SPECIAL AND DIFFERENTIAL TREATMENT

UNDER THE EXISTING AND REVISED GPA TEXTS

ANNA CAROLINE MÜLLER
ANNA.MUELLER@GMX.COM
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- **Market access may be withdrawn/not enough legal certainty**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
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!