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***DEVELOPING AN ISSUES-BASED APPROACH TO SPECIAL AND
DIFFERENTIAL TREATMENT***

WORKING PAPER

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DEVELOPING AN ISSUES-BASED APPROACH TO SPECIAL AND DIFFERENTIAL TREATMENT

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Introduction

Development cuts across the work of the WTO. The vast majority of the WTO's membership are developing countries; trade and trade policy reform are drivers for economic growth and poverty reduction; and development related objectives are integral elements of the different WTO Agreements, and now form a central element of the Ministerial Declaration adopted at Doha. Furthermore, the increase in depth and breadth of WTO rules beyond the "traditional" GATT disciplines, which were largely limited to border measures, means that WTO rules have deep linkages with other areas of development policy-making.

The main contribution the WTO can make to development countries is through the reduction or elimination of trade distorting measures - whether domestic, or external in other developed and developing markets - from trade liberalization. Trade liberalization is a positive sum game from which all can benefit. Well-defined rules, and the mechanisms of making binding commitments and concessions, are beneficial to increasing the stability of reforms. Multilateral rules can be especially beneficial to the smaller developing, low-income, and least-developed countries, who can least afford to adopt distortive policies, and have the most to lose from discretionary policy measures taken by richer or larger members. Technical assistance and capacity building, which WTO members at Doha placed at the heart of the organisation's work, are also essential elements in enabling developing countries to reap the benefits of open trade policies and a rules based trading system.

The WTO's development dimension includes, but is not reducible to, special and differential treatment. In practice, questions relating to special and differential treatment have occupied a large part of development discourse, though both views regarding special and differential treatment and policy practice have changed over time. The question that needs to be answered is what part could special and differential treatment play and how could it do so, in a strengthened development dimension of the WTO.

Special and Differential Treatment in the WTO.

At the conclusion of the Uruguay Round, provisions for special and differential treatment for developing or least developed country Members were carried forward from the GATT, and new ones were added. There are currently approximately 155 such provisions. These provisions can be classified according to the following six-fold typology developed by the WTO Secretariat:

(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 time periods; (v) technical assistance; and (vi) provisions relating to least-developed country Members. Summary information of what type of special and differential treatment provision is found in each of the different WTO agreements is provided in table [1].

Different types of special and differential treatment provisions operate in different ways. For instance, provisions relating to transition times and flexibility tend to specify exceptions to rules (time-limited or otherwise) to which developing countries may have recourse if they choose. On the other hand, provisions relating to technical assistance, the safeguarding of interests of developing countries, and measures to increase developing countries' participation in world trade tend to specify positive actions to be undertaken by developed countries in favour of developing countries. [Annex 2 provides a more detailed treatment of each type of special and differential treatment provision]. On the whole, the operation of special and differential treatment provisions is predicated on the existence of two country categories: developing, and least developed.¹

There are, however, some exceptions to this general rule. Annex VII of the agreement on Subsidies and Countervailing Measures provides an exemption on some disciplines governing prohibited subsidies to a subset of developing countries whose national income is lower than 1,000 USD per capita, while the Decision on Net Food Importing Developing Countries covers both least developed countries and those developing countries that identify themselves as net food importers. The Agreement on Textiles and Clothing contains provisions providing for more favourable treatment of small suppliers, and to developing country exporters of certain types of textile products.

When considering special and differential treatment as it currently stands, one needs to bear in mind the that the underlying grid of developing country trade policy and practice has changed substantially since the days when the first special and differential treatment provisions were incorporated in GATT law. In the early years of the GATT, consensus in the trade and development sphere leaned heavily towards the pursuit of import substitution policies; the promotion of infant industries through border measures and subsidies; the use of trade measures to ensure balance-of-payments stability; and the advocacy of preferential market access to developed markets. It is therefore no surprise that the special and differential treatment provisions of the pre-Uruguay Round era focus on the following concepts: (i) preferential access (for instance, the Enabling Clause); (ii)

¹ Members are considered developing countries on the basis of self-selection. LDCs are defined on the basis of an index developed by the United Nations.

flexibility of policy action (for instance Article XVIII (b) and (c)); and less-than full reciprocity in concessions and commitments (for instance Article XXVIII *bis*). (see Michalopoulos 2000). As the number of developing countries participating actively in the GATT was limited, it was not absurd to think of developing countries as constituting one single category.²

Through the 1980 and 1990's – that is during the period of the Uruguay Round negotiations – developing country practice had begun to shift in significant ways, for a number of reasons, in favour of trade liberalisation as a pro-development policy stance. Special and differential treatment based on broad exemptions was seen at best as not encouraging good policies and practice, and at worst, leading to the entrenchment of costly, development unfriendly policies. (Srinivasan 1998) Trade rules, binding commitments, and concessions came to be seen as mechanisms for squeezing out distortions that penalised development, and of putting trade reforms on a predictable basis. Developing countries approach to WTO negotiations also shifted away from a preoccupation with "framework issues" (such as non-reciprocity), to the active negotiations of disciplines and market access in areas of interest to them. (Hudec 1987; Michalopoulos 2000 *op. cit.*)

This in turn had an influence on the types of special and differential treatment that emerged from the Uruguay Round. Three main innovations may be noted: (i) a shift from a system where flexibility of policy and action for developing countries was mainly based on broad exemptions, to one where flexibility exists within defined limits. To take one illustration of this, the average level of bindings on non agricultural goods increased from 21 to 73 percent of all tariff lines, while all tariff lines on agricultural goods were bound. At the same time, developing countries retained the flexibility to bind at ceiling, rather than applied rates, and many chose to do so. Another example: under the agreement on agriculture, developing countries took on domestic support reduction commitments, but at a lower level of reduction, and were offered higher *de minimis* levels on reduction commitments, and the latitude to use domestic support in the context of rural development programmes. One needs to underline both that there are limits to flexibility, as well as the fact (sometimes overlooked) that the WTO agreements do provide significant levels of flexibility both through flexibility provisions generally available to all members (developed and developing), or through specific special and differential treatment provisions. (ii). The introduction of transition time periods into a number of WTO agreements, which provided flexibility for a limited amount of time. The aim was ostensibly to provide developing countries with the space to adapt policies implement legislation and push through the required reforms. (iii) The introduction of provisions relating to technical assistance in a number

² The concept of least developed countries was formally introduced into the GATT system in 1979 through the Enabling Clause.

of agreements, in recognition of the substantial efforts that developing countries would need to undertake in implementing the WTO agreements.

Approaches to special and differential treatment have therefore reflected - to some extent at least - evolving policies and practice with respect to trade and development. It is therefore no surprise that at this current juncture, views on the future direction to be taken by special and differential treatment, but also by the whole development dimension of the multilateral trading system is conditioned by the policy lessons - however tentative - that can be drawn from the experience of developing countries in implementing the policy reforms they had embarked on, especially those undertaken or envisioned in the context of the implementation of the Uruguay Round Agreements.

Lessons of experience, and issues to be addressed.

The first set of issues that has arisen relates to the sustainability of trade and trade-related reforms, and the extent to which trade liberalisation and reforms have produced durable growth and development outcomes. While the overall evidence suggests a positive causal relationship between trade policy reforms and liberalisation on one hand, and growth/ development outcomes on the other, the available evidence is not as robust or conclusive as might have been expected. [Rodrik and Rodriguez 2000] Other factors, notably governance-related issues and macroeconomic management, have in cases been observed to be more powerful determinants of development outcomes, and trade policy reforms have been susceptible to reversal. This is not an argument to justify a return to the old school of protectionism and selective interventions. What it does point to is that trade policy reforms need to be embedded in wider policy framework that embraces complementary reform measures, if they are to produce durable growth and development results.

A second set of issues that needs to be considered is that because trade policy reform by definition entails adjustment, the implementation of multilateral commitments and the reform process that underpins this needs to be approached with an eye to the adjustment costs and efforts required. The issue of adjustment costs is not particularly new; but it can be argued that it has been brought to the fore by two features specifically relating to the implementation of WTO agreements. First with the entry into the acceptance of the Uruguay Round Agreements as a single undertaking, developing countries saw a comparatively steep increase in their obligations compared to the pre-Uruguay Round baseline. Second, the Uruguay Round Agreements also expanded the coverage of WTO obligations and disciplines beyond traditional GATT-border measures into economic sectors and areas of policy-making with linkages beyond the scope of traditional trade policy, to wider aspects of development policy-making. While a number of developing countries were in the process of liberalising

unilaterally (i.e. reducing trade protection at the border), many had yet to embark on "behind-the border" measures in a systematic way, and on the scale implied by the agreements.

The experience of implementing the UR agreements has highlighted the fact that legal compliance with WTO obligation is simply the thin edge of the wedge in the reform process (Eglin 2001). The thick end consists of the different investments and measures that need to be adopted to support implementation and these can carry costs. Some of these costs stem from investments in capacity required to support the implementation of WTO commitments, or to derive benefits from them and the liberalisation process. Examples are the investment in personnel training and computerisation of systems required to reform customs procedures and implement commitments under the agreement on customs valuation; or the need to develop effective regulatory regimes and institutions to reap the benefits of inward investment in services sectors following liberalisation under the GATS. A second class of costs concerns political economy costs stemming from changes in sectoral employment and output patterns associated with the phasing out of a trade distorting measure (a tariff or a TRIM for example). The existence of such costs will require of the government concerned that it develop mechanisms to accommodate the costs (social safety nets for example), devise alternative policy options, or address underlying issues (such as insufficient inter-sectoral factor mobility) which may amplify these costs or cause them to persist.

It is important however, to keep firmly in mind that, quite unlike costs involved with protection, costs associated with implementation and its underlying reform process are usually not dead-weight losses. The flip-side is that the type of reform friendly investments alluded to above can yield important dividends in terms of trade expansion and development benefits. The elimination of a protectionist bias in favour of urban/ industrial producers can remove an implicit tax on rural agricultural sectors where the majority of the poor are likely to live. Investing in the design of a well functioning customs authority, for example, using a transparent and recognised processes, or the design of effective regulatory regimes are beneficial, both from a trade, but also a governance related viewpoint. Any investment implies an initial costs: the point about implementation costs is not that they are in themselves an argument against either policy reform or implementation, but rather that these processes need to be assessed from an overall framework that enables a proper evaluation of when such costs should be incurred, and how they could be met.

This brings us to a third set of considerations, which relates to the fact that governments have scarce economic and political capital, and need to allocate this between competing priorities. Consequently, the sequencing and timing of reforms are important factors in determining whether or not they ultimately produce robust growth and development payoffs. There are two dimensions to the

sequencing/ timing question. One is the sequencing of trade reforms vis a vis other trade reforms; the second is how trade reform packages are sequenced vis a vis other reforms, notably sectoral reforms. These will also lay claim on scarce budgets, and may have a more direct impact on poverty indicators than some aspects of trade policy reform whose impact on poverty may be of a second order nature, or over the long term.

Outlining an approach to deal with underlying issues.

In assessing the implications for special and differential treatment, it is helpful to concentrate on two specific components of special and differential treatment, namely flexibility and transition time periods. These two concepts tie in closely with the issues discussed in the preceding section, and are also the focus of the majority of proposals made by developing countries in the context of discussion surrounding implementation over the last few years.

The appropriate level of flexibility that should be availed to developing countries, and the manner, in which it should be provided, has been a long-standing subject of debate. As pointed out before, some of these provisions have progressively fallen into disuse as developing countries have by and large turned away from the economic rationale underlying these provisions. For example, throughout the 1980s, many developing countries switched from using trade measures to deal with balance-of-payments difficulties, to the use of monetary and fiscal instruments, on the reasoning that these addressed the source of the problem and did not carry the high costs of trade measures. Mainly for these reasons, only one least-developed country maintains BOP restrictions invoked under Article XVIII(B).

While looking at revealed policy preferences can give some insights into what constitutes necessary policy flexibility, in some other areas of policy a discussion is required of the underlying needs policy flexibility seeks to address. The need for flexibility in policy interventions may to a large extent be analysed in terms of the theory of the second-best i.e. interventions are needed to correct existing distortions, market failure, and externalities, and it is preferable that these interventions address the source of the problem. When considering the sufficiency of flexibilities given to developing countries, it is necessary to examine whether the type of intervention is best suited to addressing the root of the problem. For instance, the need for subsidies may be a response to policy-induced distortions elsewhere, such as inefficient tax systems which increase costs to producers, which are best remedied by treating the problem at the source. High input costs –including transport costs- may also be addressed by other policies and instruments which are more effective than specific producer subsidies, such as for instance prioritising expenditures on roads and

infrastructure, or reducing the cost and improving the quality of financial services by introducing greater competition and better regulation in that sector. Generally speaking, the type of supportive policy action needed such as investments in infrastructure, regulatory reform, training, the provision of agriculture extension services and research and development support, or the provision of general services and disaster relief for agriculture are also priority areas in their own right, which usually feature prominently in poverty reduction strategies and sector strategies of developing countries. All such policy approaches find accommodation in the built-in flexibilities in WTO rules, and the key question is how these trade and other policy actions can be time and sequenced to generate optimal results.

A wide range of commentators, including some that favour an activist policy stance, suggest that overall, there is adequate flexibility for government to pursue development objectives within the framework of WTO agreements. (Lall 1999, Amsden 2000, Wattal 2000) Doing so requires investments in complementary reforms which in themselves are desirable, but also incur various costs. It is probably for this reason that developing country proposals have sought to increase the scope for policy flexibility in WTO agreements. The thrust of several proposals is that rather than including transition time periods (time-limited flexibility), broader exemptions (indefinite transition time periods) should be incorporated in WTO agreements instead. The underlying logic behind this argument appears to be that as country progress to higher levels of development, they will be in a better position to undertake the various investments needed to support reform. The counter argument though is that development prospects are likely to be enhanced if reforms are undertaken in the first place, rather than delayed. As pointed out before, the historical experience of providing broad exemptions has on balance tended to favour the entrenchment of policies that hinder, rather than promote, development. The emphasis should therefore be on providing targeted support to reform, within a coherent policy framework that encompasses actions in trade and other fields, ensures their complementarity, and maximises positive spillovers between actions in these different areas.

Regarding transition time periods, it was pointed out before that they were one of the innovations of the Uruguay Round, introduced precisely to facilitate implementation. While they have proved to have some value, the incorporation of provisions relating to transition time periods "en bloc" in a number of WTO agreements appears to have been a fairly blunt instrument in addressing some of the underlying issues discussed in this paper. That they are of the same length for a whole range of countries with markedly different levels of resources and at different stages of reform (but all grouped under the same heading of developing countries for the purposes of the WTO) is an obvious drawback. This also suggests that they have not been defined with a full (or even a partial) costing or assessment of the costs and investment needed to support the reform process. Moreover, experience

to date in the administration of WTO agreements does not provide conclusive evidence that transition time periods, especially in the poorer and more resource constrained economies, have encouraged a planned and sequenced phasing of implementation, rather than a simple postponement of implementation owing either to a lack of capacity, of adequate support, of alternative policy options, of political will, or any combination of the these factors.

What is required then is a matching of transition time periods to individual country cases, based on an evaluation of policy and capacity constraints, and with an appropriate implementation/ reform plan. Much of recent discussions concerning transition time periods has taken place at the political level (i.e in the WTO's General Council) and has usually focused on proposals to extend transition time periods en bloc. At the same time, discussions have also taken place at the level of individual committees or councils that oversee agreements, such as those concerning Customs Valuation and TRIMs, that have built in provisions governing the extension of transition time periods on case by case basis. In the case of customs valuation, the case by case extensions, once agreed, are time limited and accompanied by a technical assistance and capacity building plan that is supposed to address the specific constraints which impede the reform process. In so far as it addresses some of the underlying constraint affecting reform, this model provides some useful elements to for consideration. In the case of the extensions under the TRIMS agreement, and the procedures for extension under Article 27.4 of the Subsidies Agreement for certain members corresponding to defined criteria and for defined programmes, the proposed transition times have the merit of narrowing in on countries that have experienced particular adjustment difficulties. It is an open question though, whether in the absence of any accompanying policy package, the extension of transition time periods will facilitate reform and adjustment, or whether they will simply postpone the day of reckoning.

Are more country categories an option?

Suggestions are sometimes made to the effect that refining country categories may contribute to making special and differential treatment more effective. Various proposals have been made over time, to identify new categories, whether on income grounds, in relation to size, or even indebtedness. The motivation to create further categories or to refine existing ones can be traced to a number of sources. First, there is the dissatisfaction arising out of the "bloc" treatment of developing countries, which masks great disparities of circumstance, and which can mean that transition time periods and the delivery of technical assistance do not adequately reflect specific constraints. Some low-income countries may have very similar constraints to least develop countries, but may not have the same level of differential treatment. Second, there is the concern –primarily from some small and low income countries - that the added level of preferences given to least developed countries can have

negative systemic effects, through for example trade diversion that may arise out of added levels of preferences.

The push for categories has the merit of pointing out that the existing structure of special and differential treatment is too broad to address the type of underlying issues touched on in the discussion of implementation issues. However, one needs to question closely whether the creation of more categories – however defined - provides any sort of response. In particular, new categories do not appear to improve the ability of the trading system to address the core of the problem, namely that managing the implementation and reform process requires that underlying adjustment costs need to be addressed. This is because the policy framework that needs to be set up to do this, and assistance required, will be country specific. Current constraints and options are as much, if not more, a function of past policy choice as they are of levels of income. Therefore, broad country categories are not likely to ensure that the key concerns that motivated proponents of new categories in the first place (i.e. that there was a lack of responsiveness to specific needs) are met any more adequately than under the current regime.

The second, and more systemic argument, is that the creation of categories is as much about exclusion as it is about inclusion. Experience with the operation of Annex VII of the Agreement on Subsidies and Countervailing Measures³ also points to difficulties created by categories to those who are excluded, especially if they are just on the margin. The same misgivings that some low and middle income non-LDC members have about trade diversion effects may spread further up the ladder if new categories are created. This is compounded by the bandwagon phenomenon that tends to appear whenever there is a discussion surrounding country groups, as some of the pre-Doha discussions surrounding subsidies attest.

Finally, there is always the risk that creating categories creates perverse incentives (what some commentators have dryly described as "doing well out of being poor"- Hoekman 2001). Proposals that trade preferences be extended on the basis of criteria such as indebtedness raise such concerns. The recent history of trade preferences on a country category basis is also one of increased tension between different developing countries.

³ This defines the countries not subject to the prohibition of subsidies contingent on export performance, or the use of domestic over imported goods.

Applying an issues-based approach – priorities for the future.

Constructing an effective development dimension to the WTO requires that there be effective ways of assisting developing countries deal with the issues that underpin the reform process that goes along with implementing trade agreements. This implies moving away from the grid of special and differential treatment based on country categories, broad exemptions and somewhat arbitrary transition times. The emphasis needs rather to be on supporting developing countries in managing the reform process, and making the most of flexibility built into agreements to sequence and prioritise reforms in the context of an overarching policy framework. This in turn will require a number of actions on a number of different fronts, which will have implications for the institutional structure of the organisation.

To begin with, a clearer and more systematic evaluation of the efforts to be undertaken in the implementation and reform process is needed. This includes the costing of capacity requirements, but is not limited to it. Consideration needs to be given to the need to those policy measures that need to go along side capacity building measures, and all the more so if the implementation efforts involved are less a question of building capacity, and more related to dealing with issues such as sectoral adjustment, for example. Both policy recommendations and capacity building initiatives need to be embedded in an overall policy framework, which articulate a country's overall development priorities.

In this context, it is worth considering the proposition that countries should concentrate on core areas of reform as a first priority, with the implication that this will be reflected in their implementation obligations. What these core issues are could vary on a regional basis, but experience suggests that these be core liberalisation in tariffs and services, accompanied by attendant regulatory reform and the removal of other policy induced distortions (notably subsidies); unilateral steps to improve the investment climate; customs and areas related to trade facilitation; and standards. The list could be progressively expanded depending on where a country is at in terms of its reform process, which could in part be a function of its level of development, but should be done on the basis of objective indicators and benchmarks. The concept of an inner and outer belt of agreements and implementation means that countries remain committed to implementing the package of agreements, but at different speeds. The process of determining what is in "the core/ inner belt" or not is of course complex, and would go beyond the sole capacities of the WTO. The current Trade Policy Review Process could provide a starting-point, but it is limited both by capacity and its terms of reference, and would need to supplement by the work of other agencies. In this process, regional development banks could have a key role to play.

Second, in terms of the administration of agreements, the emphasis should be on applying assistance flexibly, and extending transition time periods on a case by case basis as necessary. Recourse to transition time periods will be reduced if evaluations of capacity building and policy support needs are carried out in tandem with negotiations (i.e. the pre-implementation phase). In this connection it is vital to strengthen the ability of developing countries to represent them in Geneva.⁴ This will facilitate the structuring of trade rules which are negotiated to take into account the policy constraints under which a number of developing countries operate, and to develop appropriate responses. It will also foster a greater sense of ownership in the outcome of negotiations.

Existing practice within the WTO provides, within limits, some useful starting points. One can consider for example the case of the agreement on customs valuation, where the case by case extension of transition time periods is coupled with the elaboration of a phase in plan of technical assistance and capacity building. The provisions relating to Balance of payments measures involve the preparation of macroeconomic assessments and the development of phase out plans. However on the whole, the main problem with the existing system of administration of agreements is that it is fragmented. There may be some interconnection between concerns arising, say, in the areas of customs, of subsidies, and tariff policy, but the institutional structure of the WTO tends to limit the scope for an integrated approach. Furthermore, mechanisms linking "in-house discussions" to the work of other multilateral agencies and development partners, notably those involved in providing assistance to capacity building, or support for adjustment, need to be better developed. The drawback resulting from all this is that action in support of reforms has tended to be piecemeal and fragmented, and not anchored in a long-term plan that would enable cumulative benefits to accrue to the recipient.

It is important to reiterate that the question is not simply one of providing or extending transition time periods, but that there must also be an adequate review process both before and during any extension. Objective criteria and benchmarks need to be established to monitor process and outcome. There also needs to be a proper mechanism to discuss what concrete policy steps need to be taken to by developing countries between the granting of transition time-period extensions and their end-point, so that extension does not mean simple postponement of action.

Third, as already stated, an issue specific approach cannot be handled by the WTO alone. An integrated approach is required drawing on the expertise of other multilateral and regional agencies.

⁴ Currently, 24 WTO member governments do not have a representation in Geneva, and as many as thirty have mission comprising a few staff who cover the work of all Geneva-based international organisations.

This will enable policy recommendations to be formulated in overall the context of overall framework, for capacity building action to be provided within this framework, and for issues arising out of the management of the reform process to be reviewed. A model, admittedly still in its infancy, for such collaboration already exists in the form of the Integrated Framework for Trade-related Technical Assistance and Capacity-Building for Least Developed Countries (IF for short). The purpose of the IF is to embed a trade strategy into an overall development framework, and to coordinate support through capacity building actions to the implementation of policy recommendations. The Doha Ministerial Declaration places a strong emphasis on the need for coherent action between different actors, and also on drawing together the trade and development communities.

Fourth, it is important to build trade policy capability, and increase coordination, at the country level within the administration of developing countries. The coverage of trade agreements means that a number of government agencies and departments will have input into the formulation of the reform strategies that underpin the implementation of trade agreements. Furthermore, trade policy formulation and practice – even in regard to "traditional" border measures – in many countries is fragmented. Strengthening coordination will increase the likelihood of integrating trade strategies into overall development plans, and should also encourage a proper costing of the efforts required to implement policy changes. Increased coordination needs also to be accompanied by measures to strengthen local ownership, through measures to involve civil society.

Conclusion

The manner in which the multilateral trading system has addressed development-related questions through principles of special and differential treatment has been conditioned by changes in policy and practice, and by lessons of experience. The experience of the Uruguay Round agreement points to the fact that the reforms process that underpins the implementation of agreements entails significant adjustment efforts. A system of special and differential treatment that is predicated on the existence of country categories, whether broadly defined as present or defined on a more differentiated basis, is unlikely to address the underlying issues. The alternative that is suggested is one that encourages the embedding of trade policy reform in overarching development plans, and within which framework tailored policy recommendations and capacity building assistance would be delivered. Extensions in the transition period would be done on a case by case basis, if needed, and accompanied by a comprehensive policy and capacity building review process.

TABLE 1: SPECIAL AND DIFFERENTIAL TREATMENT PROVISIONS BY TYPE AND AGREEMENT

Agreement	(i) Provisions aimed at increasing the trade opportunities of developing country Members	(ii) Provisions that require WTO Members to safeguard the interests of developing country Members	(iii) Flexibility of commitments, of action, and use of policy instruments	(iv) Transitional time periods	(v) Technical assistance	(v) Provisions relating to measures to assist least-developed country Members	Total by Agreement
Agriculture	1		9	1		3	14
Decision on NEIDCs		4			1		5
Application of SPS Measures		2		2	1		5
Textiles and Clothing	1	3				2	6
Technical Barriers to Trade		6	1	1	7	1	16
Trade-Related Investment Measures			1	2		1	4
Implementation of Article VI of GATT 1994		1					1
Implementation of Article VII of GATT 1994		1	2	4	1		8
Decision on Texts Relating to Minimum Values and Imports by Sole Agents, Sole Distributors and Sole Concessionaires		2					2
Preshipment inspection							0
Rules of Origin							0
Import Licensing Procedures		3		1			4
Subsidies and Countervailing Measures		2	8	6			16
Safeguards		1	1				2
GATS	3	4	4		2	2	15
TRIPS				2	1	3	6
Understanding on Rules and Procedures Governing the Settlement of Disputes.		7	1		1	2	11
GATT 1994 Article XVIII			3				3
GATT 1994 Article XXXVI	4	3	1				8
GATT 1994 Article XXXVII	2	6					8
GATT 1994 Article XXXVIII	2	5					7
Enabling Clause	1		2			1	4

Agreement	(i) Provisions aimed at increasing the trade opportunities of developing country Members	(ii) Provisions that require WTO Members to safeguard the interests of developing country Members	(iii) Flexibility of commitments, of action, and use of policy instruments	(iv) Transitional time periods	(v) Technical assistance	(v) Provisions relating to measures to assist least-developed country Members	Total by Agreement
Decision on Measures in Favour of Least-Developed Countries						7	7
Waiver preferential tariff treatment of LDCs.						1	1
Total	14	50	33	19	14	24	155

Annex I: Detailed description of the different types of special and differential treatment provisions in WTO agreements.

1. Provisions aimed at increasing the trade opportunities of developing country Members: These provisions all consist of actions to be taken by Members in order to increase the trade opportunities available to developing countries. Such provisions are frequently couched in "best endeavour" language, though not always. Provisions within this group which are mandatory (i.e. using "shall" rather than "should" language) are shown in bold above. Actions taken by members pursuant to some of these provisions are specifically notified to the Membership – this is the case for example with preferences given under the Enabling Clause, or actions taken under Article 2.18 of the Agreement on Textiles and Clothing by restraining Members. Members' schedules of commitments under the GATS and concessions in the Agreement on Agriculture contain information relating to the implementation of these provisions. Overall, a broad question that seems to arise in relation to this class of provision concerns the extent to which these provisions have contributed to increasing developing countries' trade opportunities, how this may be assessed, and, if they have not contributed to the increasing developing countries' trade opportunities, what may be done.

2. Provisions under which WTO Members should safeguard the interests of developing country Members: These provisions concern either actions to be taken by Members, or actions to be avoided by Members, so as to safeguard the interests of developing country Members. More than half of these are mandatory (i.e. they use "shall", rather than "should", language), and these are shaded in bold in the list presented above. Questions raised in relation to this category of provisions are similar to those raised in relation to the "trade opportunities" class. They turn around the extent to which they have led to the safeguarding of developing country interests, and whether the actions to be taken can be specified concretely, monitored and their implementation objectively measured or evaluated.

3. Flexibility of commitments, of action, and use of policy instruments These provisions relate to: actions developing countries may undertake through exemptions from disciplines otherwise applying to the membership in general; exemptions from commitments otherwise applying to Members in general; or a reduced level of commitments developing countries may choose to undertake when compared to Members in general. The majority of these provisions are found in agreements concluded at the end of the Uruguay Round. Their importance may be understood in terms of their actual or potential role in facilitating the integration of trade and trade policy into the pursuit of wider development policy objectives. This type of provision is especially prominent, and important, in those areas and agreements where WTO rules have extended beyond traditional GATT-type border measures. In almost all cases, flexibility takes the form of individual provisions which Members choose, or not, to exercise. The main exception is the GATS, where in addition to individual provisions, flexibility is built into the overall structure of the agreements which provides for flexibility on an individual- case-by-case basis through negotiated commitments.

4. Transitional Time Periods: These provisions relate to time bound exemptions from disciplines otherwise generally applicable.⁵ It is to be noted that some transition time periods in different agreements have elapsed. In some cases, the relevant provision, in addition to specifying a time-period, include modalities through which an extension might be sought. Transition time periods were an innovation of the Uruguay Round. They reflect the recognition that the process of implementation of WTO agreements, and accompanying reforms, could give rise to transitional costs. It is possible to distinguish between two different types of costs: first, those which stem from the fact that the implementation of certain WTO agreements requires significant levels of human and institutional capacity The second type of cost - the political economy- adjustment type – for example, transitional shifts in output and employment in specific sectors which may result from the phasing out of protection. The type of cost, which may arise, is specific to individual agreements, and the magnitude of the cost may depend on individual country circumstances.

5. Technical Assistance: The agreements where provisions relating to technical cooperation feature prominently tend to be those which require significant levels of capacity for their implementation. The provision of technical assistance can thus be closely linked with transition time periods in facilitating the implementation of certain WTO agreements.

⁵ In the case article 10.2 of the SPS agreement, the transition time-period in question relates to longer time-frames for compliance to be accorded to products of interest to developing countries with SPS measures introduced by Members.

6. Provisions relating to least-developed country Members. These provisions, whose applicability is limited exclusively to the LDCs, all fall under one of the other five types of provision.

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