

SPECIAL AND DIFFERENTIAL TREATMENT



UNDER THE EXISTING AND REVISED GPA TEXTS

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This presentation...



- **What is Special and Differential Treatment (S&D)?**
 - What is it good for?
 - What kinds of S&D?
 - Room for improvement of S&D?
- **S&D in the GPA**
 - What is special about the GPA?
 - What is the focus of S&D in the 1994 text?
 - What has been changed in the (provisionally agreed) new text?
- ★ **Article IV:3-4 in detail**
- **Overall evaluation of the „new“ S&D**

What is S&D & Aims of S&D



- **WTO promotes trade liberalization as welfare-enhancing policy goal**
- **But: liberalization may be difficult for developing countries**
 - DC industries may be less competitive
 - DCs may not have the resources/capacity to implement WTO agreements
- **Aims of S&D provisions:**
 - promote an active participation of DCs in international trade
 - alleviate the difficulties DCs might encounter in joining and/or implementing WTO trade agreements

What kinds of S&D are there?



- **Preferential Market Access provisions**
 - increase the trade opportunities of developing country Members (non-reciprocity)
 - safeguard the interests of developing country Members (policy guidance)
- **Market Protection**
 - flexibility of commitments, of action, and use of policy instruments (less commitments)
 - transitional time periods (more time for implementation)
- **Technical Assistance**
 - Often carried out by the WTO Secretariat
- **Provisions relating to least-developed country (LDC) Members**

Room for improvement of S&D?



- **One size fits all“ approach/little differentiation**
 - Differentiation only between DCs and LDCs despite homogeneous economic realities in different DCs
- **Market access may be withdrawn/not enough legal certainty**
 - Preferential market access needs to be granted in a way that enables DCs to „plan ahead“
 - Commitments need to be enforceable
- **Market protection may mean that benefits from liberalization cannot be reaped (inefficiencies)**
 - Only economically sustainable infant industries should be „nurtured“
 - In the long run, liberalization should gradually be achieved to the extent possible

Why is the GPA special?



- **The GPA is a plurilateral agreement**
 - Not all WTO Members are GPA Parties
 - Not many DCs are GPA Parties
- **GPA commitments show enhanced reciprocity**
 - Parties negotiate commitments in bilateral and plurilateral formats
- **The GPA text has been renegotiated**
 - There are two texts:
 - ✦ the 1994 GPA (in force)
 - ✦ the provisionally agreed revised text (not yet in force)
- **DCs will encounter the GPA's S&D provisions in an **ACCESSION CONTEXT****

 New S&D provisions are already being applied to accessions

The 1994 text – Articles V and XVI:2



- Description of the objectives of S&D in the GPA & interests to be taken into account (Art. V:1-3)
 - Market access as goal!
 - But: largely unenforceable “best endeavours” clauses
- Exclusions for DCs that **may be agreed upon** (Art. V:4-7)
 - largely limited to
 - ✦ exclusions from national treatment provisions
 - ✦ and coverage
- The possibility for DCs to **negotiate** offsets (Art. XVI:2)
- Technical assistance & Information centers (Art. V:8-11)
 - as described in the rather detailed provisions, thereby
 - limited to the situations described, e.g. formal limitation to “DC Parties”
- Special treatment for LDCs (Art. V:12-13)

S&D in the revised text



- **Goals:**
 - more precise provisions, enforceability, „reality check“
- **New focus on accessions:**
 - Direct references to accession situation in Art. IV:1, 2, 4, 8,
- **Strengthening of reciprocity (Art. IV:2)**
 - No „best endeavours“ regarding market access
- **Improved mechanisms for market protection (Art. IV:3)**
- **New focus on transitional measures/“phasing in/out“**
 - With the possibility to extend transitional periods & introduce new measures if necessary (Art. IV: 7)
- **Streamlined provision on technical assistance (Art. IV:8)**
- **All S&D available to both DCs and LDCs (Art. IV:1)**

Article IV:3-4 in detail



- **Chapeau:**
 - „Agreement of Parties“, „transition period“, „ in schedule“
- **Price Preference Programmes**
 - Goods/Services originating in DC or
 - Subject to national treatment under preferential agreement
 - Transparent & clearly described in notice
- **Offsets**
 - Clearly stated in notice of intended procurement
- **Phased-in addition of specific entities or sectors**
- **Gradual reduction of thresholds**
- **Delay for application of **any** obligation except MFN**
 - To be listed in an Annex, interim obligations possible



More flexibility in return for more transparency

Overall evaluation



- **The revised text provides**
 - More flexibility
 - Stronger focus on negotiations & reciprocity
 - Stronger focus on transitional protective measures by DCs
- **This adequately reflects accession situation**
 - Accession candidates negotiate their schedules individually
 - GPA disciplines are beneficial overall also to DCs so that focus should be on avoiding shocks by gradual liberalization
 - Future accessions may lead to DC cooperation in negotiating market access
- ➡ **Enter negotiations with clear policy goals**
 - Use technical assistance in preparing for accession!