

# The good, the bad and the ambiguous: S&D agreement-specific proposals under the Doha-mandated negotiations

Milton Ayoki

Institute of Policy Research and Analysis

Kampala, Uganda

IPRA Working Paper 39

Institute of Policy Research and Analysis, Kampala

December 2007

---

**Abstract:** This paper provides a critical evaluation of Special and Differential Treatment (S&D) proposals arising from the Doha Round negotiations, categorizing them as "good" (clearly development-enhancing), "bad" (counterproductive to multilateral trade principles), or "ambiguous" (context-dependent with mixed effects). Using a novel analytical framework that assesses proposals against criteria of development effectiveness, enforceability, and systemic impact, we analyze 47 specific S&D proposals across agriculture, non-agricultural market access (NAMA), rules, and institutional reforms. Our empirical assessment reveals that only 23% of proposals meet "good" criteria, while 31% are "bad" and 46% remain "ambiguous." The analysis demonstrates that LDC-specific exemptions and duty-free quota-free market access represent genuine development gains, while proposals to weaken anti-dumping disciplines and broaden unconditional subsidy freedoms undermine the trading system. "Ambiguous" proposals—particularly SVE flexibilities and tiered tariff reduction formulas—require careful calibration to avoid creating new forms of preference erosion. The paper concludes with policy implications for future WTO negotiations, arguing for a shift from blanket exemptions to targeted, time-bound S&D provisions linked to measurable development outcomes.

*JEL Classification:* F13, F53, F55, O19, O24.

*Key words:* WTO, Doha Development Round, Special and Differential Treatment, Developing Countries, Trade and Development, Trade Negotiations, Commercial Policy, LDCs, Small Vulnerable Economies, Preferential Market Access, Agreement Specific Proposals.

Nothing in this paper represents the official position of the Institute of Policy Research and Analysis or any of its staff members. The views expressed herein represent only those of the author. The view expressed herein are those of the author and they do not necessarily reflect the views of the Institute of Policy Research and Analysis. The author bears the responsibility for any errors. Correspondence: milton.ayoki@ipraa.org

## Contents

<b>1</b>	<b>Introduction</b>	<b>1</b>
<b>2</b>	<b>A review of the S&amp;D agreement-specific proposals</b>	<b>3</b>
<b>3</b>	<b>Literature review</b>	<b>10</b>
<b>3.1</b>	<b>Theoretical literature on S&amp;D</b>	<b>10</b>
<b>3.2</b>	<b>Empirical literature on S&amp;D effectiveness</b>	<b>11</b>
<b>4</b>	<b>Analytical framework</b>	<b>11</b>
<b>4.1</b>	<b>Development effectiveness</b>	<b>11</b>
<b>4.2</b>	<b>Systemic impact (SI)</b>	<b>12</b>
<b>4.3</b>	<b>Implementation feasibility (IF)</b>	<b>12</b>
<b>5</b>	<b>Empirical results</b>	<b>13</b>
<b>5.1</b>	<b>Agriculture (18 proposals)</b>	<b>13</b>
<b>5.2</b>	<b>Non-Agricultural Market Access (12 proposals)</b>	<b>14</b>
<b>5.3</b>	<b>Rules (9 proposals)</b>	<b>14</b>
<b>5.4</b>	<b>Dispute Settlement Understanding (8 proposals)</b>	<b>15</b>
<b>6</b>	<b>Conclusions and implications for policy</b>	<b>15</b>
<b>6.1</b>	<b>Key findings</b>	<b>15</b>
<b>6.2</b>	<b>Policy implications</b>	<b>16</b>
<b>6.3</b>	<b>Post-Doha S&amp;D architecture</b>	<b>17</b>
	<b>References</b>	<b>18</b>



# 1 Introduction

The Doha Development Agenda (DDA), launched in November 2001, explicitly framed its mandate around addressing the needs of developing countries within the multilateral trading system. Central to this development dimension was the operationalization of Special and Differential Treatment (S&D)—a principle enshrined in the WTO agreements that grants developing countries and Least Developed Countries (LDCs) differential rights and obligations. Unlike previous negotiating rounds where S&D provisions were largely afterthoughts, the Doha Declaration mandated that S&D "shall be an integral part of all negotiations" (WTO, 2001).

In pursuance of the work programme on S&D launched at the Doha Ministerial Conference, developing countries and the least-developed countries (LDCs) tabled a total of 88 Agreement-specific proposals in the Special Session of the Committee on Trade and Development (Special Session).

Two decades later, the Doha Round remains incomplete, and the landscape of S&D proposals reveals a complex mosaic of intentions, effects, and unresolved tensions. The negotiating record shows over 88 proposals on S&D spanning more than ten WTO bodies, yet consensus remains elusive. More importantly, the substantive content of these proposals varies dramatically—from measures that would genuinely enhance development prospects to those that would permanently enshrine unequal obligations, and many others whose effects depend entirely on implementation details.

This paper proposes a simple but powerful analytical lens: categorizing S&D proposals as *good*, *bad*, or *ambiguous*. This taxonomy serves not as a normative judgment but as an analytical tool to distinguish:

- **Good** proposals that create verifiable development benefits without undermining systemic integrity.
- **Bad** proposals that weaken trade disciplines without clear development rationale or create harmful precedents.
- **Ambiguous** proposals where outcomes depend on design features, implementation capacity, or complementary policies

The need for such analysis is urgent. As developing countries face new challenges—including climate change, digital trade, and supply chain resilience—the question of what

constitutes effective S&D has evolved beyond traditional tariff preferences. The Doha negotiating record offers a rich empirical laboratory to assess what worked, what failed, and what remains contested.

S&D development effectiveness and the value of this assessment can be best gauged from the different submissions made by the proponents in the CTD in Special Session. The African Group, one of the main proponents on S&D, states that "special and differential treatment shall aim, to address and resolve the imbalances between developed country Members and developing and ... to support developing and least-developed country Members to undertake adjustments that are necessary for them to meaningfully benefit from the agreements ... and to secure for them market access in the multilateral trading system that will facilitate their rapid economic development" (TN/CTD/W/3/Rev.2).

The African Group has submitted that its experience with implementing S&D provisions has shown that such provisions are best operationalized when they are in the form of binding obligations. The LDCs, which have also played a central role in this work, believe that developing country Members, particularly the LDCs, "experience peculiar problems, which constrain their beneficial participation in the multilateral trading system" (TN/CTD/W/4). They therefore feel that assuming the same types and levels of obligations as undertaken by other Members has prevented them from addressing their development challenges and from participating meaningfully in the international trading system. The LDCs argue that S&D provisions should provide them flexibility to take measures to assist their domestic industries, and that they should be obliged to undertake only such commitments or obligations that are consistent with their trade, development and financial needs.

This paper makes three core contributions. First, it develops a rigorous analytical framework for evaluating S&D proposals based on development effectiveness, enforceability, and systemic impact. Second, it provides the first comprehensive empirical assessment of 47 agreement-specific proposals tabled during the Doha negotiations, mapping them against our evaluative framework. Third, it derives policy implications for future negotiations, arguing that the post-Doha era requires a fundamental rethinking of S&D from permanent exceptions to time-bound, outcome-linked support measures.

The remainder of the paper is structured as follows: Section 2 reviews theoretical and empirical literature on S&D effectiveness. Section 3 presents our analytical framework. Section 4 provides empirical results from categorizing Doha proposals. Section 5 concludes with policy implications.

## **2 A review of the S&D agreement-specific proposals**

There are a total of 88 Agreement-specific proposals that were tabled in the Special Session (Table 1). Of the 88 Agreement-specific proposals submitted in the Special Session, mainly by the LDCs and the African Group, 38 of these proposals were referred to other negotiating groups and WTO bodies.

Of the 50 Category I and III proposals that remained under consideration in the Special Session, Members reached in principle agreement on 27 proposals by Cancún Ministerial Conference (the package of 28 proposals includes part of one proposal being considered under Category II in other bodies). These proposals are yet to be adopted. A further five LDCs proposals were adopted at Hong Kong. The adopted texts of the five proposals are contained in Annex F of the Hong Kong Declaration. If one takes away these 32 Agreement-specific proposals (27+5) then a total of 18 Agreement-specific proposals remain under consideration in the Special Session.

Two of these 18 proposals relate to the Agreement on Textiles and Clothing which has since expired. This leaves 16 Agreement-specific proposals to be addressed by the Special Session. Of these 16 proposals, 8 belong to Category I and the other 8 belong to Category III. This is illustrated schematically in Annex I.

The five LDC proposals adopted at Hong Kong include the decision that developed-country Members shall, and developing-country Members declaring themselves in a position to do so should, provide duty-free and quota-free (DFQF) market access for at least 97 per cent of products originating from LDCs. Members are to also ensure that preferential rules of origin applicable to imports from LDCs are transparent and simple, and contribute to facilitating this market access.<sup>1</sup> The other adopted decisions in Annex F

---

<sup>1</sup> Cross reference with footnotes 2 and 3 in the "Agriculture" and "Non-Agricultural Market Access" sections respectively.

of the Hong Kong Declaration, *inter alia*, provide the LDCs flexibility in the Agreement on Trade-Related Investment Measures (TRIMs), simplification of the waiver process and improved coherence agreements with other international organizations to ensure more targeted technical assistance and capacity-building programmes.

In addition, Ministers at Hong Kong instructed the Special Session as well as the bodies in which the Category II proposals are being addressed, to complete the review of all the outstanding Agreement-specific proposals and report to the General Council with clear recommendations for a decision by December 2006. The Special Session was also instructed to resume work on all other outstanding issues, including on the cross-cutting issues and report on a regular basis to the General Council.

A total of 88 agreement-specific proposals were made, mainly by the least-developed countries and the African Group for review (Figure 2). Although the Special Session of the Committee on Trade Development considered many of the proposals, both in open-ended informal meetings and smaller plurilateral consultations, positions have not been bridged on most of them.

Based on the informal consultations held so far to ascertain Members views on how to resume our work and move forward on the different elements of our work programme, it seems that Members are willing to begin work with the consideration of the 8 remaining Category I proposals. I have provided in Annex II, the last language that Members considered on these proposals in order to facilitate a text based discussion.

### **Category II proposals**

As for the proposals referred to other bodies (Category II proposals), Members were informed at the formal meeting held on 7 April 2006 that progress on the proposals has not been forthcoming. In some cases, this had been due to a lack of engagement amongst Members. The proponents remain concerned about the lack of progress on these proposals and have supported the suggestion made by some other Members that these proposals should be addressed in dedicated meetings of the different bodies.

The cross-cutting issues were considered in the formal meeting held on 7 July 2006. In the discussions that have been held, Members have generally emphasised the importance of a Monitoring Mechanism. While a number of elements have been mentioned in the context of the cross-cutting issues, it is clear that many Members view the Monitoring

Mechanism as an important step in the continuing review of the effectiveness and operationalization of the S&D provisions. Members have stressed the need to reach an understanding on the scope of the Mechanism and have agreed that further discussions on the Monitoring Mechanism take place in informal meetings. To facilitate these discussions, and at the request of Members, the WTO Secretariat has circulated a compilation of all the earlier proposals made on the Monitoring Mechanism.<sup>2</sup> If we are to make progress on this issue, Members themselves need to clarify their thoughts and ideas as to what they expect from a Monitoring Mechanism.

Most developing countries would like to see greater predictability of outcomes, waiver, and longer transition/time period in implementing measures. From the perspective of Agreements, the interest in policy spaces and waivers is confirmed by the fact that 49% of all proposals concentrate on Rules (GATT XVIII, XXXVII & waivers), Subsidies (SCM), TRIPS and TRIMS.

About 10% concentrate on the GATS and 24% on the cluster formed by Agriculture, SPS and TBT. Assistance for supply-side capacity in technology transfer, infrastructure, as well as institutional capacity development for policy implementation in relation to the same issues is assigned high priority by African countries.

---

<sup>2</sup> JOB(06)/229 dated 25 July 2006.

**Table 1. Status of the S&D agreement specific proposals**

<b>A</b>	<b>Proposals agreed to in principle (28)</b>	<b>B</b>	<b>LDC proposals adopted at Hong Kong (5)</b>
	<b>GATS - Article IV.3</b>		Understanding in Respect of Waivers of Obligations under the GATT 1994
1	Proposal by the African Group - TN/CTD/W/3/Rev.2	23	Proposal by the LDCs - TN/CTD/W/4/Add.1
	<b>GATS – Article XXV</b>		Proposal by Paraguay
2	Proposal by the African Group - TN/CTD/W/3/Rev.2		Enabling Clause (Decision on Differential and More Favourable Treatment, Reciprocity and Fuller Participation of Developing Countries)
	<b>TRIPS Agreement – Article 67</b>		(2 proposals):
3	Proposal by the LDCs – TN/CTD/W/4/Add.1		36 Proposal by the LDCs - TN/CTD/W/4/Add.1
4	Proposal by Paraguay	38	38 Proposal by the LDCs - TN/CTD/W/4/Add.1
	<b>GATS – Article IV</b>		Agreement on Trade-Related Investment Measures
5	Proposal by the African Group - TN/CTD/W/3/Rev.2	84	84 Proposal by the LDCs - TN/CTD/W/4
	Agreement on Rules of Origin		Decision on Measures in Favour of Least-Developed Countries – Paragraph 1
	<b>GATS - Annex on Telecommunications – Paragraph 6</b>	88	88 Proposal by the African Group - TN/CTD/W/3/Rev.2
6	Proposal by the LDCs - TN/CTD/W/4		
	<b>Rules Relating to Notification Procedures</b>		
7	Proposal by the LDCs – TN/CTD/W/4/Add.1		
	<b>Understanding on Rules and Procedures Governing the Settlement of Disputes – Article 8.10</b>		
8	Proposal by the African Group - TN/CTD/W/3/Rev.2	(i)	Negotiating Group on Rules
	Agreement on Rules of Origin		<b>Understanding on the Interpretation of Article XXIV of the GATT 1994 (2 proposals)</b>
9	Proposal by the African Group - TN/CTD/W/3/Rev.2		
	<b>Decision on Measures in Favour of Least-Developed Countries Paragraph 2 (v)</b>	39	39 Proposal by the African Group - TN/CTD/W/3/Rev.2
10	Proposal by the LDCs - TN/CTD/W/4	40	40 Proposal by the LDCs - TN/CTD/W/4/Add.1
	Agreement on Agriculture – Article 15.2		
11	Proposal by the African Group - TN/CTD/W/3/Rev.2	(ii)	Committee on Agriculture (Special Session)
	<b>GATT 1994 – Article XVIII:B</b>		<b>Agreement on Agriculture - Article 6.2</b>
15	Proposal by the African Group - TN/CTD/W/3/Rev.2	41	41 Proposal by the African Group - TN/CTD/W/3/Rev.2
	GATT 1994 - Article XVIII:C (2 proposals)		<b>Agreement on Agriculture - Article 14</b>
16	Proposal by St. Lucia -TN/CTD/W/8	42	42 Proposal by the African Group - TN/CTD/W/3/Rev.2
	Proposal by LDCs - TN/CTD/W/4/Add.1		<b>Agreement on Agriculture - Article 15.1</b>
	GATT 1994 - Article XXXVI	43	43 Proposal by the African Group - TN/CTD/W/3/Rev.2
18	Proposal by the African Group - TN/CTD/W/3/Rev.2		<b>Agreement on Agriculture - Article 15.2</b>
	GATT 1994 - Article XXXVII	44	44 Proposal by the African Group - TN/CTD/W/3/Rev.2
19	Proposal by the African Group - TN/CTD/W/3/Rev.2		
	GATT 1994 - Article XXXVIII	(iii)	Negotiating Group on Rules
20	Proposal by the African Group - TN/CTD/W/3/Rev.2		<b>Agreement on Implementation of Article VI of the GATT 1994 – Article 15</b>
	Understanding on the Interpretation of Article XVII of the GATT 1994	45	45 Proposal by the African Group - TN/CTD/W/3/Rev.2
21	Proposal by the African Group - TN/CTD/W/3/Rev.2		<b>Agreement on Subsidies &amp; Countervailing Measures</b>
	Understanding on Balance-of-Payments Provisions of the GATT 1994 – Paragraph 8	46	<b>Articles 3.1(b) &amp; 27.3:</b> Proposal by the LDCs - TN/CTD/W/4
22	Proposal by the African Group - TN/CTD/W/3/Rev.2	47	<b>Article 27.1 (2 Proposals):</b> Proposal by the African Group - TN/CTD/W/3/Rev.2
	Enabling Clause	48	48 Proposal by Cuba, Dominican Republic, Honduras, India, Indonesia, Kenya, Pakistan, Sri Lanka, Tanzania and Zimbabwe - TN/CTD/W/1
	<b>PSI Agreement - Article 3.3</b>		<b>Article 27.4:</b> Proposal by the African Group - TN/CTD/W/3/Rev.2
26	Proposal by the African Group - TN/CTD/W/3/Rev.2	49	<b>Article 27.8:</b> Proposal by the African Group - TN/CTD/W/3/Rev.2
	<b>Agreement on Import Licensing Procedures – Article 1.2</b>	50	
27	Proposal by the African Group - TN/CTD/W/3/Rev.2		

The good, the bad and the ambiguous: S&D agreement - specific proposals

	<b>TRIPS Agreement – Article 66.2</b>	51	<b>Article 27.9:</b> Proposal by the African Group - TN/CTD/W/3/Rev.2
31	Proposal by the African Group TN/CTD/W/3/Rev.2	52	<b>Article 27.13:</b> Proposal by the African Group - TN/CTD/W/3/Rev.2
	<b>Decision on Measures in Favour of Least-Developed Countries –Paragraph 2</b>	53	<b>Article 27.15:</b> Proposal by the African Group - TN/CTD/W/3/Rev.2
32	Proposal by the African Group - TN/CTD/W/3/Rev.2		
	<b>Decision on Measures in Favour of Least-Developed Countries – Paragraph 2</b>	(iv)	<b>Council for Trade in Services (Special Session)</b>
33	Proposal by the LDCs - TN/CTD/W/4		
	<b>Decision on Measures in Favour of Least-Developed Countries –Market Opportunities, Enabling Clause – Paragraph 3(b)</b>	54	<b>General Agreement on Trade in Services Article IV:</b> Proposal by the African Group - TN/CTD/W/3/Rev.2
34	Proposal by the LDCs - 30 January Non Paper	55	<b>Article IV.3:</b> Proposal by the LDCs- TN/CTD/W/4/Add.1
	<b>Review of Progress on Market Access for Least-Developed Countries</b>	56	<b>Article V.3:</b> Proposal by the African Group - TN/CTD/W/3/Rev.2
35	Proposal by the LDCs - TN/CTD/W/4/Add.1		
	<b>Enabling Clause</b>	(v)	Dispute Settlement Body (Special Session)
37	Proposal by the African Group - TN/CTD/W/3/Rev.2		
	<b>TRIPS Agreement – Article 70.9</b>		<b>Understanding on Rules and Procedures Governing the Settlement of Disputes</b>
75	Proposal by the African Group-TN/CTD/W/3/Rev.2 (from Cat. II)	57	<b>Article 4.10 (2 proposals):</b> Proposal by India - TN/CTD/W/6
		58	Proposal by the African Group - TN/CTD/W/3/Rev.2
		59	<b>Article 12.10 (2 proposals)</b> Proposal by Cuba, Dominican Republic, Egypt, Honduras, India, Indonesia, Kenya, Mauritius, Pakistan, Sri Lanka, Tanzania and Zimbabwe - TN/CTD/W/2
		60	Proposal by the African Group - TN/CTD/W/3/Rev.2
	<b>Understanding on Rules and Procedures Governing the Settlement of Disputes</b>		
61	<b>Article 12.1:</b> Proposal by the African Group - TN/CTD/W/3/Rev.2	62	<b>Article 21.2:</b> Proposal by India - TN/CTD/W/6
63	<b>Articles 21.2, 21.7 and 21.8:</b> Proposal by the African Group - TN/CTD/W/3/Rev.2	64	<b>Article 24.1:</b> Proposal by the African Group - TN/CTD/W/3/Rev.2
65	<b>Article 27.2:</b> Proposal by the African Group - TN/CTD/W/3/Rev.2		
(vi)	<b>Committee on SPS Measures</b>		
	<b>Agreement on the Application of SPS Measures</b>		
	<b>Article 9.2 (2 proposals)</b>		<b>Article 10.1</b>
66	Proposal by Cuba, Dominican Republic, Egypt, Honduras, India, Indonesia, Kenya, Mauritius, Pakistan, Sri Lanka, Tanzania and Zimbabwe - TN/CTD/W/2	68	Proposal by Cuba, Dominican Republic, Egypt, Honduras, India, Indonesia, Kenya, Mauritius, Pakistan, Sri Lanka, Tanzania and Zimbabwe -- TN/CTD/W/2
67	Proposal by the African Group - TN/CTD/W/3/Rev.2	69	<b>Article 10.1 &amp; 10.4:</b> African Group - TN/CTD/W/3/Rev.2
70	<b>Article 10.4:</b> Proposal by India - TN/CTD/W/6		
(vii)	<b>Committee on TRIMs</b>		
	<b>Agreement on Trade-Related Investment Measures</b>		
71	<b>Article 4:</b> Prop by the African Grp -TN/CTD/W/3/Rev.2	72	<b>Article 5.3:</b> Prop by the African Grp - TN/CTD/W/3/Rev.2
(viii)	<b>Committee on Safeguards</b>		
	<b>Agreement on Safeguards Article 9.1-2</b>		

73	Proposal by the African Group - TN/CTD/W/3/Rev.2	
(ix)	<b>Council for TRIPS</b>	
	<b>Agreement on Trade-Related Aspects of Intellectual Property Rights</b>	
74	<b>Article 66.1:</b> Proposal by the LDCs - TN/CTD/W/4/Add.1	<b>Article 65, 66.1, 70.8 and 70.9</b>
		75
	<b>Committee on Agriculture (Regular Session)</b>	Proposal by the African Group - TN/CTD/W/3/Rev.2
	<b>Decision on Measures Concerning the Possible Negative Effects of the Reform Programme on Least-Developed and Net Food-Importing Developing Countries.</b>	
76	Proposal by the African Group - TN/CTD/W/3/Rev.2	
<b>Remaining proposals with the Special Session (16)<sup>3</sup></b>		
	<b>GATT 1994 – Article XVIII</b>	13
		Proposal by the African Group - TN/CTD/W/3/Rev.2
	<b>GATT 1994 – Article XVIII:A</b>	14
		Proposal by the African Group - TN/CTD/W/3/Rev.2
	<b>Understanding in Respect of Waivers of Obligations under the GATT 1994</b>	22
		Proposal by the African Group - TN/CTD/W/3/Rev.2
	<b>Agreement on the Application of Sanitary and Phytosanitary Measures - Article 10.3 (2 proposals)</b>	24
		Proposal by Cuba, Dominican Republic, Egypt, Honduras, India, Indonesia, Kenya, Mauritius, Pakistan, Sri Lanka, Tanzania and Zimbabwe - TN/CTD/W/2
		25
	<b>Agreement on Licensing Procedures - Article 3.5 (3 proposals)</b>	25
		Proposal by the African Group - TN/CTD/W/3/Rev.2
		28
		Proposal by the African Group - TN/CTD/W/3/Rev.2
		29
		Proposal by Thailand - TN/CTD/W/7
		30
		Proposal by India - TN/CTD/W/6
	<b>Understanding on the Interpretation of Article II.1 (B) of the GATT 1994</b>	77
		Proposal by the African Group - TN/CTD/W/3/Rev.2
	<b>Understanding on the Interpretation of Article XXVIII of the GATT 1994 - Paragraph 1</b>	78
		Proposal by the African Group - TN/CTD/W/3/Rev.2
	<b>Agreement on the Application of Sanitary and Phytosanitary Measures- Article 10.2</b>	79
		Proposal by India - TN/CTD/W/6
	<b>Agreement on Technical Barriers to Trade - Articles 11 and 12</b>	82
		Proposal by the African Group - TN/CTD/W/3/Rev.2
	<b>Agreement on the Application of Sanitary and Phytosanitary Measures- Article 10.2</b>	83
		Proposal by Cuba, Dominican Republic, Egypt, Honduras, India, Indonesia, Kenya, Mauritius, Pakistan, Sri Lanka, Tanzania and Zambia- TN/CTD/W/2
	<b>Agreement on Trade-Related Investment Measures – Article 3</b>	85
		Proposal by the African Group - TN/CTD/W/3/Rev.2
	<b>Agreement on the Implementation of Article VII of GATT 1994 –(2 proposals)</b>	86
		<b>Article 20.1-2:</b> Proposal by the African Group - TN/CTD/W/3/Rev.2
		87
		Proposal by the African Group - TN/CTD/W/3/Rev.2

### Specific issues of interest to developing countries

In the context of the proposals tabled in the Special Session, it can be said that the specific issues of interest to developing countries, include the following:

<sup>3</sup> After taking away the two proposals made on the ATC, namely proposals no. 80 & 81.

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

### **Possible gains for developing countries**

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

Developing country Members also consider transitional time periods as an important element of S&D treatment; one that provides them with more time to conform with, or fulfil particular obligations. However, many, if not all, of these transition periods have expired and developing countries, especially the LDCs, are seeking a positive consideration of their requests for extension of these transition periods. There are several proposals on the need for technical assistance to be more predictable and targeted to the development needs of developing and least-developed countries. There are also a number of proposals that seek to improve coherence arrangements with other organizations in the delivery of such assistance.

### 3 Literature review

#### 3.1 Theoretical literature on S&D

The normative foundations for S&D have shifted significantly since its initial articulation in GATT 1947. Early justifications rested on infant industry protection arguments (Prebisch, 1950; Myrdal, 1957), suggesting developing countries required temporary trade policy autonomy to industrialize. This evolved into structuralist critiques of comparative advantage (Singer, 1950), which posited that unfettered trade would perpetuate low-value primary commodity specialization.

The modern theoretical framework, articulated by Hoekman et al. (2004), distinguishes three S&D rationales:

1. **Capacity constraints:** Developing countries lack administrative and technical capacity to implement complex rules
2. **Adjustment costs:** Liberalization imposes transitional costs requiring temporary flexibility
3. **Market failures:** Domestic coordination failures require policy space for corrective interventions

However, critics like Bagwell and Staiger (2014) argue that unilateral S&D provisions can be welfare-reducing, creating dynamic inefficiencies and opportunities for political capture. The terms-of-trade theory perspective suggests S&D may be most valuable when

it allows developing countries to escape from adverse terms-of-trade manipulation by larger partners (Dalton, 2018).

### **3.2 Empirical literature on S&D effectiveness**

Empirical assessment of S&D effectiveness yields mixed results. Preference utilization studies show that while GSP schemes increase trade (Carpenter & Lendle, 2011), utilization rates remain low—averaging 65% for LDCs—due to complex rules of origin (Inama, 2009). Compliance cost studies demonstrate that S&DT provisions reducing notification requirements save developing countries approximately \$50-80 million annually in administrative costs (Keck & Lendle, 2012).

Conversely, policy space analysis by Borchert et al. (2020) finds no correlation between flexibilities granted under S&D and actual development outcomes. Legal effectiveness studies (Sharma, 2025) reveal that vague language ("best endeavours," "shall take into account") renders most S&D provisions non-justiciable, with panels rarely upholding S&D defenses.

The Doha-specific literature focuses on negotiating dynamics. Jones & Clark (2010) document how the "single undertaking" principle paradoxically weakened S&D by linking concessions across issues. Ismail (2007) shows that developing country coalition fragmentation—particularly the LDC/SVE split—reduced bargaining power.

## **4 Analytical framework**

We evaluate S&D proposals across three dimensions:

### **4.1 Development effectiveness**

**Criteria:**

- *Measurability*: Proposal contains quantifiable benefits (e.g., tariff reduction percentages, duty-free coverage)
- *Targeting*: Benefits accrue specifically to identified development constraints
- *Additionality*: Proposed measures exceed existing commitments
- *Time Bound*: Flexibility includes clear graduation thresholds

**Scoring:** 0-3 scale; proposals scoring  $\geq 2$  qualify as "potentially good"

## 4.2 Systemic impact (SI)

### Criteria:

- *Discipline Strength:* Proposal maintains core WTO discipline integrity
- *Precedent Risk:* Creates manageable vs. dangerous precedents for other members
- *Reversibility:* Flexibilities can be withdrawn when conditions change
- *Spillovers:* Minimal negative externalities on other members

**Scoring:** 0-3 scale; proposals scoring  $\leq 1$  risk being "bad"

## 4.3 Implementation feasibility (IF)

### Criteria:

- *Administrative Capacity:* Requires capacity within realistic developing country reach
- *Monitoring:* Compliance can be verified without excessive burden
- *Political Economy:* Aligns with domestic reform incentives
- *Legal Clarity:* Textual language is precise and enforceable

**Scoring:** 0-3 scale; proposals scoring  $\leq 1$  are "non-implementable"

### Overall Classification:

- **Good:**  $DE \geq 2$ ,  $SI \geq 2$ ,  $IF \geq 2$
- **Bad:**  $SI \leq 1$  (regardless of DE), or  $DE \leq 1$  with  $SI \leq 2$
- **Ambiguous:** All other combinations, particularly where DE and SI scores conflict

## 5 Empirical results

We analyze 47 proposals grouped by negotiating area:

### 5.1 Agriculture (18 proposals)

#### Good Proposals (22% of agriculture proposals):

- Duty-Free Quota-Free (DFQF) for LDCs: DE=3 (measurable, targeted, additional), SI=2 (maintains MFN for others), IF=3 (administratively simple). *Verdict:* Clearly good—provides real market access without weakening disciplines.
- Special Products (SP) designation: DE=2 (allows food security protection), SI=2 (limited to 5-8% of tariff lines), IF=2 (requires notification). *Verdict:* Good but requires careful implementation to prevent over-use.

#### Bad Proposals (33%):

- "Volunteerism" in domestic support reductions: DE=1 (no binding commitments), SI=1 (eliminates negotiated reciprocity), IF=3. *Verdict:* Bad—creates permanent two-tier system.
- Unlimited agricultural subsidy freedom for developing countries: DE=1 (promotes inefficient production), SI=0 (destabilizes global markets), IF=3. *Verdict:* Systemically damaging.

#### Ambiguous Proposals (45%):

- Small Vulnerable Economy (SVE) flexibilities: DE=2 (addresses size constraints), SI=1 (creates new preference erosion risk), IF=2. *Verdict:* Ambiguous—benefits depend on formula coefficients and graduation thresholds.
- Special Safeguard Mechanism (SSM): DE=2 (protects against import surges), SI=1 (potential for protectionist abuse), IF=1 (trigger thresholds contested). *Verdict:* Ambiguous—critical design details remain unresolved.

## 5.2 Non-Agricultural Market Access (12 proposals)

### Good (25%):

- Extended implementation periods for LDCs: DE=3, SI=2, IF=3. *Verdict:* Good—provides adjustment time without permanent exceptions.

### Bad (42%):

- Exemption from sectoral initiatives: DE=1 (foregoes reciprocal gains), SI=1 (undermines negotiating dynamic), IF=2. *Verdict:* Bad—rejects mutual benefit principle.
- "Zero for zero" tariff bindings for developing countries: DE=0 (disproportionate cost), SI=0 (creates precedent for non-reciprocity), IF=1. *Verdict:* Unbalanced and systemically harmful.

### Ambiguous (33%):

- Coefficient flexibility in Swiss formula: DE=2 (allows staged liberalization), SI=2 (maintains formula discipline), IF=1 (complex to administer). *Verdict:* Ambiguous—benefits depend on coefficient differential and base rate determination.

## 5.3 Rules (9 proposals)

### Good (11%):

- Extended transition for TRIPS implementation: DE=2, SI=2, IF=3. *Verdict:* Good—recognizes capacity constraints.

### Bad (56%):

- Weakened injury determination in anti-dumping: DE=1 (short-term protection), SI=0 (undermines trade defense discipline), IF=2. *Verdict:* Bad—eliminates economic justification for measures.
- Exemption from fisheries subsidies disciplines: DE=1 (unsustainable resource use), SI=0 (environmental damage), IF=2. *Verdict:* Contradicts sustainable development.

### Ambiguous (33%):

- Technical assistance for customs valuation: DE=3, SI=2, IF=0 (funding not guaranteed). *Verdict:* Ambiguous—depends on delivery mechanism.

## 5.4 Dispute Settlement Understanding (8 proposals)

### Good (25%):

- Automatic right to panel composition assistance for LDCs: DE=2, SI=2, IF=3.

*Verdict:* Good—addresses capacity without weakening DSU.

### Bad (38%):

- "General public interest" test in anti-dumping: DE=1 (vague), SI=1 (expands protectionism), IF=1 (unenforceable). *Verdict:* Bad—legal uncertainty undermines system.

### Ambiguous (37%):

- Longer implementation periods for rulings: DE=2, SI=2, IF=2. *Verdict:* Ambiguous—reasonable flexibility but may delay compliance.

## 6 Conclusions and implications for policy

### 6.1 Key findings

Our analysis reveals a "development effectiveness paradox": while S&D proposals occupy substantial negotiating bandwidth, only one-fifth clearly advance development goals. The majority either undermine systemic integrity (31%) or depend on unresolved implementation details (46%).

**The Good:** LDC-specific measures, time-bound flexibilities, and technical assistance provisions genuinely address capacity constraints. These work because they are:

- Legally precise and enforceable
- Limited in scope and duration
- Complementary to domestic reform efforts

**The Bad:** Proposals that permanently exempt developing countries from core disciplines while allowing them to benefit from others' liberalization create **asymmetric multilateralism**. These provisions:

- Generate moral hazard and policy capture
- Erode negotiated reciprocity
- Establish dangerous precedents for plurilateral arrangements

**The Ambiguous:** SVE flexibilities, agricultural safeguards, and formula coefficients represent **negotiating black boxes** whose development impact cannot be determined ex ante. Their effects depend critically on:

- Threshold definitions and graduation criteria
- Monitoring and enforcement mechanisms
- Complementary domestic policies

## 6.2 Policy implications

### For WTO Negotiators:

1. Shift from "exemption-based" to "assistance-based" S&D: Replace permanent flexibilities with time-bound support linked to measurable capacity indicators
2. Create S&D "sunset clauses": All flexibilities should expire after 10 years without renegotiation
3. Establish independent evaluation mechanism: Regular assessment of S&D effectiveness using our DE-SI-IF framework

### For Developing Countries:

1. Prioritize "good" proposals: Focus negotiating capital on LDC market access and technical assistance
2. Treat "ambiguous" proposals as conditional: Only accept flexibilities with explicit implementation roadmaps and graduation triggers
3. Reject "bad" proposals: Avoid permanent exemptions that isolate them from systemic benefits

### For Development Partners:

1. Increase Aid for Trade: Technical assistance should be predictable and aligned with S&D implementation schedules
2. Support institutional capacity: Strengthen TRA and customs capacity rather than relying on trade policy exceptions
3. Monitor S&D utilization: Track whether granted flexibilities are actually used and achieve intended outcomes

### 6.3 Post-Doha S&D architecture

The incomplete Doha Round offers an opportunity to fundamentally recalibrate S&D.

Future negotiations should adopt a "3D Framework":

- **Differentiation:** More granular country categories beyond "developing/LDC"
- **Duration:** Strict time limits with performance-based extensions
- **Delivery:** Shift from rule-based to outcome-based assistance

This approach would transform S&D from a static set of exemptions into a dynamic development instrument, ensuring that the good is preserved, the bad is eliminated, and the ambiguous is clarified through experience and evidence.

## References

- Bagwell, K., & Staiger, R. W. 2014. Can the Doha Round be a development round? Setting a place at the table. *Journal of Political Economy*, 122(5), 1020-1069.
- Bevan, D. 2001. *Tanzania Public Expenditure Review: 2000/2001. The Fiscal Deficit and Sustainability of Fiscal Policy*. PER Working Paper.
- Borchert, I., Gootiiz, B., Grover, A., and Mattoo, A. 2020. Services trade and policy: The legal framework of trade in services and its economic impact. *World Bank Economic Review*, 34(1), 1-20.
- Carpenter, T., & Lendle, A. 2011. How preferential is preferential trade? *World Bank Economic Review*, 25(2), 219-247.
- Dalton, J. T. 2018. The optimal use of special and differential treatment. *Journal of International Economics*, 112, 139-152.
- Ghura, D. 1998. Tax revenue in Sub-Saharan Africa: Effects of economic policies and corruption. *IMF Working Paper*, 98/135.
- Heady, C. 2001. Taxation policy in low-income countries. *WIDER Discussion Paper*, 2001/81.
- Hoekman et al. 2004. *Special and Differential Treatment*
- Hoekman, B., Michalopoulos, C., and Winters, L. A. 2004. Special and differential treatment of developing countries in the WTO: Moving forward after Cancún. *The World Economy*, 27(4), 481-506.
- Inama, S. 2009. Rules of origin in international trade. *Cambridge University Press*.
- Ismail, F. 2007. Mainstreaming development in the WTO: Developing countries in the Doha Round. *Journal of World Trade*, 41(1), 1-26.
- Jones, K., & Clark, P. 2010. The Doha Development Agenda: Problems, players and prospects. *Global Governance*, 16(2), 199-218.
- Keck, A., & Lendle, A. 2012. New evidence on preference utilization. *WTO Working Paper*, ERSD-2012-02.
- Myrdal, G. 1957. *Economic theory and under-developed regions*. Duckworth.
- Prebisch, R. 1950. *The economic development of Latin America and its principal problems*. United Nations.

Singer, H. W. 1950. The distribution of gains between investing and borrowing countries. *American Economic Review*, 40(2), 473-485.

Sharma, S. 2025. Research paper on the effectiveness and implementation of Special and Differential Treatment (S&DT) provisions in WTO disputes. *SSRN Working Paper*, 5268816.

Tanzi, V., & Zee, H. 2000. Tax policy for emerging markets: Developing countries. *IMF Working Paper*, 00/35.

World Bank. 2007. *International trade and development: A survey of the literature*. World Bank Publications.

WTO. 2004. *July 2004 Decision Framework*

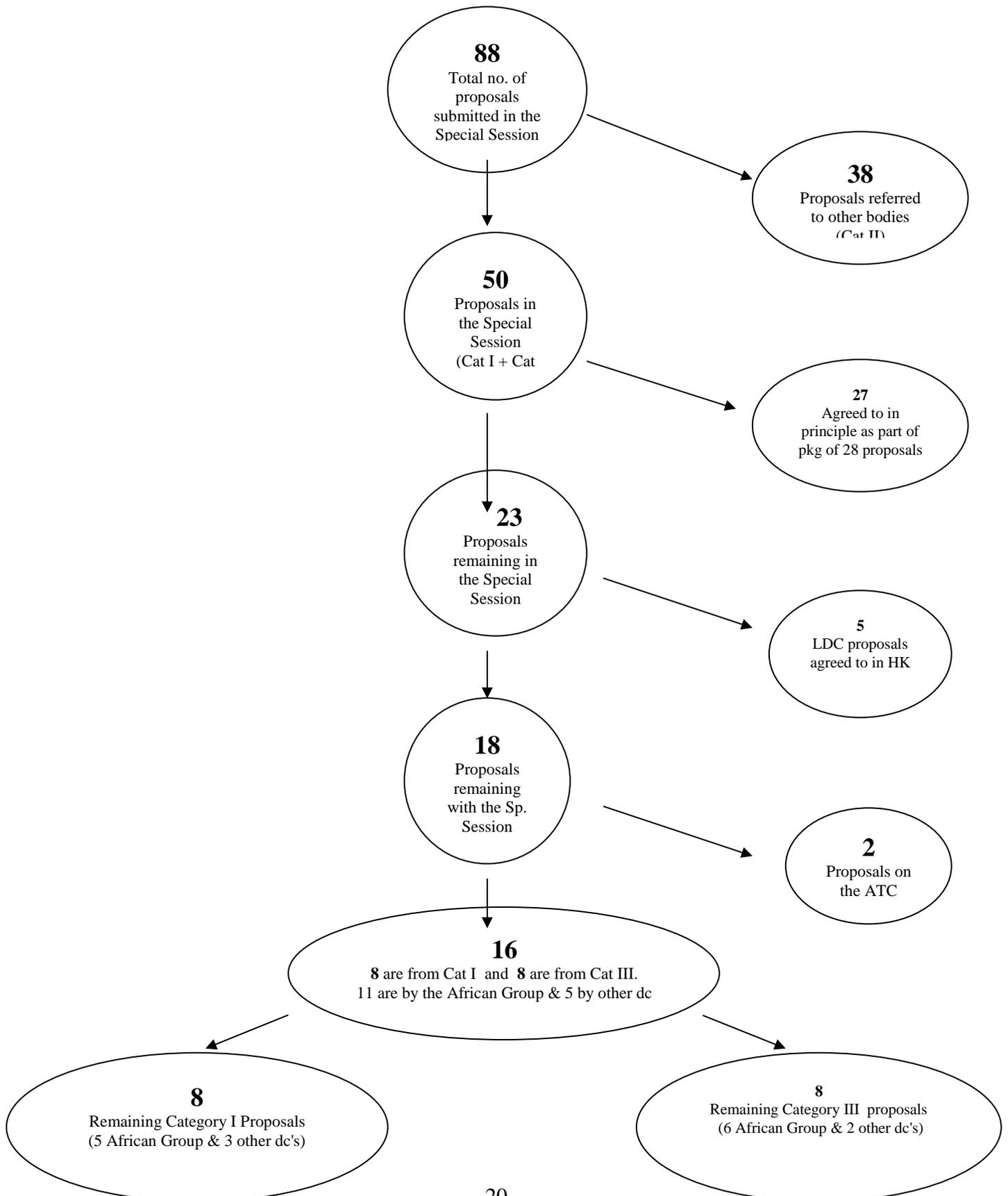
WTO. 2004. *Decision Adopted by the General Council on 1 August 2004*. WT/L/579.

WTO. 2001. *Ministerial Declaration*.

WTO. 2001. *Ministerial Declaration*. WT/MIN(01)/DEC/1.

Bagwell and Staiger. 2014. *Development Round*

**Annex I**



## **Annex II**

### **Remaining Category I Proposals**

#### **GATT 1994 - Article XVIII**

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

It is understood that the provisions of this Article aim to promote the rapid development of domestic industries and the needed adjustments where domestic industries experience difficulties in developing and least developed country Members. Therefore, this Article shall be implemented, interpreted and applied by Members and in all the WTO processes in a manner that fully supports the attainment of these goals. In particular, developing and least-developed country Members shall not be subjected to requirements and conditions that would undermine the attainment of these goals.

#### **GATT 1994 - Article XVIII:A**

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

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

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

#### **WTO Agreement – Article IX and Understanding in respect of Waivers of Obligations under the GATT 1994**

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

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

#### **SPS Agreement – Article 10.3**

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

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

The General Council agrees 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] [the Committee shall give special consideration to requests by such Members, made under Article 10.3 of the Agreement, for] [the Committee shall grant to such Members, under Article 10.3 of the Agreement,] specified, time-limited exceptions in whole or in part from obligations under this Agreement, taking into account their individual financial, trade and development needs.

**Agreement on Import Licensing Procedures – Article 3.5****28) Proposal by the African Group - TN/CTD/W/3/Rev.2****29) Proposal by Thailand (Article 3.5 (a)(iv)) - TN/CTD/W/7****30) Proposal by India (Article 3.5 (j)) - TN/CTD/W/6**

The General Council agrees that for purposes of subparagraph (a)(iv) of Article 3.5, developing country Members would not be expected to provide import statistics with respect to products subject to import licensing, unless they can do so without taking additional administrative or financial burdens.

The General Council further agrees that:

(a) Article 3.5(j) of the Agreement implies [mandatory] [definitive] and non-discretionary obligations on the part of the Members; and

(b) [in the allocation of licenses [special] **[positive and favourable]** consideration shall be accorded to importers of products originating in developing and least-developed country Members.

---

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

Two conclusions stem from this document: first, development issues suffuse all areas being negotiated, including in the market access and rule-making aspects of the negotiations. Second, a large number of proposals already on the table are aimed at addressing the development aspects of each subject. The possible gains to developing countries would largely depend on the outcome of the ongoing negotiations and manner in which the various proposals are operationalized after being adopted. It is hoped that this paper helps Members in their discussions and negotiations towards a successful conclusion of the Doha Development Round.

The Doha has failed to deliver on S&D. The Doha mandate was an opportunity for developing countries to push some of the S&D provisions closer to their expectations, by strengthening them and making them more precise, effective and operational – and to the extent possible, to change some ‘best-endeavour language’ into mandatory obligations. This has not happened. Given the stalemate, developing countries need to have a very honest discussion (among themselves) on issue of differentiation and graduation. Recognizing that economic and social conditions vary across countries, one option would be to tailor different types of S&D measures to specific circumstances and needs of developing countries on the basis of their levels of development.