

SPECIAL AND DIFFERENTIAL TREATMENT

THE GREATER CARIBBEAN IN TRADE
NEGOTIATIONS

ASSOCIATION OF CARIBBEAN STATES

PORT OF SPAIN, 14-15 JULY 2003

Focus of this Presentation

- Nature of Special & Differential Treatment provisions in the WTO Agreements
- Problems with the existing S&D provisions
- Doha work programme on S&D
- Current status

Introduction

- GATT established in 1947
- No formal recognition of any difference between the contracting parties (CP's)
- Fundamental principle of GATT was that all rights and obligations should be applied uniformly to all CP's
- Even though 11 out of the original 23 CP's would today be classified as developing countries, they participated as equal partners

S&D treatment in the UR

- A number of basic conceptual premises related to S&D treatment emerged during the UR, namely that
 - dc's are intrinsically disadvantaged in their participation in international trade
 - any multilateral agreement must take this into account when specifying dc's rights and obligations
 - trade policies that maximise sustainable development in one country may not necessarily do so in another
 - it is in the interest of developed countries to assist dc's in their integration into the MTS

S&D treatment in the UR

- These underlying conceptual premises resulted in the following kinds of S&D provisions in the UR
 - provisions aimed at increasing trade opportunities (12)
 - provisions which call upon WTO Members to safeguard the interest of dc's (49)
 - provisions offering flexibility of commitments (30)
 - Transitional time periods (18)
 - provisions related to technical assistance (14)
 - provisions in favour of least developed countries (22)

Some concerns with S&D

A number of developing countries have said that the existing S&D treatment provisions have a number of shortcomings because they are mainly in the form of

- provisions employing discretionary language
- 'best endeavour clauses'
- de facto non-binding, but yet mandatory provisions and only a few are
- mandatory and binding provisions

Examples of S&D

I. Provisions employing purely discretionary language

- “contracting parties may accord differential and more favourable treatment to developing countries” (Enabling Clause para1)

II. Best Endeavour Clauses

- “Members agree to facilitate the provisions of technical assistance to other Members, especially developing country Members” (Article 9 of SPS)
- key words : urged, to the extent possible, if conditions allow etc.

Examples of S&D

III. De facto non-binding, mandatory provisions

- developed countries **shall** to the fullest extent possible accord high priority to the reduction and elimination of barriers (GATT XXXVII:1)
- Members **shall** take account of the special needs of developing country members in preparation and application of new SPS measures (Article 10.1 SPS agreement)

IV. Mandatory provisions

The Doha Declaration

- Ministers at Doha, recognising that problems existed with respect to S&D treatment set out a work programme in para 44 of the declaration,
 - reaffirms that SDT is an integral part of the WTO
 - notes that there are concerns about the implementation of S&D provisions
 - directs that all S&D provisions should be reviewed to strengthen them and to make them more precise, effective and operational, and
 - also links this work to the decision taken on 'Implementation related Issues and concerns'

The Doha Declaration

- The decision on 'Implementation related Issues and concerns' mandates the CTD
 - to identify the S&D provisions which should be made mandatory and the implications of this
 - to examine additional ways to make SDT more effective
 - to report to the GC with recommendations by July 2002
 - to consider how SDT could be incorporated into the architecture of WTO rules.

Current Status of the Work Programme

- The first phase of this work programme has seen a very large number of Agreement specific proposals being submitted by dc's, including by the African group and the LDC's.
- Some Members have also raised a number of systemic issues including those related to principles and objectives of SDT, utilisation, graduation, universal vs. differentiated treatment.

Current Status of the Work Programme

- In its report to the General Council in July 2002 the CTD detailed the above status and sought some more time to complete the mandated work.
- The GC agreed and asked the CTD to complete its work by December 2002, later extended to February 2003.
- Satisfactory progress still not having been made, the CTD in its report in February 2003 recommended that the GC provide a clarification on the means to give effect to the Doha mandate.

Current Status of the Work Programme

- The Chairman of the General Council, who was then asked to hold consultations, put forward an approach based on two fundamental premises:
 - all proposals would be addressed without prejudice to the outcome, and that
 - an informal categorization of the proposals was necessary to make the work more efficient.
- Accordingly, he divided all the 88 Agreement-specific proposals divided into three categories.

Current Status of the Work Programme

- Category I includes the 38 proposals on which it seems that a positive outcome could be possible.
- Category II is comprised of 37 proposals made in areas that are currently under negotiation, or are otherwise being considered by other WTO bodies.
- Category III is comprised of 10 proposals on which there appears to be a wide divergence of views.

Current Status of the Work Programme

- The Chairman of the GC is holding consultations to address the proposals in category I.
- This is on the understanding that Members would engage substantively in this work, and be willing, if necessary, to consider changing the existing balance of rights and obligations.
- At the same time, the proposals in category II have been referred to the relevant negotiating or technical bodies