

Reference:

16 July 2003

To: Heads of Delegations

Dear Colleague,

In February 2003, I was mandated by the General Council to undertake consultations on how to take forward the very important matter of the review of all special and differential (S&D) treatment provisions with a view to strengthening them and making them more precise, effective and operational.

In pursuance of this mandate I began informal consultations with Members, with a view to exploring various ideas for a possible approach that could be adopted to make progress on these issues. These consultations showed a broad support for the approach that I had put forward, and which I later circulated to Members on 7 April 2003, as document JOB(03)/68. This approach was based on two fundamental premises, namely that all the S&D proposals which had been submitted by Members would be addressed, without prejudging the results, and that an informal categorization of the 88 Agreement-specific proposals was necessary, in order to move forward and to address the large number of issues in an efficient manner. Accordingly, I circulated a list of these proposals divided into three categories.

Following on from this approach, I began work with Members on the proposals listed in category I, at the level of Heads of Delegations. Since then, considerable time has been spent by Members trying to come to an agreement on the proposals in category I. I have also received the assistance of a Group of Ambassadors who have been acting as "Friends of the Chair" and who have helped considerably in taking the process forward by exploring possible alternative drafting suggestions for a number of proposals. Members have committed time and effort in these consultations and have demonstrated constructive engagement. As a result, we have been able to agree on some of the proposals, and in my view we are close to agreement on some of the others. Needless to say, differences still persist on some of the remaining proposals.

On the basis of the work carried out so far, I am annexing what in my view could be a possible package of category I proposals for consideration by Members, and if agreed upon, then for possible recommendation for adoption at Cancun. This includes the 12 proposals which Members had agreed to in principle in the February Special Session of the Committee on Trade and Development, but whose adoption they had decided to defer, as well as the 2 proposals agreed to *ad referendum* during my consultations on 21 May 2003. In addition to these, it includes the 12 proposals for which, after a first round of consultations, I sought the help of my Friends, as well as the 12 proposals which we have addressed in the regular process of consultations.

Obviously, this package does not constitute a consensus text. However, in my view it does reflect, as far as possible, the language on which there is the broadest degree of convergence and on which it may be possible to find consensus. In view of the very little time that we have left, I suggest that this form the basis of our consideration at our next open-ended meeting, which I am convening on 21 July 2003, at 10 a.m., and for possible adoption by the General Council on 24 July 2003.

I would also like to take this opportunity to mention that following on from the approach I had outlined in document JOB(03)/68, the proposals in category II were referred to the negotiating groups and other WTO bodies, with the directions that they be considered as soon as possible, and that a report be made to the last meeting of the General Council before Cancun, on their status and the progress made in this regard. I have been personally monitoring the progress of this work and have been in close touch with the Chairpersons of the relevant bodies, who will be making a report in this regard to the General Council meeting convened on 24 July 2003.

I am also aware that I had listed some proposals in category III. I intend to take them up before the Cancun Ministerial Conference, in order to see how we can address the wide divergences of views that have prevented progress on these proposals so far, and explore whether we can reach an agreement on at least some of them.

I would also like to express my appreciation for the flexibility and constructive engagement shown by Heads of Delegations in this process, and I hope that I can continue to count on your support in the lead-up to Cancun.

Yours sincerely,

Carlos Pérez del Castillo  
Chairman, General Council

# **PROPOSAL BY THE CHAIRMAN OF THE GENERAL COUNCIL**

## **AGREEMENT-SPECIFIC PROPOSALS IN CATEGORY I**

### **A. Proposals which were agreed to in principle in February 2003 and those agreed to *ad referendum* during the consultations in May 2003**

#### **(1) GATS - Article IV.3<sup>1</sup>**

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

#### **(2) GATS – Article XXV**

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

#### **(3) TRIPS Agreement – Article 67**

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

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

#### **(4) Enabling Clause**

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

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<sup>1</sup> The proposal was originally made under Article IV.2.

## **(5) GATS – Article IV<sup>2</sup>**

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

## **(6) GATS, Annex on Telecommunications – Paragraph 6**

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

## **(7) Rules Relating to Notification Procedures**

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

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

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

## **(9) Agreement on Rules of Origin**

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

Furthermore, the General Council instructs the Director-General to take action to facilitate the increased participation of developing and least-developed country Members in the activities of

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<sup>2</sup> The proposal was originally made under Article IV.1.

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

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

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

**(11) Agreement on Agriculture – Article 15.2**

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

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

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

**(19) GATT 1994 - Article XXXVII**

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

**(20) GATT 1994 - Article XXXVIII**

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

## **B. Proposals considered by the Friends of the Chair**

### **B(i) Proposals on which there is an agreement in principle**

#### **(22-23) WTO Agreement – Article IX and Understanding in respect of Waivers of Obligations under the GATT 1994**

"The General Council agrees that requests for waivers by developing and in particular least-developed country Members under Article IX of the WTO Agreement and the Understanding in respect of Waivers of Obligations under the GATT 1994 shall be given sufficient and sympathetic consideration with a view to taking an expeditious decision."

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

"Recalling paragraph 2(d) of the Decision on Differential and More Favourable Treatment, Reciprocity and Fuller Participation of Developing Countries, and Members' commitment to the objective of duty-free, quota-free market access for products originating from least-developed countries, as contained in paragraph 42 of the Doha Ministerial Declaration, the General Council agrees to review the progress made in providing access to the least-developed countries on the above basis."

#### **(31) TRIPS Agreement – Articles 7, 8 and 66.2**

"Members, having regard to Article 66.2 of the Agreement on Trade-Related Aspects of Intellectual Property Rights, and having regard to the decision of the TRIPS Council of 19 February 2003, contained in document IP/C/28, reaffirm that this decision be expeditiously implemented in a way that ensures the monitoring and full implementation of the obligations in Article 66.2."

### **B(ii) Proposals on which there appears to be an agreement, but where minor adjustments are required**

#### **(26) PSI Agreement - Article 3.3**

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

(i) training customs and revenue officials to promote and achieve the objectives of the Agreement on Preshipment Inspection through the activities defined in Article 1.3 of the Agreement, in order to help them in the inspection of consignments and in the prevention of false declaration, wrong classification and any fraud;

(ii) regulation of preshipment entities.

(b) Technical assistance shall be provided to developing and least developed country Members with a view to fully assisting them in achieving the objectives of the Agreement on Preshipment Inspection. The General Council further agrees that customs authorities of

Members shall, as appropriate, closely cooperate in the context of the Agreement on Customs Valuation, and of the Decision Regarding Cases Where Customs Administrations Have Reasons to Doubt the Truth or Accuracy of the Declared Value."

### **(32) Decision on Measures in Favour of Least-Developed Countries – Paragraph 2**

"The General Council agrees that:

(a) Taking into account their development needs, least-developed countries shall, in principle, following application, be entitled to extensions of their transition periods; where relevant procedural provisions exist in the WTO agreements, these provisions shall apply.

(b) Technical assistance to least-developed countries shall aim among other things to remove their supply-side constraints which limit their ability to benefit from the WTO Agreements, including market access opportunities and development of domestic productivity. In this context, the General Council also instructs the Director-General to consult other institutions on programmes/assistance related to supply-side constraints in least-developed country Members to determine what additional technical assistance may be made available."

### B(iii) Proposals on which an agreement seems close, but further work needs to be done

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

"Without prejudice to the binding commitments that may result from work under Paragraphs 13, 16 and 42 of the Doha Ministerial Declaration, Members will continue to pursue the objective of duty-free and quota-free market access to all least-developed countries in a manner that ensures security and predictability along with rules of origin that are realistic and flexible to match the needs of least-developed countries."

### **(34) Decision on Measures in Favour of Least-Developed Countries – Market Opportunities**

"With gradual erosion of preferences currently enjoyed by the least-developed countries, on account of lowering of most-favoured-nation tariffs, Members shall consider developing targeted assistance programmes, including appropriate mechanisms, to address effectively the impact of such phenomenon, including measures that enhance export competitiveness of least-developed countries. In this context, the General Council agrees that this issue also be considered, in close coordination with other relevant international organizations, with a view to identifying possible ways by which least-developed countries should be assisted."

### **(21) Understanding on the Interpretation of Article XVII of the GATT 1994**

"While acknowledging the provisions of Article XVII of the GATT 1994, Members recognize that state trading enterprises may have a significant role to play in promoting and protecting public policy objectives in developing and least-developed country Members."

## B(iv) Proposals that the Friends of the Chair consider should be withdrawn

### **(24 & 25) SPS Agreement – Article 10.3**

"With a view to ensuring that developing country Members are able to comply with the provisions of the SPS Agreement, the Committee shall give sympathetic consideration to requests by such Members, made under Article 10.3 of the Agreement, for specified, time-limited exceptions in whole or in part from obligations under this Agreement, taking into account their individual financial, trade and development needs."

### **(36) Enabling Clause– Paragraph 3(b)**

"Paragraph 3(b) of the Decision provides that the extension of differential and more favourable treatment to developing countries, including special treatment to the least-developed countries, shall not constitute an impediment to the reduction or elimination of tariffs on MFN basis. However, it should be recognized that MFN tariff reductions results in the erosion of preferential margins and the consequent loss of competitiveness for the affected LDC exports. In such a situation, the LDC affected would require support measures to mitigate adverse effects on their export earnings as well as enable them cope with increased global competition. In this context, the General Council agrees that this issue be considered, in close coordination with other relevant international organizations, with a view to identifying possible ways by which LDCs should be assisted."

## **C. Proposals considered in the regular process of consultations under the Chairman of the General Council**

### **(18) GATT 1994 - Article XXXVI**

"The General Council agrees that the Committee on Trade and Development shall annually review the implementation of Article XXXVI of GATT 1994, and report to the General Council with concrete recommendations, as appropriate."

### **(27) Agreement on Import Licensing Procedures – Article 1.2**

"It is understood that the requirement to take into account the "development purposes and financial and trade needs of developing country Members" in Article 1.2 of the Agreement means that the burden of the administrative procedures used to implement import licensing regimes shall be further reduced in order to facilitate trade of developing country Members and minimize possible adverse effects to their trade, including by making import licensing procedures as expeditious as possible."

### **(28-30) Agreement on Import Licensing Procedures – Article 3.5**

"The General Council agrees that for purposes of subparagraph (a)(iv) of Article 3.5, developing country Members would not be expected to provide import statistics with respect to products subject to import licensing unless they can do so within their current administrative and financial means.

The General Council further agrees that:

(a) it shall be understood that wherever the word "should" appears in Article 3.5(j) of the Agreement, it shall be construed to mean a definitive and non-discretionary obligation on the part of the Members; and

(b) in the allocation of licenses due consideration shall be accorded to importers from developing and least-developed country Members."

### **(16-17) GATT 1994 - Article XVIII:C**

"The General Council instructs the Council on Trade in Goods, in consultation with the Committee on Trade and Development, to develop and adopt guidelines on procedures for recourse to Article XVIII:C. The concerns raised by developing countries, especially the least-developed countries, including those related to the suspension of concessions or other obligations under Article XVIII:C, [should be appropriately addressed] [shall be appropriately reflected and taken into account] in this context."

### **(13) GATT 1994 - Article XVIII**

"It is understood that the provisions of this Article aim to promote the rapid development of domestic industries and the needed adjustments where domestic industries experience difficulties in developing and least developed country Members. Therefore, this Article shall be implemented, interpreted and applied by Members and in all the WTO processes in a manner

that fully supports the attainment of these goals. In particular, developing and least-developed country Members shall not be subjected to cumbersome requirements or conditions, or to any requirements and conditions that would undermine the attainment of these goals."

**(14) GATT 1994 - Article XVIII:A**

"It is understood that where developing or least-developed country Members wish to modify or withdraw concessions under Article XVIII:7, they shall not be required to offer or make compensatory adjustments under paragraph 7(a) that are inconsistent with their development needs or would unreasonably strain their resources.

Any offer by the developing and least-developed country Members modifying or withdrawing a concession to adopt measures that allow a period of 3 months for exporters based in the affected Members to undertake the necessary adjustments, shall be an important factor in determining the adequacy of compensatory adjustment within the meaning of paragraph 7(b)."

**(15) GATT 1994 - Article XVIII:B**

"In determining the need for taking measures under Article XVIII:B, due consideration shall be given to the volatility of short-term financial flows if these are included in determining the external reserves or surpluses of Members."

**(37) Enabling Clause**

"The General Council agrees that in formulating schemes under paragraphs (a) and (b) of clause 2 of the Enabling Clause, developed country Members will consult with developing and least-developed country Members with a view to ensuring that products of export interest to developing and least-developed country Members are accorded meaningful market access. The Committee on Trade and Development will annually review the progress made in this regard."

**(Paraguay) Understanding in Respect of Waivers of Obligations under the GATT 1994**

"The General Council agrees that while granting waivers under Article IX of the WTO, the legitimate interests of other developing country Members shall be taken into account."