
General Council

Original: English

SPECIAL AND DIFFERENTIAL TREATMENT PROVISIONS IN THE WTO AGREEMENTS

Report by the Chairman of the Committee on Trade and Development

The following communication, dated 3 October 2001, has been received by the Chairman of the General Council from the Chairman of the Committee on Trade and Development.

In response to a decision of Members at the informal meeting of the General Council on 31 July 2001, the Chairman of the General Council on 2 August 2001 requested the Committee on Trade and Development (CTD) to review all special and differential treatment provisions in the WTO Agreements and report to the General Council by 30 September 2001 on how they could be operationalized and further enhanced. In response to this request, I convened informal consultations on 13 and 28 September 2001. The Committee had before it the Secretariat background document WT/COMTD/W/77/Rev.1 to assist it in its deliberations.

General Remarks on the Consultations

It was clear to all Members that it would not be practicable to review every single special and differential treatment provision within the deadline given by the General Council. Rather, the discussions served to establish a proposal, as annexed to this report, for an approach to operationalizing and further enhancing provisions for special and differential treatment. Although this proposal is not yet fully agreed, a good deal of progress has been made towards a consensus.

In this connection, Members were aware that a number of specific issues are under discussion in the review of implementation of WTO Agreements and in other WTO bodies. This is reflected in the draft proposal.

Some Members emphasized the need to distinguish between ways in which existing special and differential treatment provisions may be addressed, and how special and differential provisions should be incorporated into the architecture of WTO rules in future.

Substantive Points

All Members recognize that special and differential treatment is an integral part of the rules-based international trading system, comprising positive efforts 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. At the same time, Members recognize that these provisions are not operating satisfactorily and should be made more effective. In working towards operationalizing provisions for special and differential treatment, and further enhancing their effectiveness, Members seek to increase developing countries' trade opportunities, to strengthen their capacity to implement trade reform and multilateral rules, to mainstream trade into development

policies, and to address specific constraints, including of a structural nature, faced by developing Members in reaping benefits from both international trade and the multilateral trading system.

Special and differential treatment provisions in the WTO have been classified in the following manner:

- (i) provisions aimed at increasing the trade opportunities of developing country Members;
- (ii) provisions under which WTO Members should safeguard the interests of developing country Members;
- (iii) flexibility of commitments, of action, and use of policy instruments;
- (iv) transitional periods;
- (v) technical assistance; and
- (vi) provisions relating to least-developed country Members.

It was recognized that these different categories of provisions are designed to operate in different ways, and that this must be taken into account when considering how to meet the mandate handed to the CTD by the General Council, since no universal formula would be equally applicable to all types of special and differential provisions. It was also recalled that a number of Members have proposed that agreement should be reached at the Fourth Ministerial Conference to negotiate a framework agreement on special and differential treatment (document WT/GC/W/442).

It was noted that some special and differential treatment provisions are already framed in mandatory terms, whilst others are non-binding in character. The question was raised of how mandatory, but non-operational measures could be made effective. Some Members proposed that all S&D provisions be converted into mandatory requirements. Other Members, however, emphasised that this would not necessarily lead to their operationalization or enhanced effectiveness and underscored the need for a case-by case approach.

In relation to transition periods, a key concern was that these should be responsive to the underlying challenges and costs of implementation faced by Members according to such factors as differences in levels of development, size, or availability of resources. Many members were of the view that in any future agreements, consideration should be given to differential phase-in periods, and accompanying capacity building efforts, in tandem with rule making.

Regarding provisions relating to flexibility of commitments, of action, and of use of policy instruments, a number of Members emphasised that rules needed to incorporate sufficient degrees of flexibility to enable Members to pursue wider development strategies and objectives, and to make allowance for the fact that many developing countries faced structural challenges. Some Members said that flexibility in rules was of particular interest to those Members with limited administrative and institutional capacity, and a dependence on trade preferences for access to markets.

All Members recognized that technical assistance was a core function of the WTO. Technical assistance and trade-related capacity-building more generally were required to enable developing countries to derive benefits from the multilateral trading system. The view was expressed that technical assistance efforts could be used in conjunction with other aspects of special and differential treatment, to increase developing country participation both in the WTO and in world trade.

Members recognized that the problems of least-developed countries in implementing the WTO agreements were particularly acute and stressed the importance of concrete actions in respect of market access and capacity building in respect of LDCs. The view was also expressed that flexibility in rules and strengthening of provisions relating to positive actions were particularly necessary for least-developed countries.

ANNEX I

Proposal for the Consideration of the General Council

Members agree to review the effectiveness of all special and differential treatment (S&D) provisions in favour of developing countries with a view to ensuring that individual S&D provisions can be strengthened and made more precise, effective and operational.

The General Council [proposes that the Fourth Ministerial Conference] instruct[s] the CTD:

- (i) to identify those S&D 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 S&D measures into mandatory provisions, to identify those that Members consider should be made mandatory, and to report to the General Council [by July 2002 with clear recommendations for a decision] [with clear recommendations with a view to enabling the General Council to take a decision by July 2002]
- (ii) to examine additional ways in which S&D provisions can be made more effective, to consider ways, including improved information flows, in which developing countries may be assisted to make best use of S&D provisions, to consider links to capacity building required by developing countries [according to their individual needs] [in relation to economies of different size and at different stages of development][required by developing countries, especially the LDCs], and to report to the General Council [by July 2002 with clear recommendations for a decision] [with clear recommendations with a view to enabling the General Council to take a decision by July 2002];
- (iii) to consider [, in the context of new negotiations,] how S&D treatment may be incorporated into the architecture of WTO rules. In this connection, the General Council notes that some Members have proposed a Framework Agreement on Special and Differential Treatment (WT/GC/W/442).

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 ongoing work in respect of implementation of WTO Agreements in the General Council and in other Councils and Committees.
