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Special and differential treatment for developing countries: existing provisions in the GPA (1994) and flexibilities under the 2006 revised text

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S&D under the GPA (1994)

(Articles V and XVI)

Objectives, main elements

- Objectives of S&D in the GPA (Art V:1)
  - safeguard balance of payments; ensure adequate reserves
  - promote domestic industries
  - support govt procurement-dependent industrial units
  - encourage economic development ‘through regional or global arrangements’ amongst developing countries
- Main elements
  - favourable action by developed country Parties
  - coverage exclusion – from national treatment obligation
  - exemption from prohibition of offsets under Art XVI
  - technical assistance

Main elements (2)

- Favourable action by Parties – Parties to
  - facilitate increased imports from developing countries (V:2)
  - include products, services of export interest to DCs in their coverage (V:3)
  - establish information centres for information on procurement laws, expenditure & opportunities, covered entities, etc. (V:11)
  - provide more special treatment for LDCs (V:12,13)
- Coverage exclusion from NT (V:4-6)
  - negotiated during accession, or through subsequent modification to coverage
- Use of offsets (XVI)
  - available to developing countries, otherwise prohibited

Treatment of SMEs

- No specific provisions in the text of the Agreement
- Mainly as a coverage/market access issue in Appendix I...
- Set-asides for small and minority/medium sized businesses, e.g.
  - Canada, US (General Note 1 respectively)
  - Korea (Notes to Annex 1, 2 & 3)
- Certain domestic preferences, e.g.
  - Japan: non-application to cooperatives (Note 2 to Annex 3)

Provisions on developing countries under the provisionally agreed text (GPA/W/297)

(Article IV)

“1. In negotiations on accession to, and in the implementation and administration of, this Agreement, the Parties shall give special consideration to the development, financial, and trade needs and circumstances of developing countries and least-developed countries (collectively referred to hereafter as "developing countries", unless specifically identified otherwise), recognizing that these may differ significantly from country to country. As provided for in this Article and upon request, the Parties shall accord special and differential treatment to:

(a) least-developed countries; and

(b) any other developing country, where and to the extent that this special and differential treatment meets its development needs.”

(Art IV:1) *(GPA/W/297)*

Flexibilities available

- Access to favourable coverage of each Party (2)
  - subject to negotiation
- Transitional measures (3) – some *new elements*
  - with possibility of extension or new measure (6)
- Implementation period (4) – *new*
  - with possibility of extension (6)
- Technical cooperation (8)

Transitional measures

- Key elements *(chapeau*, IV:3):
  - based on a DC's development needs
  - subject to agreement by GPA Parties
  - retained during a transition period
  - in accordance with schedule set out in Annex to Appendix I
  - non-discriminatory application among Parties
- Possibility to extend transition period, implement new measure (6)
- Obligation of DC to ensure compliance with Agreement by end of transition period (7)

Transitional measures - *2*

- Price preferences – *new*: key requirements (3(a))
  - originating goods, services only from DC or other DC in a preferential agreement
  - is transparent, and clearly described in procurement notice
- Offsets – (as in 1994 Agreement)
  - prohibited as a general principle (V:6)
  - permitted for DCs, be clearly stated in procurement notice (3(b))
- Phase-in addition of specific entities, sectors (3(c))
- Initial higher threshold (3(d)) – *new*

Implementation period – ***new***

- Possibility to delay application of any specific obligation except Art V:1(b)
  - details of delayed obligation, associated period listed in DC Party's Annex to Appendix I
- Duration of implementation period
  - LDCs – up to 5 years
  - other DC – as determined but not more than 3 years
- Possibility to extend period (6(a))
- Obligation of DC to ensure compliance with Agreement by end of transition period (7)

Other provisions

- Technical co-operation/capacity building
- GPA Committee may develop procedures for implementation of article
- Periodic (5-yearly) review by Committee

- Treatment of SMEs...?
  - no specific provisions in provisionally agreed text
  - an item under the ongoing coverage negotiations