

BOKSGURG GROUP DISCUSSION PAPER

Special and Differential Treatment within an Agreement on Trade Facilitation

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1. SDT measures are adopted in favor of developing /LDCs/country below a certain income, which need to be provided with special dispensations for implementing provisions of WTO Agreements.

2.SDT and WTO: The WTO classifies SDT provisions in the following manner:

- (i) Provisions which enhance trade opportunities(GATT XXXVI ,AOA,ATC,)
- (ii) Provisions which allow reduced commitments , flexibility or exemptions.
- (iii) Provisions which allow time bound derogations.
- (iv) Provisions which commit technical assistance.
- (v) Provisions for LDCs.

2.1 Most of the above SDT measures are covered by 50 best endeavor clauses, and about 30 of them provide flexibility of commitments. Excepting for the ones providing time bound derogations, the others are hortatory in nature and have no triggering mechanism nor any specificity in the manner of support to be provided.

3.1 **The Need for SDT in a TF Agreement.** There is general consensus that certain commitments or provisions under the proposed TF Agreement, will be beyond the capacity of many developing /LDC members to implement .While members may be able to agree to the provision in principle, the depth and extent of the commitment needed under the provision ,will determine their capacity to implement. Many developing / less developed countries may lack the necessary finance, expertise and administrative back up to implement the provisions. Even where it is conceded that the commitment to implement need to be tied to TA, past experience shows that ensure that the members receive the required TA.

4. Issues in providing SDT in case of Agreement on Facilitation: The Trade Facilitation Agreement being negotiated is based on the principle that the developing countries, including LDCs will commit to implementing the provisions of the Agreement to the extent of their capacity or capability. This is what the July package has mandated.Thus S&DT becomes an inherent part of the Agreement ,as for each of the articles of the Agreement , a decision will be necessary whether a member has the capacity to implement it, or in other words ,whether the member has to be provided some derogation in terms of time or allowed total exemption.

Except ,in case of Agreement on Agriculture , all Agreements allows rather straight forward derogations, in that they are allowed longer transitional period ,with the provision of extension in certain cases .The AOA however has issue specific cases, which means there are more than one arrangement for providing SDT. The TF Agreement , will be more unique in the sense that ,for the same provision, commitments may vary, depending on the extent and depth of commitments members will have to make. Thus, while members may have to commit agreement to the Article in principle ,the transitional period may vary with the depth of commitments or the extent to which new measure will have to be initiated , which again may be related to their financial and administrative capacity. Thus a simple time bound derogation may not be of use.

It is suggested that SDT measures be based on the following principles:

- (1) **Categorization** of countries into three groups on the basis of (a) their share of world trade or (ii) **developed(Cat.1)** ,developing (**cat.2**),and LDCs and countries with an income of less than \$1000(**cat.3**)(I prefer the latter).
- (2) The commitment, except for the core principles incorporated in the Agreement, will initially depend on the category they are in .As countries graduate into higher categories their level of commitment will also change ,having to, accept higher levels of commitment .Even in the case of core elements ,to which all members have to generally agree, there could be some degree of flexibility if the level of commitment demands significant investment.The facilitation Committee to be set up will decide on this.
- (3) Even if after the expiry of the transitional period ,countries could seek further extension of the transitional period if it could be convincingly argued that ,for genuine reasons they would need further time and assistance.
- (4) Commitments, which require significant investment or professional capacity, will have to be linked to the receipt of such support. The Committee ,suggested below, overseeing the Agreement will then be empowered to grant further extension of the transitional period for the countries. Such extension ,will however have to be based on genuine reasons ,and not merely on the perception of the concerned member. For example ,if on account of the presence of a powerful and corrupt in then ports or lack of overall proper governance, the country is unable to perform or is evading its responsibility of implementing commitments, the mere fact of being in the same category after the lapse of the transitional period ,may not be grounds for extension .
- (5) A Trade facilitation Committee should be set up to oversee implementation of the Agreement, provide guidance, initial ,adjudication where necessary,, support ,as well as grant extension or provide of transitional period. Developed countries may also seek additional time ,on account oif genuine problems.
- (6) The SDT measures will be in the form of longer transitional periods and in specific cases linked to receipt of critical financial and technical support.

5 (i) Besides the core provisions to which all have to agree and commit ,the members will have to indicate through annexes the policies ,depth of their commitment and the time frame.

(ii) The time frame ,not indicated in the main text, and for implementing decisions by international recognized bodies, will be determined by the Committee on the basis of their categorization.(this is also indicated at ---- below.)

(iii)Time may be also extended if the Committee finds it necessary ,as members prepare to meet standards ,decisions taken in internationally recognized forums.

6 .(i)The SDT measures suggested are at 6.1 .Developing countries or LDCs will not require derogations in all cases ,as some of the provisions will be of a nature which merely reaffirms ones commitment to simple and universal issues as openness ,predictability, fairness, or commitment which do not require funds or much of professional support. All members have to agree to such provisions. It is only for those that require funds or ,an appropriate administrative set up that derogations are needed. I have ,below referred to probable commitments/issues likely to be included in the proposed Agreement. The suggestions are based on the issues identified by the Bogsburg Group and that gleaned from the paper prepared by the WTO Secretariat.

(ii) In case of provisions not included below, and those related to para 7 below, the normal time bound period derogation will be 2 yrs for cat.3 and 1 yr for Cat.2 ,which may be ratified by the TF Committee.

6.1 For the following an extended implementation period of 3 years for Category 3 countries and 2 years for Category 2 countries is suggested:

(1)Publication of laws, relevant information etc.: This should be a general and universal commitment for all ,without transitional period.. However for placing the information in the internet, or to be readily accessible through the electronic media, time is to be provided. Here also , where the introduction of electronic technology ,translation facility, publication in one of the WTO official language is a requirement, and if some countries are still not been able to implement this fully for justifiable reasons such as where implementation is related to TA and if such support is not forthcoming ,the transitional period may be extended by the TF committee.

The member through an annex should indicate its commitment.

(2)Centralized enquiry point/single national focal point.

(3) Border should clear declared goods as soon as it is practicable and progressive introduction of simplified procedures and to minimize documents.

To be notified through annex .For a higher level of commitment ,necessary because of the need to adhere to international agreements ,the transitional period may be extended.

(4)Time release of goods:

To be notified through annex

However meeting higher standards or for shortening release time is contingent upon receipt of TA and financial support, and if these are not forthcoming then the transitional may be extended.

(5) Risk Management ,post clearance audit system and security: Policy and details to be notified through annex

(6) Single administrative document ,one time submission ,adoption of international standard,universal data,conformation to UN layout key and to accepted agreed standards with regard to electronic equivalents.

To be notified through annex

Transitional period may be extended.

(7) No advalorem charge

To be notified through annex

(8) Fast track and simplified procedures for good traders: To be notified through annex

(9) Use of EDI: To be notified through annex

If achieving higher standards is contingent upon receipt of TA and financial support and these are not forthcoming, then the transitional may be extended

(10) GATT Ar V :Transit guarantees may be disposed of where possible, or kept to lowest and additional measurer required for high risk goods
To be notified through Annex

(11) Regional cooperation and use of information technology for goods in transit.
To be notified through Annex

(11) Acceptance of copies /commercially available information.

6.2 For the following a transitional period of 2 yrs for Category 3, and 1 year for Cat.2 countries is suggested:

(1)Mechanism of release pending duty payment

- (2) Cooperation and data exchange between customs authority
- (3) Pre arrival documentary examination

6.3 .The members will have the right to appeal to the TFC for extension of transitional period if such request can be justified. Such requests may be on account of financial limitations and non receipt of committed TA on which the ability to implement depended.

7 . The following aspects need to be reflected in the annexes indicating the extent and depth of commitments of members (Members may also provide through annex their level of commitment on the various articles of the Agreement)

- a. The manner and means to access all laws and regulations
- b. The charges to be paid for and the manner of accessing such information.
- c. The manner of reviewing ,levying and consolidating the number of fees
- d. The focal point for clearances ,centralized enquiry points, and indicate the time frame for achieving a single window clearance system
- e. The system for consultation
- f. System of advance rulings
- g. The arrangement for coordinated border management
- h. The laws relating to appeal and adjudication of matters relating to import and export of goods
- i. Release time of goods.
- j. Simplification ,and commitment to achieve single administrative document ,universal data set, adoption of international standards
- k. Fast track procedures for good traders
- l. Extent of coverage –entire country
- m. Categorization of goods-sensitive and others, simpler procedures for non sensitive goods; policy on post clearance audit, policy on pre arrival clearance
- n. Special procedures for authorized traders
- o. Documentary requirements for clearance for imports as well as for transit

- p. The commitment to speed up the process of clearance through automation , modern information technology and the possible time frame for achieving objectives
- q. Prohibit consular transactions.
- r. Incorporation of standards ,decisions, and procedure adopted by international organizations recognized by the Committee of TF

