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SPECIAL AND DIFFERENTIAL TREATMENT PROVISIONS IN WTO AGREEMENTS AND DECISIONS

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[1] This document has been prepared under the Secretariat's own responsibility and without prejudice to the positions of Members and to their rights and obligations under the WTO.

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I. INTRODUCTION

1. This compilation of "Special and Differential Treatment Provisions in the WTO Agreements and Decisions" has been compiled at the request of the Special Session of the Committee on Trade and Development. The compilation is an updated and streamlined version of document WT/COMTD/W/77/Rev.1 of 21 September 2001 on the "Implementation of Special and Differential Treatment Provisions in WTO Agreements and Decisions".

2. Section I of the compilation contains a table providing a numerical breakdown of special and differential treatment provisions by type and agreement. The column titled "Total by Agreement" provides the total number of special and differential treatment provisions by agreement, while the row marked "Total" provides the total number of special and differential treatment provisions of each of the six types across the different agreements. The total number of special and differential treatment provisions contained in the WTO Agreements amounts to 148. In addition, there are 16 decisions that allow for special treatment to developing and least-developed country Members.

3. Sections II – VI reflect the special and differential treatment provisions contained in the different WTO Agreements. Section II reflects the special and differential treatment provisions contained in the Multilateral Agreement in Trade and Goods, Section III - the special and differential treatment provisions contained in the General Agreement on Trade in Services (GATS), Section IV – the special and differential treatment provisions contained in the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), Section V – the special and differential treatment provisions contained in the Understanding on Rules and Procedures Governing the Settlement of Disputes and Section VI – the special and differential treatment provisions contained in the Plurilateral Agreements. Section VII reflects those special and differential treatment provisions contained in Ministerial and General Council Decisions.

4. Sections II – VI also include, in some cases, general information relating to special and differential treatment in the relevant agreement. In addition, Sections II – VII contain tables which reproduce, in the left hand column, the text of the different special and differential treatment provisions, and in the right hand column titled "Comment", information on their implementation.

5. The special and differential treatment provisions in this compilation have been classified according to the typology developed by the Secretariat in 2001.[2] This six-fold typology includes:

1) provisions aimed at increasing the trade opportunities of developing country Members;

2) provisions under which WTO Members should safeguard the interests of developing country Members;

3) flexibility of commitments, of action, and use of policy instruments;

[2] At the 34th session of the CTD, the question was raised as to how provisions relating to technology should be treated in the context of the typology of special and differential treatment provisions, and in particular whether a new category should be created covering provisions relating to technology. Currently, provisions relating to technology transfer are classified under different categories of the existing special and differential treatment typology. For example, GATS Article IV provisions relating to technology come under the category of provisions aimed at increasing the trade opportunities of developing country Members; TRIPS Article 66.2 is classified under provisions relating to least-developed countries; while SPS Article 9.1, refers to technology, is classified under the category of technical assistance (in keeping with the designation of that particular provision in the SPS Agreement). This paper continues the practice followed to date, and has not created a separate category for provisions relating to technology.

4) transitional time-periods;

5) technical assistance;

6) provisions relating to least-developed country Members.

A. TABLE SPECIAL AND DIFFERENTIAL TREATMENT PROVISIONS BY TYPE AND AGREEMENT

Agreement	Provisions aimed at increasing the trade opportunities of developing country Members	Provisions that require WTO Members to safeguard the interests of developing country Members	Flexibility of commitments, of action, and use of policy instruments	Transitional time-periods	Technical assistance	Provisions relating to least-developed country Members	Total by Agreement
General Agreement on Tariffs and Trade 1994	**8**	**12**	**4**				**24**
Understanding on Balance of Payments of GATT 1994			**1**		**1**		**2**
Agreement on Agriculture	**1**		**9**	**1**		**3**	**13**[3]
Agreement on the Application of Sanitary and phytosanitary (SPS) Measures		**2**		**2**	**2**		**6**
Agreement on Technical Barriers to Trade		**8**	**1**	**1**	**8**	**1**	**19**
Agreement on Trade-Related Investment Measures			**1**	**2**		**1**	**4**
Agreement on Implementation of Article VI of GATT 1994		**1**					**1**
Agreement on Implementation of Article VII of GATT 1994		**1**	**2**	**4**	**1**		**8**
Agreement on Import Licensing Procedures		**3**		**1**			**4**
Agreement on Subsidies and Countervailing Measures		**2**	**10**	**7**			**16**[4]
Agreement on Safeguards		**1**	**1**				**2**
General Agreement on Trade in Services (GATS)	**4**	**4**	**4**		**2**	**2**	**16**
Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS)				**2**	**1**	**3**	**6**
Understanding on Rules and Procedures Governing the Settlement of Disputes.		**7**	**1**		**1**	**2**	**11**
Agreement on Government Procurement	**2**	**2**	**7**		**3**	**2**	**16**
TOTAL	**15**	**43**	**41**	**20**[5]	**19**	**14**[6]	**148**

[3] Article 15.2 is listed both in the transitional time-periods and provisions relating to least-developed countries category.
[4] Articles 27.4, 27.6 and 27.11 are listed in both the flexibility and transitional time-period categories.
[5] Articles 27.4, 27.6 and 27.11 are listed in both the flexibility and transitional time-period categories.
[6] Article 15.2 is listed both in the transitional time-periods and provisions relating to least-developed countries category.

II. MULTILATERAL AGREEMENTS ON TRADE IN GOODS

A. GENERAL AGREEMENT ON TARIFFS AND TRADE (GATT) 1994

6. The General Agreement on Tariffs and Trade (GATT) 1994 contains a total of 24 special and differential provisions. These provisions which are contained in Articles XVIII, XXXVI, XXXVII and XXXVIII of the GATT 1994, fall under the following three categories.

1. Provisions aimed at increasing the trade opportunities of developing country Members

Eight provisions [Articles XXXVI.2, XXXVI.3, XXXVI.4, XXXVI.5, XXXVII.1, XXXVII.4, XXXVIII.2(c),(e)]

2. Flexibility of commitments, of action, and use of policy instruments

Four provisions (Articles XXXVI.8, XVIII.7(a), XVIII.8, XVIII.13)

3. Provisions under which WTO Members should safeguard the interests of developing country Members

12 provisions [Articles XXXVI.6, XXXVI.7, XXXVI.9, XXXVII.1, XXXVII.2, XXXVII.3, XXXVII.5, XXXVIII.1, XXXVIII.2(a),(b),(d),(f)]

7. WTO tariff concessions undertaken by developing country Members under Article II of GATT 1994 have generally been implemented over a longer or extended time-frame compared to developed countries. To date, the Secretariat is aware of only one case where a WTO Member has had difficulties in implementing its tariff reductions according to its schedule of concessions. It should, however, be noted that the Member concerned sought and obtained a waiver under Article IX of the Marrakesh Agreement Establishing the WTO which allowed it to delay such implementation.[7] Members having any difficulty in implementing their WTO tariff concessions can renegotiate them under GATT Article XXVIII procedures, which are available to all WTO Members and commonly utilized for various reasons. Since the WTO was established, 18 WTO Members, including several developing countries and one least-developed country, have engaged in this type of negotiations.[8]

[7] See WT/L/610.
[8] See G/MA/W/23/Rev.6, Note by the Secretariat, Situation of Schedules of WTO Members.

PROVISION	COMMENT
Article XVIII	
Flexibility of commitments, of action, and use of policy instruments	
Section A	
7. (a) If a contracting party coming within the scope of paragraph 4 (a) of this Article considers it desirable, in order to promote the establishment of a particular industry with a view to raising the general standard of living of its people, to modify or withdraw a concession included in the appropriate Schedule annexed to this Agreement, it shall notify the CONTRACTING PARTIES to this effect and enter into negotiations with any contracting party with which such concession was initially negotiated, and with any other contracting party determined by the CONTRACTING PARTIES to have a substantial interest therein. If agreement is reached between such contracting parties concerned, they shall be free to modify or withdraw concessions under the appropriate Schedules to this Agreement in order to give effect to such agreement, including any compensatory adjustments involved.	This provision has not been invoked by developing country Members since the WTO Agreement came into force.
Section B	
8. The contracting parties recognize that contracting parties coming within the scope of paragraph 4 (a) of this Article tend, when they are in rapid process of development, to experience balance-of-payments difficulties arising mainly from efforts to expand their internal markets as well as from the instability in their terms of trade. *9. In order to safeguard its external financial position and to ensure a level of reserves adequate for the implementation of its programme of economic development, a contracting party coming within the scope of paragraph 4 (a) of this Article may, subject to the provisions of paragraphs 10 to 12, control the general level of its imports by restricting the quantity or value of merchandise permitted to be imported; Provided that the import restrictions instituted, maintained or intensified shall not exceed those necessary:* *(a) to forestall the threat of, or to stop, a serious decline in its monetary reserves, or* *(b) in the case of a contracting party with inadequate monetary reserves, to achieve a reasonable rate of increase in its reserves.*	In the context of a dispute, a developing country Member argued that Article XVIII was the principle expression of special and differential treatment in GATT 1994. In its findings, the Panel ruled that the measures at issue applied by the developing country Member violated – *inter alia* - Articles XI:1 and XVIII:11 of GATT 1994 and were not justified by Article XVIII:B.[9] Two developing country Members – including one least-developed country Member – were making use of Article XVIII in 2000 but these have since ceased. WT/BOP/R/88. One Member notified measures under Article XVIII:B in 2009 (WT/BOP/N/65).

[9] WT/DS90/R.

PROVISION	COMMENT
Section C	
13. If a contracting party coming within the scope of paragraph 4(a) of this Article finds that governmental assistance is required to promote the establishment of a particular industry with a view to raising the general standard of living of its people, but that no measure consistent with the other provisions of this Agreement is practicable to achieve that objective, it may have recourse to the provisions and procedures set out in this Section.	Before the WTO Agreement entered into force, Article XVIII:C was invoked 14 times.[10] Since the WTO Agreement entered into force, three developing country Members sought recourse to Article XVII:C,[11] and one developing country Member cited this provision during a dispute.
Article XXXVI	
Provisions aimed at increasing the trade opportunities of developing country Members	
2. There is need for a rapid and sustained expansion of the earnings of the less-developed contracting parties.	
3. There is need for positive efforts designed to ensure that less-developed contracting parties secure a share in the growth in international trade commensurate with the needs of their economic development.	The average trade weighted tariff on industrial imports from developing Members fell by 37 per cent after the cuts were completed following the conclusion of the Uruguay Round.
4. Given the continued dependence of many less-developed contracting parties on the exportation of a limited range of primary products, there is need to provide in the largest possible measure more favourable and acceptable conditions of access to world markets for these products, and wherever appropriate to devise measures designed to stabilize and improve conditions of world markets in these products, including in particular measures designed to attain stable, equitable and remunerative prices, thus permitting an expansion of world trade and demand and a dynamic and steady growth of the real export earnings of these countries so as to provide them with expanding resources for their economic development.	See also under section on the Agreement on Agriculture. According to WTO's international trade statistics, the value of exports of agricultural products from developing countries increased from US$165 billion in 2000 to US$373 billion in 2007.
5. The rapid expansion of the economies of the less-developed contracting parties will be facilitated by a diversification of the structure of their economies and the avoidance of an excessive dependence on the export of primary products. There is, therefore, need for increased access in the largest possible measure to markets under favourable conditions for processed and manufactured products currently or potentially of particular export interest to less-developed contracting parties.	A response to the provisions of paragraphs 3, 4 and 5 may be found in the maintenance of preferential tariff and other market access arrangements maintained under Members' GSP schemes, the GSTP, and other non-reciprocal preferential arrangements (some of which have been notified in the WT/COMTD/N/-- series). See also the reference to improved preferential market access measures for least-developed countries under the Decision on Measures in Favour of Least-Developed Countries.

[10] WT/COMTD/39/Add.1.
[11] WT/COMTD/39.

PROVISION	COMMENT
Provisions under which WTO Members should safeguard the interests of developing country Members	
6. Because of the chronic deficiency in the export proceeds and other foreign exchange earnings of less-developed contracting parties, there are important inter-relationships between trade and financial assistance to development. There is, therefore, need for close and continuing collaboration between the CONTRACTING PARTIES and the international lending agencies so that they can contribute most effectively to alleviating the burdens these less-developed contracting parties assume in the interest of their economic development.	The Uruguay Final Act includes a number of decisions relating to collaboration with other organizations. The first is the Decision on achieving greater coherence in global economic policy-making which among other things, "notes that greater exchange rate stability based on more orderly underlying economic and financial conditions should contribute to 'the expansion of trade, sustainable growth and development, and the timely correction of external imbalance'. It recognizes that while difficulties whose origins lie outside the trade field cannot be redressed through measures taken in the trade field alone, there are nevertheless inter linkages between the different aspects of economic policy". The WTO is therefore called upon to develop its cooperation with the international organizations responsible for monetary and financial matters. As part of the Uruguay Final Act, Ministers also adopted the Declaration on the Contribution of the World Trade Organization to Achieving Greater Coherence in Global Economic Policy-making, which recognizes, *inter alia* that difficulties the origins of which lie outside the trade field cannot be addressed through measures taken in the trade field alone. In addition, they adopted the Decision on the Relationship of the WTO with the International Monetary Fund which reaffirms that "that, unless otherwise provided for in the Final Act, the relationship of the WTO with the International Monetary Fund, with regard to the areas covered by the Multilateral Trade Agreements in Annex 1A of the WTO Agreement, will be based on the provisions that have governed the relationship of the CONTRACTING PARTIES to the GATT 1947 with the International Monetary Fund". In November 1996, the General Council approved WTO agreements with the IMF and the World Bank. The agreements aimed to strengthen inter-agency relations.[12] The Enhanced Integrated Framework (EIF – formally the IF established in 1997) is a good example of an international partnership, through which the IMF, ITC, UNCTAD, UNDP, the World Bank and WTO combine efforts with those of least-developed countries, donors and other development partners to respond to the trade development needs of least-developed countries. The Aid-for-Trade Initiative is another concrete example of the WTO working closely with the international lending agencies. For further information on the Aid-for-Trade Initiative see comments under Article XXXVIII of the GATT.
7. There is need for appropriate collaboration between the CONTRACTING PARTIES, other intergovernmental bodies and the organs and agencies of the United Nations system, whose activities relate to the trade and economic development of less-developed countries.	A global arrangement for cooperation between WTO and the United Nations was concluded on 29 September 1995 by an exchange of letters between the Director-General and the UN Secretary General (WT/GC/W/10). Generally speaking, the WTO collaborates with several intergovernmental bodies (see the Director-General's reports on Coherence in Global Economic Policy-Making, the most recent of which can be found in document WT/TF/COH/S/14).

[12] WT/L/194.

PROVISION	COMMENT
9. The adoption of measures to give effect to these principles and objectives shall be a matter of conscious and purposeful effort on the part of the contracting parties both individually and jointly.	
Flexibility of commitments, of action, and use of policy instruments	
8. The developed contracting parties do not expect reciprocity for commitments made by them in trade negotiations to reduce or remove tariffs and other barriers to the trade of less-developed contracting parties.	See above under paragraph 5. In addition, this provision was taken into account during the negotiations in the Uruguay Round. This is reflected both in the extent of bindings on industrial products and the average level of tariffs of the developing country Members.
Article XXXVII	
Provisions aimed at increasing the trade opportunities of developing country Members	
1. The developed contracting parties shall to the fullest extent possible - that is, except when compelling reasons, which may include legal reasons, make it impossible give effect to the following provisions: *(a) Accord high priority to the reduction and elimination of barriers to products currently or potentially of particular export interest to less-developed contracting parties, including customs duties and other restrictions which differentiate unreasonably between such products in their primary and in their processed forms;*	A similar provision has been taken into account in the reduction of tariffs on tropical products during the Uruguay Round. Members are currently negotiating the reduction and elimination of barriers to products of export interest to developing and least-developed countries in the agriculture and non-agricultural market access negotiations.
4. Less-developed contracting parties agree to take appropriate action in implementation of the provisions of Part IV for the benefit of the trade of other less-developed contracting parties, in so far as such action is consistent with their individual present and future development, financial and trade needs taking into account past trade developments as well as the trade interests of less-developed contracting parties as a whole.	See comments under the Decision on Measures in Favour of least-developed countries.
Provisions under which WTO Members should safeguard the interests of developing country Members	
1. (b) refrain from introducing, or increasing the incidence of, customs duties or non-tariff import barriers on products currently or potentially of particular export interest to less-developed contracting parties; and *(c) (i) refrain from imposing new fiscal measures, and (ii) in any adjustments of fiscal policy accord high priority to the reduction and elimination of fiscal measures, which would hamper, or which hamper, significantly the growth of consumption of primary products, in raw or processed form, wholly or mainly produced in the territories of less-developed contracting parties, and which are applied specifically to those products.*	
2. (a) Whenever it is considered that effect is not being given to any of the provisions of subparagraph (a), (b) or (c) of paragraph 1, the matter shall be reported to the CONTRACTING PARTIES either by the contracting party not so giving effect to the relevant provisions or by any other interested contracting party.	

PROVISION	COMMENT
(b) (i) The CONTRACTING PARTIES shall, if requested so to do by any interested contracting party, and without prejudice to any bilateral consultations that may be undertaken, consult with the contracting party concerned and all interested contracting parties with respect to the matter with a view to reaching solutions satisfactory to all contracting parties concerned in order to further the objectives set forth in Article XXXVI. In the course of these consultations, the reasons given in cases where effect was not being given to the provisions of subparagraph (a), (b) or (c) of paragraph 1 shall be examined. *(ii) As the implementation of the provisions of subparagraph (a), (b) or (c) of paragraph 1 by individual contracting parties may in some cases be more readily achieved where action is taken jointly with other developed contracting parties, such consultation might, where appropriate, be directed towards this end.* *(iii) The consultations by the CONTRACTING PARTIES might also, in appropriate cases, be directed towards agreement on joint action designed to further the objectives of this Agreement as envisaged in paragraph 1 of Article XXV.*	
3. The developed contracting parties shall: *(a) make every effort, in cases where a government directly or indirectly determines the resale price of products wholly or mainly produced in the territories of less-developed contracting parties, to maintain trade margins at equitable levels.* *(b) give active consideration to the adoption of other measures designed to provide greater scope for the development of imports from less-developed contracting parties and collaborate in appropriate international action to this end.*	
(c) have special regard to the trade interests of less-developed contracting parties when considering the application of other measures permitted under this Agreement to meet particular problems and explore all possibilities of constructive remedies before applying such measures where they would affect essential interests of those contracting parties.	This provision has been incorporated into the Anti-dumping Agreement.
5. In the implementation of the commitments set forth in paragraph 1 to 4 each contracting party shall afford to any other interested contracting party or contracting parties full and prompt opportunity for consultations under the normal procedures of this Agreement with respect to any matter or difficulty which may arise.	
Article XXXVIII	
Provisions aimed at increasing the trade opportunities of developing country Members	
2. (c) collaborate in analysing the development plans and policies of individual less-developed contracting parties and in examining trade and aid relationships with a view to devising concrete measures to promote the development of export potential and to facilitate access to export markets for the products of the industries thus	One of the aims of the WTO is to help developing countries, and in particular the poorest among them, expand their production and exports of goods and services. Some countries are succeeding well – but others are not, including a large number of least-developed countries where trade is failing to make the contribution that it should be

PROVISION	COMMENT
developed and, in this connection, seek appropriate collaboration with governments and international organizations, and in particular with organizations having competence in relation to financial assistance for economic development, in systematic studies of trade and aid relationships in individual less-developed contracting parties aimed at obtaining a clear analysis of export potential, market prospects and any further action that may be required;	making to economic growth and poverty reduction. The Aid-for-Trade initiative was endorsed at the WTO Ministerial Conference in Hong Kong in December 2005.[13] Its main aim is to assist developing countries and least-developed countries to reap greater, practical, trade benefits from enhanced market access opportunities. The WTO initiative brings together the beneficiary countries and their development partners, the Bretton Woods Institutions, Regional Development Banks and specialized intergovernmental agencies. Aid for Trade is not meant to compete with existing Official Development Assistance flows instead, Aid-for-Trade flows are meant to assist with the implementation of WTO Agreements and with building more trade-related capacity. Such aid requires a commitment from trade, development and finance ministers in developed and developing as well as least-developed countries, as well as the support of private business in order to live up to its promise of catalysing trade-related investment. One of the Aid-for-Trade Task Force's conclusions in its report considered by the WTO's General Council in July 2006[14] was that existing mechanisms for monitoring, reviewing and evaluating Aid for Trade were inadequate and that improved monitoring and evaluation were essential for, on the one hand, building confidence in the fact that increased Aid for Trade would be delivered and used effectively, and on the other, enhancing the credibility of donors' commitments. Greater transparency was needed to provide incentives for donors and recipients to work together more effectively to advance the Aid-for-Trade agenda. The rationale for improved monitoring and evaluation is embodied in the Paris Declaration on Aid Effectiveness which states the need to strengthen mutual accountability between donor and recipient countries through improved transparency. Members consider the WTO as being well placed to carry out this monitoring role by reviewing on a regular basis whether Aid for Trade is being adequately funded and is delivering the expected results. In 2007, a system of monitoring Aid-for-Trade flows was established at three levels: the global level, the national level and the donor level. The WTO worked closely with the World Bank and the Regional Development Banks and held three regional Aid-for-Trade reviews in 2007: in Lima, Peru for the Latin America and Caribbean region; Manila, the Philippines for the Asia/Pacific region; and in Dar-es-Salaam, Tanzania for the Africa region. The reviews gave recipients, donors and the private sector an opportunity to work together on specific challenges, prioritize needs and design deliverable business plans. A Global Aid-for-Trade Review and Debate was held at the WTO on 19-21 November 2007, where various inputs of the monitoring process were put together into a coherent picture of current trends, and where Members considered the results of the WTO monitoring process. The three main themes to emerge from these discussions were the need to: encourage greater

[13] Paragraph 57 of WT/MIN(05)/DEC.
[14] WT/AFT/1.

PROVISION	COMMENT
	developing-country ownership of the initiative; strengthen evaluation, as well as monitoring; and shift the focus on the initiative from awareness raising to implementation. In 2008, Members continued to build on previous work. Efforts were made to improve and streamline donor and recipient-country questionnaires, based on a series of consultations with delegations in the context of the WTO CTD, the OECD-DAC Aid-for-Trade Working Party, and other fora. In addition, a Symposium on Monitoring and Evaluation of Aid for Trade was held on 15-16 September 2008 to help identify and assess suitable indicators – using existing methodology where possible – that could be used to help better assess the impact of Aid for Trade on the trade performance and capacity of developing and least-developed countries. In 2009, three regional Aid-for-Trade reviews were held. The first, held in Lusaka, Zambia on 6 and 7 April, focused on the African North-South transport corridor. This was followed by the review for Latin America and the Caribbean on 7 and 8 May in Montego Bay, Jamaica and a finally the review for Asia and the Pacific held in Siem Reap, Cambodia on 28 and 29 May. The 2nd Global Review of Aid for Trade was held on 6 and 7 July at the WTO's headquarters in Geneva. Members were encouraged to honour their Aid-for-Trade pledges and press for new commitments, particularly in the context of the global economic slowdown. Developing countries were encouraged to promote greater ownership of the Aid-for-Trade initiative through mainstreaming trade into their national and regional economic planning frameworks and dialogues and placing greater emphasis on the implementation of Aid-for-Trade projects, particularly through regional Aid-for-Trade events. Work was to continue on further refining monitoring mechanisms and evaluation frameworks and on improving indicators and case studies showing Aid for Trade at work. Greater dialogue with the private sector on Aid for Trade at the national, regional and global levels was encouraged. Members also stressed the need to focus on implementation.
(e) collaborate in seeking feasible methods to expand trade for the purpose of economic development, through international harmonization and adjustment of national policies and regulations, through technical and commercial standards affecting production, transportation and marketing, and through export promotion by the establishment of facilities for the increased flow of trade information and the development of market research;	The work of the WTO/UNCTAD International Trade Centre is oriented towards meeting the objectives of this provision. The WTO Reference Centre Programme has contributed to enhancing the flow of trade-related information to governments and business communities.
Provisions under which WTO Members should safeguard the interests of developing country Members	
1. The contracting parties shall collaborate jointly, with the framework of this Agreement and elsewhere, as appropriate, to further the objectives set forth in Article XXXVI.	
2. In particular, the CONTRACTING PARTIES shall: *(a) where appropriate, take action, including action through international arrangements, to provide improved and acceptable conditions of access to world markets for primary products of particular interest to less-developed contracting*	In 2003, the delegations of Kenya Uganda and Tanzania tabled a non-paper in the CTD on the 'Declining Terms of Trade for Primary Products, and its Implications to Trade and Development of Primary Commodity Exporting Countries'. The non-paper highlighted the problem posed to primary commodity exporting countries by the

PROVISION	COMMENT
parties and to devise measures designed to stabilize and improve conditions of world markets in these products including measures designed to attain stable, equitable and remunerative prices for exports of such products;	declining terms of trade and stated the need for the WTO to take action on the issue. Subsequently, in the the July Decision[15], it was agreed that the issue of commodities should be taken into consideration, as appropriate, in the course of the Agriculture and NAMA negotiations. As a result this issues is being dealt with in the ongoing negotiations on Agriculture and NAMA. This matter has generally been considered in UNCTAD from the inception.
(b) seek appropriate collaboration in matters of trade and development policy with the United Nations and its organs and agencies, including any institutions that may be created on the basis of recommendations by the United Nations Conference on Trade and Development;.	See comment in relation to Article XXXVI:7.
(d) keep under continuous review the development of world trade with special reference to the rate of growth of the trade of less-developed contracting parties and make such recommendations to contracting parties as may, in the circumstances, be deemed appropriate;	The CTD conducts regular reviews of the participation of developing countries in world trade. (See WT/COMTD/W/162, and forthcoming paper for the CTD's December 2009 meeting.)
(f) establish such institutional arrangements as may be necessary to further the objectives set forth in Article XXXVI and to give effect to the provision of this Part.	The WTO CTD was established in 1995. (See WT/L/46 for terms of reference.)

[15] WT/L/579.

B. UNDERSTANDING ON THE BALANCE-OF-PAYMENTS PROVISIONS OF THE GENERAL AGREEMENT ON TARIFFS AND TRADE 1994

8. The Understanding on Balance-of-Payments Provisions of the General Agreement on Tariffs and Trade 1994 contains two special and differential treatment provisions falling under the following categories.

1. Flexibility of commitments, of action. and use of policy instruments

One provision (Paragraph 8).

2. Technical assistance

One provision (Paragraph 12).

9. Under the Transitional Review Mechanism pursuant to paragraph 18 of its Accession Protocol (WT/L/432), China agreed to notify information on its foreign exchange and payments restrictions to the Committee on Balance-of-Payments Restrictions. The Committee has held seven annual reviews of these measures since 2001 (WT/BOP/R/69, 71, 75, 80, 83, 87, 89).

10. In the TPRM, the view has been expressed that, in implementation, hardly any distinction seemed now to be drawn between Article XII and Article XVIII:B of GATT 1994 (WT/TPR/M/33, paragraph 9). This view has also been expressed in the discussions on implementation.

UNDERSTANDING ON BALANCE-OF-PAYMENTS PROVISIONS OF THE GENERAL AGREEMENT ON TARIFFS AND TRADE 1994

PROVISION	COMMENT
Members, *Recognizing the provisions of Articles XII and XVIII:B of GATT 1994 and of the Declaration on Trade Measures Taken for Balance-of-Payments Purposes adopted on 28 November 1979 (BISD 26S/205-209, referred to in this Understanding as the "1979 Declaration") and in order to clarify such provisions[16];* *Hereby agree as follows:*	
Flexibility of commitments, o*f action,* and use of policy instruments	
Procedures for balance-of-payments consultations *8. Consultations may be held under the simplified procedures approved on 19 December 1972 (BISD 20S/47-49, referred to in this Understanding as "simplified consultation procedures") in the case of least-developed country Members or in the case of developing country Members which are pursuing liberalization efforts in conformity with the schedule presented to the Committee in previous consultations. Simplified consultation procedures may also be used when the Trade Policy Review of a developing country Member is scheduled for the same calendar year as the date fixed for the consultations. In such cases the decision as to whether full consultation procedures should be used will be made on the basis of the factors enumerated in paragraph 8 of the 1979 Declaration. Except in the case of least-developed country Members, no more than two successive consultations may be held under simplified consultation procedures.*	
Technical assistance	
Notification and documentation *12. The Secretariat shall, with a view to facilitating the consultations in the Committee, prepare a factual background paper dealing with the different aspects of the plan for consultations. In the case of developing country Members, the Secretariat document shall include relevant background and analytical material on the incidence of the external trading environment on the balance-of-payments situation and prospects of the consulting Member. The technical assistance services of the Secretariat shall, at the request of a developing country Member, assist in preparing the documentation for the consultations.*	

[16] Nothing in this Understanding is intended to modify the rights and obligations of Members under Articles XII or XVIII:B of GATT 1994. The provisions of Articles XXII and XXIII of GATT 1994 as elaborated and applied by the Dispute Settlement Understanding may be invoked with respect to any matters arising from the application of restrictive import measures taken for balance-of-payments purposes.

C. AGREEMENT ON AGRICULTURE

11. The Agreement on Agriculture contains 14 special and differential treatment provisions. The special and differential treatment provisions of the Agreement fall under four categories.

12. Provisions falling under categories 1 and 4 cover positive actions to be taken by Members with respect to developing country Members, including least-developed countries and Net Food-Importing Developing Country Members (NFIDCs). Provisions falling under categories 2 and 3 cover actions developing countries may take as a result of exemptions, time-bound or otherwise provided for in the Agreement. With the exception of Article 12.2, available data show that developing countries made use of all provisions available in these two categories.

13. Under the notification requirements adopted by the Committee on Agriculture (G/AG/2 and G/AG/2/Add.1), least-developed countries are to submit notifications on domestic support only every two years. Developing countries are to notify annually but the Committee on Agriculture may, upon request, set aside parts of the notification requirements. To date, there has been no request for such flexibility.

1. Provisions aimed at increasing trade opportunities of developing country Members

One provision (Preamble to the Agreement).

2. Transitional time-periods

One provision (Article 15.2).

3. Flexibility of commitments, of action, and use of policy instruments

Nine provisions (Article 6.2; Article 6.4; Article 9.2(b)(iv); Article 9.4; Article 12.2; Article 15.1; Annex 2, paragraph 3 and footnote 5; Domestic food aid: Annex 2, paragraph 4, footnotes 5 and 6; Annex 5, Section B).

4. Provisions relating to least-developed country Members

Three provisions (Article 15.2, Article 16.1[17] and Article 16.2[18]).

[17] This provision is also available to NFIDCs.
[18] This provision is also available to NFIDCs.

AGREEMENT ON AGRICULTURE

PROVISION	COMMENT
Provisions aimed at increasing trade opportunities of developing country Members	
Preamble *Having agreed that in implementing their commitments on market access, developed country Members would take fully into account the particular needs and conditions of developing country Members by providing for a greater improvement of opportunities and terms of access for agricultural products of particular interest to these Members, including the fullest liberalization of trade in tropical agricultural products as agreed at the Mid-Term Review, and for products of particular importance to the diversification of production from the growing of illicit narcotic crops;*	Schedules of developed country Members show greater-than-average reductions in tariffs on a range of products of particular interest to developing countries (e.g. average tariff reduction of 43 per cent for tropical agricultural products) and often their accelerated implementation.
Transitional time-periods	
Article 15.2 *Developing country Members shall have the flexibility to implement reduction commitments over a period of up to 10 years. Least-developed country Members shall not be required to undertake reduction commitments.*	Used by developing and least-developed countries in the establishment of scheduled commitments in market access, domestic support, and export subsidies. The transition period is no longer valid for developing country Members.
Flexibility of commitments, of action, and use of policy instruments	
Article 6.2 (Domestic Support Commitments) *In accordance with the Mid-Term Review Agreement that government measures of assistance, whether direct or indirect, to encourage agricultural and rural development are an integral part of the development programmes of developing countries, investment subsidies which are generally available to agriculture in developing country Members and agricultural input subsidies generally available to low-income or resource-poor producers in developing country Members shall be exempt from domestic support reduction commitments that would otherwise be applicable to such measures, as shall domestic support to producers in developing country Members to encourage diversification from growing illicit narcotic crops. Domestic support meeting the criteria of this paragraph shall not be required to be included in a Member's calculation of its Current Total AMS.*	A number of developing countries took account of the provision when submitting the constituent data and methodologies in support of their respective Schedules. Individual notifications reflect the extent to which some Members have actually taken recourse to this provision during the implementation period. These include: Bahrain, Bangladesh, Barbados, Bolivarian Republic of Venezuela, Brazil, Burundi, Chile, Colombia, Costa Rica, Cuba, Egypt, Fiji, The Gambia, Honduras, India, Jordan, Korea, Malawi, Malaysia, Maldives, Mauritius, Mexico, Morocco, Namibia, Oman, Panama, Paraguay, Philippines, Sri Lanka, Thailand, Tunisia, Turkey, United Arab Emirates and Uruguay. See Members notifications in the G/AG/N/-- series.
Article 6.4 (b) (Domestic Support Commitments- calculation of current total AMS) *For developing country Members, the de minimis percentage under this paragraph shall be 10 per cent.*	A number of developing countries took account of the *de minimis* clause when calculating their Base Total AMS in order to schedule domestic support reduction commitments. Actual recourse to the *de minimis* clause for the specified percentage, whether on a product-specific or non-product specific basis, during the implementation period is reflected in the notifications submitted by a number of developing country Members, including: Bangladesh, Barbados, Brazil, Chile, India, Israel, Jordan, Korea, Mexico, Pakistan, Panama, Peru, Philippines, Saudi Arabia, Thailand, Tunisia, Turkey and Uruguay. See Members notifications in the G/AG/N/-- series.

PROVISION	COMMENT
Article 9.2(b)(Budgetary outlays for export subsidies) *(iv) the Member's budgetary outlays for export subsidies and the quantities benefiting from such subsidies, at the conclusion of the implementation period, are no greater than 64 per cent and 79 per cent of the 1986-1990 base period levels, respectively. For developing country Members these percentages shall be 76 and 86 per cent, respectively.*	A number of developing countries took account of the provision in establishing their Schedules. All developing country Members having scheduled export subsidy reduction commitments (e.g., the Bolivarian Republic of Venezuela, Brazil, Colombia, Indonesia, Israel, Mexico, Romania, Turkey and Uruguay) have used the flexibility to apply a lower rate of reduction. For further information see the individual Members' schedules.
Article 9.4 *During the implementation period, developing country Members shall not be required to undertake commitments in respect of the export subsidies listed in subparagraphs (d) and (e) of paragraph 1 above, provided that these are not applied in a manner that would circumvent reduction commitments:*[19]	Developing countries took account of the provision in the establishment of their Schedules. A number of developing countries (e.g., India, Korea, Mexico, Morocco, Pakistan and Tunisia) notified the use of Article 9.1(d) and/or Article 9.1(e) export subsidies under this provision. See developing country Members notifications in the G/AG/N/-- series.
Article 12.2 (Export prohibitions and restrictions) *The provisions of [Article 12.1] shall not apply to any developing country Member, unless the measure is taken by a developing country Member which is a net-food exporter of the specific foodstuff concerned.*	It should be noted that no developing country Member has ever notified the introduction of export restrictions and prohibitions, and that there is no formal indication of whether recourse to this flexibility has been taken at all.
Article 15.1 *In keeping with the recognition that differential and more favourable treatment for developing country Members is an integral part of the negotiation, special and differential treatment in respect of commitments shall be provided as set out in the relevant provisions of this Agreement and embodied in the Schedules of concessions and commitments.*	The Schedules of developing countries and least-developed countries reflect the flexibility on ceiling bindings, longer implementation periods, and lower reduction commitments in market access, domestic support and export subsidies.
Annex 2, paragraph 3, footnote 5 (Public stockholding for food security purposes) *For the purposes of paragraph 3 of Annex 2, governmental stockholding programmes for food security purposes in developing countries whose operation is transparent and conducted in accordance with officially published objective criteria or guidelines shall be considered to be in conformity with the provisions of this paragraph, including programmes under which stocks of foodstuffs for food security purposes are acquired and released at administered prices, provided that the difference between the acquisition price and the external reference price is accounted for in the AMS.*	Developing countries took account of the provision in the establishment of the Schedules. This particular category of government assistance has been implemented by several developing country Members, as reflected in their respective notifications. See Members notifications in the G/AG/N/-- series.
Annex 2, paragraph 4, footnotes 5 & 6 (Domestic food aid) *For the purposes of paragraphs 3 and 4 of Annex 2, the provision of foodstuffs at subsidized prices with the objective of meeting food requirement of urban and rural poor in developing countries on a regular basis at reasonable prices shall be considered to be in conformity with the provisions of this paragraph.*	Developing countries took account of this provision in the establishment of the Schedules. This particular category of government assistance has been implemented by several developing country Members, as reflected in their respective notifications. See Members notifications in the G/AG/N/-- series. .

[19] Memo: paragraphs (d) and (e) of Article 9.1 of the Agreement on Agriculture refer to the following export subsidy policies:

"(d) the provision of subsidies to reduce the costs of marketing exports of agricultural products, (other than widely available export promotion and advisory services) including handling, upgrading and other processing costs, and the costs of international transport and freight;" and

"(e) internal transport and freight charges on export shipments, provided or mandated by governments, on terms more favourable than for domestic shipments;"

PROVISION	COMMENT
Annex 5, Section B *7. The provisions of paragraph 2 of Article 4 shall also not apply with effect from the entry into force of the WTO Agreement to a primary agricultural product that is the predominant staple in the traditional diet of a developing country Member and in respect of which the following conditions, in addition to those specified in paragraph 1(a) through 1(d), as they apply to the products concerned, are complied with:* *(a) minimum access opportunities in respect of the products concerned, as specified in Section I-B of Part I of the Schedule of the developing country Member concerned, correspond to 1 per cent of base period domestic consumption of the products concerned from the beginning of the first year of the implementation period and are increased in equal annual instalments to 2 per cent of corresponding domestic consumption in the base period at the beginning of the fifth year of the implementation period. From the beginning of the sixth year of the implementation period, minimum access opportunities in respect of the products concerned correspond to 2 per cent of corresponding domestic consumption in the base period and are increased in equal annual instalments to 4 per cent of corresponding domestic consumption in the base period until the beginning of the 10th year. Thereafter, the level of minimum access opportunities resulting from this formula in the 10th year shall be maintained in the Schedule of the developing country Member concerned;*	The Schedules of Korea[20], the Philippines[21] and Chinese Taipei[22], reflect recourse to this provision.
(b) appropriate market access opportunities have been provided for in other products under this Agreement. *10. In the event that special treatment under paragraph 7 is not to be continued beyond the 10th year following the beginning of the implementation period, the products concerned shall be subject to ordinary customs duties, established on the basis of a tariff equivalent to be calculated in accordance with the guidelines prescribed in the attachment hereto, which shall be bound in the Schedule of the Member concerned. In other respects, the provisions of paragraph 6 shall apply as modified by the relevant special and differential treatment accorded to developing country Members under this Agreement.*	
Provisions relating to least-developed country Members	
Article 15.2 *Developing country Members shall have the flexibility to implement reduction commitments over a period of up to 10 years. Least-developed country Members shall not be required to undertake reduction commitments.*	See comment under Article 15.2 of transitional time-periods.

[20] Flexibility extended until 2014 (see G/MA/TAR/RS/98).
[21] Flexibility extended up to 30 June 2012 (see G/MA/TAR/RS/99).
[22] However, Chinese Taipei has already "tariffied" the tariff lines previously subject to this flexibility (see G/MA/TAR/RS/88).

PROVISION	COMMENT
Article 16.1 *Developed country Members shall take such action as is provided for within the framework of the Decision on Measures Concerning the Possible Negative Effects of the Reform Programme on Least-Developed and Net Food-Importing Developing Countries.*	Information on actions undertaken within the framework of the decision is contained in the comments relating to paragraph 3(iii) of the Decision on Measures Concerning the Possible Negative Effects of the Reform Programme on Least-Developed and Net Food-Importing Developing Countries.
Article 16.2 *The Committee on Agriculture shall monitor, as appropriate, the follow-up to this Decision.*	The Decision has been on the agenda of virtually every meeting of the Committee on Agriculture. Please see the comments relating to paragraph 3(iii) of the Decision on Measures Concerning the Possible Negative Effects of the Reform Programme on Least-Developed and Net Food-Importing Developing Countries.

D. AGREEMENT ON THE APPLICATION OF SANITARY AND PHYTOSANITARY MEASURES

14. The Sanitary and Phytosanitary Measures Agreement (SPS Agreement) contains six specific special and differential treatment provisions which fall under three broad categories:

1. Provisions under which WTO Members should safeguard the interests of developing country Members

Two provisions (Article 10.1 and 10.4).

2. Transitional time-periods

Two provisions (Article 10.2 and 10.3).

3. Technical assistance

Two provisions (Article 9.1.and 9.2).

15. In addition, guidelines and decisions adopted by the Committee have regularly taken into consideration the specific needs and concerns expressed by, and contain provisions for, developing country Members. These include:

(a) Recommended Procedures for Implementing the Transparency Provisions of the Sanitary and Phytosanitary Measures Agreement (G/SPS/7/Rev.3);

(b) Guidelines to Further the Practical Implementation of Article 5.5 (G/SPS/15);

(c) Decision on the Implementation of Article 4 of the Agreement regarding Recognition of Equivalence (G/SPS/19/Rev.2); and

(d) Procedure to Enhance Transparency of Special and Differential Treatment in Favour of Developing Country Members (G/SPS/33/Rev.1).

(i) Equivalence

16. At its Special Session on 18 October 2000, the General Council requested the SPS Committee "to examine the concerns of developing countries regarding the equivalence of SPS measures and to come up with concrete options as to how to deal with them". The SPS Committee had already embarked on work on equivalence in the context of the First Review of the operation and implementation of the SPS Agreement, completed in 1999 (G/SPS/12). The SPS Committee adopted guidelines on the Implementation of Article 4 of the Agreement regarding the Recognition of Equivalence in October 2001 (G/SPS/19). Further guidance and clarifications were subsequently agreed, and revised guidelines were adopted in July 2004 (G/SPS/19/Rev.2).

17. In the Second Review of the SPS Agreement (2005), the Committee encouraged Members to provide information regarding their experiences in the implementation of Article 4 on equivalence and in the use of the guidance developed by the Committee. In particular, Members were encouraged to notify any agreements reached on the recognition of equivalence. The following Members have provided information under this agenda item: Brazil and Chile (June 2005), Egypt (March 2006) and the United States (June 2007). In August 2007, Panama submitted the first notification on a recognition of equivalence (G/SPS/N/EQV/PAN/1). A second notification of the recognition of equivalence of SPS measures was submitted to the Committee in 2008 by the Dominican Republic (G/SPS/N/EQV/DOM/1).

18. The international standard-setting organizations referenced in the SPS Agreement have developed guidance in this area, and the Codex Alimentarius Commission (Codex), International Plant Protection Convention (IPPC) and the World Organization for Animal Health (OIE) have provided information on equivalence at each meeting of the SPS Committee since June 2005. The Codex has adopted principles for the development of equivalence agreements regarding food safety import and export inspection and certification systems, and guidelines on the judgement of equivalence of such systems.[23] The OIE has developed guidelines for judgement of the equivalence of zoo-sanitary measures.[24] At the October 2008 meeting of the Committee, the OIE elaborated on a new approach on equivalence under analysis by two ad hoc groups. The IPPC adopted in 2005 an international standard for phytosanitary measures with guidelines for determination and recognition of equivalence of phytosanitary measures (ISPM 24). In addition, ISPM 1, which also includes principles on equivalence, was revised in 2006.[25]

(ii) Transparency

19. In the Second Review (2005), the Committee: (i) encouraged Members to ensure full implementation of the transparency provisions of the SPS Agreement; (ii) asked that developing country Members clearly identify specific problems faced in implementing the transparency provisions of the Agreement; and (iii) asked that assistance be provided to least-developed and developing country Members in order to enable them to fully implement the transparency provisions and to make use of the benefits associated with transparency.

20. Managing information on transparency remains, however, challenging for many developing country Members that struggle with implementing basic obligations with respect to the transparency provisions of the SPS Agreement. Many developing country Members have flagged their need for assistance and support to resolve their individual transparency difficulties, for example with the process of sending notifications to the WTO. Other difficulties faced by developing country Members relate to the operation of their SPS National Notification Authority and their National Enquiry Point.

21. In adopting revised Recommended Procedures for Implementing the Transparency Provisions of the SPS Agreement in June 2008 (G/SPS/7/Rev.3), the SPS Committee made further efforts to address these difficulties. In addition, an informal mentoring mechanism, facilitated by the Secretariat, was established. Under this procedure, a number of officials responsible for transparency in developing country Members have already been "matched" with officials in other Members who will provide guidance when requested.[26] A step-by-step procedural manual on transparency, including suggestions for the effective operation of SPS National Enquiry Points and models for correspondence, has also been produced to assist developing country Members.

(iii) Transparency of Special and Differential Treatment

22. In 2004, the SPS Committee formally adopted a Procedure to Enhance the Transparency of Special and Differential Treatment.[27] The Committee agreed to review the proposed notification process after one year to evaluate its implementation, and determine whether changes were required and/or its continuation warranted. According to this procedure, if an exporting developing country Member identifies in its comments significant difficulties with a proposed SPS measure notified by another Member, the Member proposing to introduce the measure will, upon request, enter into

[23] http://www.Codexalimentarius.net/download/standards/10047/CXG_053e.pdf
[24] http://www.oie.int/eng/normes/en_mcode-2004.htm
[25] https://www.ippc.int/servlet/BinaryDownloaderServlet/124047_2007_ISPMs_book_Engl.doc?filename=1187683730555_ISPMs_1to29_2007_En_with_convention.doc&refID=124047
[26] G/SPS/W/217.
[27] G/SPS/33.

discussions to examine whether and how the identified problem could best be addressed to take into account the special needs of the exporting developing country Member. Resolution of the concern identified could include one or a combination of (1) a change in the measure; (2) the provision of technical assistance; or (3) the provision of special and differential treatment. Members agreed to inform the Committee regarding the response provided to such requests. Revisions to the procedure were currently being considered by the SPS Committee to facilitate its use. and, at its December 2009 regular meeting, the Committee adopted a revision of the procedure to enhance the transparency of special and differential treatment.[28]

23. In the Second Review (2005), the Committee encouraged Members requiring technical assistance to identify their specific needs in a clear and detailed manner to permit those needs to be effectively addressed. The Committee also encouraged Members providing technical assistance to keep it informed of specific programmes of assistance. Members were encouraged to report on the effectiveness of the technical assistance received, and, on the basis of that information, and information on the experiences of Members in the provision of technical assistance, the Committee would consider identifying best practices in the area of SPS-related technical assistance. The Committee invited Members to share information on their experiences regarding the use of the tools developed by the Secretariat to assist Members with the understanding and implementation of the SPS Agreement. Finally, the Committee requested the Secretariat to keep it informed of its relevant technical assistance activities and of the activities of the Standards and Trade Development Facility (STDF), and invited observer organizations to report on their capacity-building activities relevant to the SPS Agreement.

24. The STDF was established in September 2002 following the commitment made by the Heads of the WHO, the FAO, the WTO, the OIE and the World Bank at the Doha Ministerial Conference to explore new technical and financial mechanisms to promote the efficient use of resources in SPS-related activities. The STDF has two main aims: (i) to assist developing countries enhance their expertise and capacity to analyze and to implement international SPS standards, improve their human, animal and plant health situation, and thus their ability to gain and maintain market access; and (ii) to act as a vehicle for coordination among technical assistance providers relating to the mobilization of funds, the exchange of experience and the dissemination of good practice in relation to the provision and receipt of SPS-related technical assistance. Secretariat documents give regular overviews and updates of STDF activities, including funding offered for projects and project preparation grants in developing countries.[29]

(iv) Special and Differential Treatment

25. A report to the General Council on the proposals referred to the SPS Committee was adopted in June 2005.[30] The report expresses the Committee's commitment to continue to examine the proposals before it, and any revision of these proposals, with the aim of developing specific recommendations for a decision. The report also identifies elements for discussion on further work to assist the Committee to address the concerns underlying the proposals as identified by Members, with a view to fulfilling the Doha Development Mandate. Discussion of these elements commenced at the Committee meeting of October 2005.

26. During 2006, the Committee also continued its examination of the implementation of the SPS Agreement and the concerns of developing country Members. The proposals referred to the SPS Committee by the General Council were on the agenda of each meeting of the Committee. Although there were substantive discussions of some revisions informally suggested by the African Group at the

[28] G/SPS/33/Rev.1.
[29] G/SPS/GEN/595, 648, 718, 748, 774, 847, 865 and 877.
[30] G/SPS/35.

February, March and October meetings, the Committee was not able to reach a decision on any of the specific proposals as presented.[31] However, with a view to fulfilling the Doha Development Mandate, several Members suggested approaches to advance the work of the Committee to address the proposals as identified by Members including seeking clarification of the concerns underlying the proposals. In June 2006, the United States introduced a paper containing a compilation of ideas related to technical assistance and special and differential treatment[32], taking into account information provided by developing country Members at the Workshop on the Implementation of the Agreement, held in March 2006.[33]

27. At an informal meeting on special and differential treatment held in February and March 2007, the Committee further discussed the five proposals on special and differential treatment referred to it in August 2004. In particular: (i) the G/SPS/33 procedure and its extension until 2008; (ii) the G/SPS/35 report; (iii) the Committee's discussion of the African Group's revisions to its proposal on Article 9.2; (iv) the adoption by the General Council of the proposal from a number of small and vulnerable economies; and (v) Members' submissions on technical assistance and the paper from the United States on Special and Differential Treatment (G/SPS/W/198). A revised proposal regarding Article 10.1 was presented to the Committee in June 2007 and discussed at its October meeting.[34] The latest report of the Chairman of the SPS Committee to the General Council on special and differential treatment was in 2007.[35]

[31] G/SPS/41.
[32] G/SPS/W/198.
[33] G/SPS/R/41.
[34] JOB(07)/99.
[35] G/SPS/46.

AGREEMENT ON THE APPLICATION OF SANITARY AND PHYTOSANITARY MEASURES

PROVISION	COMMENT
Provisions under which WTO Members should safeguard the interests of developing country Members	
Article 10.1 *In the preparation and application of sanitary or phytosanitary measures, Members shall take account of the special needs of developing country Members, and in particular of the least-developed country Members.*	The first proposal relating to Article 10.1 has been addressed, in part, by the procedure agreed in G/SPS/33. See details below on G/SPS/33. Some developing country Members expressed the view that although Article 10.1 provided that the special needs of developing countries shall be taken into account in the preparation and application of SPS measures, this had rarely been done. In the discussion of the proposal relating to Article 10.1 at an informal meeting in October 2007, several Members again stressed their concern that modifications to the text of the SPS Agreement would upset the delicate balance of rights and obligations contained therein. Several Members noted that it was difficult for a Member considering the application of a food safety, plant or animal health protective measure to identify the special needs of developing countries and to take these into account.
Article 10.4 *Members should encourage and facilitate the active participation of developing country Members in the relevant international organizations.*	The General Council Decision of 15 December 2000 stated that: "In accordance with the request to the Director-General to work with the relevant international standard-setting organizations on the issue of the participation of developing countries in their work, these organizations are urged to ensure the participation of Members at different levels of development and from all geographic regions, throughout all phases of standard development" (WT/L/384). The Director-General provided three reports regarding his efforts in this area, the last one in the lead up to the Doha Ministerial Conference.[36] At the Doha Ministerial Conference, Members urged him to continue his efforts to facilitate participation of developing countries in standard setting. Some developing country Members stressed that the participation of developing countries in international standard-setting bodies remained inadequate, and that as a result, international standards were often adopted without taking into account the problems and constraints facing developing countries. The point was made that active participation in standard setting required adequate institutional infrastructure, human and financial resources and effective follow-up capabilities. One proposal was that WTO Members establish a joint fund with the purpose of assisting developing countries to increase their participation in the work of the SPS Committee and in the international standard-setting bodies. A group of developing country Members suggested that standards should only be recognized by the Agreement if the participation of countries from different geographical areas and levels of development had been ensured in their formulation, and if the specific conditions prevailing in developing countries had been taken into account.[37] Some developing country Members reported to the Trade Policy Review Body that although developing

[36] WT/GC/45, WT/GC/46, WT/GC/54.
[37] G/SPS/GEN/128, G/SPS/GEN/W/85, G/SPS/R/19 and G/SPS/W/105.

PROVISION	COMMENT
	countries participate in the policy-making committees of international bodies such as the Codex Alimentarius they are grossly outnumbered in these deliberations, at times resulting in standards development not conducive to their implementation. The growing consensus that financial support was needed to enhance participation of developing country Members in international organizations led to the creation of several funding initiatives. The Heads of the FAO, the OIE, the WHO, the World Bank and the WTO issued a joint statement during the Doha Ministerial Conference reaffirming their commitment to enhance developing countries' capacity to participate effectively in the development and application of international standards and in taking full advantage of trade opportunities.[38] (These discussions led to the establishment of the STDF, described in more detail in the section above on Technical Assistance under "General Comments".) Since the proposals were submitted in 2002, a number of developments have occurred which address some of the underlying concerns. With respect to the three standard-setting bodies of relevance under the SPS Agreement, trust funds have been established to increase participation of developing country Members in the standard-setting activities of the IPPC, of the FAO/WHO Codex and of the OIE. In addition, the OIE supports the participation of developing country Members in the elaboration of standards by ensuring that experts from every region participate in developing the draft text of a scientific standard. The Codex and the IPPC have trust funds which sponsor the participation of officials from developing country Members and economies in transition to participate in their meetings. These programmes are aimed at enhancing those officials' level of participation in the elaboration of Codex and IPPC standards. Meetings of the SPS Committee have when possible been scheduled back-to-back with the meetings of the Codex Commission and/or IPPC, to enable SPS experts from developing countries to combine both meetings in one trip.
Transitional time-periods	
Article 10.2 *Where the appropriate level of sanitary or phytosanitary protection allows scope for the phased introduction of new sanitary or phytosanitary measures, longer time-frames for compliance should be accorded on products of interest to developing country Members so as to maintain opportunities for their exports.*	The proponents were of the view that the current interpretation of the phrase "longer time-frame for compliance" found in paragraph 3.1 of the Doha Decision on Implementation-Related Issues and Concerns was not sufficient for operationalizing this Article. The Decision on Implementation-Related Issues and Concerns taken at the Doha Ministerial Conference in 2001 included, *inter alia*, a clarification on Article 10.2.[39] It specifies that where the appropriate level of protection allows scope for the phased introduction of SPS measures, the "longer time-frame for compliance" referred to in Article 10.2 shall normally mean at least six months. Where the phased introduction of a new measure is not possible, but a Member identifies specific problems, the Member

[38] WT/MIN(01)/ST/97.
[39] WT/MIN(01)/17, paragraph 3.1.

PROVISION	COMMENT
	applying the new measure shall enter into consultations, upon request, to try to find a mutually satisfactory solution. The Decision also indicated that in the context of paragraph 2 of Annex B of the SPS Agreement, a period of six months shall normally be provided between the publication of a measure and its entry into force. India had proposed that, in relation to Article 10.2, where the appropriate level of sanitary or phytosanitary protection allows scope for the phased introduction of new sanitary or phytosanitary measures, longer time-frames for compliance, not less than six months, shall be accorded, upon request, on products of interest to developing country Members so as to maintain opportunities for their exports. However, some Members remain concerned with the notion of agreeing to mandatory time-frames for developing countries to comply with their SPS obligations and there has been no consensus on India's proposal. In the SPS Committee, Egypt sought clarification about the time-frames referred to in Article 10.2 and those related to the transparency obligations of Members. The relationship between the time-frames in different provisions of the SPS Agreement is described in G/SPS/GEN/819.
Article 10.3 *With a view to ensuring that developing country Members are able to comply with the provisions of this Agreement, the Committee is enabled to grant to such countries, upon request, specified, time-limited exception in whole or in part from obligations under this Agreement, taking into account their financial, trade and development needs.*	To date, no request has been made under Article 10.3. The proponents claim that their focus is on ensuring predictability of the process to request such an exception, while other Members are concerned that the proposal would prejudge the outcome of such requests and amount to automatic granting of waivers. It was reported at the General Council in July 2008 that, on those two proposals relating to Article 10.3 of the SPS Agreement, Members had been able to narrow their differences. New ideas and language put forward enabled the circulation of a single revised text. While there were still some concerns on the implications of certain words in the text, Members seem not too far from convergence. The General Council agreed that with a view to ensuring that developing country Members are able to comply with the provisions of the SPS Agreement, they shall be eligible for specified, time-limited exceptions in whole, or in part, from the obligations under the Agreement. Any developing country with difficulties to comply with the provisions of the SPS Agreement may request such exceptions to the SPS Committee. In this regard, the SPS Committee shall give [positive and] expeditious consideration to such a request and take a decision [as appropriate] no later than at the third meeting at which the request is considered and in any case within 12 months, on any request made by such Members under Article 10.3 of the Agreement, taking into account their individual financial, trade and development needs. Furthermore, Members shall facilitate the provision of technical assistance either bilaterally or through the appropriate international organizations, if requested by a developing country Member in relation to its request for a specific time-limited exception. The concern expressed by many delegates in the SPS Committee is that a decision regarding Article 10.3 could impose requirements upon the SPS Committee without it having been consulted. In particular, if the SPS Committee is to be mandated to finalize decisions regarding requests within a limited period of time, it would be useful

PROVISION	COMMENT
	for the Committee to first develop a procedure for the handling of such requests, including clarification of the type of information a requesting Member would be expected to provide, in order to ensure the request can be addressed in the time provided.
Technical assistance	
Article 9.1 *Members agree to facilitate the provision of technical assistance to other Members, especially developing country Members, either bilaterally or through the appropriate international organizations. Such assistance may be, inter alia, in the areas of processing technologies, research and infrastructure, including in the establishment of national regulatory bodies, and may take the form of advice, credits, donations and grants, including for the purpose of seeking technical expertise, training and equipment to allow such countries to adjust to, and comply with, sanitary or phytosanitary measures necessary to achieve the appropriate level of sanitary or phytosanitary protection in their export markets.*	The SPS Committee discussed technical assistance on the basis of a typology prepared by the Secretariat (G/SPS/GEN/206) and other documents. The four categories of technical assistance identified were: information; training; "soft" infrastructure development; and "hard" infrastructure development. In October 2006, the Secretariat prepared a preliminary analysis of SPS-related technical assistance (G/SPS/GEN/726), with a view to addressing issues regarding the effectiveness of assistance provided. The Committee agreed to continue to consider the issue, and to explore the possibility of identifying best practices in the area of SPS-related technical assistance. The STDF organized a Special Workshop on Good Practice in SPS-related technical cooperation in October 2008, in collaboration with the OECD. The workshop presented the results of research on good practice in SPS-related projects identified by Members as having been successful, and considered how to apply the Paris Principles on Aid Effectiveness in this area.[40]
Article 9.2 *Where substantial investments are required in order for an exporting developing country Member to fulfil the sanitary or phytosanitary requirements of an importing Member, the latter shall consider providing such technical assistance as will permit the developing country Member to maintain and expand its market access opportunities for the product involved.*	The view was expressed that special and differential treatment provisions would be effective only if they were complemented by sufficient technical assistance to strengthen developing countries' ability to deal with scientific issues, especially risk assessment, and to improve laboratory facilities and technologies needed to comply with SPS obligations.[41] Noting their growing interest in trading with other developing countries, a number of developing country Members expressed concern that proposals for technical assistance to be provided by developed countries to specific developing country trading partners could discriminate among trading partners. While recognizing the importance of needs-based technical assistance, other delegations also disagreed with language that would require some countries to provide technical assistance. In addition, a number of delegations suggested that special and differential treatment and technical assistance could be provided by some developing countries to other developing countries. Some Members also noted that justified SPS measures should not be withdrawn simply because some Members might have difficulty complying with the requirement.

[40] G/SPS/GEN/875.
[41] G/SPS/R/19 and G/SPS/GEN/128.

PROVISION	COMMENT
	At an informal meeting on 28 March 2006, the African Group informally circulated a revision of their proposal on Article 9.2. The revised proposal sets out a procedure whereby a developing country Member that identifies specific problems in fulfilling the SPS requirements of an importing Member can request consultations with the aim of resolving the problems. The resolution can take the form of modifications of the measure, technical assistance or special and differential treatment, and the resolution should be reported to the SPS Committee. The revised proposal indicates that any technical assistance provided to resolve the trade problems would be fully funded, so as to avoid financial obligations on the part of the recipient. Many Members sought clarification as to how this proposal differed from the procedure already adopted by the SPS Committee in October 2003. In addition, several Members highlighted problems in relation to providing technical assistance on a fully-funded basis, noting the need to ensure commitment to projects on the part of beneficiaries. The African Group indicated that it was still considering revisions of other proposals. In discussions of the Article 9.2 proposals, some developing country Members have indicated that although an substantial amount of technical assistance is provided in the SPS area, in many cases this assistance is not appropriate or does not correspond to the needs of the developing country. Several Members have also created specific mechanisms to assist developing countries to participate in the relevant international institutions and in the activities of the SPS Committee, such as the Initiative for the Americas on Sanitary and Phytosanitary Measures.[42] Furthermore, bilateral technical assistance related to SPS capacity is being provided by many Members.[43] Since the SPS Agreement entered into force, the FAO/WHO, OIE and IPPC have also developed and/or strengthened technical assistance programmes, including conferences, seminars and workshops, to enhance national capacities on SPS matters. The IPPC developed a diagnostic tool, the Phytosanitary Capacity Evaluation (PCE), to help countries address their current capacity and identify needs for assistance.[44] Similar diagnostic tools have been developed by the FAO/WHO with respect to food safety, and recently by OIE.[45] A workshop on these diagnostic tools was organized by the STDF and held in the margins of the April 2008 meeting of the SPS Committee. In addition to information from the OIE, IPPC and the Codex, other observers organizations, including FAO, the World Bank, OIRSA, IICA, UNIDO and UNCTAD, provide regular updates concerning their provision of technical assistance.

[42] G/SPS/GEN/549.
[43] Paragraphs 27 to 46 of document G/SPS/GEN/543 provide a summary description of recent actions taken to enhance the provision of SPS-related technical assistance.
[44] http://www.ippc.int
[45] See G/SPS/GEN/525; also "Performance, Vision and Strategy (PVS) for National Veterinary Services", available from http://www.oie.int

PROCEDURES/GUIDELINES/RECOMMENDATIONS	COMMENT
Committee Decision on Procedure to enhance transparency of Special and Differential treatment in favour of developing country Members	
G/SPS/33/Rev.1.	One of the specific issues raised in the Committee has been the need to enhance transparency regarding the provision of special and differential treatment. In this regard, Egypt proposed the inclusion of a special and differential treatment box in the SPS notification format.[46] In response, Canada proposed that an importing country should consider any requests for special and differential treatment or technical assistance made in response to their notification of a new measure and notify the SPS Committee of any subsequent action.[47] In March 2003, the Committee adopted in principle the Canadian proposal and in October 2004 it adopted an elaboration of the steps to implement this procedure.[48] This procedure provides for the submission of specific addenda to notifications which indicate when special and differential treatment or technical assistance has been requested in the context of the notification of a new or modified SPS measure, and what response has been given to the request. The Committee agreed to review the proposed notification process one year after its adoption, to evaluate its implementation, and determine whether changes are required and/or its continuance warranted. In the 2005 Review, the Committee agreed to continue to consider specific, concrete actions to address the problems faced by least-developed and developing country Members in the implementation of the SPS Agreement and in making use of the benefits of the Agreement. Members were encouraged to provide information regarding the special and differential treatment or technical assistance they have provided in response to specific needs identified by Members in accordance with the procedure adopted by the Committee (G/SPS/33). In February 2006, the Committee agreed to further extend the procedure for transparency of special and differential treatment or technical assistance provided in response to the specific needs of developing country Members (G/SPS/33/Add 1). Unfortunately, to date there has been no indication that Members are using this procedure, and no notifications have been submitted. Developed country Members indicate that they have never been requested to provide special and differential treatment in accordance with this procedure. Some Members have suggested that a mechanism is needed to help developing country Members cope with the large number of notifications concerning changing requirements.

[46] G/SPS/GEN/358.
[47] G/SPS/W/127.
[48] G/SPS/33.

PROCEDURES/GUIDELINES/RECOMMENDATIONS	COMMENT
	On 6 June 2008, the Secretariat circulated a proposed revision to the special and differential treatment Transparency Procedure reflecting (i) proposals informally submitted by Egypt (JOB(07)/104), (ii) modifications related to the change in the recommended transparency procedures in general (G/SPS/7/Rev.3), and (iii) relevant discussions in the SPS Committee (G/SPS/W/224). The proposal has been revised several times to incorporate further comments and suggestions made by Members at informal and regular meetings in October 2008, and in February, June and October 2009.[49] At its October 2009 regular meeting, the Committee adopted, on an ad referendum basis, a revision of the procedure to enhance the transparency of special and differential treatment.[50] No objections were raised by the 16 December 2009 deadline, and the revised decision was subsequently circulated as G/SPS/33/Rev.1.
Recommended Notification Procedures *G/SPS/7/Rev.3.*	The Committee agreed to review the procedure for transparency in special and differential treatment in 2008. Egypt proposed some amendments to this procedure (JOB(07)/104), a number of which were adopted by the Committee as revisions to the general recommended procedures for transparency (G/SPS/7/Rev.3). For example, the most recently revised recommended procedures for the implementation of the transparency provisions of the Agreement, and the related format for the notification of SPS measures, request the identification of which Members or regions may be particularly affected by the measure being notified (G/SPS/7/Rev.3).[51]

[49] G/SPS/W/224 and subsequent revisions.
[50] The procedure is contained in G/SPS/33, and the proposed revision in G/SPS/W/224/Rev.6.
[51] See proposal in paragraph 14.

E. AGREEMENT ON TECHNICAL BARRIERS TO TRADE

28. The Agreement on Technical Barriers to Trade (TBT Agreement) contains a total of nine provisions relating to technical assistance and ten relating to special and differential treatment. These are contained in Articles 11 and 12 of the TBT Agreement. In addition, a number of other Articles in the TBT Agreement may be relevant to special and differential treatment (see reference to Article 2.12 mentioned in paragraph 31 below).

1. Provisions under which WTO Members should safeguard the interests of developing country Members

Eight provisions (Article 10.6; Article 12.1; Article 12.2; Article 12.3; Article 12.5; Article 12.6; Article 12.9; and Article 12.10).

2. Flexibility of commitments, of action, and use of policy instruments

One provision (Article 12.4)

3. Transitional time-periods

One provision (Article 12.8)

4. Technical assistance

Eight Provisions (Article 11.1; Article 11.2; Article 11.3; Article 11.4; Article 11.5; Article 11.6; Article 11.7 and Article 12.7)

5. Provisions relating to least-developed country Members

One provision (Article 11.8).

29. Article 12 of the TBT Agreement deals with Special and Differential Treatment of Developing Country Members. This Article has been a topic of consideration in the TBT Committee since 1995. On various occasions, Members have exchanged information and views on the operation and implementation of special and differential treatment under the TBT Agreement.

30. As noted above, the TBT Agreement has a separate Article on Technical Assistance (Article 11). The eight subparagraphs of Article 11 include two sorts of obligations: obligations to advise other Members, especially developing country Members, on certain issues, and obligations to provide them with technical assistance. Although there is a link between technical assistance and special and differential treatment – and this was noted by Members during the Fourth Triennial Review (in 2006)[52] - to date, these two issues have been discussed separately in the TBT Committee. What follows is an overview of the provision on special and differential treatment (Article 12) and the Committee's work in this area.

(i) Overall context of Special and Differential Treatment in the TBT Agreement

31. Articles 12.1 and 12.2 provide the overall context of special and differential treatment under the TBT Agreement. Under Article 12.1, Members shall provide differential and more favourable treatment to developing country Members, both through the provisions of Article 12, as well as through the relevant provisions of other Articles of the Agreement. For example, pursuant to

[52] G/TBT/19, paragraph 81.

Article 2.12 of the TBT Agreement, Members shall allow a "... reasonable interval between the publication of technical regulations and their entry into force in order to allow time for producers in exporting Members, and particularly in developing country Members, to adapt their products or methods of production to the requirements of the importing Member". The Decision on Implementation-Related Issues and Concerns adopted at the Fourth WTO Ministerial Conference in Doha, Qatar, in November 2001 clarified the phrase "reasonable interval". According to the Decision, the phrase shall be understood to mean "normally a period of not less than six months, except when this would be ineffective in fulfilling the legitimate objectives pursued".[53]

32. Pursuant to Article 12.2, Members shall give particular attention to the provisions of the TBT Agreement concerning developing country Members' rights and obligations and shall take into account the special development, financial and trade needs of developing country Members in the implementation of the Agreement, both nationally and in the operation of the Agreement's institutional arrangements.

(ii) Information Exchange

33. At the Fourth Triennial Review (2006), the Committee underscored the continuing need for exchanges of information concerning implementation of the special and differential treatment provisions of the Agreement. This includes sharing of information on special and differential treatment provided by Members and its impact, as well as information on how Members have taken into account special and differential treatment provisions in the preparation of technical regulations and conformity assessment procedures. The Committee also noted the possible challenges of ascertaining and providing information on special and differential treatment and also a possible link between discussions on special and differential treatment and technical assistance. In order to have a more focused exchange of information, the Committee agreed[54:]

(a) to encourage Members to inform the Committee of special and differential treatment provided to developing country Members, including information on how they have taken into account special and differential treatment provisions in the preparation of technical regulations and conformity assessment procedures; and

(b) to encourage developing country Members to undertake their own assessments of the utility and benefits of such special and differential treatment.

[53] WT/MIN(01)/17, paragraph 5.2.
[54] G/TBT/19, paragraphs 81-83.

PROVISION	COMMENT
Provisions under which WTO Members should safeguard the interests of developing country Members	
Article 10.6 *The Secretariat shall, when it receives notifications in accordance with the provisions of this Agreement, circulate copies of the notifications to all Members and interested international standardizing and conformity assessment bodies, and draw the attention of developing country Members to any notifications relating to products of particular interest to them.*	
Article 12.1 *Members shall provide differential and more favourable treatment to developing country Members, through the provisions of this Article, as well as through the relevant provisions of other Articles of this Agreement.*	
Article 12.2 *Members shall give particular attention to the provisions of this Agreement concerning developing country Members' rights and obligations and shall take into account the special development, financial and trade needs of developing country Members in the implementation of this Agreement, both nationally and in the operation of this Agreement's institutional arrangements.*	
Article 12.3 *Members shall, in the preparation and application of technical regulations, standards and conformity assessment procedures, take account of the special development, financial and trade needs of developing country Members, with a view to ensuring that such technical regulations, standards and conformity assessment procedures do not create unnecessary obstacles to exports from developing country Members.*	Various Members have referred to the need for information to be provided as to how special and differential treatment is taken into account in the development by Members of technical regulations and conformity assessment procedures. Such references have been raised in the TBT Committee's discussions on special and differential treatment and also in the context of other items on the Committee's agenda, such as specific trade concerns. Further, at the Third Triennial Review (November 2003), the TBT Committee resolved that to improve the ability of developing country Members to comment on notifications, and consistent with the principle of special and differential treatment, developed country Members were encouraged to provide more than a 60-day comment period.[55]

[55] G/TBT/13, paragraph 26, first tiret.

PROVISION	COMMENT
.	In the area of conformity assessment, the TBT Committee has acknowledged the benefits of Supplier's Declarations of Conformity (SDoC)[56], as a flexible and trade-friendly approach to conformity assessment.[57] [not relevant as action taken] The TBT Committee has held focussed discussions on SDoC, including on how suppliers from developing country Members exporting to markets of developed country Members could benefit from this approach. In accordance with the work programme on conformity assessment agreed at the Third Triennial Review, the TBT Committee engaged in an in-depth discussion of SDoC at a special meeting held in June 2004, and a workshop specifically on SDoC was held in March 2005.[58]
Article 12.5 *Members shall take such reasonable measures as may be available to them to ensure that international standardizing bodies and international systems for conformity assessment are organized and operated in a way which facilitates active and representative participation of relevant bodies in all Members, taking into account the special problems of developing country Members .*	
Article 12.9 *During consultations, developed country Members shall bear in mind the special difficulties experienced by developing country Members in formulating and implementing standards and technical regulations and conformity assessment procedures, and in their desire to assist developing country Members with their efforts in this direction, developed country Members shall take account of the special needs of the former in regard to financing, trade and development.*	
Article 12.10 *The Committee shall examine periodically the special and differential treatment, as laid down in this Agreement, granted to developing country Members on national and international levels.*	During an examination of special and differential treatment undertaken pursuant to Article 12.10 of the TBT Agreement, in October 1996, the TBT Committee took note of the fact that no requests had been made under Article 12.8 of the TBT Agreement for "specified, time-limited exceptions".[59] The situation remains unchanged.

[56] A procedure by which a supplier provides assurance of conformity with specified requirements.

[57] G/TBT/13, paragraph 33.

[58] The Report of the Special Meeting of the TBT Committee Dedicated to Conformity Assessment Procedures Held on 29 June 2004 is contained in G/TBT/M/33/Add.1. The Committee's work programme on conformity assessment is contained in G/TBT/13, paragraph 40. A report on the 21 March 2005 SDoC workshop is contained in Annex 1 to G/TBT/M/35.

[59] G/TBT/M/6, paragraph 17.

PROVISION	COMMENT
Article 12.6 *Members shall take such reasonable measures as may be available to them to ensure that international standardizing bodies, upon request of developing country Members, examine the possibility of, and, if practicable, prepare international standards concerning products of special interest to developing country Members.*	In the First Triennial Review (November 1997), the TBT Committee reiterated that in the preparation of international standards, it was important, *inter alia*, that trade needs were taken into account along with technical progress and Article 12.6 concerning products of special interest to developing country Members.[60] The TBT Committee also agreed to consider, as part of its work programme, inviting representatives of relevant international standardizing bodies and international systems for conformity assessment procedures to report to the Committee on whether and how account is taken of the special problems of developing countries in such bodies and systems.[61] At the Second Triennial Review (November 2000), and in order to improve the quality of international standards and to ensure the effective application of the TBT Agreement, the TBT Committee agreed there was a need to develop principles concerning transparency, openness, impartiality and consensus, relevance and effectiveness, coherence and developing country interests that would clarify and strengthen the concept of international standards under the Agreement and contribute to the advancement of its objectives.[62] In this regard, the TBT Committee adopted a Decision containing a set of principles it considered important for the development of international standards, guides and recommendations.[63] Section F of the Decision deals with the "Development Dimension". It states: "Constraints on developing countries, in particular, to effectively participate in standards development, should be taken into consideration in the standards development process. Tangible ways of facilitating developing countries' participation in international standards development should be sought. The impartiality and openness of any international standardization process requires that developing countries are not excluded de facto from the process. With respect to improving participation by developing countries, it may be appropriate to use technical assistance, in line with Article 11 of the TBT Agreement. Provisions for capacity building and technical assistance within international standardizing bodies are important in this context."

[60] G/TBT/5, paragraph 20.
[61] G/TBT/5, paragraph 33(b)(iii). These elements were subsequently reflected in the Committee's work programme, see G/TBT/M/13, paragraph 119.
[62] G/TBT/9, paragraph 20.
[63] G/TBT/1/Rev.9, Annex B (pp. 37-39).

PROVISION	COMMENT
	At the 2001 Doha Ministerial Conference, in the Decision on Implementation-Related Issues and Concerns, Members took note of actions taken by the Director-General to facilitate the increased participation of Members at different levels of development in the work of the relevant international standard-setting organizations, as well as his efforts to coordinate with these organizations and financial institutions in identifying TBT-related technical-assistance needs and how best to address them. The Director-General was urged to continue his cooperative efforts with these organizations and institutions, including with a view to according priority to the effective participation of least-developed countries and facilitating the provision of technical and financial assistance for this purpose.[64] As a follow-up to this, in 2001-2002, the WTO Secretariat, in cooperation with various international standard-setting organizations, held five regional workshops (Bangkok, Belgrade, Bogotá, Cairo and Nairobi) aimed at identifying possible actions to enhance the participation of developing countries in international standardization.[65] Presently, observer international standard-setting organizations report regularly to the TBT Committee on actions they are taking to enhance the participation of developing country Members in their work. At its Fourth Triennial Review (in 2006), the TBT Committee noted and welcomed the actions taken by observer international standardizing bodies to enhance the participation of developing country Members in their work and invites these and other international standardizing bodies to provide information on steps taken to ensure their effective participation.[66]
Flexibility of commitments, of action, and use of policy instruments	
Article 12.4 *Members recognize that, although international standards, guides or recommendations may exist, in their particular technological and socio-economic conditions, developing country Members adopt certain technical regulations, standards or conformity assessment procedures aimed at preserving indigenous technology and production methods and processes compatible with their development needs. Members therefore recognize that developing country Members should not be expected to use international standards as a basis for their technical regulations or standards, including test methods, which are not appropriate to their development, financial and trade needs.*	In discussions that have taken place in the TBT Committee, various Members have noted the importance of Article 12.4. Also, in the First Triennial Review (November 1997), when considering the difficulties that might be encountered in relation to the use of certain international standards, the TBT Committee agreed to invite Members, on a voluntary basis, to submit specific examples to the Committee of the difficulties and problems they encountered in this regard, taking into account Article 12.4.[67]

[64] WT/MIN(01)/17, paragraph 5.3.

[65] For additional information on follow-up to this decision, see WT/GC/W/500, pp. 12-13.

[66] For instance, the ISO General Assembly adopted, in 2004, an ISO Strategic Plan for the period 2005-2010 which aims, *inter alia*, at enhancing developing country involvement in its technical activities. The IEC has also reported on the use of its "Affiliate Country Programme", which is aimed at facilitating the participation of developing countries in the elaboration of international electrotechnical standards. The FAO/WHO (for Codex) has set up trust funds to enhance the participation of developing countries in standard-setting meetings and activities, training programmes and regional technical consultations on standards and their implementation. G/TBT/19, paragraph 77.

[67] G/TBT/5, paragraphs 18 and 22.

PROVISION	COMMENT
Transitional time-periods	
Article 12.8 (…) *Accordingly, with a view to ensuring that developing country Members are able to comply with this Agreement, the Committee on Technical Barriers to Trade provided for in Article 13 is enabled to grant, upon request, specified, time-limited exceptions in whole or in part from obligations under this Agreement. When considering such requests the Committee shall take into account the special problems, in the field of preparation and application of technical regulations, standards and conformity assessment procedures, and the special development and trade needs of the developing country Member, as well as its stage of technological development, which may hinder its ability to discharge fully its obligations under this Agreement. The Committee shall, in particular, take into account the special problems of the least-developed country Members.*	No request for time-limited exemptions has so far been made under this Article.
Technical assistance	
Article 11.1 *Members shall, if requested, advise other Members, especially the developing country Members, on the preparation of technical regulations.*	
Article 11.2 *Members shall, if requested, advise other Members, especially the developing country Members, and shall grant them technical assistance on mutually agreed terms and conditions regarding the establishment of national standardizing bodies, and participation in the international standardizing bodies, and shall encourage their national standardizing bodies to do likewise*	At the Fourth Triennial Review, the Committee noted and welcomed the actions taken by observer international standardizing bodies to enhance the participation of developing country Members in their work and invites these and other international standardizing bodies to provide information on steps taken to ensure their effective participation.[68]
Article 11.3 *Members shall, if requested, take such reasonable measures as may be available to them to arrange for the regulatory bodies within their territories to advise other Members, especially the developing country Members, and shall grant them technical assistance on mutually agreed terms and conditions regarding:* *(i) the establishment of regulatory bodies, or bodies for the assessment of conformity with technical regulations; and* *(ii) the methods by which their technical regulations can best be met.*	At the Fourth Triennial Review of the TBT Agreement, Members noted that, inter alia, enhancing effective provision of technical assistance is important; in this regard the use of good practices is essential to enhance efficiency and effectiveness. For instance, it is important that technical assistance is provided in a timely manner and that it is predictable and sustainable. In some cases, technical assistance may need to be provided on an urgent and ad hoc basis to assist developing country Members regarding the methods by which technical regulations can best be met, in accordance with Article 11.3.2.[69]
Article 11.4 *Members shall, if requested, take such reasonable measures as may be available to them to arrange for advice to be given to other Members, especially the developing country Members, and shall grant them technical assistance on mutually agreed terms and conditions regarding the establishment of bodies for the assessment of conformity with standards adopted within the territory of the requesting Member.*	

[68] G/TBT/19, paragraph 77.
[69] G/TBT/19, paragraph 74.

PROVISION	COMMENT
Article 11.5 *Members shall, if requested, advise other Members, especially the developing country Members, and shall grant them technical assistance on mutually agreed terms and conditions regarding the steps that should be taken by their producers if they wish to have access to systems for conformity assessment operated by governmental or non-governmental bodies within the territory of the Member receiving the request.*	
Article 11.6 *Members which are members or participants of international or regional systems for conformity assessment shall, if requested, advise other Members, especially the developing country Members, and shall grant them technical assistance on mutually agreed terms and conditions regarding the establishment of the institutions and legal framework which would enable them to fulfil the obligations of membership or participation in such systems.*	
Article 11.7 *Members shall, if so requested, encourage bodies within their territories which are members or participants of international or regional systems for conformity assessment to advise other Members, especially the developing country Members, and should consider requests for technical assistance from them regarding the establishment of the institutions which would enable the relevant bodies within their territories to fulfil the obligations of membership or participation.*	
Article 12.7 *Members shall, in accordance with the provisions of Article 11 (see above), provide technical assistance to developing country Members to ensure that the preparation and application of technical regulations, standards and conformity assessment procedures do not create unnecessary obstacles to the expansion and diversification of exports from developing country Members. In determining the terms and conditions of the technical assistance, account shall be taken of the stage of development of the requesting Members and in particular of the least-developed country Members.)*	Requirements on the provision of technical assistance under Article 12.7 are linked to the objective of Article 12.3. At the 2001 Doha Ministerial Conference, Ministers confirmed the approach to technical assistance being developed by the TBT Committee, reflecting the results of the triennial review work in this area, and mandated the work to continue.[70] Furthermore, Members were urged to provide, to the greatest extent possible, the financial and technical assistance necessary to enable least-developed countries to respond adequately to the introduction of any new TBT measures which may have significant negative effects on their trade. Members were also urged to ensure that technical assistance was provided to least-developed countries with a view to responding to the special problems they faced in implementing the TBT Agreement.[71]
Provisions relating to least-developed country Members	
Article 11.8 *In providing advice and technical assistance to other Members in terms of Article 11:1 to 11:7, Members shall give priority to the needs of the least-developed country Members.*	

[70] WT/MIN(01)/17, paragraph 5.1.
[71] WT/MIN(01)/17, paragraph 5.4.

F. AGREEMENT ON TRADE-RELATED INVESTMENT MEASURES

34. There are four special and differential treatment provisions in the Agreement on Trade-Related Investment Measures (TRIMs Agreement), which fall into three separate categories:

1. Flexibility of commitments, of action, and use of policy instruments

One provision (Article 4).

2. Transitional time-periods

Two provisions (Article 5.1 and 5.2).

3. Provisions relating to least-developed country Members

One (Article 5.2) and Decision no. 84 of Annex F of the Hong Kong Ministerial Declaration.[72] It should be noted that Article 5.2 is a modified version of the transitional time-period provision available to all developing countries.

[72] See section VII on Ministerial and General Council Decisions.

AGREEMENT ON TRADE-RELATED INVESTMENT MEASURES

PROVISION	COMMENT
Flexibility of commitments, of action, and use of policy instruments	
Article 4 (Developing Country Members) *A developing country Member shall be free to deviate temporarily from the provisions of Article 2 to the extent and in such a manner as Article XVIII of GATT 1994, the Understanding on the Balance-of-Payments Provisions of GATT 1994, and the Declaration on Trade Measures Taken for Balance-of-Payments Purposes adopted on 28 November 1979 (BISD 26S/205-209) permit the Member to deviate from the provisions of Articles III and XI of GATT 1994.*	In the TRIMs Committee a developing country Member cited this provision as justifying some measures it has taken; some other Members questioned this justification. (G/TRIMS/M/9, paragraphs 30-37 and G/TRIMS/M/10 paragraphs 16-22.)
Transitional time-periods	
Article 5.2 *Each Member shall eliminate all TRIMs which are notified under Article 5.1, within two years of the date of entry into force of the WTO Agreement in the case of a developed country Member, within five years in the case of a developing country Member, and within seven years in the case of a least-developed country Member.*	Notifications under Article 5.1 have been submitted by 26 Members. For most Members having made notifications, the Article 5.2 transition period for elimination of the TRIMs expired on 1 January 2000 (G/L/860). Issues that have arisen with respect to Article 5 include the question of what measures should be notified under Article 5.1, as well as the question of whether TRIMs notified after the deadline are still entitled to benefit from the transition period (WT/G/TRIMS/M/2-7).
Article 5.3 *On request, the Council for Trade in Goods may extend the transition period for the elimination of TRIMs notified under Article 5.1 for a developing country Member, including a least-developed country Member, which demonstrates particular difficulties in implementing the provisions of this Agreement. In considering such a request, the Council for Trade in Goods shall take into account the individual development, financial and trade needs of the Member in question.*	Ten developing country Members requested extensions of the transition period pursuant to Article 5.3. On 31 July 2001, eight developing country Members were granted extensions of the transition period to eliminate TRIMs through end-2001, with the possibility of having the extensions extended to no later than end-2003. The extensions were provided through decisions of the Council for Trade in Goods under Article 5.3 in seven of the eight cases (see G/L/460-466), and in the other case through a waiver under Article IX of the WTO Agreement. (see WT/L/410) Consultations are continuing on any other requests for the extension of transition periods.
Provisions relating to least-developed country Members	
Article 5.2 *Each Member shall eliminate all TRIMs which are notified under Article 5.1 […]within seven years in the case of a least-developed country Member.*	One least-developed country Member notified TRIMs under Article 1 (G/TRIMS/N/1/UGA/1). To date, no request for an extension has been received.

G. AGREEMENT ON IMPLEMENTATION OF ARTICLE VI OF THE GATT 1994

1. Provisions under which WTO Members should safeguard the interests of developing country Members

One provision (Article 15).

AGREEMENT ON IMPLEMENTATION OF ARTICLE VI OF THE GATT 1994

PROVISION	COMMENT
Provisions under which WTO Members should safeguard the interests of developing country Members	
Article 15 (Developing Country Members) *It is recognized that special regard must be given by developed country Members to the special situation of developing country Members when considering the application of anti-dumping measures under this Agreement. Possibilities of constructive remedies provided for by this Agreement shall be explored before applying anti-dumping duties where they would affect the essential interests of developing country Members.*	The Panel in European Communities – Anti-Dumping Duties on Imports of Cotton-Type Bed Linen from India was requested to rule whether the EC had complied with Article 15 of the AD Agreement (WT/DS/141/R). India asserted that the European Communities had acted inconsistently with Article 15 by not "exploring possibilities of a constructive remedy" prior to the imposition of anti-dumping duties. The Panel findings on the legal issues included the following: Imposition of a lesser duty or a price undertaking would constitute "constructive remedies" within the meaning of Article 15. The Panel did not come to any conclusions as to what other actions might in addition be considered to constitute "constructive remedies" under Article 15[73], but did note that a decision not to impose a duty, while within the authority of a Members, was not a remedy of any type, constructive or otherwise.[74] The phrase "before applying anti-dumping duties" in Article 15 means before the application of definitive anti-dumping duties. Therefore, Article 15 does not require developed country Members to explore the possibilities of price undertakings prior to the imposition of provisional measures.[75] While Article 15 requires that possibilities of constructive remedies be "explored", this imposes no obligation to actually provide or accept any constructive remedy that may be identified and/or offered. It does, however, impose an obligation to actively consider, with an open mind, the possibility of such a remedy prior to the imposition of an anti-dumping measure that would affect the essential interests of a developing country. The Panel ruled that, in the particular factual circumstances of the dispute, the EC had failed to act consistently with its obligations under Article 15. One Member expressed the view that a developed Member had not complied with Article 15 when imposing anti-dumping duties. See G/ADP/W/416.

[73] Paragraph 6.229.
[74] Paragraph 6.228.
[75] Paragraph 6.231.

H. AGREEMENT ON IMPLEMENTATION OF ARTICLE VII OF THE GATT 1994

35. The Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade (GATT) 1994 contains eight provisions for special and differential treatment which fall under the following headings:

1. Provisions under which WTO Members should safeguard the interests of developing country Members

One provision (Annex III.5).

2. Flexibility of commitments, of action, and use of policy instruments

Two provisions (Annex III.3 and Annex III.4).

3. Transitional time-periods

Four provisions (Article 20.1; article 20.2; Annex III:1; and Annex III.2).

4. Technical assistance

One Provision (Article 20.3).

36. In the course of the work of the Customs Valuation Committee, Members have made statements and/or taken action in regard, or pursuant to, a number of the special and differential treatment provisions listed above. The provisions in relation to which statements made or actions taken have been recorded by the Committee and are detailed below.

37. Following the Doha Ministerial Declaration (WT/MIN(01)/DEC/1), the Committee on Customs Valuation held a series of meetings during 2002 to carry out the mandates contained in paragraph 12(b) of the Doha Ministerial Declaration (WT/MIN(01)/DEC/1) and paragraphs 8.3 and 13 of the Decision on Implementation-Related Issues and Concerns (WT/MIN(01)/17). The reports on this work are contained in documents G/VAL/50 and 49 respectively. The General Council decided that the Committee should continue its work under the mandate contained in paragraph 8.3 of the Decision on Implementation-Related Issues and Concerns and report to the General Council upon its completion. This matter continues to be on the agenda of the Committee's meetings.

AGREEMENT ON IMPLEMENTATION OF ARTICLE VII OF THE GATT 1994

PROVISION	COMMENT
Provisions under which WTO Members should safeguard the interests of developing country Members	
Annex III:5 *Certain developing countries may have problems in the implementation of Article 1 of the Agreement in so far as it relates to importations into their countries by sole agents, sole distributors and sole concessionaires. If such problems arise in practice in developing country Members applying the Agreement, a study of this question shall be made, at the request of such Members, with a view to finding appropriate solutions.*	No request for a study has been made so far.
Flexibility of commitments, of action, and use of policy instruments	
Annex III:3 *Developing countries which consider that the reversal of the sequential order at the request of the importer provided for in Article 4 of the Agreement may give rise to real difficulties for them may wish to make a reservation to Article 4 in the following terms:* *"The Government of …..... reserves the right to provide that the relevant provision of Article 4 of the Agreement shall apply only when the customs authorities agree to the request to reverse the order of Articles 5 and 6."* *If developing countries make such a reservation, the Members shall consent to it under Article 21 of the Agreement.*	Fifty-three developing country Members, of which 13 are least-developed country Members, have invoked this paragraph.[76]
Annex III:4 *Developing countries may wish to make a reservation with respect to Article 5:2 of the Agreement in the following terms:* *"The Government of …..... reserves the right to provide that Article 5:2 of the Agreement shall be applied in accordance with the provisions of the relevant note thereto whether or not the importer so requests."* *If developing countries make such a reservation, the Members shall consent to it under Article 21 of the Agreement.*	Fifty-one developing country Members, of which 11 are least-developed country Members, have invoked this paragraph.[77]
Transitional time-periods	
Article 20.1 *Developing country Members not party to the Agreement on Implementation of Article VII of the GATT (Tokyo Round), may delay application of the provisions of this Agreement for a period not exceeding five years from the date of entry into force of the WTO Agreement for such Members. Developing country Members who choose to delay application of this Agreement shall notify the Director-General of the WTO accordingly.*	This provision was invoked by 56 developing countries, of which 12 are least-developed countries (see G/VAL/2 and Rev. 1 to 24.) For 29 of these Members, the provision expired on 1 January 2000 and for another 24, the provision expired during the year up to July 2001. The General Council decision of 15 December 2000 stated that: "Noting that the process of examination and approval, in the Customs Valuation Committee, of individual requests from Members for extension of the five-year delay period in Article 20.1 is proceeding well, the General Council encourages the Committee to

[76] G/VAL/W/77.
[77] G/VAL/2/Rev.10/Corr.2.

PROVISION	COMMENT
	continue this work." (WT/L/384) As of March 2009, this provision expired for all WTO Members which benefited from it.
Article 20.2 *In addition to paragraph 1, developing country Members not party to the Agreement on Implementation of Article VII of the GATT (Tokyo Round), may delay application of paragraph 2(b)(iii) of Article 1 and Article 6 for a period not exceeding three years following their application of all other provisions of this Agreement. Developing country Members that choose to delay application of the provisions specified in this paragraph shall notify the Director-General of the WTO accordingly.*	This provision has been invoked by 48 developing country Members of which 11 are least-developed countries. As of March 2009, this provision expired for all WTO Members which benefited from it.
Annex III.1 *The five-year delay in the application of the provision of the Agreement by developing country Members provided for in paragraph 1 of Article 20 may, in practice, be insufficient for certain developing country members. In such cases a developing country Member may request before the end of the period referred to in paragraph 1 of Article 20 an extension of such period, it being understood that the Members will give sympathetic consideration to such a request in cases where the developing country Member in question can show good cause.*	A total of 20 Members have requested extensions under this provision, and one Member requested a second extension; thirteen of which have been granted (see G/VAL/2 and Rev. 1 to 24.) The duration of extensions granted range from one year to two years. As of March 2009, this additional delay period expired for all WTO Members which benefited from it.
Annex III.2 *Developing countries which currently value goods on the basis of officially established minimum values may wish to make a reservation to enable them to retain such values on a limited and transitional basis under such terms and conditions as may be agreed to by the Members.* *(please also refer to Decision on texts relating to minimum values and imports by sole agents, sole distributors and sole concessionaires.)*	Seventeen developing country Members have reserved their rights to retain minimum values under Annex III.2 (see G/VAL/2 and Rev. 1 to 24.) The Committee has adopted four Decisions containing the terms and conditions under which four Members may continue to use minimum values while applying the Agreement. As of March 2009, this provision expired for all WTO Members which benefited from it.
Technical assistance	
Article 20.3 *Developed country Members shall furnish, on mutually agreed terms, technical assistance to developing country Members that so request. On this basis developed country Members shall draw up programmes of technical assistance which may include, inter alia, training of personnel, assistance in preparing implementation measures, access to sources of information regarding customs valuation methodology, and advice on the application of the provisions of this Agreement.*	All requests for technical assistance are now dealt with through the process established under the Institute for Training and Technical Cooperation (ITTC).

I. AGREEMENT ON IMPORT LICENSING PROCEDURES

38. The Agreement on Import Licensing Procedures includes four special and differential treatment provisions, which can be classified as follows:

1. Provisions under which WTO Members should safeguard the interests of developing country Members

Three provisions [Article 1.2; Article 3.5 (a)(iv); Article 3.5(j)].

2. Transitional time-periods

One provision (Article 2.2, footnote 5).

AGREEMENT ON IMPORT LICENSING PROCEDURES

PROVISION	COMMENT
Provisions under which WTO Members should safeguard the interests of developing country Members	
Article 1.2 General Provisions *Members shall ensure that the administrative procedures used to implement import licensing regimes are in conformity with the relevant provisions of GATT 1994 including its annexes and protocols, as interpreted by this Agreement, with a view to preventing trade distortions that may arise from an inappropriate operation of those procedures, taking into account the economic development purposes and financial and trade needs of developing country Members.*	This matter has not been raised in the Committee on Import Licensing. However, this provision has been invoked in dispute settlement cases. (See WT/DS/27, WT/DS169/R, WT/DS/334.)
Article 3:5 Non-automatic Import Licensing *(a) Members shall provide, upon the request of any Member having an interest in the trade in the product concerned, all relevant information concerning: (iv) where practicable, import statistics (i.e. value and/or volume) with respect to the products subject to import licensing. Developing country Members would not be expected to take additional administrative or financial burdens on this account.*	
Article 3.5 Non Automatic Import Licensing *(j) In allocating licences, the Member should consider the import performance of the applicant. In this regard, consideration should be given as to whether licences issued to applicants in the past have been fully utilized during a recent representative period. In cases where licences have not been fully utilized, the Member shall examine the reasons for this and take these reasons into consideration when allocating new licences. Consideration shall also be given to ensuring a reasonable distribution of licences to new importers, taking into account the desirability of issuing licences for products in economic quantities. In this regard, special consideration should be given to those importers importing products originating in developing country Members and, in particular, the least-developed country Members.*	This matter has not been raised in the Committee on Import Licensing. However, this provision has been invoked in dispute settlement cases. (See WT/DS/27, WT/DS/69, WT/DS/90, WT/DS/113, WT/DS/161 , WT/DS/169 and WT/DS/334.)
Transitional time-periods	
Article 2:2 footnote 5 Automatic Import Licensing *A developing country Member, other than a developing country Member which was a Party to the Agreement on Import Licensing Procedures done on 12 April 1979, which has specific difficulties with the requirements of Article 2:2 subparagraphs (a)(ii) and (a)(iii) may, upon notification to the Committee, delay the application of these subparagraphs by not more than two years from the date of entry into force of the WTO Agreement for such Member.*	Twenty-four developing country Members have invoked the delayed application provisions since the entry into force of the WTO Agreement. (See WT/LT/1/Rev.2, 14, 19, 24, 41, 48 and 72). The two-year period of delay allowed under the Agreement has expired for all these Members, and accordingly the obligations of Articles 2.2(a)(ii) and (a)(iii) apply to all current WTO Members. It is recalled that the invocation of the above provisions does not exempt Members from the obligation to notify under Articles 1.4(a), 8.2(b) and 7.3 of the Agreement. (See G/LIC/W/14.)

J. AGREEMENT ON SUBSIDIES AND COUNTERVAILING MEASURES

39. The Agreement on Subsidies and Countervailing Measures (SCM Agreement) contains 16 special and differential treatment provisions which fall under three categories:

1. Provisions under which WTO Members should safeguard the interests of developing country Members

Two provisions (Articles 27.1 and 27.15).

2. Flexibility of commitments, of action, and use of policy instruments

Ten provisions (Article 27.2 (a) and Annex VII, Articles 27.4, 27.7, 27.8, 27.9, 27.10, 27.11, 27.12 and 27.13). It should be noted that Article 27.2(a) is applicable to a subset of developing countries, listed in Annex VII, and not developing countries as a whole.

3. Transitional time-periods

Seven provisions (Articles 27.2 (b), 27.3, 27.4, 27.14, 27.5, 27.6 and 27.11).

Articles 27.4, 27.6 and 27.11 are listed in both the flexibility and transitional time-periods category, as their hybrid nature combines characteristics of both these categories.

In addition to these provisions applicable to developing countries, or a sub-group thereof, are the provisions of Article 29 which apply to Members in the process of transformation from a centrally-planned into a market, free-enterprise economy.

PROVISION	COMMENT
Provisions under which WTO Members should safeguard the interests of developing country Members	
Article 27.1 *Members recognize that subsidies may play an important role in economic development programmes of developing country Members.*	
Article 27.15 *The Committee shall, upon request by an interested developing country Member, undertake a review of a specific countervailing measure to examine whether it is consistent with the provisions of 27:10 and 27:11 as applicable to the developing country Member in question.*	No such request has been received by the Subsidies and Countervailing Measures (SCM) Committee.
Flexibility of commitments, of action, and use of policy instruments	
Article 27.2 *The prohibition of paragraph 1 (a) of Article 3 shall not apply to:* *(a) developing country Members referred to in Annex VII.* *Annex VII (Developing country Members referred to in paragraph 2(a) of Article 27) are:* *(a) Least-developed countries designate as such by the United Nations which are Members of the WTO.* *(b) Each of the following developing countries which are Members of the WTO shall be subject to the provisions which are applicable to other developing country Members according to Article 27.2 (b) when GNP per capita has reached $1,000 per annum; Bolivia, Cameroon, Congo, Côte d'Ivoire, Dominican Republic, Egypt, Ghana, Guatemala, Guyana, India, Indonesia, Kenya, Morocco, Nicaragua, Nigeria, Pakistan, Philippines, Senegal, Sri Lanka and Zimbabwe.*	The General Council's decision of 15 December 2000 stated that, "Taking into account the unique situation of Honduras as the only original Member of the WTO with a GNP per capita of less than US$1000 that was not included in Annex VII(b) to the Agreement on Subsidies and Countervailing Measures ('SCM Agreement'), Members call upon the Director-General to take appropriate steps, in accordance with WTO usual practice, to rectify the omission of Honduras from the list of Annex VII(b) countries". The rectification of this omission was communicated by the Director-General of the WTO to its Members through a letter dated 20 January 2001. (See WT/Let/371.) In paragraph 10.1 of the Doha Ministerial Decision on Implementation-Related Issues and Concerns (WT/MIN(01)/17), Ministers agreed: "that Annex VII(b) to the Agreement on Subsidies and Countervailing Measures includes the Members that are listed therein until their GNP per capita reaches US$1,000 in constant 1990 dollars for three consecutive years. This decision will enter into effect upon the adoption by the Committee on Subsidies and Countervailing Measures of an appropriate methodology for calculating constant 1990 dollars. If, however, the Committee on Subsidies and Countervailing Measures does not reach a consensus agreement on an appropriate methodology by 1 January 2003, the methodology proposed by the Chairman of the Committee set forth in G/SCM/38, Appendix 2 shall be applied. A Member shall not leave Annex VII(b) so long as its GNP per capita in current dollars has not reached US $1000 based upon the most recent data from the World Bank". Additionally in paragraph 10.4 of the same Decision, they agreed: "that if a Member has been excluded from the list in paragraph (b) of Annex VII to the Agreement on Subsidies and Countervailing Measures, it shall be re-included in it when its GNP per capita falls back below US$1,000". Based on this decision, the Secretariat carries out the necessary calculations and identifies, on a yearly basis, the Members that fall under Annex VII(b) of the SCM

PROVISION	COMMENT
	Agreement. The results of such calculations are circulated in G/SCM/110 document series.
Article 27.4 *Any developing country Member referred to in Article 27.2(b) shall phase out its export subsidies within the eight-year period, preferably in a progressive manner. However, a developing country Member shall not increase the level of its export subsidies, and shall eliminate them within a period shorter than that provided for in this paragraph when the use of such export subsidies is inconsistent with its development needs. If a developing country Member deems it necessary to apply such subsidies beyond the eight-year period, it shall not later than one year before the expiry of this period enter into consultation with the Committee, which will determine whether an extension of this period is justified, after examining all the relevant economic, financial and development needs of the developing country Member in question. If the Committee determines that the extension is justified, the developing country Member concerned shall hold annual consultations with the Committee to determine the necessity of maintaining the subsidies. If no such determination is made by the Committee, the developing country Member shall phase out the remaining export subsidies within two years from the end of the last authorized period.*	Please refer to the comment on Article 27.4 under the section on transitional time-periods.
Article 27.7 *The provisions of Article 4 shall not apply to a developing country Member in the case of export subsidies which are in conformity with the provisions of Article 27:2 through 27:5. The relevant provisions in such a case shall be those of Article 7.*	This provision has been invoked in the dispute settlement context (WT/DS/46/R.) (See comment on Article 27.4 under the section on transitional time-periods.)
Article 27.8 *There shall be no presumption in terms of Article 6.1 that a subsidy granted by a developing country Member results in serious prejudice, as defined in this Agreement. Such serious prejudice, where applicable under the terms of Article 27:9, shall be demonstrated by positive evidence, in accordance with the provisions of Article 6:3 through 6:8.*	In the context of a complaint by two developed country Members concerning subsidies provided by one developing country Member, the Panel held that because there was more than 5 per cent subsidization of the product at issue (one of the forms of subsidization referred to in Article 6.1), a serious prejudice claim could be brought against the subsidizing developing country Member on the basis of positive evidence. The Panel went on to find that, on the basis of the positive evidence, the developing country Member's subsidies at issue had caused serious prejudice, through significant price undercutting, to the interests of one of the complainants (WT/DS54/R, WT/DS55/R, WT/DS59/R,WT/DS64/R.) [Note: Pursuant to Article 31, Article 6.1 applied for a period of five years from the date of entry into force of the WTO Agreement, and could have been extended for a further period by consensus of the SCM Committee. At the end of the five-year period, no such consensus was reached.]
Article 27.9 *Regarding actionable subsidies granted or maintained by a developing country Member other than those referred to in Article 6:1, action may not be authorized or taken under Article 7 unless nullification or impairment of tariff concessions or other obligations under GATT 1994 is found to exist as a result of such a subsidy, in such a way as to displace or impede imports of a like product of another Member into the*	

PROVISION	COMMENT
market of the subsidizing developing country Member or unless injury to a domestic industry in the market of an importing Member occurs.	
Article 27.10 *Any countervailing duty investigation of a product originating in a developing country Member shall be terminated as soon as the authorities concerned determine that:* *(a) the overall level of subsidies granted upon the product in question does not exceed 2 per cent of its value calculated on a per unit basis; or* *(b) the volume of the subsidized imports represents less than 4 per cent of the total imports of the like product in the importing Member, unless imports from developing country Members whose individual shares of total imports represent less than 4 per cent collectively account for more than 9 per cent of the total imports of the like product in the importing Member.*	
Article 27.11 *For those developing country Members within the scope of Article 27:2(b) which have eliminated export subsidies prior to the expiry of the period of eight years from the date of entry into force of the WTO Agreement, and for those developing country Members referred to in Annex VII, the number in Article 27:10(a) shall be 3 per cent rather than 2 per cent. This provision shall apply from the date that the elimination of export subsidies is notified to the Committee, and for so long as export subsidies are not granted by the notifying developing country Member. This provision shall expire eight years from the date of entry into force of the WTO Agreement.* *(Article 27.10 (a): Any countervailing duty investigation of a product originating in a developing country Member shall be terminated as soon as the authorities concerned determine that: the overall level of subsidies granted upon the product in question does not exceed 2 per cent of its value calculated on a per unit basis.)*	As stipulated in its text, Article 27.11 expired eight years from the date of entry into force of the WTO Agreement.
Article 27.12 *The provisions of Article 27:10 and 27:11 shall govern any determination of de minimis under Article 15:3.*	
Article 27.13 *The provisions of Part III (Actionable Subsidies) shall not apply to direct forgiveness of debts, subsidies to cover social costs, in whatever form, including relinquishment of government revenue and other transfer of liabilities when such subsidies are granted within and directly linked to a privatization programme of a developing country Member, provided that both such programme and the subsidies involved are granted for a limited period and notified to the Committee and that the programme results in eventual privatization of the enterprise concerned.*	The SCM Committee received and discussed one notification made pursuant to this provision (G/SCM/N/13/BRA and Corr.1).

PROVISION	COMMENT
Transitional time-periods	
Article 27.2 *The prohibition of Article 3.1(a) shall not apply to: (b) other developing country Members for a period of eight years from the date of entry into force of the WTO Agreement, subject to compliance with the provisions in Article 27:4.*	
Article 27.3 *The prohibition of Article 3.1 (b) shall not apply to developing country Members for a period of five years, and shall not apply to least developed country Members for a period of eight years, from the date of entry into force of the WTO Agreement. (Article 27:3).*	This provision has expired.
Article 27.4 *Any developing country Member referred to in Article 27.2(b) shall phase out its export subsidies within the eight-year period, preferably in a progressive manner. However, a developing country Member shall not increase the level of its export subsidies, and shall eliminate them within a period shorter than that provided for in this paragraph when the use of such export subsidies is inconsistent with its development needs. If a developing country Member deems it necessary to apply such subsidies beyond the eight-year period, it shall not later than one year before the expiry of this period enter into consultation with the Committee, which will determine whether an extension of this period is justified, after examining all the relevant economic, financial and development needs of the developing country Member in question. If the Committee determines that the extension is justified, the developing country Member concerned shall hold annual consultations with the Committee to determine the necessity of maintaining the subsidies. If no such determination is made by the Committee, the developing country Member shall phase out the remaining export subsidies within two years from the end of the last authorized period.*	The eight-year phase-out period mentioned in Article 27.4 expired at the end of 2003. However, in paragraph 10.6 of the Doha Ministerial Decision on Implementation-Related Issues and Concerns (WT/MIN(01)/17), Ministers decided as follows: "Having regard to the particular situation of certain developing-country Members, directs the Committee on Subsidies and Countervailing Measures to extend the transition period, under the rubric of Article 27.4 of the Agreement on Subsidies and Countervailing Measures, for certain export subsidies provided by such Members, pursuant to the procedures set forth in document G/SCM/39. Furthermore, when considering a request for an extension of the transition period under the rubric of Article 27.4 of the Agreement on Subsidies and Countervailing Measures, and in order to avoid that Members at similar stages of development and having a similar order of magnitude of share in world trade are treated differently in terms of receiving such extensions for the same eligible programmes and the length of such extensions, directs the Committee to extend the transition period for those developing countries, after taking into account the relative competitiveness in relation to other developing-country Members who have requested extension of the transition period following the procedures set forth in document G/SCM/39." As stated in the Ministers' decision, in accordance with the procedures set out in document G/SCM/39, the SCM Committee in 2002, granted extensions for the eight-year transition period with regard to certain export subsidy programmes maintained by 21 developing country Members. (See the 2003 Annual Report of the Committee, G/L/655, paragraph 23.) On 27 July 2007, the General Council adopted a Decision on Procedures for Continuation of Extensions Pursuant to Article 27.4 of the SCM Agreement of the Transition Period under Article 27.2(b) of the SCM Agreement for Certain Developing Country Members.[78] This Decision provides that with respect to certain export subsidy measures of Members covered by the procedures contained in G/SCM/39, the SCM Committee will continue the extensions of the transition period for calendar year 2008, if so requested by the Member concerned. The Decision also provides that in the

[78] Document WT/L/691 dated 31 July 2007.

PROVISION	COMMENT
	period 2008-2012 the Committee will take annual decisions to continue these extensions of the transition period, subject to certain conditions. The Decision makes it clear that the Committee cannot extend the transition period beyond 31 December 2013, and that, as a consequence, the final two-year phase-out period provided for in the last sentence of Article 27.4 of the SCM Agreement shall end not later than 31 December 2015. Currently, 19 Members are benefiting from such extensions. A list of such Members and the programmes for which extensions have been granted is found in document G/SCM/W/546. In the context of a dispute between a developing country Member and a developed country Member, the Panel held that Article 27 does not displace Article 3.1(a) of the SCM Agreement unconditionally, but, rather, that the exemption for developing countries from the application of the Article 3.1(a) prohibition on export subsidies is conditional on compliance with the provisions in Article 27.4. This finding was not appealed. A report by the Appellate Body held that, "it is clear that the conditions set forth in paragraph 4 [of Article 27] are positive obligations for developing country Members, not affirmative defences". It concurred with the Panel Report which stated that "it is for the complaining Member to demonstrate that the developing country Member in question is not in compliance with at least one of the elements laid out in Article 27.4". The Panel in the same dispute considered that an analysis of the overall level of export subsidies of the Member concerned was, in the circumstances of that dispute, an appropriate measure for the purpose of evaluating the Member's compliance with Article 27.4. The Panel also considered that the appropriate reference period is the level of export subsidies in the period immediately preceding the date of entry into force of the WTO Agreement. In addition, the Panel considered that it is for the complaining Member to present evidence and argument sufficient to raise a presumption that the use of export subsidies by the granting developing country Member is inconsistent with that Member's needs. In that case, it considered that the complaining Member had failed to do so. (See WT/DS46/R and WT/DS46/AB/R.)
Article 27.14 *The Committee shall, upon request by an interested Member, undertake a review of a specific export subsidy practice of a developing country Member to examine whether the practice is in conformity with its development needs.*	No such request has been received by the SCM Committee.
Article 27.5 *A developing country Member which has reached export competitiveness in any given product shall phase out its export subsidies for such product(s) over a period of two years. However, for a developing country Member which is referred to in Annex VII and which has reached export competitiveness in one or more products, export subsidies on such products shall be gradually phased out over a period of eight years.*	In paragraph 10.5 of the the Doha Ministerial Decision on Implementation-Related Issues and Concerns (WT/MIN(01)/17), Ministers decided as follows: "Subject to the provisions of Articles 27.5 and 27.6, it is reaffirmed that least-developed country Members are exempt from the prohibition on export subsidies set forth in Article 3.1(a) of the Agreement on Subsidies and Countervailing Measures, and thus have flexibility to finance their exporters, consistent with their development needs. It is understood that the eight-year period in Article 27.5 within which a least-developed country Member must phase out its export subsidies in respect of a product

PROVISION	COMMENT
	in which it is export-competitive begins from the date export competitiveness exists within the meaning of Article 27.6." No developing country Member has notified to have reached export competitiveness. Requests by certain Members for the calculation of export competitiveness of other Members and the results of the calculations made are found in the following documents: G/SCM/Q3/COL/12, G/SCM/46, G/SCM/103, G/SCM/103/Add.1&2, G/SCM/47 - G/SCM/Q3/THA/16, G/SCM/48.
Article 27.6 *Export competitiveness in a product exists if a developing country Member's exports of that product have reached a share of at least 3.25 per cent in world trade of that product for two consecutive calendar years. Export competitiveness shall exist either (a) on the basis of notification by the developing country Member having reached export competitiveness or (b) on the basis of a computation undertaken by the Secretariat at the request of any Member. For the purposes of this paragraph, a products is defined as a section heading of the Harmonised System Nomenclature. The Committee shall review the operation of this provision five years from the date of the entry into force of the WTO Agreement.*	

K. AGREEMENT ON SAFEGUARDS

40. The Agreement on Safeguards contains two special and differential treatment provisions:

1. Provisions under which WTO Members should safeguard the interests of developing country Members

One provision (Article 9.1 and Footnote 2).

2. Flexibility of commitments, of action, and use of policy instruments

One provision (Article 9.2).

AGREEMENT ON SAFEGUARDS

PROVISION	COMMENT
Provisions under which WTO Members should safeguard the interests of developing country Members	
Article 9.1 and footnote 2 *Safeguard measures shall not be applied against a product originating in a developing country Member as long as its share of imports of the product concerned in the importing Member does not exceed 3 per cent, provided that developing country Members with less than 3 per cent import share collectively account for not more than 9 per cent of total imports of the product concerned.* *and footnote 2:* *A Members shall immediately notify an action taken under Article 9.1 to the Committee on Safeguards.*	Opposition was voiced over the manner in which one Member had applied Article 9.1 of the Safeguards Agreement, to exclude one developing Member from eligibility under Article 9.1 on the grounds that that Member was not included in the preference-giving Member's list of GSP beneficiaries. (See G/SG/M/9 and G/SG/M/14.) At the initiative of a developing country Member, the Committee on Safeguards discussed the various ways Members implemented this provision. (See documents G/SG/M/26, 27, 28, 29 and 30.)
Flexibility of Commitments, of action, and use of policy instruments	
Article 9.2 Developing Country Members *A developing country Member shall have the right to extend the period of application of a safeguard measure for a period of up to two years beyond the maximum period provided for in Article 7:3. Notwithstanding the provisions of Article 7:5, a developing country Member shall have the right to apply a safeguard measure again to the import of a product which has been subject to such a measure, taken after the date of entry into force of the WTO Agreement, after a period of time equal to half that during which such a measure has been previously applied, provided that the period of non-application is at least two years.*	One developing country Member has extended its measure up to ten years by virtue of this provision. (See documents G/SG/N/10/BRA/1, G/SG/N/10/BRA/2 and its supplements.)

III. GENERAL AGREEMENT ON TRADE IN SERVICES (GATS)

41. The General Agreement on Trade in Services (GATS) does not adopt the traditional concept of special and differential treatment, according to which, to a large extent, all developing countries are treated the same. It rather addresses the concerns and needs of developing countries through providing appropriate flexibility on an individual basis. Such flexibility is reflected in numerous provisions of the Agreement as well as in its basic structure, which allows each Member to undertake liberalization commitments in a manner consistent with its development needs. Such commitments are always negotiated on a case-by-case basis.

42. Under the typology developed for considering special and differential treatment, it can be said that the GATS contains 16 special and differential treatment provisions dealing with developing country-related issues. Their classification can be broken down as follows:

1. Provisions aimed at increasing trade opportunities of developing country Members

Four provisions (Preamble, Article IV:1, Article IV:2 and Article IV:3).

2. Provisions under which WTO Members should safeguard the interests of developing country Members

Four provisions (Preamble, Article XII:1, Article XV:1, Article XIX:3).

3. Flexibility of commitments, of action, and use of policy instruments

Four provisions (Article III:4; Article V:3; Article XIX:2, and Paragraph 5(g) of the Annex on Telecommunications).

4. Technical assistance

Two provisions (Article XXV:2 and Paragraph 6 of the Annex on Telecommunication).

5. Provisions relating to least-developed country Members

Two Provisions (Article IV:3, Article XIX:3).

GENERAL AGREEMENT ON TRADE IN SERVICES (GATS)

PROVISION	COMMENT
Provisions aimed at increasing trade opportunities	
Preamble *Wishing to establish a multilateral framework of principles and rules for trade in services with a view to the expansion of such trade under conditions of transparency and progressive liberalization and as a means of promoting the economic growth of all trading partners and the development of developing countries;* *Desiring to facilitate the increasing participation of developing countries in trade in services and the expansion of their services exports including, inter alia, through the strengthening of their domestic services capacity and its efficiency and competitiveness.*	The requirements of the provisions of this Article are reflected in S/L/93 "Guidelines and Procedures for the Negotiations on Trade in Services", particularly Section I ("Objectives and Principles"), paragraphs 1-2.
Article IV:1 *The increasing participation of developing country Members in world trade shall be facilitated through negotiated specific commitments, by different Members pursuant to Parts III and IV of this Agreement, relating to:* *(a) the strengthening of their domestic services capacity and its efficiency and competitiveness, inter alia through access to technology on a commercial basis;* *(b) the improvement of their access to distribution channels and information networks; and* *(c) the liberalization of market access in sectors and modes of supply of export interest to them*	The requirements of the provisions of this Article are reflected in S/L/93 "Guidelines and Procedures for the Negotiations on Trade in Services", particularly Section I ("Objectives and Principles"), paragraphs 1-4; Section II ("Scope"), paragraph 5. The Secretariat has not been notified of any specific commitments that have been made pursuant to Article IV:1.
Article IV:2 *Developed country Members, and to the extent possible other Members, shall establish contact points within two years from the date of entry into force of the WTO Agreement to facilitate the access of developing country Members' service suppliers to information, related to their respective markets, concerning:* *(a) commercial and technical aspects of the supply of services;* *(b) registration, recognition and obtaining of professional qualifications; and* *(c) the availability of services technology.*	All developed country Members, and many developing country Members have established contact points. One Member expressed the view that not all relevant Members had complied with the notification provision in Article IV:2, regarding contact points (S/C/M/43, paragraph 41 and S/C/W/ 148). Some developing country Members suggested that it may be useful for Members to review the operation of the contact points provided for in Article IV.2 (S/C/W/120). At the meeting of the Council for Trade in Services on 26 May it was agreed that, based on notifications by Members, the Secretariat would produce a listing of enquiry points as required by Article III:4 and of contact points as required by Article IV:2 of the GATS. It had also been agreed that such listings will be placed on the WTO Internet site.

PROVISION	COMMENT
Provisions under which WTO Members should safeguard the interests of developing country Members	
Preamble *Recognizing the right of Members to regulate, and to introduce new regulations, on the supply of services within their territories in order to meet national policy objectives and, given asymmetries existing with respect to the degree of development of services regulations in different countries, the particular needs of developing countries to exercise this right*	The requirements of the provisions of this Article are reflected in S/L/93 "Guidelines and Procedures for the Negotiations on Trade in Services", specifically in paragraphs 1-2 Section I relating to "Objectives and Principles".
Article XII:1 *"…It is recognized that particular pressures on the balance of payments of a Member in the process of economic development or economic transition may necessitate the use of restrictions to ensures, inter alia, the maintenance of a level of financial reserves adequate for the implementation of its programme of economic development or economic transition."*	
Article XV:1 *"…Such negotiations (on subsidies) shall recognize the role of subsidies in relation to the development programmes of developing countries and take into account the needs of Members, particularly developing country Members, for flexibility in this area…"*	
Article XIX:3 *For each round, negotiating guidelines and procedures shall be established. For purposes of establishing such guidelines, the Council for Trade in Services shall carry out an assessment of trade in services in overall terms and on a sectoral basis with reference to the objectives of this Agreement, including those set out in paragraph 1 of Article IV. Negotiating guidelines shall establish modalities for the treatment of liberalization undertaken autonomously by Members since previous negotiations, as well as for the special treatment for least-developed country Members under the provisions of paragraph 3 of Article IV.*	For the DDA negotiations, the requirements of the provisions of this Article are reflected in S/L/93 "Guidelines and Procedures for the Negotiations on Trade in Services". See paragraph 2 of Section I relating to "Objectives and Principles"; and paragraphs 13-15 of Section III relating to "Modalities and Procedures". The modalities for the special and differential treatment for least-developed country Members in the negotiations on trade in services were adopted on 3 September 2003. (See TN/S/13.)
Flexibility of commitments, of action, and use of policy instruments	
Article III:4 *Each Member shall also establish one or more enquiry points to provide specific information to other Members, upon request, on all such matters as well as those subject to the notification requirement in paragraph 3. Such enquiry points shall be established within two years from the date of entry into force of the Agreement Establishing the WTO (referred to in this Agreement as the "WTO Agreement"). Appropriate flexibility with respect to the time-limit within which such enquiry points are to be established may be agreed upon for individual developing country Members. Enquiry points need not be depositories of laws and regulations.*	
Article V:3 *(a) Where developing countries are parties to an agreement of the type referred to in Article V:1, flexibility shall be provided for regarding the conditions set out in Article V:1, particularly with reference to Article V:1(b) thereof, in accordance with*	Members did not clarify what was meant by special and differential treatment of developing countries in Article V (See paragraph 46 of S/C/M/35.) In response to a question, it was clarified that the need for flexibility with respect to coverage of such agreements when a developing country was involved was a point

PROVISION	COMMENT
the level of development of the countries concerned, both overall and in individual sectors and sub-sectors. *(b) Notwithstanding Article V:6, in the case of an agreement of the type referred to in Article V:1 involving only developing countries, more favourable treatment may be granted to juridical persons owned or controlled by natural persons of the parties to such an agreement.*	certainly raised and taken note of in the reports of the CRTA (See paragraph 35 of S/C/M/46.)
Article XIX:2 *The process of liberalization shall take place with due respect for national policy objectives and the level of development of individual Members, both overall and in individual sectors. There shall be appropriate flexibility for individual developing country Members for opening fewer sectors, liberalizing fewer types of transactions, progressively extending market access in line with their development situation and, when making access to their markets available to foreign service suppliers, attaching to such access conditions aimed at achieving the objectives referred to in Article IV. (See section on Article IV.)*	For the DDA negotiations the requirements of the provisions of this Article are reflected in S/L/93 "Guidelines and Procedures for the Negotiations on Trade in Services", particularly Section I ("Objectives and Principles"), paragraphs 2-3, and Section III ("Modalities and Procedures"), paragraphs 12, 14 and 15.
Annex on Telecommunications *5. g) Notwithstanding the preceding paragraphs of this section, a developing country Member may, consistent with its level of development, place reasonable conditions on access to and use of public telecommunications transport networks and services necessary to strengthen its domestic telecommunications infrastructure and service capacity and to increase its participation in international trade in telecommunications services. Such conditions shall be specified in the Member's Schedule.*	In the Uruguay Round, and the follow up negotiations on basic telecommunications and financial services, developing country Members have made use of flexibility appropriate to their level of development when making commitments. For instance, of the 99 Members which have made commitments on 80 sectors or fewer of the Sectoral Classification List, 98 are developing country Members (S/C/W/94). Use has been made of time-delayed commitments (phase ins) in some sectors.
Technical assistance	
Article XXV:2 *Technical assistance to developing countries shall be provided at the multilateral level by the Secretariat and shall be decided upon by the Council for Trade in Services.*	The requirements of the provisions of this Article are reflected in S/L/93 "Guidelines and Procedures for the Negotiations on Trade in Services. On 25 June 1999, the Services Council held a special Information Session on Telecommunication Services. The Information Session examined in depth technical assistance to developing countries on regulatory issues such as the establishment of an independent regulator, interconnection and competitive safeguards. Experts from other international intergovernmental organizations including the International Telecommunications Union and the World Bank participated as well as national regulators from capitals. On 26 May 2000, the Council for Trade in Services adopted the text of the cooperation agreement between the International Telecommunication Union and the World Trade Organization (S/C/9/Rev.1). Subsequently, the ITU Council also adopted the text at its annual session held on 19-28 July. Paragraph 6 of the agreement states that the WTO and ITU secretariats will endeavour to cooperate on matters relating to technical assistance and technical cooperation. A number of developing country Members have continued to stress the importance of technical assistance in the different contexts and areas of services. (See paragraph 24 of S/C/M/39 and paragraph 28 of S/C/M/31.)

PROVISION	COMMENT
Annex on Telecommunications: paragraph 6(c) In cooperation with relevant international organizations, Members shall make available, where practicable, to developing countries information with respect to telecommunications services and developments in telecommunications and information technology to assist in strengthening their domestic telecommunications services sector.	
Provisions relating to least-developed country Members	
Article XIX:3 *"…Negotiating guidelines shall establish modalities for the treatment of liberalization undertaken autonomously by Members since previous negotiations, as well as for the special treatment for least-developed country Members under the provisions of paragraph 3 of Article 4."*	For the DDA negotiations, the requirements of the provisions of this Article are reflected in S/L/93 "Guidelines and Procedures for the Negotiations on Trade in Services". (See paragraph 13 of Section III relating to "Modalities and Procedures".)
Article IV:3 Increasing Participation of Developing Countries *Special priority shall be given to the least-developed country Members in the implementation of Article IV:1 and 2. Particular account shall be taken of the serious difficulty of the least-developed countries in accepting negotiated specific commitments in view of their special economic situation and their development, trade and financial needs.*	The requirements of the provisions of this Article are reflected in S/L/93 "Guidelines and Procedures for the Negotiations on Trade in Services". (See paragraph 2 of Section I relating to "Objectives and Principles".)

IV. AGREEMENT ON TRADE-RELATED ASPECTS OF INTELLECTUAL PROPERTY RIGHTS

43. The Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement) and related instruments contain six special and differential treatment provisions and five Decisions. The six provisions fall under the following categories:

1. Transitional time-periods

Two provisions (Article 65.2 and 65.4).

2. Technical assistance

One provision (Article 67).

3. Provisions relating to least-developed country Members

Three provisions (Part of the Preamble to the Agreement; Articles 66.1; and 66.2 and three related Decisions including, TRIPS Council Decision of 27 June 2002 on the Extension of the Transition Period under Article 66.1 of the TRIPS Agreement for Least-Developed Country Members for Certain Obligations with respect to Pharmaceutical Products (IP/C/25), General Council Decision on Least-Developed Country Members-Obligations under Article 70.9 of the TRIPS Agreement with respect to Pharmaceutical Products (WT/L/478), TRIPS Council Decision on the Extension of the Transition Period under Article 66.1 for Least-Developed Country Members (IP/C/40).

The following two Decisions include provisions in favour of least-developed countries: General Council Decision of 30 August 2003 on the Implementation of Paragraph 6 of the Doha Declaration on the TRIPS Agreement and Public Health (WT/L/540 and Corr.1) and the General Council Decision of 6 December 2005 on the Amendment of the TRIPS Agreement (WT/L/641). See section on Ministerial and General Council Decisions.

PROVISION	COMMENT
Transitional time-periods	
Article 65.2 *A developing country Member is entitled to delay for a further period of four years the date of application, as defined in paragraph 1, of the provisions of this Agreement other than Articles 3, 4 and 5.*	Extensive use has been made of the transition periods provided for developing and least-developed countries in Articles 65 and 66 of the TRIPS Agreement. The transition period for developing countries under Article 65.2 expired on 1 January 2000.
Article 65.4 *To the extent that a developing country Member is obliged by this Agreement to extend product patent protection to areas of technology not so protectable in its territory on the general date of application of this Agreement for that Member, as defined in paragraph 2, it may delay the application of the provisions on product patents of Section 5 of Part II to such areas of technology for an additional period of five years.*	The additional transition period for developing country Members in fields of technology not subject to product patent protection on the date of application of the TRIPS Agreement expired on 1 January 2005. Some Members made use of this transition period.
Technical assistance	
Article 67 *In order to facilitate the implementation of this Agreement, developed country Members shall provide, on request and on mutually agreed terms and conditions, technical and financial cooperation in favour of developing and least-developed country Members. Such cooperation shall include assistance in the preparation of laws and regulations on the protection and enforcement of intellectual property rights as well as on the prevention of their abuse, and shall include support regarding the establishment or reinforcement of domestic offices and agencies relevant to these matters, including the training of personnel.*	Considerable attention has been given by the TRIPS Council to the provision of technical cooperation pursuant to Article 67 of the TRIPS Agreement. This issue has been a regular item on the agenda of the Council's meetings, with a view to monitoring compliance with the obligation contained in Article 67, sharing information on the technical cooperation possibilities available and providing an opportunity to identify any needs not adequately being addressed. Developed countries have provided, on an annual basis, for a special technical cooperation review meeting normally held at the end of year TRIPS Council's meeting, reports on their technical and financial cooperation activities of relevance (most recently in documents IP/C/W/517 and addenda). Furthermore, they have notified contact points in their administrations for technical cooperation on TRIPS (IP/N/7/Rev.2 and addenda). Intergovernmental organizations with observer status in the TRIPS Council have also provided written information on their technical cooperation activities relating to TRIPS matters (IP/C/W/516 and addenda), as has the WTO Secretariat (IP/C/W/515).
Provisions relating to least-developed country Members	
Preamble *Recognizing also the special needs of the least-developed country Members in respect of maximum flexibility in the domestic implementation of laws and regulations in order to enable them to create a sound and viable technological base.*	
Article 66.1 *In view of the special needs and requirements of least-developed country Members, their economic, financial and administrative constraints, and their need for flexibility to create a viable technological base, such Members shall not be required to apply the provisions of this Agreement, other than Articles 3, 4 and 5, for a period of 10 years*	With a view to implementing paragraph 7 of the Doha Declaration on the TRIPS Agreement and Public Health (WT/MIN(01)/DEC/2), the TRIPS Council adopted a Decision on 1 July 2002 by which the transition period under Article 66.1 for least-developed country Members with respect to the protection and enforcement of patents and undisclosed information was extended until 1 January 2016 (IP/C/25). This was

PROVISION	COMMENT
from the date of application as defined under Article 65.1. The Council for TRIPS shall, upon duly motivated request by a least-developed country Member, accord extensions of this period.	completed by Decision of the General Council of 12 July 2002, which waived the obligations of least-developed country Members under Article 70.9 with respect to exclusive marketing rights for pharmaceutical products subject of a patent application until 1 January 2016 (WT/L/478). The general transition period for least-developed country Members was initially due to expire on 1 January 2006. Recognizing their special needs and requirements, the TRIPS Council adopted a Decision on 29 November 2005 that extended the transition period under Article 66.1 for least-developed country Members until 1 July 2013 (IP/C/40). With a view to facilitating targeted technical and financial cooperation programmes, all the least-developed country Members will provide to the TRIPS Council, preferably by 1 January 2008, as much information as possible on their individual priority needs for technical and financial cooperation in order to assist them taking steps necessary to implement the TRIPS Agreement. Accordingly, developed country Members shall provide technical and financial cooperation in favour of least-developed country Members in pursuant to Article 67. To date, two least-developed country Members have submitted their priority needs to the TRIPS Council (IP/C/W/499 and 500).
Article 66.2 *Developed country Members shall provide incentives to enterprises and institutions in their territories for the purpose of promoting and encouraging technology transfer to least developed country Members in order to enable them to create a sound and viable technological base.*	Following the instructions of the Ministerial Conference to the TRIPS Council in paragraph 11.2 of the Decision on Implementation-Related Issues and Concerns (WT/MIN(01)/17), a Decision of the TRIPS Council of 20 February 2003 put in place a mechanism monitoring the implementation of the obligations under Article 66.2 (IP/C/28). Developed country Members are to submit annually reports on actions taken or planned in pursuance of their commitments under Article 66.2 and to provide new detailed reports every third year and updates in the intervals (most recently in documents IP/C/W/519 and addenda). Those reports have been regularly reviewed at the TRIPS Council's end of year meetings (see IP/C/M/58 for the review in 2008). Paragraph 7 of the Doha Declaration on the TRIPS Agreement and Public Health reaffirmed the commitment of developed country Members pursuant to Article 66.2 (WT/MIN(01)/DEC/2). According to the Decision of the General Council on the Implementation of Paragraph 6 of the Doha Declaration on the TRIPS Agreement and Public Health (WT/L/540 and Corr.1) and the Protocol Amending the TRIPS Agreement (WT/L/641), Members also undertook to cooperate in paying special attention to the transfer of technology and capacity building in the pharmaceutical sector pursuant to Article 66.2.

V. UNDERSTANDING ON RULES AND PROCEDURES GOVERNING THE SETTLEMENT OF DISPUTES

44. The Understanding on Rules and Procedures Governing the Settlement of Disputes (Dispute Settlement Understanding) contains 11 provisions relating to special and differential treatment, which can be classified as follows:

1. Provisions under which WTO Members should safeguard the interests of developing country Members

Seven provisions (Article 4.10, Article 8.10*, Article 12.10*, Article 12.11*, Article 21.2*, Article 21.7*, and Article 21.8*).

2. Flexibility of commitment, of action, or use of policy instruments

One provision (Article 3.12).

3. Technical assistance

One provision (Article 27.2).

4. Provisions relating to least-developed country Members.

Two provisions (Article 24.1 and Article 24.2).

** Note that these provisions are addressed to specific organs within the dispute settlement process, rather than to "WTO Members" directly.*

45. In the negotiations to improve and clarify the Dispute Settlement Understanding, a number of improvements have been proposed to existing special and differential treatment provisions, to make them more operational and effective (for example by strengthening the language of Articles 4.10 and 21.2 by replacing the word "should" by "shall", or by providing additional time or specific guidance on the nature of the differential treatment to be given). Some proposals also aim to introduce new special and differential treatment in favour of developing country Members in disputes (for example, to facilitate cross-retaliation). Specific proposals have also been made to improve effective access to dispute settlement for developing country Members. In this context, the creation of a Dispute Settlement Fund to assist developing country Members parties to disputes has been proposed, as well as the reimbursement of litigation costs for developing countries.

46. The current text of the proposals under discussion in these negotiations is contained in the Report by the Chairman of the Special Sessions of the Dispute Settlement Body of 18 July 2008.[79] In November 2008, Members endorsed the consolidated draft legal text contained in the July document as basis for future work.[80] This document provides an overall assessment of the state of play of the work in the negotiations and contains a consolidated draft legal text, based on the contributions of Members as well as the Chairman's own assessments. The report also contains a thematic overview of the issues under discussion, summarizing the Chairman's perceptions on the progress accomplished so far and outlining possible orientations of future work. This thematic overview contains a section on "Developing country interests, including special and differential treatment", to which readers are referred for further detailed information.[81]

[79] JOB(08)/81.
[80] See TN/DS/23.
[81] See JOB(08)/81, pp. 40-41.

UNDERSTANDING ON RULES AND PROCEDURES GOVERNING THE SETTLEMENT OF DISPUTES

PROVISION	COMMENT
Provisions under which WTO Members should safeguard the interests of developing country Members	
Article 4.10 *During consultations Members should give special attention to developing country Members' particular problems and interests.*	One developing country Member complained that its request for consultations with another Member (developed) had been disregarded, thus discriminating against and impairing its interests, in deviation from the provisions of Article 4.10 of the Dispute Settlement Understanding. (WT/DSB/M/7, p. 2)
Article 8.10 *When a dispute is between a developing country Member and a developed country Member the panel shall, if the developing country Member so requests, include at least one panelist from a developing country Member.*	In disputes between developing country Members and developed country Members, nationals of developing country Members regularly serve as panelists, if the developing country Members so request.
Article 12.10 *In the context of consultations involving and measures taken by a developing country Member, the parties may agree to extend the periods established in paragraphs 7 and 8 of Article 4. If, after the period has elapsed, the consulting parties cannot agree that the consultations have concluded, the Chairman of the DSB shall decide, after consultation with the parties, whether to extend the relevant period and, if so, for how long. In addition, in examining a complaint against a developing country Member, the panel shall allow sufficient time for the developing country Member to prepare and present its argumentation. The provisions of paragraph 1 of Article 20 and paragraph 4 of Article 21 are not affected by any action pursuant to this paragraph.*	In one dispute, a developing country defendant contended that the process raised important questions in relation to the Dispute Settlement Understanding such as: (i) the real difficulties faced by developing countries on the insistence by a developed country that consultations be held only in Geneva; (ii) the meaning and significance of the consultations stage; (iii) whether a Member could decide unilaterally that consultations had been concluded in particular since Article 12.10 of the Dispute Settlement Understanding provided that "in the context of consultations involving a measure taken by a developing country Member, the parties may agree to extend the period established in paragraphs 7 and 8 of Article 4". (See WT/DSB/M/21, page 4) See also WT/DSB/M/207, pp. 18-19, in relation to Turkey – Rice (WT/DS334). In India – Quantitative Restrictions (WT/DS90), India requested additional time to review the interim report, in accordance with Article 12.10 of the Dispute Settlement Understanding.
Article 12.11 *Where one or more of the parties is a developing country Member, the panel's report shall explicitly indicate the form in which account has been taken of relevant provisions on differential and more-favourable treatment for developing country Members that form part of the covered agreements which have been raised by the developing country Member in the course of the dispute settlement procedures.*	Panel reports show how this provision has been taken into account. For example, see: WT/DS27/R, WT/DS27/RW2/ECU, WT/DS46/R, WT/DS90/R, WT/DS204/R, WT/DS217, WT/DS234/R, WT/DS248/R, WT/DS249/R, WT/DS251/R, WT/DS252/R, WT/DS253/R, WT/DS254/R, WT/DS258/R, WT/DS259/R; WT/DS308/R and WT/DS334/R.
Article 21.2 *Particular attention should be paid to matters affecting the interests of developing country Members with respect to measures which have been subject to dispute settlement.*	This provision has been referred to in arbitration awards pursuant to Article 21.3(c) of the Dispute Settlement Understanding (See WT/DS54/15, WT/DS55/14, WT/DS59/13, WT/DS64/12, WT/DS87/15, WT/DS110/14, WT/DS207/13, WT/DS217/14, WT/DS234/22; WT/DS246/14, WT/DS265/33, WT/DS266/33, WT/DS283/14, WT/DS268/12, WT/DS269/13, WT/DS286/15 and WT/DS285/13.)
Article 21.7 *If the matter is one which has been raised by a developing country Member, the DSB shall consider what further action it might take which would be appropriate to the circumstances.*	

PROVISION	COMMENT
Article 21.8 *If the case is one brought by a developing country Member, in considering what appropriate action might be taken, the DSB shall take into account not only the trade coverage of measures complained of, but also their impact on the economy of developing country Members concerned.*	This provision has been taken into account in an arbitrator's decision pursuant to Article 22.7 of the Dispute Settlement Understanding. (See e.g. WT/DS27/ARB/ECU.)
Flexibility of commitments, of action, or use of policy instruments	
Article 3.12 *Notwithstanding Article 3.11, if a complaint based on any of the covered agreements is brought by a developing country Member against a developed country Member, the complaining party shall have the right to invoke, as an alternative to the provisions contained in Articles 4, 5, 6 and 12 of this Understanding, the corresponding provisions of the Decision of 5 April 1966 (BISD 14S/18), except that where the Panel considers that the time-frame provided for in paragraph 7 of that Decision is insufficient to provide its report and with the agreement of the complaining party, that time-frame may be extended. To the extent that there is a difference between the rules and procedures of Articles 4, 5, 6 and 12 and the corresponding rules and procedures of the Decision, the latter shall prevail.*	This provision of the Dispute Settlement Understanding has been used by developing countries in two complaints. (See WT/DS361 and WT/DS364.)
Technical assistance	
Article 27.2 *While the Secretariat assists Members in respect of dispute settlement at their request, there may also be a need to provide additional legal advice and assistance in respect of dispute settlement to developing country Members. To this end, the Secretariat shall make available a qualified legal expert from the WTO technical cooperation services to any developing country Member which so requests. This expert shall assist the developing country Member in a manner ensuring the continued impartiality of the Secretariat.*	The Secretariat makes available to developing countries the services of two consultants who are available to provide legal assistance to developing countries in dispute settlement, pursuant to this provision. This service is coordinated by ITTC. Proposals currently under consideration include the creation of a Dispute Settlement Fund for developing countries and the possibility of awarding litigation costs to developing countries that have prevailed in disputes against developed country Members. (See proposed Article 28, pp. 19-20 of JOB(08)/81.)
Provisions relating to least-developed country Members	
Article 24.1 *At all stages of the determination of the causes of a dispute and of dispute settlement procedures involving a least-developed country Member, particular consideration shall be given to the special situation of least-developed country Members. In this regard, Members shall exercise due restraint in raising matters under these procedures involving a least-developed country Member. If nullification or impairment is found to result from a measure taken by a least-developed country Member, complaining parties shall exercise due restraint in asking for compensation or seeking authorization to suspend the application of concessions or other obligations pursuant to these procedures.*	As of 30 May 2009, one least-developed country has initiated a dispute settlement proceeding (WT/DS306 – India Anti-dumping measure on batteries from Bangladesh). Eight least-developed countries have participated in panel proceedings as a third party, and six have participated in Appellate Body proceedings as a third participant.

PROVISION	COMMENT
Article 24.2 *In dispute settlement cases involving a least-developed country Member, where a satisfactory solution has not been found in the course of consultations the Director-General or the Chairman of the DSB shall, upon request by a least-developed country Member offer their good offices, conciliation and mediation with a view to assisting the parties to settle the dispute, before a request for a panel is made. The Director-General or the Chairman of the DSB, in providing the above assistance, may consult any source which either deems appropriate.*	In an attempt to make Article 5 of the Dispute Settlement Understanding operational (on good offices, conciliation and mediation), the Director-General has proposed some procedural steps to be taken by the parties to a dispute when requesting the Director-General's assistance under Article 5 (see WT/DSB/25).

VI. PLURILATERAL TRADE AGREEMENTS

A. AGREEMENT ON GOVERNMENT PROCUREMENT

47. The current Agreement on Government Procurement (1994) contains 16 special and differential treatment provisions falling under five categories.

1. Provisions under which WTO Members should safeguard the interests of developing country Members

Two provisions (Article V.1 and Article 3).

2. Provisions aimed at increasing trade opportunities for developing countries

Two provisions (Article V.2 and Article V.11).

3. Flexibility of commitments, of action, and use of policy instruments

Seven provisions (Article V.4, Aricle V.5, Article V.6, Article V.7, Article V.14 and Article V.15, Article XVI.2).

4. Technical assistance

Three provisions (Article V.8, Article V.9 and Article V.10).

5. Provisions relating to least-developed country Members

Two provisions (Article V.12 and Article V.13).

48. It is important to note that Article V is expected to be eventually replaced by Article IV of the revised GPA text (GPA/W/297). Article IV of the revised GPA text was provisionally agreed by Parties in December 2006. Its final adoption is subject to a mutually satisfactory outcome on the ongoing negotiations on coverage.[82] When adopted, Article IV of the revised text will replace Articles V and XVI:2 of the existing (1994) text. Article IV of the revised text is viewed by the Parties as being more clear, specific and concrete, as well as providing new forms of transitional measures, as compared to Article V of the existing text.

49. As a plurilateral Agreement, not all WTO Members are bound by the GPA. The Agreement at present comprises the following Parties: Canada; the European Communities including its 27 member States; Hong Kong, China; Iceland; Israel; Japan; Korea; Liechtenstein; Netherlands with respect to Aruba; Norway; Singapore; Switzerland; Chinese Taipei; and the United States.[83]

[82] See GPA/89, paragraph 20.

[83] See GPA/95, paragraph 4; upon its accession to the Agreement on 15 July 2009, Chinese Taipei became the 14th Party to the GPA and 41st WTO Member to be bound by this plurilateral Agreement.

PLURILATERAL TRADE AGREEMENTS

PROVISION	COMMENT
Article V	
Provisions under which WTO Members should safeguard the interests of developing country Members	
Objectives *1. Parties shall, in the implementation and administration of this Agreement, through the provisions set out in this Article, duly take into account the development, financial and trade needs of developing countries, in particular least-developed countries, in their need to:* *(a) safeguard their balance-of-payments position and ensure a level of reserves adequate for the implementation of programmes of economic development;* *(b) promote the establishment or development of domestic industries including the development of small-scale and cottage industries in rural or backward areas; and economic development of other sectors of the economy;* *(c) support industrial units so long as they are wholly or substantially dependent on government procurement; and* *(d) encourage their economic development through regional or global arrangements among developing countries presented to the Ministerial Conference of the World Trade Organization (hereinafter referred to as the "WTO") and not disapproved by it.*	
Coverage *3. With a view to ensuring that developing countries are able to adhere to this Agreement on terms consistent with their development, financial and trade needs, the objectives listed in paragraph 1 shall be duly taken into account in the course of negotiations with respect to the procurement of developing countries to be covered by the provisions of this Agreement. Developed countries, in the preparation of their coverage lists under the provisions of this Agreement, shall endeavour to include entities procuring products and services of export interest to developing countries.*	
Provisions aimed at increasing the trade opportunities of developing country Members	
2. Consistently with the provisions of this Agreement, each Party shall, in the preparation and application of laws, regulations and procedures affecting government procurement, facilitate increased imports from developing countries, bearing in mind the special problems of least-developed countries and of those countries at low stages of economic development.	The benefits of the Agreement are open to developing country Parties in accordance with the agreed coverage commitments of the Parties as set out in Appendix I. There are, at present, no least-developed country Parties to the Agreement.
Information Centres *11. Developed country Parties shall establish, individually or jointly, information centres to respond to reasonable requests from developing country Parties for information relating to, inter alia, laws, regulations, procedures and practices regarding government procurement, notices about intended procurements which have been published, addresses of the entities covered by this Agreement, and the nature and*	No notifications have been received from Parties regarding this provision. The Committee has not set up an information centre. However, Appendices II, III and IV of the Agreement lists the publications notified by Parties in which information about procurement opportunities, supplier registration lists, and relevant laws are published. This information is publicly available and often accessible by electronic means.

PROVISION	COMMENT
volume of products or services procured or to be procured, including available information about future tenders. The Committee may also set up an information centre.	
Flexibility of commitments, of action, and use of policy instruments	
Agreed Exclusions *4. A developing country may negotiate with other participants in negotiations under this Agreement mutually acceptable exclusions from the rules on national treatment with respect to certain entities, products or services that are included in its coverage lists, having regard to the particular circumstances of each case. In such negotiations, the considerations mentioned in subparagraphs 1(a) through 1(c) shall be duly taken into account. A developing country participating in regional or global arrangements among developing countries referred to in subparagraph 1(d) may also negotiate exclusions to its lists, having regard to the particular circumstances of each case, taking into account, inter alia, the provisions on government procurement provided for in the regional or global arrangements concerned and, in particular, products or services which may be subject to common industrial development programmes.*	
5. After entry into force of this Agreement, a developing country Party may modify its coverage lists in accordance with the provisions for modification of such lists contained in paragraph 6 of Article XXIV, having regard to its development, financial and trade needs, or may request the Committee on Government Procurement (hereinafter referred to as "the Committee") to grant exclusions from the rules on national treatment for certain entities, products or services that are included in its coverage lists, having regard to the particular circumstances of each case and taking duly into account the provisions of subparagraphs 1(a) through 1(c). After entry into force of this Agreement, a developing country Party may also request the Committee to grant exclusions for certain entities, products or services that are included in its coverage lists in the light of its participation in regional or global arrangements among developing countries, having regard to the particular circumstances of each case and taking duly into account the provisions of subparagraph 1(d). Each request to the Committee by a developing country Party relating to modification of a list shall be accompanied by documentation relevant to the request or by such information as may be necessary for consideration of the matter.	Since the coming into force of the Agreement, no developing country Party has sought or been granted exclusions from the rules on national treatment for any entities, products or services taking into account subparagraphs 1(a) through 1(c) of the Agreement. Since the coming into force of the Agreement, no developing country Party has sought or been granted exclusions for any entities, products or services on the grounds of participation in a regional or global arrangement among developing countries, taking into account the provisions of subparagraph 1(d).
6. Paragraphs 4 and 5 shall apply mutatis mutandis to developing countries acceding to this Agreement after its entry into force.	
7. Such agreed exclusions as mentioned in paragraphs 4, 5 and 6 shall be subject to review in accordance with the provisions of paragraph 14 below.	
Review *14. The Committee shall review annually the operation and effectiveness of this Article and, after each three years of its operation on the basis of reports to be submitted by Parties, shall carry out a major review in order to evaluate its effects. As part of the three-yearly reviews and with a view to achieving the maximum implementation of the*	The Committee reviewed the operation of the special and differential treatment provisions of the Agreement in the context of the negotiations under Article XXIV:7 of the Agreement. A revised set of provisions on developing countries is incorporated in the revised text of the Agreement at Article IV (GPA/W/297).

PROVISION	COMMENT
provisions of this Agreement, including in particular Article III, and having regard to the development, financial and trade situation of the developing countries concerned, the Committee shall examine whether exclusions provided for in accordance with the provisions of paragraphs 4 through 6 of this Article shall be modified or extended.	
15. In the course of further rounds of negotiations in accordance with the provisions of paragraph 7 of Article XXIV, each developing country Party shall give consideration to the possibility of enlarging its coverage lists, having regard to its economic, financial and trade situation.	The negotiations foreseen pursuant to Article XXIV:7 of the Agreement are currently ongoing. A revised text of the Agreement (GPA/W/297) was provisionally agreed by negotiators in December 2006.[84] Article IV of this text incorporates revised provisions on developing countries.
Technical assistance	
8. Each developed country Party shall, upon request, provide all technical assistance which it may deem appropriate to developing country Parties in resolving their problems in the field of government procurement.	Any requests for technical assistance by a developing country Party made directly to a developed country Party has been dealt with directly by the latter; there are no formal notification obligations in this regard. Several Parties have, however, informally informed the GPA Committee of technical assistance they have provided to developing country Members of the WTO, particularly in the context accession to the GPA. The WTO Secretariat also provides technical assistance on a regular basis under its annual technical assistance programme. This includes: (i) a regional seminar on government procurement organized for each developing country region at least once every other year (for the current plan, see document WT/COMTD/W/160); and (ii) national seminars on government procurement to developing country Members of the WTO on request whether or not they are a party to the Agreement. During the current year (2009), such technical assistance has been delivered or is programmed for: Armenia; Viet Nam; China; and Macao, China.
9. This assistance, which shall be provided on the basis of non-discrimination among developing country Parties, shall relate, inter alia, to: *- the solution of particular technical problems relating to the award of a specific contract; and* *- any other problem which the Party making the request and another Party agree to deal with in the context of this assistance.*	
10. Technical assistance referred to in paragraphs 8 and 9 would include translation of qualification documentation and tenders made by suppliers of developing country Parties into an official language of the WTO designated by the entity, unless developed country Parties deem translation to be burdensome, and in that case explanation shall be given to developing country Parties upon their request addressed either to the developed country Parties or to their entities.	
Special treatment for least-developed countries	
12. Having regard to paragraph 6 of the Decision of the CONTRACTING PARTIES to GATT 1947 of 28 November 1979 on Differential and More Favourable Treatment, Reciprocity and Fuller Participation of Developing Countries (BISD 26S/203-205), special treatment shall be granted to least-developed country Parties and to the suppliers in those Parties with respect to products or services originating in those Parties, in the context of any general or specific measures in favour of developing country Parties. A Party may also grant the benefits of this Agreement to suppliers in least-developed countries which are not Parties, with respect to products or services originating in those countries.	At present, there are no least-developed country Parties to the Agreement.
13. Each developed country Party shall, upon request, provide assistance which it may deem appropriate to potential tenderers in least-developed countries in submitting their tenders and selecting the products or services which are likely to be of interest to its entities as well as to suppliers in least-developed countries, and likewise assist them to	

[84] See also GPA/89, paragraphs 20-22.

PROVISION	COMMENT
comply with technical regulations and standards relating to products or services which are the subject of the intended procurement.	
Article XVI	
Flexibility of commitments, of action, and use of policy instruments	
2. Nevertheless, having regard to general policy considerations, including those relating to development, a developing country may at the time of accession negotiate conditions for the use of offsets, such as requirements for the incorporation of domestic content. Such requirements shall be used only for qualification to participate in the procurement process and not as criteria for awarding contracts. Conditions shall be objective, clearly defined and non-discriminatory. They shall be set forth in the country's Appendix I and may include precise limitations on the imposition of offsets in any contract subject to this Agreement. The existence of such conditions shall be notified to the Committee and included in the notice of intended procurement and other documentation.	Possibility of exemption from prohibition of offsets for developing countries (Article XVI:2) Paragraph 2 provides the legal basis for the application of offsets by a developing country Party. Such use of offsets must be negotiated with and agreed by other Parties in the course of the developing country's accession process. Details of the use of offsets are to be included in a Note to the Appendix I annexes of the concerned developing country Party.[85]

[85] Article XVI.2 should be read in conjunction with Article XVI.1 which states that "Entities shall not, in the qualification and selection of suppliers, products or services, or in the evaluation of tenders and award of contracts, impose, seek or consider offsets". Offsets in government procurement are measures used to encourage local development or improve the balance-of-payments accounts by means of domestic content, licensing of technology, investment requirements, counter-trade or similar requirements.

VII. MINISTERIAL AND GENERAL COUNCIL DECISIONS

50. The following section includes Ministerial and General Council Decisions providing special and differential treatment to developing and least-developed countries. As in sections II to VI, the tables reproduce in the left hand column, the text of the relevant Ministerial or General Council Decision, and in the right hand column titled "Comment", information on their implementation.

A. DIFFERENTIAL AND MORE FAVOURABLE TREATMENT, RECIPROCITY AND FULLER PARTICIPATION OF DEVELOPING COUNTRIES - DECISION OF 28 NOVEMBER 1979 (ENABLING CLAUSE - L/4903)

PROVISION	COMMENT
1. Notwithstanding the provisions of Article I of the General Agreement, contracting parties may accord differential and more favourable treatment to developing countries,[86] without according such treatment to other contracting parties.	
2. The provisions of paragraph 1 apply to the following:[87]	
Provisions aimed at increasing the trade opportunities of developing country Members	
(a) Preferential tariff treatment accorded by developed contracting parties to products originating in developing countries in accordance with the Generalized System of Preferences.[88]	Implementation of this provision has been through GSP schemes as notified to the CTD.
Flexibility of commitments, of action, and use of policy instruments	
(b) Differential and more favourable treatment with respect to the provisions of the General Agreement concerning non-tariff measures governed by the provisions of instruments multilaterally negotiated under the auspices of the GATT.	
(c) Regional or global arrangements entered into amongst less-developed contracting parties for the mutual reduction or elimination of tariffs and, in accordance with criteria or conditions which may be prescribed by the CONTRACTING PARTIES, for the mutual reduction or elimination of non-tariff measures, on products imported from one another.	To date, 28 RTAs have been notified under the Enabling Clause.
Provisions relating to least-developed country Members	
(d) Special treatment of the least developed among the developing countries in the context of any general or specific measures in favour of developing countries.	All developed Members of the WTO provide some degree of non-reciprocal market access to products originating from least-developed countries, including through least-developed countries specific GSP programmes. The Sub-Committee on Least-Developed Countries, pursuant to the WTO Work Programme for Least-Developed Countries, annually reviews market access for least-developed country products. The latest review is contained in document WT/COMTD/LDC/W/42/Rev.1, which includes information on recent market access initiatives taken by Members. In addition, A number of GSP schemes provide for preferential market access for the products of least-developed countries. Market access for least-developed countries has been enhanced by some developed country Members in the context of the Hong Kong Decision on duty-free and quota-free (DFQF) market access for least-developed

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

[87] It would remain open for the CONTRACTING PARTIES to consider on an *ad hoc* basis under the GATT provisions for joint action any proposals for differential and more favourable treatment not falling within the scope of this paragraph.

[88] As described in the Decision of the CONTRACTING PARTIES of 25 June 1971, relating to the establishment of "generalized, non-reciprocal and non-discriminatory preferences beneficial to the developing countries".

PROVISION	COMMENT
	countries. As mandated at Hong Kong, Members are to notify to the CTD, the implementation of the schemes adopted under the Decision. Discussions held in this regard and contained in WT/COMTD/M/57-59, 61-65, 67-74.

B. DECISION ON MEASURES IN FAVOUR OF LEAST-DEVELOPED COUNTRIES (15 DECEMBER 1993)

PROVISION	COMMENT
Ministers... *2. Agree that:* *(i) Expeditious implementation of all special and differential measures taken in favour of least-developed countries including those taken within the context of the Uruguay Round shall be ensured through, inter alia, regular reviews.* *(ii) To the extent possible, MFN concessions on tariff and non-tariff measures agreed in the Uruguay Round on products of export interest to the least-developed countries may be implemented autonomously, in advance and without staging. Consideration shall be given to further improve GSP and other schemes for products of particular export interest to least-developed countries.* *(iii) The rules set out in the various agreements and instruments and the transitional provisions in the Uruguay Round should be applied in a flexible and supportive manner for the least-developed countries. To this effect, sympathetic consideration shall be given to specific and motivated concerns raised by the least-developed countries in the appropriate Councils and Committees.* *(iv) In the application of import relief measures and other measures referred to in paragraph 3(c) of Article XXXVII of GATT 1947 and the corresponding provision of GATT 1994, special consideration shall be given to the export interests of least-developed countries.* *(v) Least-developed countries shall be accorded substantially increased technical assistance in the development, strengthening and diversification of their production and export bases including those of services, as well as in trade promotion, to enable them to maximize the benefits from liberalized access to markets.* *3. Agree to keep under review the specific needs of the least-developed countries and to continue to seek the adoption of positive measures which facilitate the expansion of trading opportunities in favour of these countries.*	Pursuant to this Decision, Members have taken concrete steps to facilitate better integration of least-developed countries into the multilateral trading system. A High-level Meeting on Integrated Initiatives for Least-Developed Countries Trade Development was held in October 1997. The High-level Meeting endorsed the Integrated Framework for trade-related technical assistance to least-developed countries. At the Doha Ministerial Conference in November 2001, Ministers committed themselves to addressing the marginalization of the least-developed countries in international trade and to improving their effective participation in the multilateral trading system. Paragraphs 42 and 43 of the Ministerial Declaration specifically address the concerns of least-developed countries. Pursuant to Paragraph 42, the WTO Work Programme on least-developed countries was adopted in February 2002 (WT/COMTD/LDC/11). Since then, the Sub-Committee has been focussing on the implementation of this Work Programme. The Work Programme contains seven elements: (i) market access for least-developed countries; (ii) trade-related technical assistance and capacity-building initiatives for least-developed countries; (iii) providing, as appropriate, support to agencies assisting with the diversification of least-developed countries' production and export base; (iv) mainstreaming, as appropriate, into the WTO's work the trade-related elements of the LDC-III Programme of Action, as relevant to WTO's mandate; (v) participation of least-developed countries in the multilateral trading system; (vi) accession of least-developed countries to the WTO; and (vii) follow-up to WTO Ministerial Decisions/Declarations. Pursuant to the WTO Work Programme for the Least-Developed Countries, the General Council in December 2002 adopted accession guidelines for least-developed countries to facilitate and accelerate the accession of least-developed countries to the WTO (WT/L/508). WTO Members attach priority to least-developed countries' accessions in accordance with these Guidelines on LDCs' accession. The latest document on Accession of least-developed countries to the WTO is contained in document WT/COMTD/LDC/W/44. The Hong Kong Ministerial Conference held in 2005 adopted a number of concrete decisions in favour of least-developed countries. One of the major outcomes of the Conference was the adoption of five decisions on special and differential treatment in favour of least-developed countries. Three of these five decisions are enumerated in Section VII:K. The Enhanced Integrated Framework (EIF) is one of the mechanisms through which the WTO in collaboration with other international organizations and other development partners seek to provide least-developed countries with trade-related assistance in response to their trade development needs. These include, but are not limited to, the development, strengthening and diversification of their production and export bases, as

PROVISION	COMMENT
	well as in trade promotion, to enable them to maximize the benefits from liberalized access to markets. The Integrated Framework (created in 1997 as IF and since enhanced to become the Enhanced IF (EIF), helps least-developed countries to map out the totality of their trade priorities (upstream and down stream), and to integrate them into their national development strategies. Identification of their trade-related priorities under the EIF and their mainstreaming assist least-developed countries in their dialogue with their donor community to seek their support. The EIF is Aid for Trade in action for the least-developed countries. Funding of the actions identified by the least-developed countries under the EIF are carried out through the EIF's own Trust Fund – through its two windows: Tier 1 and Tier 2; bilateral, regional or multilateral development partners; and the national budget, especially in countries where assistance by development partners is largely delivered by budget support and where the country's financial state allows for the government's investment in trade development. The private sector – domestic or foreign – is also a possible source of funding. To date, 47 countries (of a total of 50) have initiated to/become beneficiaries under the EIF. Of the 47 beneficiaries, 35 have completed the diagnostic stage and are now implementing the action matrix. Some are in the process of / have completed updating their Diagnostic Trade Integration Studies (DTISs). An additional 12 least-developed countries are at various stages of drafting their DTIS. In July, 2009, the first two projects for Tier 1 funding out of the EIF Trust Fund were approved by the EIF Board, signalling that the EIF is now fully operational. Another 19 Tier 1 project proposals are currently in the pipeline.

C. DECISION ON TEXTS RELATING TO MINIMUM VALUES AND IMPORTS BY SOLE AGENTS, SOLE DISTRIBUTORS AND SOLE CONCESSIONAIRES (15 DECEMBER 1993)

51. The Decision On Texts Relating To Minimum Values And Imports By Sole Agents, Sole Distributors And Sole Concessionaires contains two provisions for special and differential treatment.

1. Provisions under which WTO Members should safeguard the interests of developing country Members

Two provisions (Text I and Text II).

DECISION ON TEXTS RELATING TO MINIMUM VALUES AND IMPORTS BY SOLE AGENTS, SOLE DISTRIBUTORS AND SOLE CONCESSIONAIRES (15 DECEMBER 1993)

PROVISION	COMMENT
Provisions under which WTO Members should safeguard the interests of developing country Members	
Text I *Where a developing country makes a reservation to retain officially established minimum values within the terms of Annex III:2 and shows good cause, the Committee shall give the request for the reservation sympathetic consideration. Where a reservation is consented to, the terms and conditions referred to in Annex III:2 shall take full account of the development, financial and trade needs of the developing country concerned.*	For information on the Members that have made use of this provision see G/VAL/2 and Rev. 1 to 24. Currently no Member is making use of this provision.
Text II.I *A number of developing countries have a concern that problems may exist in the valuation of imports by sole agents, sole distributors and sole concessionaires. Under Article 20:1, developing country Members have a period of delay of up to five years prior to the application of the Agreement. In this context, developing country Members availing themselves of this provision could use the period to conduct appropriate studies and to take such other actions as are necessary to facilitate application.* *In consideration of this, the Committee recommends that the Customs Co-operation Council assist developing country Members, in accordance with the provisions of Annex II, to formulate and conduct studies in areas identified as being of potential concern, including those relating to importations by sole agents, sole distributors and sole concessionaires.*	There have been no such studies requested.

D. DECISION ON MEASURES CONCERNING THE POSSIBLE NEGATIVE EFFECTS OF THE REFORM PROGRAMME ON LEAST-DEVELOPED AND NET FOOD-IMPORTING DEVELOPING COUNTRIES[89] (15 DECEMBER 1993)

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

53. The Secretariat prepares a background note on an annual basis in order to facilitate the work of the Committee on Agriculture in this area.[90] The note provides an introduction on the follow-up process to the NFIDC Decision as a whole and examines the substantive provisions of the Decision, providing detailed information regarding their implementation.

[89] The WTO list of net food-importing developing countries as it currently stands comprises:

(a) the least-developed countries as recognized by the Economic and Social Council of the United Nations; as well as

(b) Barbados, Bolivarian Republic of Venezuela, Botswana, Côte d'Ivoire, Cuba, Dominica, Dominican Republic, Egypt, Gabon, Honduras, Jamaica, Jordan, Kenya, Mauritius, Mongolia, Morocco, Namibia, Pakistan, Peru, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Senegal, Sri Lanka, Trinidad and Tobago and Tunisia (G/AG/5/Rev.8, dated 22 March 2005, refers). Furthermore, during the March 2009 meeting of the Committee on Agriculture, Swaziland indicated its intention to be included in the list in March 2010.

[90] See G/AG/W/42/Rev.11 dated 18 November 2008.

DECISION ON MEASURES CONCERNING THE POSSIBLE NEGATIVE EFFECTS OF THE REFORM PROGRAMME ON LEAST-DEVELOPED AND NET FOOD-IMPORTING DEVELOPING COUNTRIES (15 DECEMBER 1993)

PROVISION	COMMENT
Provisions under which WTO Members should safeguard the interests of developing country Members	
Paragraph 3(i) *To review the level of food aid established periodically by the Committee on Food Aid under the Food Aid Convention 1986 and to initiate negotiations in the appropriate forum to establish a level of food aid commitments sufficient to meet the legitimate needs of developing countries during the reform programme.*	The Food Aid Convention is administered by the International Grains Council which services the Food Aid Committee (FAC). The Food Aid Convention 1999, which was to expire on 30 June 2002, has not been renegotiated by the FAC members but has been extended several times pending the outcome of the DDA negotiations. In June 2009, FAC members agreed to extend the Convention to June 2010. For more details, see paragraphs 11-26 of G/AG/W/42/Rev.11 and G/AG/GEN/78.
Paragraph 3(ii) *To adopt guidelines to ensure that an increasing proportion of basic foodstuffs is provided to least-developed and net food-importing developing countries in fully grant form and/or on appropriate concessional terms in line with Article IV of the Food Aid Convention 1986.*	Under the Food Aid Convention 1999, all food aid provided to least-developed countries will be in the form of grants. Overall, food aid in the form of grants is to represent, at a minimum, 80 per cent of FAC member's contributions and donors are to seek to progressively exceed this share. For more details, see paragraphs 27-31 of G/AG/W/42/Rev.11 and G/AG/GEN/78.
Paragraph 4 *Ensure that any agreement relating to agricultural export credits makes appropriate provision for differential treatment in favour of least-developed and net food-importing developing countries.*	The matter of agricultural export credits has been undertaken in both the regular meetings of the Committee on Agriculture and in the Special Session negotiations on the basis, *inter alia*, of the proposals that have been tabled and other inputs, including with respect to special and differential treatment in favour of developing countries. (See paragraphs 36-39 of G/AG/W/42/Rev.11 and Annex J of the Revised Draft Modalities for Agriculture in TN/AG/W/4/Rev.4.)
Paragraph 5 *As a result of the Uruguay Round certain developing countries may experience short-term difficulties in financing normal levels of commercial imports and that these countries may be eligible to draw on the resources of international financial institutions under existing facilities, or such facilities as may be established, in the context of adjustment programmes, in order to address such financing difficulties. In this regard, Ministers take note of paragraph 37 of the report of the Director-General to the CONTRACTING PARTIES to GATT 1947 on his consultations with the Managing Director of the International Monetary Fund and the President of the World Bank (MTN.GNG/NG14/W/35).*	During the Committee's annual monitoring exercise of the Marrakesh NFIDC Decision, several of the international observer organizations regularly comment on the development of international food prices and their impact on the food import bills of the least-developed countries and NFIDCs as well as on the resources of the international financial institutions and initiatives in favour of least-developed countries and NFIDC - see paragraphs 40-47 of G/AG/W/42/Rev.11 and G/AG/GEN/78.
Technical assistance	
Paragraph 3(iii) *To give full consideration in the context of their aid programmes to requests for the provision of technical and financial assistance to least-developed and net food-importing developing countries to improve their agricultural productivity and infrastructure.*	During the Committee's annual monitoring exercise of the Marrakesh NFIDC Decision, the provision of technical and financial assistance continues to be subject of review. For this purpose, updated Table NF:1 notifications are submitted by donor Members concerned. Any contributions made by the observer organizations in this context are also circulated. For more details, see pargraphs 32-35 of G/AG/W/42/Rev.11 and G/AG/GEN/78.

E. PREFERENTIAL TARIFF TREATMENT FOR LEAST-DEVELOPED COUNTRIES – DECISION ON WAIVER – 15 JUNE 1999[91] (WT/L/304)

PROVISION	COMMENT
Considering that the Parties to the World Trade Organization Agreement have recognized the need for positive efforts designed to ensure that developing countries, and especially the least-developed among them, secure a share in the growth in international trade commensurate with the needs of their economic development; *Considering the statements contained in the Comprehensive and Integrated WTO Plan of Action for the Least-Developed Countries adopted at the Singapore Ministerial Conference on 13 December 1996 and in the Ministerial Declaration of 20 May 1998 concerning integration of least-developed countries into the world trading system and providing predictable and favourable market access conditions for the products of such countries;* *Considering the 1979 Decision on Differential and More Favourable Treatment, Reciprocity and Fuller Participation of Developing Countries and the 1994 Decision on Measures in Favour of Least-Developed Countries, and without prejudice to rights of Members to continue to act pursuant to the provisions contained in those Decisions;* *Desiring to provide an additional means for developing country Members to offer preferential tariff treatment to products of least-developed countries notwithstanding the obligations of paragraph 1 of Article I of the General Agreement;* *Having regard to the Guiding Principles to be followed in considering applications for waivers adopted on 1 November 1956, the Understanding in Respect of Waivers of Obligations under the General Agreement on Tariffs and Trade 1994, and paragraphs 3 and 4 of Article IX of the Marrakesh Agreement Establishing the World Trade Organization (the "WTO Agreement");* *Members, acting pursuant to the provisions of paragraph 3 of Article IX of the WTO Agreement,* *Decide that:* *1. Subject to the terms and conditions set out hereunder, the provisions of paragraph 1 of Article I of the GATT 1994 shall be waived until 30 June 2009, to the extent necessary to allow developing country Members to provide preferential tariff treatment to products of least-developed countries, designated as such by the United Nations, without being required to extend the same tariff rates to like products of any other Member.* *2. Developing country Members wishing to take actions pursuant to the provisions of this Waiver shall notify to the Council on Trade in Goods the list of all products of least-developed countries for which preferential tariff treatment is to be provided on a generalized, non-reciprocal and non-discriminatory basis and the preference margins to be accorded. Subsequent modifications to the preferences shall similarly be notified.* *3. Any preferential tariff treatment implemented pursuant to this Waiver shall be*	To date, two notifications were made under this Decision; (i) Republic of Korea (WT/COMTD/N/12/Rev.1); and (ii) Morocco (WT/LDC/SWG/IF/18 and G/C/6). The waiver contained in the 1999 Decision (WT/L/304) was extended until 30 June 2019 (WT/L/759). See section VII: M .

[91] Adopted in accordance with the Decision-Making Procedures under Articles IX and XII of the WTO Agreement agreed by the General Council (WT/L/93).

PROVISION	COMMENT
designed to facilitate and promote the trade of least-developed countries and not to raise barriers or create undue difficulties for the trade of any other Member. Such preferential tariff treatment shall not constitute an impediment to the reduction or elimination of tariffs on a most-favoured-nation basis. *4. In accordance with the provisions of paragraph 4 of Article IX of the WTO Agreement, the General Council shall review annually whether the exceptional circumstances justifying the Waiver still exist and whether the terms and conditions attached to the Waiver have been met.* *5. The government of any Member providing preferential tariff treatment pursuant to this Waiver shall, upon request, promptly enter into consultations with any interested Member with respect to any difficulty or any matter that may arise as a result of the implementation of programmes authorized by this Waiver. Where a Member considers that any benefit accruing to it under GATT 1994 may be or is being impaired unduly as a result of such implementation, such consultation shall examine the possibility of action for a satisfactory adjustment of the matter. This Waiver does not affect Members' rights as set forth in the Understanding in Respect of Waivers of Obligations under GATT 1994.* *6. This waiver does not affect in any way and is without prejudice to rights of Members in their actions pursuant to the provisions of the 1979 Decision on Differential and More Favourable Treatment, Reciprocity and Fuller Participation of Developing Countries.*	

F. EXTENSION OF THE TRANSITION PERIOD UNDER ARTICLE 66.1 OF THE TRIPS AGREEMENT FOR LEAST-DEVELOPED COUNTRY MEMBERS FOR CERTAIN OBLIGATIONS WITH RESPECT TO PHARMACEUTICAL PRODUCTS - DECISION OF THE COUNCIL FOR TRIPS OF 27 JUNE 2002 (IP/C/25)

PROVISION	COMMENT
The Council for Trade-Related Aspects of Intellectual Property Rights (the "Council for TRIPS"), *...* *Decides as follows:* *1. Least-developed country Members will not be obliged, with respect to pharmaceutical products, to implement or apply Sections 5 and 7 of Part II of the TRIPS Agreement or to enforce rights provided for under these Sections until 1 January 2016.* *2. This decision is made without prejudice to the right of least-developed country Members to seek other extensions of the period provided for in paragraph 1 of Article 66 of the TRIPS Agreement.*	When Rwanda made use of the system established under the Decision of 30 August 2003 on the Implementation of Paragraph 6 of the Doha Declaration on the TRIPS Agreement and Public Health, it referred to the TRIPS Council Decision of 27 June 2002 as constituting the basis for its decision not to enforce patent rights that may have been granted within its territory with respect to pharmaceutical products to be imported under the system (IP/N/9/RWA/1).

G. LEAST-DEVELOPED COUNTRY MEMBERS – OBLIGATIONS UNDER ARTICLE 70.9 OF THE TRIPS AGREEMENT WITH RESPECT TO PHARMACEUTICAL PRODUCTS - DECISION OF 8 JULY 2002[92] (WT/L/478)

PROVISION	COMMENT
The General Council, *Having regard to paragraphs 1, 3 and 4 of Article IX of the Marrakesh Agreement Establishing the World Trade Organization (the "WTO Agreement");* *Conducting the functions of the Ministerial Conference in the interval between meetings pursuant to paragraph 2 of Article IV of the WTO Agreement;* *Noting the decision of the Council for TRIPS on the Extension of the Transition Period under Article 66.1 of the TRIPS Agreement for Least-Developed Country Members for Certain Obligations with respect to Pharmaceutical Products (IP/C/25) (the "Decision"), adopted by the Council for TRIPS at its meeting of 25-27 June 2002 pursuant to the instructions of the Ministerial Conference contained in paragraph 7 of the Declaration on the TRIPS Agreement and Public Health (WT/MIN(01)/DEC/2) (the "Declaration");* *Considering that obligations under paragraph 9 of Article 70 of the TRIPS Agreement, where applicable, should not prevent attainment of the objectives of paragraph 7 of the Declaration;* *Noting that, in light of the foregoing, exceptional circumstances exist justifying a waiver from paragraph 9 of Article 70 of the TRIPS Agreement with respect to pharmaceutical products in respect of least-developed country Members;* *Decides as follows:* *1. The obligations of least-developed country Members under paragraph 9 of Article 70 of the TRIPS Agreement shall be waived with respect to pharmaceutical products until 1 January 2016.* *2. This waiver shall be reviewed by the Ministerial Conference not later than one year after it is granted, and thereafter annually until the waiver terminates, in accordance with the provisions of paragraph 4 of Article IX of the WTO Agreement.*	

[92] Adopted in accordance with the Decision-Making Procedures under Articles IX and XII of the WTO Agreement agreed by the General Council in November 1995 (WT/L/93).

H. ACCESSION OF LEAST-DEVELOPED COUNTRIES – DECISION OF 10 DECEMBER 2002 (WT/L/508)

PROVISION	COMMENT
The General Council ... *Decides that:* *1. Negotiations for the accession of LDCs to the WTO, be facilitated and accelerated through simplified and streamlined accession procedures, with a view to concluding these negotiations as quickly as possible, in accordance with the guidelines set out hereunder:*	Three countries (Cambodia, Nepal, Cape Verde) have concluded their accession negotiations as least-developed countries following the adoption of the General Council's Decision of 10 December 2002. (WT/MIN(03)/18, WT/MIN(03)/19 and WT/L/715).
I. Market access	
- WTO Members shall exercise restraint in seeking concessions and commitments on trade in goods and services from acceding LDCs, taking into account the levels of concessions and commitments undertaken by existing WTO LDCs' Members;	Market access negotiations are conducted between the acceding government and interested Members on a bilateral basis. Information about the status of requests and offers in the bilateral negotiations is limited, although agreed results are publicly circulated and applied on an MFN-basis. (See WT/COMTD/LDC/W/44.)
- acceding LDCs shall offer access through reasonable concessions and commitments on trade in goods and services commensurate with their individual development, financial and trade needs, in line with Article XXXVI.8 of GATT 1994, Article 15 of the Agreement on Agriculture, and Articles IV and XIX of the General Agreement on Trade in Services.	On goods, the average final bound rates of Cambodia, Nepal, Cape Verde stand at 19.0, 26.0 and 15.8 per cent, respectively. Reductions in the bound rates are being effected over periods of up to ten years from the date of accession. The three completed least-developed countries' accessions undertook specific commitments under the GATS in 94, 77 and 99 services sub-sectors respectively. (See WT/ACC/KHM/21/Add.1 and 2; WT/ACC/NPL/16/Add.1 and 2; WT/ACC/CPV/30/Add.1 and 2.)
II. WTO rules	
- Special and Differential Treatment, as set out in the Multilateral Trade Agreements, Ministerial Decisions, and other relevant WTO legal instruments, shall be applicable to all acceding LDCs, from the date of entry into force of their respective Protocols of Accession;	See below.
- transitional periods/transitional arrangements foreseen under specific WTO Agreements, to enable acceding LDCs to effectively implement commitments and obligations, shall be granted in accession negotiations taking into account individual development, financial and trade needs;	In all the three completed least-developed countries' accessions, transition periods were granted and accompanied by action plans. Technical assistance needs were also identified and examined in connection with the action plans. Nepal was granted transition periods[93] of three years and four months to fully implement the WTO Agreements on Customs Valuation, SPS, TBT and TRIPS (WT/ACC/NPL/16).
- transitional periods/arrangements shall be accompanied by Action Plans for compliance with WTO rules. The implementation of the Action Plans shall be supported by Technical Assistance and Capacity Building measures for the acceding LDCs'. Upon the request of an acceding LDC, WTO Members may coordinate efforts to guide that LDC through the implementation process;	For Cambodia, transitional arrangements were agreed for the implementation of the WTO Agreements on Customs Valuation (five years five months), Rules of Origin (one year five months), SPS (four years five months), TBT (three years five months) and TRIPS (three years five months); and specific flexibilities were agreed for eliminating quantitative restrictions on imports of fertilizers, pesticides and other agricultural inputs (one year ten months); for trading rights on pharmaceuticals and veterinary medicines (one year ten months); and for establishing a WTO consistent duty drawback scheme (ten years five months) (WT/ACC/KHM/21). Cape Verde was granted transition periods for the implementation of the WTO

[93] The duration of the transition periods have been calculated from the date the Working Party concluded its work.

PROVISION	COMMENT
	Agreements on Customs Valuation (three years), Subsidies and Countervailing Measures (two years), SPS (two years) and TRIPS (five years) and specific flexibilities, including for the modification of legislation regarding customs user fee (four years 11 months), free zones (two years), and subsidies (seven years). (WT/ACC/CPV/30)
- commitments to accede to any of the Plurilateral Trade Agreements or to participate in other optional sectoral market access initiatives shall not be a precondition for accession to the Multilateral Trade Agreements of the WTO. As provided in paragraph 5 of Article IX and paragraph 3 of Article XII of the WTO Agreement, decisions on the Plurilateral Trade Agreements shall be adopted by the Members of, and governed by the provisions in, those Agreements. WTO Members may seek to ascertain acceding LDCs interests in the Plurilateral Trade Agreements.	None of the three least-developed countries had to accede to any of the Plurilateral Trade Agreements. They have also either opted for no, or less than full participation in the sectoral market access initiatives.
III. Process	
- The good offices of the Director-General shall be available to assist acceding LDCs and Chairpersons of the LDCs' Accession Working Parties in implementing this decision;	The good offices of the Director-General are available to assist acceding LDCs. Chairs of Working Parties, supported by the Secretariat, have also carried out high-level visits to acceding LDCs to advance their accession processes. (See WT/COMTD/LDC/W/44.)
- efforts shall continue to be made, in line with information technology means and developments, including in LDCs themselves, to expedite documentation exchange and streamline accession procedures for LDCs to make them more effective and efficient, and less onerous. The Secretariat will assist in this regard. Such efforts will, inter-alia, be based upon the WTO Reference Centres that are already operational in acceding LDCs;	The WTO Secretariat has been mandated to prepare a Factual Summary of Points Raised at an early stage of the process to facilitate additional fact-finding in least-developed countries' accessions. Each Working Party meeting is concluded with a detailed summary of the inputs expected from the acceding LDC for the next meeting, to ensure that the number of meetings are kept to a minimum. For non-resident acceding least-developed countries, formal or informal Working Party meetings or consultations are usually scheduled in the sidelines of the Geneva Week to ease the financial burden on these delegations. Information technology has been increasingly used. WTO Reference Centres have been established in Bhutan, Comoros, Ethiopia, Equatorial Guinea, Lao PDR, Samoa, Sao Tomé and Principe, Sudan, Vanuatu and Yemen. They are yet to be established in Afghanistan and Liberia. (See WT/COMTD/LDC/W/44.)
- WTO Members may adopt additional measures in their bilateral negotiations to streamline and facilitate the process, e.g., by holding bilateral negotiations in the acceding LDC if so requested;	Bilateral contacts and negotiations with interested Members have been carried forward by electronic mail, videoconferencing, or by visits to the capitals of the concerned parties. (See WT/COMTD/LDC/W/44.)
- upon request, WTO Members may through coordinated, concentrated and targeted technical assistance from an early stage facilitate the accession of an acceding LDC.	See section below on "Trade-Related Technical Assistance and Capacity Building".
IV. Trade-related technical assistance and capacity building	
- Targeted and coordinated technical assistance and capacity building, by WTO and other relevant multilateral, regional and bilateral development partners, including inter alia under the Integrated Framework (IF), shall be provided, on a priority basis, to assist acceding LDCs. Assistance shall be accorded with the objective of effectively integrating the acceding LDC into the multilateral trading system;	WTO assistance is currently being provided under the Biennial Technical Assistance and Training Plan for 2008-2009. (See WT/COMTD/W/160.) Least-developed countries, including acceding least-developed countries, are entitled to three national activities per year. Acceding least-developed countries have participated in over 600 WTO technical assistance and training activities since 2003. The WTO/OECD DDA Trade-Related Technical Assistance and Capacity Building

PROVISION	COMMENT
	Database (www.tcbdb.wto.org) provides an overview of the support available from multilateral agencies and bilateral donors to acceding least-developed countries at all stages of the accession process and post-accession.
- effective and broad-based technical cooperation and capacity building measures shall be provided, on a priority basis, to cover all stages of the accession process, i.e. from the preparation of documentation to the setting up of the legislative infrastructure and enforcement mechanisms, considering the high costs involved and in order to enable the acceding LDC to benefit from and comply with WTO rights and obligations.	Coordinated technical assistance is available through mechanisms such as the EIF. Most least-developed countries in the process of accession have joined the EIF or are seeking to be included in the framework. Support may also be sought through the Aid-for-Trade initiative.
2. The implementation of these guidelines shall be reviewed regularly in the agenda of the Sub-Committee on LDCs. The results of this review shall be included in the Annual Report of the Committee on Trade and Development to the General Council. In pursuance of their commitments on LDCs' accessions in the Doha Ministerial Declaration, Ministers will take stock of the situation at the Fifth Ministerial Conference and, as appropriate, at subsequent Ministerial Conferences.	On the review of the implementation of the Guidelines, the Sub-Committee decided that: (i) "Accession of LDCs" would be kept as a standing item on the agenda of the Sub-Committee; (ii) Chairs of least-developed countries' Accession Working Parties would be invited to the Sub-Committee for an exchange of views; and (iii) the need for targeted technical assistance for acceding least-developed countries was recognized. (See WT/COMTD/LDC/M/32.) The Director-General circulated a status report to the Fifth WTO Ministerial Conference on the "Implementation of the Commitment by Ministers to Facilitate and Accelerate the Accession of the LDCs". (See WT/MIN(03)/2.)

I. THE IMPLEMENTATION OF PARAGRAPH 6 OF THE DOHA DECLARATION ON THE TRIPS AGREEMENT AND PUBLIC HEALTH (WT/L/540 AND CORR.1) - DECISION OF 30 AUGUST 2003

PROVISION	COMMENT
1(b): "eligible importing Member" means any least-developed country Member ...; *2(a)(ii): confirms that the eligible importing Member in question, other than a least-developed country Member, has established that it has insufficient or no manufacturing capacities in the pharmaceutical sector ... ;* *4: ... in the event that an eligible importing Member that is a developing country Member or a least-developed country Member experiences difficulty in implementing this provision, developed country Members shall provide, on request and on mutually agreed terms and conditions, technical and financial cooperation in order to facilitate its implementation;* *6: With a view to harnessing economies of scale for the purpose of enhancing purchasing power for, and facilitating the local production of, pharmaceutical products: (i) where a developing or least-developed country WTO Member is a party to a regional trade agreement within the meaning of Article XXIV of the GATT 1994 and the Decision of 28 November 1979 on Differential and More Favourable Treatment Reciprocity and Fuller Participation of Developing Countries (L/4903), at least half of the current membership of which is made up of countries presently on the United Nations list of least-developed countries, the obligation of that Member under Article 31(f) of the TRIPS Agreement shall be waived to the extent necessary to enable a pharmaceutical product produced or imported under a compulsory licence in that Member to be exported to the markets of those other developing or least-developed country parties to the regional trade agreement that share the health problem in question.*	Rwanda has been the first least-developed country Member to make use of the system established under the Decision as an eligible importing Member and notified the TRIPS Council on 17 July 2007 accordingly (IP/N/9/RWA/1). The Decision provides for an annual review of the functioning of the system by the TRIPS Council and an annual report on its operation to the General Council (most recently in document IP/C/49).

J. EXTENSION OF THE TRANSITION PERIOD UNDER ARTICLE 66.1 FOR LEAST-DEVELOPED COUNTRY MEMBERS - DECISION OF THE COUNCIL FOR TRIPS OF 29 NOVEMBER 2005 (IP/C/40)

PROVISION	COMMENT
... *Decides as follows:* *I* *Extension of the transition period under Article 66.1 of the Agreement for least-developed country Members.* *Least-developed country Members shall not be required to apply the provisions of the Agreement, other than Articles 3, 4 and 5, until 1 July 2013, or until such a date on which they cease to be a least-developed country Member, whichever date is earlier.* *II* *Enhanced technical cooperation for least-developed country Members* *With a view to facilitating targeted technical and financial cooperation programmes, all the least-developed country Members will provide to the Council for TRIPS, preferably by 1 January 2008, as much information as possible on their individual priority needs for technical and financial cooperation in order to assist them taking steps necessary to implement the TRIPS Agreement.* *Developed country Members shall provide technical and financial cooperation in favour of least-developed country Members in accordance with Article 67 of the Agreement in order to effectively address the needs identified in accordance with paragraph 2.* *In order to assist least-developed country Members to draw up the information to be presented in accordance with paragraph 2, and with a view to making technical assistance and capacity building as effective and operational as possible, the WTO shall seek to enhance its cooperation with the World Intellectual Property Organization and with other relevant international organizations.* *III* *General provisions* *Least-developed country Members will ensure that any changes in their laws, regulations and practice made during the additional transitional period do not result in a lesser degree of consistency with the provisions of the TRIPS Agreement.* *This Decision is without prejudice to the Decision of the Council for TRIPS of 27 June 2002 on "Extension of the Transition Period under Article 66.1 of the TRIPS Agreement for Least-Developed Country Members for Certain Obligations with respect to Pharmaceutical Products" (IP/C/25), and to the right of least-developed country Members to seek further extensions of the period provided for in paragraph 1 of Article 66 of the Agreement.*	See comment under Article 66.1 of the TRIPs Agreement.

K. GENERAL COUNCIL DECISION ON THE AMENDMENT OF THE TRIPS AGREEMENT (WT/L/641) –DECISION OF 6 DECEMBER 2005

PROVISION	COMMENT
The General Council; ... *Decides as follows:* *1. The Protocol amending the TRIPS Agreement attached to this Decision is hereby adopted and submitted to the Members for acceptance.* *2. The Protocol shall be open for acceptance by Members until 1 December 2007 or such later date as may be decided by the Ministerial Conference.* *3. The Protocol shall take effect in accordance with the provisions of paragraph 3 of Article X of the WTO Agreement.*	The Protocol Amending the TRIPS Agreement attached to it and submitted to WTO Members for acceptance contains the same provisions in paragraph 3 of Article 31bis and paragraphs 1(b), 2(a)(ii), 3 of the Annex to the TRIPS Agreement. The Protocol Amending the TRIPS Agreement is currently open for acceptance by WTO Members until 31 December 2009 (WT/L/711). To date, 23 notifications have been received (IP/C/W/490/Rev.4, updated list available under: http://www.wto.org/english/tratop_e/trips_e/amendment_e.htm).

L. OTHER DECISIONS IN FAVOUR OF LEAST-DEVELOPED COUNTRIES – ANNEX F HONG KONG MINISTERIAL DECLARATION ADOPTED ON 18 DECEMBER 2005 (WT/MIN(05)/DEC)

PROVISION	COMMENT
23) Understanding in Respect of Waivers of Obligations under the GATT 1994 *(i) We agree that requests for waivers by 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 positive consideration and a decision taken within 60 days.* *(ii) When considering requests for waivers by other Members exclusively in favour of least-developed country Members, we agree that a decision shall be taken within 60 days, or in exceptional circumstances as expeditiously as possible thereafter, without prejudice to the rights of other Members.*	Since the adoption of this Decision, the CTG has agreed and the General Council adopted, a number of waivers in favour of least-developed countries. These include: a "Waiver on Minimum Values in Regard to the Agreement on the Implementation of Article VII of the General Agreement on Tariffs and Trade 1994" in favour of Senegal adopted on 28 July 2006 (WT/L/655) and its extension adopted on 31 July 2008 (WT/L/735); a waiver on the "Implementation of the Schedules of Concessions" in favour of Cape Verde adopted on 28 July 2009 (WT/L/768) and the extension of the 1999 waiver for "Preferential Tariff Treatment for Least Developed Countries" adopted on 29 May 2009 in favour of all least-developed countries (WT/L/759).
36) Decision on Measures in Favour of Least-Developed Countries *We agree that developed-country Members shall, and developing-country Members declaring themselves in a position to do so should:* *(a)(i)Provide duty-free and quota-free market access on a lasting basis, for all products originating from all LDCs by 2008 or no later than the start of the implementation period in a manner that ensures stability, security and predictability.* *(a)(ii) Members facing difficulties at this time to provide market access as set out above shall provide duty-free and quota-free market access for at least 97 per cent of products originating from LDCs, defined at the tariff line level, by 2008 or no later than the start of the implementation period. In addition, these Members shall take steps to progressively achieve compliance with the obligations set out above, taking into account the impact on other developing countries at similar levels of development, and, as appropriate, by incrementally building on the initial list of covered products.* *(a)(iii) Developing-country Members shall be permitted to phase in their commitments and shall enjoy appropriate flexibility in coverage.* *(b) Ensure that preferential rules of origin applicable to imports from LDCs are transparent and simple, and contribute to facilitating market access.* *Members shall notify the implementation of the schemes adopted under this decision every year to the Committee on Trade and Development. The Committee on Trade and Development shall annually review the steps taken to provide duty-free and quota-free market access to the LDCs and report to the General Council for appropriate action.* *We urge all donors and relevant international institutions to increase financial and technical support aimed at the diversification of LDC economies, while providing additional financial and technical assistance through appropriate delivery mechanisms to meet their implementation obligations, including fulfilling SPS and TBT requirements, and to assist them in managing their adjustment processes, including those necessary to face the results of MFN multilateral trade liberalisation.*	The Decision taken at the Hong Kong Ministerial Conference on DFQF market access for least-developed countries is a standing item on the CTD's agenda. To date, the CTD has conducted three annual reviews of the implementation of the Hong Kong Decision, as mandated in Annex F of the Hong Kong Ministerial Declaration. For further details on the discussions that took place please refer to documents WT/COMTD/M/57-59, 61-65, 67-75.
38) Decision on Measures in Favour of Least-Developed Countries *It is reaffirmed that least-developed country Members will only be required to*	

PROVISION	COMMENT
undertake commitments and concessions to the extent consistent with their individual development, financial or trade needs, or their administrative and institutional capacities. *Within the context of coherence arrangements with other international institutions, we urge donors, multilateral agencies and international financial institutions to coordinate their work to ensure that LDCs are not subjected to conditionalities on loans, grants and official development assistance that are inconsistent with their rights and obligations under the WTO Agreements.*	
84) Agreement on Trade-Related Investment Measures *LDCs shall be allowed to maintain on a temporary basis existing measures that deviate from their obligations under the TRIMs Agreement. For this purpose, LDCs shall notify the Council for Trade in Goods (CTG) of such measures within two years, starting 30 days after the date of this declaration. Least-developed countries will be allowed to maintain these existing measures until the end of a new transition period, lasting seven years. This transition period may be extended by the CTG under the existing procedures set out in the TRIMs Agreement, taking into account the individual financial, trade, and development needs of the Member in question.* *LDCs shall also be allowed to introduce new measures that deviate from their obligations under the TRIMs Agreement. These new TRIMs shall be notified to the CTG no later than six months after their adoption. The CTG shall give positive consideration to such notifications, taking into account the individual financial, trade, and development needs of the Member in question. The duration of these measures will not exceed five years, renewable subject to review and decision by the CTG.* *Any measures incompatible with the TRIMs Agreement and adopted under this decision shall be phased out by year 2020.*	The two-year period for notification referred to in paragraph 1 above expired on 18 January 2008 with no notifications received from the least-developed countries. So far, no notifications have been received under paragraph 2 above.
88) Decision on Measures in Favour of Least-Developed Countries – Paragraph 1 *Least-developed country Members, whilst reaffirming their commitment to the fundamental principles of the WTO and relevant provisions of GATT 1994, and while complying with the general rules set out in the aforesaid instruments, will only be required to undertake commitments and concessions to the extent consistent with their individual development, financial and trade needs, and their administrative and institutional capabilities. Should a least-developed country Member find that it is not in a position to comply with a specific obligation or commitment on these grounds, it shall bring the matter to the attention of the General Council for examination and appropriate action.* *We agree that the implementation by LDCs of their obligations or commitments will require further technical and financial support directly related to the nature and scope of such obligations or commitments, and direct the WTO to coordinate its efforts with donors and relevant agencies to significantly increase aid for trade-related technical assistance and capacity building.*	

M. TRANSPARENCY MECHANISM FOR REGIONAL TRADE AGREEMENTS – DECISION OF 14 DECEMBER 2006 (WT/L/671)

54. In accordance with paragraph 47 of the Doha Ministerial Declaration (WT/MIN(01)/DEC/1), the General Council, on 14 December 2006, established on a provisional basis a new transparency mechanism for all regional trade agreements (RTAs). The new transparency mechanism builds upon the existing transparency requirements contained in WTO provisions related to RTAs and it introduces the provisions for early announcement of any RTA and consideration of the notified RTAs on the basis of a factual presentation by the WTO Secretariat. The Committee on Regional Trade Agreements will conduct the review of RTAs falling under Article XXIV of GATT and Article V of the GATS. The CTD will conduct the review of RTAs falling under the Enabling Clause (trade arrangements between developing countries). Members are to review, and if necessary modify, the decision, and replace it by a permanent mechanism adopted as part of the overall results of the Doha Round.

TRANSPARENCY MECHANISM FOR REGIONAL TRADE AGREEMENTS - DECISION OF 14 DECEMBER 2006 (WT/L/671)

PROVISION	COMMENT
Flexibility of commitments, of action, and use of policy instruments	
Section C *8. The data referred to in paragraph 7(a) shall be made available as soon as possible. Normally, the timing of the data submission shall not exceed ten weeks – or 20 weeks in the case of RTAs involving only developing countries – after the date of notification of the agreement.*	Parties to notified RTAs have to make available to the WTO Secretariat data as specified in the Annex, if possible in an electronically exploitable format. The data is required for the drafting of the Factual Presentation of the RTA by the Secretariat. Recognizing the resource and technical constraints of developing country Members, the Decision extends the timing of the data submission from ten to 20 weeks in the case of RTAs involving only developing countries. In case of RTAs between developed and developing country Members the standard ten weeks' time-frame applies.
Technical assistance	
Section F *19. Upon request, the WTO Secretariat shall provide technical support to developing country Members, and especially least-developed countries, in the implementation of this Transparency Mechanism, in particular – but not limited to - with respect to the preparation of RTA-related data and other information to be submitted to the WTO Secretariat.*	Recognizing the resource and technical constraints of developing country Members, the Decision provides for the provisions, by the Secretariat, of technical support to developing country Members for the implementation of the Transparency Mechanism. The provision has not been invoked by developing country Members since the WTO Agreement came into force.

N. PREFERENTIAL TARIFF TREATMENT FOR LEAST-DEVELOPED COUNTRIES - DECISION OF 27 MAY 2009[94] (WT/L/759)

PROVISION	COMMENT
The waiver contained in the decision of 15 June 1999 (WT/L/304) is hereby extended until 30 June 2019.	

[94] *Secretariat note:* Adopted in accordance with the Decision-Making Procedures under Articles IX and XII of the WTO Agreement agreed by the General Council (WT/L/93).