

Committee on Trade and Development

IMPLEMENTATION OF SPECIAL AND DIFFERENTIAL TREATMENT PROVISIONS IN WTO AGREEMENTS AND DECISIONS

MANDATORY AND NON-MANDATORY SPECIAL AND DIFFERENTIAL TREATMENT PROVISIONS

Note by the Secretariat

Addendum

INTRODUCTION

This note responds to the request made by delegations, pursuant to paragraph 12.1 (i) of the Decision on implementation-related issues and concerns adopted at Doha (WT/MIN(01)/17), that the Secretariat identify mandatory and non-mandatory special and differential treatment provisions. A preliminary identification was made in WT/COMTD/W/77/Rev.1. This paper, which consolidates and completes the information found in that document, accompanies the Secretariat note "A Review of Mandatory Special and Differential Treatment Provisions".

The note is organized according to the six substantive categories of special and differential treatment provisions used in previous Secretariat documentation: (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 actions, and use of policy instruments; (iv) transitional time periods; (v) technical assistance; and (vi) provisions relating to least-developed country Members. It is recalled that provisions in Category (vi) all fall into one of the other five categories, but are distinctive insofar as their application relates exclusively to least-developed countries.

The focus of the note is on categories (i), (ii) and (v) above, as well as certain provisions falling under category (vi) for which the distinction between mandatory and non-mandatory is relevant. Mandatory provisions are distinguished from non-mandatory provisions on the basis of the following rule: mandatory provisions use "shall" language; non-mandatory provisions use "should" language. The distinction between "mandatory" and "non-mandatory" provisions does not apply to provisions under Categories (iii) and (iv), and some corresponding provisions within Category (vi). These specify levels of flexibility and transition time periods that developing countries may choose to exercise should they so wish.

I. PROVISIONS AIMED AT INCREASING THE TRADE OPPORTUNITIES OF DEVELOPING COUNTRY MEMBERS

A. MANDATORY PROVISIONS:

- Agreement on Textiles and Clothing: Article 2.18.
- GATS: Article IV:1 and IV:2

B. NON-MANDATORY PROVISIONS:

GATT 1994: Article XXXVI.2-5; Article XXXVII.1(a) and 4; Article XVIII.2 (c) and 2(e).

- The Enabling Clause: para 2(a).
- Agreement on Agriculture: Preamble.
- GATS: Preamble.

II. PROVISIONS UNDER WHICH WTO MEMBERS SHOULD SAFEGUARD THE INTERESTS OF DEVELOPING COUNTRY MEMBERS

A. MANDATORY PROVISIONS:

- The Decision on Measures Concerning the Possible Negative Effects of the Reform Programme on Least-Developed and Net Food-Importing Developing Countries: Paragraphs 3 (i)-(ii); Paragraph 4; and Paragraph 6.
- Application of SPS Measures: Article 10.1; Annex B, paragraph 2; Annex B paragraph 9.
- Textiles and Clothing: Article 6.6 (b), 6.6 (c) and Annex, paragraph 3(a).
- Technical Barriers to Trade: Article 10.6; Article 12.1; Article 12.2; Article 12.3; Article 12.5; Article 12.8; Article 12.9; Article 12.10.
- Implementation of Article VI of GATT 1994: Article 15.
- Implementation of Article VII of GATT 1994: Annex III.5.
- Decision on texts relating to minimum values and imports by sole agents, sole distributors, and sole concessionaires: Text 1
- Subsidies and Countervailing Measures: Article 27.15.
- Agreement on Safeguards: Article 9.1.
- Understanding on Rules and Procedures Governing the Settlement of Disputes: Article 8.10; Article 12.10; Article 12.11; Article 21.7; Article 21.8.
- GATS: Article XV.1 and Article XIX.3.

B. NON MANDATORY PROVISIONS:

- Part IV of GATT 1994: Article XXXVI.6,7 and 9; Article XXXVII 1(b) and (c), 2 (a)-(c), 3 (a)-(c), and 5; Article XXXVIII.1, 2 (a), (b), (d), (f).
- Application of SPS Measures: Article 10.4.
- Decision on texts relating to minimum values and imports by sole agents, sole distributors, and sole concessionaires: Text 2.
- Import Licensing Procedures: Article 1.2; Article 3.5 (a)(iv); Article 3.5 (j).
- Subsidies and Countervailing Measures: Article 27.1
- Understanding on Rules and Procedures Governing the Settlement of Disputes: Article 4.10; Article 21.2

GATS: Preamble; Article XII.1

III. TECHNICAL ASSISTANCE

A. MANDATORY PROVISIONS:

- Decision on measures concerning the possible negative effects of the reform programme on least-developed countries and net-food importing developing countries: Paragraph 3 (iii).
- Application of SPS Measures: Article 9.1 and 9.2
- Technical Barriers to Trade: Article 11.1; Article 11.2; Article 11.3; Article 11.4; Article 11.5; Article 11.6; Article 11.7; and Article 12.7.
- Implementation of Article VII of GATT 1994: Article 20.3.
- GATS: Article XXV:2 and Paragraph 6 (c) of the Annex on telecommunications.
- TRIPS: Article 67.
- Understanding on Rules and Procedures Governing the Settlement of Disputes: Article 27.2

B. NON-MANDATORY PROVISIONS:

- None.

IV. LEAST-DEVELOPED COUNTRIES

A. PROVISIONS AIMED AT INCREASING TRADE OPPORTUNITIES:

1. Mandatory:

- The 1999 Decision on waiver for preferential tariff treatment of LDCs
- TRIPS Agreement: Article 66.2.
- Decision on Measures in Favour of Least-Developed Countries: paragraph 2 (ii) and paragraph 3.

2. Non-mandatory:

- Enabling Clause: paragraph d.
- Agreement on Textiles and Clothing: Footnote to Article 1.2

B. PROVISIONS AIMED AT SAFEGUARDING THE INTERESTS OF LEAST-DEVELOPED COUNTRIES

1. Mandatory:

- Agreement on Agriculture: Article 16.1 and 16.2. (Least-developed and Net Food-Importing Developing Countries).
- Agreement on Textiles and Clothing: Article 6.6 (a).
- GATS: Article IV:3 and XIX:3.
- Understanding on Rules and Procedures Governing the Settlement of Disputes: Article 24.1 and 24.2
- Decision on Measures in Favour of Least-Developed Countries: paragraphs, 2(i), and 2(iv).

2. Non-Mandatory:

- Decision on Measures in Favour of Least-Developed Countries: paragraph 2(iii).

C. TECHNICAL ASSISTANCE

1. Mandatory:

- Technical Barriers to Trade: Article 5.8
- Decision on Measures in Favour of Least-Developed Countries: Paragraph 2(v).

2. Non-Mandatory:

- None.
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