

Committee on Trade and Development  
Special Session

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## SUBMISSION FOR THE COMMITTEE ON TRADE AND DEVELOPMENT - SPECIAL SESSION ON SPECIAL AND DIFFERENTIAL TREATMENT

### Communication from the European Communities

The following communication, dated 26 July 2002, has been received from the European Communities

#### I. THE DOHA MANDATE

1. The EC welcomes the review of WTO special and differential (S&D) treatment as mandated by paragraph 44<sup>1</sup> of the Doha Ministerial Declaration and paragraph 12<sup>2</sup> of the Decision on Implementation-Related Issues and Concerns.

2. The Doha Decision on Implementation-Related Issues and Concerns outlines three pillars of work towards the objective of strengthening S&D treatment provisions and making them more

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<sup>1</sup> 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.

<sup>2</sup> Cross-cutting Issues:

12.1 The Committee on Trade and Development (CTD) 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, special and differential treatment may be incorporated into the architecture of WTO rules.*

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.

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.

precise, effective and operational: (i) identify those S&D treatment provisions that are already mandatory in nature and those that are non-binding in character and identify those provisions that Members consider should be made mandatory"; (ii) consider ways in which S&D treatment provisions can be made more effective, including especially ways in which developing countries, in particular the least-developed countries, may be assisted to make use of S&D treatment provisions; (iii) consider how S&D treatment may be incorporated into the architecture of WTO rules.

## **II. THE THREE PILLARS OF THE WORK PROGRAMME**

### **A. MANDATORY/NON-MANDATORY S&D TREATMENT**

3. The identification of provisions that Members consider should be made mandatory must be seen against the objective of strengthening S&D treatment provisions and making them more precise, effective and operational; as such it is a means to reach this objective and not an end in itself. In some cases, making provisions mandatory will not be instrumental in meeting the overall objective. Similarly, the EC wishes to recall that there are other ways to reach that same objective and suggests that Members broaden their attention to include the instruments that prove most appropriate in relation to the overall objective. This is not meant to exclude the option of making any given S&D treatment provisions mandatory, as mandated by paragraph 44 of the Doha Ministerial Declaration and paragraph 12 of the Doha Ministerial Decision on Implementation-Related Issues and Concerns, but to avoid confusing the means with the end.

### **B. ASSISTING DEVELOPING COUNTRIES IN MAKING BEST USE OF S&D TREATMENT PROVISIONS AND S&D TREATMENT IN THE ARCHITECTURE OF WTO RULES**

4. The EC recalls the mandate to look at all ways to assist developing countries in making best use of S&D treatment provisions, including by information flows and technical assistance. The inter-relation between different S&D treatment instruments and provisions is relevant to this. In particular, making better use of S&D treatment requires better synergy and co-ordination between different S&D treatment instruments, e.g. how to make better use of transition periods to prepare implementation by providing targeted technical assistance and capacity building to countries that need such assistance. Transition periods may in this situation be seen as a function of the rules in question, the level of development of the implementing country and the capacity building efforts made and provided.

5. The EC therefore suggests that, in pursuing its work on cross-cutting issues, the CTD Special Session address as a priority the issue of how to ensure synergy and co-ordination of S&D treatment provisions as a central instrument in making S&D treatment provisions more effective and in assisting developing countries in making use of S&D treatment provisions. This should look at both existing and new S&D treatment provisions, and could touch upon the S&D treatment instruments, their structures and administration, as well as the possibility for a more differentiated application of S&D treatment to take account of the different constraints that countries at different levels of development face in relation to the implementation and use of specific WTO rules, and in light of the overall development objectives of the Doha Work Programme.

6. Moreover, the inter-relation between different S&D treatment provisions and instruments is linked to the issue of the incorporation of S&D treatment in the overall WTO architecture, i.e. their place and function in WTO Agreements, current or future, and should therefore be considered together with these other questions. Accordingly, the first element of the work programme on S&D treatment, relating to mandatory/non-mandatory nature of provisions, only makes sense if seen as part of a comprehensive agenda to achieve effectiveness of S&D treatment provisions, as underlined by the Least-Developed Countries in their communication (TN/CTD/W/4).

### **III. THE RELATION BETWEEN THE S&D TREATMENT WORK PROGRAMME AND OTHER ELEMENTS OF THE DOHA DEVELOPMENT AGENDA WORK PROGRAMME**

7. The EC recalls the link between the work programme on S&D treatment and the overall WTO Doha Work Programme, as stated in paragraph 50 of the Doha Ministerial Declaration. In particular, the EC notes that the work of the CTD in Special Session will be without prejudice to work in respect of implementation of WTO Agreements in the General Council and in other Councils and Committees. Similarly, the EC notes that questions that have been dealt with in substance by the Decision on Implementation-Related Issues and Concerns, would not merit reopening by the CTD Special Session. S&D questions now being addressed in the negotiations (e.g. on Rules) also would not need to be separately addressed in the CTD although the CTD should be aware of those discussions so that coherence of approach can be maintained in accordance with paragraph 51 of the Doha Ministerial Declaration.

8. As regards market access, the EC recalls that the negotiation mandates under the Doha Ministerial Declaration fully integrate the need for S&D treatment, thus reflecting the principles of Part IV of GATT 1994. It should not therefore be necessary within the present S&D treatment exercise to address the substance of those market access negotiations, but rather to use it to ensure that the S&D treatment aims set out in the different market access mandates are pursued in the manner intended.

### **IV. MEMBERS' SUGGESTIONS ON SPECIFIC PROVISIONS**

9. The EC welcomes the submission of specific recommendations by Members (TN/CTD/W/1 to 4) and the recommendation to continue the analysis and examination of these proposals in the Special Session of the CTD. The EC will consider each specific suggestion and provision with an open spirit, on its merits, and in line with the mandate for this exercise. The EC will address those specific suggestions separately in the pursuit of the work of the Special Session. The EC suggests that the primary aim of the Special Session in doing so must be to ascertain whether the proposal, if implemented, will aid the integration of developing countries into the multilateral trading system. At the same time, account must be taken of the feasibility of each proposal in legal and practical terms, of which Members or categories of Members should benefit from any strengthened provision, and of whether or not within the Doha Development Agenda Work Programme the issue is already being addressed.

### **V. ISSUES FOR FURTHER CONSIDERATION BY THE CTD SPECIAL SESSION**

#### **A. ANALYSIS OF THE OVERALL OBJECTIVES OF S&D TREATMENT IN WTO RULES**

10. As a first step, the EC suggests that the CTD analyse the overall objectives of S&D treatment. Such analysis should build on the useful work carried out by the WTO Secretariat in WT/COMTD/W/77/Rev.1 and include both immediate and longer-term perspectives of S&D treatment provisions in existing and future agreements. Work should also consider the expectations of developing countries with respect to S&D treatment supporting their integration into the multilateral trading system: how can S&D treatment lead to integration and not exclusion? In this context, the EC recalls the principle of common but differentiated responsibility, and the need for all Members to participate in and contribute to the multilateral trading system, whether it be by demonstrating political will in the assumption of commitments, by providing and implementing technical assistance, or further market opening, or by carrying out appropriate domestic policies, in order to maximise the benefits for all Members.

11. A clearer definition and understanding of the overall objectives of S&D treatment can help assess the effectiveness of alternative S&D treatment measures and identify the most effective

instruments to meet those objectives, and focus attention on areas and countries, where these instruments are most needed. In this context, attention should be given to the current utilisation by developing countries. This broader analysis of S&D treatment objectives can help point to means of fundamentally improving the present approach, as indicated by the African Group in their submission. The exercise would also be useful in identifying cases where provisions have been implemented, but where the expectations in terms of result have not been met because of other circumstances. In particular, and as the African Group points out in their communication, the development needs of developing and least-developed countries require special domestic policies, measures and laws as well as assistance. The EC believes that recommendations flowing from this broader exercise should go beyond the "provision by provision" approach, which has been pursued so far, thus addressing the broader concept, objective and mechanism of S&D treatment in WTO agreements.

**B. INTERACTION OF S&D TREATMENT INSTRUMENTS AND THEIR INTEGRATION IN WTO AGREEMENTS**

12. A second element, which is relevant both for the ability of developing countries to benefit from S&D treatment and for incorporating S&D treatment in the WTO architecture, is the question of how different SDT instruments interact and how they are integrated into specific agreements. To take an important practical example: technical assistance is a central S&D treatment instrument, because it is one of the means to assist countries to meet commitments (as well as to benefit from opportunities offered in other markets). Technical assistance should, however, be designed and implemented in conjunction with decisions on the application of transition periods for the assumption of commitments, which in turn depends on the type of commitment in question and the objective situation and needs of the country in question.

13. WTO Members are committed to improving the quantity, quality and co-ordination of trade-related technical assistance and capacity building. The EC suggests that these efforts be seen as an integral part of the review of S&D treatment in the WTO.

**C. TAKING ACCOUNT OF THE NEEDS, INTERESTS AND SPECIFIC CIRCUMSTANCES OF COUNTRIES**

14. It has often been stressed that S&D treatment should not rely on arbitrary or blanket provisions, but be designed to reflect the needs of countries at different levels of development. We agree. The exercise should therefore consider how best to take account of such differentiated needs of developing countries in relation to both market access and WTO rule making. Understanding the needs and interests of countries in view of their specific circumstances will allow the trading system to better address those needs in relation to specific agreements. In particular, the needs, interests and specific circumstances of least-developed countries tend to be very different from those of most other developing countries. The EC therefore has doubts about the approach taken in some of the submissions made on SDT which present proposals across the board – for example sweeping and potentially permanent exemptions for all developing countries - without taking account of the objectively different needs of countries at different developmental levels.

**D. TAKING ACCOUNT OF THE DIFFERENT NATURE OF WTO COMMITMENTS**

15. The various WTO agreements, existing and future, are different in nature and imply different levels of capacity to implement. Whereas certain commitments may imply significant resources and infrastructure, others may be implemented and applied with relative ease. Such differences should be taken in account when determining appropriate S&D treatment instruments for countries whose capacities differ.

E. RELATION BETWEEN WTO S&D TREATMENT AND OTHER SUPPORT MEASURES

16. A fifth and final element for consideration could be the relation between WTO S&D treatment provisions and measures that are taken by other organisations or donors to support the development of developing countries – notably those measures that assist their integration in the multilateral trading system and the global economy. In particular, the role of trade-related assistance and capacity building and the complementarity of WTO efforts and those by other donors need to be addressed in order to maximise efficiencies of scale, and strengthen complementarity.

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