

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

Background

One of the most contentious issues to face the multilateral trading system is the debate over differentiated rights and obligations between developed and developing countries. While it is now generally agreed that countries at lower levels of development should be accorded more favourable treatment, the form and content of such treatment remains hotly contested.

The concept of favourable treatment for developing countries has a long history in the GATT/WTO, and over time has undergone various mutations. Under current WTO rules, these issues generally fall under the rubric of 'special and differential treatment' (S&D). The roughly 155 S&D provisions spattered throughout the various WTO Agreements form the core of the 'development' dimension of the multilateral trading system.

During the Uruguay Round, the concept of S&D changed from one of providing a range of flexibilities and additional policy spaces based on economic criteria to one essentially consisting of time-limited derogations from the rules, with more favourable treatment regarding tariff & subsidy reduction commitments, thresholds in the application of countervailing measures, and limited policy flexibility for specific obligations. In compensation for accepting binding disciplines in areas that were once optional — such as subsidies and countervailing measures — as well as many new obligations (i.e. investment, intellectual property, services), developing countries sought meaningful provisions on special and differential treatment. These provisions were expected to provide both useful derogations from the obligations they had undertaken, as well as establish obligations for developed countries via greater and more preferential market access. Such provisions were intended to assist developing countries in capturing a greater portion

of the gains from trade. Generally speaking, however, these expectations did not materialise, as most of the S&D provisions were couched in non-mandatory language and thus unenforceable under the newly revitalised dispute settlement procedures.

The Doha mandate was an attempt by developing countries to push some of the 155 S&D provisions closer to their original expectations, by strengthening them and making them more effective and operational — if need be, by turning some 'best-endeavour' language into firm obligations.

In 2002, the Trade Negotiations Committee (TNC) — the body responsible for overseeing the Doha Round negotiations — decided that the mandate on special and differential treatment would be dealt with in Special Sessions of the Committee on Trade and Development (CTD).

Mandated Deadlines

- By 31 July 2002, the CTD was to report to the General Council "with clear recommendations for a decision," on the review of "all special and differential treatment provisions [...] with a view to strengthening them and making them more precise, effective and operational."

As virtually no recommendations were ready for 31 July, the General Council instructed the Special Session to "proceed expeditiously to fulfil its mandate" and report to the General Council "with clear recommendations for a decision by 31 December 2002." The deadline was extended a third time to 10 February 2003, but Members were unable to agree on any "recommendations for a decision" by that time. No further deadlines have been established to date (see below).

Doha Mandates

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.”

Current State of Play

Eleven gruelling months and three missed deadlines later, the Committee on Trade and Development (CTD) seems unable to bridge the gaps that remain between Members on the mandate to strengthen special and differential treatment provisions (S&D). In particular, Members cannot agree on what to do with the 85-plus proposals on the table, nor on how to proceed with the Special Session’s work in 2003 and beyond. The most recent stalemate — where the General Council failed to adopt a CTD report requesting a clarification of the S&D mandate — demonstrates the extent to which Members diverge on these issues.

At the 20 December 2002 General Council meeting, Special Session Chair Ransford Smith (Jamaica) indicated that in spite of “all efforts to find common ground, [Members’] differences could not be bridged,” and so it was decided that the CTD should continue its work and report back to the first General Council meeting in 2003. After a string of consultations in January and February 2003 it became clear, however, that while Members were able to get closer to agreeing on some minor changes (12 watered-down versions of the 85-plus proposals), they were unable to sufficiently close the gap on their positions.

With these intractable differences in mind, the CTD adopted (i.e. agreed by consensus) a report (TN/CTD/7) on 10 February recommending that “the General Council provide clarification, as it considers appropriate,” on the S&D mandate given by Ministers in Doha (see below). In an odd twist however, the 10 February meeting of the General Council failed to adopt the report endorsed just hours earlier by Members in the CTD. The US, the European Union, as well as Australia reportedly had a hand in preventing the report’s adoption — citing the bad precedent they felt requesting such a clarification would establish. The US further argued that the recommendation, by including the phrase “as it considers appropriate,” did not necessarily require the General Council to provide the clarification. According to one informed trade source, the US also alleged that it had not agreed to request the clarification at the level of the CTD in the first place.

Ambiguity remains on how the issue was actually concluded at the 10 February General Council meeting — and where and how the S&D review would be picked up again. Citing a lack of consensus amongst Members, Chair Sergio Marchi (Canada) moved to revert the item to the next General Council meeting, where it would come under the purview of incoming Chair Carlos Pérez del Castillo (Uruguay). One report from a

trade official indicated that Ambassador Marchi decided to “take note of the debate,” but neither Members nor Secretariat officials have yet been able to confirm exactly where the matter stands. Most now await the minutes of the meeting to see the exact language that was recorded from the proceedings. These minutes, along with input from Ambassador Marchi, will form the basis for how the incoming General Council Chair will proceed. The impasse on S&D has clearly been elevated to the highest level of the WTO decision-making structure.

Where Are the Battle Lines Drawn?

The primary fault line, contend developing countries, lies in the different interpretations (and thus implications) that Members ascribe to the mandate on S&D. They argue that operationalising and strengthening S&D provisions entail making effective previous negotiations, thus requiring meaningful changes to language in the WTO Agreements. These, they argue, should not be viewed as new negotiations, which would be open to tradeoffs in other sensitive areas such as agriculture. They believe that Ministers clearly acknowledged these concerns with both the language of the mandate and the initial July 2002 deadline, which kept the S&D review well clear of the March 2003 deadlines in agriculture and services.

Developed countries, on the other hand, assert that the mandate is clear but that difficulties arise out of the different perspectives on how it should be implemented, as well as different expectations about the review’s outcome. They feel that significant language changes can only occur in the context of new negotiations and thus must be open to tradeoffs. They do not, however, consider the work of the Special Session to be a negotiation (see below), and thus are unwilling to proceed with changes that would fundamentally alter the “balance of Members’ rights and obligations.”

Clearly, the way incoming Chair Pérez del Castillo will deal with the current stalemate in the General Council will have far-reaching implications.

With these differences underlying the respective approaches to the S&D review, the last eleven months have been mired in disagreement over, *inter alia*, whether the Special Session is in fact a ‘negotiating body’; whether any priority should be given to the Agreement-specific proposals over cross-cutting issues;¹ and the form, content and structure of a monitoring mechanism for S&D (which is the sole proposal firmly accepted since the review began nearly a year ago, see TN/CTD/3).

Negotiating Session – Or Not?

Virtually all developed countries argue that the CTD Special Session is not a negotiating body. They have been unwilling to accept any proposals that would either change the language of WTO Agreements or alter the “balance of Members’ rights and obligations,” arguing that such changes could only come in the context of negotiations. They have responded to most proposals by requesting further clarifications, commenting on the inefficiency and/or impracticality of the proposed solutions, and suggesting that the topics would be best dealt with outside the CTD (i.e. in the relevant WTO bodies and, if possible, in those that developed countries believe do actually have a negotiating mandate).

In contrast, a large majority of developing countries, including Brazil, India, the Africa Group and least-developed countries (LDCs), has made clear that according to their reading of the Doha mandate, all individual S&D provisions must be reviewed and operationalised by the CTD first and foremost. They maintain the position that making certain S&D provisions mandatory, as instructed in the Decision on Implementation, implicitly accepts altering the balance of Members’ rights and obligations.

Developing countries have responded negatively to requests to refer proposals to subsidiary bodies, citing a lack of resources to follow these issues in such a dispersed manner, as well as fearing a fate akin to that encountered by many of the implementation issues that followed a similar route (i.e. experiencing little or no movement; see Doha Round Briefing No. 1 on Implementation-related Issues and Concerns). They also argue that the mandate for the CTD’s work is different from those of the respective bodies being suggested in that the CTD is to review current S&D provisions as opposed to considering new areas for S&D.

What Comes First – Agreement-specific or Cross-cutting Issues?

Developed countries have argued that in order to provide a framework for the evaluation of the 85-plus proposals submitted to the CTD, detailed discussions on the broader ‘principles and objectives’ of S&D must occur first (see EU proposals TN/CTD/W/20 & W/26). They generally view S&D as a means of integrating developing countries into the multilateral trading system and insist that the WTO must provide one set of rules for all its Members. They appear however, willing to consider *some* derogations for *some* countries at lower levels of development for *some* period of time. This approach stems primarily from the fact that

developing countries in the WTO are self-designated (i.e. there is no explicit definition of a ‘developing country’, although LDCs are defined according to UN criteria). As OECD countries object to Members as different as India and Honduras being eligible for the same S&D benefits, a number of them have indicated that the outcome of the review will be limited without some kind of criteria for differentiation and graduation (i.e. providing different levels of flexibilities for Members at different levels of development, and establishing some criteria for countries to ‘graduate’ out of these flexibilities).

Pointing once again to the diverging interpretations of the mandate, developing countries maintain that there is only one aspect to the Doha mandate — that of reviewing the specific provisions on S&D — and thus the current work programme should limit itself to considering only Agreement-specific proposals. Regarding the controversial concepts of graduation, differentiation and utilisation (the latter looks at which S&D provisions have been used; with some developed countries proposing to change and/or delete them as appropriate), most developing countries agree that despite the willingness of some to address these issues at some point, it can only come after the Doha mandate has been met — i.e. after the Agreement-specific proposals have been operationalised and made more effective. Other developing countries, however, argue that in fact no mandate at all exists for anything outside the Agreement-specific one, and thus have no intention of entertaining discussions on cross-cutting issues until a mandate to do so exists. Yet others, like the Africa Group, recognise that “the principles and objectives of S&D need to be clarified and written down to govern the adoption and operation of S&D treatment provisions,” but agree that the actual mandate must first be fulfilled (TN/CTD/W/23).

Monitoring Mechanism – What, How, When?

Agreement on the principle of creating a ‘monitoring mechanism’ was the only proposal accepted outright in the 31 July report that extended the deadline for the CTD’s work. It found its way onto the table via the Africa Group proposal TN/CTD/W/3, which was further elaborated upon in TN/CTD/W/3/Rev.1/Add.1 and, more recently, in TN/CTD/W/23. While many trade experts first viewed this as the one concession developed countries had made to developing countries prior to the 31 July deadline, it quickly became clear that the various parties had vastly divergent views on the nature of the mechanism. So

Doha Mandates

“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.”

much so that what was once a concession, quickly became a condition for moving ahead (i.e. certain developed countries were reportedly including the establishment and immediate coming into force of the mechanism as a precondition for moving forward with the Agreement-specific proposals).

Developed countries, as outlined in such proposals as TN/CTD/W/19 (US), W/20 (EU) and W/21 (Canada), see the role of the mechanism as monitoring the effectiveness of S&D treatment in integrating Members into the multi-lateral trading system. It would monitor and report on the progress of the various bodies that they see taking over the greater part of the mandate to review S&D provisions. It would also, as outlined in detail in the US proposal, work on ensuring more effective relations between the WTO and other relevant international institutions (UNCTAD, the International Trade Centre,² the World Bank, the IMF, etc.), consider and identify technical assistance needs, as well as undertake the examination of the utilisation of S&D provisions by developing countries. Elaboration upon the issue of differentiation and graduation would

also be part of the exercise. This view envisages the mechanism coming into effect in early 2003 and taking an active role in the mandate to review S&D.

Developing countries, however, see the mechanism coming into effect *after* the finalisation of a successful review of the Agreement-specific S&D provisions. The Africa Group elaborates on this in detail in TN/CTD/W/23, arguing that it should not become an alternative to the Special Session of the CTD by taking over its mandate. Rather, via a permanent, open-ended 'Sub-Committee on S&D' reporting to the CTD, it would require all WTO committees to keep S&D provisions as a standing agenda item, and regularly evaluate the utilisation and effectiveness of S&D, with a view to ensuring that any problems identified are effectively addressed. It would also provide an avenue for considering recommendations to be forwarded to the CTD with regard to *all* Members compliance with S&D obligations, eventually taking on the role of preparing recommendations on whether proposed Agreements to be adopted in the WTO framework comply with the rules on S&D.

Endnotes

- 1 These relate to the principles and objectives of S&D; a single- or multi-tiered structure of rights and obligations; coherence; benchmarking; technical assistance and capacity building; transition periods; trade preferences including the Enabling Clause; utilisation; and universal or differentiated treatment (including graduation).
- 2 An UNCTAD/WTO agency that provides technical cooperation for trade promotion to developing countries.

All proposals to the CTD Special Session (including the 10 February report to the General Council) can be found at <http://docsonline.wto.org>, using the document symbol TN/CTD.

This series of **Doha Round Briefings** is published by the International Centre for Trade and Sustainable Development (ICTSD) and the International Institute for Sustainable Development (IISD).

Mark Halle (IISD) and Ricardo Meléndez-Ortiz (ICTSD) conceived the Briefings. Contributing writers at ICTSD included: Heike Baumüller, Hugo Cameron, Anja Halle, Ricardo Meléndez-Ortiz, Victor Mosoti, David Primack, Mahesh Sugathan, David Vivas and Alexander Werth. Trineesh Biswas (IISD) served as copy editor, Donald Berg as graphic designer and Stuart Slayen (IISD) as publication manager. Funding for this project has been provided by the Swiss Agency for Development and Cooperation through IISD and by ICTSD's supporting donors. Series Editor: Anja Halle, ahalle@ictsd.ch. Series Directors: Ricardo Meléndez-Ortiz, rmelendez@ictsd.ch and Mark Halle, mhalle@iisd.ca.

The full series as well as upcoming updates can be found at www.ictsd.org and at www.iisd.org. Copyright: ICTSD and IISD, February 2003.

The International Centre for Trade and Sustainable Development (ICTSD) – <http://www.ictsd.org> is an independent non-profit and non-governmental organization based in Geneva. Established in 1996, ICTSD's mission is to advance the goal of sustainable development by empowering stakeholders in trade policy through information, networking, dialogue, well-targeted research and capacity building to influence the international trade system. ICTSD is the publisher of *BRIDGES* Between Trade and Sustainable Development©; and *BRIDGES* Weekly Trade News Digest©. Co-publisher of *PASSERELLES* entre le commerce et le développement durable© (with ENDA Tiers-Monde); *PUENTES* entre el Comercio y el Desarrollo Sostenible© (with Fundación Futuro Latinoamericano - FFLA and Centro Internacional de Política Económica para el Desarrollo Sostenible - CINPE); and *BRÜCKEN* Zwischen Handel und Zukunftsfähiger Entwicklung© (with GERMANWATCH).

The International Institute for Sustainable Development (IISD) – <http://www.iisd.org> contributes to sustainable development by advancing policy recommendations on international trade and investment, economic policy, climate change, measurement and indicators, and natural resource management. By using Internet communications, we report on international negotiations and broker knowledge gained through collaborative projects with global partners, resulting in more rigorous research, capacity building in developing countries and better dialogue between North and South.

IISD's vision is better living for all—sustainably; its mission is to champion innovation, enabling societies to live sustainably. IISD receives operating grant support from the Government of Canada, provided through the Canadian International Development Agency (CIDA) and Environment Canada, and from the Province of Manitoba. The institute receives project funding from the Government of Canada, the Province of Manitoba, other national governments, United Nations agencies, foundations and the private sector. IISD is registered as a charitable organization in Canada and has 501(c)(3) status in the United States.