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Special and Differential Treatment

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1 Why Special and Differential Treatment is Important

For many the Uruguay Round heralded the end of the road for special and differential treatment. The popularity of the theories that had underpinned it in the GATT was in decline and the provisions in the WTO Agreement were seen as a transitional phase leading to the eventual disappearance of special treatment for particular types of members.

The picture today is very different. The experience of many developing countries with what they perceive to be inadequacies in the WTO has led to a strong renewal of interest in robust differentiation. The current negotiations, dubbed the Doha *Development* Round, give SDT a central position.

In many respects this is a reflection of the WTO's success in becoming a universal organisation taking decisions that are binding and extending its rule-making agenda into many 'beyond the border' areas that were hitherto sovereign territory for Member States. But these advances have brought their own problems that SDT needs to address. Moreover, contrary to some expectations at the end of the Uruguay Round, debate and controversy over appropriate development strategies are not a thing of the past.

The historical case for and against SDT has been couched in developmental terms. The key argument is whether lower levels of development justify special treatment or, by contrast, make the adoption of 'standard' rules even more desirable. Originally, the debate was cast mainly in broad terms related to a country's position in the 'centre' or 'periphery' of the world economy. This broad argument over whether or not there should be general provisions for all developing countries, or for all least developed countries or for some hybrids still continues. But in addition there is more focused analysis of the desirability of specific rules.

A core objective of the Agreement on Agriculture, for example, is the removal of the substantial Organisation for Economic Co-operation and Development (OECD) distortions that have led to higher agricultural output than can be justified economically. For many poor developing countries, though, the agricultural problem is quite the reverse: through neglect and bias, their production is far below what it should be. Instruments designed to curb excessive subsidy to agriculture in rich countries might easily get in the way of much needed increased support to agriculture in poor ones.

In addition to these 'traditional' themes, there are new ones that relate to the more recent characteristics of the WTO compared to the GATT. Parts of the new trade agenda may be developmentally desirable but it is argued that the opportunity cost of

implementation *at this stage* is is too high. This is because it is expensive in terms of finance, human resources or governmental/judicial attention. At the same time, the cost to the world trade system of non-implementation is trivial (for example because the country's share of relevant trade is miniscule). For example, Malawi would benefit from introducing the WTO customs valuation code – but not by as much as it would benefit from alternative uses of the resources required. And there would be few external repercussions from non-implementation.

Another justification for SDT arising from the WTO's character is that it is essential for decision-making. Without strong SDT provisions it will be difficult to conclude the Doha Round because of the need for consensus. During the final negotiations of the Uruguay Round many developing countries were persuaded to accept vague formulations with promises that turned out to be unenforceable. Because of the surge in use of dispute settlement, it is unlikely that by the end of the Doha Round countries will be willing to put their trust in vague phrases that might subsequently be defined judicially in unexpected ways.

This leaves only four obvious alternatives for achieving closure:

- Weaken the current provision of binding dispute settlement;
- Re-introduce the multiplicity of plurilateral agreements that characterised the GATT;[1]
- Extend the General Agreement on Trade in Services (GATS) 'positive list' approach, making certain obligations applicable only in sectors/contexts where countries so specified;
- Create new, more robust forms of SDT.

2 The Current State of Play

Arguably, the last of these – more robust SDT – is the more attractive. If so, the success of the Doha Round rests on the ability of the negotiators to build a stronger SDT regime. This is proving to be difficult. The Doha Declaration accorded SDT a central place in the current round of rule negotiation. It stated that:

> *... provisions for special and differential treatment are an integral part of the WTO Agreements ... We therefore agree that all special and differential treatment provisions shall be reviewed with a view to strengthening them and making them more precise, effective and operational.*
>
> WTO, 2001

Yet negotiations have failed to make any progress. In the period since Doha, developing and least developed countries have made nearly 90 proposals on SDT but by the end of February 2003 no agreement had been reached on any of them. As part of con-

sultations between mid-March and April 2003 the Chairman of the WTO General Council circulated an 'approach paper' that categorised the proposals into three broad groups (WTO JOB(03)/68, 8 April 2003). Category 1 covered 12 proposals agreed *in principle* plus 26 others on which progress seems likely. Category 2 contained 38 proposals that relate to the negotiations and discussions happening in other WTO fora. The remaining 12 proposals in Category 3 are ones where agreement seems unlikely.

So far, the talks have been more about negotiating tactics and the eventual price to be paid for any 'concessions' than about the substance of what needs to be done. This is partly because, as explained below, SDT must, if it is to be worthwhile, confer on developing countries some tangible and enforceable benefit that would not otherwise accrue; the industrialised countries have been unwilling so far to agree to this outside the sectoral negotiations in which they would expect some concessions in return. This impasse is serious – and is taken up again in the following sections and the recommendations.

There is disagreement over which should come first: decisions on cross-cutting issues or on provisions within specific agreements. The former include the principles and objectives of SDT, whether there should be one, two or multiple tiers of provisions, technical assistance and capacity-building, transition periods and graduation. Some developing countries have feared that a premature decision on cross-cutting issues might limit the scope for subsequent agreement-specific SDT.

In the absence of any serious progress in the negotiations, the analysis of appropriate themes for SDT has occurred largely outside the WTO. NGOs, academics, multilateral agencies and some development ministries have all sponsored studies and discussions on the subject. It is clear that there is no consensus outside the WTO just as there is none inside.

3 SDT in the GATT and WTO: Key Themes

A Multi-track System

Part of the problem may arise from SDT's historical baggage. SDT has been a recognised concept since the early days of UNCTAD and is the focus of the WTO's Committee on Trade and Development (CTD), but the provisions conventionally clustered under the acronym do not represent the full range of possibilities. On the one hand, 'special and differential treatment', in its literal sense, has had much broader application than via the measures conventionally described as special and differential treatment. On the other hand, there are methods for protecting development interests in future negotiations that do not involve formal SDT. In other words, 'SDT' is only a part of the picture.

The term is often misconstrued as a two-track system in which developing countries are allowed to distort their economies, to their own and others' detriment, to a

greater extent than are other WTO members. But this is not correct. The reality is that:

- The WTO is already 'multi-track' since it provides a varied set of 'rules' that apply very differently to members according to their specific circumstances;
- Binding dispute settlement has removed much of the flexibility that characterised the GATT and allowed these differences to co-exist;
- In order to avoid adverse, unintended consequences from dispute settlement (or the threat thereof), the WTO needs new mechanisms to balance precise rules with appropriate flexibility;
- The extension of the Doha Round into many 'behind-the-border' and regulatory issues makes this even more necessary.

Binding Dispute Settlement: The New Ingredient

Scope for special differentiation applied extensively in the GATT and benefited a very wide range of members. This 'informal' SDT was achieved by incorporating into the GATT texts vague phrases that could be interpreted in different ways by different members. Such vagueness included such current *causes célèbres* as the Article XXIV requirements that a free trade agreement/customs union should cover 'substantially all trade' and be completed 'within a reasonable period of time'. This allowed countries with different views of what should be done to sign up to the same set of words, secure in the knowledge that they could apply them in their chosen way once the ink was dry.

The innovation of the Uruguay Round in making dispute settlement binding removed this escape route. This fact was not necessarily fully recognised by all (or even most) parties. The subsequent striking down by the WTO of the US offshore tax regime and the European Union banana regime, for example, has concentrated minds. In neither case was the defendant wilfully flouting WTO rules: both believed that, on their interpretation of the rules, they had a strong defence.

There are two reasons why this sea-change from the GATT to the WTO needs to be borne constantly in mind. The first is that proponents of SDT are not necessarily pressing for loopholes to be inserted into a well-established system based upon uniform treatment. On the contrary, the GATT provided a highly permissive framework. The exemptions for temperate agriculture and the Multifibre Arrangement's quantitative restrictions on developing country textile and clothing exports represented only the most visible signs that 'non-discrimination' remained a goal and not an achievement. Substantial exceptions still exist, and developing countries would argue that many are to their disadvantage. Hence, the proponents of SDT are arguing merely for the reality, rather than the rhetoric, of the WTO to apply, and to recognise that binding

dispute settlement requires that this be done *ex ante* rather than *ex post*. Some go further and argue that 'special' treatment for developing countries now is required to offset bias against them in the present rules that were drafted under heavy industrialised country influence.

The second implication of change is that binding dispute settlement has altered the character of the WTO and its image. The WTO appears to be a more litigious forum than the GATT. All sorts of policies that had been in existence for years have been placed in the WTO's dispute settlement spotlight. And the proportion of cases brought by industrial against developing countries has increased: a review of cases brought between 1995 and 2000 found a threefold increase compared with the GATT period in the proportion of cases that were brought by industrialised countries against developing countries (Delich, 2002: 76). A corollary is the vastly more controversial image of the WTO compared with the GATT.

There now exists a greater need for formal constraints on the extent to which WTO rules can compromise development objectives. Since the WTO's rules are the result of hard political negotiations and not the application of textbook economics, there is every reason to suppose that some rules could compromise development objectives, whatever one's opinion on the latter; it would be remarkable if this were not the case. Without such formal safeguards there is the real danger that 'speculative litigation' by interested parties in the WTO will, at best, cast the organisation in an anti-developmental light, reducing its public legitimacy, or at worst actually lead to pro-development policies being struck down.

The Status Quo

Even though SDT is not the whole story, it is at the centre of current discussion. An analysis of the *status quo* is an essential part of identifying new SDT for the Doha Round. This must both plug gaps in the *status quo* and learn from the lessons of the past. The history has been well covered (for example by Michalopoulos, 2001; Whalley, 1999; and Fukasaku, 2000). In essence, it is that:

- SDT had its origins in a view of trade and development that questioned the desirability of developing countries liberalising border measures at the same pace as industrialised countries;
- The popularity of this approach was (possibly temporarily) in decline in many developing country governments during the negotiation period for the Uruguay Round Agreement;
- Consequently, many SDT provisions on border measures and subsidies envisage developing countries (other than the least developed) following a similar path to that of the industrialised countries but at a slower pace;

- Other SDT provisions (particularly those covering positive support to developing countries via financial and technical assistance or technology transfer) were not agreed in a form that is enforceable within the WTO system.

The presumption of many was that the Uruguay Round represented the beginning of the end for SDT. Increasingly WTO members would accept the same obligations. But, as suggested above, this presumption appears now to have been misplaced. What is clear, though, is that the SDT incorporated into the Uruguay Round texts is unsatisfactory for many members and observers.

There are currently three areas of SDT, and they apply to three principal groups of countries. The types of treatment are modulation of commitments, trade preferences and declarations of support, while the main country groups are the industrialised countries, the developing countries and the least developed. Developing countries want Doha to improve some of the types of treatment; some industrialised countries propose a re-visiting of the country groups.

Modulation of Commitments

The most substantial SDT provisions are those which allow for a modulation of commitments by different types of member. Hence, for example, the Agreement on Agriculture requires the industrialised countries to reduce their tariffs by 36 per cent over six years, but developing countries have to do so by only 24 per cent over ten years and least developed countries do not need to cut their tariffs at all. As noted above, TRIPs provides similarly extended timetables.

This aspect is 'legally enforceable' in the following sense. A WTO member may use the dispensations granted under SDT in its defence if its trade policies are challenged by another WTO member on the grounds that they do not conform to the Uruguay Round commitments. Hence, for example, if India were challenged on the grounds that it had not reduced its agricultural tariffs by 36 per cent, it would have a watertight defence in dispute settlement by pointing to the fact that it is required to liberalise by only 24 per cent.

Trade Preferences Market Access for Developing Country Exports

The second area is the provision of enhanced market access via trade preferences (mainly by industrialised countries to developing and least developed countries). Under the 1979 Enabling Clause, WTO members are permitted to suspend the granting of MFN treatment in cases where they are offering better-than-MFN tariffs to developing countries.

The extent to which these provisions on trade preferences are legally enforceable is questionable and may be clarified by the current dispute of India against the EU. A strong case can be made that the standard Generalised System of Preferences (GSP) of

most industrialised countries can be justified under the SDT provisions of the Enabling Clause where it provides equal treatment to all developing countries. In other words, if the EU were to be challenged in dispute settlement by, say, the USA on the grounds that the standard GSP tariff available to all developing countries was lower than the MFN tariff being applied to imports from the USA, the EU would probably be able to cite the SDT provisions of the Enabling Clause in its defence.

However, as has been seen in the case of the challenges from Latin America and the USA to the EU banana regime, other aspects of trade preferences are less securely underpinned by legally enforceable SDT. Problems arose in the case of bananas because:

- The differential tariff was challenged on the grounds that it favoured one group of developing countries over another (and, hence, could not be justified under the Enabling Clause);
- The system of import licensing for companies was challenged on the grounds that it contravened the EU's commitments under the GATS.

The current Indian challenge focuses on the fact that the EU's *generalised* system of preferences actually offers several different regimes, with some beneficiaries being treated more favourably than others.

But, even where these provisions provide a permissive framework, it is not necessarily a supportive one. The 'beneficiaries' of SDT have limited rights to ensure that industrialised countries take advantage of the latitude that the WTO texts make available. There are many areas where SDT *could* be provided on market access, but the industrialised countries do not do so; on the contrary, they target their restrictions on developing countries. The misuse of anti-dumping actions is a case in point. Far from using the provisions that exist within the WTO sensitively to reduce the disruption to developing country trade, the OECD states are frequently accused of claiming that dumping has occurred when it is simply a case that developing countries are more competitive than domestic suppliers. As in so many cases, the WTO *status quo* provides the industrialised countries that largely drafted it with substantial opportunities for special and differential treatment in their own cause, but only limited opportunities in that of the developing states!

This lack of support is especially marked because the only clearly 'WTO-legal' policies – the standard GSP – are wholly autonomous undertakings by the industrialised countries. In other words, they can be introduced, amended or withdrawn unilaterally. They also often include major limitations that restrict their commercial value to developing countries. These can include zero, or limited, GSP preferences on products of particular importance for developing countries (such as clothing or footwear) and onerous rules of origin that either negate the commercial value of the

preferences (for example by requiring inputs to be sourced uneconomically from the GSP granting state) or deter regional trade.

Those preference agreements that are negotiated are often more generous – but they are not available to all developing countries. Hence, not only is their WTO-legality questionable, but the gains they provide to beneficiaries may be obtained at the expense of other developing countries.

Ancillary Support

The third area of SDT is wholly unenforceable. It comprises the large number of declarations of support for developing countries that litter the Uruguay Round texts. For example, Article 4 of GATS deals with encouraging the increased participation of developing countries in international services trade through 'negotiated specific commitments' relating to the strengthening of their domestic services capacity, improvement of their access to distribution channels and liberalisation of market access in sectors and modes of supply of export interest to them. Similarly, the *Decision on Measures Concerning the Possible Negative Effects of the Reform Programme on Least-Developed and Net Food-Importing Developing Countries* requires members to review the level of food aid to ensure that it is sufficient to meet the legitimate needs of developing countries, to adopt guidelines to ensure that an increasing proportion is provided to least developed countries and net food-importing developing countries, and to give full consideration in their aid programmes to help improve agricultural productivity and infrastructure. There are many other such references.

As is well known, there is no action that an aggrieved developing country can take either inside or outside the WTO to force another member (or an international organisation) to take actions that it believes are consistent with these undertakings. A considerable element of the discontent expressed by developing countries in the WTO about the failures of SDT derives from resentment that they were 'hoodwinked' into signing the Single Undertaking through promises that were, literally, not worth the paper they were written on. The Doha negotiations need to resolve these problems either by making the SDT provisions enforceable in some sense or by amending current rules (or tailoring future rules) to take account of their non-enforceability.

4 New Ideas

What is the Primary Purpose of SDT?

Given this impasse in the negotiations, it may be helpful to revisit the primary purpose of SDT in the WTO. It can be argued that this is to provide a framework for development in cases where it is not possible to agree a standard rule, applicable to all Members, that achieves this objective.

Such cases may arise from technical aspects of an issue: some countries need to do different things than do others, and so a rule that is appropriate to the first group will

necessarily be less so for the second. Most OECD states, for example, need to scale back the huge direct and indirect subsidies that distort their agriculture; in many developing countries the problem is the exact opposite – inadequate support has led to agricultural underproduction.

Alternatively, or additionally, the case may arise from political factors: a standard rule that would apply appropriately to all parties can be identified but there is no consensus in the WTO to agree it. Agriculture includes both types of issue: rules required to discipline effectively OECD distortions would be inappropriate for many developing countries but, in any case, it seems improbable that the political will exists in key OECD states to accept rules that would sweep away the major distortions. Hence, developing countries need flexibility both to expand the development potential of their agricultural sector and to deal with the consequences of the continuing OECD distortions.

In order to achieve this goal, the SDT framework needs to provide, at a minimum, a permissive and, at best, a supportive one. The permissive element relates to the key role of the WTO. This is to agree rules that are then maintained by the threat of sanctions applied under the dispute settlement mechanism. At a minimum, SDT must ensure that developmentally desirable actions are not constrained by the fear (or actuality) of challenge under dispute settlement. TRIPs provides a salutory lesson. Some aspects of the agreement are now widely perceived to be wrong headed (see CIPR, 2002) but re-negotiation to protect developing countries from the threat of sanctions is proving to be very difficult.

SDT must be effective, therefore, in the negative sense that it provides a developing country with a clear defence in dispute settlement. If it can also provide a positive, supportive environment (for example, by directing resources to needy developing country sectors or by giving better-than-MFN access to protected markets), then this is desirable although there are clear problems in linking WTO rules and resource flows. By the same token, to the extent that it is able to facilitate consensus building between developing countries, with other development actors and with the wider community, these are all plus points. But they should not divert attention from the primary objective.

Problems with the Status Quo

How does the existing provision measure up to this minimum task? There are two principal problems with the *status quo*. One is that the existing, legally enforceable provisions are eroding assets. The other is that large areas of trade policy are without any legally enforceable SDT.

Most legally enforceable SDT is an eroding asset in the sense that it provides modulation of commitments, the vitality of which will decline directly (if time limited) and indirectly (if it relates to removal of barriers that all members are reducing

over time). Hence, the implementation delays under TRIPs and the Agreement on Agriculture cease to provide differential treatment once the extended timetable has expired. Similarly, SDT provisions that require developing countries to liberalise/reduce subsidies etc., but to a lesser extent than industrialised countries, will in due course cease to have validity when the developing countries' remaining barriers reach very low levels. It is true that in cases where least developed countries have been exempted from tariff/subsidy reduction altogether their concessions will not be eroded in this way. But many vulnerable developing countries do not fall within the least developed group.

The other problem, found especially severely in the 'new areas' of trade policy (such as TRIPs, services, government procurement and competition policy) is that no effective SDT exists and it is often far from clear what form more robust provisions would take. Evidently, the removal of formal market access barriers is either irrelevant or a minor aspect of rule formation. Hence, the 'traditional recipe' of slower, more limited barrier removal is not relevant. Yet, unless the proposed rules are 'analysed' and not just 'negotiated', extended implementation may be all that is on offer.

At the same time, even in cases where the form of SDT has been identified, the modalities remain an area of controversy, as noted above under TRIPs. A variation of this problem is to be found in the Agreement on Agriculture, which aims primarily to solve a problem that developing countries do not have: excessive direct and indirect subsidies to inefficient domestic agriculture. Given this 'wrong' focus (and the very partial coverage of the new rules), the existing SDT provisions have been described as 'upside down': developing countries are allowed flexibility in reducing distortions that they do not have, but face potential gaps in coverage over vital aspects of food security (Michalopoulos, 2003).

5 Negotiating Change

Existing SDT provisions are not adequate: hence the Doha Declaration commitment to strengthening them and making them more operational. Even if the current Round succeeds in extending and reinforcing the current rules, it will throw up new areas in which SDT is required in a form that avoids the problems of the current provisions. Yet for existing provisions to be improved and new arrangements made the WTO members have to agree change – and this is proving to be problematic.

The major problem in dealing with the deficiencies in the *status quo* is not technical but political. It is possible to identify, even at this early stage in the negotiations, flexibilities that would address major concerns. But they must necessarily be couched in quite broad terms given the absence of specific texts for new rules. And there is an evident unwillingness on the part of industrialised countries to agree broad, enforceable provisions at this time. Hence the dispute, noted above, over the appropriate

forum for SDT negotiations – the CTD or the sectoral committees negotiating change to specific agreements.

All proposals for effective SDT face the twin hurdles that some Members will be unhappy agreeing flexibilities that would apply equally to all developing countries, but differentiation will be very difficult to negotiate. The problems are both technical and political. The technical issues involve identifying appropriate forms of SDT and the countries to which they should apply. The political problem is the one of selling the idea of differentiation to an organisation that acts by consensus. Categories are all very well until a country discovers that it is excluded from one! There will be pressure to make more fuzzy the parameters of any proposed group until it becomes so vague that other countries (including, but not necessarily exclusively, the industrialised countries) are no longer willing to agree significant SDT for such a varied group.

If there is a problem with broad provisions now, how about more tightly drawn ones at a later stage? While this would still face the political problem of differentiation, the technical one would at least be more soluble when there are draft texts to be amended. The problem here is likely to be the dynamic of the negotiations.

If the Doha Round proceeds in the same way as its predecessor, introducing appropriate SDT at a later stage will not be easy. The Uruguay Round made erratic progress. A Draft Final Act had been produced by the end of 1991, but the agricultural proposals were rejected by the EU (Croome, 1995: 328). There followed two years in which most of the 'action' took place in bilateral talks between the EU and the USA from which other states were largely excluded. Even when the formal negotiations were relaunched in July 2003, there were at least three tracks: the discussion in the formal GATT groups; the personal 'facilitating' of the new Director General, Peter Sutherland, who 'kept up a punishing series of whirlwind visits to top-level political leaders in the major countries' (ibid.: 349); and bilateral negotiations between the EU and USA, with their respective chief negotiators, Sir Leon Brittan and Mickey Kantor, having from November 'a crucial series of meetings ... that were to continue with only short breaks over a period of more than three weeks' (ibid.: 364).

In other words, while some broad positions had been established by 1991, many of the critical details were not agreed until the final months, weeks (and even hours) of the 11-year marathon. Many of these details were hammered out in fora from which the majority of GATT members were excluded. Some of the non-actionable SDT provisions that are causing the greatest developing country bitterness were hatched in this way.

The Doha dynamic will probably be similar because it appears to be inherent in the task of negotiating a wide range of complex provisions simultaneously. There can be no agreement until the major WTO members have obtained compromises with which they can live, and then there is a strong imperative to finalise the deal as quickly as possible before this consensus is disturbed. John Croome, a close observer of the

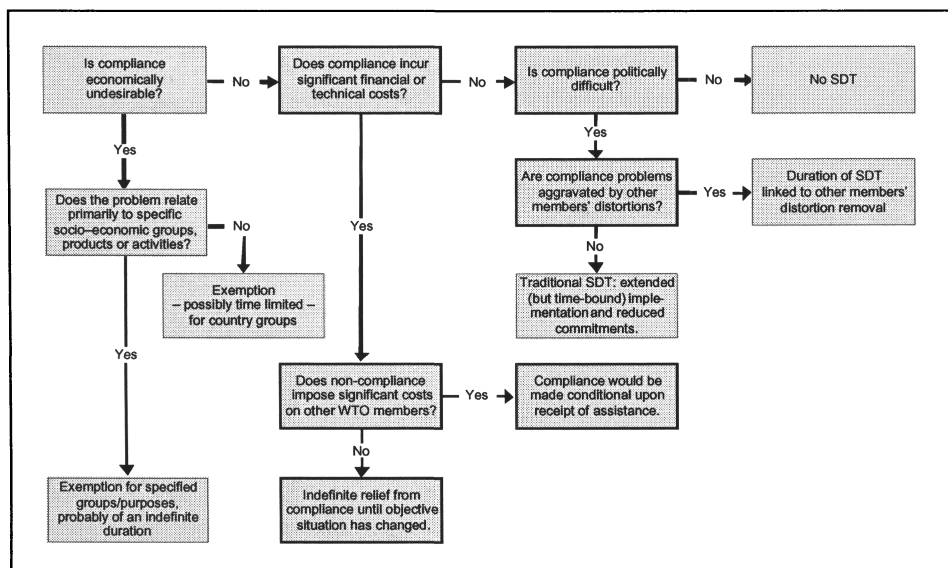
process, attributes a significant part of the final success in the Uruguay Round to Peter Sutherland's refusal to countenance any further delay (Croome, 1995). A consequence is that all other members have to scuttle around to establish their willingness to accept the compromises and to secure their own interests.

Hence, we have an impasse.

- To be effective, any development provisions must be actionable within the WTO.
- In the absence of agreed details to any WTO rule changes, such a guarantee can be provided only in broad terms.
- In the absence of agreement on sub-groups of developing countries, these broad, actionable provisions would apply either to all developing countries or just to the least developed countries.
- The industrialised countries are unwilling, currently, to agree general exemptions, partly because they want to link them to the negotiations of substance and they are unwilling to agree them for *all* developing countries; but SDT limited to the least developed would be cast too narrowly.
- The developing countries are unwilling to discuss differentiation and graduation, at least until substantial offers are on the table, and are reluctant to link provisions which, to their mind, 'restore the balance' to negotiations on further WTO rules.

In this unpromising environment, there is an urgent need for a regular review of the ends to be achieved by SDT in specific circumstances and the means to do this. The analytical matrix in Figure 3.1 aims to identify the multiple different reasons that might justify SDT and the appropriate mechanisms to achieve the desired outcomes. The questions posed in the figure are different from those often tabled (but not answered) in the Doha talks. It is not intended as an alternative to the negotiations but as a complement. Some of the boxes in the figure can be filled in already in broad terms – for example in agriculture (Michalopoulos, 2003; Stevens and Kennan, 2003). As the negotiations progress and proposed rules become clearer, the boxes can be refined. But at least all parties will have been sensitised before the final negotiating rush to the types of problems that different developing countries and least developed countries might face and the type of SDT that would be appropriate.

Figure 3.1: Check-list for Classifying SDT Issues and Solutions



6 Recommendations

The discussion of SDT in the WTO is at an impasse; indeed, some members argue that what happens in the CTD are not even 'negotiations'. Intransigence on one side has provoked intransigence on the other. One way to break the deadlock that would be developmentally desirable and respond to the realities of the WTO would be for the industrialised countries to agree at Cancún *some* general principles that would be legally enforceable in the sense that they would provide a cast-iron protection against challenge in dispute settlement regardless of what goes into the small print of specific agreements at a later stage.

So far, the industrialised countries have been unwilling to proceed in this direction. Given the current structure of the WTO such principles would have to apply either to all members, or to developing countries and LDCs or to LDCs alone. The first would not provide any special treatment; the third would miss out many WTO Members. Hence, only the second – general, enforceable principles applicable to all (or virtually all) countries currently classified (if only by themselves) as developing countries and LDCs would fit the bill. (Some further sub-groups of members might become acceptable later in the negotiations – but not by the time of the Cancún conference.)

While there is no strong evidence that the industrialised countries are willing to go down this route, its desirability is so great that it would be worth elaborating it a little further. In particular, some detail needs to be given to the word 'some' above. What are the highest priority areas? Are they food security, behind-the-border measures,

flexibility for small producers (regardless of the product) even in economically not so small countries? If any compromise can be reached, it is more likely to be for a list of issues that is shorter than many developing countries would wish but longer than some industrialised countries are currently willing to concede. A combination of socio-economic analysis and diplomatic opinion polling might throw light on the prime candidates for inclusion in the list.

Another area for action is for developing countries and LDCs to consider their highest priorities for action in relation to detailed SDT provision. This is necessary even if Cancún does agree some general, binding SDT principles, and it will be even more necessary if it does not. While each state has its own priorities, some common areas can be identified in which the *right sort* of WTO action is better than no action. Hence, developing countries and LDCs have an interest in avoiding the use of their blocking majority if it can be avoided: this provides the last line of defence, but a better outcome would be new rules that advance development interests (for example restricting the misuse of anti-dumping).

Agriculture is a prime candidate. Serious OECD 'liberalisation' (in the textbook sense) seems unlikely to happen. The Harbinson compromise would leave many important OECD product markets largely closed to import competition (Stevens, 2003). But there may nonetheless be many rule changes that could help or hinder agricultural development. If the negotiations progress, it is vital that the potential effects of what is actually being proposed (rather than vague concepts such as 'liberalisation') have been analysed in advance to show the ways in which specific socio-economic groups in particular countries could be affected. Otherwise, the chances of appropriate SDT being proposed – let alone agreed – are low.

Concentrating upon some areas means a relative neglect of others. This is inevitable. The trade-off can be made less severe if countries are able to collaborate and share out the responsibilities and if international organisations are able to help boost analytical capacity. But a trade-off will remain.

This needs to feed back into the list of highest priority general principles. One clear candidate for inclusion in the list would be a general limitation restricting the extent to which developing countries and LDCs would be subject to dispute settlement in areas that are low priorities for their limited analytical and negotiating capacities. This might be some form of halfway house between core WTO texts and plurilateral agreements. All members would be parties to an agreement, but the right to take a member to dispute settlement, and the obligation to accept such settlement, would only apply to those states that specifically agreed to be so bound. This would be just one way in which the limited membership and agenda organisation of the GATT would be transformed into the more pluralist WTO.

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Note

1 Plurilateral agreements need not be signed by the entire membership. While these were plentiful under the GATT, the Uruguay Round results made most of them multilateral (all members were obliged to accede).