composition and concentration of LDCs' export structures over time and across LDCs and through the establishment of other relevant indicators."

11) Agreement on Agriculture – Article 15.2

"The General Council confirms that least-developed country Members remain exempt from reduction commitments, as provided in Article 15.2, unless decided otherwise by consensus."

12) Understanding on Balance-of-Payments Provisions of the GATT 1994 – Paragraph 8

"The General Council mandates the Committee on Balance-of-Payments Restrictions to examine ways and means of simplifying the administrative requirements within the full consultation procedures."

Proposals on which there appears to be a greater likelihood of making recommendations (26)³

GATT 1994 - Article XVIII

13) Proposal by the African Group - TN/CTD/W/3/Rev.2

"It is understood that the provisions of this Article aim to promote the rapid development of domestic industries and the needed adjustments where domestic industries experience difficulties in developing and least developed country Members. Therefore, this Article shall be implemented, interpreted and applied by Members and in all the WTO processes in a manner that fully supports the attainment of these goals. In particular, developing and least-developed country Members shall not be subjected to cumbersome requirements or conditions, or to any requirements and conditions that would undermine the attainment of these goals. In determining whether any requirements or conditions are cumbersome, the views of the developing and least-developed country Members concerned shall be fully accommodated and shall not be prejudiced or rejected except with the consensus of all Members.

It is further understood that Members will consider at the 5th Session of the Ministerial Conference the elaboration of a multilateral framework on the provisions of Article XVIII and Part IV of GATT 1994."

GATT 1994 - Article XVIII:A

14) Proposal by the African Group - TN/CTD/W/3/Rev.2

"It is understood that where developing or least-developed country Members wish to modify or withdraw concessions under Article XVIII:7, they shall not be required to offer or make compensatory adjustments that are inconsistent with their development needs or would unreasonably strain their resources. In particular, they shall not be required under paragraph 7(a) to make or offer unreasonable compensatory adjustments, and compensatory adjustment shall be adequate within the meaning of paragraph 7(b) where the developing and least-developed country Members modifying or withdrawing the concession offer to adopt measures that allow a period of 3 months for exporters based in the Members affected to undertake necessary adjustments."

³ This section contains the original proposal and, when new language was considered during consultations, the last language discussed (in italics).

GATT 1994 - Article XVIII:B

15) Proposal by the African Group - TN/CTD/W/3/Rev.2

"It is understood that short term financial flows shall not be included in determining the external reserves or surpluses of Members and financial instability shall be duly taken into account as a problem to be addressed over a reasonable period of time when measures under Article XVIII: B shall be maintained. The reasonable period of time shall not be less than 3 years, taking into account differences in industry types."

GATT 1994 - Article XVIII:C (2 proposals)

16) Proposal by St. Lucia - TN/CTD/W/8

"The following proposals are advanced as a means towards enhancing the effectiveness of Article XVIII: Section C of GATT 1994 as a trade policy instrument which would address, *inter alia*, the needs of small and vulnerable developing country Members:

- Basic guidelines setting out the procedures for recourse to Article XVIII: Section C should be elaborated. The guidelines would assist in clarifying certain procedural ambiguities in the text.
- The condition limiting Article XVIII: Section C to circumstances involving "infant industries" should be interpreted broadly to facilitate the implementation of sustainable economic development programmes in small and vulnerable developing country Members, including circumstances where established industries are threatened by an absolute or relative increase in imports. Additionally, there should be clear reaffirmation that the duration and review of the measure must be tied to achievement of the objectives for which the measure was imposed as opposed to any arbitrary absolute number of years.
- The right to compensation and/or retaliation should be waived for an initial period of application given the limited ability of small and vulnerable developing country Members to provide compensatory concessions and the limited impact which restrictions would have on global trade.⁴ It is worth noting that there is a lack of symmetry regarding the application of trade remedies. Generally, the unilateral response of a larger nation against a smaller nation carries markedly more impact than the reverse.
- Article XVIII: Section C should be affirmed as a new distinct special and differential (S&D) trade policy instrument for, *inter alia*, small and vulnerable developing country Members with limited administrative capacities; and not merely a measure of last recourse.⁵ Small and vulnerable developing country Members require effective trade policy instruments – considered vital for successful liberalization – to promote sustainable economic growth and development.

⁴ Note that the Agreement on Safeguards waives the right of compensation within the first three years provided that the safeguard measure imposed has been the result of an absolute rather than a relative increase in imports and that such a measure conforms to the provisions of the Agreement; See Agreement on Safeguards, Article 8.3. This grace period does not extend to measures taken under Article XVIII of the GATT 1994; See Article XVIII.7, 12 & 21 of the GATT 1994.

⁵ The condition stated in paragraph 13 of Article XVIII, permitting recourse to Section C only where "no measure consistent with the other provisions of this Agreement is practicable", appears particularly restrictive; arguably, suggesting that this provision is a measure of last recourse."

17) Proposal by the LDCs - TN/CTD/W/4/Add.1

"Members shall exercise restraint in seeking compensation from least-developed countries when they need to modify or withdraw a tariff concession.

In order to facilitate adoption by developing countries, particularly by least-developed countries, of such measures in appropriate cases, it would be necessary to examine how the existing procedures prescribed by Article XVIII:C, for granting of approval are modified and improved. One possible approach would be to make the rules applicable to safeguard actions taken for "development purposes" under Article XVIII:C comparable to those applicable under the Agreement on Safeguards, to safeguard actions taken "in emergency situations". In the latter case, countries can take actions involving increase in the bound rates of duties or imposition of the quantitative restrictions, if the conditions laid down by the Agreement on Safeguards are met. There is no need to seek prior approval of WTO, except in cases where the safeguard action takes the form of application of quantitative restrictions to imports on a selective country basis.

The improvements in the rules governing the use of safeguard measures for development purposes on the above basis would, by assuring countries that they could when needed, provide increased protection across sectors on a selective basis for the attainment of development objectives, also enhance their willingness to continue with the overall liberalization process."

LAST LANGUAGE CONSIDERED:

"The General Council agrees that Members shall exercise restraint in suspending concessions or other obligations under Article XVIII:C in respect of least-developed country Members [and Members the economies of which can only support low standards of living and are in the early stages of development]."

The General Council instructs the Council on Trade in Goods, in consultations with the CTD, to elaborate guidelines on procedures for recourse to Article XVIII:C."

GATT 1994 - Article XXXVI

18) Proposal by the African Group - TN/CTD/W/3/Rev.2

"The phrase "shall be a matter of conscious and purposeful effort" in paragraph 9 used in relation to paragraphs 2 to 7 of Article XXXVI, and read together with paragraph 8 of Article XXXVI, shall be understood to mean that the provisions of paragraphs 2 to 7 are binding commitments on the part of developed country Members in favour of developing and least-developed country Members to,

- (a) ensure a rapid and sustained expansion of export earnings of the developing and least-developed country Members;
- (b) ensure that developing and least developed country Members secure a share in the growth in international trade commensurate with the needs of their economic development;
- (c) provide the maximum market access to products of export interest to developing and least-developed country Members and take measures to stabilise and improve conditions in world markets for these products particularly measures to attain stable, equitable and remunerative prices;
- (d) assist in the diversification of the economies of developing and least-developed country Members; and
- (f) ensure coherence in global economic policymaking and implementation in a manner that ensures that gains and opportunities in the multilateral trading system are supported and not undermined by programmes implemented by international lending agencies and vice versa;
- (g) It is further understood that this Decision shall be without prejudice to the acquis under any preferential regime governing the exports of developing and least-developed country Members by developed country Members.

Accordingly, implementation of the provisions of Article XXXVI shall be subject to reviews twice in every 12 months, in the Committee on Trade and Development. In the reviews, objective criteria shall be used to determine whether the implementation is meaningfully attaining the objectives set out in the provisions, in light of specific targets set by the Committee on Trade and Development."

LAST LANGUAGE CONSIDERED:

"The General Council agrees that the CTD shall annually review the implementation of Article XXXVI of GATT 1994, and report to the General Council with appropriate recommendations."

GATT 1994 - Article XXXVII

19) Proposal by the African Group - TN/CTD/W/3/Rev.2

"Paragraphs 1 and 3 of Article XXXVII provide for binding obligations and it is understood that the commitments set out shall be fully implemented and where it is felt that this would not be possible, leave shall be sought in the General Council by the concerned developed country Members on the basis of consultations on specific grounds advanced."

LAST LANGUAGE CONSIDERED:

"The General Council agrees that any Member may initiate discussions in the Committee on Trade and Development on the basis of Article XXXVII and decides that a Member shall, upon request, provide a detailed explanation to matters raised in regard to the provisions under paragraph 1, with a view to reaching a solution that is satisfactory to all Members concerned."

GATT 1994 - Article XXXVIII

20) Proposal by the African Group - TN/CTD/W/3/Rev.2

- "(a) It is understood, under Article XXXVIII of GATT 1994, that the WTO shall arrange with the United Nations and its agencies, and with all international and regional organisations that have observer status in WTO bodies, to annually provide studies and reports pertaining to elements indicated in Article XXXVIII to the Committee on Trade and Development, which shall deliberate on them and report with recommendations to the General Council.
- (b) The studies and reports, and the recommendations to the General Council shall provide guidelines on, development indicators and goals, desirable rates of growth in actual market access levels for products of export interest to developing and least-developed country Members, targets to be achieved over the short and medium terms, measures to be taken in the WTO framework and by other international organisations as well as the assistance required by developing and least-developed country Members to ensure the achievement of goals and targets, and deal with any relevant matters."

LAST LANGUAGE CONSIDERED:

"The General Council instructs the Director-General to pursue and conclude cooperation arrangements as may be necessary to further the objectives set forth in Article XXXVI of the GATT 1994. The General Council further instructs the Committee on Trade and Development to receive studies and reports from relevant international agencies and organizations that may assist Members in analyzing the development plans and policies of individual developing and least-developed country Members, export potential and market prospects over the short and medium terms, measures that could be taken in the WTO framework and by other international agencies and organizations as well as the assistance required by developing and least-developed country Members to help achieve their respective development goals."

Understanding on the Interpretation of Article XVII of the GATT 1994

21) Proposal by the African Group - TN/CTD/W/3/Rev.2

"Members agree that state trading enterprises may have a significant role to play in protecting public policy in developing and least-developed country Members."

Understanding in Respect of Waivers of Obligations under the GATT 1994 (2 proposals)

22) Proposal by the African Group - TN/CTD/W/3/Rev.2

"It is understood that waiver of obligations in accordance with Article IX of the WTO Agreement shall be for the benefit of, Members seeking the waiver, or those that the waiver is sought for. Other Members shall not prejudice the benefits under waivers sought in favour of developing or least-developed country Members."

23) Proposal by the LDCs - TN/CTD/W/4/Add.1

"The Understanding in Respect of Waivers of Obligations under the GATT 1994 should be clarified to provide that request for waivers from least-developed countries of their obligation under the GATT 1994 and other multilateral agreements shall be considered sympathetically and waivers granted expeditiously."

LAST LANGUAGE CONSIDERED:

"The General Council agrees that [duly motivated] requests for waivers under Article IX of the WTO Agreement by developing and in particular least-developed country Members shall be given sympathetic, [favourable] and expeditious consideration."

Agreement on the Application of Sanitary and Phytosanitary Measures - Article 10.3 (2 proposals)

24) Proposal by Cuba, Dominican Republic, Egypt, Honduras, India, Indonesia, Kenya, Mauritius, Pakistan, Sri Lanka, Tanzania and Zimbabwe - TN/CTD/W/2

"For effective operationalisation of Article 10.3, it is suggested that the words "is enabled to" be amended to "shall". This will make the provision more effective. If this suggestion is accepted, the amended provision would read as follows:

With a view to ensuring that developing country Members are able to comply with the provisions of this Agreement, the Committee shall grant to such countries, upon request, specified, time-limited exceptions in whole or in part from obligations under this Agreement, taking into account their financial, trade and development needs."

25) Proposal by the African Group - TN/CTD/W/3/Rev.2

"The phrase "the Committee is enabled to grant such countries" shall be understood to mean that the Committee shall grant such countries, and the phrase "specified, time-limited exceptions" shall be understood to refer to periods of not less than 3 years notwithstanding any provision in any WTO Agreements and in any case such periods such be adequate for developing and least-developed country Members to undertake any adjustments necessary for them to comply with the provisions of the Agreement. The phrase "taking into account their financial, trade and development needs" shall mean that the periods shall objectively relate to the time and resources necessary for developing and least-developed country Members to undertake necessary adjustments to comply with the provisions of the Agreement."

Agreement on Preshipment Inspection – Article 3.3

26) Proposal by the African Group - TN/CTD/W/3/Rev.2

"Technical assistance for purposes of the Agreement shall address the concerns of developing and least-developed country Members or user Members relating among others to:

- (i) training customs and revenue officials to ensure that the objectives of preshipment inspection are achieved; particularly those relating to prevention of false declaration, wrong classification, and any fraud;
- (ii) ensuring that it is duly inspected consignments that are shipped to user Members; and
- (iii) regulation of preshipment entities.

In this regard, and in the context of the Agreement on Customs Valuation and of the Decision Regarding Cases Where Customs Administrations Have Reasons To Doubt The Truth Or Accuracy Of The Declared Value, it is agreed that customs authorities of Members shall closely co-operate with a view to fully assisting user Members achieve the objectives of the Agreement on Preshipment Inspection."

LAST LANGUAGE CONSIDERED:

"The General Council agrees that technical assistance for purposes of the Agreement shall address the concerns of developing and least-developed country Members relating among others to:

- (i) training customs and revenue officials [to ensure that the objectives of preshipment inspection are achieved; particularly those relating to prevention of false declaration, wrong classification, and any fraud] [to be able to take over the activities temporarily being carried out by the PSI entities as early as possible];*
- (ii) ensuring that [it is duly inspected consignments that are shipped to user Members] [PSI programmes are carried out without giving rise to unnecessary delays or unequal treatment and that PSI contracts provide for training and transfer of technical know-how wherever possible];*
- (iii) regulation of preshipment entities.*

The General Council further agrees, in the context of the Agreement on Customs Valuation and of the Decision Regarding Cases Where Customs Administrations Have Reasons to Doubt the Truth of Accuracy of the Declared Value, that customs authorities of Members shall closely co-operate with a view to fully assisting user Members to achieve the objectives of the Agreement on Preshipment Inspection."

Agreement on Import Licensing Procedures – Article 1.2

27) Proposal by the African Group - TN/CTD/W/3/Rev.2

"It is understood that the requirement to take into account the "development purposes and trade needs of developing country Members" in Article 1.2 of the Agreement means that import licensing regimes shall be designed in a manner that prevents adverse effects to the trade of developing country Members. In this regard, the regimes shall specifically be expeditious in relation to the trade of developing country Members."

Agreement on Import Licensing Procedures – Article 3.5 (3 proposals)

28) Proposal by the African Group - TN/CTD/W/3/Rev.2

- "(a) The last sentence of subparagraph (a)(iv) of Article 3.5 stating that "developing country Members would not be expected to take additional administrative or financial burdens on this account" shall be construed to mean that developing country Members shall not be required to take any measures additional to existing measures.
- (b) The word "should" in subparagraph (j) of Article 3.5 shall be replaced with "shall" wherever it appears, and the provision shall be construed to require that priority in licence allocation shall be accorded to importers from developing and least-developed country Members."

29) Proposal by Thailand (Article 3.5 (a)(iv)) - TN/CTD/W/7

"The proposal is that the word 'would' be replaced by 'shall', so that the sentence reads 'Developing country Members shall not be expected to take additional administrative or financial burdens on this account.' "

30) Proposal by India (Article 3.5 (j)) - TN/CTD/W/6

"There is need for making this Special and Differential (S&D) provision mandatory to enable the products originating from developing countries to benefit from this provision. This could be done either through an authoritative interpretation or by replacing the word "should" in the last sentence by "shall". In the context of Article 3.5 (j) of the Agreement on Import Licensing Procedures, making the last section

mandatory, would help developing countries, especially the least-developed ones, to increase their share in exports of products of export interest to them, as envisaged in the preamble to the Marrakesh Agreement."

LAST LANGUAGE CONSIDERED:

"With respect to Article 3.5(a)(iv), the General Council agrees that it shall be understood that developing country Members are not required to provide import statistics (i.e. value and/or volume) with respect to the products subject to import licensing, where this is not practicable, and, even where it is practicable, would not be expected to do so, if this results in additional administrative or financial burdens to them.

With respect to Article 3.5(j), it shall be understood that in allocating licenses a Member shall take fully into account all the elements contained in the subparagraph. In this context, and so as to improve benefits to developing and in particular least-developed country Members, Members are obliged to adhere to the provision in the final sentence regarding special consideration."

ON 6 FEBRUARY 2003 THE FOLLOWING TEXT WAS DISTRIBUTED BUT NOT DISCUSSED:

"The General Council agrees that for purposes of subparagraph (a)(iv) of Article 3.5, developing country Members shall not be required to provide import statistics with respect to products subject to import licensing unless they can do so within the current administrative and financial means [, which they shall themselves determine].

The General Council further agrees that:

(a) the word "should" in subparagraph (j) of Article 3.5 shall be replaced with the word "shall" wherever it appears, on the understanding that this does not change the nature of the legal obligations in this provision; and

(b) priority in licence allocation shall be accorded to importers from developing and LDC Members."

Agreement on Trade-Related Aspects of Intellectual Property Rights - Articles 7, 8 and 66.2

31) Proposal by the African Group - TN/CTD/W/3/Rev.2

"(a) It is agreed that in implementing Article 66.2:

- (i) developed country Members shall give incentives to enterprises and institutions in their territories through their laws or other administrative instruments;
- (ii) the incentives shall be of a magnitude and nature that will effectively operate as motivation to transfer technology to least-developed country Members taking into account the actual conditions in the least-developed country Members and the difficulties expressed by the enterprises and institutions; and

(b) The incentives shall take any appropriate forms provided that the forms shall effectively operate as incentives to motivate the enterprises and institutions to transfer technology to least-developed country Members.

(c) Developed country Members shall report on their implementation of Articles 7, 8, and 66.2 of the Agreement, according to a reporting schedule to be regularly drawn up by the TRIPS Council. The reports shall be evaluated in the TRIPS Council to establish whether or not the implementation is achieving the objectives of building sound technological bases in developing and least-developed country Members

(d) "Technology" for purposes of the Agreement shall include equipment, knowledge and skills including their tacit forms and trade secrets, practical and theoretical training, and insights into the history and global context of innovations and processes relating to particular technologies.

(e) Accordingly, it is understood that co-operation arrangements between enterprises and institutions of developed country Members on the one hand and research and other learning institutions in developing and least developed country Members on the other, shall be essential components of implementing the Agreement. The reporting shall indicate implementation in terms also of arrangements with the research and learning institutions."

Decision on Measures in Favour of Least-Developed Countries – Paragraph 2

32) Proposal by the African Group - TN/CTD/W/3/Rev.2

- "(a) It is understood that notwithstanding any provision of any WTO Agreement, least-developed country Members shall always be entitled to extensions for their transition periods as they may require.
- (b) It is understood that technical assistance to least-developed country Members shall aim among other things to remove any supply-side constraints to benefits under all WTO Agreements, such as benefits of market access opportunities and development of domestic productivity."

LAST LANGUAGE CONSIDERED:

"The General Council agrees that:

- (a) *notwithstanding any provision of any WTO Agreement, least-developed country Members shall always be entitled to extensions for their transition periods as LDCs may request and Members may determine; and*
- (b) *technical assistance to least-developed country Members shall aim among other things to remove their supply-side constraints which limit their ability to benefit from the WTO Agreements, including market access opportunities and development of domestic productivity. In this context, the General Council also requests the Director-General, as part of his work on technical assistance, to consult other institutions on programmes/assistance related to supply-side constraints in least-developed country Members to determine what additional technical assistance may be made available."*

Decision on Measures in Favour of Least-Developed Countries – Paragraph 2 (ii)

33) Proposal by the LDCs - TN/CTD/W/4

"The initiative to improve market access for LDCs was first contained in the 1996 Singapore Ministerial Declaration by which WTO Members agreed to a plan of action in favour of LDCs. Among the stated objectives of this initiative, was that of taking positive measures, for example, to provide duty-free market access on an autonomous basis, for products of LDCs and thus aiming at improving their overall capacity to respond to the opportunities offered by the trading system.

While recent initiatives undertaken by major trading partners in favour of LDCs such as the Everything But Arms and African Growth and Opportunity Act should be welcomed, further improvement of Generalized System of Preferences (GSP) and other schemes for products of particular interest to the LDCs should include not only expanding the product coverage, and lowering of barriers, but also include the important dimension of predictability and security of these access conditions. Binding of these measures are critical to strengthening the supply capacities in LDCs and necessary for the improvement of secure and beneficial market access for these countries.

- Establishment of a commitment that provides a contractual status to duty free and quota free preferential market access through the negotiation of a legal instrument to make market access secure, stable and predictable. Any temporary withdrawal of duty-free treatment should be disciplined in a contractual manner;
- Duty-free treatment should be provided to all products. Any temporary exceptions could provide for duty-free tariff quotas, which would be subject to an agreed phase-out programme;
- Rules of origin requirements should be realistic and flexible to match the industrial capacity of LDCs in order to ensure the effective and full utilisation of preferences. The rules of origin should also be harmonised among preference-giving countries and subject to simplified customs documentation and procedures;
- Existing S&D treatment provisions under the various WTO Agreements should be improved in an effective manner with a view to ensuring that duty-free access is not nullified by non-tariff measures;
- Technical and financial assistance to meet the cost of compliance with SPS measures and technical standards."

LAST LANGUAGE CONSIDERED:

"The General Council agrees that the value of duty-free and quota-free market access provided to LDCs should be assured by the application of rules of origin commensurate with their needs. The General Council also instructs the Sub-Committee on LDCs to identify possible simplifications of origin requirements for LDCs under individual preferential access schemes so as not to impair market access opportunities provided to LDCs under such schemes."

ON 6 FEBRUARY 2003 THE FOLLOWING TEXT WAS DISTRIBUTED BUT NOT DISCUSSED:

"The General Council agrees that bound duty-free and quota-free market access shall be provided to LDCs, along with rules of origin that are realistic and flexible to match the needs of LDCs. Tariff peaks and tariff escalations, and other non-tariff barriers, will also be avoided, in respect of products from LDCs."

Decision on Measures in Favour of Least-Developed Countries – Market Opportunities**34) Proposal by the LDCs – 30 January Non-paper**

"Tariff preferences, currently being given to LDCs by many countries in the form of GSP or other preferences, are gradually being eroded. In order to encourage imports of LDC products, the General Council agrees that other schemes should be devised."

LAST LANGUAGE CONSIDERED:

"Recognizing that reduction of MFN tariffs erodes the tariff preferences currently being enjoyed by the LDCs, the General Council agrees that this issue be discussed and addressed through appropriate measures."

Enabling Clause (Decision on Differential and More Favourable Treatment, Reciprocity and Fuller Participation of Developing Countries) – Paragraphs 1 and 2(d)

35) Proposal by the LDCs - TN/CTD/W/4/Add.1

"For effective operationalisation of the provisions of the Decision on More Favourable Treatment and to ensure that the least-developed countries derive continued and sustained benefits from the special preferential treatment extended by the developed countries, it is suggested that its provisions shall be clarified as follows:

- (a) Special treatment to be extended to least-developed countries in accordance with the provisions of Paragraph 1 and 2(d) of the Decision shall take the form of duty-free and quota free access for all products.
- (b) The Committee on Trade and Development shall prior to the Fifth Ministerial Conference review the progress made by the developed countries in providing access to the least-developed countries on the above basis and shall make appropriate recommendations for consideration at the Ministerial Meeting."

LAST LANGUAGE CONSIDERED:

"Recalling paragraph 2(d) of the 'Enabling Clause' and Members' commitment to the objective of duty-free, quota-free market access for products originating from least-developed country Members, as contained in paragraph 42 of the Doha Ministerial Declaration (WT/MIN/(01)/DEC/1), the General Council agrees that the Committee on Trade and Development shall, prior to the Fifth Ministerial Conference, review the progress made by [the developed] countries in providing access to the least-developed countries on the above basis and shall make appropriate recommendations to the General Council for consideration at the Fifth Ministerial Conference."

Enabling Clause (Decision on Differential and More Favourable Treatment, Reciprocity and Fuller Participation of Developing Countries) – Paragraph 3(b)

36) Proposal by the LDCs - TN/CTD/W/4/Add.1

"Paragraph 3(b) of the Decision provides that the extension of differential and more favorable treatment to developing countries, including special treatment to the least-developed countries, shall not constitute an impediment to the reduction or elimination of tariffs on MFN basis. However, it should be recognized that MFN tariff reductions results in the erosion of preferential margins and the consequent loss of competitiveness for the affected LDC exports. In such a situation, the LDC affected would require compensatory or adjustment support measures in the trade, financial and technological fields to mitigate adverse effects on their export earnings as well as enable them cope with increased global competition, through, *inter alia*:

- (i) Elimination of all internal and border constraints inhibiting the full utilization of existing preferential access.
- (ii) Support diversification efforts including elimination of all tariff peaks and tariff escalation affecting semi-processed and processed products.
- (iii) Provide debt relief through cancellation to release resources for building productive capacities.
- (iv) Provide targeted incentives to their enterprises to facilitate technology transfer in the spirit of Article 66.2 of the TRIPS Agreement.
- (v) Remove all non-tariff barriers to all LDCs exports.
- (vi) Provide temporary financial compensation for fall in export earnings resulting from a reduction of MFN tariff rates in the case of products whose share in the total export earnings of an LDC exceeds 50 per cent."

Enabling Clause (Decision on Differential and More Favourable Treatment, Reciprocity and Fuller Participation of Developing Countries)

37) Proposal by the African Group - TN/CTD/W/3/Rev.2

- "(a) In formulating schemes under paragraphs (a) and (b) of clause 2 of the Enabling Clause, developed country Members shall consult under the auspices of the Committee on Trade and Development with developing and least-developed country Members with a view to ensuring that products of export interest to developing and least-developed country Members are accorded meaningful market access that will achieve the objectives set out in Article XXXVI of GATT 1994.
- (b) In this regard, developed country Members shall show to the Committee on Trade and Development how they have included in the programmes specific products of particular export interest to developing and least-developed country Members and taken measures to ensure meaningful market access.
- (c) Meaningful market access shall be construed in accordance with targets set or adopted from time to time in the Committee on Trade and Development.
- (d) The Enabling Clause provides developing and least-developed country Members with the right to enter regional or global arrangements for the mutual reduction or elimination of tariffs or non-tariff barriers. It is understood that the arrangements can be for reduction or elimination of tariffs or non-tariff barriers, and that with regard to reduction or elimination of tariffs no WTO body or Members can prescribe any criteria relating to the arrangements. Members shall respect any such arrangements as an exercise of rights that developing and least-developed country Members have under the WTO Agreement.
- (e) It is understood that this Decision shall be without prejudice to the acquis under any preferential regime governing the exports of developing and least-developed country Members by developed country Members."

Enabling Clause (Decision on Differential and More Favourable Treatment, Reciprocity and Fuller Participation of Developing Countries)

38) Proposal by the LDCs - TN/CTD/W/4/Add.1

"Towards this end [i.e. "... to ensure that the decisions on both the pace and the extent of the liberalizations, both in sequencing and timing, have to be left to be taken by the least-developed country concerned, taking into consideration its economic and trade situation, and taken into account in trade negotiations and structural adjustment programmes" (paragraph 16 of document TN/CTD/4/Add.1)] it is suggested that the provisions of the Decision on More Favourable Treatment should be clarified to provide for the following:

- (a) In exceptional cases where it is considered that the liberalization measures in the trade field are essential for the attainment of the development and other objectives of the structural adjustment programmes, both the extent and the pace of liberalization shall be determined in consultation with the government of the recipient country, taking into account the relevant provisions in the Decision on More Favourable Treatment which require that least-developed countries shall not be required to take liberalization measures that are inconsistent with their development trade and financial needs. The new WTO Working Group on Trade, Debt and Finance should look into these issues and make appropriate recommendations.
- (b) In multilateral trade negotiations credit shall be given to the measures taken by developing and least-developed countries by providing flexibility in determining the "base year" for the selection of tariffs on the basis of which reductions are to be made.
- (c) The provisions in the Decision on More Favourable Treatment, which provide that the least developed countries "shall not be required to make concessions that are inconsistent" with their "development, trade and financial needs" shall be clarified to provide that these countries shall be permitted in trade negotiations, if they considered that this was warranted by economic and trade situations and the stage of development:
 - (i) to make no reductions in tariffs in the agricultural and/or industrial sectors;
 - (ii) exclude from tariff reductions certain sub sectors in both of the above sectors; and
 - (iii) bind the rates reduced in the negotiations and the prevailing applied rates at levels consistent with the development, trade and financial needs of developing countries and LDCs."

CATEGORY II (38)

(Proposals made in areas on which mandated negotiations are ongoing or which are otherwise being considered in the respective WTO bodies)

Proposals made in areas on which mandated negotiations are ongoing (27)

Understanding on the Interpretation of Article XXIV of the GATT 1994 (2 proposals)

39) Proposal by the African Group - TN/CTD/W/3/Rev.2

"It is understood that this Understanding shall not prejudice the right of developing and least-developed country Members to enter arrangements for mutual reduction or elimination of tariffs and non-tariff barriers to their trade, in accordance with the Decision of 28 November 1979 (Enabling Clause) (BISD 26S/203)."

40) Proposal by the LDCs - TN/CTD/W/4/Add.1

"It is understood that this Understanding shall not prejudice the right of developing and least-developed country Members to enter arrangements for mutual reduction or elimination of tariffs and non-tariff barriers to their trade, in accordance with the Decision of November 18, 1979 (Enabling Clause).

Special treatment shall be accorded to the least-developed among developing countries in arrangements involving developed and developing countries or among developing countries in accordance with that Decision notwithstanding Paragraphs 5, 6, 7 and 8 of Article XXIV of GATT 1994."

Agreement on Agriculture

Article 6.2

41) Proposal by the African Group - TN/CTD/W/3/Rev.2

"It is understood that the permitted subsidies under Article 6.2 shall, be without limitation as to amount, and include any programmes in developing and least-developed country Members for, *inter alia*, promoting food security and rural development, and assisting resource poor or low-income farmers."

Article 14

42) Proposal by the African Group - TN/CTD/W/3/Rev.2

"It is understood that measures covered by the Agreement on the Application of Sanitary and Phytosanitary Measures shall not be used as disguised restrictions against the trade of developing and least-developed country Members. Members shall biannually report to the Committee on Agriculture any measures taken under the Agreement on the Application of Sanitary and Phytosanitary Measures that affect any products from developing and least-developed country Members."

Article 15.1

43) Proposal by the African Group - TN/CTD/W/3/Rev.2

"It is understood that where developed country Members are to take measures of a special and differential treatment nature, they shall embody in their schedules of commitments or concessions specific special and differential treatment commitments in favour of developing and least-developed country Members, which shall be binding commitments. It is further understood that this Decision shall be without prejudice to the *acquis* under any preferential regime governing the exports of developing and least-developed country Members by developed country Members."

Article 15.2

44) Proposal by the African Group - TN/CTD/W/3/Rev.2

"It is understood that:

- (a) transition periods under the Agreement shall be extended for developing country Members that face adjustment difficulties;
and
- (b) developing and least-developed country Members shall have the right to modify their commitments if this is found necessary to protect the public interest in ensuring food security and alleviating rural poverty."

Agreement on Implementation of Article VI of the GATT 1994 – Article 15

45) Proposal by the African Group - TN/CTD/W/3/Rev.2

"For purposes of Article 15 of the Agreement:

- (a) "Special regard", "special situation", and "essential interests of developing country Members", read together, shall be understood to require that developed country Members shall specifically take into account the development needs of developing and least-developed country Members particularly for sustainably maintaining or increasing market access for products of export interest to them.

In this regard:

- (i) the causal link between the fact of dumping and of injury on the one hand, to imports from developing and least-developed country Members on the other, shall be determined on a case by case basis taking into account the WTO goals of improving living standards in developing and least-developed country Members through growth in the trade of these countries, in a manner that demonstrates that the achievement of these goals in developing and least-developed country Members has duly been taken into account; and
 - (ii) coherence shall be ensured between the Anti-dumping, and the Subsidies and Countervailing Measures Agreements on the basis of the importance of sustainably maintaining or increasing market access for products of export interest to developing and least-developed country Members; and of maintaining their export competitiveness.
- (b) "Constructive remedies provided for by this Agreement" shall within the context of Article 15 be understood to include:
 - (i) consultations for mutually agreed solutions within the meaning of paragraph (a) above other than anti-dumping duties, price undertakings, or any action prohibited by the Agreement on Safeguards;
 - (ii) internal reforms in developed country Members regarding market conditions, and employment and investment conditions to improve competitiveness on the basis of fair competition rather than taking anti-dumping measures against imports; and
 - (iii) exploring solutions against anti-competitive practices if determined to have taken place, on the basis of taking into account and protecting the interests of domestic consumers, rather than taking any anti-dumping measures."

Agreement on Subsidies and Countervailing Measures

Articles 3.1(b) and 27.3

46) Proposal by the LDCs - TN/CTD/W/4

"Remove the seeming contradiction between time-bound derogation in paragraph 27.3 from the obligation in paragraph 1(b) of Article 3 of the Agreement on Subsidies and Countervailing Measures (prohibition of subsidies contingent upon the use of domestic over imported goods) and paragraph 1 of Article 2 of the Agreement on TRIMs which prohibits measures inconsistent with paragraph 4 of Article III of GATT 1994 (National Treatment).

One way of removing this contradiction and thus providing the intended rights to LDCs in the unrestricted recourse to the use of local content is to provide in both Agreements for the right as long as a country remains in the LDC status."

Article 27.1 (2 proposals)

47) Proposal by the African Group - TN/CTD/W/3/Rev.2

"It is therefore understood that developing country Members shall have a right to use subsidies as may be necessary for their economic development. Extensions shall be granted under Article 27.4 of the Agreement bearing in mind the important role subsidies play in the economic development of developing country Members."

48) Proposal by Cuba, Dominican Republic, Honduras, India, Indonesia, Kenya, Pakistan, Sri Lanka, Tanzania and Zimbabwe - TN/CTD/W/1

"It is proposed to delete the word "may" from the text. The provision, if amended, would read as follows:

"Members recognize that subsidies play an important role in economic development programmes of developing country Members".

The above change would give full effect to this S&D provision."

Article 27.4

49) Proposal by the African Group - TN/CTD/W/3/Rev.2

- "(a) "Inconsistent with its development needs" refers to where otherwise prohibited or actionable subsidies would clearly not benefit any domestic industry.
- (b) It is understood that developing country Members shall not be prevented from seeking extensions on grounds of not strictly following the time frames in Article 27.4 and the Decision on Procedures for Extensions Under Article 27.4 for Certain Developing Country Members (G/SCM/39)."

Article 27.8

50) Proposal by the African Group - TN/CTD/W/3/Rev.2

"It is understood that in consultations and in any proceedings, there shall be no presumption of serious prejudice whatsoever including on the basis of any percentage or amount of subsidisation where developing country Members grant subsidies; and that any serious prejudice shall be demonstrated exclusively by positive evidence."

Article 27.9

51) Proposal by the African Group - TN/CTD/W/3/Rev.2

"It is understood that nullification and impairment in cases of actionable subsidies that developing country Members grant or maintain, shall be construed to mean only the displacement or impediment of imports of a like product into the market of the developing country Member or injury to a domestic industry in the market of the importing Member."

Article 27.13**52) Proposal by the African Group - TN/CTD/W/3/Rev.2**

"It is understood that Article 27.13 covers any privatisation programmes undertaken within the period from 1 January 1995 and that developing country Members may grant or maintain the subsidy programmes under Article 27.13 to ensure good adjustment of their economies. It is further understood that "limited period" refers to a period of not less than 8 years."

Article 27.15**53) Proposal by the African Group - TN/CTD/W/3/Rev.2**

" 'Interested developing country Member' shall be construed to refer to any developing country Member regardless of any subsidy programmes maintained, on the basis that developing country Members have an abiding interest in the use and operation of subsidies due to their importance in the rapid economic development of developing country Members."

GATS

Article IV

54) Proposal by the African Group - TN/CTD/W/3/Rev.2

- "(a) The Committee on Trade and Development shall set periodic benchmarks on financial and technical cooperation and other mutual arrangements under which developed country Members shall accord to developing country Members treatment and concessions designed to ensure:
- (i) the strengthening of the capacity, efficiency and competitiveness of domestic services of developing country Members and designed to effect technology transfer to developing country Members;
 - (ii) access by domestic services of developing country Members to distribution channels and information networks for developed country markets; and
 - (iii) liberalisation of market access in sectors and modes of supply of export interest to developing country Members.
- (b) It is agreed that developed country Members shall reserve quotas for supply of services by developing country suppliers in sectors that developing country suppliers have interests, and that developed country Members shall not adopt horizontal limitations with respect to movement of natural persons and shall over a period of 2 years phase out the limitations they maintain at the adoption of this decision.
- (c) It is agreed that developed country Members shall twice every 12 months:
- (i) report to the Council for Trade in Services on how they are implementing and complying with targets set by the Committee on Trade and Development for the operationalisation of Article IV;
 - (ii) the Council for Trade in Services and the Committee on Trade and Development shall make recommendations to developed country Members to ensure the implementation of Article IV.
- (d) It is agreed that the commitments or concessions under the General Agreement on Trade in Services, shall reflect a proportion of, at least 40 for developing country Members, and not more than 60 for developed country Members in short-term actual gains, provided that special attention shall be demonstrably accorded to the interests of developing and least-developed country Members."

Article IV.3

55) Proposal by the LDCs - TN/CTD/W/4/Add.1

"Proposed addition under Article IV.3, after the first sentence:

'In sectors of their export interest multilaterally agreed criteria for giving priority to the least-developed country Members shall be established, and when developing further disciplines and general obligations under the agreement'."

Article V.3

56) Proposal by the African Group - TN/CTD/W/3/Rev.2

"The references to "flexibility" and "more favourable treatment" with respect to agreements for liberalisation of trade in services among developing country Members, shall be understood to mean that the agreements shall not be required to comply with the rules set out in Article V provided that the agreements are entered into within the framework of or form part of wider economic liberalisation or regional integration programmes."

Understanding on Rules and Procedures Governing the Settlement of Disputes

Article 4.10 (2 proposals)

57) Proposal by India - TN/CTD/W/6

"It is suggested that the word "should" be replaced by "shall" so as to make this S&D provision mandatory.

The precise operational content of the phrase "give special attention" is not defined. It is proposed that:

- (a) if the complaining party is a developed Member and if it decides to seek establishment of a panel, it should be made mandatory for it to explain in the panel request as well as in its submissions to the panel as to how it had taken or paid special attention to the particular problems and interests of the responding developing country;
- (b) if the developed Member is a defending party, it should be made mandatory for it to explain in its submissions to the panel as to how it had addressed or paid special attention to the particular problems and interests of the complaining developing country;
- (c) the Panel, while adjudicating the matter referred to it, should give ruling on this matter as well.

These suggestions, when implemented will make the provisions of Article 4.10 mandatory, effective, operational and of value to the developing countries."

58) Proposal by the African Group - TN/CTD/W/3/Rev.2

"It is understood that:

- (i) in consultations, requests by developing and least-developed country Members to be involved shall always be accepted; and
- (ii) in the proceedings developed country Members shall present evidence of, and in the written decisions the panels and the Appellate Body shall indicate, how special attention has been given to particular problems and interests of developing country Members during the stage of consultations."

Article 12.10 (2 proposals)

59) Proposal by Cuba, Dominican Republic, Egypt, Honduras, India, Indonesia, Kenya, Mauritius, Pakistan, Sri Lanka, Tanzania and Zimbabwe - TN/CTD/W/2

"1. It is suggested that the words "whether" and "if so, for how long" be deleted from the second sentence and the words "for not less than 15 days, in cases of urgency as envisaged in Paragraph 8 of Article 4, and not less than 30 days in normal circumstances" be added towards the end of the sentence. Thus the second sentence should read:

"If, after the period has elapsed, the consulting parties cannot agree that the consultations have concluded, the Chairman of the DSB shall, after consultation with the parties, decide to extend the relevant period for not less than 15 days, in cases of urgency as envisaged in Paragraph 8 of Article 4, and not less than 30 days in other cases in normal circumstances."

2. Similarly, in the third sentence, after the expression "sufficient time" the words "not less than two weeks extra in normal circumstance," be inserted and in the place of "argumentation" the words "first written submission and not less than one week extra thereafter at each stage of written submission or presentation." Thus the sentence should read:

"In addition, in examining a complaint against a developing country Member, the panel shall allow sufficient time, not less than two additional weeks in normal circumstance, for the developing Member to prepare and present its first written submission and one additional week thereafter at each stage of written submission or presentation."

3. The last sentence should be rephrased as: "The additional time taken above shall be added to the time frames envisaged in Article 20 and paragraph 4 of Article 21."

The first part of the proposal gives guidance to the DSB Chair, upon being approached by either party, for extending the period at least 15 or 30 days as the case may be in normal circumstances. In case of any exceptional circumstances, (expression used in Article 21.4) he can exercise discretion to give more time to the parties.

The second part of the proposal directs the Panel to give additional time of at least two weeks for the first submission, one week each for second submission, first and second oral presentations and for interim submissions, if any.

The third part of the proposal seeks to extend the overall time frames to the dispute proceedings involving a developing country Member as a defending party.

These suggestions, when implemented will make the provisions of Article 12.10 of the DSU effective, operational and of value to developing country Members."

60) Proposal by the African Group - TN/CTD/W/3/Rev.2

"It is agreed that:

- (i) consultations within the period set for consultations and consultations that may be extended under the Dispute Settlement Understanding, may only be declared as concluded with the consent of all parties involved in the consultations; and
- (ii) "sufficient time for the developing country Member to prepare and present its argumentation" shall be understood to be a period of not less than 6 months or the longer period requested by the developing country Member."

Article 12.11**61) Proposal by the African Group - TN/CTD/W/3/Rev.2**

"It is understood that Article 12.11 of the Dispute Settlement Understanding requires the panel, in reaching a decision, to fully take into account the special and differential treatment provisions that appear in any covered Agreements that are raised or that are relevant in the dispute."

Article 21.2**62) Proposal by India - TN/CTD/W/6**

"It is suggested that the word "should" be replaced by "shall", so as to make this provision mandatory.

The utility of the provision could be increased by clarifying the phrase "matters affecting the interests of developing country Members". It is proposed that:

- (a) this provision, having been placed at the beginning of the long and important Article 21, should be made mandatory, for the panels and Appellate Body to interpret it as an overarching provision in all disputes, involving a developing country Member as a disputing party;
- (b) if the defending party is a developing Member and the complainant, a developed member,

- (i) RPT: 15 months should be considered as normal RPT and if the measure at issue is change of statutory provisions or change of long held practice/policy [like Quantitative Restrictions/Balance of Payment (QRs/BOP)], RPT should be two to three years and panels/AB should indicate requirement of more RPT;
 - (ii) 21.5 Procedures: Time for completion of 21.5 panel proceedings should be increased from 90 days to 120 days; and the panel should give all due consideration as any normal panel would give to the particular situation of developing country Members.
 - (ii) Filing of status report should be in alternate meetings rather than in every regular meeting.
- (c) if the complaint is by a developing Member against a developed Member:

The defending developed country Member should be given no more than 15 months of RPT in any circumstance; existing 90 days time limit for 21.5 procedures should be observed strictly. In case of delay, it should entail an obligation to compensate for continuing trade losses to the developing country complainant.

These suggestions, when implemented will make the provisions of Article 21.2 mandatory, effective, operational and of value to the developing countries."

Articles 21.2, 21.7 and 21.8

63) Proposal by the African Group - TN/CTD/W/3/Rev.2

"Paying "particular attention" to the "interests of developing country Members" in paragraph 2, and consideration of "what further action the DSB might take" in paragraph 7, shall be understood to require that recommendations made by the Dispute Settlement Body and their implementation and surveillance shall address:

- (i) any economic or trade loss suffered by the developing country Member, by requiring that the developed country Member pay monetary compensation or make some other form of compensation to the developing country Member; and
- (ii) any difficulties that a developing country Member may face in seeking to enforce compliance with the recommendations of the Dispute Settlement Body, through authorising collective suspension by the rest of the WTO Membership of obligations to the Member against which recommendations were made. It is understood that under such authorisation any Member may suspend any obligations to the Member against which suspension is authorised."

Article 24.1

64) Proposal by the African Group - TN/CTD/W/3/Rev.2

"The requirement to "exercise due restraint in raising matters under these procedures involving a least developed country Member" shall be understood to mean that panels shall before proceeding with the case first determine whether the Member bringing the case has given particular consideration to the special situation of the least-developed country Member. In this regard, the panel shall take into account all relevant factors including, the value of any alleged nullification or impairment, the possible harm to the economy and resources of the least-developed country Member that could result from the case, and the capacity in the circumstances of the least-developed country Member to effectively deal with the case."

Article 27.2

65) Proposal by the African Group - TN/CTD/W/3/Rev.2

"(a) It is understood that notwithstanding the establishment of the Advisory Centre on WTO Law, the Secretariat shall provide qualified legal experts to developing country Members to assist them in disputes.

(b) The requirement for "continued impartiality of the Secretariat" in paragraph 2 shall be understood to mean that the qualified legal expert made available to assist a developing country Member in a case shall assist the country for the duration of the case and not continue to be counsel for the country after the case."

Proposals which have been made in areas which are being considered by other WTO bodies as a part of their ongoing work programme (11)

Agreement on the Application of Sanitary and Phytosanitary Measures

Article 9.2 (2 proposals)

66) Proposal by Cuba, Dominican Republic, Egypt, Honduras, India, Indonesia, Kenya, Mauritius, Pakistan, Sri Lanka, Tanzania and Zimbabwe - TN/CTD/W/2

"To make this mandatory provision effective and operational it is proposed that the clause "shall consider providing" be changed to "shall provide". It is further proposed to add the following sentence to the provision:

"If an exporting developing country member identifies specific problems of inadequate technology and infrastructure in fulfilling the sanitary or phytosanitary requirements of an importing developed country Member, the latter shall provide the former with relevant technology and technical facilities on preferential and non-commercial term, preferably free of cost, keeping in view the development, financial and trade needs of the exporting developing country".

The above suggestion would make this S&D provision effective and operational."

67) Proposal by the African Group - TN/CTD/W/3/Rev.2

"(a) The phrase "substantial investments" in Article 9.2 shall be construed relative to resources of concerned government departments in developing and least-developed country Members and to their development needs. Any changes that would require additional resources to existing levels of current expenditure or their restructuring, or additional training or staffing, shall be construed to amount to "substantial investments".

(b) Where the importing Member does not actually provide such technical assistance, that Member shall withdraw the measures immediately and unconditionally; or the importing Member shall compensate the exporting developing country Members for loss resulting directly or indirectly from the measures.

- (c) It is understood that technical assistance shall be fully funded technical assistance and shall not entail financial obligations on the part of the exporting developing and least-developed country Members.
- (d) It is agreed that the WTO shall recommend that impact assessments shall be conducted to determine the likely effect on the trade of developing and least-developed country Members for any proposed standards before adoption, and if the impact would be adverse, the standards would not become applicable until it is established that developing and least-developed country Members that would be affected have acquired the capacity to beneficially comply with them."

Article 10.1

68) Proposal by Cuba, Dominican Republic, Egypt, Honduras, India, Indonesia, Kenya, Mauritius, Pakistan, Sri Lanka, Tanzania and Zimbabwe - TN/CTD/W/2

"For effective operationalisation of Article 10.1, it is suggested that the following addition be made to the existing provision:

"If an exporting developing country Member identifies specific problems in complying with a sanitary or phytosanitary measures of an importing developed country Member, the latter shall upon request enter into consultations with a view to finding a mutually satisfactory solution.

In this regard, such special needs shall include: securing and enhancing current levels of exports from developing and least developed country members, maintain their market shares in their export markets, as well as developing their technological and infrastructural capabilities. While notifying a measure, Members shall, *inter-alia*, indicate the following: (i) systems and/or equivalent systems that could be used to comply with such a measure; (ii) the names of the developing and least-developed country Members that could be affected by the applied measure."

The above suggestion would make this S&D provision effective and operational."

Article 10.1 and 10.4

69) Proposal by the African Group - TN/CTD/W/3/Rev.2

"(a) The requirement to "take account of the special needs of developing country Members, and in particular least developed country Members" in Article 10.1 shall be understood to mean that Members shall either withdraw measures that adversely affect any developing and least-developed country Members or which they find difficult to comply with, or shall provide the technical and financial resources necessary for the developing and least-developed country Members to comply with the measures.

(b) The requirement shall be further understood to mean that Members shall always initiate consultations in the Committee whenever they propose or intend to take any measures that are likely to affect imports from developing and least-developed country Members. In the consultations, Members shall establish whether or not the proposed or intended measures, if justified under the Agreement, would adversely affect any developing and least-developed country Members.

(c) Members shall establish a facility within the Global Trust Fund for ensuring that:

(i) developing and least-developed country Members have the financial and technical capacity to meet the requirements under the Agreement;

(ii) delegations from developing and least-developed country Members attend and effectively participate in meetings of the Committee and relevant international standard setting organisations;

(iii) developing and least-developed country Members effectively utilise the flexibility under the Agreement; and

(iv) measures adopted under the Agreement do not contravene the rights of developing and least developed country Members.

(d) It is understood that technology transfer and any technical and financial assistance under the Agreement to developing and least-developed country Members shall be cost free."

Article 10.4

70) Proposal by India - TN/CTD/W/6

"The language used in the Article 10.4 is of best endeavour nature. It urges Members to encourage and facilitate the active participation of developing country Members in the relevant international organizations.

In the light of paragraph 3.5, as mentioned above [paragraph 7 of document TN/CTD/W/6], of the Decision on Implementation-Related Issues and Concerns (WT/MIN(01)/W/10) by the Ministerial Conference taken at Doha on 14 November 2001 and in view of the importance of ensuring greater participation of Members at different levels of development throughout all phases of standard setting, it is proposed that in Article 10.4 of the Agreement on the Application of Sanitary and Phytosanitary Measures the term "should" be read to express "duty" rather than mere exhortation. This could be clarified through an authoritative interpretation under Article IX.2 of the Marrakesh Agreement Establishing the WTO. This would help achieve the intended objective of this S&D provision."

Agreement on Trade-Related Investment Measures

Article 4

71) Proposal by the African Group - TN/CTD/W/3/Rev.2

- "(a) In accordance with paragraph 1.1 of the Ministerial Decision on Implementation-Related Issues and Concerns adopted at the 4th Session of the Ministerial Conference on 14 November 2001, which "reaffirms that Article XVIII of the GATT 1994 is a special and differential treatment provision for developing countries and that recourse to it should be less onerous than to Article XII of the GATT 1994", Members shall interpret and apply Article 4 of the TRIMS Agreement in a manner that fully supports measures taken by developing and least-developed country Members to safeguard the external financial position, the balance of payments, and sufficiency of reserves.
- (b) The phrase "free to deviate temporarily from the provisions of Article 2" that appears in Article 4 of the TRIMs Agreement shall, in view of the structural bottlenecks of developing and least-developed country Members, be understood to refer to a period of not less than 6 years."

Article 5.3

72) Proposal by the African Group - TN/CTD/W/3/Rev.2

"On the basis of the development, financial and trade needs of least-developed and other low income developing country Members, it is understood that the Council for Trade in Goods shall grant requests for extension of or for fresh transition periods from least-developed country Members, and from developing country Members that are eligible under the Agreement on Subsidies and Countervailing Measures to maintain subsidy programmes that may wholly or in part be covered by or have a relation to the TRIMs Agreement."

Agreement of Safeguards

Article 9.1-2

73) Proposal by the African Group -TN/CTD/W/3/Rev.2

"It is understood that paragraphs 1 and 2 of Article 9 of the Agreement are respectively:

- (i) a binding prohibition against taking safeguard measures against products from developing country Members that do not exceed 3 per cent of imports of a Member; and
- (ii) a binding right for developing country Members to extend safeguard measures for an additional two years and to take fresh safeguard measures against products previously the subject of safeguard measures."

Agreement on Trade-Related Aspects of Intellectual Property Rights

Article 66.1

74) Proposal by the LDCs - TN/CTD/W/4/Add.1

"If at the end of the transition period the least-developed Member has not established a viable technological base, a further extension of transition period shall be automatically granted by the TRIPS Council on request by the least-developed Member. Where any other Member is opposed to the extension, it shall rest on that Member to show that the objective of the transition period has been met for that least-developed Member."

Articles 65, 66.1, 70.8 and 70.9**75) Proposal by the African Group - TN/CTD/W/3/Rev.2**

- "(a) It is understood that developing country Members shall be entitled to extensions beyond the additional 5 year period under Article 65.4 relating to other areas of technology required to be protected under the TRIPS Agreement.
- (b) For purposes of the requirement to grant exclusive marketing rights during transition periods, it is understood that there is a clear distinction between "patent rights" on the one hand and "exclusive marketing rights" on the other. The two shall not confer the same rights. Patent rights as set out in Article 28 of the TRIPS Agreement are the following: "to prevent third parties not having the owner's consent from the acts of making, using, offering for sale, selling, or importing for these purposes the (patented) product" as well as the products obtained directly by the patented process. These rights conferred by a patent, are not the same rights as may be conferred by the grant of exclusive marketing rights. Members have the right and the freedom to define what constitutes exclusive marketing rights, and may do so in light of any interpretations that the General Council or the TRIPS Council may adopt. It is understood also that there is no requirement to grant exclusive marketing rights until and only if marketing approval is granted."

Decision on Measures Concerning the Possible Negative Effects of the Reform Programme on Least-Developed and Net Food-Importing Developing Countries**76) Proposal by the African Group - TN/CTD/W/3/Rev.2**

"It is understood, in the context of the Decision on Measures Concerning the Possible Negative Effects of the Reform Programme on Least-Developed and Net Food-Importing Developing Countries and of the Ministerial Decision on Implementation-Related Issues and Concerns, that developed country Members shall embody in their schedules of commitments undertakings on, contributions to a revolving fund for normal levels of food imports, providing food aid in fully grant form, and maintaining food aid levels consistently with recommendations and rules under the Food Aid Convention."

CATEGORY III (12)

(Proposals on which currently there appears to be a wide divergence of views, and on which progress might not be possible without a certain degree of redrafting of the original text presented)

Understanding on the Interpretation of Article II.1 (B) of the GATT 1994

77) Proposal by the African Group - TN/CTD/W/3/Rev.2

" 'Other duties or charges' shall not be construed or applied in a manner that prejudices the right of developing and least-developed country Members to levy duties or charges to meet their requirements relating to government revenue and administrative expenses."

Understanding on the Interpretation of Article XXVIII of the GATT 1994 – Paragraph 1

78) Proposal by the African Group - TN/CTD/W/3/Rev.2

"In the context of the provisions of paragraph 1 of the Understanding on Article XXVIII of GATT 1994, urgent consideration shall be given to a re-balancing of the relative rights of small and medium-sized exporting Members."

Agreement on the Application of Sanitary and Phytosanitary Measures – Article 10.2

79) Proposal by India - TN/CTD/W/6

"While paragraph 3.1 of the Decision on Implementation-Related Issues and Concerns (WT/MIN(01)/W/10) of the Ministerial Conference taken at Doha on 14 November 2001, gives an interpretation of the phrase "longer time-frame for compliance" referred to in Article 10.2 of the Agreement on the Application of Sanitary and Phytosanitary Measures, there remains some ambiguity on the period of the time-frame for compliance owing to the use of word "normally" in this paragraph.

In the light of the above decision and the need for longer time-frames for compliance for the developing countries, it is proposed that in Article 10.2 of the Agreement on the Application of Sanitary and Phytosanitary Measures, the term "should" be read to express "duty" rather than mere exhortation. This could be clarified through an authoritative interpretation under Article IX.2 of the Marrakesh Agreement Establishing the WTO. It is further proposed that the word "normally" in the first sentence of paragraph 3 of the Decision on Implementation-Related Issues and Concerns (WT/MIN(01)/W/10), be deleted.

The above changes would make this important S&D provision fully operational and effective and will give necessary flexibility to developing countries."

Agreement on Textiles and Clothing – Articles 1.2 and 2.18

80) Proposal by the LDCs - TN/CTD/W/4/Add.1

"The footnote [to Article 1.2] should be modified to provide that Members shall use the provision of Paragraph 18 of Article 2 in such a way as to permit meaningful increase in market access for textiles and clothing exported by the least developed countries."

Later on 30 January 2003 the LDCs submitted the following new language (which was not discussed):

"The General Council agrees that provision shall be made to make fully operational Paragraphs 18 of Article 2 of the ATC, and Article 1, in a manner that is meaningful for the LDCs. Countries involved are to report to the TMB their compliance of these provisions."

Agreement on Textiles and Clothing – Articles 2.18 and 6.6

81) Proposal by the African Group - TN/CTD/W/3/Rev.2

- "(a) In the context of paragraph 4 of the Ministerial Decision on Implementation-Related Issues and Concerns adopted on 14 November 2001, (and in part as recommendations to the CTG) it is understood that "advancement by one stage" means the cumulation of the current and the succeeding stages, and "equivalent changes" refers to changes that are not less favourable than the cumulation. In determining equivalent changes, proposals made by developing and least-developed country Members shall be accepted unless there are compelling reasons, which shall be recorded and examined by the Textiles Monitoring Body.
- (b) The phrase "differential and more favourable treatment" in Article 6.6(b) shall mean that no safeguard measures shall be taken against exports of Members that constitute a small volume or a small percentage of total textile and clothing imports. In this regard "small" shall be understood to refer to imports from any developing and least-developed country Member that are less than 10 per cent of the total textile and clothing imports of a Member. It is understood in this regard that there shall be no cumulation of imports from developing or least-developed country Members in determining volumes of imports for purposes of measures against imports under the Agreement.
- (c) The phrase "special consideration" in Article 6.6(c) shall be understood to mean that no restrictions shall be imposed on such exports of such developing and least-developed country Members.
- (d) It is understood that in accordance with paragraph 42 of the Declaration of the Fourth Session of the Ministerial Conference, textile and clothing exports of least-developed country Members shall be accorded duty free, quota free treatment by developed country Members. It is further understood that this Decision shall be without prejudice to the *acquis* under any preferential regime governing the exports of developing and least-developed country Members by developed country Members."

Agreement on Technical Barriers to Trade - Articles 11 and 12

82) Proposal by the African Group - TN/CTD/W/3/Rev.2

- "(a) It is understood that Article 11 contains binding obligations. In this regard, and recognising the importance of standardisation in promoting exports of developing and least-developed country Members, a fund shall be established into which contributions shall be made by Members to assist developing and least-developed country Members in implementing the Agreement. Members that propose to introduce new standards that are required to be notified under the Agreement, shall prior to adoption of the standard, deposit amounts into the fund in accordance with assessments by the Committee based on resource implications for developing and least-developed country Members in complying with such standards.
- (b) It is understood that reference to the special needs and difficulties of developing and least-developed country Members in Article 12 means that developed country Members shall provide full technical and financial assistance to developing and least-developed country Members that are to comply with standards in accordance with the Agreement.
- (c) It is understood that technical assistance shall be fully funded technical assistance and shall not entail financial obligations on the part of the exporting developing and least-developed country Members.
- (d) It is agreed that the WTO shall recommend that impact assessments shall be conducted to determine the likely effect on the trade of developing and least-developed country Members for any proposed standards before adoption, and if the impact would be adverse, the standards shall not become applicable until it is established that developing and least-developed country Members that would be affected have acquired the capacity to beneficially comply with them.
- (e) In paragraph 8 of Article 12 the phrase "the Committee ... is enabled to grant" shall be understood to mean that the Committee shall grant, and the phrase "specified, time-limited exceptions" shall be understood to refer to periods of not less than 3 years and in any case such periods such be adequate for developing and least-developed country Members to undertake any adjustments necessary for them to comply with the provisions of the Agreement.
- (f) Members shall establish a facility within the Global Trust Fund for ensuring that (i) developing and least-developed country Members have the financial and technical capacity to meet the requirements under the Agreement; (ii) delegations from developing and least-developed country Members attend and effectively participate in meetings of the Committee and relevant international standard setting organisations; (iii) developing and least-developed country Members effectively utilise the flexibility under the Agreement; and (iv) measures adopted under the Agreement do not contravene the rights of developing and least-developed country Members.
- (g) It is understood that technology transfer and any technical and financial assistance under the Agreement to developing and least-developed country Members shall be cost free."

Agreement on Technical Barriers to Trade - Article 12.3

83) Proposal by Cuba, Dominican Republic, Egypt, Honduras, India, Indonesia, Kenya, Mauritius, Pakistan, Sri Lanka, Tanzania and Zimbabwe - TN/CTD/W/2

"For effective operationalisation of Article 12.3, it is suggested that the following addition be made to the existing provision:

"If an exporting developing country member identifies specific problems of inadequate technology and infrastructure in complying with the technical regulations and standards of an importing developed country Member, the latter shall provide the former with relevant technology and technical facilities on preferential and non-commercial terms, preferably free of cost".

The above proposal, if accepted, would make this S&D provision meaningful and effective."

Agreement on Trade-Related Investment Measures – Whole Agreement

84) Proposal by the LDCs - TN/CTD/W/4

"LDCs should be exempted from the disciplines of the Agreement on TRIMs."

Agreement on Trade-Related Investment Measures – Article 3

85) Proposal by the African Group - TN/CTD/W/3/Rev.2

"The provision in Article 3 of the TRIMs Agreement that all the exceptions in GATT 1994 shall apply, as appropriate, to the TRIMs Agreement, means that, co-operation arrangements, laws, measures and policies adopted on the basis of the provisions of GATT 1994 that operate as exceptions, apply to the provisions of the TRIMs Agreement. Such exceptions include:

- (a) co-operation arrangements among developing country Members under which certain preferential treatment is accorded to parties to the arrangements;
- (b) quantitative restrictions taken in accordance with among others Articles XII, XVIII and XIX of GATT 1994; and
- (c) measures taken to improve living standards in developing country Members under Article XVIII including programmes on incentives relating to domestic content requirements."

Agreement on the Implementation of Article VII of GATT 1994 – Article 20.1-2

86) Proposal by the African Group - TN/CTD/W/3/Rev.2

"It is understood that delays of application of the Agreement provided for under Article 20 read together with Annex III and the Decision on Texts Relating to Minimum Values and Imports by Sole Agents Sole Distributors and Sole Concessionaires, shall be renewable whenever that is necessary to protect the development, financial and trade needs of developing and least-developed country Members as requested by the Members seeking such extensions."

Agreement on the Implementation of Article VII of GATT 1994 – Article 20.3

87) Proposal by the African Group - TN/CTD/W/3/Rev.2

"It is understood that the technical assistance programmes provided for under paragraph 3 of Article 20 constitute binding obligations undertaken by developed country Members, which shall be implemented for as long as least-developed country Members remain classified as such."

Decision on Measures in Favour of Least-Developed Countries – Paragraph 1

88) Proposal by the African Group - TN/CTD/W/3/Rev.2

"It is understood that least-developed country Members, notwithstanding any provision of any WTO Agreement, shall not be required to implement or comply with obligations or commitments that are prejudicial to their individual development, financial or trade needs, or their administrative and institutional capacity."