



REFLECTIONS ON A FUTURE TRADE FACILITATION AGREEMENT

Implementation of WTO Obligations.
A Comparison of Existing WTO Provisions

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A COMPARISON OF EXISTING WTO PROVISIONS**



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NOTE

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This document builds on the results of a study elaborated by Ms. Hadil Hijazi, consultant funded through the UNCTAD Trust Fund to support developing countries participation in the WTO negotiations on trade facilitation (T4CO).

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EXECUTIVE SUMMARY

The WTO negotiations on trade facilitation are part of the Doha Development Agenda, which grants central importance to developing countries objectives and implementation concerns. In the view of many, multilateral rules on trade facilitation stand a chance to yield real benefits for developing and landlocked countries, if these countries are provided with an effective capacity to implement their commitments.

The text setting the modalities of negotiations on trade facilitation, the Annex D of the so-called July Package 2004, clearly states that the negotiated outcome will take full consideration of the principle of special and differential treatment and that it should go beyond traditional approaches to special and differential treatment (S&DT). Members aim at crafting legal provisions which are more effective than the existing ones in addressing implementation concerns of developing countries.

UNCTAD provides technical assistance and capacity-building to developing countries during the negotiations to support their effective participation. Advisory services to delegations of developing countries are part of this endeavour. This study contributes to the objectives of UNCTAD's technical assistance. It provides a review of selected provisions of World Trade Organization (WTO) agreements as they relate to S&DT, the review and monitoring mechanisms for the implementation of agreements, and the role of the supervisory bodies of the agreements. When examining these provisions and mechanisms, clarification is provided on their legal and operational effects keeping in mind their potential relevance for the discussions in the Negotiating Group on Trade Facilitation (NGTF).

The review shows that a shortcoming of the currently existing provisions is the lack of operational and legal linkage between technical assistance, special and differential treatment regarding the application of commitments and the reporting, notification and review requirements of member States. On-going discussions in the Sanitary and Phytosanitary (SPS) and TBT Committees and the TRIPS Council underline the benefits and importance of strengthening transparency and reporting mechanisms for a more effective application of the special and differential treatment provisions.

The study concludes that a new and more effective approach to the implementation of WTO obligations should link S&DT flexibilities to technical assistance commitments and an effective transparency mechanism. Based on the findings of the review of the existing provisions, the study concludes with an outline of such a comprehensive implementation framework and the procedural requirements it entails.

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ABBREVIATIONS

AoA	Agreement on Agriculture
GATS	General Agreement on Trade in Services
IPR	Investment Policy Review
LDC	least developed country
MFN	most favoured nation
NGTF	Negotiating Group on Trade Facilitation
RoO	Rules of Origin
S&DT	special and differential treatment
SCM	Subsidies and Countervailing Measures
SPS	Sanitary and Phytosanitary
TA	technical assistance
TBT	Technical Barriers to Trade
TF	trade facilitation
TPRB	Trade Policy Review Body
TPRM	Trade Policy Review Mechanism
TRIPS	Trade-related Aspects of Intellectual Property Rights
WTO	World Trade Organization

INTRODUCTION

The WTO negotiations on trade facilitation are part of the Doha Development Agenda and aim at accelerating the movement and clearance of goods in international trade and transit. Negotiations on this subject matter started in October 2004. UNCTAD provides technical assistance and capacity building to developing countries during the negotiations to support their effective participation through the Trust Fund for *“Capacity-Building to support developing countries and least developed countries in their participation in the WTO negotiations on trade facilitation”*. UNCTAD provides research, advice and support to developing countries during the negotiation process, including regional and national capacity building and training activities, advisory services on private-public consultations over the negotiations, development of background documents on the issues under negotiations, and ad-hoc advice to Geneva - and capital -based negotiators. This study is part of these activities.

Special and differential treatment (S&DT) of developing countries will be critical as regards the implementation of commitments under a future WTO Agreement on trade facilitation. Negotiations of the new subject area trade facilitation have been on-going since 2004 with the overall objective of accelerating the movement and clearance of goods, through the simplification and harmonization of trade procedures, documents and formalities. It has been clear from the beginning of the negotiating process that many developing countries would have to undertake domestic reforms to be compliant with new rules, and would require additional time and resource to acquire the implementation capacity. The importance of incorporating S&DT provisions in a new agreement was therefore highlighted by developing countries from the outset of the negotiations.

Moreover, developing countries emphasized that S&DT has to be approached in a new and different manner in these negotiations. This is because existing provisions are widely criticized for having failed to provide a sufficient remedy to developing countries' implementation concerns. Existing S&DT includes various measures, such as transitional periods or exemptions to delay or forego the application of certain commitments¹, and technical assistance for developing countries. Against the background of this criticism, the modalities text for the negotiations on trade facilitation adopted by the General Council on 1 August 2004, the Annex D, clearly states that S&DT has to be part of the new agreement and that it has to go beyond traditional ways of S&DT.

The negotiations on trade facilitation hence cover two areas: substantive trade facilitation rules, and provisions for the S&DT. Current proposals on this issue include the following elements; differentiation of rules into distinct categories with different application conditions; transitional periods; technical assistance to develop implementation capacity; early warning mechanism for the extension transitional periods; and the notification of implementation

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