

PREPARATIONS FOR THE FOURTH SESSION OF THE MINISTERIAL CONFERENCE

Proposal for a Framework Agreement on Special and Differential Treatment.

Communication from Cuba, Dominican Republic, Honduras, India, Indonesia, Kenya, Malaysia, Pakistan, Sri Lanka, Tanzania, Uganda and Zimbabwe

The following communication, dated 31 July 2001, has been received from the Permanent Mission of Pakistan.

1. The recognition of inherent inequality of 'players' in the Multilateral Trading System and the special needs and development concerns of the developing countries figured, for the first time, in the Havana Charter. The concept of Special and Differential treatment is a fundamental building bloc of the multilateral trading system. It was conceived in acknowledgement of the fact that developing countries are at a very different stages of economic, financial and technological developments and therefore have entirely different capacities as compared to developed countries in taking on multilateral commitments and obligations. It had, therefore, been accepted that special advantages and flexibilities must be provided to developing countries so that they are able to adopt appropriate national policies to support their trade regime. In essence, therefore, Special and Differential treatment provisions are to be looked at not as exceptions to the general rules but more importantly as an integral and inherent objective of the multilateral trading system.
2. The preamble of the Marrakesh Agreement establishing the WTO clearly recognizes the need for positive efforts to ensure that developing countries and the least developed countries secure a share in the growth in international trade commensurate with the needs of their economic development. It is perhaps important to look at the process of the development and elaboration of S&D treatment for developing countries in the multilateral trading system.
3. In the GATT the important milestones in this regard were:
 - (a) Modification of Article XVIII of GATT in 1954-55 to include Article XVIII-B which allowed developing countries to use quantitative restrictions for balance-of-payments (BoP) purposes;
 - (b) Establishment of UNCTAD and the creation of the Committee on Trade and Development in the GATT in 1964;
 - (c) Addition of Part IV on Trade and Development to the GATT in 1965; and
 - (d) Adoption of the Enabling Clause in 1979 at the end of the Tokyo Round. This process signified the growing importance of the S&D treatment for developing countries in the multilateral trading system and, at the very least, the political recognition by

developed countries of the need for S&D to attract and accommodate developing countries in the system.

4. Special and Differential treatment was based on the recognition that the developing countries were placed differently in international trade and that these difficulties as well as the imperative of promoting social and economic development required that the developing countries be treated differently in the Multilateral Trading System.

5. The basic content of S&D provisions consisted of :

- (i) Better market access for exports by developing countries so that they could boost economic development through exports.
- (ii) A lower level of obligations for developing countries providing them the necessary flexibility to pursue policy options appropriate for industrialization and economic development and;
- (iii) A modest level of expectation from developing countries as regards their application of various GATT agreements.

6. One guiding principle for S&D was an acceptance of deviation from the general rule of quid pro quo or reciprocity for the developing countries.

7. The concept of S&D underwent a dramatic transformation in the Uruguay Round Agreements. The S&D treatment prior to WTO was in recognition of the special problems of development faced by developing countries, but in the WTO agreements it only recognized the special problems that developing countries may face in the implementation of the agreements. This major shift in the focus from the problems of development to the problems of implementation meant that:

- (i) It was assumed that the level of development had no relationship with the level of rights and obligations under the multilateral trading system,
- (ii) The same policies could be applicable for countries at various levels of development. It was thought that all what was required was the grant of short transition periods and technical assistance for the developing countries ; and
- (iii) Developing countries did not have the option to sign or otherwise on the various agreements because all of them, excepting four plurilateral agreements, were part of the Single Undertaking.

8. This dramatic erosion of S&D treatment was further compounded by the fact that the WTO agreements went far beyond the traditional border measures covered under the GATT and included many more areas of domestic economic policy making. In addition, these agreements were enforceable through a binding dispute settlement mechanism under the WTO.

9. The Uruguay Round Agreements shifted the thrust from enhanced market opportunities to grant of transition periods and technical assistance. The developing countries could hardly benefit from the almost 145 S&D provisions (in the Uruguay Round Agreements) which mostly do not go beyond a best endeavour promise and therefore are not legally enforceable. Lack of any mechanism to ensure effective implementation of S&D provisions in the WTO has been a major area of concern for developing countries.

10. It is imperative to undertake a thorough review of the concept of S&D as its basis objective is to create a level playing field for unequal players in the Multilateral Trading System. This should seen

in the establishment of a concrete and binding S&D regime which is responsive to the development needs of the developing countries. There is an urgent need for such S&D regime which mainly focuses on enhancing market access opportunities (for developing countries) and provides policy options aimed at unlocking their growth and development potential. The guiding basis, therefore, should be that;

- (i) the liberalization of trade is not an end in itself but the means to an end, that is, economic growth and development of all Members; and
- (ii) different levels of development achieved by members require different sets of policies to achieve economic growth and development.

11. First, because developed countries, too, have enjoyed such flexibility and differential treatment during their earlier periods of economic development. In fact, some of them are still getting such treatment, particularly in areas such as textiles and clothing, and agriculture. Second, in this age of interdependence, the long term prosperity of developed countries depends on the economic development of developing countries. S&D treatment that facilitates developing countries to grow and develop will ultimately benefit all not just in terms of more and affluent markets but by ensuring a more peaceful world.

12. The system and the rules should ensure equal participation by, and equal benefits to, all. In the immediate/short term, all the existing S&D provisions in various WTO agreements should be fully operationalized/implemented. The implementation should go beyond technicalities and include operationalization of provisions that presently lack operational modalities.

13. In the medium term, the agreements should be suitably amended in the light of the experience by the developing countries that these provisions fall short of providing necessary flexibility to pursue appropriate policies and facilitate economic development in the developing countries. The WTO must demonstrate sensitivity to developmental objectives of majority of its Membership and to sustain credibility. Many of the Implementation proposals submitted by developing countries, in the backdrop of, uneven growth and development in the years following the establishment of WTO, can be viewed as an initial endeavour for extension and elaboration of enhanced, effective and a binding S&D regime.

14. In order to institutionalize and rationalize the adoption and application of S&D provisions in various WTO Agreements, WTO Members should elaborate a framework/umbrella agreement on S&D treatment which should include provisions reflecting the objectives and principles of S&D treatment for developing countries, as outlined above. The Doha Ministerial should recognize the importance of this issue and agree to the negotiation of such a “framework” agreement on S&D.

15. Some of the elements which can form part of the Agreement on S&D could be as follows:

- Special and Differential treatment shall be mandatory and legally binding through the dispute settlement system of the WTO (including notification requirements and inclusion of these commitments in country schedules).

- In any future agreement, that the Members may agree, there shall be an evaluation of the development dimension. This evaluation should include the fact as to how these agreements facilitate attainment of developmental targets (e.g. as set out in the Millennium Declaration).
 - The Members shall undertake an evaluation of the implications of any future agreement, with respect to implementation costs in terms of financial, capacity building and technical assistance, etc.
 - The transition periods shall be linked to objective economic (debt level, level of industrial development, human development index, etc.) and social (literacy and life expectancy) criteria.
 - Without an evaluation of the fact whether an Industrial Policy has a demonstrable adverse impact on trade, there shall be no prohibition of policies which promote growth and development in developing countries.
 - The application of the concept of Single Undertaking for developing countries should not be automatic.
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