

*REGIONAL TRADE POLICY
COURSE FOR THE ASIAN &
PACAFIC COUNTRIES*

SPECIAL AND DIFFERENTIAL
TREATMENT

INDONESIA
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S&D treatment in the UR - 1

- Certain basic underlying conceptual premises related to S&D treatment emerged during the UR, namely that
 - dc's are intrinsically disadvantaged in their participation in international trade;
 - trade policies that maximise sustainable development in dc's may be different than those in developed economies;
 - any multilateral agreement must take account of these weaknesses & differences when specifying rights and obligations

S&D treatment in the UR - 2

- These underlying conceptual premises resulted in the following kinds of S&D provisions in the UR
 - a) provisions aimed at increasing trade opportunities (12)
 - b) provisions which call upon WTO Members to safeguard the interest of dc's (49)
 - c) provisions offering flexibility of commitments (30)
 - d) transitional time periods (18)
 - e) provisions related to technical assistance (14)
 - f) provisions in favour of least developed countries (22)

UNDERSTANDING ON RULES AND PROCEDURES GOVERNING THE SETTLEMENT OF DISPUTES

Article 4.10

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Some concerns with S&D

Many developing countries have accordingly said that most of the S&D provisions are:

- non-binding
- in the form of ‘best endeavour clauses’
- apparently mandatory, yet de-facto non-binding

and only a few provisions are

- mandatory and binding provisions

Some examples which reflect these concerns

I. Provisions employing purely discretionary language

“contracting parties may accord differential and more favourable treatment to developing countries”

(Enabling Clause)

II. Best Endeavour Clauses

“Members agree to facilitate the provisions of technical assistance to other Members, especially developing country Members” (Article 9 of SPS)

Some examples which reflect these concerns

III. De facto non-binding provisions

- Members *shall* take account of the special and needs of developing country members in preparation and application of new SPS measures (Article 10.1 SPS agreement)
- It is recognised 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. (Article 15 of the AD Agreement)

The Doha Declaration

- Ministers at Doha, recognising that problems existed with respect to S&D treatment set out a work programme in para 44 of the declaration, which
 - reaffirmed that SDT is an integral part of the WTO
 - noted that there are concerns about the implementation of S&D provisions
 - directed that all S&D provisions should be reviewed to strengthen them and to make them *more* precise, effective and operational, and
 - and linked this work to the decision on ‘Implementation related Issues and concerns’

The Doha Declaration

- The decision on 'Implementation related Issues and concerns' mandates the CTD
 - to identify the S&D provisions which should be made mandatory and the implications of doing so
 - to examine additional ways to make SDT more effective
 - to report to the GC with recommendations by July 2002
 - to consider how SDT could be incorporated into the architecture of WTO rules.

Phases in the S&D work programme

The S&D work programme can be considered to have been undertaken in the following phases:

- I. Procedural phase Jan'02 – April'02
- II. Submissions phase May'02 – Sep'02
- III. Responses and discussions phase Sept'02 – Dec'02
- IV. Negotiating phase Dec'02 – Feb'03
- V. General Council phase Feb'03 – Sept'03
- VI. The post-Cancun phase?

Procedural and Submissions Phase

- The TNC in its first meeting after Doha mandated the CTD in special Sessions to carry out the work programme on SDT. Some of the procedural issues:
 - negotiating body?
 - symbols of documents?
 - reporting requirement
- A very large number (finally 88) Agreement specific proposals were submitted by dc's, primarily by the African group and the LDC's.

Responses and Discussions phase

- Developed countries took time to provide (oral) responses, saying the number of proposals was too large
- They also raised a number of systemic issues including those related to principles and objectives of SDT, utilisation, graduation, universal vs. differentiated treatment.
- In its report to the General Council, initially in July'02, and then in December'02, the CTD detailed the above status and sought more time to complete the work.

Negotiating phase

- Actual negotiations and drafting of possible language for recommendation to the GC only started in Dec'02
- Members could agree in principle to 4 proposals in December'02 and a further 8 by February'03
- However, most developing countries felt that the agreed language did not make the provisions more precise, effective and operational.
- Lack of progress linked to the differences in the interpretation of the mandate

General Council phase

- 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.

General Council phase

- The Chairman of the General Council put forward an approach based on two fundamental premises:
 - all proposals would be addressed without prejudice to the outcome, and that
 - an informal categorization of the proposals was necessary to make the work more efficient.
- Members also agreed to referrals and to consider possible changes in the existing language
- Accordingly, all the 88 Agreement-specific proposals were divided into three categories.

General Council phase

- Category I included the 38 proposals on which it seemed that agreement may be possible.
- Category II had 38 proposals made in areas currently under negotiation– for referral.
- Category III included 12 proposals on which there appeared to be a wide divergence of views.
- After protracted negotiations members agreed to make 24 recommendations w.r.t. 25 proposals. A further 3 were added on at Cancun.

Post-Cancun Phase

- Work on S&D started only in January 2004 after the new slate of Chairpersons had been decided
- The main point of divergence has been whether or not the 28 Agreement-specific proposals should be adopted
- Some dc's feel that the proposed recommendations are not meaningful.
- On the other hand these 28 proposals do represent nearly 2 years of work and the best possible language on which convergence wasa forthcoming.

Issues for future consideration

- Need to address systemic issues, namely
 - Principles and Objectives of S&D;
 - Transition periods or derogations;
 - Definition of a developing country;
 - Differentiation among groups of dc's;
 - Graduation from S&D;

Issues for future consideration

■ Principles and Objectives of S&DT

- Is the objective of S&DT is to give dc's time to develop their administrative capacity to implement the WTO Agreements;
- or, should it be to ensure that dc's are able to implement trade policies that are appropriate to their developmental goals? (issue of policy space)
- or, should it be to ensure that otherwise uniform multilateral rules can result in maximum gain to countries at different levels of development

Issues for future consideration

- Differentiation amongst dc's
 - For SDT to be meaningful, it must be targeted. However, targeted SDT can only be possible if there is an objective definition of developing countries.
 - What would be the benefits of a differentiated approach as compared to the existing universal approach to S&DT?
 - Should differentiation be horizontal on the basis of economic indices or should it be Agreement wise?

Issues for future consideration

■ Graduation

- Should developing countries graduate out of SDT? If so what should be the approach to graduation (experience of LDCs; disincentive to develop)
- Should SDT be linked to certain economic indicators which would reflect vulnerability?
- Should the time period and/or level of economic development up to which SDT would be available to different groups of developing countries be specified?

Why is Special & Differential Treatment an important issue for developing countries

- It's a horizontal issue and is central to the DDA
- The work programme allows for a redressal of the existing imbalances in the rights and obligations
- It has important implications for the areas being negotiated – provides an alternative track
- In particular for the Caribbean countries it is extremely important in the context of their ongoing regional initiatives