

Special Provisions: Enhancing Agreements for Specific Needs

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ABSTRACT:

Special provisions in agreements play a crucial role in shaping the terms and conditions of international agreements and trade relationships between countries. This chapter provides a concise overview of special provisions in agreements and their significance in international trade. It explores different types of special provisions, such as safeguards, dispute settlement mechanisms, intellectual property rights protection, and environmental and labor standards. The chapter also examines the objectives and implications of these special provisions, including their impact on market access, fair competition, and sustainable development. By understanding and navigating these special provisions, countries and businesses can ensure compliance, mitigate risks, and maximize the benefits of international agreements.

KEYWORDS:

Confidentiality Clause, Dispute Resolution Mechanisms, Force Majeure Clause, Intellectual Property Rights Protection, Non-Compete Clause, Payment Terms.

I. INTRODUCTION

The WTO's goals are to ensure fair trading conditions, whether via MFN, national treatment, or anti-dumping and subsidy regulations. The use of a rule-based approach assures fair trade since the problems are too complicated and several countries are involved [1], [2]. More than 75% of WTO members are developing nations or those in the process of converting to market economies. By giving these economies more time to adapt, more flexibility, and unique advantages, the WTO aims to increase their benefits [3], [4]. All of the responsibilities of the GATT, GATS, TRIPS, and any other ancillary agreements, must be accepted by the WTO members. This puts a stop to the free ride those certain developing nations had under the previous GATT, when they could profit from some trade favours without having to join and fulfil all of their commitments.

Intellectual property, products, and services are all covered under the WTO Agreements. They discuss the liberalization's guiding principles and sanctioned deviations. They include each country's pledges to establish and maintain open services markets as well as to lower customs duties and other trade obstacles. They outline the steps involved in resolving disputes. They recommend extra care for emerging nations. They didn't believe that states should make their trade policies open by informing the WTO of laws that are in effect and policies that have been established, as well as by having the Secretariat issue regular reports on each nation's trade policy. The collection of agreements, annexes, decisions, and understandings in The Results of the Uruguay Round of Multilateral Trade Negotiations: The Legal Texts is extensive, numbering around 60 documents [5], [6]. The three-part common framework on which the goods and services agreements are built is as follows.

The GATT and the GATS serve as its foundational principles. Despite the fact that the TRIPS agreement currently lacks any extra components, it falls under this category as well. The following agreements and annexes address the unique requirements of certain problem areas [7], [8]. Finally, the specifics and protracted timetables of agreements struck by various nations granting certain foreign goods or service providers access to their markets are revealed. These refer to legally-binding agreements on goods tariffs and quotas for certain agricultural items for the GATT. The obligations for the GATS specify the scope of access granted to international service providers. They identify specific industries and service categories where various nations claim they do not adhere to the MFN concept of non-discrimination [9], [10]. The following particular areas or topics are covered by the additional details agreements and annexes:

1. Agriculture.
2. Rules governing the health of agricultural goods.

3. clothes and textiles.
4. Product specifications.
5. Investment policies.
6. Anti-dumping policies
7. Techniques for customs valuation.
8. Shipping container inspection
9. Origin rules.
10. Import permits.
11. Subsidies and preventative actions
12. Safeguards.

Dispute Resolution

Even while trade generally proceeds without incident, there are times when a member is not pleased with the manner some other members are doing trade with it, i.e. not in accordance with the WTO regulations. In this situation, the former may decide to utilise the WTO's dispute resolution process. The WTO's dispute resolution processes are essential for the prompt resolution of trade disputes in conformity with its defined norms. A predefined timeline of automatic actions is started whenever a disagreement is reported to the WTO. Using dialogue to resolve the conflicts is the top priority right now. If not, a case is referred to a panel of experts by the WTO's case Settlement Body. The parties agree on the panellists' appointment, and the Director General of the WTO appoints them by default. Unless the DSB, which is made up of all WTO members, unanimously decides against adoption, a panel's recommendations are automatically implemented. A first instance panel report may be challenged, but the second instance appellate body's judgement is binding.

The ultimate goal of the dispute resolution procedure must be the full restoration of conformity with WTO law. However, there are two interim steps that may be done if a member refuses to execute a WTO decision. The DSB may approve a level of punitive measures, or the violating members may give compensation for the damage done to another member's trade interests. But typically speaking, this does not occur. More than 239 issues have been filed to the WTO so far, and the great majority of them have been resolved very amicably. Unilateral trade penalties imposed by strong trading entities are subject to multilateral WTO regulation since the fundamental goal of the WTO dispute resolution process is to prevent unilateral trade sanctions. The WTO's dispute resolution process is equivalent to it in that it gives a small member a fair shot. By September 2001, 79 of the 239 disputes had been started by developing nations together. Brazil and India Thailand and Mexico were prominent. The methods have been utilised by the US and the EU the most 69 and 56 times, respectively and they are also the most often criticised by foreign countries for not complying with WTO regulations. The greater frequency of disagreements being reported suggests:

1. Members' trust in the effectiveness of the new dispute resolution process has increased.
2. The broader selection and more detailed WTO regulations.
3. The WTO agreements encompass a larger variety of topics, such as services and TRIPS, all of which are subject to the same dispute resolution process.
4. The higher levels of trade and increased significance of trade to member economies as a result of the WTO's growing membership.

Before the WTO, the dispute resolution process lacked legal force, which often led to rulings being broken. The new system is effective, but any upgrades would be great. The smaller nations lack the resources to bring their issues before the WTO. As a result, the WTO aggressively promoted the establishment of the Advisory Centre on WTO Law in Geneva, an impartial organisation that offers cheaper legal advice to poor nations.

The WTO and Developing Nations

Nearly two-thirds of the 146 WTO members come from developing nations. The developing nations matter to the WTO not just because they are many but also because they are beginning to have a big impact on the world economy. The following methods are used to satisfy these nations' needs, which the WTO has identified as special:

1. Developing nations are given particular consideration under the WTO accords.
2. The WTO's Committee on Trade and Development is in charge of the work in this area.
3. The WTO Secretariat offers developing nations technical support

II. DISCUSSION

Several clauses of WTO agreements are geared at developing and least developed nations. For instance, the GATI includes a Special on Trade and Development that contains provisions on the idea of non-reciprocity in trade negotiations between developing and developed countries. These provisions state that when developed countries offer trade concessions to developing countries, they should not anticipate those developing countries to do the same. Similar to this, members of the GATT are permitted to provide developing nations particular concessions without giving the same to other members under the special and differential treatment provision. Similar to this, Economic Integration allows for certain preferential treatment for emerging nations. Other elements of the WTO accords that give developing nations particular cause for worry are:

1. Give developing nations more time to complete their obligations.
2. provisions for expanding market access to increase trade prospects between nations.
3. WTO members are required by provisions to protect the interests of developing nations when adopting certain national or international actions.
4. provisions for various ways to aid developing nations.

Trade and Development Committee

The WTO Committee on Trade and Development has a broad range of responsibilities. Implementation of measures for developing nations, standards for technical cooperation, increased involvement of developing countries in the trade system, and the status of least developed countries are among the major priority topics it handles. Members must also update the WTO on any special trade concessions for goods from developing nations as well as any regional agreements among those nations. Following notifications were addressed by the Committee. Programmed under the Generalized System of Preferences allow wealthy countries to decrease their trade barriers in favor of goods from developing nations. Preferential agreements between poorer nations. such as the ASEAN Free Trade Area, the Common Market for Eastern and Southern Africa, and MERCOSUR.

1. The Sub-committee on Least Developed Countries, an important sub-committee of the Committee, concentrates on the following two issues.
2. Approaches to bringing the least developed nations into the global economic system.
3. Cooperative technical effort.
4. The subcommittee also reviews the application of specific provisions for the least developed nations on a regular basis.

Technical Assistance

The technical assistance provided by the WTO aims to facilitate the smooth functioning of emerging nations and those moving away from centrally planned economies within the multilateral trade system. By assisting these nations in creating the institutions they need, this is accomplished. and educate policymakers on trade policies and successful bargaining techniques. In Geneva, the WTO often hosts training sessions on trade policy. Additionally, up to the beginning of 1999, the WTO hosted around 300 cooperation events, including as seminars and workshops in different nations and courses in Geneva. Additionally, seminars have been held throughout Asia, Latin America, the Caribbean, the Middle East, and the Pacific. The WTO's normal budget, voluntary donations from members, and cost sharing by the event's host nation or other nations all go towards supporting technical cooperation. In addition, the WTO launched the WTO Reference Centre initiative, which aims to establish a network of computerised information hubs in developing and least developed nations. The WTO secretariat offers particular legal advice to help and provide legal guidance to developing nations in any WTO dispute. Many members have taken use of this service.

The Financial Suburb

A successful completion of an export transaction depends on having access to sufficient export financing at affordable rates. From the time an export order is received until the importer makes their final payment, as shown, finances are needed to complete the export trade cycle. To produce goods for export, a company must purchase raw materials, inputs, replacement parts, or capital equipment. An exporting company may often need to purchase inputs or replacement parts needed for export manufacturing, in which case advance funding is necessary. Exporters are required to provide their foreign customers excellent financing conditions in order to remain competitive in the global marketplaces. Such loan extensions to international purchasers place a significant burden on the exporting company's liquidity. It makes it crucial to get appropriate trade financing from outside sources at fair conditions during the stage after shipping. Exporters often quote lower prices to make

up for their inability to provide competitive credit conditions if competitive trade financing is not readily accessible to them. Therefore, the national government often provides financing to exporters at reduced rates, both before and after shipping, via commercial banks.

Pre-shipment Discount

Any loss or advance given by a bank for funding the acquisition, processing, manufacturing, or packaging of products before to shipping is referred to as pre-shipment credit. Another name for it is packing credit. The bank needs some evidence of the importer's creditworthiness before accepting the final payment. Before issuing export credit, the banks often need the letter of credit or any other proof, such a verified and irrevocable order. By requesting collateral or a supporting guarantee, the banks lessen their exposure to the importer's potential for nonpayment.

Priority Period

The length of the packaging credit provided by the banks varies from case to case depending on how quickly the exporter needs the money for product acquisition, manufacturing, or processing, and shipment. The length of packaging credit for exports is mostly determined by the different banks. Pre-shipment advances, however, must be adjusted by the submission of export documents within a period of 360 days from the date of advance in order to continue to qualify for a concessionary rate of interest. The Reserve Bank of India only offers refinancing to banks for a limited time, which should not exceed 180 days.

Transfer of Packing Credit

the credit for pre-shipment. provided to an exporter is liquidated using the money from the bills that were drawn to buy, discount, etc. the exported goods. Pre-shipment credit is changed into post-shipment credit in this way. The leftover amount in Exchange Earners' Foreign Currency Account may also be used to repay or prepay the packaging credit.

Account-Running Capability

Pre-shipment credits are often offered to exporters after the filing of the export order or letter of credit. Additionally, it has been noted that in certain circumstances, raw material supply is seasonal, whilst the time needed for production and shipping of the items is longer than the delivery timeline specified in the export contract. In addition, an exporter often has to acquire raw materials, produce the export goods, and maintain them prepared for shipping in advance of receiving the company's export orders or letters of credit from the international customers. Considering the challenges encountered. by exporters when setting up pre-shipment credit arrangements. account accessibility. Depending on the bank's assessment, this running account facility may be extended in relation to any commodity without requiring the business to first submit an export order or letter of credit, subject to the following conditions:

1. The running account facility is offered by banks to exporters with a strong track record as well as to export-oriented units, units in free trade zones, units in export processing zones, and units in special economic zones.
2. In all instances where a pre-shipment credit running account facility has been granted, export orders from the company or letters of credit must be produced quickly.
3. As and when they are received, banks mark off specific export invoices for negotiation with or collection against the earliest unpaid pre-shipment credit on a first in, first out basis. Additionally, banks make sure that any cumulative credit offered in connection with a single pre-shipment credit does not exceed the term of sanction or 360 days from the date of advance, whichever comes first.
4. The revenues of export papers for which the exporter has not taken any parking credit may also be used to mark off parking credit.
5. The facility could be removed if it's shown that the exporter is misusing it.
6. The advance is subject to the commercial loan rate ab initio in the event that exporters have not complied with the terms and conditions.
7. Sun-suppliers are not allowed to use the running account function.

Credit for Post-Shipment

Any loan, advance, or other form of credit given by a bank to an exporter of goods between the date the credit is extended after the shipping of the products and the date the export revenues are realized is referred to as post-

shipment credit. It includes any loan or advance given to an exporter in exchange for any duty drawback that the government may sometimes provide. The post shipment advance might so primarily take the following forms:

1. Purchased, reduced, or negotiated export bills.
2. Advances against debts awaiting payment.
3. Advances against government-owned duty drawbacks.

Post-shipment financing falls under one of the following categories:

1. Advances against undrawn export bill balances.
2. Advances made against retained funds.
3. Exports made in shipments.
4. Indian rupee export credit interest rate structure.

Post-Shipment Credit Period

The typical transit time, as stipulated by the Foreign Exchange Dealers association of India, is the term of advance in the case of demand bills. Normal transit period refers to the average amount of time, as set out from time to time by FEDAI, between the date of negotiation, purchase, or discount and the receipt of bill proceeds in the Nostro account of the relevant bank. It should not be confused with the amount of time it takes for things to arrive at their destination abroad.

The International Monetary Fund's Purpose

The British Keynes Plan proposed for a worldwide clearing union to establish a global system of payments known as *banco*, and was the product of extensive debates of different American, British, Canadian, and French ideas created during World War II. The central banks of any nation would accept unlimited payments in *banco* from other central banks. Debtor nations might receive *banco* by using the clearing union's automatic overdraft provisions. These overdrafts would have liberal restrictions that would increase based on the overall imports and exports of each member nation. Charges of 1 or 2 percent per year would be applied to positions held by both creditors and debtors that exceed the predetermined thresholds. The idea of significant imbalances being compensated by automatic American credits to the rest of the workforce, maybe totaling to many billions of dollars, was not ruled out by this small dissuasion to imbalanced positions.

Due to the provision for cancelling creditor-country claims not employed in international commerce within a certain time period, a portion of the credits may ultimately turn out to be gifts. Harry Dexter White of the United States gave his name to the competing American scheme. Treasury. White criticised the idea of automatic American credits in large and loosely restricted sums as well as the overdraft notion. In its place, he suggested a currency pool, to which participants would only make certain contributions and from which they may draw to cover short-term balance of payments shortfalls. Both ideas anticipated a society that was mostly free of constraints put in place for balance of payments reasons. Both intended to avoid using a global gold standard and eliminating state independence in monetary and fiscal policy while achieving exchange rate stability. The American plan prioritized currency rate stability akin to the gold standard, whereas the British plan placed a greater focus on national independence. The eventual agreement was closer to the American than the British approach.

The International Monetary Fund was required by its Articles of Agreement to consult with the organisation on them annually. Actually, discussions regarding broad economic policies are now routinely held with all members on a yearly basis, not simply those who are in breach of the normal decontrol duties. Such talks, which need copious documentation, have even evolved into the fund's principal source of labor-intensive upkeep. IBRD stands for International Bank for Reconstruction and Development. The IBRD was founded in December 1945, and while its initial focus was on post-war reconstruction in Europe, it has since expanded to include financing for economic development of member countries where private capital is unavailable on reasonable terms. Either directly to the governments or to individual business owners with the backing of their governments, loans are issued. The International Development Association and the IBRD make up the World Bank, as it is usually known. The term world Bank group currently refers to the linked groupings of institutions that include the IBRD, the IDA, the International Financial Corporation, the Mutual Investment Guarantee Agency, and the International Centre for Settlement of Investment and Disputes. Officers and personnel from the IBRD also work for the IDA simultaneously. In addition to resident missions in more than 70 countries, the World Bank maintains officials in Brazil, New York, Paris, London, and Tokyo as well as regional missions in Nairobi and Abidjan for Western Africa.

Features of IBRD

Financial Operations: IBRD capitalizes on members' subscriptions to capital shares, which are calculated based on their quotas in the International Monetary Fund. At the end of June 1999, the total subscribed capital of IBRD Quota was \$188,200 million, of which the paid portion was 11,395 million. The remaining amount is subject to call if necessary. IBRD loans are often granted to governments or need government guarantees and are typically issued for projects that are anticipated to generate a commercially feasible rate of return. They typically have a grace period of five years and are repayable over 50 years or less. The World Bank established structural adjustment funding in 1980, which supports programmes and reforms needed to alter an economy's structure so that it may regain and sustain its growth and viability in its balance of payments over the medium term, rather than financing particular projects.

IBRD operations are supported by medium- and long-term borrowings in international capital markets. The IBRD and IDA together made 276 new lending and investment commitments totalling \$26,994.1 Million during the year ending 30th June, 1999 compared to 286 commitments totalling \$28,593.9 Million during the previous year. The World Bank's main goals are the achievement of sustainable economic growth and the reduction of poverty in developing nations. In order to stimulate economic growth, the bank encourages both private sector development and human resource development, and it has made an effort to meet the growing demands of developing nations for assistance in these areas. Greater decentralisation of decision-making, investments in frontline operations, improved loan administration, and improved access to information and coordination of bank activities through a knowledge management system were all part of the reforms that increased the proportion of projects rated as satisfactory in terms of development from 66% to 75%. During 1997–1998 the severe financial difficulties facing several Asian economies trusted the bank's capacity. A consultative group to help the poorest was established in June 1995 with the help of other international donors, including regional development banks, other UN bodies, Canada, France, the Netherlands, and the United States. An initial credit of about \$200 million was committed by the donors, and in September 1996, the World Bank/IMF development committee endorsed a joint initiative to help heavily.

Technical Support: In addition, project loans and credits may include money set aside specifically for feasibility studies, recourse surveys, management or planning advice, and training. The provision to a member country has grown into a significant component of world bank activity. The bank encourages the use of local consultants to help with projects and stimulates institutional capabilities. The bank serves as an executing agency for projects funded by the UN Development Programme and administers projects financed by various trust funds. Technical Assistance is also extended to countries that do not need bank financial support, for example for training and technology transfer. In December 1994, the PPF Commitment Authority was increased from \$220 million to \$250 million. In 1992, the Bank established an Institutional Development Fund, which became operational on July 1st; the purpose of the fund was to provide rapid small scale financial assistance to a maximum value of \$5 lacs for capacity building proposals. In 1975, the Project Preparation Facility was established to provide cash advances to prepare projects that might be financed by the Bank. The task force published its assessment of the situation in December 1996 and recommended that the bank revise its lending strategy to emphasize poverty reduction objectives and strengthen systematic monitoring of Poverty situation in all Sub-Saharan African countries. The task force was established in 1993 to consider measures to reduce poverty in sub-Saharan Africa in consultation with local and national experts, non-governmental organisations, and government officials.

Economic Research and Studies: In the 1990s, the World Bank, carried out by its own Research staff, was increasingly concerned with providing information to support the bank's expanding advisory role to developing countries and to improve policy in the Bank's borrowing countries. The principal area of current research focuses on issues like sustaining sustainable growth while safeguarding the environment and the poorest sectors of the society, encouraging the development of the underdeveloped countries, and promoting the development of the middle-income countries. World Bank, FAO, and UNDP founded the Consultative Groups on International Agricultural Research in 1971; the bank serves as the group's chairman and secretariat; in February 1995, UNEP was invited to join as the group's fourth sponsoring member. The group was formed to raise money for international agricultural research work aimed at enhancing crop and animal productions in developing countries; it funds sixteen Research Centers.

In order to extend an effective international response to the financial crises that had affected several Asian countries from Mid-1997, the bank established new partnerships and strengthened existing ones in 1998-1999. The bank also worked closely with the Japanese government and administered a \$40 million trust fund established by the Asia Europe Meeting. The Environment Facility, established in 1990 by the World Bank, UNDP and the United Nations Environment Programme, is a three-year pilot program designed to provide grants

for investment projects and technical assistance. The Global Environment Facility aims to help developing countries implement projects that bring global benefits. Agenda 21 at the United Nations Conference on Environment and Development in June, 1992 recognized the Global Environment Facility as a source of funding to support activities that benefit the global environment, and in the financial mechanisms of conventions on climate change. was included. was nominated as a director. biological diversity. In March, 1994, 87 industrialized and developing countries agreed to restructure and replenish the Global Environment Facility for a period of three years from July of that year. Funding of \$2000 million was to be provided by 26 donor countries.

The world Bank's operation Evaluation department studies and publishes the results of projects after a loan has been fully disbursed. So as to identify problems and possible improvements in future activities. A quarrel assurance group monitors the effectiveness of the bank's operations and proportions. In September, 1993 the Bank's board of Executive Directors agreed to establish an independent panel, consistent with bank's objective of improving project implementation and accountability. The panel, which became operational in September, 1994 was to conduct independent investigations and report on complaints concerning the design, appraisal and implementation of development projects supported by the Bank. By the end of 1999 panel had received 14 formal requests for inspection. The three projects received in 1999 concerned Land reforms in Brazil, diamond mining in Lesotho and a property reduction schemes in the Peoples Republic of China.

III. CONCLUSION

In conclusion, Special clauses in agreements play a crucial role in establishing global economic ties and promoting ethical and sustainable business practices. Countries and enterprises may successfully negotiate the complexity of global commerce, settle disputes, safeguard intellectual property rights, support sustainable development, and guarantee regulatory compliance by comprehending and using these rules. To maximize the advantages of international commerce, nations and enterprises must actively participate in negotiations and the formulation of policies, as well as continuously monitor international accords and their particular features.

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