



# Governance at the WTO: Accommodating Diversity and Development

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# A Perennial Challenge

- Proposals for WTO reform on the rise – a sign of difficult times
- But a perennial challenge – striking a fair balance of rights and obligations amongst diverse members with diverse needs, priorities and capabilities
- In short, how to define, design and manage differentiated commitments, or “special and differential treatment” (S&D)?
- Fixing the attribution of rights and obligations among members is a shared responsibility
- The indispensability of an effective negotiating function in the WTO

# Overview

- Particular aspects of GATT/WTO work are referred to here in order to illustrate key arguments around:
  - Market access in goods (tariffs)
  - Agriculture
  - Trade in services
  - Non-tariff-measures (NTMs)
  - Trade-related intellectual property areas (TRIPS)
  - Agreement on trade facilitation (ATF)
- Discussion that follows is in terms of special and differential treatment (S&D) for developing countries

# Tariffs on goods

- Distinguish between S&D in market access and S&D in regulatory aspects of GATT/WTO: not always a clean slice, but helpful
- For market access in goods, things started off in the 1950s on the wrong foot. That history still casts its shadow.
  - In essence, voluntary somewhat unstable discriminatory preferences in exchange for minimal contractual obligations represented a minimalist bargain.
  - The juxtaposition of most-favoured-nation and reciprocity disfavoured negotiations between large and small countries

## Tariffs on goods (cont.)

- How to strike a bargain built with mutual benefits?
- No two members have identical obligations
- Talking about S&D in MA doesn't really help because everyone has S&D – it is balance, not country-wise classification that is needed
- Autonomous preferences was one approach, but a questionable solution: contractual obligations generally superior in this context

## How To Unlock MA (Tariff) Opportunities?

- Could 'critical mass' substitute for preferences, making this more of a shared undertaking (e.g. ITA I and ITA II )?
- More emphasis on closing gaps between applied and bound rates?
- An appropriate use of tariff reduction formulae?
- Negotiations in clusters of countries, with shared product line interest?

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- WTO as a consolidator of unilateral and preferential progress in tariff reductions rather than mover of market opening?
- Linked to this, more focus on rule-making – a 'public good' uniquely supplied by the WTO? Lots of venues for market opening – unilateral, preferential
- Designing the scope of negotiations to ensure inclusiveness and shared interests in 'package' outcomes?

# Trade in Agriculture

- Complexity: tariffication, universal binding, domestic support and export competition (no more)
- Agriculture's social relevance an explanation for some of the difficulties but not an excuse for everything
- Defining "S&D" is at the heart of the matter; 'hard' S&D involving permanent differentiation is problematic
- Need to settle 2 categories of "S&D" – developed and developing
- That implies a possible bargain, perhaps made more likely by cross-issue negotiating packages

# Trade in Services

- Somewhat different architecture, including in approach to S&D
- Minimal reliance on preferences (only LDC waiver)
- Progressive liberalization that seeks to accommodate diversity
- S&D in GATS Article IV – doesn't actually refer to
- Article XIX:2 refers to level of expectations by way of developing country commitments
- Negotiations can take place in varied configurations – multi-, pluri-, and bilateral (Article XIX:4)
- Market-opening and greater regulatory commitments go together – no need to discuss S&D

# Non-Tariff Measures

- Covers a multitude of provisions, challenge of ensuring NTMs do not simply become NTBs
- Policy objective flexibility, so importance of “least-trade restrictive”
- Some provisions are tailored specifically for developing countries (e.g. BoP and infant industry), but used less and less
- How far can S&D in these domains rest on timeframes and technical assistance? The more the better
- Agreements covering standards – TBT and SPS – and the use of a committee-based process for discussing Specific Trade Concerns
- This has been a successful approach, which is not explicitly S&D, and yet is widely relied upon by developing as well as developed countries

# TRIPs

- TRIPS entertains flexibility in terms of domestic design of provisions, as long as interoperability is assured
- TRIPS is essentially a minimum standards agreement, meaning 'adequate standards'
- Limited S&D provisions in TRIPS, which have largely expired (notable exception is arrangements for LDCs)

# Agreement on Trade Facilitation

- Elaboration of GATT rules on freedom of transit, fees and formalities and publication and administration of trade regulations – numerous detailed provisions to ensure minimal trade costs across borders
- Novel S&D approach – common commitments (not necessarily identical in design) spelled out by each of the signatories
  - Some commitments for immediate implementation
  - Others subject to phase-in
  - And yet others subject to phase-in and capacity-building technical assistance
- Shifts responsibility, induces buy-in, and is underwritten by transparency
- Is this an approach that can be used elsewhere?

# S&D: Conclusions

- S&D has too often become a political football, driven by static zero-sum thinking
- Everyone gets some “S&D”, especially in market access
- Differentiation remains key, not necessarily for everyone and certainly not in the same degree, but it is essential for fairness and effectiveness
- If S&D is to be useful and not simply divisive, it must be enabling and not exempting
- S&D must be dynamic and not permanent, implying emphasis on time-limited access
- But convergence to identical approaches is not always essential – alternative paths and minimum standards

## S&D: Conclusions (cont.)

- S&D is compromised if treated as a blunt binary instrument defined nationally on the basis of self-selected development status
- It must be customized, responding to need at the sectoral, product or policy design level
- As far as possible S&D provisions and access to them should be jointly defined and determined
- S&D is not always needed in an explicit sense – processes can be as important as provisions

# S&D: Conclusions (cont)

- S&D must be fair and perceived to be so, hence a shared responsibility
- Designing rules and procedures must be inclusive and non-discriminatory as this can lessen the need for S&D
- Technical assistance is central to most of what we have discussed here in terms of effective engagement by the membership

Most suggestions made here would take time to act upon, but first, enough members have to want to engage and strengthen the WTO

# Three Things That Would Help Advance The Differentiation Debate

- Flexibility in decision-making:
  - Not everyone needs to engage in every exploration of issues that lead to negotiations – provided strict conditions of transparency, inclusiveness at all stages, and non-discrimination in outcomes
  - This will work in the long-term if there is mutual respect for everyone’s negotiating aspirations
- Enriched deliberation function in the WTO:
  - Legislating and litigating will be far more effective if members talk to each other – referred to in the past as the ‘missing middle’
- Transparency is a crucial ingredient of progress on all fronts, quite apart from being a WTO requirement

Thank you

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