Analysis of Developing Country Status in the WTO System: Implication from the Korean Experience

Dukgeun Ahn
Graduate School of International Studies, Seoul National University

1. "Developing Country" in the WTO System

1.1 Overall Structures of Special and Differential Treatment for Developing Countries

The different types of special and differential treatment provisions included in various WTO Agreements operate in different ways. For instance, provisions relating to transition times and flexibility tend to specify exceptions to rules to which developing countries may have recourse if they choose. On the other hand, provisions relating to technical assistance, the safeguarding of interests of developing countries, and measures to increase developing countries' participation in world trade tend to specify positive actions to be undertaken by developed countries in favour of developing countries. In addition, individual WTO Agreements contain different types and combinations of special and differential treatment provision, reflecting, in part at least, their specific characteristics. For instance, agreements which require considerable investments in capacity for their implementation may also include provisions relating to technical assistance and transition time periods.

A. Provisions aimed at increasing the trade opportunities of developing country Members

There are fourteen such provisions in total across the following four agreements and one decision, namely:

(a) GATT 1994: Article XXXVI.2-5, Article XXXVII.1(a) and 4; Article XVIII.2 (c) and 2(e).

(b) The Enabling Clause, para 2(a).

(c) Agreement on Agriculture: Preamble.

(d) Agreement on Textiles and Clothing: **Article 2.18**

(e) GATS: Preamble, **Article IV:1; and Article IV:2**

These provisions all consist of actions to be taken by Members in order to increase the trade opportunities available to developing countries. Such provisions are frequently couched in "best endeavour" language, though not always. Provisions within this group which are mandatory (i.e. using "shall" rather than "should" language) are shown in bold above. Actions taken by members pursuant to some of these provisions are specifically notified to the Membership – this is the case for example with preferences given under the Enabling Clause, or actions taken under Article 2.18 of the Agreement on Textiles and Clothing by restraining Members. Members schedules of commitments under the GATS and concessions in the Agreement on Agriculture contain information relating to the implementation of these provisions. Overall, a broad question that seems to arise in relation to this class of provision concerns the extent to which these provisions have contributed to increasing developing countries' trade opportunities, how this may be assessed, and, if they have not contributed to the increasing developing countries' trade opportunities, what may be done.

B. Provisions under which WTO Members should safeguard the interests of developing country Members

There are 47 such provisions across the following 13 WTO agreements and two decisions:

(a) Part IV of GATT 1994: Article XXXVI.6,7 and 9; Article XXXVII 1(b) and (c), 2 (a)-(c), 3 (a) –(c), and 5; Article XXXVIII.1, 2 (a), (b), (d), (f).

(b) the Decision on Measures Concerning the Possible Negative Effects of the Reform Programme on Least-Developed and Net Food-Importing Developing Countries: **Paragraphs 3 (i)-(ii); Paragraph 4; and Paragraph 5.**

(c) Application of SPS Measures: **Article 10.1** and Article 10.4.

(d) Textiles and Clothing: Article **6.6 (b), 6.6 (c)** and **Annex, paragraph 3(a**).

(e) Technical Barriers to Trade: **Article 10.6**; **Article 12.1**; **Article 12.2; Article 12.3**; **Article 12.5**; **Article 12.9**; **Article 12.10**.

(f) Implementation of Article VI of GATT 1994: **Article 15.**

(g) Implementation of Article VII of GATT 1994: **Annex III.5.**

(h) Decision on texts relating to minimum values and imports by sole agents, sole distributors, and sole concessionaires: **Text 1** and Text 2.

(i) Import Licensing Procedures: Article 1.2; Article 3.5 (a)(iv); Article 3.5 (j).

(j) Subsidies and Countervailing Measures: Article 27.1 and **Article 27.15.**

(k) Agreement on Safeguards: **Article 9.1 and Footnote 2.**

(l) Understanding on Rules and Procedures Governing the Settlement of Disputes: Article 4.10, **Article 8.10**, **Article 12.10, Article 12.11**; Article 21.2; **Article 21.7**; **Article 21.8**.

(m) GATS: Preamble; Article XII.1, **Article XV.1**, and **Article XIX.3.**

These provisions concern either actions to be taken by Members, or actions to be avoided by Members, so as to safeguard the interests of developing country Members. More than half of these are mandatory (i.e. they use "shall", rather than "should", language), and these are shaded in bold in the list presented above. Questions raised in relation to this category of provisions are similar to those raised in relation to the "trade opportunities" class. They turn around the extent to which they have led to the safeguarding of developing country interests, and whether the actions to be taken can be specified concretely, monitored and their implementation objectively measured or evaluated.

C. Flexibility of commitments, of action, and use of policy instruments

There are 50 such provisions across the following ten different WTO agreements:

(a) GATT 1994: Article XVIII and Article XXXVI, paragraph 8.

(b) Enabling Clause: Paragraphs (b) and (c).

(c) the Agreement on Agriculture: Article 6.2; Article 6.4; Article 9.2(b)(iv); Article 9.4; Article 12.2; Article 15.1; Annex 2, para 3, and footnote5; Annex 2, para.4, footnotes 5 and 6; Annex 5, Section B.

(d) Technical Barriers to Trade: Article 12.4.

(e) Trade-Related Investment Measures: Article 4.

(f) Subsidies and Countervailing Measures: Article 27.2 (a) and Annex VII; Article 27.4; Article 27.7; Article 27.8; Article 27.9; Article 27.10; Article 27.11; Article 27.12; Article 27.13.

(g) Safeguards :Article 9.2.

(h) GATS: Article III:4;Article V:3; Article xix:2, and Paragraph 5(g) of the Annex on telecommunications.

(i) Understanding on Rules and Procedures Governing the Settlement of Disputes: Article 3.12.

These provisions relate to: actions developing countries may undertake through exemptions from disciplines otherwise applying to the membership in general; exemptions from commitments otherwise applying to Members in general; or a reduced level of commitments developing countries may choose to undertake when compared to Members in general. The majority of these provisions are found in agreements concluded at the end of the Uruguay Round. Their importance may be understood in terms of their actual or potential role in facilitating the integration of trade and trade policy into the pursuit of wider development policy objectives. This type of provision is especially prominent, and important, in those areas and agreements where WTO rules have extended beyond traditional GATT-type border measures. In almost all cases, flexibility takes the form of individual provisions which Members choose, or not, to exercise. The main exception is the GATS, where in addition to individual provisions, flexibility is built into the overall structure of the agreements which provides for flexibility on an individual- case-by-case basis through negotiated commitments.

D. Transitional Time Periods

There are 19 such provisions across the following eight agreements:

(a) Agriculture: Article 15.2.

(b) Sanitary and Phytosanitary Measures: Article 10.2 and 10.3.

(c) Technical Barriers to Trade: Article 12.8.

(d) Trade-Related Investment Measures: Article 5.2.

(e) Implementation of Article VII of GATT 1994: Article 20.1; Article 20.2; Annex III.1; and Annex III.2

(f) Import Licensing Procedures: Article 2.2, footnote 5.

(g) Subsidies and Countervailing Measures: Article 27.2 (b); Article 27.4; Article 27.14; Article 27.5; Article 27.6; and Article 27.11.

(h) TRIPS: Article 65.2; and 65.4.

These provisions relate to time bound exemptions from disciplines otherwise generally applicable.[1] It is to be noted that some transition time periods in different agreements have elapsed. In some cases, the relevant provision, in addition to specifying a time-period, include modalities through which an extension might be sought. Transition time periods were an innovation of the Uruguay Round. They reflect the recognition that the process of implementation of WTO agreements, and accompanying reforms, could give rise to transitional costs. It is possible to distinguish between two different types of costs: first, those which stem from the fact that the implementation of certain WTO agreements requires significant levels of human and institutional capacity. The second type of cost - the political economy- adjustment type – for example, transitional shifts in output and employment in specific sectors which may result from the phasing out of protection. The type of cost which may arise is specific to individual agreements, and the magnitude of the cost may depend on individual country circumstances.

E. Technical Assistance

There are 14 such provisions across the following six different agreements and one ministerial decision:

(a) Decision on measures concerning the possible negative effects of the reform programme on least-developed countries and net-food importing developing countries: Paragraph 3 (iii).

(b) Application of SPS Measures: Articles 9.

(c) Technical Barriers to Trade: Article 11.1; Article 11.1; Article 11.3; Article 11.4; Article 11.5; Article 11.6; and Article 12.7.

(d) Implementation of Article VII of GATT 1994: Article 20.3.

(e) GATS: Article XXV:2 and Paragraph 6 of the Annex on telecommunications.

(f) TRIPS: Article 67.

(g) Understanding on Rules and Procedures Governing the Settlement of Disputes: Article 27.2

[1] In the case article 10.2 of the SPS agreement, the transition time-period in question relates to longer time-frames for compliance to be accorded to products of interest to developing countries with SPS measures introduced by Members.

The agreements where provisions relating to technical cooperation feature prominently tend to be those which require significant levels of capacity for their implementation. The provision of technical assistance can thus be closely linked with transition time periods in facilitating the implementation of certain WTO agreements.

F. Provisions relating to least-developed country Members.

There are 24 such provisions across seven agreements and three decisions:

(a) Agriculture: Article 15.2, Article 16.1 and Article 16.2

(b) Enabling Clause: Paragraph d. 1

(c) Decision on waiver for preferential tariff treatment of Least-Developed Countries.

(d) Textiles and Clothing: Footnote to Article 1.2, and Article 6.6 (a).

(e) Technical Barriers to Trade: 11.8

(f) Trade-Related Investment Measures Article 5.2

(g) GATS: Article IV:3, and Article XIX:3

(h) TRIPS: Article 66.1 and 66.2.

(i) Understanding on Rules and Procedures Governing the Settlement of Disputes: Article 24.1 and 24.2

(j) Decision on Measures in Favour of Least-Developed Countries: paragraphs 1-3.

These provisions, whose applicability is limited exclusively to the LDCs, all fall under one of the other five types of provision, as follows:

(a) Six fall into the category of provisions aimed at increasing trade opportunities:

- Enabling Clause - paragraph d.
- Decision on waiver for preferential tariff treatment of LDCs.
- Agreement on Textiles and Clothing - Footnote to Article 1.2.
- TRIPS Agreement –Article 66.2.

- Decision on Measures in Favour of Least-Developed Countries – paragraph 2 (ii) and paragraph 3.

(b) Ten fall into the category of provisions aimed at safeguarding the interests of least-developed countries:

- Agreement on Agriculture - Article 16.1 and 16.2.
- Agreement on Textiles and Clothing – Article 6.6 (a).
- GATS – Article IV:3 and XIX:3.
- Understanding on Rules and Procedures Governing the Settlement of Disputes: Article 24.1 and 24.
- Decision on Measures in Favour of Least-Developed Countries: paragraphs, 2(i), 2(iii) and 2(iv).

(c) one relating to the flexibility of commitments, of action, and use of policy instruments – Article 15.2 of the Agreement on Agriculture.

(d) three in the category of transition time periods

- TRIMS – Article 5.2
- TRIPS – Article 66.1
- Decision on Measures in Favour of Least-Developed Countries –paragraph 1.

(e) two in the category of technical assistance.:

- Technical barriers to trade – Article 5.8
- Decision on Measures in Favour of Least-Developed Countries – Paragraph 2(v).

1.2 Provisions Aimed at Increasing the Trade Opportunities of Developing Country Members

A. Implementation of Article VI of the GATT 1994, Article 15

> *"It is recognized that **special regard must be given** by developed country Members to the special situation of developing country Members when considering the application of anti-dumping measures under this Agreement. Possibilities of constructive remedies provided for by this Agreement **shall be explored** before applying anti-dumping duties where they would affect the essential interests of developing country Members."*

This provision can be classified as an **obligation of conduct**. The provision requires that, in certain circumstances, "special regard" be given to the situation of developing country Members and that constructive remedies be "explored". No specific result is envisaged. This provision also stipulates an **obligation of Members taken individually**.

The Panel in *European Communities – Antidumping Duties on Imports of Cotton-Type Bed Linen from India* rule that the European Communities had failed to act consistently with the obligations imposed by Article 15 of the Antidumping Agreement. In it findings, the Panel noted that: (i) Article 15 refered to "remedies" in respect of injurious dumping. A decision not to impose an anti-dumping duty was not a remedy of any type, constructive or otherwise; (ii) Imposition of a lesser duty or a price undertaking would constitute "constructive remedies" within the meaning of Article 15. The Panel did not come to a conclusion as to what other actions might in addition constitute "constructive remedies" Article 15; (iii) The phrase "before applying anti-dumping duties" in Article 15 means before the application of **definitive** antidumping duties; and (iv) Article 15 imposes no obligation to actually provide or accept any constructive remedy that may be identified and/or offered. The Panel concluded that Article 15 does, however, impose an obligation to actively consider, with an open mind, the possibility of such a remedy prior to the imposition of an anti-dumping measure that would affect the essential interests of a developing country.[2] The Dispute Settlement Body adopted the report of the Panel as modified by the Appellate Body (which did not consider this aspect of the Panel's report) on 12 March 2001. On 7 August 2001 the EC suspended the application of the anti-dumping measure with regard to imports originating in India, effective 14 August 2001. The EC considers that by this action, it has fully implemented the DSB recommendations and rulings. India has made known to the EC that it is in disagreement as to whether this action constitutes full implementation of the DSB recommendations and rulings in the dispute.[3]

[2] WT/DS/141R, dated 30 October 2000.
[3] WT/DS141/11, dated 21 September 2001.

In discussions on this provision in the Committee on Anti-Dumping Practices, Members have expressed the view that developed Members have not complied with Article 15 when imposing anti-dumping duties.[4]

This issue is also part of the work to be done in WTO subsidiary bodies pursuant to paragraph 7.2 of the Doha Decision of 14 November 2001 on Implementation-Related Issues and Concerns (WT/MIN(01)/17). In this Decision, Ministers recognize "that, while Article 15 of the Agreement on the Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 is a mandatory provision, the modalities for its application would benefit from clarification." Pursuant to this decision, "the Committee on Anti-Dumping Practices is instructed, through its working group on Implementation, to examine this issue and to draw up appropriate recommendations within twelve months (that is by 14 November 2002) on how to operationalize this provision".

B. Agreement on Subsidies and Countervailing Measures, Article 27.15

> *"The Committee **shall**, upon request by an interested developing country Member, **undertake** a review of a specific countervailing measure to examine whether it is consistent with the provisions of paragraphs 10 and 11 as applicable to the developing country Member in question."*

This provision can be classified as an **obligation of result** insofar as it requires the relevant Committee to initiate and carry out a review of a CVD measure, if so requested. This provision also stipulates an **obligation of Members taken collectively** since the Committee is instructed to undertake a review.

[4] G/ADP/W/416 dated 8 November 2000, G/ADP/M/15 dated 14 March 2000, G/ADP/M/16 dated 20 September 2000, G/ADP/M/17 dated 9 April 2001, G/ADP/M/18 dated 21 November, 2001.

To date no request has been received by the SCM Committee pursuant to Article 27.15 (that is, to review a specific countervailing measure). This issue is also part of the work to be done in WTO subsidiary bodies pursuant to the paragraph 10.3 of the Decision adopted 14 November 2001 on Implementation-Related Issues and Concerns (WT/MIN(01)/17), addressing specific existing special and differential treatment provisions. In this Decision, Ministers agreed that the Committee on Subsidies and Countervailing Measures continue its review of the provisions of the Agreement on Subsidies and Countervailing Measures regarding countervailing duty investigations and report to the General Council by 31 July 2002. This Decision covers all provisions of the SCM Agreement having to do with countervailing duty investigations. To date, no Member has submitted a proposal concerning Article 27.15 in the context of this review.

C. Agreement on Safeguards, Article 9.1

> *"Safeguard measures **shall not be applied** against a product originating in a developing country Member as long as its share of imports of the product concerned in the importing Member does not exceed 3 per cent, provided that developing country Members with less than 3 per cent import share collectively account for not more than 9 per cent of total imports of the products concerned [2]."*
>
> Footnote 2: *"A Member **shall immediately notify** an action under paragraph 1 of Article 9 to the Committee on Safeguards."*

This provision can be classified as an **obligation of result** given that, subject to certain conditions, it prevents Members from applying safeguard measures against products from certain developing country Members. It also prescribes the notification of any safeguard measures that may nevertheless be taken. This provision also stipulates an **obligation of Members taken individually** since individual Members take safeguard measures.

This provision is invoked generally when a safeguard measure is conducted.

D. Understanding on Rules and Procedures Governing the Settlement of Disputes, Article 8.10

> *"When a dispute is between a developing country Member and a developed country Member the panel **shall**, if the developing country Member so requests, **include** at least one panelist from a developing country Member."*

This provision can be classified as an **obligation of result**, as it requires the inclusion of at least one panelist from a developing country Member, if a request is made. This provision also

stipulates an **obligation of Members taken individually** insofar as a developed country Member cannot object to inclusion of a panelist on the grounds that the person is from a developing country Member.

In disputes between developing country Members and developed country Members, nationals of developing country Members regularly serve as panelists. This has been the result of specific requests from developing country Members pursuant to this provision.

E. Understanding on Rules and Procedures Governing the Settlement of Disputes, Article 12.10

> *"In the context of consultations involving a measure taken by a developing country member, the parties may agree to extend the periods established in paragraphs 7 and 8 of Article 4. If, after the relevant period has elapsed, the consulting parties cannot agree that the consultations have concluded, the Chairman of the DSB* ***shall decide****, after consultation with the parties, whether to extend the relevant period and, if so, for how long."*
>
> *"In addition, in examining a complaint against a developing country Member, the panel* ***shall accord*** *sufficient time for the developing country Member to prepare and present its argumentation. The provisions of paragraph 1 of Article 20 and paragraph 4 of Article 21 are not affected by any action pursuant to this paragraph."*

This first part of this provision can be classified as an **obligation of result** since it requires the Chairman of the DSB to make a decision. The second part of the provision can be classified as an obligation of result, in that it requires panels to grant sufficient time to developing country respondents to prepare and present their argumentation.

In one dispute, a developing country defendant contended that the process raised a number of questions in relation to the DSU such as (i) the real difficulties faced by developing countries on the insistence by a developed country that consultations be held only in Geneva; (ii) the meaning and significance of the consultations stage; (iii) whether a Member could decide unilaterally that consultations had been concluded in particular since Article 12.10 of the DSU provided that "In the context of consultations involving a measure taken by a developing country Member, the parties may agree to extend the period established in paragraph 7 and 8 of the Article 4. If, after the relevant period has elapsed, the consulting parties cannot agree that the consultations have concluded, the Chairman of the DSB shall decide, after consultations with the parties, whether to extend the relevant period, and if so, for how long." For all these reasons, one developing country Member could not agree

to the establishment of a panel requested by a developed country Member.[5]

F. Understanding on Rules and Procedures Governing the Settlement of Disputes, Article 12.11

> *"Where one or more of the parties is a developing country Member, the panel's report **shall explicitly indicate** the form in which account has been taken of relevant provisions on differential and more-favourable treatment for developing country Members that form part of the covered agreements which have been raised by the developing country Member in the course of the dispute settlement procedures."*

This provision can be classified as an **obligation of result** since it requires panels to indicate in their reports how special and differential treatment provisions have been taken into account.[6]

G. Understanding on Rules and Procedures Governing the Settlement of Disputes, Article 21.7

> *"If the matter is one which has been raised by a developing country Member, the DSB **shall consider** what **further action** it might take which would be appropriate to the circumstances."*

This provision can be classified as an **obligation of conduct** if it is understood to mean that the DSB is not required to take specific further action, but rather to "think" about and discuss what, if any, further action might be taken. This provision also stipulates an **obligation of Members taken collectively** since the obligation is laid on the DSB.

H. Understanding on Rules and Procedures Governing the Settlement of Disputes, Article 21.8

> *"If the case is one brought by a developing country Member, in considering what appropriate action might be taken, the DSB **shall take into account** not only the trade coverage of measures complained of, but also their impact on the economy of developing country Members concerned."*

This provision can be classified as an **obligation of conduct**. The provision does not prescribe specific action to be taken, but rather requires the DSB to "take into account" certain aspects in considering specific action. This provision also stipulates an **obligation of Members taken collectively** since the DSB is the addressee of the obligation.

---

[5] WT/DSB/M/21, dated 5 August 1996, p. 4.

[6] Panel reports show that this provision has been taken into account. Examples can be found in document WT/DS/141/R (*EC - Bed Linen*) dated 15 May 2000, or document WT/DS/90/R (*India - Quantitative Restrictions*) dated 6 April 1999.

This provision has been taken into account in an arbitrator's decision pursuant to Article 22.7 of the DSU.[7]

I. General Agreement on Trade in Services, Subsidies, Article XV.1

> *"Members recognise that, in certain circumstances, subsidies may have distortive effects on trade in services. Members shall enter into negotiations with a view to developing the necessary multilateral disciplines to avoid such trade-distortive effects.[7] The negotiations shall also address the appropriateness of countervailing procedures. Such negotiations* ***shall also recognize*** *the role of subsidies in relation to the development programmes of developing countries and* ***take into account*** *the needs of Members, particularly developing country Members, for flexibility in this area. For the purpose of such negotiations****, Members shall exchange*** *information concerning all subsidies related to trade in services that they provide to their domestic service suppliers."*
>
> Footnote [7]: *"A future work programme* ***shall determine*** *how, and in what time-frame, negotiations on such multilateral disciplines will be conducted."*

The classification of this provision presents some difficulty. The provision could be considered an **obligation of conduct** if it is understood to mean that the mandated negotiations must "recognize" the development role of subsidies and "take account" of the needs of developing countries for flexibility, without, however, predetermining a specific result. If, on the other hand, the provision is understood to mandate *some* flexibility for developing country Members, it could be classified as an **obligation of result**. This provision also stipulates an **obligation of Members taken collectively** in view of the fact that the envisaged negotiations are multilateral in nature.

J. General Agreement on Trade in Services, Negotiations on Specific Commitments, Article XIX.3

> *"For each round, negotiating guidelines and procedures shall be established. For the purposes of establishing such guidelines, the Council for Trade in Services shall carry out an assessment of trade in services in overall terms and on a sectoral basis with reference to the objectives of this Agreement, including those set out in paragraph 1 of Article IV. Negotiating guidelines* ***shall establish*** *modalities for the treatment of liberalization undertaken autonomously by Members since previous*

[7] Document WT/DS27/ARB/ECU (*EC – Bananas III (Ecuador) (Article 22.6 – EC)).*

negotiations, as well as for the special treatment for least-developed country Members under the provisions of paragraph 3 of Article IV "

This provision can be classified as an **obligation of result**. It prescribes for that negotiating guidelines and modalities be established for the treatment of liberalisation undertaken autonomously. Section V.B.3 below refers to Article IV.3 on least-developed countries. It is not entirely clear whether this provision stipulates an **obligation of Members taken collectively** and/or of **Members taken individually**. The provision could be seen as directed both at Members engaged in multilateral negations and at Members engaged in bilateral negotiations.

Guidelines and Procedures for the Negotiations on Trade in Services were adopted by the Special Session of the Council for Trade in Services on 28 March 2001, pursuant to the objectives of the GATS, as stipulated in the Preamble and Article IV, and as required by Article XIX.[8] Section III of "Modalities and Procedures", paragraph 13 addresses requirements specific to this provision stating, "Based on multilaterally agreed criteria, account shall be taken and credit shall be given in the negotiations for autonomous liberalization undertaken by Members since previous negotiations. Members shall endeavour to develop such criteria prior to the start of negotiation of specific commitments."

During a Special Session of the Services Council, several developing countries made submissions made with regard to the treatment of autonomous liberalization in the WTO service negotiations.[9]

[8] Document S/L/93 dated 29 March 2001.
[9] Documents S/CSS/W/126 and 130 dated 30 November 2001.

Annex. Category of Special and Differential Treatment Provisions in the WTO Agreements

A. Measures to enhance trade opportunities for developing country Members

Instrument	Measures	In Favour of/Concerning	Article
Agreement on Textiles and Clothing	More favourable growth factor	Small exporters, new entrants and to the extent possible LLDCs	1:2 2:18
	Consideration of particular interests	Cotton producing exporting Members	1:4
Agreement on Technical Barriers to Trade (TBT)	Examination by international standardizing bodies of the possibility of preparing international standards (upon request)	Products of special interest to LDCs	12:6
General Agreement on Trade in Services (GATS)	Negotiation of specific commitments	Services sectors and modes of supply of export interest to LDCs, in particular LLDCs	IV:1
Decision on Measures in Favour of LLDCs	Autonomous implementation, in advance and without staging, of Uruguay Round concessions on tariffs and non-tariff measures	Products of export interest to LLDCs	2(ii)
	Consideration of improving preferential treatment	Products of export interest to LLDCs	2(ii)
	Adoption of positive measures which facilitate the expansion of trading opportunities	LLDCs	3

B.Measures safeguarding developing country Members' interests, to be implemented domestically

Instrument	Measures	In Favour of/ Concerning	Article
Agreement on Sanitary and Phytosanitary Measures (SPS)	Consideration of special needs in the preparation and application of SPS measures	LDCs, and in particular of the LLDCs	10:1
	Longer time-frames for compliance with new SPS measures	Products of interest to LDCs	10:2
	Allow a reasonable interval between the publication and entry into force of a SPS regulation	In particular, producers of LDCs	Annex B, para. 2
Agreement on Textiles and Clothing	Consideration of particular interests	Cotton producing exporting Members	1:4
	Significantly more favourable treatment regarding the transitional safeguard	LLDCs	6:6(a)
	More favourable treatment regarding the application of quota levels, growth rates and flexibility in the transitional safeguard	Small suppliers, new entrants and to the extent possible also LLDCs	1:2 6:6(b)
	Special consideration of needs in the application of quota levels, growth rates and flexibility in the transitional safeguard	Comparatively small textiles and clothing exporters dependent on the wool sector	6:6(c)
	More favourable treatment regarding the transitional safeguard	Exports of Members having a significant portion of their exports in outward processing trade	6:6(d)
	No transitional safeguard	Exports of handloom fabrics from LDCs and other specific products of export interest to LDCs	Annex, para. 3
TBT Agreement	Allow a reasonable interval between the publication and entry into force of a technical regulation and requirements concerning conformity assessment procedures	In particular, producers of LDCs	2:12 5:9
	Consideration of special needs in the implementation and operation of the Agreement; and in the preparation and application of technical regulations, standards and conformity assessment procedures	LDCs	12:2 12:3 12:9
Agreement on Anti-Dumping	Special regard of special situation in considering the application of anti-dumping measures	LDCs	15

Instrument	Measures	In Favour of/ Concerning	Article
	Exploring constructive remedies before applying anti-dumping duties	Products of essential interest of LDCs	15
Agreement on Import Licensing Procedures	Consideration of needs to preventing trade distortions arising from an inappropriate operation of administrative procedures used to implement import licensing régimes	LDCs	1:2
	Better treatment in allocating licences among importers	Products from LDCs, in particular LLDCs	3:5(j)
Agreement on Subsidies and Countervailing Measures	Positive demonstration that Article 6:1 subsidies caused serious prejudice	Subsidies granted by LDCs	27:8
	Application of defined threshold for classifying the volume of subsidized imports as negligible	Subsidized imports from LDCs	27:10
	More favourable threshold for classifying the level of subsidization as *de minimis*	Subsidized imports from LDCs	27:10 27:11
	No actionability under multilateral rules of direct forgiveness of debt and certain other subsidies in the context of a privatization programme	Subsidies granted by LDCs	27:13
Agreement on Safeguards	Exemption from safeguard measures provided they remain below a certain threshold	Imports from LDCs	9:1
GATS	Establishment of contact points to facilitate the access to information relating to Members' markets	Service suppliers of LDCs, in particular LLDCs	IV:2
Dispute Settlement Understanding (DSU)	Special attention to particular problems and interests during consultations	LDCs	4:10
	Due restraint in using the dispute settlement mechanism	Measures taken by LLDC	24:1
Decision on Measures in Favour of LLDCs	Special consideration of export interests when applying import restrictions	LLDCs	2(iv)

C. Measures safeguarding developing country Members' interests, to be implemented multilaterally

Instrument	Measures	In Favour of/ Concerning	Article
WTO Agreement	Periodical review of the special provisions and propose action	LLDCs	IV:7
Agreement on Agriculture	Consideration of special and differential treatment in the negotiations for continuing the reform in agricultural trade	LDCs	20(c)
TBT Agreement	Consideration of special needs in the implementation and operation of the Agreement	LDCs	12:2
	Facilitation of participation in international standardizing bodies and international systems for conformity assessment	Relevant bodies in LDCs	12:5
	Periodical examination of the special and differential treatment	LDCs	12:10
Agreement on Subsidies and Countervailing Measures	More favourable dispute resolution during the transition period	Export subsidies and subsidies contingent upon the use of domestic over imported goods granted by LDCs	27:7
	Limitations on actionability	Subsidized products from LDCs	27:9
	Review of the consistency of a Member's countervailing measure with special and differential treatment (upon request)	LDCs	27:15
GATS	Consideration of needs when disciplines concerning subsidies will be developed	LDCs	XV:1
	Inclusion of special treatment in guidelines for future trade liberalizing rounds	LLDCs	XIX:3
DSU	Inclusion of at least one panellist from a LDC in the panel (upon request)	Disputes between a LDC and a developed country Member	8:10
	Possible extension of periods for consultations, agreed by parties or decided by Chairman of Dispute Settlement Body	Disputes involving a measure taken by a LDC	12:10
	Accord sufficient time to prepare and present argumentation before the panel	LDCs when defendant party	12:10
		Disputes where one or more	

Instrument	Measures	In Favour of/ Concerning	Article
	Explicit indication in the panel report of how special and differential provisions raised were considered	members is a LDC	12:11
	Particular attention in the surveillance of the implementation of recommendations or rulings	Matters affecting the interests of LDCs	21:2
	Consideration of what further action might be taken	Case brought by a LDC	21:7 21:8
	Particular consideration to the special situation at all stages of the dispute	Disputes involving a measure taken by a LLDC	24:1
Decision on Measures in Favour of LLDCs	Regular reviews for ensuring expeditious implementation of all special and differential measures	LLDCs	2(i)
Decision Relating to LLDCs and Net Food-Importing Developing Countries (NFICs)	Periodical review of the level of food aid	LLDCs and NFICs	3(i)
	Establishing a level of food aid commitments sufficient to meet legitimate needs during the reform programme	LDCs	3(i)
	Adoption of guidelines for ensuring that an increasing proportion of basic foodstuffs is provided	LLDCs and NFICs	3(ii)
	Ensuring that any agreement relating to agricultural export credits makes appropriate provision for differential treatment	LLDCs and NFICs	4
	Possibility of drawing on the resources of international financial institutions in cases of short-term difficulties in financing normal levels of commercial imports	LLDCs and NFICs	5

1.3 Monitoring Mechanism/Processes on Special and Differential Treatment

A. Subsidiary Bodies of the General Council

(1) Council for Trade-Related Aspects of Intellectual Property Rights

(i) Technical cooperation for developing countries pursuant to Article 67 of the TRIPS Agreement

Article 67 of the TRIPS Agreement requires developed country Members to provide, on request and on mutually agreed terms and conditions, technical and financial cooperation in favour of developing and LDC Members. According to this provision, the objective of such cooperation is to facilitate the implementation of the Agreement. Article 67 specifies that such assistance shall include assistance in the preparation of laws and regulations on the protection and enforcement of intellectual property rights as well as on the prevention of their abuse, and support regarding the establishment or reinforcement of domestic offices and agencies relevant to these matters, including the training of personnel.

Technical cooperation pursuant to Article 67 of the TRIPS Agreement is a regular item on the agenda of the TRIPS Council's meetings, with a view to monitoring compliance with the obligation contained in Article 67, sharing information on the technical cooperation possibilities available and providing an opportunity to identify any needs not adequately being addressed.

In order to ensure that information on available assistance is readily accessible and to facilitate the monitoring of compliance with the obligation of Article 67, developed country Members annually present descriptions of their relevant technical and financial cooperation programmes. The information received is reviewed each year by the TRIPS Council at a meeting normally held in the autumn. For the sake of transparency, intergovernmental organizations with observer status in the TRIPS Council, such as World Intellectual Property Organisation and the World Health Organization, have also annually presented, on the invitation of the Council, information on their activities. In addition, the WTO Secretariat reports on its technical cooperation activities in the TRIPS area.[10]

The TRIPS Council has agreed that each developed country Member should notify a contact point for technical cooperation on TRIPS, in particular for the exchange of information between donors and recipients of technical assistance.[11]

(ii) TRIPS and Public Health

On 30 August 2003, the General Council adopted a decision on "Implementation of

[10] This information from developed country Members, intergovernmental organizations and the WTO Secretariat on their technical cooperation activities in the area of TRIPS is circulated in IP/C/W/- series of documents.

[11] These notifications are being circulated in IP/N/7- series of documents, which are available on the WTO Document Online database.

Paragraph 6 of the Doha Declaration on the TRIPS Agreement and Public Health".[12] The decision contains a set of three waivers from certain provisions of the TRIPS Agreement.

Although the decision does not specifically relate to a S&D provision, the purpose of the decision is to facilitate affordable access to medicines in countries with insufficient or no manufacturing capacities in the pharmaceutical sector and that all developed countries have opted out from using the system created under it for importation of medicines. To this extent, it is a special and differential decision and it does contain some provisions dealing specifically with review and monitoring.

Paragraph 8 of the decision provides that the Council for TRIPS shall annually review the functioning of the system set out in the decision with a view to ensuring its effective operation and report annually on its operation to the General Council. This review shall be deemed to fulfil the review requirements of Article IX:4 of the WTO Agreement. The first annual review was held at the TRIPS Council's meeting in December 2004.

On 6 December 2005, the General Council adopted a decision on "Amendment of the TRIPS Agreement",[13] which will make the system created under the 2003 waiver decision a permanent part of the TRIPS Agreement. The waiver decision will remain in force for each Member until the amendment replacing its provisions takes effect for that Member. Paragraph 7 of the Annex to the TRIPS Agreement contained in the Protocol Amending the TRIPS Agreement provides for a similar annual review of the functioning of the system.

(2) Committee on Trade and Development

(i) Technical Assistance

The Committee on Trade and Development (CTD) is mandated to provide guidelines for, and to review periodically, the technical cooperation activities of the WTO as they relate to developing country Members. In addition to formally approving the WTO's Technical Assistance and Training Plans[14], the CTD also considers, on a yearly basis, a semi-annual review and an annual report on the implementation of technical assistance activities[15], as well as the annual technical cooperation audit report.[16]

(ii) Duty-Free Quota-Free Market Access Decision

At the Hong Kong Ministerial Conference Ministers adopted a decision calling on developed

[12] WT/L/540 and Corr.1.
[13] WT/L/641.
[14] Biennial Technical Assistance and Training Plan 2008 – 2009 contained in WT/COMTD/W/160.
[15] The most recent reports are contained in WT/COMTD/W/161 and WT/COMTD/W/157 respectively.
[16] WT/COMTD/W/158.

countries and developing country Members in a position to do so, to provide duty-free quota-free (DFQF) market access for goods originating from LDCs.[17] As part of this decision, it was agreed that Members should notify, annually, the implementation of the schemes adopted under the decision to the CTD which would in turn carry out an annual review of the steps taken to provide DFQF market access to the LDCs and report to the General Council for appropriate action. Since the Hong Kong Ministerial Conference, the CTD has been considering the steps taken to provide DFQF market access to LDCs.[18]

(iii) Notifications under the Enabling Clause

The 1979 GATT Decision on Differential and More Favourable Treatment, Reciprocity and Fuller Participation of Developing Countries – known the as "Enabling Clause" – provides the legal basis for the notification of certain types of preferential trade arrangements in the WTO, including regional trade agreements (RTAs) in goods between developing countries as well as the GSP schemes of many developed countries. Notifications under the Enabling Clause are considered in the CTD. Based on Members' desire to enhance the transparency of information concerning RTAs, the General Council took a decision on 14 December 2006 to establish, on a provisional basis, a Transparency Mechanism for RTAs. The Transparency Mechanism applies to all RTAs notified to the WTO, including those notified under the Enabling Clause. Also on 14 December 2006, the General Council invited the CTD to consider transparency for preferential arrangements under the Enabling Clause other than those covered by the Transparency Mechanism for RTAs.

(iv) Aid For Trade

The WTO plays a key role in monitoring and evaluating progress on Aid for Trade, through periodic reviews in the CTD, and an annual Global Review on Aid for Trade in the General Council, which draws together the various tiers of monitoring inputs into a coherent picture. The OECD and the WTO have collaborated closely in setting up an aid-for-trade monitoring framework. This framework aims to elicit critical quantitative and qualitative information from donor agencies, and their partner countries to provide a comprehensive picture of aid for trade and allow the international community to assess what is happening, what is not, and where improvements are needed.

The first tier provides a global picture of annual aid-for-trade flows based on statistical data from the OECD/Development Assistance Committee (DAC) Creditor Reporting System (CRS) database. Data on global flows are clearly important in assessing whether additional resources have been made available, in helping identify where funding gaps remain, in highlighting where resource reallocation might be appropriate, and in increasing transparency on pledges and disbursements. The

[17] Annex F of WT/MIN(05)/DEC.
[18] See Minutes WT/COMTD/M/57 – M/59, M/61 – M/65, and M/67 (to be issued).

second tier relies on donor self-evaluation. In seeking specific inputs from donors, this level of reporting allows for refining the quantifications of aid for trade derived from the CRS database. In addition, this second tier of monitoring also aims to uncover qualitative information on best practices and how, in the case of aid for trade, donors adhere to the principles of the Paris Declaration on Aid Effectiveness. The third tier relies on self-assessments provided by partner countries. This tier allows partner countries to define which activities in their national development strategies are identified as trade development priorities. As such, it permits partner countries to refine the quantification of aid for trade and elicits additional qualitative information on how partner countries adhere to the principles of the Paris Declaration on Aid Effectiveness.

In addition, monitoring is also carried out through reviews of aid-for-trade activities, held at the regional level. The Regional reviews provide a platform for donors to explain their regional strategies and commitments, and for partner countries to identify key gaps and priorities.

(3) Committee on Regional Trade Agreements

Under the provisional Transparency Mechanism on RTAs that was adopted by the General Council in December 2006, the Secretariat prepares factual presentations on all RTAs relating to goods and/or services that are notified to it, including those RTAs notified under the Enabling Clause. As of January 2008, 11 RTAs have been considered and the Committee has begun its 'initial review' of the Transparency Mechanism as required by the General Council Decision.

(4) Committee on Balance-of-Payments Restrictions

While there is no monitoring mechanism in place or under discussion in the Committee on Balance-of-Payments Restrictions, consultations held under Article XVIII:B of the GATT relating to quantitative restrictions for balance-of-payment purposes, can be considered to contain an implicit monitoring in that Members are to review all restrictions still applied under Section B of Article XVIII. Subsequently, those Members applying the restrictions, are to enter into consultations along specific guidelines in order to determine whether the restrictions are consistent with the rules or whether there is a need to modify them.

B. Subsidiary Bodies of the Council for Trade in Goods

(1) Committee on Agriculture

In accordance with Article 18 of the Agreement on Agriculture, the Committee on Agriculture

carries out the review of the implementation of all Members' commitments as set out under the Agreement and embodied in the Schedules of Concessions. There is no specific and separate review of S&D provisions in favour of developing country Members.

(2) Committee on Sanitary and Phytosanitary Measures

While the Committee on Sanitary and Phytosanitary Measures does not have a monitoring mechanism specifically to review the implementation of S&D provisions, the implementation of S&D is a standing item on the Committee's agenda. In addition, the Committee has in place a mechanism to ensure transparency of S&D provided in response to requests by developing countries.[19] The Committee also has in place a mechanism to address any specific trade concerns related to sanitary and phytosanitary measures raised by any Member.

(3) Committee on Technical Barriers to Trade

Article 12 of the Agreement on Technical Barriers to Trade (TBT Agreement) contains specific provisions on S&D for developing country Members. Paragraph 10 of Article 12 instructs the Committee to carry out periodic examinations of special and differential treatment as laid down in the TBT Agreement that is granted to developing country Members on national and international levels.

The Committee's First Triennial Review resulted in a number of recommendations, including inviting Members to voluntarily exchange information on the implementation of Article 12 of the TBT Agreement.[20] In its Fourth Triennial Review Report adopted in November 2006[21], the Committee agreed "to encourage Members to inform the Committee of special and differential treatment provided to developing country Members, including information on how they have taken into account special and differential treatment provisions in the preparation of technical regulations and conformity assessment procedures", and to "encourage developing-country Members to undertake their own assessments of the utility and benefits of such special and differential treatment".

(4) Committee on Anti-Dumping Practices

Article 15 of the Anti-Dumping Agreement requires developed country Members, before applying anti-dumping duties on products of developing Members, to "explore possibilities of

[19] G/SPS/33 and Add.1.
[20] G/TBT/5.
[21] G/TBT/19.

constructive remedies" where the duties would "affect the essential interests" of the developing country Member.

Pursuant to the Doha Ministerial Decision on Implementation-Related Issues and Concerns [22], which calls upon the Committee on Anti-Dumping Practises to develop guidelines for improving its annual reviews of the operation of the Agreement, the Committee adopted recommendations relating to its annual reporting to the Goods Council.[23] The recommendations include the need for developed country Members, in their bi-annual reports of anti-dumping actions taken, to report on how they have fulfilled the obligations of Article 15, and that the information provided be compiled into a table to be appended to the Committee's annual reports. Since 2003, subsequent annual reports of the Committee have contained information on the implementation of Article 15.[24]

(5) Committee on Subsidies and Countervailing Measures

Pursuant to procedures adopted at the Doha Ministerial Conference[25], the Committee on Subsidies and Countervailing Measures has adopted annual decisions providing for an extension of the transition period for the elimination of export subsidies by certain developing country Members. The General Council recently adopted a decision[26] to continue this procedure for the adoption of annual extension decisions during the period 2008 to 2012. The adoption of such annual decisions by the Committee is subject to review by the Committee to ensure compliance with certain transparency and standstill requirements. This review takes place based on updating notifications submitted by the Member in question.

(6) Committee on Safeguards

The Committee on Safeguards does not have a specific function of monitoring S&D. Howe ver, it does carry out the review of notifications from various Members which includes, if relevant, not ifications concerning the application of the S&D provision contained in Article 9.1 of the Safeguards Agreement.

C. Subsidiary Bodies of the Council for Trade in Services

[22] WT/MIN(01)/17, paragraph 7.4

[23] G/ADP/9.

[24] Annex E of documents G/L/653 (2003), G/L/707 (2004), G/L/758 (2005), G/L/791(2006) and G/L/830(2007).

[25] See document G/SCM/39.

[26] See document WT/L/691.

(1) Working Party on Domestic Regulation

Pursuant to GATS Article VI:4, Members in the Working Party on Domestic Regulation have been considering possible disciplines on domestic regulation. Among the possible disciplines that have been identified, Members have proposed disciplines on development.[27] These disciplines include the right for a Member to accord reduced administrative fees to service suppliers from developing country Members, as well as longer phase-in periods of new licensing requirements and procedures, qualification requirements and procedures, and technical standards in service sectors and modes of supply of export interest to developing country Members. In addition, developed country Members, and to the extent possible other Members, have been called up to provide technical assistance to developing country Members and in particular LDCs, upon their request and on mutually agreed terms and conditions aimed at, among other things, developing and strengthening institutional and regulatory capacities to regulate the supply of services and implement these disciplines and assisting them to meet the relevant requirements and procedures in export markets.

Furthermore, Members are proposing that the Council for Trade in Services establish a Committee on Domestic Regulation to oversee the implementation of the disciplines, as well as the operation of Article VI of the GATS including any further work under Article VI:4 of the GATS. In addition, it has been proposed that the Council for Trade in Services, upon the request from any Member, review the operation of the future disciplines and make recommendations as appropriate.[28]
committees established pursuant to the plurilateral trade agreements

(2) Committee on Government Procurement (1994 Agreement)

Article V:14 of the Agreement on Government Procurement calls for an annual review of the operation and effectiveness of Article V of the Agreement which relates to "Special and Differential Treatment for Developing Countries". In addition, it calls for a "major review" every three years of the operation of Article V on the basis of reports to be submitted by Parties, in order to evaluate its effects. As part of the three-yearly reviews and with a view to achieving the maximum implementation of the provisions of the Agreement, and having regard to the development, financial and trade situation of the developing countries concerned, the Committee is mandated to examine whether exclusions provided for in accordance with the provisions of paragraphs 4 through 6 of Article V shall be modified or extended. In recent years, the whole of the Agreement on Government Procurement, including Article V, has been under active review and re-negotiation by the Parties. A

[27] Paragraphs 43-45 of the Chairman's informal note on 'Disciplines on Domestic Regulation Pursuant to Gats Article VI:4'.
[28] Paragraphs 47-48 of the Chairman's informal note on 'Disciplines on Domestic Regulation Pursuant to Gats Article VI:4'.

revised text has been developed which is intended to replace the text of the existing Agreement. The revised text will incorporate a new provision in favour of developing countries which is considered to set out more clearly and specifically the flexibilities that are available to developing countries under the Agreement.[29] The operation and effectiveness of the new provision is to be reviewed every five

1.4 Determination of "Developing Country" in the GATT/WTO

There have been controversies on whether or not a country should receive the special and differential treatment reserved in the WTO Agreements for developing economies. Similar discussions have not taken place in the case of least-developed countries because these are clearly identified in the United Nations list of LDCs which is accepted by the WTO. In addition, the former Soviet Union countries in Central and Eastern Europe are referred to as transition economies and are excluded from the list of developing countries.[30]

In the GATT/WTO system, there is no formal definition of a developing country. However, there has been an informal group of such countries, the chairman of which invites new Members to join if they claim that status. The system worked satisfactorily under GATT, and 98 out of 128 GATT members were accepted as developing countries.

This practice has been basically intact in the WTO system. The determination of a developing country status is still based on self-declaration. This practice has raised little problem, particularly at the current stage of the WTO, in which most of the transition periods rendered to developing country Members already expired. Because there is no visible benefit for a developing country, somewhat loose practices to determine a developing country do not cause serious conflicts in implementing the WTO Agreements.

But, as sectoral negotiations under the Doha Development Agenda (DDA) have been substantially progressed, the status of a developing country has again raised some controversy in terms of agricultural negotiations in which special and differential treatment for a developing country has significant implication for Members. For example, Members such as Korea, Taiwan (or Chinese Taipei), and China are currently arguing for the developing country status, whereas other Members oppose to such arguments.

[29] Article IV of GPA/W/297.

[30] Romania is the rare exception to be recognized as a developing country while it is considered as a transition economy. Raj Bhala and Kevin Kennedy, World Trade Law, 400-401 (1998).

1.5 "Developing Country" in the Accession Negotiation

Among the subjects which have given rise to the most discussion in Working Parties for WTO Accession are whether or not the applicant country in question should receive the special and differential treatment reserved in the WTO Agreements for developing economies. As it has been difficult to resolve this issue, participants in a number of Working Parties have taken the view that it is more productive not to discuss the principle involved but to concentrate on the terms that are appropriate in each accession case and in relation to each subject dealt with by the Working Party.[31]

Several applicant countries have requested that they be granted transitional periods of the kind provided in WTO Agreements for developing Members and, in some instances, for Members in the process of transformation from a centrally-planned into a market, free-enterprise economy. It is the position of some WTO Members that only original Members of the WTO are entitled to use the transitional periods referred to, which form part of the single undertaking of the WTO Agreement. Some members state that a transitional period should not ordinarily be granted. In this connection, some Members make it plain that where existing legislation is deficient or lacking, draft laws and regulations in full conformity with WTO rules be presented to the Working Party for examination, together with a timetable for their implementation.

Others say that they are not, *a priori*, opposed to transitional periods for applicants but that applicants must demonstrate that they have done as much as they can to bring their system into conformity with WTO requirements before asking for transitional periods. Some others urge flexibility in this matter, especially for small developing economies and least-developed countries.

Consequently, acceding governments usually present a plan and timetable showing, for each of the main subjects dealt with in the Working Party, what steps they have taken towards conformity, what remains to be done and how and when they expect to complete this process. This is then the subject of negotiations in the Working Party on the terms to be included in the Protocol.

A. China Case

In its WTO accession negotiation, China insisted that it should be able to join the WTO with developing country status while several WTO Members strongly opposed to it. The China's view is understandable because not only does it reflect accurately the economy's current stage of development but also it would bestow in many respects more WTO rights and fewer obligations on China. One of the perceived benefits would be longer transition periods both for meeting WTO accession demands and for complying with on-going liberalization commitments under the Uruguay Round. Another benefit of developing country status is that China would have access to the many other special and

[31] WT/ACC/7/Rev.2 (Nov. 1, 2000), p.21.

differential treatment in the WTO Agreements. Two of those that particularly worry some of China's trading partners are provided in GATT Articles XII and XVIII, which allow a developing country to restrict imports when it faces difficulties in its balance of payments or seeks to retain protection for a particular 'infant' industry (automobiles being the key candidate in China's case). While not often used by WTO Members in the past, Article XII would give China the legal right to renege on its market access commitments following its accession as a developing country, should it be able to convince the IMF that it had a serious problem with its balance of payments that cannot be addressed better by other means such as a devaluation. The concern of some WTO Members that China might try to (ab-)use its legal right made them very reluctant to accept developing status of China even though its per capita income level would suggest that status is appropriate.[32]

Although China has not been granted across-the-board preferential treatment as a developing country, it has negotiated specific transitional arrangements in certain areas of its trade regime. Examples include the phasing out of quotas and import licenses, and the phased liberalization of the right for foreign entities to trade in China. In contrast, despite the availability of more preferential treatment under the WTO agreements, China has accepted a special cap on its ability to provide domestic production subsidies in agriculture, has agreed not to use export subsidies, and has committed to immediate implementation of the TRIPS Agreement.[33]

B. Vietnam Case

C. Ukraine Case

[32] Kym Anderson, "On the Complexities of China's WTO Accession", World Economy, 764-765 (1997).
[33] Jeffrey L. Gertler, "What China's WTO Accession Is All About?", in China and the WTO: Accession, Policy Reform, and Poverty Reduction Strategies, p. 26 (eds., D. Bhattasali, et al., 2004).

2. "Developing Country" Status for Korea

2.1 Korea in the GATT System

Korea joined the GATT in 1967 in the final phase of the Kennedy Round as the 71st Contracting Party. The decision to join the GATT was carefully weighed by the Korean Government for several years since it launched the First Five Year Economic Development Plan (1962-1966). However, once the decision had been made to accede to the GATT, the process was extraordinarily swift. The application was made on May 20, 1966, and after five months of negotiations from September 1966 to February 1967, process of accession was completed in April 1967.

Interestingly enough, Korea's introduction to the GATT had come much earlier. Korea, as a newly independent nation after the World War Ⅱ, sent a delegation to Torquay, England in September 1950 to participate in the second trade round under the aegis of the GATT and to seek accession to the GATT. The records show that, in Torquay, Korea made tariff concessions on 31 items, including bituminous coal, chemical fertilizers, cotton, pesticides, whiskey and champaigne. The Korean delegation also signed the Protocol of Accession[34] which was endorsed by 25 of the 34 Contracting Parties of the GATT at the time. The accession did not materialize as the country failed to take necessary steps, including the ratification of the Protocol of Accession, in the midst of the Korean War.[35] As a poor country with hardly any international trade at the time, the decision to seek membership in the GATT in 1950 was primarily motivated by the desire of the Korean Government to receive political recognition in the international community, particularly by seeking membership in any and all international organizations, after its independence from Japan after World War Ⅱ.

Unlike at the time of the Torquay Round, the Korea's decision to pursue the GATT membership in 1966 was much more deliberate and commercially motivated. The new government which came into power in 1962 through a military coup had launched an ambitious outward-oriented Five Year Economic Development Plan that year. Export promotion became one of the central policy thrusts of the Plan. Thanks to these policies, the Korean exports began to take off, albeit from a small base. The Korean exports grew annually by 45 percent, during the first five year plan, reaching US $250 in 1966.

In July 1963, the Director General of the GATT sent a letter to the Korean government recommending GATT entry. This put in motion studies in the trade-related ministries about the benefits and costs of such an entry. On November 15, 1965, President Chung-Hee Park instructed his government to officially review the desirability of GATT membership in one of the monthly Export

[34] BISD, Vol.Ⅱ, May 1952, pp.33-34.
[35] For a brief description of the Korean participation in the Torquay Round, see, Korean Customs Association, THE HISTORY OF TARIFFS IN KOREA(1958), pp. 354-355.

Promotion Council Meetings at the Blue House, the Presidential Office. An inter-ministerial committee composed of ministries of trade, finance, and foreign affairs was created shortly thereafter for this purpose.

For a poor country pursuing an export-oriented development strategy, the GATT membership was important in terms of securing most-favored-nation (MFN) status from all 66 GATT Contracting Parties. Earlier, Korea concluded bilateral trade agreements with the United States (1956), Philippines (1961), Taiwan (1961) and Thailand (1961). As exports grew, more trade agreements were negotiated. However, this was a time-consuming and cumbersome procedure, and the GATT membership gave the means to avoid concluding endless bilateral agreements to gain the MFN status in overseas markets. The GATT membership was also perceived by the Korean policy makers as providing opportunities for cooperating with other developing countries in combating discrimination and protectionism against export items of interest to Korea, particularly in the agricultural and cotton textile sectors.[36]

It appears that the ministries concerned with trade policy, such as trade, finance, and foreign ministries, had also carefully examined the "cost" of GATT membership in the wake of the government decision to apply. In particular, their main interest was whether Korea as a developing country could, under the existing GATT framework, maintain its flexibility with regards to the existing economic and trade policies which were marked by a high degree of government intervention in all sectors of economic policy. Such questions as whether Korea could pursue its trade liberalization on its own pace or whether industrial subsidies could be provided appeared to have loomed large in the minds of policy makers examining the pros and cons of membership.[37] The addition of Chapter Ⅳ to the GATT in 1963, with its "more favorable and differential treatment" for developing countries was, therefore, an important development in this regard. It convinced the Korean policy makers that the GATT membership, while providing substantial benefit to Korea, did not overly constrain Korea's economic and trade policies because of its developing country status. The Korean government thus decided to pursue the GATT membership in early May 1966 and notified the GATT on May 20 Korea's intention to join the GATT and to participate in the Kennedy Round.

The tariff negotiation part of the accession process took place in Geneva from September to December 1966 and Korea's strategy was focused on limiting tariff concessions of its own, rather than gaining tariff concession from her trading partners in the GATT. Korea's offer to seven Contracting

[36] How the Korean Government viewed the GATT accession is well explained by the Report to the Economic Ministers Meeting by the Minister of Foreign Affairs in the Proceeding of the Economic Ministers Meeting, No.138, May 9, 1966.

[37] For background of Korea's decision to apply for membership, see, Hahm Tae-Hyuk, REFLECTIONS ON THE GATT ACCESSION NEGOTIATIONS (1993).

Parties[38] which sought bilateral negotiations with Korea, was limited in scope and many offers were confined to the binding of the present tariff levels. They, therefore, were received with little enthusiasm. However, as Korea was still a minor developing country with a small trade volume and a low per capita income, the major trading partners of Korea seemed to have refrained from making many additional demands. When the negotiations were completed in December 1996, Korea made tariff concessions on 60 items, of which 41 items were bindings at the existing tariff levels, while 17 items were tariff reductions and two items were ceiling bindings. The combined imports of those 17 duty reduction items in 1965 was less than $1 million, or about 1.2 percent of Korea's total imports of $ 463 million registered for that year. The United States sought tariff reduction of several other items, including automobiles, but later relented. Japan withdrew their request for reductions under the condition that Korea would not seek any reciprocal concessions from Japan. New Zealand sought and received a 10 percentage tariff reduction on lamb meat tariff from 35 to 25 percent.

The GATT Working Party on Accession of Korea, composed of 14 Contracting Parties, met twice on November 30 and December 6, 1966 to examine the trade policy of Korea and to review Korea's plan to bring its trade regime into conformity with the GATT rules. The Korean delegation assured the Working Party members of its intention to further liberalize trade as Korea's balance of payments situation improves and as its infant industry gains its competitiveness. The Working Party adopted the Protocol of Accession[39] on December 8 and sent its report to the General Council, which approved Korea's accession to the GATT by consensus a week later. The post ballots were sent out by the GATT Secretariat on January 10, 1967 to fulfill the terms of Article XXXIII of the GATT, which required two-thirds majority for accession of new members. The two-thirds majority required was 47 votes out of 70 Contracting Parties and this was achieved as of March 1, 1967.

The ratification process in Korea was extraordinarily swift. On March 6, the GATT Secretariat notified the Korean Government that the requirements of accession under the Article XXXIII had been fulfilled. On March 8, the joint meeting of the Committees of Finance and Economy, Trade, Industry and Energy, and Foreign Affairs of the Korean National Assembly unanimously approved the country's accession without much discussion. Two days later, on March 10, the Plenary Session of the National Assembly also approved the accession unanimously, again without much discussion. The National Assembly's ratification paved the way for the Korean Ambassador in Geneva to sign the Protocol of Accession on March 15 and Korea became a new Contracting Party one month later, on April 14, 1967.

As a new Contracting Party in GATT, Korea was soon to benefit from 33 to 35 percent average global tariff cuts on some 41,111 items negotiated in the Kennedy Round, which was

[38] The U. S., Japan, EC, the United Kingdom, Canada, New Zealand, and Australia negotiated bilateral tariff concessions with Korea in the accession negotiation.

[39] Korea's Protocol of Accession is contained in, BISD, 15th Supplement, April 1968, pp.44-46.

concluded in May 15, 1967. According to one Korean government estimate, Korea's benefits from tariff concessions of trading partners covered 44 percent of Korea's total exports in 1966.[40]

When Korea joined GATT in 1967, the developing country status for Korea was not an issue due to a still aggrieved economic situation. In fact, Korea could invoke so-called "balance-of-payment exception" under GATT Article XVIII:B, which was exceptionally permitted for developing countries, to restrain importation into the domestic market. No country in the GATT had challenged the developing country status of Korea.

2.2 Korea during the Uruguay Round Negotiation

(a) Background

Korea was an active participant in the Uruguay Round. It played a significant role in both launching the round and in the negotiations as well. This enhanced role of Korea is owed to a number of developments that have taken place in Korea as well as in the international economy in the several years preceeding the launch of the round in 1986.

At home, Korea shifted from a heavy interventionist policies to more market-based economic policies and embarked on an ambitious trade liberalization program since the beginning of the 1980s. Korea in the earlier decade experimented with import substitution policies under the Heavy and Chemical Industry (HCI) policy. Under this policy drive, officially announced in 1973, credit, interest rate tax and trade policies were used to promote development of "key" industries, such as iron and steel, non-ferrous metals, shipbuilding, machinery, automobiles, electronics and petrochemicals.[41] While this policy laid the foundation for industrial growth in Korea in the 1980s and beyond, it contributed to the serious structural imbalances and inflationary pressures in the Korean economy by the late 1970s. In 1979, the policy was officially abandoned, and the government began to take measures to correct resource misallocation emerging from the HCI policy and to enhance the competitiveness of Korean industries. Significantly, the Korean government took market opening measures as a first step. Starting in 1978, it began to take trade liberalization measures. By the end of 1979, import items subject to automatic licensing reached 70 percent of all tariff lines and the unweighted average tariff rate had been cut to just under 24%.

These trade liberalizing initiatives have been strengthened when the government subsequently launched on a pre-announced three year program to expand the scope of automatic import licensing in 1983 and a five year program to reduce tariffs in 1984. These plans were renewed in subsequent years and continued until the early 1990s, when nearly all industrial products became subject to automatic

[40] Korean Customs Association, THE TRADE OF KOREA AND GATT (1967), p.3.
[41] For HCI policy drive, see, Trade Policy Review of Korea, C/RM/S/27A, 2 June 1992, pp.9-10.

import licensing and the average tariff rates were reduced to 7.9% by 1994, with the brunt of protection remaining in agriculture. In 1985, industry-specific promotion laws enacted during the late 1960s and the early 1970s were replaced by the Industrial Development Act intended to promote restructuring and technological development on an industry-wide basis.

Under the new market-based macroeconomic policies and the ambitious trade liberalization programs, the Korean economy regained its competitiveness and performed well in 1985. Under these circumstances and with regained confidence, Korea began to look favorably upon the global effort to launch a new trade round. Another reason why Korea looked favorably toward the new multilateral trade negotiations was the perception in the trade policy circles that it might be an answer to a number of challenges facing Korea in the worsening global trade environment. The first of these challenges was the growing protectionism abroad. As Korea's presence in the world markets became more prominent, protectionist measures in the form of safeguard measures, gray-area measures, anti-dumping actions and countervailing duties were imposed with increasing frequency on Korean export products.

According to a study made by the Ministry of Trade and Industry, during 1982 to 1985, some 270 export items were subject to import restrictions in 21 industrial countries covering about 30% of total exports to these countries.[42] This took the form of QRS, voluntary export restraints, and the imposition of anti-dumping and countervailing duties. In 1984, Korea concluded a voluntary export restraint arrangement on steel products, another major export item, with the United States. As of end of 1985, many anti-dumping and countervailing duties have been imposed on Korean export products, ranging from photo albums and color television receivers. In 1985 alone, 15 new anti-dumping and countervailing duty investigations on Korean export products were initiated by Korea's trading partners, of which ten were undertaken by the United States.

The other challenge was the growing market opening pressures by Korea's trading partners. By the mid-1980s, Korea was beginning to face strong market opening pressures from its trading partners, particularly from the United States. Bilateral trade between the two countries expanded rapidly during the 1960s, 1970s and the 1980s. The United States was Korea's number one trading partner with the bilateral trade volume of $17 billion in 1985. Korean exporters' dependence on the United States market was considerable, with 35.5% of Korea's total exports going to that market in the same year. Korea's trade balance with the United States registered a surplus for the first time in 1982, and it expanded to $4.3 billion in 1985.

The United States began demanding market opening measures in 1983. Initially, it took the form of demanding tariff reductions and removing quantitative restrictions in the goods sector. But later, a full trade offensive involving service sectors and the protection of intellectual property were

[42] CCCN 4-digit classification applied. See, Ministry of Trade and Industry, FORTY YEARS OF TRADE PROMOTION (1998), p.573.

undertaken, utilizing Section 301 of the U. S. Trade Act of 1974. In September and October of 1985, investigations and subsequent negotiations took place on Korea's insurance market and the protection of intellectual property rights. Under these negotiations, Korea promised to partly open fire and life insurance markets to U. S. firms and promised to modernize copyright, software and patent laws. In addition, several patent infringement cases involving Korean firms were filed with the USITC in the mid-1980s.

As Korea faced more protectionism abroad and pressures to open its domestic market by its trading partners, it became evident to its policy makers that Korea's overall economic interests were quite consistent with the objectives of the new trade round. It therefore became one of the most active supporters of the launching of a new trade.

Korea thus took a very positive stance toward the launching of a new round in Punta de Este, Uruguay in September 1986. The head of the Korean delegation, Woong-Bae Rha, Minister of Trade and Industry, strongly urging a consensus on launching the new round, advocated that both "old" and "new" issues should be discussed. He stated that Korea attached importance to "tighter safeguard principles, the elimination of non-tariff measures and the strengthening of dispute settlement procedures." As for the new issues, he believed that "the trading nations should recognize that the world economy is constantly evolving and that the trading system needs to be more responsive to this change, "but that the interests and concerns of developing countries should be fully reflected in adapting our trading system to meet new challenges."[43] He supported two other initiatives to strengthen the functioning of the GATT. One was to establish a permanent surveillance body in the GATT to monitor trade policies and practices of GATT Contracting Parties. The other was for ministers to become more involved in the decision-making process of the GATT by meeting periodically on a regular basis.

(b) Korea's Participation in the Uruguay Round

(i) Objectives in the Round

Korea's objective in the Uruguay Round was much more clearly defined than in the previous round. The multilateral trading system was seen as providing the best means of resisting bilateral trade pressures and as an important constraint on protectionist pressures as well as on the negative aspects of the trend towards regionalism. Therefore, Korea was interested in improving the GATT's ineffective dispute settlement procedure, to oppose selective safeguards, to stop abuses of anti-

[43] Korea : Statement by H. E. Woong-Bae Rha, Minister of Trade and Industry at the Meeting of the GATT Contracting Parties of Ministerial Levels, 15-19 September 1986, Punta de Este, Uruguay, MIN(86)/ST/ 11, 16 September 1986.

dumping measures, and to reintegrate textiles into the GATT. On the other hand, in agriculture, Korea's goal in the round was defensive. While supporting progressive liberalization in agriculture, Korea argued strongly that certain agricultural products including rice should be shielded from foreign competition.

As far as the new areas are concerned, Korea did neither have a strong service sector nor a strong system of protection of intellectual property rights. Therefore, Korea was not in the forefront of those countries which argued strongly for the liberalization and protection in these areas. However, Korea supported the inclusion of these sectors in the new round in the name of strengthening and bringing up to date the rules of the multilateral trading system. As for the intellectual property rights, Korea had already embarked on the modernization of its laws, partly in response to the bilateral trade pressures of industrialized countries, in the early 1980s, particularly by the United States. As a result, the new negotiations were not expected to bring overly difficult new obligations to Korea. It was also thought widely that strengthening of intellectual property rights would be crucial to technological advancement in Korea.

The service sector in Korea has come to occupy more than 50 percent of Korea's GDP at the turn of the 1980s and 55.9 percent by 1985. According to the GATT statistics, Korea's service exports reached $8 billion and imports $5 billion respectively in 1987, making Korea the 15th largest exporter and 19th largest importer of services in the world by 1987. Despite the size of the service industry in Korea, however, the industry as a whole lagged behind the manufacturing sector due to the small market, heavy regulation and low level of productivity and research and development in many sectors of services. Therefore, the inclusion of services in the negotiation was generally seen as a burden to the Korean economy. On the other hand, Korea was seen to have comparative advantage in construction services and in the movement of natural persons.

(ii) Korea in the Negotiations

Korea played a much more important role in the Uruguay Round compared with that in the Tokyo Round. The more important role for Korea was a reflection of the enhanced status of Korea as a trading nation. By 1986, Korea became the 12th largest trading nation in the world with a two-way trade volume of $66 billion. Its industries, such as textiles, electronics, shipbuilding, steel and automobiles were already global in scale and in competitiveness. Korea thus had an important stake in

TABLE Ⅰ: WRITTEN PROPOSALS BY KOREA IN THE URUGUAY ROUND

Document No.	II. DATE	III. SUBJECT
1. MTN. GNG/NG7/W6	1 June 1987	Article 28

2. MTN. GNG/NG7/W/59	3 November 1989	Article 28*
3. MTN. GNG/NG8/W3	20 May 1987	Anti-Dumping
4. MTN. GNG/NG8/W/10	30 September 1987	Anti-Dumping
5. MTN. GNG/NG8/W/40/Add.1.	22 November 1988	Anti-Dumping
6. MTN. GNG/NG8/20/40	22 November 1988	Anti-Dumping
7. MTN. GNG/NG8/40/Add.2	20 December 1989	Anti-Dumping
8. MTN. GNG/NG9/W/4	25 May 1987	Safeguards**
9. MTN. GNG/NG9/W/8	5 October 1987	Safeguards**
10. MTN. GNG/NG10/W/5	1June 1987	Subsidies and Countervailing Measures
11. MTN. GNG/NG10/W/11	22 October 1987	Subsidies and Countervailing Measures
12. MTN. GNG/NG10/W/21	17 June 1988	Subsidies and Countervailing Measures
13. MTN. GNG/NG1/W/13	16 November 1987	Tariffs
14. MTN. GNG/NG8/W/21	7 December 1987	Government Procurement
15. MTN. GNG/NG8/W/39	8 November 1988	Government Procurement
16. MTN. GNG/NG5/W/80	16 October 1988	Agriculture
17. MTN. GNG/NG5/W/178	24 July 1990	Agriculture
18. MTN. GNG/NG13/W/19	20 November 1987	Dispute Settlement
19. MTN. GNG/NG11/W/48	26 October 1989	TRIPS
20. MTN. GNG/TRIPS/W/1	12 July 1991	TRIPS
21. MTN. GNS/W/80	24 October 1989	GATS
22. MTN. GNG/NG2/RS/25	18 May 1990	Non-tariff Measures
23. MTN. GNS/CON/W/2	9 October 1990	Construction Services
24. MTN. SB/RBN/5	22 October 1990	Rollback
25. MTN. TNC/W/61	14 January 1991	Trade in Services

*Joint proposal with Argentina, Canada, Columbia, Czechoslovakia, Hong Kong, Hungary, Mexico, New Zealand and Singapore

** Joint proposal with Australia, Hong Kong, New Zealand, and Singapore

the outcome of negotiations, and the Korean government placed a high priority in the negotiations by increasing resources for the negotiations as well as putting into place a national framework of preparations for negotiation.

In December 1986, the government created an inter-agency committee on the Uruguay Round under the Economic Planning Board, which had a coordinating role in domestic and international

economic policy matters. The Uruguay Round Committee, as it was called, was composed of high level officials from nearly all economic ministries and the foreign ministry. The Committee reported to the ministerial level International Cooperation Committee headed by the Deputy Prime Minister, who was concurrently the Minister of Economic Planning on important matters. The Uruguay Round Committee was also divided into seven subcommittees composed of officials of relevant ministries and experts in the private sector. The positions developed by the subcommittees were screened and coordinated by the Uruguay Round Committee before officially communicated to the various negotiating groups created under the Trade Negotiating Committee in Geneva.

Although Korea's experience in the multilateral trade negotiations was rather limited, it played a fairly active role in every phase of the Uruguay Round. This active role reflected the more diversified trading interest of Korea, which, by then, had emerged as the 13th largest trading nation. Unlike in the previous round, the Korean delegation made many written proposals independently of other countries in nearly every negotiating areas of the round. The Deputy Minister of Trade in the Ministry of Trade and Industry was chosen as the Chairperson of NG8, the Negotiating Group on MTN Agreements. As Table Ⅰ shows, Korea made some 25 written proposals during the Uruguay Round. They covered issues such as dispute settlement, safeguards, anti-dumping, subsidies, agriculture, services, and intellectual property. The most extensive Korean proposal was probably in the area of anti-dumping, where Korea initially proposed renegotiations in at least 13 issues of the anti-dumping code agreed during the Tokyo Round.[44]

At the initial stage of the Uruguay Round negotiation, there was no serious dispute concerning the Korea's developing country status. The United States was the main country to oppose to the position of Korea that demanded the status as developing country. The European Communities joined later but was not very keen about this issue. Other countries, including Japan, were generally favorable to the argument of Korea.

During the Uruguay Round negotiation, only 13 Members, including United States, Canada, EU, Japan, Switzerland, Norway, Finland, Australia, New Zealand, Poland, Czech Republic, Slovak, South Africa, submitted their commitments to reduce domestic support as developed countries. Other WTO Members, including Korea, submitted their commitments as developing countries.

(ⅲ) Uruguay Round Results and Korea

The Korean reaction to the results of the Uruguay Round was generally favorable except in agriculture. The market access results were seen in Korea as creating new export opportunities for Korea. The 35 percent tariff reductions by industrial countries and the substantial lowering of tariffs and tariff bindings on the part of developing countries were significant market access improvements

[44] MTN. GNG/NG8/W/3, 20 May 1987.

for Korea. On Korea's part, its market access commitments were considerable. On industrial products, tariff bindings increased from 24 percent to 89 percent of all tariff lines. Tariffs were to be reduced from the base level of 24 percent to 8.3 percent by 2004, which was a reduction of 54 percent. Korea also participated in zero for zero negotiations initiated by the Quad countries. Out of 75 items, Korea agreed to zero tariff on 50 items, agreed to a eight to ten year transition period for 17 items, and did not concede in 8 items such as x-ray equipment, other medical equipment, and penicillin. Korea also participated in tariff harmonization on chemical products, making concessions in 193 of 196 total items. These substantial tariff commitments, however, did not require a major overhaul in Korea's tariff structure, as many concessions were well within the existing tariff rates resulting from the unilateral reductions since the 1980s.[45]

The strengthening of the rules and the dispute settlement mechanism in the round was widely received in Korea as a welcome development as they were expected to reduce unilateral trade pressures on the part of major trading partners. The phase-out of grey-area measures, strengthened rules in anti-dumping and countervailing duties, negotiated in the Uruguay Round, were also expected to act as a strong deterrent to protectionism facing Korean exports. The ten year phase out of the MFA under the Agreement on Textiles and Clothing was generally seen as a disadvantage rather than an advantage by the Korean textile industry as its global market share accumulated with a large quota was expected to be reduced in the liberalization process to low-cost suppliers. In a few cases, the new Uruguay Round agreements created new obligations in Korea's trade policy. The Agreement on Subsidies and Countervailing Duties, which introduced new disciplines in the subsidies, imposed new requirement to phase out Korean subsidies related to exports and domestic production. Under the Agreement on Import Licensing which became a multilateral agreement as a result of the Uruguay Round, Korea was required to phase-out Import Diversification Program targeted against Japan. Under this program, which was introduced in 1978, the products of Japanese origin were not allowed to be imported into Korea for domestic consumption even when the same product was liberalized, and therefore could be imported from elsewhere.

In the new areas, Korea's commitment was expected to be substantial. In reality, however, they turned out to be only moderate. In services, Korea has assumed commitments in about half of the negotiated service sectors, i.e., 78 out of 155 total service sectors. Korea made the full commitments in construction and engineering services, but its commitments in other services such as financial, telecommunications, transportation services were only partial. Korea did not make any commitments in educational, health and social services as well as in recreational, cultural and sporting services, among others. Korea's commitment also included only one MFN exemption in, computer reservation

[45] For a general discussion of Korea's commitment in the Uruguay Round, see, Choi, N., *Trade Opportunities in the Post-UR Regime*: Korea's Perspective, KIET OCCASIONAL PAPERS, No. 19. See also, Ministry of Foreign Affairs, THE RESULTS AND ASSESSMENT OF URUGUAY ROUND RESULTS (1994), pp.31-39.

services, thereby offering non-discriminatory treatment in virtually all service sectors where concessions had been made. In intellectual property rights, the TRIPS Agreement introduced a high standard for protection. However, Korea had already introduced a strong protection in all areas of intellectual property laws, partly due to the bilateral agreements negotiated with major trading partners during the mid-1980s. Korea's new obligations in this area were few, such as extension of patent and computer software protection periods and the introduction of color trademarks.

In agriculture, Korea's participation was defensive and very controversial at home. Korea's negotiation with its trading partners had also been complicated due to the recommendation of the BOP Committee in 1989, when Korea agreed to phase out all quantitative restrictions by July 1, 1997. Korea resisted tariffication without exception until the very last phase of the negotiation. In the end, Korea received a special treatment on rice as Japan, but more favorable treatment as a developing country. Tariffication on rice could be delayed until 2004, while guaranteeing minimum market access (MMA). In 1995, the MMA was to be 1 percent of the domestic consumption, rising annually by 0.25 percent each year until 1999, after which it was to rise annually by 0.5 percent each year through 2004, when the MMA quota was to reach 4 percent of domestic consumption. On beef, the existing quota system was to be extended until 2000 with the tariffs to be increased from 20% to 40%. In the meantime, the beef quota was to be increased from 123,000 tons in 1995 to 225,000 tons in 2000. For chicken and pork, quantitative restrictions were to be lifted by July 1, 1997, as was agreed in the BOP consultation in 1989, but their tariffs were to be raised from 20 percent to 35 percent for chicken and 25 percent to 37 percent for pork. During 1995 to 1997, 3.5 percent of domestic consumption in these products was to be allowed under the import quotas. Similar arrangements applied for mandarin oranges and orange juice, for which 3% of the domestic consumption was to be allowed in as import quotas from 1995 to 1997 when quantitative restrictions were to be removed.

While Korea had made a very difficult decision in the Uruguay Round with respect to agricultural liberalization which would require a wide-ranging structural adjustment in the sector, the overall assessment of the round by the Korean government was quite positive. The Korean Trade Minister attending the Marrakesh Meeting stated that the "Uruguay Agreement has substantially strengthened the principle of multilateralism," and that "it has, *inter alia*, reduced barriers in various sectors, made the rules more transparent and introduced a stronger dispute settlement system." He went on to say that " I am confident that this agreement will go a long way toward helping maintain Korea's development momentum."[46]

(iv) Implementation

[46] Statement by Mr. Chulsu Kim, Minister of Trade, Industry, and Energy, 12 April 1994, Marrakesh, MTN.TNC/MIN(94)/ST/19.

Immediately after the conclusion of the Uruguay Round in December 1993, the Korean government began to revise relevant laws in accordance with the new WTO agreements. As a result, Korea had almost completed its legislative work related to its Uruguay Round obligation as of December 1994, before the launching of the WTO. Even in areas where the implementation period has not expired, Korea has revised related laws in advance. As of end of December 1995, Korea had revised a total of 24 laws related to Uruguay Round agreements.[47] In the meetings of the WTO committees since, no serious slippages on the part of Korea to implement WTO Agreements have been pointed out by other Members, nor its implementation records been challenged in the dispute settlement mechanism of the WTO.

Despite no controversy on "developing country" status for Korea at its accession, Korea had achieved a considerable industrialization and economic development during 1970-80s. This economic development caused controversy regarding "developing country" status, especially for the Uruguay Round negotiation which substantially strengthened the rules for world trade to make preferential treatment for developing countries much more significant and economically important.

2.3 Korea in the WTO System

In the Doha Development Agenda (DDA), the market liberalization commitment mandated for the WTO Members has been set or at least proposed at a very high level. Therefore, Korea has again desperately tried to secure special and differential treatment for developing countries, particularly in the context of agricultural negotiations.

Sector Specific Approach

Instead of the overall status for a WTO Member, Korea tries to emphasize the importance of sector or product specific determination in terms of a developing country. For example, after losing the first GATT dispute in the Korea – Beef case, the Korean government notified the decision to dis-invoke the GATT Article XVIII:B exception in June 1989, which was accepted by the GATT Balance of Payment Committee on 27 October 1989. Pursuant to this decision, Korea graduated from the coverage of GATT Article XVIII:B from I January 1990. But, considering the fact that the remaining products were mostly sensitive, politically and socially, agricultural products, the eight year waiver period was granted to Korea.

Moreover, when Korea joined the OECD in 1996, both the trade committee and the environment committee adopted the final report that accepted developing country status for agriculture and environment areas. The Korean government explained a variety of economic problems in the agricultural sector and also the arrangement as a developing country in that sector during the Uruguay

[47] Trade Policy Review of Korea, Report by Government, WT/TPR/G/19, p.7.

Round.

Arbitrary GSP System

Throughout the economic development periods from 1970s to 1980s, Korea was the beneficiary of the Generalized System of Preference (GSP). But, the United States excluded Korea from the GSP benefit, along with Hong Kong, Singapore, and Taiwan in January 1989. Korea was also excluded from the GSP list of the EU in 1996. Some WTO Members have argued that the elimination of Korea from the coverage of GSP system indicates the developed country status for Korea, at least in terms of WTO obligations. However, the status – or the graduation from the status – as the GSP beneficiary does not necessarily represent the general status of the country for the purpose of determining developing country status. In fact, Korea was recognized as developing country in the WTO even after the US government terminated the GSP benefit.

3. Policy Recommendations

3.1 Strategies for "Developing Country" Status in Accession Negotiation

(a) Key Points to Argue in Accession Negotiation

Firstly, the general practice to treat similarly situated WTO members may be pointed out as the basis for claiming basically the non-discriminatory treatment to recognize "developing country" status. It is obvious that no country with similar economic situations to those of Azerbaijan in the GATT as well as the WTO system was considered "developed country", i.e., demanded to make commitments at the level for developed countries. The requirement to liberalize the markets as well as to reduce government support at the current stage of economic development, especially considering the situation of market transition, should be seen as an overly excessive request for a newly acceding country. Therefore, the Azerbaijan government may argue the non-discriminatory treatment in the spirit of most-favored nation treatment for deciding "developing country" status.

Secondly, Azerbaijan may point out the fact that even Korea was recognized as a developing country at the Uruguay Round negotiation. In other words, technically speaking, when Korea acceded to the WTO, it was recognized as a developing country and granted with benefits for developing countries. This can be a very important precedent for Azerbaijan to claim the developing country status at least in terms of agricultural market liberalization and commitment.

Thirdly, the Azerbaijan government may explain to the working party group that the overly excessive request as part of the WTO accession negotiation may provoke too serious domestic political resistance. Unlike other market access negotiation issues whose economic significance is often opaque, the status of developing country is a clear issue even for the general public. Therefore, too much request in terms of WTO accession, in particular the request that has implication for domestic support especially in the agricultural sector still demanding considerable government assistance, would cause serious political resistance. The Azerbaijan government may emphasize such domestic political risk which can be too controversial to be accommodated. So, considering the actual economic benefit for a WTO member that insists "developed country" status for Azerbaijan, the Azerbaijan government may be able to persuade other WTO members to agree on more rational trade and economic agenda instead of provoking symbolic – but unnecessarily too much controversial – political matters.

(b) Other Issues to Consider in Accession Negotiation

In the negotiation concerning developing country status, it should be noted that the issue is

not the matter to be bargained over. In other words, whether Azerbaijan should be treated as developing country is the issue to be determined based on the principle, not the matter like market access negotiation to be bargained. It means that the Azerbaijan government can be stronger to defend its status as developing country. In case the Azerbaijan government tries to bargain its status with other WTO members in the working party, it would inevitably require much more substantial concession than reasonably prepared, because many members would try to take advantage of the opportunities even if they might not have direct economic stake related to the issue.

Since every decision making, including accession negotiation, in the WTO system is based on consensus, the developing country status of Azerbaijan also does require the agreement of all working party members. Although this situation make the decision on developing country status practically negotiable, the Azerbaijan government would be able to handle this issue better by separating from market access bargaining or negotiation.

Another point to be considered is that the developing country status itself does not guarantee "developing country" level market concession. In other words, even if the Azerbaijan government is able to secure developing country status, the market concession level agreed for the accession condition may still be very substantial depending on the content of the negotiation. Therefore, it is very important to focus on content of market concession, rather than developing country status itself.

In fact, the Korean government had the similar problem during the Uruguay Round negotiation. The Korean government was desperate to secure the developing country status to be benefited by special and differential treatment stipulated under the Agreement on Agriculture, i.e., lower tariff reduction duty as well as lower domestic support reduction requirement. However, at that time, the United States raised the strong objection on this argument. Consequently, the negotiation on developing country status was undertaken basically between Korea and the United States. This negotiation structure led the US government to make substantial requests to the Korean government, for example, regarding various agricultural products that are economically important to its domestic farmers, including, *inter alia*, beef, pork, chicken, orange and orange juice, and dairy products. Ultimately, the Korean government could achieve the two most symbolic success in agricultural negotiation: securing developing country status and elimination of rice from tariffication requirement. But, in return, the Korean government did make substantial market concession for the above listed products in which the US government had considerable economic interest.[48]

3.2 Implication for the Status of Azerbaijan in the WTO System

The "developing country" status at the accession stage may have some important implication for future trade policy under the WTO system. But, as of 2008, the developing country status has

[48] White Paper on Uruguay Round Agriculture Negotiation, J. Lee et al., p.121 (KREI, 1994, 11).

much less meaning even for developing country members.

As explained in Section 1, various parts of the WTO Agreements contain special and differential treatment for developing countries. But, in terms of biding legal obligations, the WTO Agreements typically stipulate longer transition periods for developing countries, instead of weaker or discriminatory obligations. For example, in the SCM Agreement, the developing countries are permitted to use export subsidies for 8 years and import subsidies for 5 years. But, all these benefits for developing countries already expired as of today for the incumbent WTO members. The requests by newly acceding countries to apply these transition provisions from the date they joined were invariably rejected in the WTO system. Therefore, as soon as Azerbaijan completed the accession procedure to the WTO, it will be very difficult to utilize “developing country” status in terms of legal obligations.

This situation raises two important policy implications. Firstly, it is very urgent to develop industrial development strategies and implement promptly so that the Azerbaijan government may legally adopt various government support programs without being challenged under the WTO rules. Although it appears very unlikely to have additional waiver periods for WTO obligations, at least the transition periods to introduce the WTO system permitted for a newly acceding member may be utilized to set up the foundational framework to initiate industry promotion strategies.

Secondly, the developing country status still has an important meaning for agricultural market liberalization. Generally speaking, the legal duties for developing countries are about half level for developed countries. In this regard, it is noted that the modality for agriculture negotiation in the Doha Development Agenda provides basically the same benefit for “recently acceded Member”(RAM) as for developing country Member. For example, both RAM and developing countries are supposed to reduce the overall trade-distorting domestic support by two-thirds of the rates applicable to developed countries. Moreover, the legal requirements for small low-income RAMs are even lower. Currently, “small low-income RAMs” include Albania, Armenia, Georgia, Kyrgyz Republic and Moldova. It is very likely that the WTO Members include Azerbaijan in that list. It means that at least for the Doha Development Agenda, the developing country status is not the only channel to alleviate the legal burden for the agricultural sector in Azerbaijan. The new category invented as “small low-income RAMs” can replace the need to become developing country, and can even play a more role to address the concern of domestic agricultural sector.

Analysis of Developing Country Status in the WTO System: Implication from the Korean Experience

PROFESSOR DUKGEUN AHN

Seoul National University

GSIS
GRADUATE SCHOOL OF INTERNATIONAL STUDIES
SEOUL NATIONAL UNIVERSITY

Table of Content

1. “Developing Country” in the WTO System

1.1 Overall Structures of Special and Differential Treatment for Developing Countries

A. Provisions aimed at increasing the trade opportunities of developing country Members
B. Provisions under which WTO Members should safeguard the interests of developing country Members
C. Flexibility of commitments, of action, and use of policy instruments
D. Transitional Time Periods
E. Technical Assistance
F. Provisions relating to least-developed country Members

A. Provisions aimed at increasing the trade opportunities of developing country Members

a. GATT 1994: Article XXXVI.2-5, Article XXXVII.1(a) and 4; Article XVIII.2 (c) and 2(e).
b. The Enabling Clause, para 2(a).
c. Agreement on Agriculture: Preamble.
d. Agreement on Textiles and Clothing: **Article 2.18**
e. GATS: Preamble, **Article IV:1; and Article IV:2**

B. Provisions under which WTO Members should safeguard the interests of developing country Members

a. Part IV of GATT 1994: Article XXXVI.6,7 and 9; Article XXXVII 1(b) and (c), 2 (a)-(c), 3 (a) –(c), and 5; Article XXXVIII.1, 2 (a), (b), (d), (f).
b. the Decision on Measures Concerning the Possible Negative Effects of the Reform Programme on Least-Developed and Net Food-Importing Developing Countries: **Paragraphs 3 (i)-(ii); Paragraph 4; and Paragraph 5.**
c. Application of SPS Measures: **Article 10.1** and Article 10.4.
d. Textiles and Clothing: Article **6.6 (b), 6.6 (c)** and **Annex, paragraph 3(a**).
e. Technical Barriers to Trade: **Article 10.6**; **Article 12.1**; **Article 12.2; Article 12.3**; **Article 12.5**; **Article 12.9**; **Article 12.10**.
f. Implementation of Article VI of GATT 1994: **Article 15.**
g. Implementation of Article VII of GATT 1994: **Annex III.5.**
h. Decision on texts relating to minimum values and imports by sole agents, sole distributors, and sole concessionaires: **Text 1** and Text 2.
i. Import Licensing Procedures: Article 1.2; Article 3.5 (a)(iv); Article 3.5 (j).
j. Subsidies and Countervailing Measures: Article 27.1 and **Article 27.15.**
k. Agreement on Safeguards: **Article 9.1 and Footnote 2.**
l. Understanding on Rules and Procedures Governing the Settlement of Disputes: Article 4.10, **Article 8.10**, **Article 12.10, Article 12.11**; Article 21.2; **Article 21.7**; **Article 21.8**.
m. GATS: Preamble; Article XII.1, **Article XV.1**, and **Article XIX.3.**

C. Flexibility of commitments, of action, and use of policy instruments

a. GATT 1994: Article XVIII and Article XXXVI, paragraph 8.
b. Enabling Clause: Paragraphs (b) and (c).
c. the Agreement on Agriculture: Article 6.2; Article 6.4; Article 9.2(b)(iv); Article 9.4; Article 12.2; Article 15.1; Annex 2, para 3, and footnote5; Annex 2, para.4, footnotes 5 and 6; Annex 5, Section B.
d. Technical Barriers to Trade: Article 12.4.
e. Trade-Related Investment Measures: Article 4.
f. Subsidies and Countervailing Measures: Article 27.2 (a) and Annex VII; Article 27.4; Article 27.7; Article 27.8; Article 27.9; Article 27.10; Article 27.11; Article 27.12; Article 27.13.
g. Safeguards :Article 9.2.
h. GATS: Article III:4;Article V:3; Article xix:2, and Paragraph 5(g) of the Annex on telecommunications.
i. Understanding on Rules and Procedures Governing the Settlement of Disputes: Article 3.12.

D. Transitional Time Periods

a. Agriculture: Article 15.2.
b. Sanitary and Phytosanitary Measures: Article 10.2 and 10.3.
c. Technical Barriers to Trade: Article 12.8.
d. Trade-Related Investment Measures: Article 5.2.
e. Implementation of Article VII of GATT 1994: Article 20.1; Article 20.2; Annex III.1; and Annex III.2
f. Import Licensing Procedures: Article 2.2, footnote 5.
g. Subsidies and Countervailing Measures: Article 27.2 (b); Article 27.4; Article 27.14; Article 27.5; Article 27.6; and Article 27.11.
h. TRIPS: Article 65.2; and 65.4.

E. Technical Assistance

a. Decision on measures concerning the possible negative effects of the reform programme on least-developed countries and net-food importing developing countries: Paragraph 3 (iii).
b. Application of SPS Measures: Articles 9.
c. Technical Barriers to Trade: Article 11.1; Article 11.1; Article 11.3; Article 11.4; Article 11.5; Article 11.6; and Article 12.7.
d. Implementation of Article VII of GATT 1994: Article 20.3.
e. GATS: Article XXV:2 and Paragraph 6 of the Annex on telecommunications.
f. TRIPS: Article 67.
g. Understanding on Rules and Procedures Governing the Settlement of Disputes: Article 27.2

F. Provisions relating to least-developed country Members

a. Agriculture: Article 15.2, Article 16.1 and Article 16.2
b. Enabling Clause: Paragraph d. 1
c. Decision on waiver for preferential tariff treatment of Least-Developed Countries.
d. Textiles and Clothing: Footnote to Article 1.2, and Article 6.6 (a).
e. Technical Barriers to Trade: 11.8
f. Trade-Related Investment Measures Article 5.2
g. GATS: Article IV:3, and Article XIX:3
h. TRIPS: Article 66.1 and 66.2.
i. Understanding on Rules and Procedures Governing the Settlement of Disputes: Article 24.1 and 24.2
j. Decision on Measures in Favour of Least-Developed Countries: paragraphs 1-3.

1. “Developing Country” in the WTO System

1.2 Provisions Aimed at Increasing the Trade Opportunities of Developing Country Members

A. Implementation of Article VI of the GATT 1994, Article 15
B. Agreement on Subsidies and Countervailing Measures, Article 27.15
C. Agreement on Safeguards, Article 9.1
D. Understanding on Rules and Procedures Governing the Settlement of Disputes, Article 8.10
E. Understanding on Rules and Procedures Governing the Settlement of Disputes, Article 12.10
F. Understanding on Rules and Procedures Governing the Settlement of Disputes, Article 12.11
G. Understanding on Rules and Procedures Governing the Settlement of Disputes, Article 21.7
H. Understanding on Rules and Procedures Governing the Settlement of Disputes, Article 21.8
I. General Agreement on Trade in Services, Subsidies, Article XV.1
J. General Agreement on Trade in Services, Negotiations on Specific Commitments, Article XIX.3

1. “Developing Country” in the WTO System

1.3 Monitoring Mechanism/Processes on Special and Differential Treatment

A. Subsidiary Bodies of the General Council
   (1) Council for Trade-Related Aspects of Intellectual Property Rights
   (2) Committee on Trade and Development
   (3) Committee on Regional Trade Agreements
   (4) Committee on Balance-of-Payments Restrictions

B. Subsidiary Bodies of the Council for Trade in Goods
   (1) Committee on Agriculture
   (2) Committee on Sanitary and Phytosanitary Measures
   (3) Committee on Technical Barriers to Trade
   (4) Committee on Anti-Dumping Practices
   (5) Committee on Subsidies and Countervailing Measures
   (6) Committee on Safeguards

C. Subsidiary Bodies of the Council for Trade in Services
   (1) Working Party on Domestic Regulation
   (2) Committee on Government Procurement

1. "Developing Country" in the WTO System

1.4 Determination of "Developing Country" in the GATT/WTO

- In the GATT/WTO system, no formal definition of a developing country.
  - However, an informal group of such countries, the chairman of which invites new Members to join if they claim that status. Under GATT, 98 out of 128 GATT members were accepted as developing countries.

- This practice has been basically intact in the WTO system. The determination of a developing country status is still based on self-declaration.
  - This practice has raised little problem, particularly at the current stage of the WTO, in which most of the transition periods rendered to developing country Members already expired.

- But, as sectoral negotiations under the Doha Development Agenda (DDA) have been substantially progressed, the status of a developing country has again raised some controversy in terms of agricultural negotiations in which special and differential treatment for a developing country has significant implication for Members. For example, Members such as Korea, Taiwan (or Chinese Taipei), and China are currently arguing for the developing country status, whereas other Members oppose to such arguments.

1. “Developing Country” in the WTO System

1.5 “Developing Country” in the Accession Negotiation

A. China Case

- Concern on GATT Articles XII and XVIII
- Although China has not been granted across-the-board preferential treatment as a developing country, it has negotiated specific transitional arrangements in certain areas of its trade regime. Examples include the phasing out of quotas and import licenses, and the phased liberalization of the right for foreign entities to trade in China.
- In contrast, despite the availability of more preferential treatment under the WTO agreements, China has accepted a special cap on its ability to provide domestic production subsidies in agriculture, has agreed not to use export subsidies, and has committed to immediate implementation of the TRIPS Agreement.

B. Vietnam Case

C. Ukraine Case

2. “Developing Country” Status for Korea

2.1 Korea in the GATT System

- When Korea joined GATT in 1967, the developing country status for Korea was not an issue due to a still aggrieved economic situation. In fact, Korea could invoke so-called “balance-of-payment exception” under GATT Article XVIII:B, which was exceptionally permitted for developing countries, to restrain importation into the domestic market.

- In 1990, graduation from GATT Article XVIII:B

2. “Developing Country” Status for Korea
2.2 Korea during the Uruguay Round Negotiation

- The United States was the main country to oppose to the position of Korea that demanded the status as developing country. The European Communities joined later but was not very keen about this issue. Other countries, including Japan, were generally favorable to the argument of Korea.

- History of Uruguay Round Negotiation Regarding Developing Country Status of Korea
  - The United States was the main country to oppose to the position of Korea that demanded the status as developing country. The European Communities joined later but was not very keen about this issue. Other countries, including Japan, were generally favorable to the argument of Korea.
  - History of Uruguay Round Negotiation Regarding Developing Country Status of Korea
    - During the Uruguay Round negotiation, only 13 Members, including United States, Canada, EU, Japan, Switzerland, Norway, Finland, Australia, New Zealand, Poland, Czech Republic, Slovak, South Africa, submitted their commitments to reduce domestic support as developed countries.
  - The Outcome of the Negotiation: Claim of Victory, but Defeat in Key Areas
    - Content of Agricultural Market Access
    - Other Areas

- The Outcome of the Negotiation: Claim of Victory, but Defeat in Key Areas
  - Content of Agricultural Market Access
  - Other Areas

2. "Developing Country" Status for Korea
2.3 Korea in the WTO System

- Sector Specific Approach
  - Exception for graduation from the coverage of GATT Article XVIII:B from I January 1990
    - Considering the fact that the remaining products were mostly sensitive, politically and socially, agricultural products, the eight year waiver period was granted to Korea.
  - Moreover, when Korea joined the OECD in 1996, both the trade committee and the environment committee adopted the final report that accepted developing country status for agriculture and environment areas.

- Arbitrary GSP System
  - Throughout the economic development periods from 1970s to 1980s, Korea was the beneficiary of the Generalized System of Preference (GSP).
  - But, the United States excluded Korea from the GSP benefit, along with Hong Kong, Singapore, and Taiwan in January 1989.
  - Korea was also excluded from the GSP list of the EU in 1996.
  - Arbitrariness of GSP implementation undermines the significance of GSP status.

3. Policy Recommendations

3.1 Strategies for "Developing Country" Status in Accession Negotiation

- Key Points to Argue in Accession Negotiation
  - Non-discriminatory treatment in the spirit of most-favored nation treatment for deciding "developing country" status
  - Case for Korea during the Uruguay Round negotiation
  - Domestic political risk

- Other Issues to Consider in Accession Negotiation
  - Issue for principle, not for bargaining
  - Developing country status works for legal duty under the WTO system, not for acceding conditions.
    - Korea's experience during the Uruguay Round
    - Almost bilateral negotiation with the United States
    - Substantial concession for beef, pork, chicken, orange and orange juice, and dairy products.

3. Policy Recommendations

3.2 Implication for the Status of Azerbaijan in the WTO System

- Limited utility under the current WTO system
  - Mostly expired transition periods for legally binding WTO obligations
- Importance of a transition period until the full WTO duties become applicable.
- Very important for agriculture negotiation
  - Roughly half level obligation for developing countries
  - In DDA, recently acceded Members are like developing countries.
  - “small low-income RAMs” category is also created:
    - Albania, Armenia, Georgia, Kyrgyz Republic and Moldova.