

WORLD TRADE ORGANIZATION

RESTRICTED

TN/CTD/M/4

17 July 2002

(02-3964)

Committee on Trade and Development Fourth Special Session

NOTE ON THE MEETING OF 14 JUNE 2002

Chairman: H.E. Mr. Ransford Smith (Jamaica)

Subjects discussed:

A.	ADOPTION OF THE DRAFT AGENDA	1
B.	SPECIAL AND DIFFERENTIAL TREATMENT	2
C.	OTHER BUSINESS	24

INTRODUCTION

1. The Chairman recalled that at the informal meeting on 10 June 2002 he reported on the outcome of the informal consultations that had been held on a number of issues. One issue under consultation was that of document symbols for documents issued by the Committee on Trade and Development (CTD) when meeting in Special Session. In his brief to Members he recalled that several delegations had questioned whether or not it was appropriate to attribute the TN symbol to the submissions and other documentation presented to or issuing from the Special Session of the CTD since, in their view, the Special Session was not a negotiating body. The contrary view was held by other Members. However, importantly all Members had indicated their commitment to the relevant Doha Ministerial mandate on Special and Differential (S&D) treatment and had likewise indicated their willingness to pursue the work of the Special Session on the basis of the agreed Work Plan. Against this background, the Chairman conveyed his understanding of the use of the TN symbol for the Special Sessions' documentation. He clarified that use of the TN symbol would not prejudice the position of any delegation on the nature of the Special Session.

A. ADOPTION OF THE DRAFT AGENDA

2. The Chairman indicated that the draft agenda for the meeting was contained in airgram WTO/AIR/1821 of 3 June 2002. He also mentioned that he intended, under "Other Business", to bring up two matters for discussion. First, he would open the floor to any comments that delegations might have with respect to the responses received from the Chairs of the other WTO bodies to the Committee's request to be kept informed of any issues relating to S&D treatment within their respective bodies. He had drawn the Committee's attention to these responses at the last meeting. Second, since the Committee only had two more meetings until July 2002, one of which would be a half-day meeting only, it was necessary to consider how to proceed with the work, particularly in view of the reporting requirement to the General Council. He also indicated that two further submissions had been received since the last informal meeting: one from Thailand and one from St. Lucia. He suggested that these submissions, currently available in English only, should be introduced at the meeting. With these introductory remarks he proposed the agenda for adoption.

3. The agenda was so adopted.

B. SPECIAL AND DIFFERENTIAL TREATMENT

4. The Chairman proposed that the business under this agenda item be conducted as follows. He said that Agenda Item B had two components: B(I) and B(II). Agenda Item B(I) had been further sub-divided into three components: the identification of provisions which Members consider should be made mandatory; the consideration of Members' inputs on the legal and practical implications of making non-mandatory provisions mandatory; and the identification of how provisions might be made more precise, effective and operational. With respect to Agenda Item B(I) he recommended that the submissions made by the delegations of Paraguay, Thailand, and Saint Lucia be introduced. Members could then give their initial reactions. He was aware that Members might, however, need more time to study these proposals. He also recalled that at the informal meeting held on 10 June 2002 there had been an initial discussion of the proposals from the African Group and from the Least-Developed Countries (LDCs) which were contained in the expanded version of TN/CTD/W/3 and TN/CTD/W/4 respectively. He suggested that the Committee also continue the discussion of these two proposals. He would invite further reactions to them following any additional comments that the sponsoring delegations might first wish to make. Finally, he proposed to have a first agreement-by-agreement and decision-by-decision discussion on the specific proposals contained in (i) the LDC submission of TN/CTD/W/4, (ii) Paraguay's submission in TN/CTD/W/5, (iii) the African Group submission in TN/CTD/W/3/Rev.1. He proposed, following this discussion, to turn then to Agenda Item B (II) - the consideration of ways, including through improved information flows, by which developing countries, and in particular the LDCs, might be assisted to make the best use of S&D treatment provisions.

5. The Chairman then invited the delegation of Paraguay to introduce its submission.

6. The representative of Paraguay said that his delegation's paper had already been circulated to Members as document TN/CTD/W/5 and that it was available both in Spanish and English. The paper related to the "Decision on Differential and More Favourable Treatment, Reciprocity and Fuller Participation of Developing Countries", more commonly known as the "Enabling Clause", coming under the General Agreement on Tariffs and Trade 1994 (GATT 1994). His delegation wished to introduce this paper under the agenda item on the identification of how provisions might be made more precise, effective and operational, pursuant to Paragraph 44 of the Doha Ministerial Declaration. He said that the GATT and the WTO Agreements were signed in an endeavour to achieve further trade liberalization and greater participation of all countries in establishing fairer trade. The need to provide S&D treatment for developing countries had, as a result, been accepted. Developed countries, by recognizing this fact, had declared that they believed this approach to be fair and equitable. The Enabling Clause was accordingly established, within that framework, as a mechanism for handling more effectively the General System of Preferences (GSP). He accepted that developed countries had the right to accord facilities or privileges to developing countries on a voluntary or optional basis. However, for S&D treatment to be fair, once adopted, it had to comply with the mandatory rules and regulations binding the provision of such special treatment. This was the reason why the Enabling Clause had laid down these rules in such clear and mandatory terms. He said that, throughout the years in which it had been in force, the "Decision on Differential and More Favourable Treatment, Reciprocity and Fuller Participation of Developing Countries" had frequently been infringed. These infringements took the form of requests to the WTO for waivers from Article I of the General Agreement in order to accord privileges or benefits to specific developing countries to the exclusion of others. This had given rise to discrimination inconsistent with the objectives of the Enabling Clause.

7. He pointed out that these preferences were often made conditional upon such criteria as: (i) competitiveness; (ii) specialization and development indices; (iii) sectoral and country graduation; (iv) linking of benefits to non-trade issues such as environmental and social (labour) standards; (v) intellectual property rights; and (vi) the fight against drugs. He said that all these conditionalities were reflective of a subjective, arbitrary and unilateral position taken by certain developed countries in administering certain preferential schemes. He also pointed out that it was for this reason that the most serious consequence of granting waivers was the non-compliance with the Enabling Clause which resulted in discriminatory privileges for a few specific countries to the detriment of others. This was particularly so given that no case could be made that agreements on concessions by certain developed countries were covered by Article XXIV of the GATT. He went on to say that his delegation also considered that the establishment of agreements between blocks of countries and other countries and/or blocks of countries, allegedly pursuant to Article XXIV and involving waivers and exceptions, gave rise to discrimination and made the system less transparent. He said that the Ministers at Doha had recognized that regional trading arrangements could play a major role in encouraging trade liberalization and economic development. His delegation was convinced of the truth of this assertion since they themselves were members of several regional economic integration schemes, such as the Latin American Integration Association (LAIA), the Free-Trade Area of the Americas (FTAA) and MERCOSUR, all of which were consistent with WTO principles, disciplines and procedures. He said that at the Doha Ministerial Conference Members had also agreed to further the objective of establishing a multilateral trading system based on non-discrimination, rejection of protectionist practices, and with an emphasis on development. But discrimination was unfortunately very much present in the system and the ones who ended up paying for the concessions provided to some developing countries by means of such waivers were generally the developing countries excluded from such preferential treatment. He said that it could be asserted that waivers of this type generated unfair competition leading to the impoverishment of those developing countries which did not receive such benefits. This therefore constituted a distortion to the fundamental purpose of multilateralism. He said that it was these and other elements, as set forth in their document, that had prompted his delegation to make this submission.

8. He went on to say that the Members who had signed the Marrakesh Agreement establishing the World Trade Organization had nurtured the hope and desire that international trade would be truly multilateral and that all Members would be able to compete on an equal footing without discrimination or benefits for some to the exclusion of others. A sense of relief had subsequently accompanied the launch of the "Agenda for Development" at Doha since it involved a clear political commitment to a multilateral trading system which sought to secure transparent, predictable and sustainable conditions for the implementation of measures whose objective was to increase developing countries' trade. Moreover, this was to be done keeping in mind the interests of all developing country Members, without distinction or exclusion, on a collective rather than an individual basis, so as to ensure transparency and "non-discrimination" in the implementation process. However, an ever-increasing number of people in many developing countries were now not only questioning the ability of the WTO to contribute to export growth, but also asking whether trade opening and liberalization did not at times have an adverse affect on development. He said that for many developing countries, in particular those which had continued to support and believe in the multilateral trading system, Doha represented a reconciliation between "free trade" and "development with equity". However scarcely had the Doha Conference drawn to a close when, in the midst of the preparations on structuring the agreed negotiations, with sights set on the "developing world", the trading system was hit by a series of unilateral restrictions imposed by the world's major trading economies. Citing as examples multi-million dollar domestic support and protectionist agricultural policies, he said that such policies would destroy any confidence that Members may have had in the political will of the leaders of such countries to construct a fair multilateral trading system. Given the evidence of increasing protectionist measures taken by some countries, measures which distort trade and discriminate against those countries least able to retaliate, it was of course becoming ever more difficult to muster support for the multilateral trading system in developing countries.

9. He said that establishing an open, free, competitive and multilateral trading system was both a responsibility, a challenge, and indeed a necessity. To guarantee such a system it would be necessary to increase access to developed country markets as well as to eliminate barriers to trade. The system had to be based on sustainability, predictability and non-discrimination so that trade and development, taken together, produced satisfactory results for all Members of the system. He felt that these were some of the aims pursued by developing country Members in order to ensure their more effective participation in the multilateral trading system. He said that it was in light of these concerns that, as a brief but nevertheless important contribution to the multilateral trading system, his delegation considered that the "Differential and More Favourable Treatment, Reciprocity and Fuller Participation of Developing Countries", provided for in the Decision of 28 November 1979 (L/4903), more commonly known as the "Enabling Clause", should be unconditionally implemented and that its implementation should not give rise to any discrimination between developing countries. Nor should any attempt be made to circumvent its implementation requirements except, as he repeated, for the LDCs. Finally, he said that if these commitments were understood to be mutual then implementation of the development objectives of developing countries would guarantee equal opportunity and confirm that the multilateral trading system was the answer to the many problems for which people in developing countries were hopefully and eagerly awaiting answers.

10. The Chairman then requested the delegations of Thailand and Saint Lucia to introduce their proposals.

11. The representative of Thailand introduced their submission relating to the Import Licencing Agreement. She said that Article 3.5(a) of the Agreement on Import Licencing Procedures stipulated that Members shall provide, upon the request of any Member having an interest in the product concerned, all relevant information, including import statistics, with respect to the product subject to import licencing. Her delegation was of the view that, in providing such information to the Member making a request, there was always a certain administrative and financial cost involved. Developing country Members should therefore be required to provide information, particularly import statistics, only to the extent that this was considered necessary. They should not be expected to engage in the provision of information which was administratively and financially more onerous than absolutely necessary. However, her delegation noted that sub-item (iv) of Article 3.5(a) stated that "where practicable, import statistics (i.e. value and/or volume) with respect to the products subject to import licensing. Developing country Members would not be expected to take additional administrative or financial burdens on this account". Although there was room for flexibility for developing country Members not to take additional administrative and financial burden, but as the word used was "would" there was a lack of clarity about the mandatory nature of the provision. Her delegation had therefore proposed that the word "would" be replaced by "shall" in the last sentence of Article 3.5(a)(iv) so that the sentence would read: "Developing country Members shall not be expected to take additional administrative or financial burdens on this account".

12. The representative of Saint Lucia said that the availability of trade policy instruments was a necessary adjunct to the successful liberalization of economic development - one that was considered vital to promote sustainable economic growth and development. Quoting the Appellate Body, she said that permitting the use of safeguard measures was equivalent to giving a WTO Member the possibility of resorting to an effective trade remedy in an emergency situation that, in the judgement of that Member, made it necessary, albeit temporarily, to protect its domestic industry. However the less advantaged developing countries, particularly those with limited human resources, lacked the administrative capability to take recourse to these trade remedies in accordance with WTO rules. She went on to say that, while almost all WTO Members, irrespective of the level of sophistication of their economy, often advanced similar economic justification for the application of safeguard measures, a major difference existed when it came to the application of these contingency measures by developing countries. These countries often lacked administrative resources to implement these measures effectively even though the pronounced severity of the potential impact of the import surges on small

developing markets underscored the need for swift remedial action. In this context, her delegation felt that it was important to revisit the intent and purpose of the 1955 redrafted Article XVIII of the GATT. Article XVIII was intended, *inter alia*, to provide a suitable solution to some of the problems arising because of the special circumstances of economic development. However, only a few developing countries have had recourse to Article XVIII. She pointed out that Bangladesh's invocation of Article XVIII was the first such attempt since the WTO Agreements came into force. Many developing countries which faced the same import surges as other WTO Members had no defence whatsoever while others had recourse to precisely these instruments.

13. She said that it was from this perspective that her delegation had proposed certain changes for enhancing the effectiveness of Section(C), Article XVIII. These included the elaboration of basic guidelines to set out the procedures for recourse to this Section since this would assist in clarifying the procedural ambiguities in the text. Similarly, there was a need to interpret "infant industries" broadly, so as to facilitate the implementation of sustainable economic development programmes in small and vulnerable developing country Members, including in circumstances where established industries were threatened by an absolute or relative increase in imports. Additionally there should be a clear reaffirmation that the duration and review of the measure must be tied to the achievement of objectives for which the measure was imposed rather than to any arbitrary number of years. She also said that they were proposing that any right to compensation and/or retaliation should, given the limited ability of small and vulnerable developing country Members to provide compensatory concessions, be waived for an initial period of application. Finally, she said that Section(C) of Article XVIII should be reaffirmed as a new and distinct S&D trade policy instrument for *inter alia* small and vulnerable developing country Members with limited administrative capacities and not merely as a measure of last recourse. Small and vulnerable developing country Members require effective trade policy instruments for successful liberalization and to promote sustainable economic growth and development.

14. The representative of the Philippines said that the issue raised in Paraguay's submission was a very important one and struck at the very heart of the WTO system. This was a principle which had been held sacrosanct for a long time. He said that the proliferation of special arrangements on market access based on political and other non-economic issues was probably one of the biggest causes of discriminatory treatment. His delegation fully subscribed, therefore, to the legal and economic reasons which had been adduced by Paraguay. He said that the consistency of regional trading arrangements could not often be examined because of the political need and motivation among some Members to continue to have the flexibility to discriminate on the basis of non-economic and non-commercial factors. He said that he fully supported the proposal, in particular that contained in paragraph 5 of the submission, as it was important to consider ways and means to ensure against this kind of discrimination. He felt that this issue should be given importance in the discussions of S&D provisions for mandatory implementation.

15. The representative of Thailand said that her delegation attached great importance to the need to create a level playing field within the organization so that the less developed country Members could participate effectively in the multilateral trading system. She fully appreciated the spirit in which Members, including the developed country Members, wanted to help less developed countries to improve their efficiency and competitiveness in the world market by granting them preferential tariff treatment in accordance with the Generalized System of Preferences. However as time had gone by the spirit and objective of this approach had been eroded and altered. The basic principle of the Enabling Clause as a generalized, non-reciprocal and non-discriminatory system of preferences had been established to ensure that special and preferential treatment given to developing countries was unconditional and non-discriminatory. She pointed out, however, that some developed countries, without fully adhering to the Enabling Clause, had used this system of preferential treatment as an instrument to assist their own investment policies in certain developing countries. This in turn had lead to discriminatory treatment of imports from other more competitive developing countries. She

said that some developed countries had also used this as an instrument with which to impose the adoption of their standards, such as on labour and the environment, as a pre-condition for the granting of such preferential treatment. She said that the Enabling Clause was mandatory and that no Member should be allowed to deviate from its norms on providing preferential treatment uniformly to all developing countries. She said that her delegation therefore fully supported Paraguay's proposal.

16. The representative of Argentina began by recalling the nature of the Enabling Clause and said that the footnote to the clause made it clear that the intention was to establish a system of generalized, non-reciprocal and non-discriminatory preferences beneficial to the developing countries. There were thus three basic elements to the Enabling Clause. He said that when preferences were being granted by obtaining a waiver these basic elements were unfortunately ignored because the preferences so granted were neither generalized nor non-discriminatory. He said that this prejudiced the interests of countries which did not benefit from such preferences, granted on the basis of a waiver. At times even the interest of the preference receiving countries was prejudiced because they did not receive non-reciprocal preferences. He said that the Enabling Clause had been adopted as a protection for developing countries and felt that it would be in the interest of even preference receiving countries if such treatment was granted within the framework of the Enabling Clause because then they, too, would not be required to fulfill other non-reciprocal and non-commercial conditions.

17. The representative of India said that they fully endorsed and supported the proposal by Paraguay. He said that the Enabling Clause was introduced basically to facilitate and promote trade from developing countries without raising barriers or creating undue difficulties for other developing countries. In short, it was meant to be a trade instrument that would benefit the developing countries and not an instrument that should be used to promote the political objectives of some countries. He said that the three basic pillars of the Enabling Clause as outlined in Paragraph 2(a), which cross referenced with the earlier decision on GSP, were: (i) that such concessions should be generalized or the system should be a generalized one; (ii) that the system should be non-reciprocal; and (iii) that the preferences should be non-discriminatory. He agreed with the instances given by other delegations of how these basic conditions were being violated whenever the Enabling Clause was invoked. He said that paragraph 6 of the Paraguayan submission had highlighted six conditions that were often attached to privileges granted under the Enabling Clause: conditions which resulted in discrimination inconsistent with its provisions. He said that the first three conditions, namely the competitiveness criteria, specialization and development indices, and sectoral and country graduation were, at least, linked to trade. The remaining three conditions, namely the fulfilment of environment and social standards, intellectual property rights, and the fight against drugs, had nothing to do with trade. These, in his delegation's view, should never be invoked when granting preferences under the Enabling Clause. He added that these six conditions also resulted in the preferences granted under the Enabling Clause being administered in a subjective, arbitrary and unilateral manner, apart from the fact that such concessions resulted in the granting of discriminatory privileges that benefited only a few countries to the detriment of others. He said that this often resulted in unfair competition and constituted a distortion of the fundamental purpose of multilateralism in a way that had not been foreseen in the 1979 Decision on the Enabling Clause. He said that a waiver based on any of these conditions not only violated the principles of transparency and non-discrimination but also violated one of the basic principles of concessions provided under the Enabling Clause, namely the principle of non-reciprocity. He said that his country had also suffered from the selective administration of the Enabling Clause by some developed countries. In light of this experience his delegation did not have any hesitation in fully endorsing the proposals contained in paragraphs 17 and 18 of the submission by Paraguay. Before concluding he also welcomed the proposals tabled by Thailand and Saint Lucia. He said that Thailand had highlighted the administrative and financial burden that the provisions of Article 3.5(a) of the Import Licensing Agreement imposed upon developing countries and therefore agreed with the suggestion that the word "would" should be replaced with "shall" in that provision. He said that his delegation also endorsed the proposal contained in the last section of the proposal by Saint Lucia on Article XVIII of GATT.

18. The representative of Switzerland stated that his delegation had some sympathy with the understanding put forward concerning the objectives of the Enabling Clause, namely that they should be applied in a non-discriminatory manner. He said that the Swiss GSP lived up to that spirit as it applied to all developing countries alike and had no specific linkages or additional requirements. He expressed a reservation, however, about one point contained in the Paraguayan submission. This related to the issue of country graduation. His delegation believed that graduation was consistent with the Enabling Clause. He said that Paragraph 3(c) of the Clause stated that more favourable treatment shall be designed and if necessary modified to respond positively to the development needs of developing countries. He said that, irrespective of the exact interpretation of this paragraph, it was clear that a certain categorization amongst countries would be able to take better account of the differences in their levels of development and would allow measures to be adopted which were better tailored to the specific needs of the developing countries.

19. The representative of Uganda said that as an LDC they understood the spirit in which the proposal had been presented, namely that the Enabling Clause was designed to promote trade from developing countries and not to create a barrier or hindrance for others. He also agreed that preferences should not be made conditional to the fulfilment of certain criteria imposed by the beneficiary countries. He said that they could not, however, support Paraguay's proposal because it would then make it very difficult for the LDCs to get preferential treatment and it would make the system very straight-jacketed. He also noted that a number of countries, including Paraguay, were in the process of submitting a proposal recommending the provision of special treatment for some land-locked developing countries. He wondered how the present submission would tie up with the spirit of that proposal.

20. The representative of Saint Lucia said that, while her country was not an LDC but a small and vulnerable developing country, her views were very much in harmony with those expressed by Uganda. She said she agreed with the thrust of paragraph 1 of the submission that the concept of the Enabling Clause was really to provide all developing countries with an opportunity to participate effectively in the multilateral trading system because they were "unequals among unequals among unequals". The only way in which developing countries could participate effectively was by providing them with specially targeted preferential treatment so as to address their particular needs and circumstances. Referring to the Secretariat paper WT/COMTD/W/93 she said that the analysis given there of the GSP scheme showed that only a small subset of developing countries had actually benefited from it. She added that her own delegation also had reservations on some of the other issues raised in the submission. The very important Paragraph 3(c) of the Enabling Clause, for instance, applied directly to developed countries. It stipulated that preferential treatment should be accorded by developed contracting parties to developing contracting parties and that it should be designed and if necessary modified to "respond positively" to the development, financial and trade needs of developing countries. She questioned what such a positive response could be. A positive response would, in her view, mean addressing the specific needs of each country separately - something which could not be done if preferential treatment were made generalized and non-discriminatory. She also said that to question the legality of waivers was wrong because these were specifically allowed in the provisions. Referring to the history of the Enabling Clause and the GATT she said that historical trading practices had been "grandfathered" into the latter. If one looked at paragraph 2 of Article I, or at Article XXIV, it would immediately be clear that historical trading patterns had been preserved. She felt that globalization had moved forward while the existing framework of the rules had not. And it was for this reason that vulnerable countries that had come through the process of progressive liberalization, like her own, were nonetheless still dependent on preferential treatment for their development needs. The Enabling Clause was an empowerment of these specific differences as well as of the individual needs of such countries so as to enable them to survive in a multilateral trading system. It was not designed to provide advantages to only those who could compete on a non-discriminatory basis. She said that this should be kept in mind in any discussion on the Enabling Clause.

21. The representative of the European Communities stated that his comments would be somewhat brief and limited because his delegation had requested consultations under the Dispute Settlement Understanding (DSU) on the issue of waivers. He nevertheless thought that the issues raised in the Paraguayan paper were very broad and would need in-depth analysis and deliberation in future meetings. At this stage, however, he wanted to make two or three initial comments. Referring to the issue of an environment based incentive he said that his delegation did not view this as discriminatory because the incentives were available to anyone. He said that such stipulations were also trade-related because environment standards gave rise to extra costs and these extra costs had implications for trade. He said that the need for some kind of discrimination had been foreseen: this was why the possibility of seeking waivers had been built into the GATT. At the same time the intention was not to raise barriers or to create difficulties for other parties. His delegation had a consistent record of consulting and talking to delegations who nonetheless believed this to be the case. On the issue of graduation he said that there was no clear view of how graduation could work. This was because there were no established criteria either for differences in the levels of development or differences in conditions which would, once achieved, allow countries to graduate. For these reasons he felt that this too was an important issue to which it would be necessary to devote more time.

22. The representative of Mauritius endorsed the comments made by Saint Lucia. He said that they had only just received the Paraguayan submission which they would send on to their capital: fuller comments would hence be made on a later occasion. He said that although fundamental issues had been raised about waivers it should at the same time be borne in mind that the system of waivers was an integral part of the Agreement. He recalled that mention had been made of the need for a level playing field which, like a hypothetical perfect market, could only be based on the assumption that all countries were equal and competitive. He said that it was therefore difficult to understand how one could talk of differences in levels of development and yet at the same time argue for a level playing field. Some differential treatment would always be necessary.

23. The representative of Kenya said that it would not be appropriate to have the same set of rules or standards for all countries, including those that had not yet developed the national institutions and capacities necessary to compete in the global marketplace. He recalled that the CTD had been mandated to make S&D treatment more effective, precise and operational. It was therefore important to look at the Enabling Clause, which did at least recognize differences in the levels of development among Members, from a different perspective: not with the intention of mutating it in other words, but rather with the objective of enhancing it. He observed that the Enabling Clause had been adopted to provide enhanced S&D treatment to those who were at the lower end of economic development and in order to help them to catch up with others who were relatively more developed. So he said that, while his delegation shared their concerns, they could not accept the Paraguayan proposals. These, he believed, would go against the need to support the less advantaged developing countries - a principle embodied in the Doha Development Agenda.

24. The representative of Cuba said that the discussions on the Enabling Clause had clearly demonstrated the need to monitor its implementation as an instrument to develop appropriate trade relationships between developed and developing countries as well as between the developing countries themselves. She said that the fundamental objectives of the Enabling Clause, as understood by her delegation, were that it should be able to respond to the trading, financial and development needs of under-developed countries. The nature of these provisions should not therefore be violated. Nor should their implementation be attached to conditions of any kind, including the fulfilment of labour or environmental standards. She also said that preferential treatment should not necessarily be biased for political reasons. The Enabling Clause should therefore be used as an instrument of development and not as a means for political coercion. She said that the debate had demonstrated the need to strengthen S&D treatment as contained in the various agreements and decisions of the WTO. But at the same time it must be borne in mind that there cannot be the same set of rules for countries at vastly different levels of development. She also fully supported the proposal from Saint Lucia. She

said that strengthening of Section (C) of Article XVIII should be carried out in order to clarify its ambiguities. And a broader interpretation of these provisions should be made in order for them more easily to be implemented.

25. The representative of Lesotho said that, like the delegations of Uganda, Kenya and Saint Lucia, they too supported the understanding, at least in principle, of the objectives and interpretation of the Enabling Clause given by Paraguay. But his delegation did not support the links often sought between the granting of preferential treatment under the Enabling Clause and conditions which effectively denied potential market access to developing countries. Like the delegation of Uganda, however, they did agree that the Enabling Clause and the waiver approach were needed in order to address the constraints and peculiarities that existed between different groups of developing countries. He believed that the differences in levels of development required special provisions and special mechanisms that would ensure that these problems were adequately addressed. For this reason, his delegation felt that the use of waivers to facilitate preferential access for LDCs was a valid instrument and was also consistent with many regional integration programmes which sought to achieve the same objectives. He hoped that there would be a further opportunity for more detailed discussion of this proposal since it touched upon many critical and important issues.

26. The representative of Hungary said that the submission by Paraguay had raised a number of important issues of which some were at the heart of S&D treatment and the provision of trade benefits in the form of GSP based on the Enabling Clause. He recalled that his delegation had earlier requested for a compilation of the GSP systems of various countries, including a complete list of those countries providing GSP benefits, who the beneficiaries were, what the product coverage was, etc. This had been done in anticipation of exactly the kind of discussion that Members were now having. He said that the proposal to strengthen the provisions of the Enabling Clause would help to prevent differentiation among developing countries. The only exception to this would remain the already legalized differentiation between developing countries and the LDCs. Referring to the enumeration of the different kinds of conditions and criteria often used by countries to differentiate among Members, he said that he agreed with the delegation of India that the first three of these conditions were more general and related to economic development, while the next three criteria were somewhat different. He said that at this point he wished to highlight, in the context of the Paraguayan submission, was with reference to the imposition of certain economic conditions in granting trade preferences. He noted that Hungary, as an example, was a country with a medium level of development and had a per capita GDP of US\$5,000. Hungary had been providing and operating a GSP scheme for developing countries and had also provided generous benefits in terms of full and free market access to LDCs. His country's legislation prohibited the provision of GSP benefits to countries which were at a higher level of development than they were, that is to countries with a higher level of GDP per capita. But the submission from Paraguay sought to prohibit even this kind of economic differentiation. In this context he addressed a few questions to Paraguay. He asked first whether their intention was to ensure that GSP providing countries provide benefits to all developing countries, including countries with a higher level of development, as long as such countries were deemed to be developing countries within the WTO. He pointed out that the economic and political implications of an affirmative answer would be considerable. His country, for example, which provided GSP benefits only to countries less developed than itself, would then in practice be required to stop entirely its provision of GSP benefits. In the context of the interventions made by a number of African countries, he also observed that developing countries were a very heterogeneous group and that a "one size fits all" approach would not work. He said that one consequence of Paraguay's proposal would be that anyone wanting to assist developing countries through trade benefits would be obliged either to assist all or none of them. He indicated that they would follow-up their interventions with some written questions concerning these issues.

27. The representative of the United States said that the Enabling Clause was a core element in the concept of S&D treatment in the WTO. However, it should be seen in the context of the balance

of rights and obligations that comprised the commitments that Members had made. When looking at this complex contract it was important to recognize that there could not exist a situation where one group of Members had only rights without obligations to the system. She said that full access to its opportunities could only be achieved through full participation in the multilateral trading system, which was a matter of rights as well as obligations. At the same time it was important to have sound economic and governmental policies in order to operationalize and effectuate that participation. She said that the discussion on the Enabling Clause could be compared with the discussion concerning transition periods: a discussion which highlighted the question of how to address the peculiarities existing within and among developing countries. She also supported the point previously made by a number of delegations that, although clearly it was important that it be implemented correctly, the Enabling Clause did not stand on its own. Instead there were other provisions which had also been designed to address the individual needs of developing countries. Likewise the point made by Hungary concerning the definition of a developing country was also, she said, very important. In discussing S&D provisions, for example, the possibility of a really thorough debate was hampered by the absence of a clear WTO definition of a developing country. She said that it was precisely because of the differences among the developing countries that the S&D provisions were drafted in the way that they were. She said it was her delegation's view that, in order to accommodate the different S&D needs of developing countries, some of the provisions were in the nature of best endeavours. This was an element inherent in many of the provisions. She also said that the African Group's paper had rightly pointed out that some forms of S&D treatment had been more effective than others. For this reason she felt that an updated paper by the Secretariat on utilization would help in targeting and making operational the S&D provisions. Similarly the African Group's paper had also mentioned that transition periods were somewhat arbitrary in their application. This was largely because, rather than being tailored to individual needs, the application of transition periods tended to be too general. For this reason her delegation, in every discussion on transitions period, had attempted to address the specific needs of countries rather than adopting a "one size fits all" approach. She said that the discussion should not lose sight of the fundamental objectives of S&D treatment and that, whether one talked about the Enabling Clause or other similar provisions, it must be kept in mind that the main objective was to fully integrate all Members into the WTO system rather than to further exaggerate a two tier or multi tiered system. She accepted that, because of differences in development levels, a multi-tiered system did, at times, exist. This was not a reason to grant such a system a permanent status, however, or similarly to create, within the institution, further sub-groups. Whatever is done to facilitate the individual needs of Members should be done within a single-tier system. She referred also to various studies made of trade among developing countries. She felt that these showed that, while the role of developed country markets was important, an equal perspective on the role played by access to developing country markets was just as important. Data compiled by the World Bank revealed that most of the income gained by developing countries was from liberalization of other developing country markets. Three-quarters of potential income gains in agriculture trade negotiations, for example, would probably derive from the liberalization of developing country markets. It was the hope of her delegation that, during the course of further discussions, a more structured approach to examining issues relating to individual developing country needs would therefore be adopted.

28. The representative of Hong Kong, China, while thanking Paraguay for their intervention, said that they were still examining the submission. She pointed out that her delegation did, however, accept the principle set out in Paragraph 17 that the Enabling Clause should be applied as an instrument designed to facilitate and promote the trade of developing countries and not as an instrument to raise barriers or to create difficulties for other countries.

29. The representative of Haiti stated that, although Paraguay's submission had highlighted the fact that there was a need to continue to press for the effective application of S&D, his delegation could not accept the argument that there should be no differentiation among Members in the application of preferential schemes. He supported the statements made by Hungary and by Uganda

on behalf of the LDCs. He said that the LDCs had been accepted as a different category even by the United Nations. Paragraph 44 of the Doha Declaration spoke, in fact, of the need for S&D treatment to benefit developing countries and the least-developed countries in particular. So as the Ministers themselves had accepted this differentiation it was difficult to accept Paraguay's proposition. To do so would involve overlooking both the different levels of development and the different constraints that existed among developing countries. He noted that even the developed countries had spoken about this differentiation. In addition several developing countries had said that they would not accept any levelling out, not merely in respect of the Enabling Clause but also in respect of other preferential S&D treatment. Differential treatment on the basis of different economic development levels and financial constraints had, in any case, been accepted internationally already. Members should therefore strive for effective implementation of the S&D treatment provisions while at the same time taking into account the existing differences between different developing countries.

30. The representative of Nicaragua stated that Paraguay's submission had opened the door to a frank and sincere discussion on some of the themes with which developing countries had long been concerned. He said that a dichotomy clearly existed. On the one hand there were countries which needed additional assistance in order to participate actively and effectively in the multilateral trading system. But at the same time there were other countries which could participate competitively either because they had economies of scale or because they were more efficient. He that a serious problem was clearly created when a larger trading partner excluded another Member for political, social, economic or geographical reasons. Such a problem could only be overcome through a clear differentiation between Members with different levels of development as well as a clear identification of each Member's specific limitations.

31. The representative of Barbados stated that in her delegation's view the goal of all developing countries should be to ensure that S&D treatment, in any of its forms or manifestations, was made affirmative, positive, and effective. Developing countries must aim to overcome their specific constraints, vulnerabilities and characteristics. They should do so with a view to increasing their share in world trade and subsequently to achieve full participation in the multilateral trading system. Her delegation felt that the use of the Enabling Clause, and temporary or time-bound waivers from Article I of the GATT, were both valid means of achieving these objectives. In conclusion, she supported the comments made by the delegations of Saint Lucia, Mauritius, Kenya, and Haiti, among others, as well as some of the points made by the US and the EC. She said that her delegation looked forward to further deliberations on this issue.

32. The representative of Nigeria said that, although his delegation sympathized with its arguments, they nonetheless had difficulty in supporting the proposal. The Enabling Clause was built into GATT to assist developing countries to participate and benefit from the multilateral trading system. It had a further component which reflected the historical commercial relationship, in some cases, between Members and their former colonies. He said that Members supporting the proposal should keep in mind the difference in the levels of development among developing countries. He felt that the issue merited further discussion.

33. The representative of Belize associated himself with those countries which had stated that the implementation of the Enabling Clause should not be unnecessarily burdensome on its beneficiaries. He also supported those delegations which had stressed the diversity among developing countries. He shared the argument that different types of assistance were therefore necessary for their needs to be accommodated.

34. The representative of Turkey, giving its preliminary comments, said that the issue had certain peculiarities and certain characteristic aspects. He said that the list shown in paragraph 10 of the submission showed how broad the issue was, especially since each case of S&D treatment had its own particular aspects and practices which in some cases gave rise to a certain amount of discrimination.

Because of the complexity of the issues each situation had to be assessed on a case by case basis. He felt that a comprehensive study was needed before any conclusions on the issue of S&D treatment could be reached.

35. The representative of Zimbabwe observed that the WTO already recognized different levels of development among Members and his delegation wished to associate itself with those who had supported the need to continue to recognise such a difference between countries. She said that her own country had certain specific problems - as a consequence, to take but one example, of being land-locked. So she felt that the "one size fits all" approach was not appropriate to all situations. She also felt that there was a need for more discussion before a decision could be taken as to exactly what needed to be done. She also asked the Chair whether or not it would be possible, given that the Members had raised such a large number of important issues, to conclude the discussions and to come to an agreement, even if only on some of the issues, by the end of July 2002.

36. The representative of Sri Lanka stated that her comments were principally directed at the two proposals that had been presented by Thailand, on Import Licencing, and by Saint Lucia, on GATT Article XVIII, both of which they supported. Her delegation supported these proposals because they made an attempt to enhance the effectiveness of the S&D provisions. She added that the proposal made by St Lucia should not be limited to small and vulnerable economies but should rather be extended to encompass all developing countries sharing the same concerns. She felt, however, that the basic guidelines for recourse to Article XVIII should be liberalized and that, while addressing the procedural ambiguities in the text, consistency with the overall architecture of the WTO Agreements should be ensured. Elaborating upon the need for such consistency she said that, while Article XVIII allowed developing countries the flexibility to use recourse to certain measures provided they met the criteria stipulated in the Article, provisions in other Articles prohibited the adoption of these very same measures. For instance a country may, on the one hand, enjoy the flexibility of being able to employ certain border measures such as the imposition of quantitative restrictions, as provided for in Article XVIII. But if the product in question is an agricultural crop it may not enjoy this flexibility as certain provisions of the Agreement on Agriculture prohibit Members from taking recourse to any border measure other than tariffs. This showed that, even though Article XVIII provided developing countries with some measure of flexibility, it was a flexibility often taken away again by the provisions of other Agreements. She felt that this was a classical example of a situation in which the flexibility provided for by Article XVIII had been eroded because of weaknesses in the overall architectural design of the WTO Agreements. She noted that there would likewise be many such instances in the context of provisions in other Agreements where the inconsistencies in the overall architecture eroded the flexibility apparently permitted to developing countries. She felt that this was an important dimension to the debate and one which the Committee should look into at greater depth.

37. The representative of Jamaica stressed that, as the delegate of Saint Lucia had pointed out, footnote 2 in the Enabling Clause sought to allow enhanced non-reciprocal trade arrangements between developed and developing countries through a waiver. In the context of paragraph 18 of the submission she made the point that Article XXV of the GATT provided a legal right for Members to seek waivers from Article I of the GATT. This allowed for the provision of preferential treatment for some Members. Her delegation did not see any fundamental contradiction, therefore, between what was provided for under Article XXV and the Enabling Clause. These two instruments together created an overall framework for the granting of trade preferences by developed countries to developing countries. In her concluding comments she underscored what had been said by Mauritius, Uganda, Saint Lucia and Kenya, namely that differences in the levels of economic development between developing countries must be recognized in order to allow the adoption of measures facilitating the integration of developing countries into the multilateral trading system.

38. The representative of Canada felt that Paraguay's submission had elicited a most interesting debate in terms of the fundamental principles of S&D treatment. Her delegation shared the view

expressed by several delegations that a "one size fits all" approach would not work. She was also supportive of the idea of graduation as put forward by a number of delegations. Her country was very sensitive to the need for appropriate S&D treatment, but felt that this should be done on a case by case basis. She suggested that Members should review S&D treatment provisions in a holistic fashion with respect to individual Members' needs. The Trade Policy Review Mechanism might be one mechanism with which to do that. She felt that such an approach would facilitate a balanced discussion incorporating various issues such as transition periods, technical assistance and other flexibilities, domestic reforms being undertaken, and so on, all of which could then be put into a framework of realistic but fixed time frames. This would also allow the concerns of individual Members to be taken into account with regard to any individual S&D provision treatment that was being considered.

39. The representative of Japan appreciated the fact that a number of speakers had touched upon the differences among developing countries in their respective levels of development. They felt that this was an important issue to be considered as part of the discussion on S&D treatment. They said that there was a need to discuss the various ways to respond to the different and specific needs of individual countries, including the relation between capacity building and making S&D treatment fully operational.

40. The representative of Trinidad and Tobago, while welcoming the thought-provoking submission, said that they shared some of the concerns that had been expressed about the arguments put forward by Paraguay. Her delegation looked forward to further discussion on this issue.

41. The representative of Norway felt that Paraguay had highlighted a very fundamental issue that had been lurking beneath the surface ever since the beginning of the Special Sessions. He said that part of this work had, after all, focussed on distinguishing and recognizing the differences in levels of development between countries. He said that for S&D provisions to be made more effective they would need to recognize the difference in the levels of development not only between developed and developing countries also but between developing countries themselves. This was an important aspect of his country's trade policy which had attempted to give strong preferential emphasis to the LDCs.

42. The representative of Senegal felt that some differentiation was necessary in the framework of S&D treatment because many developing countries, particularly the least-developed countries, required such a differentiation. He said that Paraguay's submission would create a sense of inertia in the system because, if the Paraguayan proposals were accepted, they would then make it difficult to provide preferential treatment to some developing countries within the overall framework of S&D treatment.

43. The representative of Pakistan said that at this stage he would merely like to endorse the statements made by Uganda, Saint Lucia, the EU, Mauritius, Kenya and some others, and would like also to support the countries who had asked for recognition of the different levels of development and special needs of individual countries. He said that they looked forward to further discussions on this issue at a future meeting.

44. The representative of Paraguay thanked the delegations who had intervened and said that the debate had demonstrated the importance of the issue which they had tabled. It was clear that there was a need for a more thorough discussion of the issues underlying the Enabling Clause and the discrimination to which, in one form or another, it was giving rise within the Organization. He felt that some basic conclusions were already evident, including the fact that S&D treatment was of vital importance and that it lay at the heart of the WTO. Moreover, he felt that S&D treatment required clear and precise norms so that it could serve as a useful means for developing countries in an Organization which at present recognized only three categories of countries, namely: the developed

countries; developing countries; and the LDCs. Within these three categories, the only countries clearly classified were the LDCs. For this reason his delegation supported wholeheartedly calls to provide them, on an exceptional basis, with preferential treatment. He felt that the issue of a country graduating from developing to developed country status needed to be looked at further. Similarly, he emphasized the need for further study of the Enabling Clause because of its importance within the Organization. He pointed out that countries could suffer marginalization when appropriate privileges failed to materialize so that, instead of the Enabling Clause being used to assist them in their needs, it instead became an obstacle to their development. He also said that, while his delegation respected the need for balance between rights and obligations, they were against any kind of discrimination which would prejudice the interests of some countries. He felt that, in order to seek possible consensus on norms that could be clearly and openly defined, and norms which at the same time did not prejudice individual country Members, the debate should continue. He said that he looked forward to further deliberations on this issue.

45. The Chairman, in concluding the discussion on the submission by Paraguay, said that the debate had been most interesting and that even though differing view points had been presented these had all been of a constructive nature. Commenting on the remarks made by the representative of Zimbabwe, who wondered whether or not the many systemic issues raised could be addressed before the deadline of July, he said that in his view this would not be possible. This in turn raised the very important question of the need to structure future work, not only in the context of the immediate July deadline but also after it. This would encourage a realistic assessment as to what may, in fact, be feasible by July. It would also help in setting out a road map for the work remaining beyond July.

46. Moving on to the next part of the agenda, the Chairman stated that in the meeting held on 10 June 2002 there had been an initial discussion of the general proposals from the African Group and the LDCs which were contained in the expanded version of TN/CTD/W/3 and in TN/CTD/W/4. He then invited firstly the representative from Kenya, on behalf of the African Group, and then secondly the representative from Uganda, on behalf of the LDCs, to make any additional remarks, if they wished to do so, in respect to these papers.

47. The representative of Kenya stated that at the informal Special Session of the CTD held on 10 June 2002 they had, on behalf of the Africa Group, introduced a comprehensive three-part proposal to assist the Committee in discharging its Doha mandate on S&D treatment provisions. At that meeting some delegations had sought clarification on some elements of the proposal, including on the thinking behind its principles and objectives; the working of the proposed Monitoring Mechanism; and some background to Part III of the proposal which was the part which dealt with specific S&D treatment provisions. He indicated that he would like to respond to these requests for clarification through his statement, which would later be circulated to Members. He began by shedding further light on the objectives that the African Group had had in mind when suggesting that various provisions of S&D treatment be made fully operational. He said that trade was not an end in itself but something which was reflected in the objectives agreed to by Members in setting up first the GATT and now the WTO. Trade should contribute to the improvement of living standards, especially in developing and least-developed country Members. It had to be a welfare generating activity. He said that, in this context, it was recognized that special measures would be necessary to assist developing and least-developed country Members achieve a share in international trade that was commensurate with their development needs. He felt that this embodiment of special treatment in the core objectives and functions of the WTO recognized such treatment to be a basic right for developing and least-developed country Members as part of their overall right to economic development.

48. As an illustration, he pointed out that one of the benefits of the WTO was that it provided a market access framework for products and also recognized trade as a significant engine of economic development and a contributor to its attainment. However, as was well recognized, developing and least-developed country Members faced difficulties in using the WTO framework properly in order

fully to benefit from the market access opportunities available to them. Also, in implementing new obligations and in complying with the many existing obligations, developing and least-developed country Members operated under enormous financial, institutional, and human resource constraints. He said that Members were not equal in terms of resources and capacity and hence were similarly unequal in their participation in the WTO system, especially with regard to meeting their implementation and compliance requirements. He stressed that developing countries therefore needed assistance and flexibility in implementing and complying with these obligations, as well as in the ways in which they could benefit from the market access opportunities supposedly created. He said that it was against this background that S&D treatment had been accorded to developing and least-developed country Members as a means of assistance and as a recognition of their development needs. He added that, while maintaining the primary objective of ensuring an improvement in living standards through trade growth and economic development, the WTO rules could also play an important role in providing some of the market access solutions required for economic development. He felt that, although this was unquestionably the primary objective of S&D treatment, it nonetheless needed to be stated more clearly in terms that demonstrated its broad scope. He stated that, in seeking to attain these primary objectives, certain basic principles and objectives should be kept in mind. This was particularly important in view of the fact that the Ministers had recognized the need to strengthen S&D treatment provisions in order to make them more effective, precise and operational, and likewise of the need to incorporate S&D treatment into the architecture of the WTO Agreements. He said that these principles provided useful parameters in the process of pursuing the basic objectives of development and growth. From such a perspective, the primary principles for S&D treatment should be that they are accorded to developing and least-developed country Members in accordance with their developmental needs. Only then would such S&D treatment be meaningful and relevant. He said that in keeping with the mandate of the work programme agreed upon in Doha, it was important that S&D treatment provisions should be binding, resulting in mandatory obligations which Members were required to implement. He cited the example of Article 66.2 of the TRIPS Agreement and said that all Members should respect and treat as binding any S&D treatment provisions, such as these, which sought to provide developing and least-developed country Members certain special rights. He said that this interpretation of "binding" was also relevant to the goal of attaining coherence in global economic policymaking, so that the rights, in the form of S&D treatment, enjoyed by Members under the WTO Agreement, were not negated due to incoherence in global economic policy-making and thus rendered meaningless.

49. He said that it was in order to achieve these stated objectives that the African Group had proposed the establishment of a Monitoring Mechanism to function under the authority of the CTD. He suggested that the Secretariat should prepare a note on the basis of their proposal, also incorporating the views expressed by others, in which the possible elements of such a mechanism would be set out. He said that this would expedite and help to focus further discussion. He also said that the main reason for proposing a monitoring mechanism was that, while some S&D treatment provisions were already mandatory or relatively precise, they had not been utilized or complied with, a situation demonstrated in various Members' trade policy reviews and captured in the background note of the Secretariat (WT/COMTD/W/77/Rev.1/Add.4). The Monitoring Mechanism would assist in the further operationalization and utilization of S&D treatment provisions. The mechanism would likewise be a means of monitoring difficulties encountered by Members in the implementation of these provisions. The Monitoring Mechanism could be established under the CTD as an open ended subsidiary body. It would therefore function under and report to the CTD. He suggested that the CTD could have two Vice Chairs who, together with the Chair and the Secretary to the CTD, would constitute a bureau responsible for ensuring that the Monitoring Mechanism expeditiously carried out its functions, including to act as a forum to facilitate S&D treatment related consultations among Members.

50. Elaborating upon the African Group's view, he said that the main functions of the Monitoring Mechanism could include: (i) a regular evaluation of the utilization and effectiveness of the S&D

treatment provisions with a view to ensuring that the provisions are fully utilized and that any problems that may arise in connection to these provisions be effectively addressed; (ii) provision of a framework for initiating and considering recommendations that the CTD could make to Members on complying with obligations under S&D treatment provisions, including on best practices for the utilization of the provisions; (iii) drawing on, among others, the reports of the Trade Policy Review Mechanism and reports prepared by other international organizations on areas within their remit, particularly UNCTAD, the World Bank, the International Monetary Fund and the United Nations Development Programme, and proposals, statements and reports made by Members; the Monitoring Mechanism could then periodically evaluate the utilization and effectiveness of S&D treatment provisions and prepare recommendations; (iv) the Monitoring Mechanism could regularly prepare country profiles setting out detailed and quantified needs, as well as highlighting the available opportunities and benefits relating to S&D treatment provisions in order to assist in their full utilization; (v) the CTD could hold regular dedicated sessions on the utilization and effectiveness of S&D treatment provisions; and (vi) the Monitoring Mechanism could be given the specific function of examining whether proposed agreements and instruments to be adopted in the WTO framework comply with the overall principles and objectives of S&D treatment. He said that the CTD could also recommend time frames for complying with its recommendations as well as introducing a requirement whereby regular reports on steps taken to implement these recommendations are submitted to it.

51. In addition, the delegate from Kenya stated that the African Group had also proposed the establishment, within the Doha Development Agenda Global Trust Fund, of a facility specifically to provide the necessary financial underpinning for the effectiveness and utilization of S&D treatment provisions under the various Agreements. This facility would be a standing and permanent financial arrangement for S&D treatment provisions. Going on to Part III of the proposal, he said that this contained specific suggestions on the meaning to be attached to S&D treatment provisions in the existing Agreements of the WTO. As suggested in the proposal in the section dealing with the "action to be taken", the Special Session could, under its present mandate, prepare a Decision containing an authoritative interpretation of the various S&D treatment provisions and recommend that the General Council adopts this Decision. He said that they had also proposed certain interpretations of specific provisions. These interpretations, if adopted, could become an intrinsic part of the provisions which would then have to be read with reference to the interpretations. It was his view that the CTD could also discharge its mandate through a decision containing the rules proposed in Part II as well as the interpretations proposed in Part III. He concluded by saying that their intention was to strengthen the S&D treatment provisions, to make them more effective, more precise and operational, and to include them in the overall architecture of the WTO Agreements.

52. The representative of Mauritius stated that he had already made his views known on the submissions by the African Group and the LDCs in the meeting held on 10 June 2002. He added that his delegation looked forward to fruitful work being done in the coming days so that some concrete solutions could be found to the problems that had been raised.

53. The representative of the United States, while appreciating the further elaboration by Kenya on behalf of the African Group concerning the proposal which they had earlier circulated, said that they were in the process of studying the paper, which they believed contained a number of important elements. She said that the African Group paper had noted that existing S&D provisions had been the subject of negotiations, as part of the overall settlement, which had created certain expectations on all sides. Coming to grips with the principles and objectives of S&D was also essential as such a discussion would then underpin the consideration given to the large number of submitted proposals. In the view of her delegation, S&D treatment had been recognized as an integral part of the system and, as earlier mentioned by a number of delegates, it was to be provided consistent with an individual country's trade, financial and development needs. The problem, however, concerned the determination of what was appropriate and using what methodology or methodologies should such a determination be made. She said that this was a difficult question which had not yet been

appropriately answered. However, what was important was that, while considering the principles and objectives, an examination be made of the relationship between adoption of sound economic policies and open trade policies in the context of the utilization of S&D provisions. This would show that the certainty and predictability of adhering to a rules-based system, combined with a thoughtful recourse to S&D provisions, was the best way to promote long-term economic growth. There were a number of studies that had arisen from the work done in various WTO bodies that showed that, notwithstanding some of the concerns raised about implementation of the various WTO provisions, the best results had been obtained where there had been a full implementation of the respective Agreements. She said that they would soon be circulating a paper that would highlight these conclusions. As an example, however, she related that developing country Members who had chosen to join the Information Technology Agreement (ITA) had realized important benefits from opening up their markets. The nineteen non-OECD developing-country Members who had signed the ITA had a growing trade surplus with OECD Members, totalling over \$30 billion in key ITA products in 2000. She also stated that having a rules based and transparent system in the Services regime would foster further economic growth and development in that area.

54. Referring to the statement by Kenya she said that it contained elements that could provide a useful basis for examining the principles and objectives of S&D treatment. It would also be important to focus the work programme in the CTD from now until July and especially to consider how best this work could contribute to the overall work programme coming out of Doha. A number of proposals that had been submitted had provided evidence that there were parallels with the work being done in other bodies in the Organization. In view of this it was her delegation's view that perhaps the most expeditious way of moving forward was for the Chair to send the proposals submitted by Members so far to the Chairs of the other relevant Special Sessions, Negotiating Bodies, and Committees, so that these proposals were taken into account and considered in the discussions and negotiations of these other bodies proceed. She added that, in his report to the General Council, the Chairman should acknowledge that the discussions had shown there to be a wide range of issues requiring further exploration in the appropriate bodies. She highlighted a few such issues, in some cases drawing from the African Group paper. These included: crafting the appropriate provisions in such a way as to ensure the effective integration of Members into the existing Agreements now under negotiation; ensuring appropriate flexibility in determining parameters for transitions in the Agreements given the varied experiences and needs of Members; taking the work on utilization into account in developing the trade related technical assistance work plan for 2003; and establishing an appropriate monitoring mechanism, during the course of negotiations, to review the application of S&D. She said that the Annexes on technical assistance provided by the Africa Group should also be discussed further, with a view to then examining the ideas with the individual bodies before the end of the year. Any further discussion on the "Framework for S&D Treatment", suggested by a Member before Doha and noted in the Ministerial Declaration, would also require an exploration of a mechanism that would ensure that Members no longer in need of S&D treatment relinquish such treatment in an appropriate manner. This would link to similar points made on graduation during earlier discussions and any further discussion of principles and objectives should be carried out in this light. She also suggested that the CTD, working with the Sub-Committee on Least-Developed Countries, should further explore the specific areas where S&D could contribute to the greater participation of the least-developed countries in the trading system. She felt that the Special Session should recommend to the General Council that it would need to continue its work on objectives and principles and that the Special Session would then report periodically to the General Council to obtain further direction and guidance in line with the negotiations.

55. The representative of Thailand, while thanking the African Group for their revised and comprehensive proposal on S&D treatment, said that it was important to have a discussion and decision on the general framework for S&D provisions. Referring specifically to the proposals in the African Group paper on the Agreement on Technical Barriers to Trade, she said that it had been her country's experience that most standards imposed by importing developed countries were not only

financially burdensome to the exporting developing and least-developed countries but also acted as barriers to trade due to the lack of capacity and appropriate technology in such countries to fulfill the requirements of the standards set. They also fully supported the proposal on Article 3.5 of the Agreement on Import Licensing Procedures.

56. The representative of India, commenting on the additional clarifications provided by Kenya, said that there were a number of important elements in this clarification. Kenya had correctly identified the primary principle that should govern S&D provision, namely that these provisions should be binding. He added that by "binding" his delegation understood that these provisions should be mandatory and as such should be implemented by all the Members of the Organization. Further, these provisions should also be made binding in the context of coherence and global economic policy-making so that the rights enjoyed by Members in this Organization were not taken away because of commitments undertaken in another context. He supported the ideas and clarification put forward concerning the Monitoring Mechanism and said that his delegation looked forward to a detailed discussion on this issue in due course. He also hoped that the specific proposals which had been circulated at the last meeting be tabled for a more detailed discussion at the next meeting. In the context of some of the remarks made by the US delegate on the structuring of future work, he said that he would like to come back to some of these procedural issues when, as indicated by the Chair, this matter was taken up under "Other Business".

57. The representative of Djibouti said that Kenya, speaking on behalf of the African Group, had highlighted a fundamental point not only for African countries but also for all of the developing countries, namely: what should these countries expect from this Organization? He said that essentially they expected an increase in their living standards in the context of active participation in the work and negotiations of the WTO. But this had not been forthcoming. Against this background, it seemed to his delegation that the creation of an appropriate mechanism to monitor the functioning of the S&D treatment provisions and to see whether LDC expectations were being fulfilled was essential. He hoped that Members would agree to this proposal.

58. The representative from Columbia, while thanking the delegations which had presented fresh proposals in the meeting, indicated that she would be forwarding these proposals to her Government in order to obtain specific comments. She believed that the several proposals which had so far been made presented a good basis for future work. These proposals would, however, require detailed technical analysis - an analysis requiring more time. She recalled that Paragraph 44 of the Doha Declaration had reaffirmed that provisions for S&D treatment were an integral part of the WTO Agreements and a key element of the multilateral trading system. For this reason, her delegation had shown a particular interest in these discussions and was committed to engaging in the work currently under way with a view to achieving the proposed objectives. She said that some progress had already been made - notably in the form of a series of documents which included that prepared by the Secretariat. Commenting on the paper by the African Group she said that it had a number of interesting elements which would be useful for structuring future discussion. She agreed that a series of measures in different fields may need to be taken in order to strengthen the provisions on S&D treatment and to make them more operational. She also supported the need for a surveillance mechanism to be institutionalized within the WTO as a means of monitoring the implementation of these provisions. She felt that it would be advisable if the Special Session received the S&D treatment proposals and then allocated them to the various WTO bodies. These could in turn review the proposals before reporting back with their recommendations. She said that in this manner the work on S&D would remain centralized in this body while, at the same time, any duplication of effort would be avoided and the desired objective achieved.

59. The representative of Chile said that in their view the African Group proposal could be essentially seen in two parts. Some general criterion, principles and objectives relating to S&D treatment had been highlighted in the first part. This part also contained certain elements that would

help developing countries in obtaining better market access. His delegation could support these elements. There were also some elements which were somewhat restrictive, however, and which seemed to emphasize protectionism. Commenting on the discussion to make non-binding S&D provisions mandatory, he said that while engaging in such an exercise it would be important to examine the practical effects of making a non-binding provision binding, as well as examining the implications of such a change on other developing countries. It was important to ensure that any modifications of non-binding provisions did not alter the balance of rights and obligations of developing countries. The second part of their paper contained specific proposals relating to the various Agreements of which an analysis would require more time.

60. The representative of the European Communities said that the revised African Group contribution had thrown up rather interesting new ideas, some of which may have quite far-reaching implications. He said that he had already made detailed comments in the meeting on 10 June 2002, in which he referred to the linkages between the various S&D provisions and the work being done on some of these issues in other WTO bodies. There was therefore a need to step back and look at the overall picture of S&D treatment under the various pillars of the work programme. He also pointed out that the discussion had not only been complex, but diverse, and had oscillated between some very specific proposals and other rather broad and systemic approaches to the issue taken as a whole. He also echoed the views expressed by some delegations that it was important to have a discussion, as proposed under other business, on how the road map and future work should be structured.

61. The representative of Venezuela said that the submissions from the African Group and the LDCs were seeking to create favourable development conditions for all developing countries who were Members of this Organization. She said that the proposals that had been made seemed to be in this direction and that her delegation would be prepared to work constructively so as to achieve possible conclusions to this exercise. Commenting first on the discussion on the Enabling Clause, she said that perhaps the most important aspect of S&D treatment was that it should offer conditions that were favourable to all developing countries. She felt that this idea was reflected in both the Paraguayan submission and in paragraph 15 of the document presented by the LDCs. She highlighted the fact that most of the issues included in the 'Decision on Implementation' actually corresponded to the lack of implementation of S&D provisions. Referring to paragraph 6 of the submission by the LDCs, she said that S&D treatment had for a long time been both a basic principle and a fundamental practice in the multilateral trading system. It was now important to make this approach effective and operational, both by improving existing provisions and by incorporating new provisions where necessary. Though she requested for an elaboration of the ideas presented in paragraph 4 of the submission from the LDCs, she felt that the appropriate forum for discussion on this issue would be the Sub-Committee created for the LDCs. In the context of the submission made by the African Group she said that capacity building should include the possibility of helping Members negotiate improvements in the Agreements, to create internal capacity, and to develop their ability to defend public interest in trade-related areas. She also referred to the Monitoring Mechanism and said that, although some of the concerns of her delegation had been clarified by Kenya, including the kind of structure being proposed for such a mechanism, they nonetheless looked forward to further discussion on this issue.

62. The representative of Morocco said that Paragraph 44 of the Doha Ministerial Declaration had given a clear mandate to the CTD which was to examine the possible ways and means of making the S&D treatment provisions effective, precise, and operational. He said that this exercise, which was to be concluded by formulating recommendations to the General Council by the end of July 2002, would help the developing countries and the least-developed countries to use the S&D provisions in a more substantive fashion. His delegation supported the proposal which had been submitted by Kenya on behalf of the African Group. The proposals contained in that document related to substantive Agreements of the WTO and the legal framework of S&D treatment, including the suggestion for setting up a Monitoring Mechanism to evaluate the impact and effectiveness of such provisions,

something which had been lacking so far. He said that addressing these proposals would be entirely within the letter and the spirit of Paragraph 44 of the Doha Ministerial Declaration.

63. The representative of Cuba said that in principle, at least, they shared the criteria that Kenya had outlined with regard to the proposed Monitoring Mechanism. His delegation accorded great importance to the setting up of an evaluation and monitoring body which would allow Members to examine the implementation of the S&D provisions that had been agreed upon and which would also allow an assessment of any difficulties that arise during the implementation of these provisions. He said that the mechanism would also enable Members to assess whether or not the S&D provisions were fulfilling the objectives for which they had been incorporated in the Agreements.

64. The representative of Nigeria said that there appeared to be a general agreement, in principle, that S&D treatment provisions must be reviewed with the objective of strengthening them and making them more precise, effective, and operational. In this respect, the African Group had come up with suggestions to make these provisions mandatory and binding, including the setting up of a Monitoring Mechanism. The Special Session had now to examine these proposals so as to come up with recommendations in keeping with the mandate of Paragraph 44 of the Doha Ministerial Declaration.

65. The representative of Sri Lanka, commenting on the proposals presented by a group of developing countries on the SPS Agreement, particularly on Articles 9.2, 10.1 and 10.3 of the Agreement, said that developing countries in their efforts to maintain the existing levels of market access, or to increase their level of market access, or even to enter the developed country markets as new entrants, were required to adhere to rather stringent SPS requirements stipulated by the developed countries. Potential access for developing country exports in developed country markets therefore depended largely on not only the tariffs but also on the non-tariff barriers and particularly the SPS and TBT requirements. She said that an increase in market access would only be possible if the exporter were able to comply with the SPS standards. Developing countries were not, however, able to attain the level of standards required by the developed countries because of a number of constraints. The direct loss of potential export volumes due to non-compliance of SPS and TBT requirements was enormous. Sharing her country's experience in the spice sector, she said that the estimated average export volume loss as a result of non-compliance of standards was about 5,500 Mt. during 1995-2000. This represented about 34 per cent of the total exports of spices during the same period. The corresponding total average value of this volume, estimated at its opportunity cost, amounted to about 6 per cent of the total export revenue during the same period. There was evidence to suggest that these compliance requirements resulted in both positive and negative impacts on the spice industry. A final assessment at the national level, however, demonstrated a net negative impact on the economy, particularly on employment. This was mainly due to a decrease in export volumes. She said that the net loss of employment was in the range of 2400 persons every year or about 4 per cent of the total labour force involved in that sector.

66. She said that this showed that even if developing countries wanted to maintain the existing level of market access and thereby to negate the negative consequences of loss of market share, they still needed to take a number of steps, including: (i) introducing improved technology; (ii) introducing improved R&D facilities; and (iii) becoming aware of new voluntary and mandatory standards through training and workshops. All these measures required financial resources. In addition it would also be necessary for developing countries to upgrade the relevant technology. It was therefore important for developed countries to provide appropriate technology to developing countries, either free or on affordable terms, so as to improve their processing systems and the quality of their products. For the spice processing sector in her country, for example, it had been estimated that the investment cost of research and development was in the range of US\$8 million per annum, of which only 3 per cent could be provided by the Government. Similarly, the total cost of providing training for the employees in this industry was in the range of US\$1.954 million, of which only a small part could be provided by the Government. She said that empirical data clearly demonstrated

that additional funding was needed in order for conformity with the SPS requirements to be achieved. Finding such funds would of course be very difficult given the financial constraints of most developing countries. In her view this underscored the need for developed countries not only to provide technical and financial assistance to developing countries but also to provide them with longer time periods to implement SPS standards. She added that there was no mechanism in the WTO, or in any other intergovernmental organisation, which could provide developing countries with such assistance. Assistance could at present be sought only bilaterally. and she stressed that, since the existing Article 9.2 of the SPS Agreement was not mandatory, there was no way that a developing countries could be assured of any assistance once it had been requested. This was why the proposals presented by Members, including that of the African Group, suggested that the relevant provisions of the SPS Agreement be made mandatory in order for them to become effective and operational. She said that her delegation therefore supported the proposal contained in document TN/CTD/W/2 that the clause "shall consider providing" be changed to "shall provide". Her delegation also wished to indicate its support for the proposed addition to Article 9.2 and the proposals made in respect of Articles 10.1 & 10.3 of the SPS Agreement. She felt that there were justifiable reasons for the developed countries to provide compensation for the loss of export revenue resulting from the imposition of such measures, a point also highlighted in the African Group Submission.

67. The representative of Canada said that it was important to move the discussion into the area of the principles and objectives of S&D treatment. In this context her delegation wished to associate itself with the statement made by the United States. As for the Monitoring Mechanism, she said that while her delegation appreciated the clarifications that had been provided, it would be pertinent to point out that they had visualized this mechanism as being much simpler. They had imagined a mechanism whereby S&D treatment would be discussed as a regular item on the agendas of the committees. These committees would then report to the CTD which was, she felt, the right body in which to deal with these issues. She also expressed support for the idea of an annual review of the S&D provisions from the perspective of LDCs. But the appropriate forum for such an exercise should, in her view, be the LDC Sub-Committee.

68. The representative of Uganda stated that there were many similarities between the concerns of the LDCs and those of the African Group. For this reason the submission by the latter converged substantially with that made by the LDCs. He supported the submission by the African Group, saying that it also included many points which the LDCs did not wish to duplicate in their own submission. Elaborating on the need for a framework Agreement on S&D, he said that this could be built around four elements. First, there must be a reaffirmation and operationalization of development as the primary goal of the WTO Agreements. This would require the current framework, principles, rules, operations and proposals in the WTO to be assessed and improved. He believed that the current process addressed some aspects of this element but stressed that the strengthening of S&D treatment should not be confined to examining only the existing provisions but should look also at the need for additional measures, as envisaged in paragraph 12 of the Implementation Decision. Second, there must be a strengthening, operationalizing, and introduction of general development principles in the Agreements in the four major areas of the WTO, i.e. goods, services, intellectual property and dispute settlement. Third, developing countries, and particularly LDCs, should have recourse to financial resources in order to enable them to undertake their obligations and to enjoy their rights, including their rights under S&D treatment. This would require an estimation of the necessary additional resources that developing countries might require under each Agreement. Fourth, supply-side constraints in developing countries and their need to retain the flexibility of being able to adopt pro-development policies and options should be addressed. This could be done in several ways including, for example, by: (i) by exempting developing countries, particularly least-developed countries, from obligations when these constrain or prevent them from adopting policies or measures required for their economic and social development; or (ii) by making it obligatory for developed countries to assist developing countries in building their supply-side capacity in order to help them to foster exports. He also indicated that they were in the process of modifying their paper and intended shortly

to submit a revised version. He said that most of their proposals were, however, either systemic or made with reference to specific provisions of the various Agreements. One of such proposal related, for example, to notification obligations. He said that various Agreements stipulated numerous notification requirements and that, on the basis of the reports of these bodies, many countries, especially from the LDC group, were technically in breach of such requirements. This was often because of a lack of capacity. He said that it was in order to highlight these concerns that the LDCs intended to submit a proposal on notification requirements.

69. The representative of Australia said that they recognized the importance of S&D treatment and the work being done in this regard in this body. The discussion had been very useful and had given them a better sense of the issues that needed to be addressed. However, they were still working through the very large number of proposals which had been submitted and in this context they felt that it would be useful to have a better idea of the structure of the future work of the Committee.

70. The representative of Indonesia said that his delegation fully endorsed and supported the elements and proposals submitted by the African Group and the LDCs, particularly regarding the proposal to set up a Monitoring Mechanism. Further discussion on this issue would help in clarifying how to make such a mechanism effective. He also raised some questions regarding the elements and modalities of making S&D provisions operational and mandatory. He said that, in view of the limited time available, it was important urgently to discuss and clarify the elements and modalities of the proposals introduced by Members aimed at making the provisions effective and operational.

71. The delegation of Zambia began by expressing support for the statement made by Kenya on behalf of the African Group as well as for the proposal submitted by the LDCs, especially for a general framework Agreement that could guide the work on the overall issue of strengthening SDT, as envisaged in Paragraph 44 of the Doha Ministerial Declaration. Explaining why his delegation believed that the Special Session should take a decision on the adoption of such a framework Agreement, he said that if the work programme from the Doha Ministerial Conference was to succeed in making development a priority, the multilateral system must decisively address the development implications of the S&D mandate by responding to the needs of the least-developed and developing countries. This would mean formulating guidelines and practical measures that would improve their terms of trade, enhance their export capacity and sustain their balance-of-payments. He said that trade policy must, most importantly, be seen to be contingent on the particular conditions of each country, depending on its level of development. S&D treatment must not merely be based on providing, or extending, transition periods for least-developed and developing country Members. Such an approach would disregard the individual problems and the structural imbalances and distortions in developing country economies, those factors, in other words, which undermine their productive and trade capacities. Such problems constrain their participation in the trading system as well as their ability to obtain benefits from it, problems which would not be resolved by merely extending the timeframe. For these reasons his delegation felt that it was important to have a framework Agreement on S&D treatment. He stressed that his delegation viewed this as an important issue and that it would take a view on the rest of the work programme set out in the Doha Ministerial Declaration against the context of the results of decisions arrived at on the S&D issues. He emphasized that the Doha mandate must remain relevant. It must be ensured that the issue of strengthening S&D treatment does not remain merely a public relations exercise for the Committee.

72. In the context of the general framework approach proposed by the LDCs, he said that there must be a reaffirmation and operationalization of development as the primary goal of the WTO. This would require that the current framework, principles, rules, operations and proposals in the WTO are appropriately assessed and improved. He said that the process undertaken addressed some aspects of this element but it was important that the strengthening of S&D treatment not remain confined to examining only existing provisions but that it should also look instead at additional measures as envisaged in paragraph 12 of the Implementation Decision. There should also be an introduction,

strengthening, and operationalizing of general development principles within the agreements in the four major areas of WTO work, i.e. goods, services, intellectual property and dispute settlement. Developing countries, including LDCs, should have recourse to financial resources in order to enable them to undertake their obligations and to enjoy their rights, including their rights under S&D treatment. The additional resources required by each developing country under the different Agreements would need to be estimated. Some assurance must then be made that the financial requirements are met. He said that supply-side constraints in developing countries and their need to retain the flexibility of being able to adopt pro-development policies and options must also be addressed. The LDCs had proposed that this could be done in two ways: first, through exemptions from obligations for developing countries, if such obligations constrain or prevent developing countries from adopting policies or measures required for their economic and social development; and, second, through obligations on the part of developed countries to assist developing countries to build their supply-side capacity so as to foster national production and export supply capacity. He felt that these elements could make up the framework approach and provide much-needed guidance to the work that was being undertaken.

73. The representative of Saint Lucia referred to the statement made by Uganda in which it had been mentioned that the LDCs would be submitting a paper on notification requirements. She said that this was an issue which her delegation understood very well since the capacity constraint faced by countries like hers limited their ability to fulfill the heavy regulatory administrative burden imposed by the Uruguay Round Agreements. She said that this issue should be addressed either in the context of the proposal submitted by them on the use of contingency protection measures or on the basis of a specific proposal regarding notification requirements which the LDCs had said they would be submitting. The work on S&D should in either case address the problem of the administrative cost incurred by developing countries in fulfilling obligations based on rules that were written without reference to the capacity constraints of many Members.

74. The representative of Japan said that in their view S&D treatment was one means by which to respond to the specific development needs of individual developing countries in order to help them comply with the obligations of the Agreements. Japan was interested in discussing the principles of S&D treatment from such a viewpoint. Knowledge of the utilization of the existing S&D provisions would help in this regard, since Members could then identify the problems or difficulties that beneficiary countries may have faced in using these provisions. In this connection he appreciated Sri Lanka's explanatory comments. He also said that it would be useful further to analyse the proposed Monitoring Mechanism. They looked forward to receiving a copy of the statement made by Kenya on this matter.

75. The Chairman said that discussion of the papers by the African Group and by the LDCs had been very constructive. He also referred to the intention of the LDCs to submit a modified paper. As for the African Group paper, he said that it had made a number of specific proposals regarding specific provisions of the various Agreements. It had made suggestions to which Members could return in future meetings.

76. The representative of Kenya, responding to the various interventions that had been made on the African Group submission and the clarification provided by them on some of their proposals, said that they were happy to note that there had been no real opposition to their proposals and that in particular the Monitoring Mechanism was something that the Special Session could agree upon and consider further. In response to comments from Canada, he emphasized that what they had proposed was to have a relatively simple monitoring mechanism. The intention was not to have anything complicated. He said that they were ready to engage in further discussions so that a mechanism could be agreed upon that would be of benefit to the LDCs and the developing countries.

77. The Chairman then gave his consideration to the second portion of agenda item B. This concerned various ways, including through improved information flows, by which developing countries, in particular the least-developed countries, could be assisted to make use of the S&D treatment provisions. He said that there were no specific documents on this issue on the table and simply invited Members to make any comments that they might have.

78. The representative of Venezuela stated that, while they had certain comments on proposals relating to the Dispute Settlement Mechanism, as also on the Understanding on Article VI of GATT 1994, they would limit themselves to comments on the TRIPS Agreement, as it had been made clear that only this was on the agenda for the meeting. They observed that the TRIPS Agreement contained very few provisions on S&D treatment and, therefore, that the best approach might be to maintain the flexibility of the Agreement in using only such instruments or policies that were important for development. They felt that norms that restricted development should not be applied. She said that it was also important to consider technical assistance a priority issue, especially since capacity building should not be focused exclusively on the observance of, or compliance with, any one single Agreement. Countries should be able to participate in the formulation of plans for technical assistance and should be able to express their needs and priorities. She concluded by stating that they supported the proposal made on transition periods and reiterated that S&D provisions should not be limited in scope should rather encompass the flexibility necessary in the context of development.

79. The representative of Saint Lucia said that that the proposal that she had introduced earlier, clarifying the basic guidelines and setting out the procedures for recourse to the provisions of Article XVIII (C), was one way of facilitating the effective use of S&D provisions by developing countries. In this context she highlighted the fact that there were certain provisions drafted under GATT 1947 which lacked procedural clarity and which have therefore been unable to provide to developing countries the benefits they intended. There was also a lot of ambiguity among Members as to how to use a provision and, in such instances, elaborating guidelines was one of the ways by which developing countries could be assisted to make effective use of the existing provisions.

C. OTHER BUSINESS

80. Moving on to "Other Business" the Chairman reminded Members that at the beginning of the meeting he had indicated that due to the fact that only two more meetings were scheduled before the July deadline there was now a need urgently to examine how best to proceed with the work. He said that given the volume of work, with as many as 80 or so specific proposals having been made, some of which had been given only a first or an initial reading, Members would need to prioritize and structure their future work. In addition, a number of issues had been raised in the papers that had been submitted and during the course of the discussions: issues relating to principles and objectives; issues relating to systemic and institutional measures that might improve the implementation of S&D; and issues relating to the overall framework and architectural elements of the S&D provisions. He said that with only two meetings to go, meetings that were actually scheduled to help finalize the Special Session's recommendations to the General Council, it was clear that Members had to prioritize what to do between now and the July meeting. Members could also begin to draw up a possible road map for work after July. He said that it was his intention to hold a series of informal consultations in the coming weeks in an effort to structure the Special Session's work, above all to prioritize it but also to begin to consider the contours of a road map charting the direction of future work. He said that some broad elements of the work schedule had emerged, including an examination of some of the proposed systemic measures. He mentioned the Monitoring Mechanism, for example, on which a number of delegations had spoken and on which there had been a detailed discussion in the meeting. He also reiterated the need to examine the large number of Agreement specific proposals on which the discussions remained inconclusive. In this perspective, he invited Members' views on how they thought the Special Session should address some of these issues and likewise if there were

other elements that Members wished to see addressed, either as part of the current structure of work or to be drawn into the road map for the way ahead.

81. The representative of the European Communities agreed that there was an urgent need to look ahead to what would need to be done, especially in the context of the deadline for recommendations to the General Council. He felt that the discussions could possibly be structured around four elements. First, it was important to analyse the overall objectives of S&D treatment in the WTO rules. Such an analysis should look at both the immediate and the longer term perspectives of S&D provisions in existing and future S&D treatment provisions. He said that the work plan should also include consideration of the expectations of developing countries with respect to S&D treatment supporting their integration into the multilateral trading system. He felt that the clear definition and the understanding of the overall objectives of the S&D provisions could help identify those instruments which would be most effective in reaching some of these objectives. Attention should therefore be focussed on the areas where these instruments were most needed. Second, it would be useful to look at the interaction between the S&D treatment instruments and their integration into the WTO Agreements, in other words how those instruments interact and how they could be integrated into specific agreements. The third issue was the need to take into account the specific interests and circumstances of countries. This might lead to an examination of how account is taken of the differentiated needs of developing countries in relation to WTO rule making and, in this context, to the specific needs of the LDCs. Understanding the different needs and the interests of developing countries in view of their specific circumstances would allow the trading system better to address those needs and interests in relation to specific agreements. Fourth was the relation between the S&D provisions and other support measures, including the relation between S&D measures and measures that are taken by other organizations or donors to support the development of developing countries, notably through measures that assist their integration into the multilateral trading system and the global economy. The role of the WTO's trade-related technical assistance and capacity building efforts combined with those of other donors to strengthen synergy and complementarity merited particular consideration. He felt that a structured discussion of these elements would help move the discussions further forward as well as helping to achieve some satisfactory results within the next six weeks.

82. The representative of India said that it was important to recall the mandate given to the CTD by Ministers in Doha. He said that paragraph 12.1(i) of the Decision on Implementation was fairly clear: it was to identify those S&D provisions that Members felt should be made mandatory and to report to the General Council with clear recommendations for a decision by July 2002. He said that paragraph 1 was equally clear. It specified that the S&D provisions were to be examined with a view to making them more effective and again a report was to be submitted to the General Council with clear recommendations for a decision by July 2002. He stressed that these were not just reports to the General Council, as some delegations had said, but were to be reports containing clear recommendations that would then enable the General Council to take a decision by July 2002. He said that, as long as these objectives were fulfilled, his delegation would be happy to leave the structuring of the future work in the hands of the Chairman. He stated, however, that some delegations had made a suggestion that the Agreement specific proposals should be sent to other WTO bodies. He said that this was something his delegation was unable to accept since it was the CTD Special Session that had been tasked with the responsibility of examining all the S&D provisions with a view to making them mandatory, precise, effective and operational. He did not see any necessity, therefore, to refer any of the proposals to other WTO bodies. He felt that the proposals already on the table provided a clear indication of what might be tackled in the first stage of the work.

83. The representative of Canada said that it was appropriate to take stock of the progress that had been made in fulfilling the Doha mandate. She said that a number of proposals had been tabled regarding S&D provisions that could be made mandatory. The CTD had considered the legal implications and practical implications of doing so, as mandated in the Doha Declaration. She said

that, in the view of her delegation, any changes to the existing S&D treatment provisions must only be made through the procedure set out for making amendments to the provisions of existing Agreements. She said that Article IX of the Marrakesh Agreement could be used to clarify the meaning of a provision but not to change it. She felt that the interpretation provision should not be used in a manner that would undermine the amendment provisions. As to the second part of the Doha mandate she said that her delegation held the view that making provisions mandatory did not mean that they would necessarily become more effective; nor did it mean that developing countries would start to make better use of them. She supported an approach that did not require amendments to the agreements but was based instead upon reviewing the S&D provisions against the basic principles and objectives of S&D treatment. As others, she felt that the Secretariat document on utilization was the most comprehensive analysis currently available on the use of these S&D provisions. She looked forward to its update by the Secretariat. She also said that it was important to take account of the work that had already been done in other bodies and working groups, some of which have held in-depth discussions on various S&D provisions such as, for example, the TRIPS Council. She said that these bodies could be asked to give their recommendations as to which S&D provisions merited further discussion in the Special Session. As to possible recommendations to the General Council, she said that a pointer might be made to the suggestion regarding the establishment of a Monitoring Mechanism and to the need for a further review of the principles and objectives, both of which would require further analysis.

84. The representative of the United States said that, in the context of the emphasis given by India on the reporting obligation by July, she would like to remind delegations that in the initial consultations held by the then Chairman of the General Council, a number of delegations had stated that the July deadline was not necessarily very realistic in light of the amount of work that had to be done. Since then a very large number of proposals had been tabled which would also need time to be examined. She said that there were a number of elements concerning S&D treatment provisions in the Doha Declaration and, as the delegation of Venezuela had indicated, there were also cross linkages with the overall implementation proposals that were being examined separately. She said that, while they shared concerns about the need for more time, they also wanted to affirm their commitment to the Special Session's reporting mandate to the General Council.

85. The Chairman said that it was his intention to hold informal consultations on 18 June 2002 so that Members could reflect on some of those issues in an informal meeting. He noted that Members had repeatedly stressed their commitment to the mandate during the course of the work of their Group. He said that in view of the time constraint and given the status of the work it would be difficult to get to where the mandate would have required us to be in July. He said that if the current status were accepted this would help to instil a measure of realism as to how to structure the work during the next six weeks. He said that Members had to strive for the attainable in this period through constructive engagement, in all good faith, and then to devise a plan of action for the work that still remained.

86. Before concluding, the Chairman said that he wished to bring to the attention of Members the responses that had been received from the other WTO bodies requested to inform the CTD Special Session of any issues related to S&D treatment which they may have considered. He said that these had been circulated to Members to peruse and that Members could give their reactions to these reactions either at once or at a later meeting. No comments were made in this regard and so the Chairman closed the meeting.
