

Doha Mandates

"We reaffirm that provisions for special and differential treatment are an integral part of the WTO Agreements. We note the concerns expressed regarding their operation in addressing specific constraints faced by developing countries, particularly least-developed countries. In that connection, we also note that some Members have proposed a Framework Agreement on Special and Differential Treatment (WT/GC/W/442). We therefore agree that all special and differential treatment provisions shall be reviewed with a view to strengthening them and making them more precise, effective and operational. In this connection, we endorse the work programme on special and differential treatment set out in the Decision on Implementation-Related Issues and Concerns."

(Paragraph 44 of the Doha Ministerial Declaration)

Special and Differential Treatment

"Development issues" are discussed in a broad range of WTO fora, spanning the negotiations on special and differential treatment within the Committee on Trade and Development Special (negotiating) Session (CTD-SS) and the discussions on implementation provisions in many other WTO Committees. Nonetheless, in all these fora little progress has been seen, either at the Cancun Ministerial or since.

In the wake of the Cancun conference, many of the so-called "development issues" — including special and differential treatment, implementation-related issues and concerns, technical assistance and capacity building and the unique challenges faced by least developed countries (LDCs) and small economies — have been put on the back burner. The lack of movement on these issues, which are crucial to many developing countries, calls into question the description of the current round of negotiations as a 'development round', and makes the coming year of negotiations in this issue area all the more important.

Special and Differential Treatment

There has been little concrete agreement on how to move forward with the review of special and differential treatment (S&D) since the Cancun Ministerial in September 2003. At that meeting, Members included a set of 28 agreement-specific S&D proposals in Appendix C of the Draft Ministerial text that was eventually not adopted due to the Ministerial Conference's failure to agree on a number of other issues. After being put on hold for several months, the S&D negotiations restarted in April 2004 in the Committee on Trade and Development Special Session. However, many of the same questions resurfaced regarding the relative priority of the agreement-specific proposals submitted by developing countries vis-a-vis controversial cross-cutting issues such as the

principles and objectives of S&D and eligibility to receive it. Disagreement about the real value of the 28 agreement-specific proposals, as well as on how to relaunch the negotiating process, led to a small section on the issue in the July package that merely "reaffirmed" the importance of S&D and "instructed" the CTD-SS to "expeditiously complete" the review by July 2005.

Background

The relationship between trade and development is at the heart of the WTO negotiations on S&D. The concept of more favourable treatment for developing countries in the multilateral trading system stretches back to the earliest years of the GATT, but the form that such treatment has taken within trade rules has changed over time. The WTO Agreements are replete with references to S&D; the approximately 155 S&D provisions contained in the WTO agreements represent much of the "development" dimension of the multilateral trading system in that they attempt to provide more favourable treatment for developing countries.

However, unlike S&D provisions before the Uruguay Round that were limited in scope and thereby allowed developing countries to pursue their development goals without particular concern for multilateral rules, the WTO Agreements cover a much wider variety of fields, many of which reach beyond borders to regulate fairly central aspects of state economic policy. Although S&D provisions in the WTO aim to preserve flexibilities and space for developing countries to pursue their development goals, they are largely limited to time-limited derogations from the rules, lower tariff and subsidy reduction commitments, more generous thresholds in the application of market defence measures (e.g. countervailing and anti-dumping duties) and unenforceable statements in favour of development.

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According to paragraph 12 of the Decision on Implementation-related Issues and Concerns, "The Committee on Trade and Development is instructed:

(i) to identify those special and differential treatment provisions that are already mandatory in nature and those that are non-binding in character, to consider the legal and practical implications for developed and developing Members of converting special and differential treatment measures into mandatory provisions, to identify those that Members consider should be made mandatory, and to report to the General Council with clear recommendations for a decision by July 2002;

(ii) to examine additional ways in which special and differential treatment provisions can be made more effective, to consider ways, including improved information flows, in which developing countries, in particular the least-developed countries, may be assisted to make best use of special and differential treatment provisions, and to report to the General Council with clear recommendations for a decision by July 2002; and

(iii) to consider, in the context of the work programme adopted at the Fourth Session of the Ministerial Conference, how special and differential treatment may be incorporated into the architecture of WTO rules."

This transformation in the nature of S&D reflected a change in the popular understanding of the trade-development relationship. According to the new prevailing orthodoxy, increased trade liberalisation is seen as a necessary element of development policy. According to this school of thought, S&D was at best a way of slowly integrating developing countries into the WTO mainstream and at worst damaging.

Developing countries agreed to this change in Uruguay — along with new commitments in intellectual property, services, and investment related measures — in expectation of benefits from increased market access in agriculture, textiles and clothing, as well as the full implementation of S&D provisions. These benefits have for the most part failed to materialize. Developing countries' frustration with the aspirational statements in favour of development has led them to refocus on the S&D mandate to make the 88 agreement-specific proposals more "precise, effective and operational".

Developed countries, on the other hand, point out that countries themselves determine their classification as 'developing'. This, they say, limits the extent of preferential treatment available to low-income developing countries, given that the same level of S&D must be accorded to all of them. They argue that differentiating among developing countries would make it possible to offer the poorer ones deeper S&D. They have thus sought to focus debate on cross-cutting issues such as the principles and objectives of S&D, the issue of eligibility, benchmarking, the monitoring mechanism and differentiated treatment. The key points of controversy remain developed countries' attempts to differentiate amongst developing countries (despite the fact that developing countries say that they all have the right to S&D) and the failure to deliver effective and strengthened agreement-specific S&D provisions.

Mandated Deadlines

According to the original Doha mandate, the CTD was to report to the General Council "with clear recommendations for a decision" regarding the S&D mandate contained in Paragraph 44 by 31 July 2002. The deadline has been extended three times: to December 2002, February 2003 and most recently to July 2005 by the July Package.

Current State of Play

The Trade Negotiations Committee (TNC) originally assigned the mandate on S&D to the CTD-SS, but following disagreement on how to proceed with

the review, the CTD-SS in February 2003 adopted by consensus a report (TN/CTD/7) requesting the General Council to clarify the mandate "as it considers appropriate." However, the US, EC and Australia prevented the General Council from adopting the report, citing the bad precedent such a clarification would establish. The General Council consequently "took note of the report", and took up the S&D mandate through informal consultations held by incoming General Council Chair Ambassador Perez del Castillo.

After undertaking consultations, Chair Perez del Castillo suggested in April 2003 that an informal categorisation of the 88 agreement-specific proposals was necessary to move ahead. In May 2003, a list dividing the 88 proposals into three categories was circulated (JOB 3404). In Category I were 38 proposals on which agreement was seen to be possible before Cancun, owing either to existing support or their urgency. In Category II were another 38 proposals that were sent to relevant WTO bodies in late May. Category III included the 15 proposals on which delegates had the most difficulty in finding consensus.

24 recommendations based upon 25 agreement-specific proposals were thus sent to the Cancun Ministerial meeting, which subsequently added three new recommendations based upon proposals from the African Group. The full list of 28 agreement-specific recommendations was included in Annex C of the Cancun Draft Ministerial text. However, African countries were so frustrated with what they perceived to be a lack of progress and failure to adequately incorporate their concerns into the S&D language in the draft text that they submitted a letter to Chair Castillo on 20 August expressing their "deep concern". Regardless, the failure of the Ministerial to agree on a final text meant that the 28 recommendations were left un-adopted.

As a result of the post-Cancun focus on agriculture, non-agricultural market access, cotton and the Singapore issues in late 2003 and early 2004, discussions on S&D did not begin again until 1 April 2004. At that time, the first CTD-SS meeting since Cancun was held under Chair Faizel Ismail (South Africa). Focusing largely on process, the meeting and subsequent informal consultations attempted to address the underlying problems represented in the 88 proposals. Members were asked what they wished to do with the proposals on which they have already agreed in principle; how the current discussions on S&D could be made more productive; and what suggestions they had on a way forward. On 5 April, several countries¹ circulated a submission (TN/C/W/16)

calling for “a clear road map with specific benchmarks to fulfil the mandate on the outstanding implementation issues and S&D issues in a time bound manner”. Discussions at this meeting and the subsequent informal consultations have nonetheless returned to the issues of the relative priority between agreement-specific and cross-cutting issues. The lack of substance in the 28 recommendations from the Cancun Draft Ministerial text has also remained a sticking point, with one African delegate saying that they were “no different to the provisions Members were trying to strengthen.”

The July Package instructed the CTD-SS to “expeditiously complete the review” by July 2005. Disinterest by the African Group in the 28 recommendations, among other things, led to their exclusion from the July Package. On a number of different fronts Latin American and East Asian developing countries challenged language that they feared would create a de facto new category of developing country and thus incorporate the controversial differentiation issue. In the end, language tying market access reductions to levels of development in particular sectors was removed. However, the paragraph on “other development issues” qualifies the language on providing special attention to developing countries by saying that it must be compliant with “the fundamental principles of the WTO”, namely the most-favoured nation principle (MFN), which says that any benefit conferred to one Member must be conferred to all.

In its October 2004 meeting, the CTD-SS continued discussions on the process to be taken and the balance between agreement-specific and cross-cutting issues. Switzerland proposed a new clustering of proposals around specific underlying themes such as capacity constraints or technical assistance. As well, the Chair agreed to push the other WTO bodies examining Category II proposals to report back to the CTD, and also spoke hopefully about taking up all 28 recommendations, along with the rest

of the Category I proposals, by the end of 2005.

Looking Forward....

At the heart of debate has been the fact that developing countries do not believe that cross-cutting issues such as the principles and objectives of S&D, eligibility to receive it, and differentiated treatment are part of the Doha mandate. They do not believe that discussion of these issues will help achieve the mandate. Developed countries, on the other hand, see them as essential issues.

A new approach presented by Chair Ismail at the December 2004 meeting of the CTD-SS, may contribute to overcoming this impasse. He suggested that Members look at “horizontal issues or “underlying causes” behind the agreement-specific proposals to try to understand their motivation and intent, instead of debating the language of the recommendations. These issues, such as technical assistance, supply-side constraints, capacity, coherence, flexibility and monitoring expressly exclude the more controversial cross-cutting issues while enabling Members to get at the roots of the developmental challenges that S&D is supposed to address. One Member noted that there had been a significant shift from discussion on ensuring compliance with WTO rules to a focus on how to allow developing countries to use international trade rules flexibly to ensure sustainable development. It is believed that if the Chair’s still-embryonic approach can be used to reach specific recommendations to address the overall problems behind the S&D proposals, concrete achievements in the S&D field might finally be achieved.

Endnotes

- 1 Bangladesh (on behalf of the LDC group), India, Indonesia, Mauritius (on behalf of the African Group) and Trinidad and Tobago (on behalf of the ACP group)

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“The work of the Committee on Trade and Development in this regard shall take fully into consideration previous work undertaken as noted in WT/COMTD/W/77/Rev.1. It will also be without prejudice to work in respect of implementation of WTO Agreements in the General Council and in other Councils and Committees”.

Para. 12.2 “reaffirms that preferences granted to developing countries pursuant to the Decision of the Contracting Parties of 28 November 1979 (‘Enabling Clause’) should be generalised, non-reciprocal and non-discriminatory.”

All CTD-SS proposals can be found at <http://docsonline.wto.org>, using the document symbol TN/CTD/*.
Draft language from the 2003 General Council consultations can be found at http://www.ictsd.org/ministerial/cancun/documents_and_links.htm

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