



SPECIAL & DIFFERENTIAL TREATMENT IN THE WTO

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Presentation outline



- The GATT/WTO Framework
 - ▣ Development provisions in the GATT/WTO: *a chronology*
 - ▣ Special and Differential Treatment (S&D)
 - ▣ S&D in the Doha “Development” Agenda
- How do S&D provisions matter?
 - ▣ Issues for Reflection?



Development provisions in the WTO

The WTO Framework

- Development: what are we really talking about?
 - “Sustainable development” as an objective of the WTO...
 - Ref: Para 1, preamble of the Marrakesh Agreement:
 - Need to conduct trade with a view to **“raising standards of living, ensuring full employment and a large and steadily growing volume of real income and effective demand,** and expanding the production of and trade in goods and services, while allowing for the optimal use of the world’s resources in accordance with the objective of **sustainable development,** seeking both to protect and preserve the environment and to enhance the means for doing so in a manner consistent with their respective needs and concerns at different levels of **economic development,**
 - Ref: Para 2, preamble-Marrakesh Agreement:
 - Recognizing further that there is 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...**

Some points to ponder...

- But what is the core business of the WTO? Is it a development organization/agency?
 - Administering Trade Agreements / Oversight on implementation;
 - Review of trade policies,
 - Trade negotiations;
 - Resolution of Disputes;
 - TRTA provision.
- Categorization of Members: DCs, self-selection;
 - Over 70% DCs: But practical realities arising from heterogeneity.
- Do Members agree on an approach to development?
 - Integration into the MTS v/s Policy space from the MTS (“in” or “out”)?
 - Trade a “means” to an “end”?

Tracing development provisions in the WTO: *A chronology...*

- GATT 1947: Non discrimination among and between Contracting Parties.....no differentiation.... Uniform application of rights and obligations.

- Review Session: 1954-55:
 - GATT Article XVIII: Government assistance to economic development. It allows:
 - Granting protection (through tariffs) for the establishment of a particular industry; [IIA]
 - Application of quantitative restrictions for BOP purposes [M-substitution]

*A chronology...*Part IV of GATT: XXXVII

- ▣ 1964: The politics: Decolonization, UNCTAD.
- ▣ So what were the concerns?
 - Need for a system of rules that allowed promotion of manufacturing, industrialization;
 - Rules supportive of national development policy-import substitution;
 - Rules supportive of prices and markets for primary commodities – declining terms of trade.

Part IV: Achievements...

- Reduce and eliminate customs duties and other restrictions which differentiate unreasonably between such products in their primary and processed forms;
- Not introduce or increase the incidence of customs duties or non-tariff import barriers on products currently or potentially of particular export interest to less-developed contracting parties;
- Developed Countries – carve-outs for agriculture, textiles

Part IV: Achievements...?

□ Article XXXVII: Commitments

*"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..."*

- What is the nature of the obligation imposed in the above provision? How can it be made more binding?
- How would you rate the strength of Part IV of GATT?

□ Article XXXVI: 8

*"developed contracting parties do not **expect** reciprocity for commitments made by them in trade negotiations to reduce or remove tariffs and other barriers to trade of less-developed contracting parties."*

- What does this mean? Does this legally stop developed countries from seeking reciprocity? What is the import of expectation in legal terms?

The Enabling clause: November 1979

- Decision on Differential and More Favourable Treatment, Reciprocity and Fuller Participation of Developing Countries.
 - **Differential and More Favourable Treatment** (exception to MFN)
 - **Non-reciprocity**
 - Permanent waiver for developed countries to grant preferential market access to developing countries (GSP)
 - S&D in NTBs
 - RTAs and South-South trade (GSTPs),
 - Special treatment for LDCs as a separate sub category.

(To recap) GATT: S&D treatment (1)

Gradual recognition of special needs of developing/LDCs:

- S&D provisions in GATT (from the 1950s to 70s)
 - ▣ GATT: Article XVIII (Balance of Payments)
 - ▣ GATT: Part IV (“Trade & Development”)
 - “Best Endeavour Commitments”
 - Concept of “Non-Reciprocity” in Trade Negotiations
 - ▣ Enabling Clause (“differential & more favourable treatment”)

WTO Agreements: 6 Types of S&D Treatment

- Measures in WTO agreements for developing/LDCs
 - ▣ (a) Provisions aimed at increasing trade opportunities
 - ▣ (b) Provisions which require WTO Members to safeguard the interests of developing country Members
 - ▣ (c) Provisions allowing flexibility to developing countries in the use of economic and commercial policy instruments
 - ▣ (d) Provisions allowing longer transitional periods to developing countries
 - ▣ (e) Provision of technical assistance to developing country Members
- (f) Additional provisions specifically for the LDCs

<i>Agreement</i>	<i>(i) Provisions to increase trade opportunities of developing country members</i>	<i>(ii) Provisions that safeguard the interests of developing country Members</i>	<i>(iii) Flexibility of commitments, of action, and use of policy instruments</i>	<i>(iv) Transitional time periods</i>	<i>(v) Technical assistance</i>	<i>(vi) Provisions relating to measures to assist least-developed country Members</i>	<i>Total by Agreement</i>
Agriculture	1		9	1		3	14
Decision on NFIDCs		4			1		5
Application of SPS Measures		2		2	1		5
Textiles and Clothing	1	3				2	6
Technical Barriers to Trade		6	1	1	7	1	16
TRIMs			1	2		1	4
Anti Dumping Agreement		1					1
Customs Valuation Agreement		2	2	4	1		8
Decision on Texts Relating to Minimum Values and Imports by Sole Agents, Distributors and Concessionaires		2					2
Imports Licensing Procedures		3		1			4
Subsidies & Countervailing Measures		2	8	6			16
Safeguards		1	1				2
GATS	3	4	4		2	2	15
TRIPS				2	1	3	6
DSU		7	1		1	2	11
GATT 1994 Article XVIII			3				3
GATT 1994 Article XXXVI	4	3	1				8
GATT 1994 Article XXXVII	2	6					8
GATT 1994 Article XXXVIII	2	5					7
Enabling Clause	1		2			1	4
Decision on Measures in Favour of LDCs.						7	7
Waiver Preferential tariff treatment of LDCs.						1	1
Total	14	50	33	19	14	24	155

WTO Agreements: S&D Treatment (a)

- Provisions aimed at increasing trade opportunities
 - Article XXXVII of GATT 1994
 - The Enabling Clause 1979 - “Differential & More Favourable Treatment”
 - Generalized System of Preferences (GSP)
 - Special treatment of LDCs
 - Regional Trade Arrangements
 - Article IV of GATS
 - Negotiation of commitments to help strengthen domestic service capacity
 - Liberalization of market access in sectors and modes of supply of export interest

WTO Agreements: S&D Treatment (b)

- Provisions to safeguard the interests of developing country Members. E.g.
 - Anti-Dumping (GATT Art. VI) Agreement
 - SCM Agreement
 - Agreement on Safeguards
 - TBT Agreement
 - SPS Agreement

WTO Agreements: S&D Treatment (c)

- Provisions allowing flexibility to developing countries in the use of economic and commercial policy instruments. E.g.
 - Article XVIII GATT 1994 (incl. BoP)
 - Article XXXVI of GATT and the Enabling clause
 - Agreement on Agriculture
 - SCM Agreement
 - GATS

WTO Agreements: S&D Treatment (d)

- Provisions allowing longer transitional periods to developing countries. E.g.
 - Agreement on Agriculture
 - Flexibility to implement reduction commitments - 10 yrs.
 - LDCs no commitments
 - TRIPS Agreement
 - Developing countries - delay by 5yrs
 - LDCs - 11 yrs (except National Treatment and MFN)
 - Some transition periods lapsed (but extendable) e.g.
 - TRIMS (5 yrs developing countries, 7 yrs LDCs)
 - Customs Valuation Agreement (5 yrs)

WTO Agreements: S&D Treatment (e)

- Provision of technical assistance to developing country and LDC members E.g.
 - Agreement on SPS
 - Agreement on TBT
 - Agreement on Implementation Article VII (Customs Valuation)
 - Agreement on TRIPS

WTO Agreements: S&D Treatment (f)

- Additional Provisions relating to LDCs. E.g.
 - Enabling Clause
 - 1999 & 2009 Waiver for LDCs' Market Access
 - Agreement on Agriculture
 - TRIPS (Art. 66 and 67)
 - Ministerial Decisions in Favour of LDCs (Marrakesh)
 - Decision on Measures Concerning the Possible Negative Effects of the Reform Program on LDCs and NFIDCs
 - Decision on Measures in Favour of LDCs

Doha Ministerial Declaration

[...] The majority of WTO members are developing countries. We seek to place their needs and interests at the heart of the Work Programme adopted in this Declaration. Recalling the Preamble to the Marrakesh Agreement, we shall continue to make positive efforts designed to ensure that developing countries, and especially the least-developed among them, secure a share in the growth of world trade commensurate with the needs of their economic development. [...] (second paragraph)

DMD: 5 references to growth, 30 references to development

The Doha Work Program

- Para 44: DMD:
 - ▣ Reaffirms that S&DT is an integral part of the WTO;
 - ▣ Notes concerns with implementation of S&D provisions;
 - ▣ Directs that all S&D provisions be reviewed to strengthen them and to make them more **precise, effective and operational**;
 - ▣ Links to the Doha decision on ‘Implementation related Issues and Concerns’

DWP...

- The Decision on 'Implementation related Issues and concerns' mandates Members to:
 - Identify the S&D provisions which should be mandatory;
 - Examine additional ways to make SDT more effective;
 - Consider how SDT could be incorporated into the architecture of WTO rules; and
 - Report to the GC with recommendations (July 2002);

S&D Work Programme

- 88 Agreement specific submitted. Proponents the African Group and the LDCs.
- Developed countries also made submissions and raised a number of systemic issues
- In its report to the General Council, initially in July'02, and then in December'02, the CTD (SS) could only agree on 4 proposals. CTD sought guidance from GC.

S&D Work Programme



- The CTD recommended that the GC provide a clarification on how to give effect to the Doha mandate.
- There was no consensus in the GC to provide this clarification
- The GC only took note of the report and asked its Chairman to undertake consultations on how to take forward the mandated review of all S&D provisions.

S&D Work Programme

- All 88 proposals to be addressed in 3 categories
- Category I 38 proposals on which there was greater possibility of agreement.
- Category II 38 proposals made in areas currently under negotiation— for referral.
- Category III 12 proposals with wide divergence of views.

Progress to date



- “In principle” Agreement on 28 proposals (at the Cancun Ministerial Conference)
- Hong Kong Ministerial – 5 LDC Proposals
- Bali Ministerial: Monitoring Mechanism & LDC package

Monitoring mechanism

- ▣ Regular review: Gives visibility to S&D issue

- ▣ 2 Levels
 - CTD
 - General Council

- ▣ Scope
 - WTO Agreements
 - Proposals
 - MC+GC Decisions

S&D in the DDA

As in draft modalities texts and TF Agreement

- Agriculture:
- NAMA:
- Services:
- Other topics: e.g. Trade facilitation
- ...S&D approach in the above...

Systemic issues for reflection...

- Objectives of S&D
 - ▣ development through - integration / policy space?
- Compliance with obligations
 - ▣ Transition periods or waiver?
- Definition of developing country
 - ▣ Self-denomination or objective criteria?
- Categorization
 - ▣ Same treatment for all or creation of separate categories?
- Graduation
 - ▣ Is S&D permanent or temporary?

Basis for Special & Differential treatment?

□ **Special and Differential Treatment ?**

- **The politics:** the rich..have a political/moral obligation to assist..the poor.
- **The approach:** Integration v/s Policy space (“in” or “out”)?
- **The economics:** depends on the approach...
 - To have “preferential” or “improved” access to the developed markets;
 - Import substitution or Export promotion
 - To have flexibility in rules, or to postpone the application of rules.
- **The legal provisions:** “best endeavour” or “legally binding”?
- **The negotiations:** Use of “development” chips? Are trade negotiators sensitive to development considerations?
- **Lessons:** for Doha (and other future) negotiations.....?

Further reflections:

- What is the future of S&D? Eg: Trade Facilitation negotiations.
- What is the future of developing countries as a grouping?
 - ▣ Differentiation? Economic threshold criteria?
 - ▣ New dynamics: SVEs, RAMs etc.
 - ▣ Change in self selection processes?
- S&D: Differentiation or Non-Discrimination in rules?
 - ▣ multiple tiers?
 - ▣ Approach in Accessions?
- New Approaches: Aid for Trade (A4T); Mainstreaming Trade

Any questions or comments??

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Thank you for your attention!!