
Committee on Trade and Development

DEVELOPMENTAL ASPECTS OF THE DOHA ROUND OF NEGOTIATIONS

Note by the Secretariat

Revision

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I. INTRODUCTION

1. At the 54th Session of the Committee on Trade and Development (CTD) on 5 October 2005, Members undertook a review of the developmental aspects of the Doha Round of negotiations based on a background paper prepared by the Secretariat (WT/COMTD/W/143). It was agreed at the meeting that the paper would be revised based on comments made by Members so as to more fully reflect the interests and concerns of developing countries in the current Round.

2. The present document addresses the developmental aspects in all the subject areas under negotiations in the Round. In addition to providing a brief summary of the status of the negotiations in each area, the paper attempts to highlight the broad parameters of the development dimension, to identify specific issues of interest to developing countries and to describe the potential gains which could accrue to developing countries from the conclusion of the negotiations. This revised document has been prepared under the Secretariat's own responsibility and by no means claims to provide an exhaustive coverage of all the developmental aspects raised in the course of the negotiations. Nor should the paper be seen as an attempt to prioritize issues, subjects or concerns raised by individual Members or groups of Members. Finally, this paper does not prejudice the right of any Member to raise other concerns or views related to paragraph 51 or the presentation below concerning the areas currently under negotiation in the Doha Development Agenda.

II. DEVELOPMENTAL ASPECTS OF THE DOHA DEVELOPMENT AGENDA NEGOTIATIONS

A. AGRICULTURE

1. Parameters of the Development Dimension

3. Agriculture has the potential to play an important role in the continuing development of many WTO Members. For a large number of developing and least-developed countries, agriculture makes a significant contribution to their economies, including its direct contribution to gross domestic production, export revenue and employment as well as to rural development and livelihood security. However, many of the world's agricultural producers are currently disadvantaged in the world trading environment because of high tariff barriers and competition from producers that receive high levels of domestic or export-related assistance. Therefore, a reduction in trade barriers and subsidy levels, both domestic and export, can lead to important improvements for developing country agricultural producers. The development aspects related to agriculture can be found in each of the three pillars of the agriculture negotiations – market access, domestic support and export competition.

(a) Market access

4. The market access pillar is arguably the most complex and intricate pillar of the agriculture negotiations, with the 1 August 2004 Decision (WT/L/579) being a delicate balance of offensive and defensive interests of all Members. Despite its complex nature, the market access pillar has, arguably, the greatest potential to deliver real economic benefits to Members. As tariff barriers are reduced and tariff rate quotas expanded in both developed and developing countries, increased market access opportunities will allow Members to expand export volumes and revenues.

5. A significant reduction in tariffs and the expansion of tariff quotas, particularly in developed country markets, is being sought by developing countries in order to assist with the achievement of their development and other trade-related objectives. In addition, some Members also view the reduction of tariff escalation and the implementation of the long-standing commitments to the fullest liberalization of trade in tropical products as being key elements of the development dimension of the Doha Round. At the same time, many developing countries are concerned about the likely impact of tariff reductions on rural livelihood, and consequently on their food security concerns. Accordingly, they argue for a flexibility in the reduction of tariffs, especially for "special products". Preference receiving developing and least-developed countries are also concerned that tariff reductions by preference-granting countries will result in significant preference erosion, especially since preferential access arrangements play a vital role in terms of their ability to export, and earn foreign exchange, which contributes to the development of their economies.

(b) Domestic support

6. Reduction in the high levels of domestic support is a key issue to most developing countries, since such policies distort the agricultural trading environment and contribute to lower world prices including the decline of commodity prices. This has a negative impact on non-subsidising producers, particularly those in developing countries, many of which would therefore like to see large reductions in trade-distorting support in developed countries.

7. Reform of domestic support is linked to the market access pillar. Some developing and least-developed countries argue that it would indeed be counter to development aims to expect them to further reduce their tariffs while countries are still able to maintain significant levels of spending on Amber and Blue Box subsidies. Further market openings would simply mean increased competition for their domestic producers against highly subsidised products.

(c) Export competition

8. Export subsidies, of all kinds, are generally considered to be the most egregious form of trade-distorting policy. The use of export subsidies ensures that there are more agricultural goods on world markets, resulting in lower world prices than would otherwise be the case. For non-subsidising countries this means artificially high levels of competition in both the domestic market and abroad and reduced export revenue. In some cases, exports may be completely displaced in third markets by 'cheaper' subsidised products. Thus the removal of this form of artificial competition and price suppression would help to improve the ability of Members that do not use such programmes, particularly developing and least-developed Members, to compete in a fair and market-orientated agricultural trading system.

9. Most developing countries argue for the elimination of all forms of export subsidies, including in the form of export credits, non-genuine food aid or trade-distorting practices of exporting state trading enterprises. The parallel elimination of all forms of export subsidies may, however, increase the cost of imported food products for some net-food importing countries.

2. Status of the Negotiations

10. The agriculture negotiations are governed by paragraph 13 of the Doha Declaration which states that the negotiations are "aimed at: substantial improvements in market access; reductions of, with a view to phasing out, all forms of export subsidies; and substantial reductions in trade-distorting domestic support". Ministers also agreed that "special and differential treatment for developing countries shall be an integral part of all elements of the negotiations and shall be embodied in the Schedules of concessions and commitments and as appropriate in the rules and disciplines to be negotiated, so as to be operationally effective and to enable developing countries to effectively take account of their development needs, including food security and rural development".

11. Paragraph 13 of the Doha Declaration has been given further precision by Members in Annex A of the General Council Decision of 1 August 2004. For example, in the area of market access, the Decision states that tariff reductions will be made through a tiered formula that takes into account Member's different tariff structures and that progressivity in tariff reductions will be achieved through deeper cuts in higher tariffs with flexibilities for sensitive products. Similarly, it states that developing country Members "must be able to pursue agricultural policies that are supportive of their development goals, poverty reduction strategies, food security and livelihood concerns". Although not fully developed, special and differential treatment provisions are also set out in Annex A. Such provisions include, *inter alia*, lower reduction commitments, longer implementation periods, designating an appropriate number of products as Special Products, and the use of a Special Safeguard Mechanism.

12. The 1 August 2004 Decision also states that preference erosion will be addressed in the negotiations, as well as that the full implementation of the long-standing commitment to achieve the fullest liberalization of trade in tropical, agricultural products and for products of particular importance to the diversification of production from the growing of illicit narcotic crops will be effectively addressed. Clearly, an intricate, delicate and challenging balance needs to be found in the negotiations so that all developing countries are able to pursue agricultural policies that are supportive of their development goals, poverty reduction strategies, food security and livelihood concerns.

13. Prior to July 2005, Members had been involved in a series of consultations to develop a "first approximation of draft modalities". The objective of the first approximation was to give further precision to the 1 August 2004 Decision so that Members could later agree on full modalities. Members had focused their work on a number of "gateway" issues where clarity was required before other issues, including development related issues, could be further developed. For example, on agricultural market access it was necessary to have some idea of the basic structure of the approach to

be taken to reduce tariffs before a special safeguard mechanism for developing countries can be fully defined. The inability of Members to achieve a sufficient degree of convergence on the "gateway" issues, coupled with a very limited period of time before the Sixth Ministerial Conference, led Members to agree on a change of focus in their discussions. Members committed themselves to a "bottom-up" negotiating approach. Rather than discuss specific issues in isolation, the "bottom-up" approach looks at the issues in a more comprehensive and complete manner and includes a discussion of the numbers (i.e. levels of ambition) for the reductions in support and protection. A number of new proposals in various formats, from both developed and developing countries, have been submitted to the negotiations since September 2005. These proposals outline the modalities and level of ambition different Members, and groups of Members, are seeking to achieve. Not only will the final modalities package define the level of ambition from the negotiations, it will also determine the commitments that Members will be willing to undertake, which in turn will define the development potential of the agriculture negotiations.

3. Specific Issues of Interest to Developing Countries

14. Issues of interest to developing countries suffuse all the three pillars of the negotiations. Even though the emphasis that different groups of developing countries and the least-developed countries attach to the different issues varies, these remain central to their overall ambitions for the Round. The specific issues of interests to developing countries include, *inter alia*:

(a) Market access

- Increased market access in developed countries, by pushing for tariff reductions, especially on products of export interest to developing countries;
- Expanding their trading opportunities in other developing countries (South-South trade);
- Fullest liberalization of trade in tropical agricultural products and for products of particular importance to the diversification of production from the growing of illicit narcotic crops;
- Less than full reciprocity in the negotiations, including by having to undertake lesser tariff reductions and/or tariff quota expansion commitments relative to those to be undertaken by developed countries;
- Addressing problems relating to preference erosion;
- Addressing the issues of tariff escalation and the issue of tariff simplification;
- Expanding and improving the administration of tariff rate quotas;
- Lifetime of the existing special agricultural safeguard (SSG);
- Appropriate special and differential treatment for developing countries, including the flexibility to designate a number of products as 'Special Products' (SP) based on criteria of food security, livelihood security and rural development needs, and the establishment of a Special Safeguard Mechanism (SSM).

(b) Domestic support

- Substantial reductions in trade-distorting support in developed countries;
- Blue Box criteria/ceiling;
- Review and clarification of the Green Box criteria to ensure that such measures have no, or at most minimal trade-distorting effects on production;

- Capping of product-specific aggregate measurements of support, in accordance with a methodology to be agreed;
- Flexibility to pursue agricultural policies that are supportive of their development goals, poverty reduction strategies, food security and livelihood concerns;
- Flexibility in, or exemption from, any reduction in de minimis support (building upon the decision that developing countries that allocate almost all de minimis support for subsistence and resource-poor farmers will be exempt from reduction commitments);
- Appropriate special and differential treatment, including the right to use some level of agriculture support either now or in the future; flexibility to provide certain types of investment subsidies and to target subsidies to low-income or resource-poor farmers.

(c) Export competition

- Elimination of all forms of export subsidies;
- Developing appropriate rules in respect of short-term export credits, export credit insurance or guarantee programmes (export credits, etc. with repayment terms of more than 180 days are to be eliminated), exporting state trading enterprises, with special consideration for the monopoly status for certain STEs in developing countries, and on food aid, whilst ensuring that these disciplines have appropriate provisions for differential treatment of least-developed and net food-importing developing countries;
- Appropriate special and differential treatment, including longer time frames to eliminate all forms of their export subsidies (to those developing countries that have reduction commitments in this area), extension of the provisions contained in Article 9.4 which provides an exemption from reduction commitments for certain types of export marketing and transport costs.

15. In addition to the issues of interest to developing countries highlighted above, special and differential treatment will have to include lower reduction rates and longer implementation periods for developing countries. Furthermore, the 1 August 2004 Decision states that least-developed countries (LDCs) will not have to undertake reduction commitments and that they will have full access to all special and differential treatment provisions. It also states that developed Members, and developing country Members in a position to do so, should provide duty-free and quota-free market access for products originating from least-developed countries.

16. Given the importance of cotton for a number of developing countries, especially LDCs, cotton has now its own specificity in the agriculture negotiations. Members have agreed to address it ambitiously, expeditiously and specifically within the agriculture negotiations. A Sub-Committee on Cotton has been established and is tasked with addressing "all trade-distorting policies affecting the sector" in all three pillars of the agriculture negotiations. The work programme of the Sub-Committee is also to take account of the need for "coherence between trade and development aspects of the cotton issue". The main interest of the proponents is to seek the elimination of all export subsidies and subsidies which distort international cotton markets and to obtain bound duty-free and quota-free access for cotton and its by-products for LDC cotton producers and net exporters.

17. A number of recently acceded Members (RAMs), are concerned about the possible negative impact on their agricultural sectors of further significant market access commitments in particular. These Members argue that due to the significant commitments they undertook during their accession process their levels of border protection are already at very low levels, especially compared to the tariff levels of other more advanced countries.

18. Because of the perceived shortcomings of the mechanisms put into place at the end of Uruguay Round to monitor the implementation of Members' commitments, some developing

countries have put forward a proposal for improved monitoring and surveillance mechanisms. They support greater transparency in the implementation of new obligations through improved monitoring mechanisms as well as ensuring full compliance of new provisions through better surveillance.

19. A number of developing countries have voiced concern about the continuing decline of commodity prices. Key aspects of their proposal tabled in June 2005 include the removal of tariff escalation, the elimination of tariff duties for commodity products under GSP schemes; the temporary protection of preferential margins where MFN reductions may affect these preference margins; enhanced duty- and quota-free access for products from least-developed countries into developed and advanced developing country markets; the elimination of non-tariff barriers; more rapid reductions on trade-distorting domestic support and elimination of export subsidies; and the establishment of a transitional compensation mechanism with a view to compensating exporting countries for the subsidy-related losses in their export earnings, during the period which subsidies are being reduced or eliminated

4. Possible Gains for Developing Countries

20. A successful conclusion of the negotiations would lead to considerable gains for developing countries. Further reform of the world agriculture trading system, would lead Members closer towards the long-term objective they all agreed to during the Uruguay Round and which is encapsulated in the Doha Declaration and the 1 August 2004 Decision, namely to establish a fair and market-orientated agricultural trading system.

21. Substantial reductions of tariffs, along with a reduction of tariff peaks and tariff escalation, would result in increased market access opportunities. Exports to developed countries would increase and South-South trade would be stimulated. This would not only allow developing countries to export products where they have a comparative advantage, but would also allow for the diversification of production, including value-added processing, and export orientation. Enhanced tariff quotas with an improved tariff quota administration regime would also result in further market access opportunities.

22. Substantial reductions in trade-distorting domestic support presently provided many industrialized countries and the elimination of all forms of export subsidies would make world prices more realistic and would allow exporters, especially in developing countries to trade in an environment free from artificial competition and artificially low prices. This would undoubtedly improve developing and least-developed countries' share in world trade in products in which they have a comparative advantage.

23. At the same time, appropriate special and differential treatment, including the flexibility to designate a number of products as 'special' and the establishment of a Special Safeguard Mechanism, would go a long way in alleviating concerns that many developing countries have about the possible effect of tariff reductions on their rural development, rural livelihood and food security. Similarly, flexibility in the right to provide some agriculture support, as well as the flexibility to provide certain types of investment subsidies, and to target these subsidies to low-income or resource-poor farmers, would help developing countries in their effort to increase the productivity, and consequently the earning capacity, of their agriculture sector. Clearly, increased trade and thereby increased export revenue and foreign exchange earnings are all important aspects in the realization of development objectives, especially objectives related to rural development and the alleviation of rural poverty. At the same time, improved market access conditions on a more certain footing can help to increase infrastructure and investment, including foreign direct investment, and therefore increase and improve production and processing standards, employment and standards of living.

B. NON-AGRICULTURAL MARKET ACCESS

1. Parameters of the Development Dimension

24. The NAMA negotiations offer the promise of improved and more secure market access conditions through new tariff reductions and bindings in both developed and developing country markets. Major aspects of these new opportunities are listed below.

- Improved access into developed country markets: The reduction or elimination of tariff peaks, high tariffs, tariff escalation on products originating in developing countries would open up new valuable market access opportunities in developed countries.
- Improved opportunities in South-South trade: Developing countries also have a substantial interest in improving their access opportunities into other developing country markets. South-South trade constitutes approximately 40 per cent of the exports of developing countries and these flows are growing at a faster rate than trade with developed countries. Some Members consider that there are better ways of improving South-South trade opportunities outside of the NAMA negotiations, such as Free-Trade Agreements (FTAs) and GSTP negotiations. However, other consider that this approach would be discriminatory, including potentially among developing countries.
- Improved market access for LDCs: LDCs consider improved market access in the form of preferential duty-free/quota-free access important for their development goals. LDCs aim to secure and improve this type of access into developed countries markets as well as those of other large developing countries.

25. Developing country Members in the NAMA negotiations have often called for flexibilities that would allow them to make lower tariff cuts, exempt a number of tariff lines from new bindings or reduction commitments, or maintain the *status quo*. This would be in line with the principle of less than full reciprocity for developing countries in negotiations. Some of the main considerations underlying these arguments are listed below.

- Preserving "policy space": Many developing country Members have argued for a degree of flexibility in order to pursue their developmental goals, including industrialization and the diversification of their economies. While recognizing merit in these arguments, at least with respect to a few products or sectors, others have noted that many developing countries have a large binding overhang (difference between the bound duties and the applied duties) and will probably not cut into applied duties as a result of this Round. The idea has also been mooted that since some developing countries lack the institutional capacity to use trade remedies (i.e. safeguards, anti-dumping, etc.) they need to preserve high bound duties as a substitute instrument.
- Protecting infant industries: Some developing countries have argued that they need to retain tariffs to nurture infant industries because they lack the public funds to provide subsidies or other types of incentives for this purpose. Members have discussed the risks of excessive protection over extended periods in terms of a potentially negative impact on development. Some have noted that almost all countries have protected nascent industries at some stage of their development.
- Maintaining unbound duties: Some Members have made a case for keeping tariff lines unbound, particularly in sensitive sectors. Others have questioned why a binding, as opposed to the level of a binding, should be considered detrimental to any industry, and have noted that all agricultural tariffs normally considered more sensitive are bound and that several developing countries and LDCs already have full binding coverage.
- Non-reciprocal preference erosion: Many developing and least-developed countries have argued that they depend on non-reciprocal preferences for a significant share of their exports. They consider that further MFN liberalization should take this into account and

avoid their further marginalization. Other developing countries which benefit less from preferences emphasize the importance they attach to further MFN liberalization precisely in the markets of the preference giving countries and note that non-reciprocal preferences are autonomously granted outside the WTO system. These Members are ready to consider safety-net solutions for preference receiving countries, but outside the WTO framework. They do not want MFN liberalization to be compromised for preserving preference margins as this solution would, amount to S&D for developed countries.

- Preventing the loss of tariff revenue: Dependence on tariffs for government revenue has been cited by some developing countries as a reason for preserving tariffs at current levels. While arguing that it is desirable for a country to diversify its tax base over time, others have noted that since bound and not applied duties are being negotiated, the risk of revenue loss may be lower for many developing countries.

2. Status of the Negotiations

26. Paragraph 16 of the Doha Ministerial Declaration provides that the negotiations shall aim, by modalities to be agreed, to reduce or as appropriate eliminate tariffs, including the reduction or elimination of tariff peaks, high tariffs, and tariff escalation, as well as non-tariff barriers, in particular on products of export interest to developing countries. It also provides that the negotiations would take fully into account the special needs and interests of developing and LDC participants, including through less than full reciprocity in reduction commitments, in accordance with the relevant provisions of Article XXVIII *bis* of GATT 1994 and the provisions cited in paragraph 50. The modalities to be agreed are also to include appropriate studies and capacity-building measures to assist LDCs to participate effectively in the negotiations.

27. The Negotiating Group on Market Access (NGMA) has been working towards the objective of achieving full modalities for the Hong Kong Ministerial. Since the start of the year, the discussions on the non-linear formula have been intensive. More recently, discussions have focused on a Swiss or Swiss-type formula. Various proposals have been submitted. Different views have been expressed on how to measure less than full reciprocity in reduction commitments, with some indicating that this means lower percentage cuts for developing than developed Members while for others this principle should be evident in the end result irrespective of the means to achieve it. Not unexpectedly, given the fast approaching Hong Kong Ministerial, Members have begun to engage in a discussion of numbers for the coefficients for the formula.

28. Flexibilities have been the subject of substantive discussions. Some Members have indicated that flexibilities are a stand alone component and have expressed concerns about the conditions attached to the use of flexibilities. Some other Members see a link between the formula and the flexibilities. LDCs are expected to increase their bindings substantially, leaving it largely to them to decide on the level and coverage of the bindings. Discussions have taken place more recently on the question of duty-free and quota-free market access for LDCs.

29. Unbound tariffs have also been an issue of concern to a number of developing countries. The question of how these should be treated has been discussed thoroughly on the basis of several proposals. In this context, the August 2004 Decision already recognises that LDCs shall not be required to apply the formula nor to participate in the sectoral approach, but as a contribution to the Round they are expected to substantially increase their level of binding commitments.

30. The sectorial tariff component of the negotiations is being pursued actively in an informal Member-driven process. Some Members consider this an essential component of the NAMA negotiations in order to achieve commercially meaningful market access. Four of the ten ongoing sectoral initiatives have been initiated by developing country Members. However, other developing

country Members have indicated that such initiatives are to the detriment of small developing Members, as they would erode preferential margins.

31. Intense discussions have taken place on the erosion of non-reciprocal preferences. A number of studies which show that the effects of preference erosion is circumscribed to a limited number of countries and a limited number of products have also been discussed. While some Members see the preservation of such preferences at the heart of their development needs, others see MFN liberalization central to their own development needs. The NGMA has had a preliminary exchange on tariff revenue dependency. However, it would appear that more information is necessary from the Members concerned in order to move the discussions forward.

32. A number of additional issues have been discussed in the NGMA, including the subject of recently acceded Members. Some recently acceded low income economies in transition have indicated that given their significant contribution at the time of their WTO accession and their low levels of development, they should not be required to make any tariff cuts. The NGMA has also been working on the subject of product coverage. On *Ad valorem* Equivalents (AVEs), Members agreed to use the guidelines contained in JOB(05)/166/Rev.1 for the conversion of non *ad valorem* duties to AVEs.

33. Addressing non-tariff barriers (NTBs) would appear to be important for many developing countries. It has now become clearer that the majority of notified NTBs will be taken up by the Members concerned either in regular WTO committees or in other negotiating groups. The majority of NTBs notified pertain to technical barriers to trade (TBT), trade facilitation, customs valuation and sanitary and phytosanitary (SPS) measures. It should be recalled that many of the regular WTO bodies have ongoing technical assistance and capacity building projects to assist developing countries and LDCs to assume the obligations laid out in the various NTB Agreements, such as the TBT and SPS Agreements. There are also ongoing vertical NTB discussions, mostly spearheaded by developed country Members and it is also expected that some NTBs will be addressed bilaterally. This is a very complex area of work and many developing and LDCs have had difficulties in identifying the NTBs affecting their exports. The NGMA has spent a considerable amount of time identifying, categorizing and examining the notified NTBS, and in some instances discussed the NTBs proposed for negotiation in the NGMA. Members are expected in the current process to come up with specific proposals on how they would like to solve the NTBs they are facing.

3. Specific Issues of Interest to Developing Countries

34. Summarizing from the preceding section, the specific issues of interest to developing country Members are listed below. It is noted, however, that not all developing countries share the same views on several of the issues listed below.

- Bring down tariff peaks, high tariffs and tariff escalation in developed country markets (improve access in developed country markets);
- Bring down tariff peaks, high tariffs and tariff escalation into other developing country markets (improve South-South trade);
- Duty-free and quota-free access for LDCs while ensuring that LDCs are only required to increase their level of bindings and not to apply the formula or to participate at sectorials;
- Reduce or eliminate non-tariff barriers;
- Preserve "policy space";
- Provide adequate protection for infant industries;
- Preserve unbound duties (keep certain lines unbound);

- Address non-reciprocal preference erosion;
- Prevent tariff revenue losses.

4. Possible Gains for Developing Countries

35. In recognition of benefits that accrue from appropriately designed trade liberalization measures, many developing country Members have been reducing tariffs autonomously over the years. Trade in the manufacturing sector covers 85 to 90 per cent of world merchandise trade. Moreover, the share of developing countries in world exports of manufactured goods rose from 16.6 per cent in 1990 to 28.1 per cent in 2004 (the figure for manufactured goods excludes fish and fish products and petroleum).

36. Overall, the gains from NAMA liberalization have been estimated by several institutions to range from US\$54.2 billion to US\$ 276.8 billion (Piermartini, R. and Teh, R. 2005). Most of those estimates are long term, in the sense that they assess the impact following full adjustment. Evidence regarding short-term effects is scarce. These estimates need to be considered in light of the following: first, the estimates are based on scenarios which may diverge substantially from any final agreement reached. Second, the models typically do not take proper account of factors such as growth effects, preferences, or supply-side constraints. For example, in order to feel the full benefits of results in the NAMA negotiations, alleviation of supply-side constraints is a necessary condition. Moreover, it is important to note that the estimates of gains from opening up to trade do not incorporate any consideration of adjustment costs associated with increased trade competition.

37. The gains that could accrue to individual developing countries differ depending on each country's comparative advantage as well as on the extent to which it will liberalize itself. However, in general terms, both North/South and South/South trade are expected to expand as a result of the NAMA negotiations, with the corresponding effect on economic efficiency and growth. Additionally, another impact of removing or reducing tariff escalation will be to give developing countries the opportunity to diversify their export base and to produce and export products with a higher domestic value-added component.

38. Another outcome of the NAMA negotiations is expected to be an improvement in binding levels, which would enhance the predictability and transparency of the trading environment. Reducing binding overhangs which are currently prevalent in tariff structures of many Members would render the trading environment more stable and potentially also improve the investment environment. This could be further reinforced by the requirement that bindings should only take the form of *ad valorem* duties.

39. Problems in the area of non-tariff barriers are also expected to be addressed in the context of the NAMA negotiations or in other negotiating groups. Since the results of the different NTB negotiations will be applied on an MFN basis, the benefits will accrue to the entire Membership, irrespective of whether or not a particular Member engaged in the discussions. This alone could lead to a considerable alleviation of the NTBs faced by developing countries and will facilitate their exports to developed country markets as well as to the markets of their developing trading partners.

40. Granting duty-free and quota-free market access to LDCs, whether by developed country Members or other developing Members, would offer this group of countries additional market access, and along with this, the opportunity to integrate further into the trading system and to diversify their export base.

C. SERVICES

1. Parameters of the Development Dimension

41. Services production is the dominant economic activity in virtually all countries of the world, regardless of their level of development. The services sector represented 68 per cent of world gross domestic product (GDP) in 2002 (World Bank 2004). Despite many country-specific factors such as natural resource endowments, the share of services tends to be positively related to the level of income or development. This is because individuals tend to spend more on services at higher levels of income, and the services content of production increases with growing sophistication in industrial production. For example, in 2002, services were estimated to account for 44 per cent of GDP in LDCs, 57 per cent in middle income economies, and 71 per cent in high income economies (World Bank 2004).

42. Many traditional services, including distribution, construction, or social services are particularly labour-intensive. Services thus tend to be an even more important source of employment – and employment creation – than the above figures suggest. By the same token, given the sector's dominant role in total employment, productivity gains are essential for overall economic expansion and welfare. Removing barriers to access and competition among services and service suppliers can lead to lower prices, better quality and a wider choice for consumers. Given their infrastructural role, services such as telecommunications, financial services (including banking and insurance), business services, construction and transport are crucial in shaping overall economic performance. Logistics (packaging, storage, transport, inventories, administration and management) are also an important component of total production costs. The impact of costly or inadequate services infrastructure is comparable to a tax on production and exports. Moreover, access to global production and trade networks requires efficient and timely delivery of products. In sum, there is a common interest across countries at all levels of development in ensuring that their services infrastructure underpins, rather than inhibits, internal economic integration and access to external markets. The quality, availability and price of core producer services are key determinants of competitiveness, and ultimately of growth and development.

2. Status of the Negotiations

43. The services negotiations are taking place on two broad fronts: market access and rule-making (Emergency Safeguard Measures, Government Procurement, Subsidies and Domestic Regulation). The market access segment consists of negotiations on new or improved commitments for inclusion in Members' schedules of specific commitments under GATS, and the re-negotiation of current MFN exemptions as mandated by the Annex on Article II Exemptions. Appropriate flexibility is to be provided to individual developing countries, which may open fewer sectors and liberalize fewer types of transactions in line with their development situation.

44. The GATS does not recommend or prescribe, templates for undertaking commitments. Each Member is free to structure its commitments in line with its national policy objectives and constraints. However, in accordance with GATS Article XIX, Members have adopted specific instruments to guide the negotiations. Among these are the 'Guidelines and Procedures for the Negotiations on Trade in Services', which, *inter alia*, recall that the negotiations aim to achieve progressively higher levels of liberalization and increase the participation of developing countries in services trade; reaffirm that the process of liberalization shall take place with due respect for national policy objectives, the level of development and the size of economies of individual Members; require Members to give special attention to sectors and modes of supply of export interest to developing countries; and recognize the right of Members to regulate and to introduce new regulations. Special provision has also been made for the terms of LDC participation in the negotiations, affirming the need for greater flexibility in terms of the depth and coverage of LDC commitments, calling for particular attention on the part of

other Members in opening up sectors of interest to LDCs, and emphasizing the importance of assisting LDCs to participate more effectively in international trade in services.

45. The Negotiating Guidelines, which govern the negotiations on market access, establish the request-and-offer approach as the main negotiating method. However, the request-and-offer process has only produced limited results so far: by the end of October 2005, only 69 Members (counting the EC as one) had submitted offers, including 30 revised offers. In other words, 23 offers are outstanding, if LDCs are not counted. If LDCs are factored in, 54 offers would remain to be submitted. Members have expressed their concerns with regard to both the number of Members which have yet to submit an offer and the modest quality of offers submitted to date.

46. The rule-making negotiations already started in 1995 are based on the mandates contained in Article VI:4 (Domestic Regulation), Article X (emergency safeguard measures), Article XIII (government procurement), and Article XV (subsidies). Pursuant to the Doha Declaration, they were integrated into the broader agenda of the new round of negotiations. Overall, however, the rules negotiations have made little headway to date. While discussions are ongoing on the basis of several proposals, major divergences between Members remain to be solved.

3. Specific Issues of Interest to Developing Countries

47. A broad range of developing countries have expressed their negotiating objectives and expectations in written submissions since the start of the services negotiations. Interests among developing countries show considerable variation. Over 40 per cent of the 150 proposals that have been tabled since November 2000 involve one developing country or more (this number excludes most proposals on so-called horizontal issues, but covers basically all proposals on sectors and modes of supply). In total, more than 30 developing country Members have voiced interest in at least one sector or mode of supply under negotiation. Relevant sectors include professional services, computer and related services, telecommunication services, audiovisual services, construction and related engineering services, distribution services, energy services, environmental services, financial services; tourism services and transport services (including logistics). In other words, the sectors addressed by individual developing countries extends across all major services covered by the Agreement.

48. Movements of natural persons (under mode 4) and, more recently, the cross-border supply of services (under modes 1 and 2), have also attracted attention. Proposals on mode 4, which play a focal role for many developing countries, have included a call for the harmonization of categories of the type of service supplier used in scheduling commitments, more commitments on lower-skilled workers, the reduction of barriers involving such matters as nationality, residency and work permit requirements, tax treatment, wage parity requirements and the duration of stay. The emergence of "off-shoring" activities in recent years has turned the spotlight on cross-border trade. A number of developing countries have recently called for ambitious commitments under both modes 1 and 2 across a wide range of sectors, including business services, research and development services, computer services, management consulting services, call-centre services, and transfer of financial information and data.

4. Possible Gains for Developing Countries

49. Several studies have estimated, with a wide variety of research techniques, the income effects attributable to a reduction in services protection. In general, these gains have been found to dwarf the benefits expected to flow from further trade liberalization in goods. This is due to several factors. First, barriers in many services markets are higher than existing barriers in goods trade, barring particular exceptions such as in the case of agriculture. Second, these barriers normally consist of less transparent and efficient measures – quotas and other non-revenue generating interventions – than tariffs in merchandise trade. Third, as explained above, the costs of services protection, in particular

of infrastructure-related services, are spread across, and impose deadweight losses on, a wide array of downstream user industries.

50. Developing countries stand to gain considerably from liberalization of trade in services, both on the part of their trading partners and in terms of their own policy regimes. Bearing in mind the nature of potential economy-wide gains from low-cost, high quality services, benefits to countries from their own liberalization can be considerable. While there are obvious long-term gains associated with services liberalization, there also adjustment costs that may be involved which need to be addressed with assistance and capacity-building programmes. Moves towards a more competitive environment take time and may impose significant burdens in terms of redundancies, professional or even regional relocation, additional training requirements, etc. on affected companies and their staff. Obviously much depends on domestic reforms to underpin the viability and credibility of the new environment. For example, the absence of clear and predictable market conditions may prompt potential investors to demand risk premiums that are not politically or socially acceptable. If increased entry into financial sectors is not accompanied by adequate prudential supervision, instability may ensue. And the absence of well-designed universal service requirements may result in new, unsustainable burdens being imposed on vulnerable groups or regions. The pace, content and sequencing of liberalization programmes are thus key to avoiding unnecessary frictions and ensuring the efficiency and viability of the new regimes.

D. TRADE FACILITATION

1. Parameters of the Development Dimension

51. Development aspects have always been at the heart of WTO work on facilitating trade, reflecting the wide-spread recognition of 'facilitation' as a fundamental element of a country's trade and growth policy. Having brought down tariff barriers to an all-time low, Members have decided to address the remaining obstacles to trade. Negotiations on Trade Facilitation are seen as a necessary complement to broader liberalization efforts to allow the realization of their full potential. The development dimension further surfaces in the negotiations' aim of enhancing technical assistance for Facilitation measures and harness private sector support. UNCTAD estimates that trade facilitation could result in savings equivalent to 2-3 per cent of the value of the traded goods.

52. The development aspects are reflected in the negotiating mandate, addressing them in three inter-connected ways. First, by seeking to expedite the movement, release and clearance of goods, including goods in transit, with the related additional goal of enhancing technical assistance and capacity-building support in this field. Work on both aspects further has to take full account of S&D treatment for the developing membership with extent and the timing of entering into commitments being related to their implementation capacities. Members recognize that the S&D principle should extend beyond the granting of traditional transition periods with developing and least-developed Members also not being obliged to undertake investments in infrastructure projects beyond their means. Far-reaching flexibility is further granted to LDCs, which will only be required to undertake commitments to the extent consistent with their individual development, financial and trade needs or their administrative and institutional capabilities. Development-related aspects are finally also addressed in the mandate's call for the identification of trade facilitation needs and priorities as an integral part of the negotiations. Each of those aspects has been reflected in various contributions by the Membership, advancing their understanding and outlining possible ways ahead.

2. Status of the Negotiations

53. Based on the modalities set out in Annex D of the General Council Decision of 1 August 2004, and in line with the Work Plan adopted for their translation into day-to-day work, negotiations have proceeded on the basis of Members' contributions, both in written and verbal form. More than 60 submissions, many by developing countries, have been tabled on various aspects of the

mandate, underlining their commitment to advancing the facilitation of trade. Written contributions have also been made by least-developed countries, often teaming up with developed Members.

54. Having completed a series of discussions on all elements of the mandate and the proposals submitted thereon, the Negotiating Group has worked on capturing the progress made so far and setting out the road ahead, proposing a number of concrete recommendations in that regard. Benefiting from advances in understanding and building on elements of common ground, the draft reflects a generally expressed sense of satisfaction with the inclusive and transparent manner of conducting the negotiations, and their progress made on substance. At the same time, there is clear recognition of there still being substantial work ahead, especially with respect to S&DT aspects, needs and priorities identification, concerns about cost implications and technical assistance and capacity-building support.

3. Specific Issues of Interest to Developing Countries

55. Issues identified by developing countries as areas of particular interest cover a wide field, including technical assistance and capacity building (TA&CB). A lot of attention has also been given to the needs and priorities of developing countries, cost implications and questions of S&D. Reference was further made to linkages between Annex D's elements and the need for a balanced result. At the same time, there was also focus on measures to improve and clarify the relevant regulatory framework with a view to expediting and enhancing developing country trade. For landlocked countries (as well as non-landlocked Members of the developing world), transit matters are of particular interest in that regard.

56. In the TA&CB area, calls have been made for support both during the negotiations and after their conclusion, with a number of concrete measures proposed for each phase. Such support is recognized as vital for developing and least-developed countries to fully participate in and benefit from the negotiating process. Assistance was requested to be precise, effective and operational, reflecting the trade facilitation needs and priorities of the developing world. Reference was also made to enhancing cooperation and coordination amongst the various aid providers to increase efficiency and avoid duplication of work. The identification of trade facilitation needs and priorities is another issue close to the heart of developing Members, with strong requests being made for their advancement and support. Proposals were also made for a compilation of the identified results, with tools solicited to this end. Work is also requested to continue and intensify on the process of addressing concerns on the cost implications side.

57. Special and differential treatment is another key pillar of the negotiations and an essential requirement for their success. Like in the case of TA&CB, calls have been made for S&D provisions to be precise, effective and operational and allow for the necessary flexibility in implementing the negotiations' results. Issues raised by developing countries with respect to improving and clarifying the existing regulatory framework cover all relevant GATT Articles. Proposals range from enhanced transparency and non-discrimination initiatives over various measures regarding import/export-related fees and formalities to matters addressing goods in transit. The landlocked countries have been especially active in pursuing some of these issues. Common underlying objectives of those suggestions are increased trading opportunities that take account of the particular needs of the developing world.

4. Possible Gains for Developing Countries

58. Lowering trade-related transaction costs can result in a significant improvement in a country's ability to compete effectively in the global economy. There has been wide recognition of this expressed in the Negotiating Group on Trade Facilitation by developing countries and LDCs, and of the importance of trade facilitation for the attainment of their development objectives. They have drawn particular attention to the benefits they foresee in terms of increasing the competitiveness of

their small and medium-scale enterprises. This applies in particular to the case of landlocked developing countries and LDCs, for which steps to facilitate transit traffic along with facilitating their own cross-border trade can produce a marked reduction in their import costs and an improvement in their export competitiveness on world markets. National experience papers presented by delegations in the Negotiating Group, as well as numerous studies that have been conducted by relevant international organizations that are collaborating with WTO Members in this area, point to a range of benefits that can be realized by taking measures to facilitate trade, including improving revenue collection, improving border controls and security, lowering administrative costs, encouraging more trade and foreign investment, and enhancing the competitiveness of domestic business in its home market as well as on export markets. Developing countries also stand to benefit greatly from the aspired increase in transparency and predictability of the trading environment.

E. SPECIAL AND DIFFERENTIAL TREATMENT

1. Parameters of the Development Dimension

59. Special and differential treatment (S&D) is an integral part of the WTO Agreements and reflects a recognition of the diverse nature of WTO's vast membership, asymmetry in their economic strengths and the need to ensure that economic gains from the trading system are well distributed among all Members. These provisions are also designed to facilitate the integration of developing and least-developed countries into the world economy, and to provide countries at different levels of development support and flexibility in their obligations so as to be able to achieve economic growth. While developing countries acknowledge that the multilateral trading system has attempted to address some of their concerns through appropriate S&D provisions, many of them still feel that more needs to be done to enhance the effectiveness and operationalization of these provisions. One of the main concerns expressed has been that S&D provisions are couched in best endeavour language and merely exhort Members to take certain steps, rather than making this action mandatory and binding.

60. The development dimension of S&D can be best gauged from the submissions made by the proponents in the Special Session. The African Group, one of the main proponents on S&D, in its submission states that "special and differential treatment shall aim, to address and resolve the imbalances between developed country Members and developing and ... to support developing and least developed country Members to undertake adjustments that are necessary for them to meaningfully benefit from the agreements ... and to secure for them market access in the multilateral trading system that will facilitate their rapid economic development" (TN/CTD/W/3/Rev.2). The African Group has submitted that their experience with implementing S&D provisions has shown that such provisions are best operationalized when they are in the form of binding obligations. The LDCs, which have also played a central role in this work, believe that developing country Members, particularly the LDCs, "experience peculiar problems, which constrain their beneficial participation in the multilateral trading system" (TN/CTD/W/4). They therefore feel that assuming the same types and levels of obligations as undertaken by other Members has prevented them from addressing their development challenges and from participating meaningfully in the international trading system. The LDCs argue that S&D provisions should provide them flexibility to take measures to assist their domestic industries, and that they should be obliged to undertake only such commitments or obligations that are consistent with their trade, development and financial needs.

2. Status of the Negotiations

61. The section on S&D in the August 2004 Decision mandated the Special Session to expeditiously complete the review of all the outstanding Agreement-specific proposals and report to the General Council, with clear recommendations for a decision, by July 2005. The Special Session was also instructed to address all other outstanding work, including on the cross-cutting issues. The proposals that have been referred to other WTO bodies were also to be addressed with clear recommendations for a decision no later than July 2005. Of the 88 Agreement-specific proposals

submitted in the Special Session mainly by the LDCs and the African Group, Members had up to Cancún been able to agree in principle to 28 proposals, which are yet to be adopted. (Annex C of JOB(03)/150/Rev.2). Thirty-eight proposals are under consideration in other WTO bodies. The remaining proposals are under consideration in the Special Session.

62. Members have agreed to focus their efforts on the five remaining LDC proposals and in recent weeks intensive work has been carried out on them. These proposals, *inter alia*, are seeking bound duty-free and quota-free market access for all products originating from LDCs, flexibility in the TRIMs Agreement, simplification of the waiver process for LDCs and improved coherence agreements with other international organizations to ensure more targeted technical assistance and capacity-building programmes.

3. Specific Issues of Interest to Developing Countries

63. Just as development issues suffuse all areas of the negotiations, so do issues relating to S&D. Consequently, any comprehensive compilation of issues of interest to developing countries would need to necessarily include the proposals on S&D tabled by developing countries in the different areas being negotiated. However, in the context of the proposals tabled in the Special Session, it can be said that the specific issues of interest to developing countries, include the following:

- Flexibility in the multilateral rules, which reflect their concerns and constraints;
- Transitional arrangements linked to the achievement of certain pre-specified developmental objectives;
- Simplifying existing procedures, including for enhanced flexibilities and extended transition periods, so as to provide a timely and effective response to particular concerns;
- Less than full reciprocity in the commitments undertaken by developing countries;
- Enhanced and targeted technical assistance and capacity-building programmes that would assist countries to implement WTO rules;
- Measures that would provide stable and predictable market access for products of export interest to developing countries, especially for the least-developed countries;
- Making S&D provisions mandatory, in keeping with the concern expressed by many developing countries that most of these provisions are not couched in binding language;
- Improved coherence arrangements to ensure that flexibilities provided in the WTO rules are not diluted because of commitments mandated by other organizations.

4. Possible Gains for Developing Countries

64. While it is difficult to quantify the gains from the S&D work programme, mainly because of the lag between adopting and operationalizing any recommendation that may be adopted, it can be said that gains would accrue by making the provisions precise, effective and binding. Clearly, in order to assist developing countries, especially the LDCs, the S&D provisions must respond to, and be reflective of, their concerns. A number of developing country Members have said that commitments and obligations undertaken by them in the WTO have reduced their flexibility to adopt, what in their view, are pro-development policies and measures. In this context, they have put forward a number of proposals which seek to enhance the existing flexibility in the rules for them, and consequently provide them a certain degree of policy space. They have also sought simplification of cumbersome procedures and/or notification obligations, so that they can divert their resources to other developmental issues and areas. Clearly, market access will be an important area where gains would accrue, even if the bulk of the development outcome are to be found in the different areas being

negotiated, such as in the agriculture, NAMA and services negotiations. However, the actual gains will largely depend on how effectively these recommendation are operationalized.

65. Developing country Members also consider transitional time periods as an important element of S&D treatment; one that provides them with more time to conform with, or fulfil particular obligations. However, many, if not all, of these transition periods have expired and developing countries, especially the LDCs, are seeking a positive consideration of their requests for extension of these transition periods. There are several recommendations on the need for technical assistance (TA) to be more targeted to the development needs of developing and least-developed countries. There are also a number of proposals that seek to improve coherence arrangements with other organizations in the delivery of such assistance. An effective S&D regime, as part of the final outcome of the Doha Round, will certainly strengthen the development dimension of the negotiations. However, to achieve this it will be important to ensure that S&D provisions are targeted, effective and binding and provide actual development gains to developing countries.

F. IMPLEMENTATION-RELATED ISSUES AND CONCERNS

1. Parameters of the Development Dimension

66. Concerns arising from the implementation of the Uruguay Round Agreements were raised by some developing countries shortly after the establishment of the WTO in 1995. To them, the Uruguay Round Agreements were not balanced and did not contain provisions that would facilitate their integration into the multilateral trading system. In fact, there was the view that some of the Agreements, particularly the Agreement on Trade-Related Investment Measures and the Agreement on Subsidies and Countervailing Measures restricted the policy measures that could be implemented by developing countries to attract foreign direct investment and to support their nascent domestic industries ("policy space"). Concerns were also expressed about a wide range of issues, including the back loading of commitments under the Agreement on Textiles and Clothing. There was the additional concern among small and economically-weak developing countries that the cost of implementing the Uruguay Round Agreement, particularly the Agreement on Trade-Related Aspects of Intellectual Property and the Agreement on Customs Valuation was excessive as compared to benefits they had derived from the implementation of the Uruguay Round Agreements. Some developing countries also complained about abuse of anti-dumping, safeguards and countervailing measures as well as standards, sanitary and phytosanitary measures

67. In response, a number of developed countries queried whether all the proposals were genuine implementation issues in the sense of focusing on difficulties encountered by developing countries in their implementation of the Uruguay Round Agreements. Rather, they believed some proposals were aimed at rewriting Agreements, thereby upsetting the balance which was struck during the Uruguay Round. Nonetheless, they entered into a lengthy process of consideration of the issues.

2. Status of Work

68. Work on implementation issues begun in earnest in 2000 when WTO Members agreed to set up an Implementation Review Mechanism under the auspices of the General Council, which culminated in the adoption of a Decision on Implementation-Related Issues and Concerns at the Fourth Ministerial Conference in Doha. Under this Decision, Ministers agreed to take immediate action to address about 55 issues. Regarding the outstanding implementation issues, they agreed under paragraph 12 of the Ministerial Declaration to address them in two parallel tracks. Where a specific negotiating mandate had been provided, the relevant issues were to be addressed under those mandates. Where no such mandate had been provided, the issues were to be addressed by relevant WTO bodies, which were expected to report to the Trade Negotiations Committee (TNC) by the end of 2002 for it to take appropriate action. In this latter track of work, the relevant WTO bodies

reported wide divergences in Members' positions on most of the issues preventing the TNC from taking any action on the issues at its meeting in December 2002.

69. To break the impasse, Members requested the Director-General in May 2003 to consult on the issue of the extension of the protection of geographical indications provided for in Article 23 of the TRIPS Agreement to products other than wines and spirits, which was widely seen as the most controversial proposal. It was felt that progress on this issue would have spill-over effects and allow progress to be made on the other issues. It was further agreed that the Director-General's deputies would consult on the remaining 23 issues. Despite intensive consultations, very little progress was made on the outstanding issues prompting a number of Members to request that the issues be considered by the TNC itself in dedicated sessions. There was no agreement on this proposal and the Director-General process was allowed to continue.

70. The 1 August 2004 Decision of the General Council mandated the Director-General to continue with his consultative process on all outstanding implementation issues under paragraph 12(b). Since that time, work has proceeded on two tracks. The first track concerns all outstanding implementation issues except GI extension, with consultations being carried out by the Chairpersons of concerned WTO bodies acting as the Director-General's Friends, in line with the August 2004 Decision. On the second track (GI extension), the Director-General requested his Deputy Director-General to conduct, on his behalf, a technical level process aimed at clarifying the issues related to GI extension, building on the work already undertaken. The Director-General, in reporting to the TNC and General Council in May 2005, said that the picture was a mixed one, with more encouraging signs in some areas than in others. In some cases, ways in which Members could try to move forward had emerged which deserved to be further explored. He, therefore, suggested that the work should continue on both tracks and that he would report again in July 2005. In July, however, the Director-General reported that the overall situation had not evolved significantly, and suggested that his successor be requested to continue the consultative processes after the summer break. The General Council took note of the report by the Director-General.

71. At the meeting of the TNC of 13 October 2005, the Director-General informed delegations that, in line with the mandate given to the Director-General in the August 2004 Decision which was renewed by the General Council in July 2005, he was undertaking a consultative process on all outstanding implementation issues under paragraph 12(b) of the Doha Declaration, including on issues related to the extension of the protection of geographical indications provided for in Article 23 of the TRIPS Agreement to products other than wines and spirits. He indicated that this process would be carried out in his capacity as Director-General and was without prejudice to the positions of Members. He is being assisted by a number of the Chairpersons of concerned WTO bodies acting as his Friends and by two of his Deputy Directors-General, namely on the TRIMs issues and on GI extension and issues relating to TRIPS and the Convention on Biological Diversity (CBD).

3. Specific Issues of Interest to Developing Countries

72. Although raised under a number of agreements, the outstanding implementation issues can be broadly classified under four main headings:

- (a) Proposals intended to give longer transitional periods to developing countries to implement their obligations;
- (b) Proposals safeguarding the market access of developing countries and ensuring that they derive benefits under certain Agreements, such as the TRIPS Agreement;
- (c) Proposals intended to exempt developing countries from complying with obligations, such as those under the TRIMs Agreement; and
- (d) Proposals requesting that developing countries be provided with effective technical assistance.

4. Possible Gains for Developing Countries

73. Proponents of the various implementation-related proposals have argued that they would derive economic and development benefits from them. For example, some of the proposals are intended to safeguard the market access of developing countries by requiring developed countries to take account of their interests when applying contingency protection measures. Proponents believe that the proposals under the TRIMs Agreement would enable them to attract foreign direct investment into certain critical sectors of their economy. They argue that the domestic content requirement would benefit local industries in terms of enhancing their competitiveness and facilitating the transfer of technology. Some other Members argue that if the domestic industries are efficient, most foreign investors would source inputs from them rather than importing them from elsewhere.

74. Proponents also believe that the proposals on the TRIPS Agreement would confer several benefits on them. This would ensure that they receive adequate remuneration for their genetic materials and related traditional knowledge used in inventions through equitable benefit-sharing schemes (in particular on the Convention on Biological Diversity), and also for products which enjoy GI protection. Some of the proposals, if adopted, could facilitate the transfer of technology, particularly to least-developed countries. On the other hand, some Members feel the adoption of these proposals would not necessarily increase investment flows, as investors also take into account a number of other factors, including political stability, macro-economic fundamentals and other economic-related matters. There is also the expectation among proponents that the proposals relating to technical assistance would strengthen their human and institutional capacities and enable them to participate effectively in the activities of standard-setting bodies. Proponents also feel that the proposal on Article XVIII of the GATT 1994 would assist them to implement programmes which would put their economies on the path of sustainable growth and development. It may be noted that some of these issues have also been raised in the Special Session of the Committee on Trade and Development as part of the work programme on S&D.

G. RULES

1. Anti-Dumping and Subsidies and Countervailing Measures, Including Fisheries Subsidies

(a) Parameters of the development dimension

75. Developing country exports have been the subject of some 45 per cent of all anti-dumping investigations since 1995. Developing country Members also are the main users of anti-dumping, accounting for nearly 60 per cent of all anti-dumping investigations since 1995. A number of developing country Members have sponsored or co-sponsored proposals aimed at tightening anti-dumping rules, i.e., reflecting exporter interests. On the other hand, a number of developing country Members (including some that have co-sponsored proposals aimed at tightening anti-dumping rules) have cautioned against making the rules too difficult for developing country investigating authorities to implement, thereby reflecting their interests as users. Disciplines on subsidies are differentiated among developing country Members based on their level of development and certain other factors. This diversity of current treatment is reflected in positions on various proposals concerning whether and how subsidy disciplines might be strengthened, and on proposed changes to the special and differential treatment provisions of the SCM Agreement. Finally, in the area of fisheries subsidies, certain developing country Members favour very strict disciplines with few exceptions and limited special and differential (S&D) treatment, while others seek broad exemptions from any new disciplines.

(b) Status of the negotiations

76. The work of the Negotiating Group on Rules has proceeded in three stages, the first of which began in 2002 and which continued up to the Cancún Ministerial in September 2003. It consisted of formal meetings at which formal submissions were made by Members, identifying issues on which they wished to negotiate. The second stage began after Cancún and established a process of informal plenary meetings, at which more detailed and specific "elaborated proposals" were discussed. The third stage continues the formal and informal plenary process, but has added, since early 2005, a series of bilateral and plurilateral consultations convened by the Chairman of the Negotiating Group to discuss "third generation" precise proposals for specific changes to the text of the existing Agreement. The Negotiating Group has also created a Technical Group on issues related to anti-dumping questionnaires and verification, with a view to reducing the cost and increasing the predictability of investigations.

(c) Specific issues of interest to developing countries

77. Most of the proposals on anti-dumping have been submitted by a group of Members known as the Friends of Anti-dumping Negotiations (FANs), which includes a number of developing country Members. Developing and developed Members have also submitted proposals individually on various aspects of anti-dumping and countervailing duty measures. The general orientation of the FANs' proposals is to make the rules on using anti-dumping measures stricter, both in respect of the substantive provisions (how dumping margins are calculated, and how injury and causation are established), and in respect of duty application and investigative procedures. In addition, various Members are pursuing some of the implementation and S&D issues pertaining to anti-dumping which were referred to the Negotiating Group. On the other hand, certain proposals by developing country Members reflect concerns that anti-dumping rules are becoming more demanding and that many developing country administrators have difficulty implementing them because of their cost and/or complexity. A final cluster of anti-dumping proposals/issues with implications for developing countries concern transparency and due process in anti-dumping investigations. On the one hand, certain developing country Members express concerns over a lack of access to information in investigations to which their exporters are subject. On the other, some developing country Members express concern over the increased costs and burdens of any new procedures or mechanisms. Proponents on these issues, however, have stressed the importance that they attach to a high and consistent standard of procedural fairness and transparency on the part of any Member making use of the anti-dumping instrument.

78. A relatively small number of proposals on horizontal subsidy disciplines under the SCM Agreement are under active discussion at present. Most of these have to do with the rules on export subsidies, one has to do with the meaning of "withdrawal" of a subsidy, and one has to do with serious prejudice. Only one of these proposals, on export credits, is sponsored by a developing country Member. In other fora, including the Dedicated Sessions of the Committee on Trade and Development, certain proposals have been tabled to exempt on a long-term basis certain developing countries from the SCM Agreement prohibition on export subsidies. In addition, early in the negotiations, Members (developed as well as developing) tabled papers referring to S&D under the SCM Agreement. Developing country proposals differ on the question of exemptions from horizontal obligations under the Agreement, with some favouring the prolongation of such exemptions and others expressing concern about their implications for international competition. Finally, certain papers tabled early in the negotiations propose enhanced immunity from countervailing measures for developing country exporters.

79. The main proponents of new, sector-specific disciplines on fisheries subsidies comprise a group called "Friends of Fish". This group includes a number of developing country Members. For the developing country proponents, the main concern is the artificial competitive advantage created by subsidies, which affect access to fish and contribute to the depletion of the resource. Most Members

(developed as well as developing) have stressed the need for effective S&D as part of any fisheries subsidies package. Of particular concern in this regard are small-scale, artisanal fisheries and any subsidies thereto, as well as payments that some developing Members receive from foreign governments for access to the fisheries in their waters. Aquaculture is another area of considerable interest to many developing country Members, which seek to ensure that any new disciplines would not interfere with these activities.

(d) Possible gains to developing countries

80. An eventual clarification and improvement of any of the rules under negotiation will increase the predictability of the trading system to the benefit of all Members. Moreover, an appropriate balance of rights and obligations will permit developing countries to pursue their development objectives and at the same time guard against practices that have a negative impact on their trade. Another area where balance is crucial concerns trade-offs between the costs and administrative burdens of the contingency protection system and its capacity to ensure fairness and transparency.

2. Regional Trade Agreements

(a) Parameters of the development dimension

81. Negotiations on regional trade agreements (RTAs) aim to clarify and improve WTO disciplines and procedures governing these agreements, including in relation to their developmental aspects. RTAs can foster economic growth and development. But such an outcome is dependent upon various factors, including net trade-creation, an improved regulatory environment, enhanced investment flows and technology transfers. These factors are also important in terms of the benefits that RTAs can bring to non-parties, as is the readiness of members of RTAs to translate their mutual preferences into non-discriminatory trade liberalization. RTAs have become a significant element in the trade policy of virtually all WTO Members. A key question is whether they are a building block to non-discrimination or a permanent feature of the trading landscape. Concern has been expressed that some RTAs reflect a defensive necessity aimed at maintaining access to larger markets, locking out competition from other MFN suppliers and locking in investment. If such trends are sustained and not counterbalanced by a successful outcome of the Doha Round, the contribution of an ever-growing number of overlapping RTAs to the economic progress of both parties and non-parties could be negative.

(b) Status of the negotiations

82. The negotiations on RTA rules and procedures have proceeded on parallel tracks, involving "systemic" and "transparency" issues. In the last two years, the Negotiating Group has made considerable progress in considering various elements of the transparency question. These include procedural questions such as the early announcement of RTAs and the timing of formal notifications. Discussions have also focused on building a more transparent and efficient RTA review process based on a factual presentation by the Secretariat and a streamlined process for subsequent notifications. Outstanding issues include how to deal with those RTAs on which the CRTA has not been able to report and the extent to which new transparency arrangements should apply to RTAs notified under the Enabling Clause. Discussions on systemic issues have not made as much progress as those on transparency issues. Submissions by participants have most notably focused on the clarification of certain GATT Article XXIV provisions, including the "substantially all trade" requirement and the length of transition periods. Proposals have also addressed the question of flexibilities for developing countries.

(c) Specific issues of interest to developing countries

83. One of the issues of particular interest to some developing countries is whether the proposed transparency mechanism should apply to Enabling Clause agreements. One developing country submission calls for a reaffirmation of the right of developing countries to rely on the Enabling Clause to regulate South-South RTAs. Some developing countries have opted to use the GATT Article XXIV provisions for South-South agreements. Some developing countries have also proposed additional flexibility in relation to the "substantially all" and "reasonable period of time" criteria, as well as on certain procedural aspects of the rules regarding notification, reporting, review and dispute settlement in this context.

(d) Possible gains to developing countries

84. It is generally accepted that a developmental rationale exists for allowing developing countries to engage in progressive asymmetric liberalization with selected partners. However, if transition periods are too long or too many products are excluded from coverage, potential gains from RTAs in terms of growth and development will be foregone. At the same time it is important to ensure coherence both within the regional arrangement, as well as with the broader goals of the multilateral trading system. Another area of benefit relates to transparency, which serves the interests of all WTO Members, in particular those lacking information resources of their own. If Members retain the right to accord more favourable trade conditions to some partners that are not extended to all Members, then equally they retain the obligation to keep other Members well informed of such preferences. Since practically all WTO Members are engaged, or are engaging, in multiple RTAs, the need for adequate transparency has become systemic in a fundamental sense.

H. TRADE-RELATED ASPECTS OF INTELLECTUAL PROPERTY RIGHTS

1. Parameters of the Development Dimension

85. The negotiations regarding the establishment of a multilateral system of notification and registration of geographical indications for wines and spirits (hereinafter "multilateral system") form an integral part of the wider mandate of the Doha Development Agenda. In keeping with the mandate contained in Article 23.4 of the TRIPS Agreement, paragraph 18 of the Doha Declaration states that "[w]ith a view to completing the work started in the Council for Trade-Related Aspects of Intellectual Property Rights (Council for TRIPS) on the implementation of Article 23.4, we agree to negotiate the establishment of a multilateral system of notification and registration of geographical indications for wines and spirits by the Fifth Session of the Ministerial Conference".

2. Status of the Negotiations

86. The negotiations are being conducted by the Special Session of the Council for TRIPS. Initially foreseen as an "early harvest" of the Doha Round, the negotiations are presently being pursued in accordance with the 1 August 2004 Decision, which reaffirmed Members' commitment to progress in all of areas of the negotiations in line with the Doha mandates. Since 2002, a considerable amount of work has been done, involving the tabling of position papers and proposals by delegations. The various points and issues raised by delegations up to May 2003 have been reflected in a Secretariat compilation (TN/IP/W/7/Rev.1 and Corr.1). These discussions were structured around four main categories of issues, namely: the definition of the term "geographical indications" and eligibility of geographical indications for inclusion in the system; the purpose of the notification and registration system; what was meant by a "multilateral system of notification and registration"; and the issue of participation. Within these discussions, several points and issues were raised on the costs and benefits of the system to all Members, in particular developing countries, and to various stakeholders, including those in developing countries. While some developing country Members have lent broad support to the approach proposed by the European Communities for a system whereby, in

the absences of reservations, registrations of geographical indications would create legal effects that included presumptions, there are other developing countries that have sponsored or supported the approach of the "Joint Proposal" group of Members, whereby participating Members would commit themselves to consult a database of registered geographical indications when taking national decisions on the protection of geographical indications.

87. There are two major stumbling blocks. The first is the extent to which the registration of a geographical indication, within the multilateral system, should create legal effects at the national level. The second relates to participation, that is to say the question of whether the legal effects under the system should apply to all WTO Members or to those opting to participate in the system. In addition to these two key issues, there are other points such as administrative and other burdens of a multilateral system, especially on developing and least-developed countries, and whether the proposals on the table would modify the balance of rights and obligations in the TRIPS Agreement and respect the principle of territoriality.

3. Specific Issues of Interest to Developing Countries

88. Those developing countries that have been active in the work of the Special Session have expressed diverging views about the merits of the proposals on the table for a multilateral system, including on the implications for their development. A significant number of developing countries have yet to take a position and are still studying the various proposals, including as they relate to their own development. An issue on which a number of developing countries have expressed particular interest is that of participation. Some of them expressed the view that the system should be voluntary and not have legal effects for countries opting not to participate in it.

89. Discussion of S&D treatment has been relatively limited so far. The point has been made that the need for it would depend, to a significant extent, on the nature and complexity of the basic notification and registration system to be chosen – which still remains unclear. Nonetheless, there has been some discussion of this issue, for example on the extent to which special and differential treatment in the payment of registration fees might be envisaged for developing and LDC participants. It has also been suggested that the participation of developing countries in the system could be facilitated through technical assistance. A suggestion has been made that a transition period for developing countries could be envisaged, so as to give them enough time to create a sound database and to sort out domestic legal and practical issues related to a better protection of geographical indications. The point has also been made that allowance would have to be made for the transition period of LDCs under the TRIPS Agreement.

4. Possible Gains for Developing Countries

90. The question of possible gains to developing countries has been the subject of some debate among the participants in the negotiations. Some hold the view that a multilateral system's ability to alleviate the costs for all producers in seeking protection worldwide by allowing them to gain legal standing in third countries via a centralised procedure would help developing country producers in particular, who have less resources to invest in asserting such protection internationally. Others consider that the system would impose considerable administrative burden on developing countries, which would more than offset any benefits they might obtain, especially as the mandate is limited to wines and spirits, of which most developing countries are not exporters.

91. In paragraph 6 of the Doha Declaration on the TRIPS Agreement and Public Health, Ministers recognized that WTO Members with insufficient or no manufacturing capacities in the pharmaceutical sector could face difficulties in making effective use of compulsory licensing under the TRIPS Agreement. Following their instruction to find an expeditious solution to this problem, the General Council on 30 August 2003 adopted the decision on "Implementation of Paragraph 6 of the Doha Declaration on the TRIPS Agreement and Public Health", which contained three waivers to

paragraphs (f) and (h) of Article 31 of the TRIPS Agreement with respect to pharmaceutical products. Paragraph 11 of this Decision, which makes it clear that this work is not part of the negotiations under the Doha Ministerial Declaration, instructs the Council for TRIPS to prepare an amendment of the TRIPS Agreement replacing its provisions, based, where appropriate, on the Decision. It stipulates that the waivers remain in place until the date on which the amendment takes effect for that Member. At present, consultations on the preparation of the amendment are actively underway among certain delegations. The TRIPS Council is expected to reconvene to consider this matter once more prior to the Hong Kong Ministerial Conference.

I. TRADE AND ENVIRONMENT

1. Parameters of the Development Dimension

92. The negotiations under paragraph 31 of the Doha Declaration, which are undertaken with a view to enhancing the mutual supportiveness of trade and environment, and the negotiation under paragraph 28 of the Doha Declaration on fisheries subsidies, represent the "environmental package" of the current negotiations and are an integral part of the wider mandate of the Doha Development Agenda. The mandate contained paragraph 31 mandate has three main components: paragraph 31(i) sets out the scope of work as far as the relationship between existing WTO rules and specific trade obligations set out in multilateral environmental agreements (MEAs) is concerned. It states that the negotiations shall be limited in scope to the applicability of such existing WTO rules as among parties to the MEA in question, and that they shall not prejudice the WTO rights of any Member that is not a party to the MEA in question; paragraph 31(ii) mandates negotiations on procedures for regular information exchange between MEA Secretariats and the relevant WTO committees, and the criteria for the granting of observer status; while paragraph 31(iii) mandates negotiations aimed at the reduction or, as appropriate, elimination of tariff and non-tariff barriers to environmental goods and services.

2. Status of the Negotiations

93. Since the commencement of the negotiations, the Committee on Trade and Environment in Special Session (CTESS) has held a large number of formal and informal meetings, as well as two Information Exchange Sessions on Environmental Goods and Services. Under paragraphs 31(i) and (iii) in particular, a large number of proposals have been submitted by delegations (TN/TE/INF/4/Rev.7, dated 4 October 2005). While paragraph 31(ii) has also been discussed, it has received somewhat less attention than other parts of the mandate. Recently, the CTESS has given particular focus to paragraph 31(iii), including through proposals submitted and technical discussions held during the abovementioned information exchange sessions.

94. With respect to paragraph 31(i), the CTESS first attempted to develop a common understanding of the negotiating mandate. Various terms contained in the mandate were explored, such as "specific trade obligation" (STO) and "multilateral environmental agreement" (MEA). In parallel, discussions were held on proposals relating to certain governance principles aimed at ensuring mutual supportiveness of WTO-MEA regimes - as a potential outcome for negotiations. A process of national experience sharing was also initiated, in which Members, including some developing countries, discussed their national experiences in the negotiation and domestic implementation of STOs in MEAs. With respect to paragraph 31(ii), Members have before them a number of ideas exploring how to enhance information exchange and cooperation between the WTO and MEAs. In the discussions, several delegations have pointed to synergies between paragraphs 31(i) and (ii) of the negotiating mandate. Developing countries have participated actively in the negotiations under paragraphs 31(i) and (ii) with a number of them including Argentina, Korea, Malaysia, and China tabling submissions to clarify their positions on this aspect of the negotiations. With respect to negotiations on trade liberalization in environmental goods and services under paragraph 31(iii), the CTESS's work focused mainly on clarifying the concept of an

environmental good, based on submissions of the Members. Submissions so far have proposed *inter alia* the following approaches: an approach supporting the establishment of a mutually agreed list of environmental goods, and the environmental project approach. On the first, nine lists of environmental goods have been tabled by different Members. Under the second approach ("Environmental Project Approach"), environmental goods and services would be included in a project to be approved by a Designated National Authority (DNA); if approved, the goods and services included would qualify for special concessions for the duration of the project. Recently, an integrated approach suggesting multilateral identification of categories of goods that could be included in national environment projects has also been tabled. The liberalization of such goods should take effect as of the time that the importing Member assigns to a given national project the goods required to meet the objective of that project.

3. Specific Issues of Interest to Developing Countries

95. While positions and interests naturally vary among developing countries, some specific issues of interest to them can be discerned. Many developing countries feel that liberalization in the trade of environmental goods should offer opportunities for them to increase exports of goods in which they have a competitive advantage. On their part, proponents of lists have generally underlined the importance they attach to achieving a "balanced list" of environmental goods, i.e. a list of products which takes into account areas of trade interest for developing countries.

96. Some Members have observed that the exports of most developing countries consist, by and large, of natural resource-based products. Hence, the definition of environmental goods should necessarily cover such products. At the same time, some concerns have been expressed regarding the existing asymmetries in production capacities, trading volumes and tariff structures for environmental goods. A number of developing countries have questioned the benefits for them of liberalizing trade in environmental goods, commenting that most environmental goods proposed thus far have multiple uses or have been "high-tech" or "end-of-pipe" products that are primarily of interest to developed countries. Other issues of interest to developing countries include the need to facilitate technology transfer to the developing and least-developed Members, the use of technologies adapted to their needs, and how to ensure the negotiations take into account the principles of special and differential treatment and less than full reciprocity in reduction commitments.

4. Possible Gains for Developing Countries

97. There has been little substantive debate among participants in the negotiations on the specific gains that can accrue to developing countries from the negotiations under paragraphs 31(i) and (ii) on the relationship between MEAs and WTO rules. As regards paragraph 31(iii), some hold the view that liberalization of environmental goods and services can be beneficial to trade, environment and development. According to them, the negotiations could result in increased trade due to a reduction or elimination of tariffs and non-tariffs barriers. They also feel that there would be development gains because liberalization would assist developing countries in obtaining the tools needed to address key environmental priorities. Others, however, question the possible environmental benefits of some of the goods proposed for liberalization. These Members feel that the developmental gains would be enhanced only if goods which have an unambiguous environmental use are liberalized.

98. Some developing country Members have also argued for the retention of a certain level of policy space in determining which goods help them meet their nationally prioritized environmental objectives. In this context, they have also stressed that their national interest in these negotiations is mainly directed towards the building-up and development of domestic production capacity and the provision of environmental goods and services. This in their view would further their objectives of sustainable development.

J. DISPUTE SETTLEMENT UNDERSTANDING

1. Parameters of the Development Dimension

99. The negotiations on dispute settlement aim to "agree on improvements and clarifications" of the Dispute Settlement Understanding (DSU). Under paragraph 47 of the Doha Declaration, these negotiations are not to be treated as part of a single undertaking. A number of developing country Members highlighted in the early stages of the negotiations the need to have effective access to the dispute settlement procedures. In this context, it was stressed that clarifications or improvements to the DSU should not lead to any reduction in the access of developing country Members to dispute settlement procedures. Although a number of developing country Members have been active users of the dispute settlement procedures, others, in particular African and LDC Members, have had much more limited participation to date. These Members highlighted in their proposals the significant constraints, including resource constraints, they face in having recourse to the complex and expensive (if outside counsel is used) procedures of the DSU.

100. A number of proposals presented by developing countries have, therefore, aimed at enhancing the ability of developing country Members to participate effectively in dispute settlement proceedings and to ensure that specific developing country interests are adequately taken into account at all stages of the proceedings. This has been reflected in a variety of forms, including proposals for additional flexibility to be provided to developing country Members in respect of timeframes, or the enhancement of existing provisions for S&D. A number of developing country Members have also put forward proposals intended to reinforce the effectiveness of procedures at the implementation phase, sometimes, but not exclusively, in the form of S&D. Proposals have also been made to assist developing countries overcome financial and resource constraints, including through enhanced technical assistance.

101. The interests of developing country Members in the DSU negotiations are, however, not limited to S&D, or indeed to developmental aspects only. The improvement and clarification of the dispute settlement mechanism has an institutional dimension that goes beyond the particular interests of developed or developing countries. A stable, predictable and effective multilateral system to resolve trade disputes benefits the whole WTO membership. Many proposals put forward by developing country Members therefore address systemic concerns and are not intended to secure any form of S&D. Some of these proposals may reflect concerns which are of special significance to developing country Members as users of the dispute settlement mechanism (for example, the enhancement of third party rights). Others, however, also reflect more general systemic concerns not intrinsically tied to a developmental dimension.

102. Since February 2004, the work of the Special Session of the Dispute Settlement Body has been based primarily on efforts by Members or groups of Members to develop areas of convergence, building on the work to date. A number of the issues in respect of which contributions have recently been put forward are of interest to developing country Members, without being development-related *per se*. Indeed, a significant part of recent discussions has been based on informal contributions presented jointly by a group of developed and developing country Members. Several delegations, including developing country proponents, have also indicated that they were working on issues relating specifically to developing country participation. However, this work is still ongoing and has not yet led to the presentation of revised or improved text. Bearing this consideration in mind, specific issues of interest to developing country Members are identified below.

2. Status of the Negotiations

103. In the initial phases of the negotiations, a wide range of proposals was put forward, covering virtually every provision of the DSU, and reflecting very diverse levels of ambition. Many of these proposals were submitted by developing countries or groups of developing countries, including some

Members that have not been active users of the dispute settlement system so far. As part of recent Member-driven efforts to develop areas of convergence based on work in the previous phases of the negotiations, a number of revised contributions, mostly informal, have been put forward by various Members or groups of Members, including developing country Members. Specifically, contributions have been put forward and discussed in respect of remand, third-party rights, sequencing, post-retaliation, third-party rights, additional guidance to WTO adjudicative bodies, panel composition, time-savings and transparency (open meetings). However, in this recent phase of the negotiations, no revised proposal relating specifically to S&D or developing country participation in dispute settlement has been put forward. Recently, several developing country proponents have indicated that they are working on issues relating to the participation of developing country Members in dispute settlement, with a view to presenting some revised text to the Special Session.

3. Specific Issues of Interest to Developing Countries

104. A number of developing country Members have presented proposals, spanning all phases of the dispute settlement procedures. These proposals reflect a range of concerns that include, but are not limited to developmental considerations. Given the systemic dimension of the clarification and improvement of the DSU, virtually all issues under discussion could be said to be of relevance to developing countries as Members of the WTO and potential users of the DSU. Only issues in respect of which specific attention has been given to developing country interests are identified below. For the sake of clarity, the issues are identified under four broad headings corresponding to the four main stages of dispute settlement proceedings under the DSU.

(a) Consultations

- Provide adequate time for consultations, especially for developing country respondents.
- Ensuring adequate opportunity for non-disputing Members to join the consultations.
- Improving the existing S&D provision relating to the attention to be given to developing country Members' particular interests during consultations.

(b) Panel proceedings

- Preserving adequate timeframes at all stages of the proceeding to allow developing country Members to prepare and present their arguments, especially as respondents.
- Ensuring adequate representation of developing country nationals as panellists in cases involving developing country Members.
- Strengthening of third-party rights.
- Strengthening existing S&D provisions and ensuring that developmental aspects are adequately taken into account in the proceedings.
- Some developing country Members have expressed strong views on issues of so-called "transparency", relating to the opening WTO dispute settlement procedures more widely to the public, raising concerns as to the potential implications of such opening. Recent discussions have focused specifically on the proposed opening of panel meetings and Appellate Body hearings for the public to observe.

(c) Appellate review

- Strengthening of third-party rights.
- Transparency (similar concerns as at the panel stage).

(d) Implementation

- Improving the effectiveness of remedies, in particular where a developing country Member has prevailed against a developed country Member.
- Enhancing the opportunities for effective compensation or retaliation in favour of developing country Members.
- Ensuring that developing country Members are afforded sufficient time for the implementation of adverse rulings.
- Enhancing the means for developing country Members to overcome the financial and human resource challenges posed by participation in WTO dispute settlement proceedings, through enhanced technical assistance, the creation of a "fund" for developing country Members, or the award of litigation costs to developing country Members prevailing in a case.

4. Possible Gains for Developing Countries

105. The institution of a strengthened multilateral rules-based dispute settlement mechanism has been heralded as one of the major achievements of the Uruguay Round, and the DSU is generally acknowledged to have served WTO Members well so far. Indeed, more than 80 WTO Members (of which 65 are developing countries) have participated, either as party or as third-party, in at least one dispute to date. Since the dispute settlement procedures are in essence an instrument for the protection of Members' substantive rights and obligations under the WTO Agreements, it might be said that the immediate objective of improving and clarifying procedures under the DSU ultimately serves the long-term goal of enhancing the ability of WTO Members, in particular developing country Members, to fully benefit from the trade opportunities they have negotiated in the WTO.

106. The main benefits of improvements and clarifications to the DSU, could be expected to come in the form of institutional strengthening of the multilateral trading system, and enhanced capacity for all Members to protect their interests in the WTO. To the extent that developing country Members, especially smaller economies with limited political power to influence the behaviour of larger trading partners, may generally have more difficulty in defending their interests effectively, such enhancements would especially benefit them. In this perspective, any improvement that would enhance the effectiveness of the procedures and thus facilitate a prompt and effective resolution of disputes, has the potential to benefit especially developing country users. A number of such procedural improvements are under consideration, that may not have any particular developmental dimension, but that would, if adopted, benefit developing country Members equally as users of the system (for example, the establishment of remand authority, the clarification of "sequencing" between compliance and retaliation procedures or the elaboration of procedures to address "post-retaliation").

107. Interests depend, in part, on the particular position a Member finds itself in a given dispute: as complainants, Members are likely to want to obtain prompt and effective relief from dispute settlement, while as respondents, they will require guarantees that they will be in a position to defend their interests adequately and be allowed sufficient time to implement any adverse rulings. An important dimension of the DSU negotiations is thus that all Members, developing countries included, have to negotiate in consideration of the fact that they may, in a given case, be either in the position of complainant or in the position of defendant. These pressures can be exacerbated where developing country Members are concerned: as a complainant, a developing country Member facing an inconsistent measure maintained by another Member may have more limited capacity to withstand any adverse effects for a prolonged period, while, as a respondent, a developing country Member with significant resource constraints will be especially sensitive to the need for the procedures to afford it sufficient time and means to defend itself in the most adequate manner. In these circumstances, an optimal outcome, including for developing country Members, is likely to be the result of a balancing

exercise between different interests, including in situations where legitimate developing country interests might exist on either side of the dispute.

108. Proposals to address the resource constraints highlighted by a number of developing country Members, in the form of enhanced technical assistance or financial support, are of a slightly distinct nature, in that they do not directly affect procedural steps in the dispute, but focus rather on ensuring that developing country Members have effective access to the procedures in the first place. Improvements designed to address these resource constraints could facilitate actual recourse to the procedures by developing country Members who might otherwise feel unable to take advantage of them. In cases where such improvements would benefit defendant developing country Members, they could enhance the ability of these Members to effectively defend their rights under the WTO agreements with respect to measures they themselves have taken.

III. CONCLUDING REMARKS

109. In an effort to assist Members with their discussion concerning paragraph 51 of the Doha Ministerial Declaration, this document identifies the key developmental aspects raised in the various negotiating bodies. While the issues raised in the paper vary according to subject area, it is clear that developing countries have serious and pressing interests which they wish to see addressed in the Round. These interests also change according to the subject area under discussion and reflect the very diverse interests of developing countries overall.

110. Two conclusions stem from this document: first, development finds itself into each and every item under negotiation, whether on the market access or in the rule-making part. Second, a large number of proposals are already on the table aimed at addressing the development aspects of each subject. It is hoped that this paper helps Members in their discussions and negotiations towards a conclusion of the Doha Development Round.
