

**REALIZING TRADE AND DEVELOPMENT OBJECTIVES THROUGH
SPECIAL AND DIFFERENTIAL TREATMENT**

Submission by Canada

The following communication dated 21 November 2002 has been received from the above delegation.

I. INTRODUCTION

1. In the *Implementation-Related Issues and Concerns Decision of 14 November 2001*, the Committee on Trade and Development (CTD) was instructed to examine Special and Differential (S&D) Treatment in particular:

- (i) to identify those S&D treatment provisions that are already mandatory in nature and those that are non-binding in character, to consider the legal and practical implications for developed and developing Members of converting S&D treatment measures into mandatory provisions, to identify those that Members consider should be made mandatory, and to report to the General Council with clear recommendations for a decision by July 2002;
- (ii) to examine additional ways in which S&D treatment provisions can be made more effective, to consider ways, including improved information flows, in which developing countries, in particular the least-developed countries (LDCs), may be assisted to make best use of S&D treatment provisions, and to report to the General Council with clear recommendations for a decision by July 2002; and
- (iii) to consider, in the context of the work programme adopted at the Fourth Session of the Ministerial Conference, how S&D treatment may be incorporated into the architecture of WTO rules.

2. S&D treatment provisions allow for transitional differentiated obligations for developing countries through such instruments as: non-reciprocal trade concessions, exemption or exoneration from certain disciplines and obligations of the multilateral trading system, and trade-related technical assistance (TRTA) and capacity building. These provisions are designed to respond positively to the development, financial and trade needs of developing countries, without prejudice to other Members.

3. The WTO Secretariat has identified six categories of S&D provisions:

- (i) provisions aimed at increasing the trade opportunities of developing country Members;
- (ii) provisions under which WTO Members should safeguard the interests of developing country Members;
- (iii) flexibility of commitments, of action, and use of policy instruments;
- (iv) transitional time periods;
- (v) technical assistance;
- (vi) provisions relating to LDC Members. (WT/COMTD/ W/77/ Rev.1/Add.4)

4. The inclusion of S&D treatment provisions in WTO Agreements were recognition that some developing countries might lack the capacity to fully meet their WTO obligations, and were intended to facilitate the full integration of developing countries into the global economy. The implicit assumption was that the capacity of developing countries to make contributions or undertake negotiated concessions would increase with the progressive development of their economies and improvement in their trade situation. Developing countries accordingly expect to participate more fully in the WTO framework, and to share in the benefits from the increased opportunities and welfare gains generated by the multilateral trading system.

II. S&D: "A MEANS TO ENDS"

5. The overarching objectives of S&D treatment provisions are to foster the ability of developing countries to become full participants in the multilateral trading system and reap the benefits of WTO Membership. That is, S&D treatment provisions are to be used in accordance with the conditions that are set out in the various WTO Agreements and gradually become redundant as developing countries incrementally increase their ability and capacity to implement agreements, decisions and related obligations. It is only when they are able to implement the full extent of agreements that they will reap the economic benefits of WTO Membership. One means, multiple ends.

6. To this end, S&D treatment is best targeted to a specific country's trade, financial and development needs. S&D treatment provisions should provide developing countries with meaningful and constructive mechanisms to assist them in developing the necessary infrastructure and "know-how" to allow them to implement fully the obligations of an agreement. At the same time S&D treatment should reinforce the adoption of sound economic and governance policies and open trade policies. It is these policies that secure the economic growth and prosperity sought. Within this context, we need to ensure that S&D treatment provisions beneficial to development efforts are reinforced, including growth, poverty reduction and sustainable development, while those that may potentially delay this progress are assessed and reconsidered.

7. The carefully negotiated rules of Membership need to be adhered to for the system to work for all. However, there is a need for flexibility in the application of the rules in order to take the circumstances of individual Members into consideration. Members need to be able to assess their particular needs and request S&D treatment accordingly, rather than rely on broad categories of exemption that would not necessarily meet their requirements. At issue is the pace of adherence, not adherence itself. A possible way forward is for the CTD to take a Member-specific focus and examine methods to develop a predictable cycle to analyze the impact S&D treatment provisions have

had on specific Members' capacity to adhere to obligations and realize the economic benefits of Membership.

8. With the exception of the LDC exemptions/derogations, which have particular criteria and are specific to each Agreement, blanket exemptions are inconsistent with this Member-specific approach. Members wishing to take advantage of such special measures should be able to provide the rationale for the measure, frame domestic plans to advance their ability to meet obligations and demonstrate results within agreed milestones.

9. Positive S&D treatment measures are those aimed at increasing the trade opportunities of developing country Members, safeguarding the interests of developing country Members, and assisting LDCs. For these provisions, it is incumbent upon the developed and developing country Members to demonstrate where and how they have been furthering these aims.

10. Similarly, many S&D treatment provisions are of a "best endeavour" nature or involve other multilateral agencies. We cannot assume that because we do not have any information from Members as to how they have tried to implement these, that nothing has occurred. The Special Session might consider recommending to the General Council that the Committees and Working Groups responsible for the relevant WTO Agreements have a more thorough, coherent and regular reporting process on S&D treatment. This could be a vital task of the monitoring mechanism proposed by the Africa Group.

11. Trade-related technical assistance and capacity building are a means to enabling developing countries to implement Agreements. As technical assistance is the fifth category of S&D treatment identified by the WTO Secretariat, the monitoring mechanism will have a key role to play in ensuring that TRTA and capacity building activities are effective, properly targeted, and coordinated with other agencies, to help countries progressively implement elements of Agreements.

III. UTILIZATION EXAMINED

12. S&D treatment represents acknowledgement that no "one size fits all". S&D treatment exists to allow developing countries sufficient support and time to make necessary transformative changes to their economies to enable incremental integration to the WTO, until full participation is achieved. There has been significant progress. As WT/COMTD/W/77/Rev.1/Add.4 enumerates, Member countries have undertaken a variety of efforts to implement these commitments. Where flexibility was "encouraged", it has been respected, and it is the exception rather than the rule that a developing country that invoked S&D treatment was unable to take advantage of it.

13. Canada has taken several actions aimed at increasing the trade opportunities of developing country Members, including further development of a Trade Facilitation Office to promote exports of developing countries, and significant increases in funding for trade-related technical assistance and capacity building.

14. Canada co-founded the Advisory Centre on WTO Law at the Seattle WTO Ministerial meeting. Canada has also been a strong supporter of the "Integrated Framework," which pulls together six agencies (WTO, World Bank, UNDP, UNCTAD, ITC and IMF) to help developing nations integrate into the multilateral trading system and the modern global economy.

15. Canada maintains a General Preferential Tariff for developing countries, and will institute quota and tariff-free market access for LDCs.

16. Given the wide range of trade agreements, their differing adoption times, as well as the state of trade policy and development policy thinking at these times, it is not surprising S&D treatment provisions are not consistent and coherent. While this inconsistency has not necessarily meant that

measures are ineffective, it has added to the administrative burden of countries that may need to invoke provisions. For example, many S&D treatment provisions require that Members make requests for their use.

17. As has been noted, failure to use S&D treatment provisions does not necessarily mean there is a problem with their wording or that they are irrelevant. Some specific proposals are issues for negotiations and should be dealt with under the agendas of the respective WTO Committees. Similarly, we should not be too hasty in assuming that they would be better served by changing them. To make efficient use of our resources in considering proposals to make provisions more effective, we might first assess if countries can make better use of existing provisions. This could be furthered by examining practical illustration of difficulties in utilizing particular provisions. This is key for deciding whether to recommend to the General Council that a given provision needs to be revised, rethought, or eliminated.

IV. ROLE OF MONITORING MECHANISM

18. While only preliminary thought has been given to the framework for monitoring procedures, creating a new or heavy structure should be avoided. The mechanism should monitor the effectiveness of S&D treatment in integrating members into the multilateral trading system. This might initially be done by the individual committees and working groups who would then provide input to the CTD for an overview report.

19. In the short to medium term, a monitoring mechanism could report on progress made in negotiating committees on the S&D treatment proposals referred to them. This would have the advantage of not letting work on proposals become too diffuse. Also in the medium term, the mechanism might look at interim policy changes or a road map envisioned by countries to enable them to meet their commitments. For example, where S&D treatment involves specific transition periods, Member countries' actions toward implementation of obligations could be reviewed at stages within the transition period, in conjunction with reviews of TRTA that is being delivered to implement obligations.

20. As noted in the African proposal, the monitoring mechanism should have the capacity to take note of ongoing developments to enable continual refocusing of S&D treatment efforts towards the most effective means of integrating developing countries into the multilateral trading system.

V. MOVING FORWARD

21. WTO S&D treatment provisions were negotiated within the context of specific Agreements. Integral to each are certain precepts. New proposals need to respect these key precepts. While the intention is to allow for flexibility, the ultimate aim is inclusion not exclusion. By joining the WTO, Members have accepted the underlying notion that global trade rule-making and liberalization play an important role in promoting the liberalization and expansion of trade and in fostering economic growth, development and employment. Similarly, Members have accepted the framework that has been developed through the various Agreements.

22. Each S&D treatment provision must be dealt with within the context of the specific Agreement in which it was negotiated, taking into consideration the changing circumstances of the specific Member requesting use of the provision.

23. Given the preceding analysis of the S&D treatment context and utilization, Canada proposes that the discussion of strengthening S&D treatment progress on the basis of the following overarching ideas:

- **Transparency:** S&D treatment approach should reflect broader WTO principles: that is, they should be transparent, open, predictable, and respect procedural fairness.
 - **Member-specific Flexibility:** Since the economy of each developing country is unique, S&D treatment must be flexible enough to allow each country to chart its individual path to integration. Recognizing limited capacity and lack of resources, S&D treatment should enable developing countries to undertake commitments and obligations at a pace that is flexible, with appropriate TRTA and support when required. The application of flexibility for some Members should not cause harm to others.
 - **Cooperation:** S&D treatment provisions should be developed and examined on a cooperative basis, ensuring coherence between committees and the CTD.
 - **Efficiency and Effectiveness:** S&D treatment provisions should be assessed on an ongoing basis against their efficiency and effectiveness in contributing towards integration into the multilateral trading system.
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