



Trade, Economic Development, and Capacity Building

Katrin Kuhlmann

President and Founder, New Markets Lab

Lecturer on Law, Harvard Law School

Adjunct Professor Georgetown University Law Center

Trade and Development

- WTO Frameworks
 - WTO Agreements
 - Special and Differential Treatment
- Trade Agreements (Regional Trade Agreements and FTAs)
 - Market Access (Special and Differential Treatment)
 - Negotiating Issues/Rule of Law Aspects
- Trade Preference Programs (GSP, AGOA, etc.)
- Aid for Trade
- Other Issues (Investment/BITS)
- Supply/Value Chain Regulation
 - Non-Tariff Issues (Sector-specific Regulation, Standards, SPS)
 - Services (Financial, ICT, Transport, Distribution)
 - Other Aspects Business Enabling Environment (IPR, Labor)
 - Related Issues (Land, Energy, Environment)

Trade & Development WTO

- Special & Differential (S&D) Treatment
- **Part IV GATT 1965 Trade & Development- Best Endeavor:** Increased MA primary products, manufactured and processed products; restraint introducing duties or NTBs products of export interest to developing countries; ***reciprocity not required***
- **Enabling Clause 1979** (permanent legal authority): GSP, S&D under GATT Agts, RTAs, special treatment LDCs, non-reciprocity
- Trade Preference Programs (since 1964): US, Europe, and other countries maintain preferences, both general (under Enabling Clause 1979) and specific (require WTO waiver)
- Flexibility in Implementation: GATS, TRIPS, Agreement on Agriculture (extensions for compliance for LDCs; TRIPS extension through 2021)
- Committee on Trade and Development
- LDC Services Waiver
- Trade Facilitation Agreement

Trade Facilitation

- WTO Trade Facilitation Agreement and RTAs/FTAs
 - Capacity building for developing countries
- Transparency: Publication and availability of information, opportunity to comment, appeal
- Release and Clearance of Goods: Pre-arrival processing, electronic payment systems, expedited shipments (including for perishable agriculture), risk management
- Border Agency Cooperation
- Formalities in Importation, Exportation & Transit (“shall endeavor” to form single window systems)
- Freedom of Transit (important for landlocked countries)
- Customs Cooperation

Trade Agreements

- Market Access for Goods & Services
- Negotiating Issues: Rule of Law/Building Block Issues
 - Rules of Origin
 - SPS
 - TBT
 - Trade Facilitation
 - Investment
 - IP
 - Labor & Environment
 - Regulatory Coherence (TBT)
- Capacity Building (CAFTA-DR; TPP)

Trade Agreement “Best Practices”

- **Building Block Approaches:** Cooperation Agreement Among the Partner States of the EAC and US on Trade Facilitation, Sanitary and Phytosanitary Measures and Technical Barriers to Trade and the U.S.-CAFTA-DR FTA (technical advice and assistance for improving risk assessment techniques, simplifying and expediting customs procedures, advancing technical skills, and enhancing the use of technologies that can lead to improved compliance with laws and regulations governing importation)
- **Staging Commitments:** Tailor to market development and changes in capacity, such as the WTO Trade Facilitation Agreement and agricultural chapter of the U.S.-Morocco FTA
- **Focus on Specific Economic Sectors:** Link to development significance; examples include European agreements with developing country trading partners that specifically target transportation, tourism, and energy
- **Provisions to Encourage Private Sector Engagement and Consultation:** Examples include environmental provisions in the U.S.-CAFTA-DR, U.S.-Panama, and U.S.-Peru FTAs

Development in the TPP

- Provisions specific to SMEs and women; SME chapter mainly focused on information sharing – SMEs and women could be linked through key areas such as trade facilitation, access to finance, infrastructure (particularly electricity), labor, and anti-corruption
- Chapters on TBT and SPS more tailored and include provisions for certain industries, such as, *inter alia*, cosmetics, wine and distilled spirits, and organic products
- Capacity Building included (“soft” legal standard)
- Anti-corruption provisions, such as those that address compliance with anti-corruption measures through best practices, including, for example, requirements for the adoption of accounting standards and keeping of records, training of local officials, and the development of good procedures to ensure that corrupt officials are removed from office
- Other Issues: Regulatory Coherence (regulatory & non-tariff measures), Global Supply Chains

Trade Preference Programs

- Generalized System of Preferences (GSP): benefits concentrated, temporary duration, product exclusions, income and competitiveness graduation
- Conditions on use: U.S. mandatory and discretionary eligibility criteria
- Rules of Origin: Can be difficult to meet or complex
- European GSP and GSP Plus: Special conditions on labor, environment, combating drugs (note India Appellate Body case); European EBA (2000) for LDCs: Permanent DFQF
- Non-generalized programs require WTO Art XXIV Waivers (3/4 absolute majority)
- Caribbean (1983) – two programs CBERA (permanent, no CNL) and CBTPA (2020); AGOA created 2001 (just renewed for 10 years through 2025); HOPE I and II (most until 2020)

Aid for Trade

- Aspect of Special and Differential Treatment
- Different Categories (review of uses/effectiveness)
 - Technical Assistance: helping countries negotiate, develop trade strategies, implement
 - Infrastructure: roads, ports, telecommunications
 - Productive capacity and trade development: help countries diversify exports, build on comparative advantages
 - Adjustment Assistance: costs tariff reductions, preference erosion, shifting terms trade
- Examples: Feed the Future, Power Africa, Trade Africa

Approaches for Implementation

- Trade Policy Tools (Preferences, FTAs, Other Models?)
- Value Chain Approach
- Development Corridors
- Models for implementing law and regulation, including Case Studies

Value Chain Approach: Agriculture



- Production
 - Land Tenure and producer organizations
 - Inputs, including seeds and fertilizer
- Storage/Logistics
 - Services (transport, retail, distribution)
- Processing
 - Standards, SPS, TBT
- Markets
 - Customs and Trade Facilitation
- Cross-Cutting
 - Financial Services
 - Energy regulation, including renewables

