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Special and Differential Treatment of Developing Countries in the World Trade Organization

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Foreword

In order to contribute to a better understanding of global development the Swedish Ministry for Foreign Affairs has established a series of research reports on current global issues. The objective of the series labelled Global Development Studies is to channel research findings to the heart of policymaking in Sweden and elsewhere. The studies are initiated by the ministry and managed by its EGDI-Secretariat (Expert Group on Development Issues) but written by independent researchers.

The issue of Special and Differential Treatment (SDT) of developing countries in the WTO system has been a subject of debate for a number of years. As the international trading system has developed over time, and grown more complex, the importance of SDT has increased. In the ongoing WTO-negotiations under the Doha Development Agenda, SDT is seen as a key issue. Consequently, there were compelling grounds to undertake a comprehensive review of the special rules and benefits for developing countries provided for under WTO rules. The study analyses the development of the provisions for special and differential treatment within the WTO system and the actual and potential development effects of existing provisions. It puts forth a number of suggestions for how to improve the current system.

With this study we wish to contribute to the international discussion on these issues in the WTO and the international system at large.

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Acronyms and Abbreviations

ACP	African, Caribbean and Pacific group
AD	Anti-Dumping
AGOA	African Growth and Opportunity Act
AMS	Aggregate Measure of Support (in agricultural subsidies)
ASEAN	Association of South East Asian Nations
Bind	Make a formal commitment in the WTO
BISD	Basic Instruments and Selected Documents (GATT)
Cairns Group	Group of 17 agriculture exporting countries
CARICOM	The Caribbean Community and Common Market
CBERA	Caribbean Basin Economic Recovery Act
COMESA	Common Market for Eastern and Southern Africa
DAC	Development Assistance Committee (OECD)
DDA	Doha Development Agenda
DTI	Department of Trade and Industry (UK)
EBA	Everything But Arms (EU preferences for LDCs)
EGDI	Expert Group on Development Issues (Sweden)
EPA	Economic Partnership Agreement (between EU and ACP regions)
EU	European Union
FDI	Foreign Direct Investment
FTA	Free Trade Area
FTAA	Free Trade Area of the Americas
G20	Negotiating group of developing country agricultural exporters; currently Argentina, Bolivia, Brazil, Chile, China, Cuba, Egypt, India, Indonesia, Mexico, Nigeria, Pakistan, Paraguay, Philippines, South Africa, Tanzania, Venezuela LDCs and Zimbabwe
G90	Group of 94 countries, including all ACP countries, all LDCs, the North African countries and South Africa. 63 are members of the WTO
GATT	General Agreement on Tariffs and Trade
GATS	General Agreement on Trade in Services
GPA	Government Procurement Agreement (WTO)
GPT	General Preferential Tariff, Canada's GSP
GSP	Generalized System of Preferences
GSTP	Global System of Trade Preferences (among developing countries)
ICTSD	International Centre for Trade and Sustainable Development

IDB	Inter-American Development Bank
IDS	Institute of Development Studies, University of Sussex
IMF	International Monetary Fund
LDC	Least Developed Country
MERCOSUR	Mercado Común del Sur (Southern Cone Common Market)
MFA	Multi-Fibre Arrangement
MFN	Most-Favoured Nation
Mode 4	Under GATS (qv), services liberalisation is classified according to how each service is supplied. Of the four modes, movement of labour, Mode 4, is often referred to by number.
NAFTA	North American Free Trade Agreement
NAMA	Non Agricultural Market Access (in DDA)
NFIDC	Net Food Importing Developing Countries
NGO	Non-governmental organization
OECD	Organization for Economic Cooperation and Development
SAARC	South Asian Association for Regional Cooperation
SACU	Southern Africa Customs Union
SADC	Southern African Development Community
SDT (or S&D)	Special and Differential Treatment
SIDS	Small Island Developing States
Singapore Issues	Proposal to include Investment, Competition Policy, Transparency in Government Procurement, and Trade Facilitation in the DDA
SPS	Agreement on Sanitary and Phytosanitary Measures (WTO)
TBT	Agreement on Technical Barriers to Trade (WTO)
TIM	Trade Integration Mechanism (IMF facility)
TPR	Trade Policy Review
TPRM	Trade Policy Review Mechanism (WTO)
TRIMs	Trade-Related Investment Measures (WTO)
TRIPS	Trade-Related Aspects of Intellectual Property Rights (WTO)
UNCTAD	United Nations Conference on Trade and Development
UR	Uruguay Round
WTO	World Trade Organization

Executive summary

Criteria and objectives to make SDT effective

SDT should increase the benefits to developing countries from trade and the weight given to their interests

The purpose of the WTO is to provide the rules that will allow its members, which represent a wide range of different types of economy and level of development, to grow and develop without impeding the progress of others. The purpose of SDT is to give developing countries a greater priority in this process, thus to allow them to give more priority to their own needs and less (not no) priority to those of others.

SDT should not replace international or national development strategies

Trade is not the only means of promoting development or reducing poverty. Therefore while developed countries concerned about assisting developing countries will want to ensure that the trading system does not obstruct development, they need not use the trading system actively to promote development. The developing countries have trading and systemic interests other than development and poverty, and the developed countries also have trading interests. This suggests that SDT should be regarded as a way of modifying pursuit of the central trade aims of the WTO, not as a substitute for them.

An inclusive organisation must build in flexibility

When it was founded, GATT was what today would be called a group of like-minded countries, major traders accepting a particular system of international economic relations. This meant that the members could assume agreement on a common approach to most rules. As it has expanded, it has acquired de facto a different aspect, of being the organisation that regulates most international trade. This has given countries which might not be 'like minded' an incentive to join to avoid the costs of exclusion from both trade and rule-making. At the same time, the existing members have started to believe that universality of membership is an additional goal of the WTO. If the WTO members now accept that the organisation should aim for universal

membership, in order to ensure that the benefits of certainty and predictability apply to all trade by its members, then both the possibility that some countries are permanently 'different' and the certainty that some will not share the same approach to all rules imply that the WTO must either limit its rules to those which can benefit and be accepted by all members or allow permanent derogations for countries with different economies or different approaches to economic policy.

SDT must be consistent with countries' views of their interests

The way the WTO functions is based on mercantilist self-interest. It is therefore necessary that countries should be expected to define their own interests in SDT, not accept what developed countries (or analysts) think is 'good for them'. This requires a difficult balance between biasing the system to help developing countries, because developed countries accept development as a worthwhile objective, and biasing the system to promote developed countries' own view of what type of development is best.

SDT should promote integration of countries into the world trading system and support the basic aims of the WTO

The existence of international trade and of the WTO confirms that all members believe that 'Integration into the international system' is an essential element in national strategies, although it is not a purpose in itself. SDT should not, therefore, contradict this fundamental purpose: it should avoid creating obstacles to a country's future development or integration into the system, and should normally promote, not restrict trade. Its aim should be to increase the benefits and reduce the costs of integration into the WTO.

SDT must avoid excessive costs to other countries and to the international system

The Enabling Clause from 1979 requires that SDT be designed 'not...to create undue difficulties for the trade of any other Contracting Parties'. Even small countries may be important markets or suppliers for particular interests in another country, and if that country is itself small, the damage may be significant. The basis for SDT is that all countries agree that some members of the WTO (however the group is chosen) need relaxation of some WTO rules, but that it is for the WTO membership to define which rules and what exceptions by its normal procedures. This gives WTO obligations priority over exceptions, and thus by implication trade rules priority over 'policy space'.

SDT should be bound

Removing the existing 'best endeavours' clauses in some of the existing WTO agreements may be more damaging than leaving them alone, but there should be caution about adding new ones. Adding provisions with questionable benefit should be avoided when there are costs to any new responsibilities. For new agreements, therefore, there does not seem to be a role for non-binding SDT. 'Best endeavours' clauses raise expectations and therefore increase the risk of dissatisfaction.

How to determine eligibility for SDT - Differentiation

There are no agreed measures of 'level of development'. Different political priorities would determine what weight should be given to different indicators. It would be very difficult to establish indicators of a country's ability and institutional capacity to undertake commitments, or agree who should make such an assessment. Even if indicators could be agreed, the fact that SDT represents a balance between a country's needs and the damage to others from relaxing an agreed rule means that the boundary must be negotiated. If countries attempt to define criteria, the choice of criteria will be influenced by their knowledge of where they will fall.

It is not realistic to suggest that any classification be defined on objectively quantifiable indicators of a country's level of development and ability to undertake commitments.

Any discussion of changing the present boundaries would be divisive. Even the LDC category is divisive, but new divisions would seem more painful than old ones.

But the precedent of the agreement-specific list in the Uruguay Round Agreement on Agriculture shows that a non-standard income group can be accepted, and the July 2004 framework for agricultural negotiations, with special mentions for cotton and NFIDCs, carries this further. The format of the services negotiations allows individual treatment.¹

The suggestion that 'particular concerns' 'should be taken into consideration, as appropriate, in the course of the Agriculture and NAMA negotiations' suggests that special exceptions could be built into other issues. There is thus already differentiated SDT according to a country's level of development. This could be extended.

¹ The old, pre-formula, product by product negotiations in the goods negotiations could also allow some differentiation, for example liberalisation on tropical products in the Uruguay Round.

Graduation or not?

Formally defining which countries are eligible, and then a procedure for graduating them would cause controversy, and there are contradictory criteria for such definitions. Any 'logical' structure from a development point of view, with more categories and boundaries determined by economic criteria, not past alliances, might make negotiation more difficult. Excluding some of the most advanced developing countries from 'developing' status would have little practical effect and could be an obstacle to encouraging and demonstrating effective developing country participation in negotiations.

The history of the SDT negotiations in the current Round suggests that formal graduation is not a practical proposal. It might seem that the obvious solution to the difficulty of persuading countries to 'graduate' would be to make graduation attractive, either by highlighting its advantages, if it has them, or by giving it advantages. But while this is possible in some cases, graduation is likely to remain unattractive. The record of self-selection offers some potential for breaking the stalemate. The declaration by some developing countries, not corresponding to any income or other group, that they would not use the TRIPS/drugs import provisions could be copied, and given more legal status, in other agreements.

The problem of preference erosion

Some developing countries will face costs of adjusting to a less distorted trading system, if the current Round achieves this. The preferences that they have received will be reduced, and therefore their rents from higher prices and in most cases also the volume of their exports will fall, reducing their income.

The consequence is that they will suffer significant losses if trade is liberalised. Total world welfare will be increased, because removing protection will remove trade distortions, with the gains going to both the currently protecting countries and the currently non-preferred developing countries. Some of the currently preferred countries will gain because other exports will rise. The problem is that there remains a small number of countries for whom these gains are too small to compensate for their preference losses, so the criterion that SDT should increase the benefits to developing countries from trade suggests action is necessary. Because it is only a small number of countries, the cost of providing them with funds to meet the losses is also small.

Adjustment funding and compensation

Some countries will have a measurable negative outcome from any significant liberalisation of trade because their losses from preference erosion will be greater than their gains from other parts of the agreements. These countries

need non-repayable support in order to be able to make the investments in physical and human infrastructure and in productive capacity to permit alternative production, adapted to the new trading conditions. The increase in world welfare suggests that there is scope to direct funding to them.

Compensating them through a fund, rather than other trade concessions would be a major new initiative for the WTO, and one that could seem inconsistent both with its role as a trade agency and with other funding by developed countries through their aid programmes and the international financial institutions. It would, however, be consistent with the proposal by the EU to help those losing benefits from sugar quotas by offering financial assistance. The reason for suggesting it is that the other proposals for dealing with the problem of preference erosion are more unsatisfactory and more difficult. Alternative gains from trade are either too small (in goods) or too sensitive (in services).

The fund would have to be secure. If developed countries preferred to make voluntary contributions, to avoid the inference that they were being compelled to do so because of past 'errors' in preferences, this would be feasible, provided the commitments were legally irrevocable.

However, several questions would need to be solved by negotiation before a funding mechanism could be instituted, such as (our suggestions in italics):

- What losses should be compensated - only preference erosion?
Only losses as a result of a multilateral agreement, where some countries suffer adjustment costs, but most people, in particular, most people in developing countries, gain.
- Should all preference schemes be eligible for compensation?
A WTO scheme could only cover schemes allowable under WTO rules or waivers; negotiations would have to specify a list of relevant schemes.
- What countries should be compensated - all preference-receiving countries or only the poorest?
The compensation would have the same status as any exchange of offers and requests in the WTO, so all those affected could claim.
- The size and calculation of the compensation;
The calculation of losses from the formation of regions and the estimates used by the IMF Trade Integration Mechanism offer precedents.
- Who should pay?
Developed Countries, as a contribution to SDT, not as part of their normal aid budgets, with shares negotiated on the basis of offers; these could be based on share of trade, relative income, or commitment to development. Higher income developing countries might want to contribute.

– How to avoid reducing the incentives to adjust.

Any fund and payment would need to be generous initially, but tapered and time-limited.

Other initiatives by developed countries

Binding existing preferences, at least in the same terms and for the same period as they are legally in force under countries' own trade rules, would increase their value to beneficiaries, by providing transparency and security, without increasing their costs to the non-preferred. For those preferences which are indefinite in countries' own provisions, but which remain de facto, reversible (e.g. EBA), countries could bind them for a fixed period. Requiring this notification would be no more onerous than the similar requirement for regions, but would confirm that preferences are part of the WTO system, not independent of it.

Temporary binding could also be used in other types of agreement, for example if countries wanted to offer special access to developing countries on services. Combined with clarifying the obligations on transparency and non-discrimination, whether through interpretation or modification of the existing rules, this could improve the consistency of preferences with the WTO system. Developed countries could also make existing SDT work better by publicising it.

Finally, donor countries in the WTO should give much higher priority to the question of simplifying and harmonizing rules of origin – both preferential and non-preferential.

What can the 'more advanced' developing countries do?

The EU, US, and other developed countries have repeatedly insisted that the advanced developing countries should offer preferences to the LDCs (and possibly others) as part of any deal to improve SDT or to improve access by the more advanced to the developed countries. The context, in particular requests to the G20, suggest that this means China, India, and Brazil, although these are not the highest income countries in the developing category. Evidence on their tariffs and trade shares suggest that this would have only limited benefits.

If a fund to deal with preference erosion were established with voluntary donations, these countries could declare an intention of contributing to this, although they would be unlikely to accept a compulsion to contribute.

A framework agreement for SDT in the WTO?

A framework might encourage a more consistent approach to SDT. However, the efforts in the Doha Round to negotiate a framework agreement have used

negotiating capital with, so far, little result. Some of the points that would need to be settled in a framework, such as the purpose and general scope of SDT, are more controversial than the practical decisions needed for specific areas.

One way to break this deadlock could be to try to build on earlier solutions and texts. In the choice of trying to reach agreement on a framework or come up with nothing, a middle way could therefore be to update the Enabling Clause from 1979, taking into account the developments that have taken place over the last 25 years. We propose language for such an updated Enabling Clause. Like the old Enabling Clause, it would need to be sufficiently flexible to remain useful even when development fashions change.

The Enabling clause does not represent a full-fledged framework agreement. Rather it could be characterised as a set of general principles and a legal cover for various types of preferential treatment, as well as some very general formulations on the concessions and contributions that could be expected from developing countries in trade negotiations. On the latter point our proposed language means that not only the special situation and the difficulties that confront the LDCs shall be taken into account, but also the problems of other developing country Members with limited administrative and legal resources and lacking relevant infrastructure or capacity.

Does the WTO need a new mechanism for monitoring SDT?

Where SDT provisions are bound, the normal WTO mechanisms, complaints from damaged countries and dispute settlement, are the formal control. As long as some SDT is not bound, and as long as some developing countries believe that they do not have the capacity to monitor developed countries' performance, there may be a need to supplement these, for example by finding an equivalent to the Trade Policy Review Mechanism that could assess overall outcomes. The Committee on Trade and Development (CTD) might be the appropriate location, both to identify the 'development, financial and trade needs' mentioned in the Enabling Clause and to assess how effectively SDT was and is being provided.

1 How can the multilateral trading system serve the interests of developing countries?

Trade can make a significant contribution to development, but it is also an important force in the economies of developed countries. The international trade regime offers both developing² and developed countries additional benefits of a consistent and predictable environment. Although the WTO is a trade organisation, its purpose (as was the case for GATT) is defined as 'raising standards of living...while allowing for the optimal use of the world's resources in accordance with the objective of sustainable development' (WTO, 1994). What the WTO does is to provide the instruments for accomplishing these goals in the trade and economic field. It is thus one of the important international organisations contributing to development, but its focus and competence is in trade and trade related rules, not all the other potential elements of development. An analysis of how the WTO's rules should be modified for the benefit of developing countries must take account also of the broader role of trade and of the WTO, in contributing to all countries' welfare. The question to ask about any proposal is not merely, *does it promote development, but does it promote development in a way that avoids unacceptable costs to the economies of other countries or to legitimate expectations about the system, and, if there are costs, is it the best way of achieving the development objectives?* The debate about the appropriate treatment of developing countries in the international trading system (which dates from the founding of the General Agreement on Tariffs and Trade, GATT, in 1947), stems from different views on:

- how trade can help development, so: what should the trade regime do?
- what other tools are available to promote development, so: how important is the trade regime?
- what are the interests of developed countries in trade, so: what is a 'cost' to them?
- what are the systemic interests of developed and developing countries in the international trade regime, so: what parts of this must be left untouched?

This is based on the assumption that trade matters for development; that it is a significant influence, even a determining influence, on the success or failure of countries' strategies for development. This is not a universal view, and certainly not a traditional one. Histories of developed countries' industrial transformations focus on the role of innovation (UK), of governments (Japan), or of strong private sectors (US). Trade is an instrument with some useful (or damaging) characteristics, but is not central to the story.

² In this paper, 'developing countries' will include Least Developed Countries.

There could be a case for country-by-country differentiation of trade policy, to meet the special needs or advantages of each country, not only the developing countries, but the basis of the GATT and WTO systems has been that treatment should be equal (the MFN tradition). That countries established the GATT, and then the WTO, is evidence that they value some elements of a common regime for trade.

Therefore, any answer on special and differential treatment (SDT) for developing countries must be a compromise among different objectives. The multilateral system, developed under GATT and the WTO, has been based on a presumption that all countries will benefit from a rule-based system treating all equally which restrains countries from taking actions that damage others. Treating all countries equally offers transparency, certainty, and avoidance of introducing distortions. But the appropriate criteria for economic policy also include efficiency and equity, and all trading arrangements differentiate among countries, so that there are clearly powerful arguments that counterbalance these.

Alongside the general presumption that a well-designed international system can help all countries have been worries that developing countries may require different conditions. The point of compromise between uniformity and differentiation will move as either development needs or the system and its rules change. Both have changed in the last decade, and the debate has intensified.

In development, the focus on reducing poverty has meant increased weight to the short-term effects on income of any changes in trade. The definition of poverty has been narrowed in income terms, to include only the lowest income groups (conventionally, under USD1 a day, although interpretations of this vary), but broadened to include other elements such as vulnerability to income or other shocks. Concern for poverty within countries has been translated into a commitment to specially favourable treatment for the category of Least Developed Countries (LDCs), as being the official category with the closest approximation to 'poor countries'. The Uruguay Round agreement (1994) had extensive differentiation between LDCs and other countries (see chapter 3), and the first WTO Ministerial Meeting, in Singapore in 1996, intensified the identification of these as particularly in need of assistance through trade.

Following this, all the major developed regions have offered more favourable market access to the LDCs (see chapter 4). This policy shift, however, preceded analysis of how trade and trade policy affect poverty. There was extensive literature, particularly in the 1980s, on the relationship between trade and 'development', with development interpreted as growth, perhaps plus diversification, but only in the last 5 years has direct analysis of the trade-poverty relationship emerged (McCulloch et al., 2001; Conway, 2004; Bird, 2004). It is therefore necessary to ask whether the purposes and potential effects of SDT in trade do have direct impacts on poverty. This

paper can only describe the distribution by country, not within countries.

Whatever the effect on poverty, however, the sharp increase in the extent of 'special' treatment for the LDCs has brought the question of whether SDT can damage the systemic benefits of the WTO to the fore.

A second change has been a growing acceptance that preferential trade arrangements³ are currently having positive effects for some countries. During the 1980s and early 1990s there was scepticism about the value of preferences in promoting trade (largely the result of some economists' bias towards open trade plus weak methodology), but a combination of the strong demands by countries with preferences to retain them and better methods have led to a reconsideration. Some still argue that preferences have no or small effect (an empirical question, which is largely beyond the scope of this paper, but the evidence will be summarised in chapter 4).

A third change on the development side has been a modification of the strong 'trade promotes development' position to a more nuanced acceptance that trade can provide the potential for development, if internal economic and policy conditions are met.⁴

These three development changes have meant that there is now a much stronger demand for SDT on the part of developing countries. They believe that: trade promotes their current objectives; preferences work; and policy is an important element in reaping the advantages from trade.

On the other side, the system has also changed. The Uruguay Round brought a major extension of the number and coverage of trade rules, so that countries have re-analysed the costs and benefits of the regime. And all the new arrangements were extended to all countries, the 'single undertaking', so that the traditional option for developing countries uncertain about a new rule, of remaining outside, was closed.

The strengthening of the disputes procedure meant that having clear rules mattered more. Any exceptions for developing countries or constraints on which countries could have particular privileges had to be spelled out, not accepted by custom and practice (called 'informal SDT' by Stevens, 2002). (The challenge by India to the special GSP granted by the EU to certain drug-producing countries in 2004 is the most recent example of this.)

The Uruguay Round brought agriculture and textiles and clothing into the negotiations for the first time, and therefore developing countries saw some of their most important trading interests being affected. The focus on agricultural reform in the current Round has intensified this. Whether they expect to gain (because they will have improved access) or lose (because

³ Preferential will be used here to mean non-reciprocal arrangements where a country (or group) offers better than MFN access to poorer or less developed countries. Regional will be used to refer to reciprocal, even if asymmetric, agreements among countries.

⁴ 'There is a tendency to overestimate the effects of external measures on both sides...Open trade creates development opportunities for poor countries.' (Swedish Government, 2003 p.17).

they currently have preferential access), this change means that many more countries have a reason to take strong positions in the negotiations. It is no longer possible either to ignore them or to treat them as passive beneficiaries of policies 'for their own good'.

There have also been changes in the external conditions within which the WTO operates. While it has always been true that 'developing countries' were diverse with conflicting interests, this perception has been intensified by growing awareness that while some developing countries have moved up, and are now regarded as trading competitors or markets, there is a group of countries that have not diversified their economies, but remain both poor and vulnerable to changes in a single commodity. For these, the special role of trade, and in some cases trade policy (where there are exceptional measures, such as the sugar quotas), suggests that they may make different demands on the trading system.

Two changes which have failed to happen have also brought renewed interest in special arrangements for developing countries. The mid-1990s brought the formation of NAFTA, the EU's FTAs with South Africa and Mexico, and then the proposed FTAs between the EU and the ACP countries and between the US and a range of developing countries. All these suggested that more equal trading relationships were replacing the old preferences. Since then, however, both the EU and the US have moved back to preferences, at least for the LDCs and Africa, with the introduction of EBA and AGOA (see chapter 4). And second, the general decline in tariffs and other barriers to trade, which was expected to reduce the value of preferences, has not extended to agriculture or to textiles and clothing, still the most important exports for many developing countries.

There are normally considered to be three types of SDT arrangements, meeting different needs:

- Improved access to developed country markets: this increases the benefits of trade.
- Reducing the costs imposed by the international system (by allowing delays or partial compliance, for example): this improves the ratio of benefits to costs of the international system for these countries.
- Permission to follow policies that would otherwise be against WTO rules because they reduce the benefits other countries can receive from trade: this shifts the balance between promoting countries' own interests and conserving a fair trading system for all in favour of developing countries.⁵

⁵ The WTO (Breckenridge, 2002; EGDI, 2004) classifies measures into 6 categories: to promote market access; to safeguard developmental interests; flexibilities; transitional periods; provision of technical assistance; and flexibilities for LDCs. The last three are merely tools or rephrasing of the first three. Stevens (2003c) divides them into three: 'modulation of commitments, trade preferences and declarations of support', p. 7.

One type of 'access' SDT, however, is more like development funding than increasing the benefits of trade. Quotas and guaranteed high prices are not intended to increase access (the quotas are strictly limited) or to encourage diversification (the goods are traditional exports, in particular sugar and bananas).

This paper will start by examining the reasons offered for SDT (chapter 2), analysing what purpose different measures were expected to serve. It will then review the history of SDT in GATT and the WTO (chapter 3), noting the different views of development and trade that helped to define what was considered beneficial at different times. This will identify which types of trade and rules have been considered suitable for SDT, examining in particular the types of SDT which emerged from the Uruguay Round of trade negotiations, and ask whether the differences can be explained by views on what is beneficial to developing countries or by different historical contexts. A description of current preferences and trade patterns will give some evidence on the current usefulness of trade preferences and also provide the background for judging whether some of the current proposals for new or modified SDT might be beneficial (chapter 4). Chapter 5 will briefly examine the evidence of whether the other types of SDT, of greater national discretion on policy and weaker compliance or assistance in meeting the costs of compliance, are useful, but this analysis cannot be done in detail without country case studies. Chapter 6 reviews the current official proposals on SDT in the Doha Round, and the current state of negotiations. Chapter 7 will attempt to draw analytic conclusions about the appropriate objectives and criteria for SDT measures. In chapter 8, we examine the proposals currently being made by various analysts against those criteria. Chapter 9 will consider whether rethinking which countries should qualify for SDT is necessary, given these principles. Chapter 10 will then try to identify feasible policy paths that could lead to a consensus in favour of these reforms.

2 What is the purpose of special and differential treatment?

From the beginning, the reasons for SDT have covered a range of positions, depending on differing, and changing, views of the needs of developing countries and of the requirements of the international system. Any 'special' treatment can only be defined relative to what is 'normal', so SDT must depend on what rules are generally accepted, e.g. the GATT requirements of Most Favoured Nation treatment and reciprocity of obligations. What will help development depends on explicit or implicit assumptions about what 'development' is and about whether and how policy and trade can influence this. It is also influenced by perceptions about the current characteristics of 'developing countries'. In the 1940s and 1950s, development was regarded as virtually synonymous with industrialisation. In the 1960s, weakness and dependency were stressed. In the 1970s and 1980s weak institutions and economic vulnerability were seen as most important. In recent years, the focus has been on poverty.

'Different' treatment for developing countries must be relative to how developed countries are treated: only if there are significant barriers to their trade or obligations under the rules can preferences or exemptions be valuable (Ismail, 2004b). SDT must therefore evolve. The increase in the coverage and the legal enforceability of trade rules has meant that what needs to be defined as 'special' as opposed to 'not regulated' has changed.

The system that evolved tried to meet two criteria. It was intended to be a 'rule-based' system, offering fair access and certain trading conditions for all, to provide the conditions for efficient, non-distorted growth. It also attempted to help development, through offering what are considered (at each point in history) to be favourable conditions for developing countries.⁶ Initially, the emphasis was on encouraging diversification and industrialisation. The outcomes, however (described in chapter 3), were often compromises that could be justified on more than one view of what would be 'good for development'.

Recently, some developed countries (notably the EU) have argued that the purpose is to help developing countries integrate into the trading system. To the extent that trade is an instrument of development, it may still be possible to find instruments that do this and meet the development criteria, but this suggests a view that the system of rules is important in itself or for purposes other than maximising economic welfare (e.g. protecting private property in the case of the rules in intellectual property).

⁶ An alternative approach might have been to strengthen developing countries within the international system, and thus allow them to negotiate what they considered favourable conditions. The growing influence of developing countries in the WTO is starting to bring these two paths into conflict.

Trade presents special difficulties to defining 'benefit'. Analysis of policy by economists often assumes that conventional economic welfare arguments will be accepted as convincing reasons for policy changes. But the current system, with tariffs and other constraints on trade, clearly was not designed to meet these criteria. Such analysis therefore risks not taking proper account of the interests that are actually governing policy. Better access to a market is a benefit under any view. Less good access than a competitor is always a disbenefit. If access to low cost supplies is not considered a benefit (i.e. if granting tariff concessions is considered a cost), then there is a 'cost' to giving preferences. Developed countries choose to accept this cost when they give preferences, but this provides a reason to restrict such preferences to cases where benefits are important (the most 'deserving' classifications) or those whose 'costs' to the donor are smallest. By giving preferences to some developing countries, but not all, developed countries impose a cost (a market disadvantage) on those excluded. This must also be taken into account.

On GATT/WTO rules, there is a similar ambiguity. If these are designed to benefit all, exemption is not a benefit. In practice, the system assumes that these also are imposed on countries for the benefit of others, so exemption is a benefit.

Although advocates of SDT usually suggest a number of reasons for it, they can be grouped into six types.⁷

2.1 Development requires different policies from growth

The original justification (Prebisch, 1950; Singer, 1950), reflected in the foundation of UNCTAD and the adoption of Part IV of GATT, was that developing countries were different. Therefore, the policies that were best for developed members of GATT were not necessarily the best for the developing. They need to transform the structure of their economies, not merely expand an existing structure. They may need to promote particular sectors to secure access to advanced technology. This may require planning, intervention, and short-term costs in efficiency. Their economies are different: in sectoral composition and in the size and competitiveness of companies, so that policies may have different effects (lower gains from trade; lower efficiency costs from subsidies).

While support for the import substitution strategy, which was derived from these views, has diminished, there is still a debate (which goes well beyond the scope of this paper) about what theory and the evidence of

⁷ This is partly based on Page 2001. The issues are also discussed in Stevens, 2002; Stevens, 2003c; Hoekman, 2004a; Breckenridge, 2002.

successful countries allow us to conclude about the proper balance between trade and government intervention in development strategies. An attenuated support for intervention emphasising infant export industries appears in UK (DTI, 2004b p. 24); if increasing returns to scale are important, that would support intervention (Singh, 2003). It is expressed much more strongly by the new EU Trade Commissioner (Mandelson, 2004): The needs of the poorest are different from the more advanced developing countries and Europe must be fully committed to the principle of 'special and differential' treatment for developing countries. The idea that developing countries need to intervene more actively in directing their economies than do developed countries still commands considerable support, and is the basic argument behind SDT intended to allow developing countries to follow different policies.

2.2 Adjustment requires different policies

Other arguments implied modified or transitional rules, not different rules. There are costs to setting up production and to entering new markets; developing countries have a higher proportion of their economy in this phase, and therefore they need a de facto subsidy; a low or 0 tariff to a market can provide this. Their disadvantages mean that this will put them on a level with, not at an advantage to, producers in the importer. (And even if they have an advantage, they are too small to have a serious effect.) While some of the policies implied may need freedom to follow different policies, better market access is also an instrument for this purpose. When the role of trading rules, including domestic legislation, became more prominent in the Uruguay Round, these 'need for transition' arguments were extended: legal adjustments take time, especially in countries with insufficient trained people.

2.3 Developing countries need parity with developed country 'SDT'

The evidence that developing, particularly least developed, countries had few economic gains and some losses (Page and Davenport, 1994) from the Uruguay Agreement, combined with the dissatisfaction of developing countries in the Seattle Ministerial conference, has led to a greater acceptance of special treatment even by those who would believe free trade is beneficial for all (i.e. who would reject the normal justifications). As long as there are distortions in the WTO system against developing countries (protection in agriculture and clothing, for example), distortions in their favour may be necessary either as second best economic solutions or as 'confidence building' measures to avoid their alienation from the system.

This can be used to justify any measures that developing countries may consider useful (i.e., if developed countries have been allowed what is now called 'policy space', developing countries have an equal right to it), but developing countries need to judge whether there are real benefits to them from the measures (in addition to any benefit felt from balancing an injustice) that outweigh other potential gains in the negotiations (Lippoldt, 2003).

A variant of this argument, which would justify market access advantages, is: that free trade remains the objective, and if protectionism prevents us from attaining it for all, we can at least encourage it for those most in need of the benefits of trade (the reverse of the original justification) and too small to raise protectionist fears.

2.4 Developing countries need non-trade compensation

Evaluations of the high gains of a few developing countries from trade distortions such as preferences or special access schemes suggest that it is possible that there are countries for which there is no possibility of a net positive outcome from negotiated changes in trade policy. If this is true, even allowing for gains in areas such as services (often omitted from such arguments), then, as most countries would gain, and the gains outweigh the losses, it would be economically efficient to find a way of compensating the losers, and probably developmentally desirable to assist them to find alternative activities.

2.5 Some types of country require different policies

This argument rejects the basic premise of GATT, that all can gain from trade, and suggests that some types of country require permanent special treatment because of their size or geography. It has emerged in the 1990s with the growing belief that the countries that are now the poorest or which gain least from trade are not just 'less developed', but unable to follow the same paths as other developing countries, and therefore they are 'different'. It has been particularly directed at the problems of 'small' countries. They are likely to have greater concentration of exports and production (which increases the risk of income volatility, and therefore hurts growth, Jansen, 2004) and high import dependence. They are also more vulnerable to natural disasters. The type of special treatment under this argument should vary with the 'difference' identified ('approaches such as "spaces" might be an option but could only be second best', ICTSD, 2003 p. 10). There should be a clear distinction between 'differences' which can be alleviated by trade measures and those that can't; this argument, however, tends to be used to justify general greater policy freedom.

It also argued that LDCs are particularly badly affected by some aspects of current trade (UNCTAD, 2004a). These include not just trade measures: tariffs, agricultural subsidies, and the end of the Multi-Fibre Arrangement (MFA), but environmental trade barriers, and two economic trends, the decline in extractive industries and the fall in commodity prices.

Small countries face higher costs in all economic activities because of small-scale production and distance from suppliers and markets. While they will still have a 'comparative advantage' in some of their products, their absolute disadvantage means that they can never secure a high income (Winters and Martins 2004).

Food importing countries may want to be able to apply variable tariffs to protect themselves against fluctuations in prices, and therefore want extra flexibility (Matthews, 2003a).

2.6 Developing countries need assistance in integrating into the system

Integration has not been clearly defined,⁸ but appears to mean at a minimum assisting developing countries to comply with current rules (the Uruguay round innovation of transition periods plus proposals for technical assistance, for example), but also assisting them to accept greater obligations. European use of the term suggests that they should reduce their own barriers to trade and accept proposals for new rules, for example on trade facilitation. In particular, the EC not only preferred trade-expanding SDT but also had 'difficulties in agreeing to proposals aimed at permitting permanent or unilaterally determined trade restrictive measures' (WTO, 2002a). This suggests that it rejects the arguments that more intervention is necessary for development strategies or that it gives less weight to these than to integration. While the policies it suggests may, of course, be beneficial for development (EGDI, 2004), the direct objective is seen as strengthening the system, not contributing to development.⁹ It ignores the possibility of a conflict between the aims.

⁸ The term was used in the Leutwiler Report, commissioned by GATT, 1985 p. 44; quoted by Fukasaku, 2000. ICTSD 2003 argues that integration has been seen as an objective since 'the creation of the WTO', p. 4.

⁹ A further argument for 'integration' as a benefit in itself stems from the view of some (see, for example Hart, 2002 p. 5) that the 'principal benefit derived from GATT/WTO membership...has always been support-through rule development and enforcement- for domestic economic policy reform', the argument that an international agreement 'locks in' policy. As the strength of the 'lock' depends on belief in the government's commitment to the organisation, it is not clear why this is assumed to be stronger than a government's commitment to a domestic policy. In its weaker form, that the 'lock' comes from the advantages of membership in an international system, it is simply the normal cost/benefit analysis of acceptance of rules against policy freedom.

Some rules may 'not pass a cost-benefit analysis test' (Hoekman, 2004a), and therefore are clearly only for the benefit of the system and/or more developed countries.¹⁰ An alternative interpretation of the integration argument is that SDT should help the system deal with the 'growing asymmetries among developing countries' (Tortora, 2004) by providing a degree of flexibility.

2.7 SDT as aid

None of these six purposes explains the use of 'rent' preferences: these are a transfer of resources to developing countries, so they are consistent with aid criteria, but they do not directly assist with access or meeting different trading needs.

¹⁰ Or, expressed more strongly, 'The rules for admission into the world economy not only reflect little awareness of development priorities; they are often completely unrelated to sensible economic principles. WTO rules on anti-dumping, subsidies and countervailing measures, agriculture, textiles, trade related investment measures (TRIMs) and trade related intellectual property rights (TRIPS) are utterly devoid of any economic rationale beyond the mercantilist interests of a narrow set of powerful groups in the advanced industrial countries.' D. Rodrik, *The Global Governance of trade as if Development Really mattered*, UNDP, 2001, quoted in Singh 2003, p. 17.

3 SDT in GATT and the WTO

Half the founding members of GATT were developing countries, and there have been references to 'countries in the early stages of development' (WTO, 1994) and their potential need to restrict imports or intervene in their economies since the first GATT agreement. As long as there were only informal enforcement mechanisms, and, perhaps, as long as the privileges were not very large, an informal system of classification was feasible. Although the issue has been raised in a few disputes where developing country status was relevant, the countries claiming developing status have been allowed it. From the Enabling Clause, 1979, a differentiation between LDCs and other developing countries was accepted; this category is a legally precise group, defined by the UN Economic and Social Council (see chapter 8).

Under the Uruguay Round, for one element of agricultural subsidies, a special group, defined on the basis of a ceiling income (above that of LDCs), and specified in a list (Annex VII), were given special status. The agreement also referred to Net Food Importing Developing countries (NFIDC), but neither defined the group nor gave them legally enforceable rights. Since then, there has been a second example of a special list for a single purpose. Under the Uruguay Round TRIPS agreement on intellectual property, there had been uncertainty over what circumstances would allow countries to override the new protection for patent holders and allow unlicensed production of pharmaceuticals. A declaration at the Doha Ministerial Meeting 2001 attempted to clarify this, but only applied directly to countries with their own production capacity. In 2003, there was a decision to modify the TRIPS agreement to allow countries without their own capacity to import unlicensed drugs. Developed countries (by list) agreed in a Chair's declaration that they would not use the provisions, while 11 countries on the borderline between advanced developing countries and developed¹¹ said they would use it only in national emergencies.

3.1 Pre-Uruguay Round SDT

From 1947, Article XVIII of GATT allowed developing members to protect imports and use domestic policy to develop particular sectors; from 1955 this was strengthened. Countries could also continue to offer special access

¹¹ Hong Kong China, Israel, Korea, Kuwait, Macao China, Mexico, Qatar, Singapore, Chinese Taipei, Turkey and United Arab Emirates

to colonies or other associated countries (defined by lists in the agreement). In 1956, GATT adopted a 'Resolution on Particular Difficulties Connected with Trade in Primary Commodities' (WTO, 1999), and appointed the Haberler Commission to consider what more needed to change in the GATT rules. The provisions were reinforced and consolidated by the adoption of Part IV in 1966. All these dealt with trade measures (by or for developing countries), and were based on the assumption that developing countries had different needs. Later, there was an agreement for modifications of the Dispute Procedure in cases involving developing countries (which was used only 4 times, of which 2 eventually went to normal procedures, Footer, 2000), and in 1972, simplified procedures for balance-of-payments restrictions (WTO, 1999).

In 1971 GATT authorised preferences as an exception to MFN treatment through a waiver. These were justified as increasing market access, but were also seen as continuing the colonial preferences allowed from 1947. They were implemented by individual developed countries, not by any general reduction in the tariffs notified to the WTO. In 1979, following the Tokyo Round, the Enabling Clause (GATT, 1979) was adopted (by decision, not by amendment, a precedent which has rarely been followed), to allow not only preferences for developing countries, including further flexibility in the application of rules, for example on developing country regional trade agreements, but special treatment for LDCs (the first differentiation among developing countries). This was intended to be the only differentiation allowed (although a judgment in 2004 has accepted other differentiation, WTO, 2004h). The Enabling Clause was explicitly directed at different needs (Swiss Delegation, 2004), and remains the basic WTO statement of principles for SDT.

An additional *de facto* differentiation in the Tokyo Round was the possibility of countries choosing whether to adopt agreements in new areas, for example technical barriers, subsidies, government procurement, and customs valuation. Although many developing countries did not join these 'pluri-lateral' agreements, there was no explicit exemption, and developed countries could also stay outside. This can be considered a case of accepting different interests.

On the broader definition of SDT, including action against developing countries, the acceptance of the succession of agreements restricting exports of textiles and clothing by developed countries from developing also treated developing countries differently.

3.2 Uruguay Round and after

Developing countries felt at a disadvantage entering the Uruguay Round negotiations because many had reduced import barriers before (or during) the Round without negotiating corresponding concessions from others.

While various proposals and commitments to give 'credit' for this were made, it is impossible to know whether these are equivalent to what they could have negotiated if they had been starting from the previous level.

In *trade in goods*, the presumption has been that all controls on trade, whether tariffs or other barriers, must be specified. Developing countries have had some *de facto* SDT by not being required to 'bind' as high a share of their tariffs (commit to the WTO that they would not raise a tariff), but negotiations have reduced this, with an increase from 21 percent to 73 percent binding for non-agricultural goods and all agriculture bound by the end of the Uruguay Round (Breckenridge, 2002).

The Uruguay Round attempted to end all permanent differentiation: agriculture and textiles were brought under normal rules; countries could still use safeguard measures, but these were temporary; all countries had to sign all agreements. It did not, however, formally change GATT Part IV or the Enabling Clause; these continue to allow (and advocate) special treatment. Since the Kennedy Round, there had been a shift to using formula tariff reductions. This was a *de facto* shift away from the differentiation allowed by sectoral negotiations. The differentiation still allowed in agriculture, through a combination of average and minimum cuts, applied to all Members. The remaining differences allowed for developing countries were partial or delayed compliance: developing countries had 50 percent more time to comply with cuts in subsidies, and a smaller target reduction; LDCs were exempt. This implied acceptance of only the adjustment arguments for special treatment for non-LDC developing countries. The 'declaration' on food importing countries implied structural differentiation, but it was not accompanied by any required provisions.

Trade preferences were still allowed, including differentiation for LDCs. This was reinforced by the Decision of December 1993 in favour of LDCs, which encouraged more rapid implementation of tariff cuts on products of interest to LDCs.

On *services*, which were included in the negotiations for the first time, the format of the negotiations permitted developing countries to try to preserve their ability to use policy. In contrast to the presumption in favour of 'binding' commitments in goods, in services countries only notify what they are prepared to liberalise, classified according to type of service and to 'mode of supply' (whether the service is provided by cross border transactions, establishment of a subsidiary, or movement of capital or labour). Developing countries, and especially LDCs, notified fewer services and made fewer commitments, on average, and the lack of pressure on them by developed countries to notify more was taken to be *de facto* SDT. Developed countries were encouraged to liberalise services of interest to developing countries, and this could have led to an equivalent of preferences, offering better than MFN market access, but this has not been used. As low cost labour is conventionally considered one of the trading advantages of developing

countries, this cannot be explained as being because it would not benefit developing countries. It probably reflects the lack of commitment at the time to preferences. The rules on obligations when developing countries and developed countries formed regions (GATS Article V), however, did envisage asymmetrical obligations. This was in contrast to the equivalent Article of GATT, XXIV, which does not mention this. Purely developing country regions are exempt from controls under the Enabling Clause.¹² As Article XXIV was modified by an Understanding in the Uruguay Round, and the first mixed regions were appearing, not amending it seems surprising.

On *intellectual property* (patents and copyright rules and their enforcement: TRIPS), there was no permanent differentiation between developed and developing countries, LDCs were given a 11 year transition period (later increased at the Doha Ministerial meeting), and other developing a 6 year period. This suggests that only the costs of introducing new laws were considered 'different' in countries that started from a position of less complete legislation. As developing countries are more likely to be net importers of intellectual property and developed countries to be net exporters, developing countries argued both during and after the negotiations that there should have been permanent differentiation. That this was not accepted can be attributed to relative negotiating weakness: there was very strong pressure for TRIPS in the developed countries, while developing countries had not realised that the agreement would have major effects on their existing practices, to negotiating tactics: the major developing country groups wanted access on agriculture and textiles and clothing and therefore accepted TRIPS; or to an expectation that TRIPS would be a plurilateral agreement.

GATT had always controlled subsidies that affected exports, but the *subsidies and countervailing measures* agreement made the controls more formal, and the agreement on measures to help *investment* (TRIMs, Trade Related Investment Measures) repeated and specified the constraints on performance requirements. Both reduced the degree of 'informal SDT' that countries felt they had to carry out industrial policy. Although the Agreement on Agriculture introduced some constraints on domestic and export subsidies there, these were still much less constrained than those on non-agricultural goods (Corrales-Leal *et al*, 2003).

In the Uruguay Round, 24 of the 124 Articles that offer SDT apply

¹² GATT and the WTO control the formation of regional trading arrangements because these are a clear breach of the fundamental principle that all countries should be treated the same (MFN). In an effort to secure the benefits of greater liberalisation while limiting the costs of 'trade diversion', where a region leads its members to trade with each other rather than with the most efficient producers, GATT Article XXIV only allows regions which cover 'substantially all trade', and thus which do not appear to be picking and choosing among products to disadvantage the countries not in the region.

specifically to *Least Developed Countries* (UNCTAD, 2004a). Initiatives since the Uruguay Round have put increasing weight on this classification. At the Singapore Ministerial meeting in 1996, the WTO members adopted the Integrated Framework for Least Developed Countries, encouraging both further initiatives on market access for LDCs and further technical assistance in trade. Several developed (and a few developing) countries have offered greatly increased special access for LDCs, including the 'Everything But Arms' initiative from the EU, an extension of the number of products under its special LDC preference by the US and AGOA, and special arrangements from Canada and Japan (see chapter 4).

Measures (like that first introduced in 1966 for disputes) requiring their *interests to be taken into account* appear in several of the Uruguay Round agreements (SPS, TBT, AD, countervailing, safeguards). But these require only that countries say that they have considered the interests of developing, not that they take (or avoid taking) measures following that consideration.

Many of the agreements also envisaged *technical assistance*, by or in cooperation with the WTO, reflecting the assumption that adjustment is difficult. The 1993 Decision said that LDCs should receive 'substantially increased technical assistance'. There were, however, no formal provisions to fund or organise increased technical assistance targeted at trade. Since the Round, developed countries have established a range of special funds at the WTO for assistance, and some have included more trade assistance in their development assistance.

Legal assistance by the WTO to developing countries has been limited (Footer, 2000) and is constrained by the unwillingness of the WTO to risk appearing non-neutral in disputes. All disputes are taken (or decided not to be taken) by countries, with no WTO discretion to refuse to consider them if they might damage development.

The special provisions in force by the end of the Uruguay Round were thus a combination of *allowing* special treatment (preferences, 'taking account of interests', and technical assistance) and *mandated exemptions*, from rules. There has been much criticism of the first type, the so-called 'best endeavours' provisions, but the record is mixed. Trade preferences, which continued to be granted through GSP, were regarded as useful but are not always included in discussions of non-mandatory rules. The 'taking account' provisions are believed by developing countries to have had no effect in disputes (developed countries have simply stated that they 'took account' before acting) or in SPS, TBT, AD, and countervailing actions. Some dispute panels, however, have stated explicitly how they have taken account of developing country interests (normally by allowing more time), and no LDC has had a dispute taken against it. There has been increased technical assistance, but, it is argued, not enough to give countries the resources to comply with all the rules.

Difficulties have been created by the operation of 'standstill', the capping

of barriers and subsidies at their existing level. Developing and developed countries with restrictions or with subsidies have been able to maintain them, with differential requirements to cut. But countries without restrictions (or which failed to notify restrictions, under some agreements) are required to comply with the full rules. The SDT on subsidies, therefore, seem to have been seen more as allowance for adjustment than recognition of special needs. Developing countries that are diversifying, particularly those moving away from commodities such as metals where there are few trade restrictions, may want to introduce measures to plan their trade. Some countries whose preferences have been eroded may now want to subsidise exports. 'Standstill', however, assumes that countries have put in place all measures that they might want at any point in their future development programme. It therefore implicitly discriminates against countries at a relatively low level of development when the rule is introduced. This problem of developing under more restrictive rules is often cited as a disadvantage of the current LDCs (the extent is discussed further in chapter 5). Some developing countries argue that there should be permanent permission for all developing countries (or up to the USD1000 or a revised income limit) to subsidise. A similar question of whether there is a need for permanent difference or transition is raised by new members: they are not automatically allowed the same flexibility or time.

Following the Uruguay Round, negotiations took place on telecommunications and financial services: developing countries participated, and did not use the provision for exemptions under the former. It included declarations in favour of technical assistance (Gibbs, 1998).

4 Developing countries' trade and use of preferences

4.1 What preferences exist

This section will focus on preferences by developed countries, although some developing countries also offer them, and there is a revival of interest in these measures. The initiatives from the mid-1990s to direct preferences towards the LDCs had, as a corollary, an assumption that the more advanced developing countries should be starting to behave like developed countries, including in offering preferences to the LDCs.¹³ The MERCOSUR countries as a group (Argentina, Brazil, Paraguay, Uruguay), Egypt, Korea, Mauritius, and Thailand offer preferential access, and Chile, Indonesia, Malaysia, and Morocco (UNCTAD, 2004a) are reviewing the possibility. The UNCTAD XI conference, in June 2004, decided to revive the Global System of Trade Preferences, GSTP, which dates from 1989 and covers preferences among developing countries (UNCTAD XI 2004). These preferences are limited, however, and apply to low shares of trade (see below). The growth of regional arrangements among developing countries has had more impact on intra-developing country tariffs.

All the developed countries offer some general preferences for all developing countries, under the GSP (as allowed under the Enabling Clause). The EU introduced its GSP schemes in 1971, US 1976, and other developed countries in the 1970s. Table 1 summarises the preferences currently available to African countries. Most goods from most developing countries are covered. The GSP preferences, however, tend to be the weakest preferences offered, in terms of numbers of products covered and depth of tariff reductions. One of the reasons that attempts to find effects from preferences failed in the past was over-concentration by some researchers on these broad programmes, rather than on the more targeted preferences which have been larger and more used.

The EU GSP in force until 2005 applies to all developing countries except Myanmar (excluded for human rights abuse; Belarus is under review). Countries can be 'graduated' for high income; some commodities that meet certain criteria as 'competitive' can be excluded, even from countries which remain covered. It has five additional schemes: for LDCs (Everything but Arms: EBA): duty and quota free access for all goods, with rice, bananas and sugar not completely included until 2009; the extension of the Lomé

¹³ In renewing AGOA in 2004, the US Congress (US, AGOA, 2004) said, 'some of the most pernicious trade barriers against exports by developing countries are the trade barriers maintained by other developing countries'.

provisions to 2008 for its associated ACP countries: duty free entry for all manufactures and some agricultural goods; and for countries meeting certain standards on labour standards, or sustainable forestry, or at risk of producing illegal drugs: varying additional tariff reductions relative to the GSP level. The scheme designed to reduce the incentive to produce drugs initially targeted the Andean Countries; it was then extended to Central America. After the Afghanistan war, it was extended to Pakistan. It has been successfully challenged by India as not in accordance with the exemptions allowed under the Enabling Clause (WTO, 2004h).

The EU has proposed a revised GSP for 2006-2008. The details have not yet been agreed. What is proposed is that the standard GSP would be extended beyond developing countries in apparent violation of the Enabling Clause that allows more favourable than MFN treatment only for developing countries. Article 3, paragraph 1, provides for graduation only when a high-income country becomes sufficiently diversified that 'the five largest sections of its GSP-covered imports to the Community represent less than 75% of the total GSP-covered imports of the beneficiary country to the Community' (EC, 2004c). This is intended to protect small countries from graduation (EC, 2004b). It also declares an intention of removing countries that have other preferential access to the EU, in particular those that have signed FTAs. If this is with their consent, it could be accepted as an agreed renunciation of their rights under the Enabling Clause, although the declared purpose, of simplification, is not one of those specified there (see chapter 10).

EBA remains unchanged, and the three variants of GSP would be replaced by a single 'GSP +'. This was intended (EC, 2004b) to assist 'countries with special development needs' but has been specified as: those 'vulnerable' countries which accept all the main international conventions on social rights, environmental protection and governance, including the fight against drugs production and trafficking' plus at least seven others from a list (EC, 2004b; EC, 2004c). The use of international conventions to define recipients of GSP + is intended to meet the legal challenge to its previous drug country scheme. But the definition of 'vulnerable countries' (eligible to use the scheme if they sign the conventions) as undiversified or small exporters (high share of the five principal products or low share of EU imports) and the provision to exclude altogether products with a 15% share of the EU market will exclude large countries from GSP + and continue to limit their access under normal GSP.

The most important special scheme is for sugar where there are quotas based on historical levels of supplies (and thus believed to be allowable under the Uruguay round Agreement on Agriculture), which allow some members of the ACP plus India access at prices close to the (high) domestic European price. These are normally fully utilised. The EU, however, has argued that the failure of most ACP countries to use their other access under Lomé provisions to expand their exports shows that the preferences do not

work. Stevens and Kennan (2004c), however, suggest four types of reasons for low utilisation: not producing the relevant goods; that the preference scheme does not cover all the goods a country does produce; restrictions, such as rules of origin, on the goods that are included; and choice or administrative failure. Of these, the low level of industrialisation and diversification in many ACP countries has contributed to the low utilisation, and comparisons with other preference schemes, such as AGOA by the US (see below) suggest rules of origin may also be a barrier.¹⁴

The coverage of the scheme for the ACP countries has restrictions on some goods subject to the Common Agricultural Policy in the EU, including sugar, beef, rice, bananas, and some horticultural products. The EBA scheme for LDCs, dating from March 2001, will eventually cover all products, although sugar, rice, and bananas are currently subject to quotas: the quotas for sugar increase each year until 2008. Although the product coverage is wider, it has less favourable rules of origin than the ACP scheme. Both are still used by the countries eligible for both.

The US GSP has excluded countries on the grounds of security, expropriation of US property, failure to recognise intellectual property rights, labour rights and membership of OPEC (Onguglo, 1999). All countries in the World Bank 'high income' category are automatically graduated, including those that are small countries.¹⁵ Like the EU, it also 'graduates' individual products as competitive (details in Wainio, 2004). The US has additional schemes for LDCs, for the Caribbean, for Africa, and for the Andean drug producers. The US programmes all offer 0 tariffs, although sometimes with quantitative restrictions (Wainio, 2004).

The US scheme for Andean countries dates from 1991, and covers Bolivia, Colombia, Ecuador, and Peru. Like the EU scheme, its declared purpose is offering incentives not to produce drugs.

For the Caribbean, the US Caribbean Basin Economic Recovery Act (CBERA) gives duty free entry for some products, not subject to graduation, and the scheme is not subject to renewal (Wainio, 2004).

The US introduced the African Growth and Opportunity Act (AGOA) in 2000, extending the range of GSP products for African countries. As well as the normal GSP conditions, it requires beneficiaries to implement their obligations under the WTO and to participate in negotiations.¹⁶ It included

¹⁴ For a full survey, see Stevens and Kennan, 2004a, which concludes that the EU and Canada are most liberal, except on clothing where the US is most liberal, the US is 'in the middle' for other goods, and Japan is the most restrictive.

¹⁵ Barbados and Antigua and Barbuda will lose eligibility from 2006 (Tradewatch 10 March 2004)

¹⁶ That they 'participate in and support mutual trade liberalisation in ongoing negotiations under the auspices of the World Trade Organization, including by making reciprocal commitments with respect to improving market access for industrial and agricultural goods, and for services, recognizing that such commitments may need to reflect special and differential treatment for developing countries' (US, AGOA, 2004).

some clothing and textile products, normally excluded from US preferences. It has led to marked increases in exports from African countries that had not previously used their ACP access to the EU. This is because of the more flexible rules of origin for countries defined as 'lesser developed' (not only LDCs, but all African countries eligible under the scheme except Mauritius and South Africa). Apparel knitted from imported yarn or manufactured from imported cloth is eligible. The rules were scheduled to be made more rigorous after 2004, but the current rules have now been extended to 2007. In contrast, the EU does not allow the use of fabric from a non-EU or non-ACP source.¹⁷ The US also offers duty-free quotas for sugar.

Since 2000, Canada has provided deeper preferences for LDCs than the standard GSP.¹⁸ Its only special arrangement is with the Caribbean. GPT excludes 'sensitive manufactures' (Stevens and Kennan, 2004a), but it has a higher proportion of tariff lines with 0 MFN rates (table 1).

The Japanese GSP was amended in 2001/2 to include more products for LDCs, particularly in agricultural products, and further extended in 2003. It still excludes sensitive products in both agriculture and manufactures (UNCTAD, 2004a; Stevens and Kennan, 2004a).

If we distinguish between 'development preferences', those designed to give countries better access because their exports are considered to be at a disadvantage because they are 'infant' or lack complementary infrastructure, and 'rent preferences', those designed to continue transferring resources to traditional suppliers, most of these schemes are 'development preferences'. However, as will be seen below, the value of exports under the 'rent' preferences is much greater.

4.2 Trade patterns

Tables 2 to 4 indicate the share of exports for the major 'preferred' groups: the LDC, the ACP, and the countries eligible for AGOA, to the major grantors of preferences, the US, EU, Japan, and other developed countries, plus to the major developing countries which are being pressed to liberalise their markets to the LDCs (and to Africa for the AGOA countries to indicate the importance of their own region for the only regional group of preference receivers). Most LDC exports go to the US and the EU, and

¹⁷ Lesotho provides the most clear-cut case that origin rules have impeded exports. Low-level exports of woven clothing were made to the EU during the 1980s and 1990s under a derogation from the rules. This allowed the use of non-originating cloth. In 1996, however, the second EU derogation was not renewed when it expired, and exports to the EU slumped. With the enactment of AGOA the flow of foreign investment into Lesotho to produce for the US market increased substantially...Lesotho is now the largest supplier to the USA from SSA and accounts for 0.5 percent of US imports of apparel' (Stevens and Kennan, 2004c). Kenya has also been able to increase exports of clothes to the US (by a factor of four), while being unable to export to the EU (Stevens and Kennan, 2004a).

¹⁸ It calls it the General Preferential Tariff, GPT.

within this the EU share has fallen, although it recovered in 2001 and 2002 (EBA began in March 2001).

None of the other areas approaches these shares, but exports to China, although low until the 1990s, rose rapidly in the late 1990s, with a peak of 11 percent, about half the level to the US. India began to rise in the 1980s, and overtook the share to Japan in the 1990s, but is still only 4 percent. Brazil is not a significant market for LDCs. ACP and AGOA country exports also go mainly to the US and EU, but the US has been more important (presumably because of exports by the Caribbean countries). The other markets are not important, until the increase in China from about 2000, now reaching 6 percent for the ACP and 5 percent for the AGOA countries. All the regions are important local markets; even Africa shows a high share (table 4). Much of this trade takes place under regional arrangements.

4.3 Do preferences matter?

General preferences

This is not the place to repeat all the arguments on the effects of preferences (for a general survey see Onguglo in Rodriguez Mendoza et al 1999; for a recent analysis of their use by Africa, Stevens and Kennan, 2004a), but the state of the debate and some new or particularly relevant arguments should be summarised. Some countries that have had preferences increased trade particularly rapidly (especially in the preferred sectors e.g. Mexico, Malaysia); some countries have used preferences and the associated economic rents from one product to develop through diversification into another (e.g. Mauritius, Jamaica). They, and some analysts, attribute their success to the preferences.

Some countries with preferences have not used them or used them, but did not benefit, some because they were not in the right commodities (they faced protection for agriculture and clothing) or at the wrong time (countries with severe structural problems and supply constraints cannot use additional access); others suffered because the preferences encouraged distorted production (bananas). They have sometimes helped, but they do not solve all development problems.¹⁹

¹⁹ Recent evidence (including Stevens and Kennan, 2004a) has showed that previous concerns that countries did not use the preferences that exist, leading to the conclusion that preferences were not useful, were based on inaccurate analysis. They found that only 2.4 percent of African exports to the EU eligible for ACP preferences (and not duty free under MFN) failed to use the preferences, and some of these may have failed to meet rules of origin. Wainio (2004) finds high utilisation of US schemes. Some earlier studies e.g. Brenton (2003) looked at the effects of one preference scheme, for example the EU's EBA for Least Developed, without allowing for other preferences: most of the countries eligible for EBA were also eligible for ACP preferences, so that low use of one may be explained by high use of the other. Others included goods that were excluded because they did not meet the rules of origin of schemes, a sign of a less satisfactory scheme, not of low usage. Most excluded the

One frequently expressed doubt about the value of preference schemes stems from their apparently temporary nature. All are subject to renewal at varying intervals, and are at the discretion of the countries offering them, so that they appear not to offer a predictable environment for investors, reducing their value. The long history of GSP and the political commitment of some countries to some of the schemes (the EU to EBA; the US to AGOA) offer some assurance that they will continue, although subject to alteration. The most striking unexpected alteration was in the direction of liberalisation, not removal: the announcement by the EU in September 2000 that from March 2001 it would offer duty free entry to all LDC exports (with some transitional exceptions). This reduced investors' expectations in the previously most preferred countries, the ACP. While general schemes have been largely permanent, there have, however, been frequent changes in country and product coverage within them. This uncertainty is a problem, although most goods which receive significant preferences are agricultural commodities or light industries, such as clothing and footwear, for which investment periods are normally less than the notice of a change in preferences.

The schemes could also be uncertain if they are legally questionable. The Enabling Clause allows special concessions for all developing and greater concessions for all LDCs. The interpretation of this has been raised in two cases against the EU. After being challenged, the EU requested, and has received, 'waivers' (permission to take a measure that would otherwise be outside the rules), for its preferences for the ACP, the latest expiring in 2008. Its preferences for some countries exporting illegal drugs have also been found not allowable (see above). The US notified AGOA under the Enabling Clause, and it has not been challenged. This and other schemes might be challenged. The way in which the Appellate Body decided the EU/Andean preference case (WTO, 2004h) suggests that if developed countries specify clear criteria, this might make schemes that cover only part of the 'developing' or 'LDC' categories allowable, although other legal experts question this (Howse, 2004). Partly because of these uncertainties, we suggest a renewed Enabling Clause (see Proposal after chapter 10).

Some argued, and a few continue to do so, that preferences can be damaging to the countries that receive them. Four arguments are suggested.

First, that the fact that countries have market access 'given' to them means that there is not the same possibility of exporter pressure to reduce import barriers that there is in non-preference receiving countries, where import reductions need to be offered as a price for gaining market access (e.g. Messerlin in Griffith, 2003). This could be true, but both the political economy and the morality of damaging developing countries' interests (by

most valuable preferences, those that grant guaranteed prices and quotas. Bureau and Gallezot (2004) also find high utilisation of both EU and US preferences, when all available schemes are taken into account.

not removing barriers to their exports) in order for them to lobby for another change are highly questionable.

The second argument often presented by World Bank authors (e.g. Hoekman, 2004a) is that because they received some access without negotiation, developing countries did not negotiate for more concessions, for example in agriculture and clothing and textiles, and this explains why barriers in these remain among the highest. While it is true that starting from a higher point in terms of access may have reduced developing countries' incentive to bargain hard (if there are declining marginal returns to bargaining), they would presumably have had the same reduced incentive to bargain for more even if they had had to reach the current degree of market access by bargaining. And the force of internal pressures for protection in agriculture and textiles strongly suggests that even determined bargaining would have had little impact.

The third argument is stronger: that those countries with preferences will attempt to preserve these by obstructing liberalisation (World Bank, 2004b, in an implicit reversal of its previous position that preferences were not beneficial to their recipients). For most countries, dependent on preferences for some exports, but on general trade conditions for others, this is unlikely to hold, but it does for a few (see below). If this obstruction is effective, it suggests that developing countries have acquired an important degree of power in the WTO system, itself a possible objective of SDT.

The final argument is that access to preferences reduces countries' incentives to find sustainable patterns of development (a similar argument to the one used about oil or aid dependency), and in particular distracts countries from looking at their own trade policies. As with the risks of Dutch Disease, it is not the foreign exchange that is the disadvantage, but mistaken policy in using it.

Two arguments against expanding preferences for the LDCs have been that these are precisely the countries where the supply constraints on using preferences may be most serious (Michalopoulos, 2000; Langhammer and Lücke, 2000), and that most current exports by LDCs to developed countries would enter duty free or at low tariffs even if they were on MFN terms. The large increases in preferences for LDCs since 2000 are giving researchers an opportunity to test this. The success of AGOA suggests that if preferences are adapted to LDCs' needs (absence of local supplies of inputs) they will be used. Supply factors, however, are barriers to using preferences, even in non-LDC countries (for example, distance and transport difficulties prevent Kenya from using preferences for horticultural products in the US market, Stevens and Kennan, 2004a).

Finally, preferences seem to have been very successful in some cases, and they always offer countries' principal objective in traditional GATT terms: access to markets on more favourable terms than other suppliers. Therefore, no country will give them up, particularly not if others retain (or are

improving) them. Even a small preference can be important in a competitive market or for a new entrant, and even post-Uruguay Round some tariffs are high (clothing, agricultural, including horticultural).

Special preferences

It is true that those areas where trade barriers are still major obstacles to development (agriculture and textiles; in services, movement of labour) are areas where there is an international interest in lowering barriers to all, not only to developing countries and where special preferences for developing have seemed least likely. This, however, may be changing. The initiatives for special trade access for the LDCs, especially the EBA proposal and the continued importance of special provisions for sugar and a few other protected agricultural goods suggest that preferences do still give significant market access gains, and this is supported by the fact that 'preference erosion' has emerged as a major issue in the current negotiations and in fears about the end of the MFA.²⁰

For some countries, with high concentrations of exports in heavily protected commodities, the gains from preferences are very large (Gillson, 2003; IMF, 2003; IMF, 2004; Alexandraki and Lankes, 2004 for calculations of current gainers, discussed in chapter 7; Alexandraki and Lankes, 2004 for a review of previous estimates of gains). The role of concentration means that it is mainly small countries who gain. The exception is Bangladesh whose massive response to the special concessions for LDCs exporting clothing during the period of the MFA now makes it vulnerable to the end of the Arrangement.

The highest barriers, and therefore the highest gains from preferences, are in sugar, bananas, and clothing (table 5), so the gainers include Malawi (which could lose more than 10 percent of its exports if preferences ended), Mauritania, Cambodia, Maldives, Haiti, Cape Verde, Sao Tome, Tanzania, and the Comoros and among the non-LDC, principally Mauritius and the Caribbean (see table 6).

For the medium term, it is important to ask whether preferences create an industry that can survive the reduction or end of preferences (as countries may face reform of agriculture, reducing the value of sugar quotas, and the end of the MFA, bringing the traditionally most competitive suppliers back into the market). If they do, the preferences are producing the effect of nurturing infant export industries. If they do not, they provide only a

²⁰ The Uruguay Round reached agreement that the highly detailed system of quotas on clothing and textiles which was imposed by developed countries on developing countries in a succession of arrangements beginning in the 1960s would end after 10 years, at the end of 2004. Some countries were fully or partially exempt from its provisions because they had special access to the EU as Least Developed or associated countries or had access to the United States as African countries.

temporary increase in income, 'rents' from the higher price attainable in the protected market country; this income is itself important in poor countries.

On sugar, the position seems clear: the only benefit is the increase in income: while some of the quota receivers are efficient producers by world standards, and will continue to export, they will no longer receive the high fixed prices, and those who are not efficient will lose markets.

On clothing, the arguments for transfer of skills and experience, if not of technology, are plausible. Some of the exporters 'created' by the MFA or more recently by AGOA, such as Bangladesh, Mauritius, and perhaps Lesotho, will have higher exports than they would have without their period of high preferences (they will retain a degree of preference), although they will have lower volume and lower prices for their exports: there is both a development and an income effect.

The evidence that the benefits of trade in stimulating development and reducing poverty depend on policies within countries (Bird, 2004; Conway, 2004; Page 2004a) make it impossible to interpret this as necessarily evidence that preferences are good for development or poverty reduction. They increase countries' national income, but the effects depend on how the income is distributed and how it is used. Some of the value of the rent from the preferences may stay in the importing country.²¹ Some of the countries that are benefiting from preferences, particularly the ones that moved into production of clothing, rather than those which have gained principally by remaining in protected commodities, have diversified their economies. In some sectors, including sugar, the important role of large private companies would need to be considered in looking for any effect on development and poverty.

Country examples

We looked briefly at seven countries, at varying stages of development to determine what elements of preferential treatment they were currently using (see Appendix A). Brazil and India are the traditional leaders of the developing country group in GATT (since the Tokyo Round) and the WTO. Most recently they were the only developing countries in the Five Interested Parties that brokered the negotiating framework in July 2004. Mauritius and Kenya are above the LDC category, but Kenya competes with and is in

²¹ Stevens and Kennan (2004a) review the evidence for exports from Africa to the EU and to the US under AGOA, and find that even under AGOA, where the important role of US buyers and their ability to choose the country from which to import suggest that they will be able to appropriate some of the extra value, some of the rent accrues to the exporting countries, so that they do benefit from a 'rent' element as well as from the additional volume of exports. The EU sugar quotas, by assigning specific quotas to countries, probably ensure that much of the rent will go to the countries. Özden and Sharma 2004 found positive, but small price effects for the Caribbean countries under CBERA.

trading arrangements with LDCs, so it feels disadvantaged by discrimination in their favour, while Mauritius is the non-LDC that benefits most from preferences. Malawi and Zambia are LDCs. Malawi is the most preferred LDC. Zambia has concentrated exports, but in a relatively freely traded product (copper).²² Vietnam is in the process of acceding to the WTO.

Brazil exports mainly to the EU and the US, and the share of the US has risen to be almost equal to that of the EU (table 7). Japan and other developed countries have fallen in importance. India is not an important market, but China's importance has increased (and continued to do so in 2003). India (table 8) has a similar pattern, but with a marked fall in the share to Japan and increase to China, now 9 percent. Even for these countries, traditional markets are important. Mauritius (table 9) still exports mainly to the EU (both sugar, where it has the largest quota under the Sugar Protocol, as well as preferential access of textiles), but the US share have risen, as has the share to other African countries. The major developing markets are not significant for it. All its major exports benefit from deep preferences: not only sugar (where it has the highest sugar quotas to the EU) and textiles (where its exports to the EU developed after the MFA restricted Asian countries), but also its third export, tuna, because fish is highly protected. African markets are much more important to Kenya and Malawi (tables 10 and 11), reflecting their regional position, but the EU is again the major developed market, and only minor shares for the major developing countries. Stevens and Kennan (2004a) found that, although the trade preference for horticultural products (the principal Kenyan export receiving preferences) were 'relatively small at only 8-10 percent', non-preferred countries did not penetrate the EU market. Vietnam (table 12) is the only one of the countries for which Japan is a major market; the US has increased in importance in recent years, and overtaken China, but the pattern remains more diversified than in the other countries. It is therefore clearly the US and EU trade preferences that will be important for most of these countries, with some influence from the regional market or China in a few cases.

For the 7 countries we examined, all except Vietnam have and use the basic GSP preferences, or, for the LDCs, the special arrangements under EBA and the US, Canadian and Japanese schemes. (Vietnam has a different arrangement with the US.) Some also have additional preferential quotas that give them 'rents' (extra revenue): Malawi, Mauritius and Zambia for sugar; and India for tea. Malawi also has important benefits as a tariff exempt tobacco exporter since tariffs on this are high. The African countries have started to use the AGOA provisions from the US, particularly the 'low income' countries (Kenya, Malawi, and Zambia; not Mauritius).

²² Zambia's erratic pattern reflects more the different declared destinations of its copper than real changes, so its data are not useful.

Brazil and India give preferences to other developing countries under the UNCTAD system of intra-developing country preferences, the Global System of Trade Preferences among Developing Countries, GSTP, and India also gives preferential treatment with its regional agreement, SAARC, to LDCs. Zambia and Malawi have received regional preferences from South Africa in SADC (sugar and textiles). Other regions also have preferential arrangements for their poorer members.²³

None has preferences in services from any country.

²³ Cuba, which is establishing links with CARICOM, will give preferences to the Eastern Caribbean (smaller) members of this (Caribbean Insight 23 July 2004).

5 SDT for policy flexibility and to meet the costs of implementation

5.1 Does SDT to give countries policy flexibility matter?

One of the arguments most frequently used against increasing the general SDT provisions is that countries do not use the provisions that exist. They have been used extensively in the past,²⁴ but appear to be less used now, and the provisions of Article XVIII specifically for infant industry have rarely been used (Keck and Low, 2004).

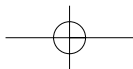
In the Agreement on Agriculture in the Uruguay Round, developing countries were allowed no reductions in some subsidies and smaller reductions in others. Only 25 countries notified the use of domestic support of types exempt from reduction commitments for developing countries: investment subsidies, input subsidies for low income farmers, and support to encourage diversification from drugs (Hoda, 2003 p. 9), most of small amounts; Brazil, Colombia, Costa Rica, India (in 1995 only), Mexico, Morocco, Thailand and Turkey (in one year only) had levels above USD100 million. For subsidies that were subject to reduction, calculated using a measure called the Aggregate Measurement of Support (AMS), and which were above the 10 percent of the value of agriculture de minimis level that was allowed, only 15 developing countries²⁵ notified that they had such subsidies. (LDCs were exempt from reduction and notification). 12 had export subsidies that had to be reduced. One observer found that the rules on domestic subsidies had not been a constraint on developing countries so far because they 'generally do not have the budgetary means to provide significant support to their farmers' (Matthews, 2003b p15), but that they might be in the future as these countries urbanise, and want to make transfer payments to a declining agricultural sector. Making new payments might damage existing suppliers, and therefore be potentially challengeable.

Matthews also found that most developing countries have not yet used the flexibility they have to increase tariffs on agriculture. For some food products, applied rates are close to bound rates,²⁶ so even the flexibility that

²⁴ From the 1950s, when the provisions were changed, countries used the right to restrict imports for balance of payments reasons extensively. In the 1980s, however, they 'switched from using trade measures...to the use of monetary and fiscal measures' (Breckenridge, 2002 p. 7). By 2002, only one LDC was using this provision.

²⁵ Argentina, Brazil, Colombia, Costa Rica, Cyprus, Israel, Jordan, Korea, Mexico, Morocco, Papua New guinea, South Africa, Thailand, Tunisia and Venezuela.

²⁶ Although developing countries 'bound' their agricultural tariffs in the Uruguay Round, many were allowed to do so at levels above the rate they were currently applying, so that they retain the right to increase these to the bound level.



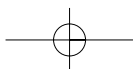
some tried to retain may be limited (Matthews, 2003a). There may also be constraints on using the flexibility. The potential to increase tariffs to a high bound rate, for example might be used as an alternative way of dealing with disruptive fluctuations in the price or supply of food imports, instead of the complex safeguard mechanisms which are intended for such problems (Matthews, 2003b). While moving an applied rate up within the bound rate is normally allowed under the WTO, it is not clear whether using this flexibility systematically to offset varying import prices could be challenged as equivalent to a variable levy and disallowed (Matthews, 2003a and 2003b). Stevens (2004) argues that the provisions of the Agreement on Agriculture are not consistent with current understanding of food security and appropriate policies to achieve it because they do not look at all costs related to food (e.g. transport) or to the effects of trade on access to food within countries.

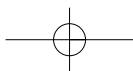
Although developing countries had wanted the extra flexibility given by the 2001 Declaration and the 2003 change in the rules on TRIPS to help give countries access to essential drugs, some countries which could have granted production licences were not doing so (Kenya) while LDCs had not developed strategies to supply cheap medicines using their exemption from the TRIPS disciplines. This failure to use particular provisions was, however, partly because the pharmaceutical firms were supplying cheap drugs directly and partly because countries had not seen this is a priority.

Given the precedent of the subsidies rules, where countries which did not use subsidies lost the right to use them in the future, it is understandable that countries now want to secure the right to use all measures that they might, at some point, need, rather than focusing only on what they are currently using. For developing countries, as for developed countries, the long-term costs of preserving inefficient domestic agriculture may be high, and contrary to an assessment of their economic welfare interests (Matthews, 2003a). If, however, the WTO allows developed countries to do what they want in agriculture, rather than what economists think is good for them, developing countries can claim the same rights, and may need different tools to use them.

Other reasons identified for low use of policies permitted to developing countries (Mangeni, 2003) include constraints imposed by conditions from the IMF or World Bank, fear of such constraints, and lack of technical capacity to use safeguards or anti-dumping. If developing countries are in practice prevented from using the flexibility that WTO rules would allow, it is not possible to assess the actual value of the special treatment.

Many developing countries, and especially the LDCs and other lower income countries, have been allowed to keep higher applied tariffs than most developed, as well as a larger difference between these and bound rates. For developed countries, the averages²⁷ for bound and applied tariffs are 5.7 percent and 4.7 percent; for non-LDC developing they are 29.0 percent and





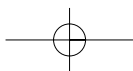
11.1 percent; for LDCs, 46.3 percent and 12.6 percent. LDC and other developing countries are also now more likely to have 'tariff escalation', tariffs which rise with the degree of processing. For developed countries, the average tariff on primary goods is 0.4 percent; on intermediate, 3.0 percent; on final products, 3.4 percent. For non-LDC developing countries, the three stages are 6.0, 9.1, and 8.0; for LDCs, 6.9, 18.0, 12.0 (de Córdoba et al, 2004). India remains among the highest at a weighted average applied rate of 30 percent (Jha et al, 2004). Djibouti is over 30 percent, the Maldives, Sierra Leone and Solomon Islands over 20 percent, and most others are between 10 percent and 20 percent (Mattoo and Subramanian, 2004).

The margin between these applied rates and the bound rates is on average about 40 percentage points, and particularly high for the African countries which have reduced tariffs, but left their bound rates unchanged. Not all these countries, however, actually have the freedom to raise their applied rates to the bound rates. They have signed regional agreements with an agreed common structure and maximum (often 25 percent to 30 percent). The lower rates that they offer within regions also reduce their average barriers.

While many regions modify strictly reciprocal trade liberalisation by offering temporary or permanent asymmetry, and thus give assistance similar to preferences to the less advanced members of a region, other types of SDT in trade are rare in regions. Two customs unions, the EU and the Southern African Customs Union, SACU, make financial transfer payments to the poorer members, but do not allow different rules for trade or trade related policy, and indeed have concentrated their harmonisation policies in this area. There are transition periods for new members, but these are seen as adjustment, rather than differentiation. The Caribbean countries have attempted to negotiate a special status in the Free Trade Area of the Americas (FTAA), but this amounts to tariff measures: different cuts and some exclusions, plus longer transition periods and technical assistance. In other areas, like dispute settlement, they only received the promise of special consideration.

If regions were more uniform than WTO members in development level, this would be easy to explain, but North-South regions, both those around the EU and those around the US, also require uniformity. Countries that form regions normally have non-economic common interests, and it is possible therefore that they believe that they can reach a harmonised set of

²⁷ These are simple averages, not weighted by trade; this is appropriate to measure the use of tariffs as policy, but does not measure the effect on other countries. In general, the developing countries have more uniform structures, while the developed have generally lower tariffs, but with peaks in sensitive products, so a comparison of averages underestimates the potential harm from developed countries' peaks.



rules. The EU's agenda for negotiations of EPAs with the ACP states, for example, still includes the three 'Singapore issues' that have been excluded from the revised negotiating framework in the DDA, suggesting that it thinks there is more commonality of interests. It is also true, however, that in North-South Regions it is easier for the Northern country to impose an agreement than it is within the WTO.

5.2 Country examples

Of the seven countries taken as examples, some use *subsidies*, most notably Vietnam which is trying to preserve them as it enters the WTO, and Zambia offers some tariff concessions to producers.

All are members of developing country *regions* that should be eligible to be exempt from the requirements of Article XXIV.²⁸ Some of the regions are negotiating trading arrangements with the EU and the US, and could therefore have an interest in the different rules for these in services (and in the lack of such exemptions for goods).

All have kept the right to use *imported pharmaceuticals* under the 2003 agreement, although Brazil and India are major producers, and Kenya has a small industry. There does not seem to be any evidence that they have used this provision.

Only Brazil and India have used the WTO *disputes procedure* (and their officials do not believe that they have had any of the special consideration in this suggested in the Uruguay Round agreement). Some recent cases, notably in cotton, attracted the interest of cotton exporters like Zambia and Malawi, and they have started to consider whether they should start to participate, if only by declaring an interest.

5.3 SDT for the costs of implementation

The extension of international rules to new areas like intellectual property and the tightening of rules on areas like customs administration under the Uruguay Round agreement led to extensive complaints that these had high costs of compliance for developing countries, and therefore that they needed assistance in order to avoid being disadvantaged. While many observers started from the position that the new agreements were of no benefit to developing countries, and therefore that all costs incurred should be considered as 'excessive', an alternative position would be that if all

²⁸ MERCOSUR exceptionally is being examined by the Committee on Regional Trading Arrangements under the full Article XXIV provisions. This was agreed by the members when other countries requested this because of its size and because it is a Customs Union as well as free Trade Area. The right to insist on examination under the Enabling Clause was therefore not tested.

members agreed to the new rules (as, by consensus, they did), then we must assume that they do consider them beneficial (or, at least, worth incurring in return for some other benefits negotiated), and therefore only some of the costs are 'excessive'. The excess could be because developing countries are required to catch up unduly quickly or to incur costs relatively early in their history. Whichever position is accepted, it is clear that the new regulations do impose new costs on countries which are already in need of aid to meet their existing costs and development programmes.

There are no good estimates of either the additional costs or the additional technical assistance specifically attributable to the new rules because both were treated as part of existing administrative reform or aid programmes. An early, widely quoted, World Bank estimate (Finger and Schuler, 1999) that they would cost LDCs the equivalent of a year's development budget was based on assumptions, not evidence, as the most costly requirements, on TRIPS, are not yet in force. (They were originally to be required by 2006; this deadline has now been postponed to 2015.) One estimate for a non-LDC developing country, Jamaica (Hoekman *et al* in Hoekman *et al* ed, 2002) found that implementing the additional TRIPS rules would cost about USD6 million; implementing the Sanitary and Phytosanitary Measures, another USD6 million (mainly to establish an Agriculture Health and Food Safety Authority), and new rules on customs valuation, about USD1 million. In the same year, 2002, Jamaica received USD24 million in official assistance (OECD DAC, 2004). The total cost is a significant additional burden in the short term, even if lower than the high estimates. (See also National Board of Trade, 2004.)

Developing countries therefore have requested that there be a binding commitment to provide the additional funding required to meet rule changes. This has not been accepted, but there is a move in that direction in the July 2004 framework for WTO negotiations (WTO, 2004c). In the one new area included, Trade Facilitation, there are first clauses like the much-criticised 'best endeavours' commitments on technical assistance in the Uruguay Round Agreement, a non-binding statement that technical assistance will be 'vital', that 'Members, in particular developed countries, therefore commit themselves to adequately ensure such support and assistance during the negotiations', and that where infrastructure development is required, 'developed-country Members will make every effort to ensure support and assistance...to allow implementation'. But in addition there is for the first time in a WTO agreement an acceptance that 'in cases where required support and assistance for such infrastructure is not forthcoming, and where a developing or least-developed Member continues to lack the necessary capacity, implementation will not be required.'

5.4 Summary of the evidence on how SDT is being used

Developing countries are using both the market access and the policy freedom types of SDT. The leading countries are offering some degree of non-reciprocal treatment to other developing countries, both under the general GSTP scheme and within regions. Subsidies are rarely used.

6 Proposals on SDT in the current WTO negotiations

6.1 Negotiations 2001-2004

Before Doha some developing countries requested a Framework Agreement on Special and Differential Treatment. The framework would establish certain conditions against which future agreements could be evaluated. WTO agreements could be evaluated for their contribution to the Millennium Development Goals (an aid target). There should be technical and financial assistance to meet implementation costs. There should be longer transition periods. Finally, there were two provisions to restrict the application of WTO rules to developing countries, that such countries should not be prevented from following a policy that did not have an adverse impact on trade and that they not necessarily be bound by the single undertaking (WTO, 2001b). The Doha mandate referred to this, although not committing to it.

It was also agreed that existing SDT provisions would be reviewed. This would include identifying the current provisions, considering whether some of the non-mandatory provisions should be made mandatory, consideration of how to make them more effective, and help for developing countries use them more effectively (Melamed, 2003a). These reflected two types of concern about the existing agreements, that the mentions of technical assistance and special consideration for the needs of developing countries had no legal force, and there was little evidence that they were being implemented, and that some of the policy flexibility allowed to developing countries, either under the agreement or by custom and practice from earlier agreements, might not be immune to legal challenge. The mention in the Mandate led to the tabling in the first half of 2002 of about 90 proposals, now reduced to 88, to change existing provisions from the US, EU, Hungary and nine developing countries or groups of developing countries.

The Africa Group (WTO, 2002 b and c) suggested as principles that SDT be 'meaningful and relevant to the development needs' and that it should be bound. They had 'principles' for provisions on capacity building, transition and training, and they proposed a mechanism to monitor implementation, especially the non-mandatory provisions. To convert the non-mandatory provisions to mandatory, it proposed the instrument of 'authoritative interpretation' not legal revision of GATT articles. There were also institutional proposals (including strengthening the routine mechanisms of the WTO by using authoritative interpretations). The one that was taken up by others was to establish a Monitoring Mechanism for SDT. The Africa group also proposed detailed amendments to existing articles and an annual

meeting to review LDC participation in the system (Smith, 2003). The EC proposal also implied some monitoring mechanism, but this was to ensure that developing countries did not continue to use SDT instruments longer than necessary (WTO, 2002; Communication from the EC). Neither proposal specified by whom they should 'be regularly reviewed'. There was disagreement over whether the review and revision of existing provisions amounted to new negotiations (to be transferred to the appropriate negotiating groups) or was directed at revising previous negotiations, and over whether the principles for SDT should be discussed before or after specific proposals. Originally, the difference was not mere semantics, as developing countries had wanted these discussions to go faster than the other negotiations, and be completed by July 2002.

This was not achieved, but by 2003, the Chair of the WTO General Council thought that 38 of the proposals might be near agreement, 38 were to be discussed by other negotiating groups, and 12 were not likely to be accepted (described in detail in Melamed, 2003b).

The introduction of a formal and prolonged discussion of principles, as opposed to specific proposals, was rather outside the normal WTO negotiation model, and the negotiations have not progressed. The attention of most developing countries (and probably of their principal negotiators) has been focussed on the subject negotiations, notably agriculture and non-agricultural goods (and, until they were removed from the agenda, the risk of the inclusion of the so-called Singapore issues investment, competition policy, and transparency in government procurement). The only attempts to classify the proposals by objective or rank them in order of priority were by outsiders, and were resisted by the countries' proposing them. In June 2004, the chair of the Trade and Development committee tried to classify the proposals according to what they were trying to achieve and which agreements were at issue, in order to move the discussion to a more productive phase.

This classification (Ismail, 2004a) divided the proposals into three categories, two roughly the same as those used here, market access and increased flexibility, and 'capacity building' which included financial assistance. The relatively small number grouped under market access reflected the fact that proposals on this would normally go to the appropriate negotiating group, except where they were reaffirming existing commitments or asking for generic improvements for LDCs. There are also problems related to constraints such as sanitary and phytosanitary restrictions and technical barriers to trade. The analysis identified many more proposals where the needs could be best met by taking account of development needs in the specific negotiations on goods and services. Then, there were proposals for capacity building and technical and financial assistance, where there was a need to find a way to give substance to the soft commitments of the Uruguay Round.

Some of the solutions here might need to look beyond the WTO, to cooperation with national governments and international financial institutions. These problems and those of access were reasonably well defined. Those for increased flexibility, almost by definition, are harder to make precise and harder to assign to a clear approach. There is an inevitable inconsistency in trying to use a system designed to make and enforce rules to increase the scope for countries to make their own development policies. An 'enabling environment' can be seen as a negative objective, avoidance of restrictive rules, in which case the basic request is a 'standstill and roll back' (to use the phrase applied to tariffs) of WTO rules. This, however, raises the question of why the rules exist, and why some countries see them as negative. Alternatively, an actively 'enabling environment' would need elements like development advice, assistance and funding, which the WTO does not provide.

As well as the difficulties of reconciling negotiation of 'revisions' and 'new proposals', and balancing general principles and specific requests, there has been in the background the question of SDT for whom. Most proposals distinguish only between LDCs and others, but much discussion has been around what more might be offered if some developing countries were removed from the group. Should the 'treatment' be defined first, and then there could be a discussion of who should be entitled to it (as most developing countries request)? Or should the group of 'developing countries' be redefined, and then an appropriate treatment be offered (the position of the EU and other developed countries)? One semi-formal proposal was made, by the EU in May 2004, that the LDC group be broadened to include all the ACP and all (or most) African countries. This might be interpreted as either an extension of the LDC category or a restriction of 'developing category'.

The SDT negotiation process has resulted in more tension and antagonism between groups than the apparently more significant negotiating areas like agriculture or even the Singapore issues. The lack of a clear focus for the discussions encouraged circular arguments about the method of negotiating. In agriculture and non-agricultural goods, both types of negotiation went together. Many developing countries believe that developed countries have not wanted to comply with the soft provisions of the Uruguay Round, and want to avoid changes that would make these compulsory. Many developed countries do not see the value in general commitments for special treatment, and would prefer to deal with specific requests in specific negotiations. This has polarised into accusations of bad faith and ignorant negotiating.

The emphasis on development needs on the side of the developing countries has encouraged the developed countries to justify their positions on the grounds of development needs: the developing countries are asking for things which are not good for them. This risks turning a discussion of different policy measures into a debate on the nature of development. Little

progress in clarifying even the nature of the negotiation seems to have occurred since early 2002 (the state of negotiations then is summarised in AITIC, 2002). The focus on a framework has brought the differences in fundamental views about what policies help development, which are normally subordinated to trying to find compromises in particular cases, into sharp focus. The successful agreement on a framework for negotiations in July 2004 suggests that such differences have not made other negotiations impossible.

The fact that the SDT negotiations have made little progress indicates that the problems are not easy to resolve. It may also, however, indicate that some of the most active countries do not consider them of sufficient importance to be a priority. Those who are most interested in these negotiations include Kenya, India, and Egypt, plus a range of countries from all continents and levels of development (ICTSD, 2004), but not Brazil, China, South Africa, and other leading middle income countries, while most LDCs have concentrated their efforts on their specific interests in other negotiations, whether in exclusion from obligations or special access. The SDT discussions were more like the traditional developing country group positions, reflecting broad positions of those developing countries that have not yet identified specific negotiating objectives. The number of these is diminishing as more countries participate actively in the negotiations. In its latest statement (G90, 2004) even the G90 had a page and half of very specific requests on goods, explicit requests on TRIPS and the Singapore issues, and two perfunctory paragraphs on 'the development dimension', expressing 'concern...over the lack of effective progress' and instructing the General Council 'to agree on a work programme'. The major countries have always participated more actively in the other negotiations, on goods and on possible new areas for the WTO.

6.2 July 2004 decision

In the July 2004 negotiating decision (WTO, 2004c), under the rubric SDT, the Trade and Development Committee was merely instructed to complete the review. The important changes for differential treatment for developing countries were found in the agricultural and trade facilitation sections, and in the absence of three of the Singapore issues, investment, competition policy, and transparency in government procurement. On *development* there was restatement of that it was 'an integral part of the Doha Ministerial Declaration' and that SDT is 'an integral part of the WTO agreements'. On technical assistance and capacity constraints, in the general framework, there was only encouragement to other agencies and an exhortation to take concerns into consideration. This was actually less than had been expected to be agreed, if there had been agreement at Cancún: there, 28 proposals were more or less agreed, but by July 2004 developing countries no longer

considered it important to get a paper agreement, so preferred to reject these as not significant enough to include on their own. The section on technical assistance does not go beyond the Uruguay Round, simply noting that developing countries 'should be provided' with it. These provisions therefore add nothing, but as the requests in these general areas were also unclear, the agreement, by concentrating on the specific elements, rather than the general, may meet the criterion of offering countries what they most want. It does suggest that 'special attention shall be given to the specific trade and development related needs and concerns of developing countries' in all the negotiations, and thus attempts to treat these as a basic part of the negotiations, not an afterthought.

For LDCs, there was, as they had requested, complete exemption from reducing tariffs in agriculture or non-agriculture, and exhortations that developed and those developing countries that could should remove tariffs on their exports. Making this binding was one of the LDCs' objectives, but they were only able to secure the statement of intent.

In *trade facilitation*, as mentioned in chapter 5, developing countries secured a commitment that they could use failure to provide assistance as a reason for failing to comply with some new requirements. The guidelines suggest that an agreement should include SDT not only in the form of transition periods, but of the 'extent and the timing of entering into commitments'. On costs, the provision for failure to receive adequate support to be an acceptable reason for non-compliance is an innovation. As presented here, this section does meet the criteria for SDT, provided the introduction of any new rules is acceptable in terms of the criterion of limiting new rules.

In *agriculture*, there had been the most detailed SDT provisions in the Uruguay Round, and this has been carried over in proposals in the current round. On market access, some developing countries, with the US and Australia wanted to increase market access, but others have wanted to preserve their preferences (e.g. G90, 2004), and therefore opposed any increase in access for others. In 2003-4 these positions became identified with the G20 and G90. ASEAN countries wanted to restrict labour or other conditions on GSP schemes (Hoda, 2003). Initially, both the EC and other European countries with highly protected agriculture and preferences had positions of preserving preferences. On policy flexibility for developing countries, there were proposals of a Development Box, embodying flexibility on import controls and domestic support. This would have allowed an increase in the subsidies allowed and reclassification of some restricted measures to the 'allowable' categories (Matthews, 2003 SDT; Melamed, 2003 IDS). There was also the separate initiative on cotton, which argued that developed country subsidies on cotton should be phased out earlier than the rest of the negotiations because of the needs of the developing country exporters.

The July 2004 agreement provided for lower reductions and longer implementation periods for developing countries, for both domestic and export subsidies. These seem to be expected to be fixed differences, implying the view that the changes are beneficial for all, but more costly for developing countries. They have the possibility of exemption from disciplines on state trading companies. On market access, there was provision for differential application of the formula tariff cuts. Developing countries can identify some sensitive products; developed countries will also be allowed these, but with differential treatment. These will have lower than normal reductions in barriers. The only way to meet the concerns that food security was wrongly treated in the Agreement on Agriculture would be an improved safeguard mechanism (Stevens, 2004). Developing countries may also specify 'special products' which can be treated (presumably) even more flexibly. There are thus two types of special treatment. There was also a procedure to secure that cotton was treated 'ambitiously, expeditiously, and specifically'. These were justified as part of a development effort for 'economies where cotton has vital importance' (WTO 31 July 2004), and with a specific consultational (not bound) link to 'development assistance aspects'. This special attention to an important activity suggests that SDT is being used increase the returns to trade of at least some developing countries, but by linking it to the general agricultural negotiations it also implicitly recognises that the countries have been disadvantaged by the continuing authorisation of subsidies in agriculture, designed to favour the developed countries. 'The issue of preference erosion will be addressed' (WTO, 2004c), but there is no specific plan. There was some provision for a monitoring mechanism specifically directed at the implementation of what is agreed on agriculture.

The negotiating framework for agriculture thus has most of the elements that were supported by developing countries, including those where there were opposing positions, on access and preference erosion. It does not include any increase in policy flexibility through higher limits or reclassification of subsidies, but there could be gains from the reductions in subsidies by developed countries, and thus in the unfavourable differential between their substantial subsidies and those offered by a few developing countries. The outcome will depend on the numbers and details to be negotiated.

The *non-agricultural goods* annex offers 'credit' for autonomous liberalisation, but this is conventional, not SDT, as all negotiations normally start from the previous Round, not from intermediate positions. It accepts different concessions for countries with low binding (these are developing countries, but it is not a category related to levels of development). On tariff cuts, it would allow more exemptions from cuts (not, on the current proposal, smaller cuts) and longer implementation periods. Again, LDCs are exempt from all these, and other countries are encouraged to offer them

access. It 'recognizes' the problems of preference erosion and dependence on tariffs for government revenue, but expects these to be resolved by taking them into account in these negotiations. It does not, therefore, meet the problems of these countries in reconciling integration into the trading system with meeting the costs of it and assumes that remedies can be found within the trading system.

On *services*, there is nothing new, and merely a request to 'note' the interests of developing countries.

7. Principles for SDT

This chapter suggests seven criteria for SDT that can be supported from general principles of the WTO and from the experience with SDT reported in this paper. These criteria could guide the policy choices made by the Swedish government or the EU. What the best way of achieving a more effective SDT might be, and whether these or other criteria should themselves be made 'policy' by enshrining them in a framework within the WTO, will be considered in chapter 10.

7.1 SDT should increase the benefits to developing countries from trade and the weight given to their interests

The purpose of the WTO is to provide the rules that will allow its members, which represent a wide range of different types of economy and level of development, to grow and develop without impeding the progress of others. The purpose of SDT is to give developing countries a greater priority in this process, thus to allow them to give more priority to their own needs and less (not no) priority to those of others. The existence of international trade and of the WTO confirm that all members believe that 'Integration into the international system' is an essential element in national strategies, although it is not a purpose in itself. SDT should not, therefore, contradict this fundamental purpose: it should avoid creating obstacles to a country's future development or integration into the system, and should normally promote, not restrict trade.

This does not mean that development or poverty reduction should be the explicit aim of the WTO. Rather, SDT should be seen as the way of reconciling two purposes: increasing world welfare through trade and development. The rhetoric of the Doha Development round and proposals by some observers that the success of the round should be judged only by its contribution to development or that SDT should be designed to 'assist the development of low-income countries' (Hoekman, 2004b) suggest that the trade promotion and regulation roles of the WTO are subordinate to development. If trade were the only (or the most important) way to encourage development, this diversion of the WTO might be necessary. The growing literature on trade and development and trade and poverty strongly suggest, however, that trade is not the only means of promoting development or reducing poverty. The developing countries have trading and systemic interests other than development and poverty, and the developed countries also have trading interests. This suggests that SDT should be

regarded as a way of modifying pursuit of the central trade aims of the WTO, in order to ensure that a high share of any benefits go to developing countries and to minimise any costs to them.

The WTO as it exists now owes more to the interests and negotiating strength of the developed countries, particularly the EU and the US, than to those of other countries²⁹. As changes are difficult, there may be a presumption that other countries, particularly those that have only started to participate actively in the negotiations, are more likely to need derogations from the rules than those who created the rules. This is too vague to be itself a WTO rule, but could guide a country trying to define its position on particular proposals: where other arguments are finely balanced, developing countries' position should have priority. Hoekman (2004b p. 1) notes that 'to a significant extent WTO rules reflect the 'interests' of rich countries: they are less demanding about distortionary policies that are favoured by these countries and they largely mirror the...disciplines that have over time been put in place by them.'

7.2 It should not be used to solve all development needs

What 'development needs' are acceptable? If the WTO wants to preserve its current basis, that equal treatment is a fundamental principle, then they should be temporary needs (even if 'temporary' may be measured in decades rather than years). The justifications for SDT discussed in chapter 2 which focus on countries which are not yet competitive or have not yet developed their desired economic structure or are further from compliance with a new rule are all potentially legitimate derogations. As well as being legitimate, however, they should be effective, and this is an empirical issue. The evidence of chapters 4 and 5 is that some have been useful for some countries. Some have other needs, such as physical, human and institutional infrastructure or changes in the ways of doing business or other aspects of development or poverty. Some countries will benefit more from a favourable bias in trade policy than others.

This leads to two additional empirical questions. Do the countries not in a position to use the trade (and now TRIPS) advantages that constitute SDT need even more advantages of the same type (the argument for special SDT for a group within developing countries, such as the LDCs)? And is belonging to the group able to benefit from SDT a characteristic that all developing countries can eventually reach, and then graduate from, or do at least some of the countries which have not succeeded in 'developing' need permanent special treatment?

²⁹ 'It is important to see SDT as a mechanism to deal with systemic imbalances in the trading system. It is not charity, but rather dealing with the reality of an unequal playing field resulting from rules designed by negotiations by unequal partners.' (ICTSD, 2003).

On the first, there seems to be no reason to believe that offering additional advantages in trade is the most efficient way of improving supply problems. It may not be completely useless: any additional incentive may increase the speed of transition of a country to a more 'development friendly' internal state and the experience of working within the WTO system may strengthen institutional capacity, but direct measures, which for these countries will normally mean aid or advice, are to be preferred to indirect ones.

The second question remains uncertain. There is some research which suggests that the characteristics of small countries, in particular, may be such that they can never benefit as much from trade as large (see chapter 9). Trade measures, including derogations from WTO obligations, may increase the benefits significantly but it may be that some countries' problems will not be helped by it: *prima facie*, offering a preference is not the most obvious form of assistance to a country vulnerable to natural disasters.

7.3 An inclusive organisation must build in flexibility

When it was founded, GATT was what today would be called a group of like-minded countries, major traders accepting a particular system of international economic relations. As with the regions mentioned in chapter 5, this meant that the members could assume agreement on a common approach to most rules; those who did not agree (notably the Communist countries, but also, for example, Mexico and Venezuela) were not members. As it has expanded, it has acquired *de facto* a different aspect, of being the organisation that regulates most international trade. This has given countries which might not be 'like minded' an incentive to join to avoid the costs of exclusion from both trade and rule-making. At the same time, the existing members have started to believe that universality of membership is an additional goal of the WTO, although perhaps they do not all agree on whether it is more or less important than MFN treatment.

The inevitable move to increasing regulation as the original members became more integrated has increased the number of rules, and therefore the potential for disagreement. The GATT and now the WTO evolved from transparency of barriers through reduction of barriers to detailed regulation of both trade barriers and trade-related national rules.

Some of the countries which now argue that their size or level of development makes current WTO rules inappropriate for them did not make a deliberate decision to join, but came into the GATT on reaching independence, and have remained in the WTO. They therefore find themselves doing the assessment of the costs and benefits of membership from inside rather than on joining. Leaving an organisation is a more serious policy step than not joining it, and losing a member is more serious for the organisation than not acquiring one, so that a tension among existing members has built up.

If some members find that the rules have increased or changed in a way which they now find damaging or a hindrance to development, but which they did not oppose at the time (the argument that developing countries agreed to the introduction of the TRIPS agreement into the Uruguay Round settlement without realising its implications), they can try to change them. The fact that the consensus rule operates both to conserve what has already been agreed and to retard any new agreements may create inflexibilities which are inconsistent with changing interests of the members (the possible implications for institutional reform of the WTO are discussed in chapter 10).

If the WTO members now accept that the organisation should aim for universal membership, in order to ensure that the benefits of certainty and predictability apply to all trade by its members, then both the possibility that some countries are permanently 'different' and the certainty that some will not share the same approach to all rules imply that the WTO must either limit its rules to those which can benefit and be accepted by all members or allow permanent derogations for countries with different economies or different approaches to economic policy (chapter 8 discusses formal and informal ways of allowing this). Clarifying the need for this choice does not make it easy, but might make the debate over both SDT and new rules more practical and less emotional. Rules that will never, or not for a considerable period, be appropriate to a majority of members may risk damage to the system. A large number of rules that were not binding or of derogations would alter the nature of the organisation; they might also make it less predictable and transparent. If universality is an objective, then SDT may be a necessary compromise between very limited rules and so many exceptions that the system is damaged or unworkable. ('The pragmatic case is that SDT is not only desirable, but, actually, essential if the Doha Round is to move beyond a very low lowest common denominator.' Stevens, 2002 p. iii.)

7.4 It must be consistent with countries' views of their interests

The way the WTO functions is based on mercantilist self-interest. In trade in goods, countries bargain to achieve access in other countries while offering the minimum possible access to their own markets. Even if some governments and many analysts disagree with the fundamental assumptions behind this, and believe that countries should liberalise their trade in their own self interest (c.f. UK DTI, 2004a), the whole mechanism of negotiation and enforcement of the WTO relies on it. Any modification must work in this context (unless it is a proposal to rewrite GATT 1947 and start again). It is therefore necessary that countries should be expected to define their own interests in SDT, not accept what developed countries (or analysts) think is

'good for them'. The approach must remain one of negotiation, not aid. This requires a difficult balance between biasing the system to help developing countries, because developed countries accept development as a worthwhile objective, and biasing the system to promote developed countries' own view of what type of development is best. If developing countries, or some of them, believe in the structural arguments for SDT, then developed countries must accept these as their 'interests' in the negotiations. Attempting to design SDT for developing countries assuming that free trade is the correct approach is not consistent with WTO mechanisms. The more favourable treatment allowed by SDT must accept countries' own definition of 'favourable', not what some would like it to be, unless the WTO is regarded as the instrument of a higher authority, not of its members.³⁰

7.5 SDT should promote integration of countries into the world trading system and support the basic aims of the WTO

The existence of international trade and of the WTO confirms that all members believe that 'Integration into the international system' is an essential element in national strategies, although it is not a purpose in itself. SDT should not, therefore, contradict this fundamental purpose: it should avoid creating obstacles to a country's future development or integration into the system, and should normally promote, not restrict trade. Its aim should be to increase the benefits and reduce the costs of integration into the WTO.

7.6 It must avoid excessive costs to other countries and to the international system

One criterion that is suggested is that countries should be allowed to follow any policy that does not damage other members of the WTO. If we interpret 'damage other members' to mean damage to interests which have been agreed in the WTO (this would include not only market access, but newer areas like protection of intellectual property, but not interests which are not covered, such as investment), then this is an empty suggestion. Any complaint about violation of WTO rules which is taken to formal dispute must be based on damage, so if a country can identify a measure which does not damage any other country, then it can use it.

³⁰ That non reciprocity has 'excluded developing countries from the major source of gains from trade liberalization - namely the reform of their own [emphasis in original] policies' (Hoekman et al, 2003 p. 15) is not a valid argument against allowing developing countries to use non-reciprocity. They have the same right to defend policies that analysts consider wrong that developed countries have.

The Enabling Clause from 1979 requires that SDT be designed ‘not...to create undue difficulties for the trade of any other Contracting Parties’. This is difficult to achieve, even if we add some *de minimis* criterion for ‘damage’ because even small countries may be important markets or suppliers for particular interests in another country, and if that country is itself small, the damage may be significant, but correctly reflects that SDT must balance interests.

The proposal by some observers that developing countries have more freedom (‘policy space’) to restrict imports to meet temporary difficulties, for example, would be most likely to be used against other developing countries (low cost imports from neighbours have already provoked controls among southern African countries, and developing countries are becoming major users of anti-dumping measures against other developing countries).

Any *de minimis* rule would have to measure the damage relative to the country damaged, not be based on the size of the country taking the action or the total world economy. The increasing acceptance of economic analysis of the direct and indirect effects of a measure in WTO dispute decisions (rightly from the point of view of an economist) means that all the effects of a measure would need to be taken into account.³¹ The extension of both the scope of the WTO and the disciplines of the dispute procedure has limited the areas where such a criterion could apply. Therefore, developed countries could accept changes in the rules to allow developing countries to restrict only developed country exports (a parallel provision to preferences).

If we interpret ‘damage other members’ to mean damage them in ways which the observer considers important, where the observer disapproves of some current WTO agreements (for example, many analysts, as well as some countries, do not consider the TRIPS agreement to be either as desirable or as fundamental to the WTO’s principles as the market access elements³²), then this becomes a very uncertain criterion (which would fail the principles of certainty and transparency). It assumes that there is some higher authority than the WTO agreement (the views of the informed observers or, in some formulations, a body of experts within or outside the WTO, c.f. Stiglitz and Charlton, 2004) which can decide which elements of the WTO are essential and which are not. Only if there is agreement in the WTO that certain duties are desirable, but not required, could it allow such a distinction. This would be consistent with proposals that some elements of the WTO should be considered ‘core’, and therefore binding on all, while others are not (discussed later in this chapter in the section on plurilateral agreements and

³¹ Even if a country provides support to a product that is not the same as that produced in other countries, it may damage competing products.

³² Hoekman et al 2003 argue that ‘The value of reciprocity when applied to regulatory policies is much more doubtful, given analysts’ uncertainty about the appropriateness of particular policy instruments, and the differences between countries’ domestic priorities.’ Even this, however, is an argument for defined SDT, not a general case against reciprocity.

soft law); it would, however, be tantamount to an extension of 'best endeavours' clauses.

It seems better to recognise that the basis for SDT is that all countries agree that some members of the WTO (however the group is chosen) need relaxation of some WTO rules, but that it is for the WTO membership to define which rules and what exceptions by its normal procedures. This gives WTO obligations priority over exceptions, and thus by implication trade rules priority over 'policy space'. That the advantages of common rules are greater than the disadvantages is the choice that countries have made by joining, and remaining members of, the WTO, and therefore this has to be a premise of any discussion of rules and derogations in the WTO. The arguments for SDT within the WTO are that for some rules for some countries these advantages may be weaker than for others, not that they do not exist. If a country judges that they do not exist, it must either try to change the rules or consider leaving the organisation.

This principle suggests that one necessary reform is to clarify what types of 'special treatment' can be treated as purely concessional (a benefit to the recipient without cost except, perhaps, to the donor) and what types affect either the system (e.g. exemption from common rules) or third countries (some rule exceptions and trade preferences). The decision in the dispute between India and the EU over the special preferences for drug producers suggested criteria of transparency and certainty (that eligibility not be subject to discretionary decisions by the donor) so it is possible that this reform could be achieved by clarifying the provisions of the Enabling clause, not revising it, but that case created other difficulties by allowing some types of discrimination. The current system has still not reconciled the system of giving discretion for GSP with the new situation of developing countries being major participants in seeking gains in WTO negotiations, and therefore having their own views, not being mere passive recipients. Non-LDCs have legitimate trading interests, and risk being alienated by aid and preference diversion to the LDCs. A reformed Enabling Clause could require explicit approval, allowing countries fearing they would be adversely objected to object, or could strengthen the present provisions for notification and consultation, while clarifying the types of harm that might be covered.

7.7 SDT should be bound

Existing provisions for SDT are a mixture of *formal*, *'bound'*, *provisions* of the WTO: countries are not required to meet a rule during a longer transition period; they need only cut their subsidies or tariffs by an amount which is less than that for developed, or may not need to act at all if they are LDCs, and *exhortations plus permissions*: developed (and developing) countries may discriminate on tariffs in favour of developing and LDCs; they should take their limitations or interests into consideration in a range of rules and in

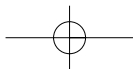
disputes; they should offer technical assistance. The bound provisions date from the earliest years of GATT (see chapter 4) with different rules for measures to protect the balance of payments, for example. The first unbound provisions, permitting preferences, date from the 1970s (although GATT 1947 allowed the continuation of preferential treatment for colonies, etc.). The Uruguay Round added to both lists.

Unbound provisions are clearly inconsistent with a rules-based system, especially when they deal not only with costs which one country can impose on itself for the benefit of another (preferences for all developing countries; exercising restraint in applying barriers to specific countries like anti-dumping), but with costs which are imposed on third countries (preferences for LDCs, which discriminate against other developing countries; offering technical assistance to some countries, but not others). The argument for non-binding has been that developed countries are willing to offer more if they can choose what they offer, and can keep the possibility of withdrawing it.

This is not consistent with the principles of the WTO. For any areas of international relations not (or not yet) subject to WTO or other rules, it is possible to assume that countries have made the choice that the advantages of flexibility and discretion are greater than those of fixed rules. The reason GATT and the WTO exist, however, is that in the areas which they cover, countries have decided that rules are more beneficial than policy flexibility. Any modification of this, except when its scope is defined and limited by time (fixed transition period) or status (as developing, LDC, etc.), and so not really 'unbound', must be subject to a high level of proof. Where all countries agree that such flexibility is desirable, as in the continued acceptance of the principles of preference schemes, discretionary policies meet the criterion of an agreed derogation: even if some countries are damaged, they have agreed to accept this.

When there is considerable controversy, as in the provisions for special consideration or technical assistance in the Uruguay Round, the presumption must be that what has been offered is not regarded as particularly valuable by their recipients and developed countries trying to meet the criteria suggested here should not consider them as contributing significantly to SDT, measured by the views of recipients. Removing the existing 'best endeavours' clauses may be more damaging than leaving them alone (the implication that countries do not want to take account of developing country interests would be unfortunate), but there should be caution about adding new ones. Adding provisions with questionable benefit when there is a criterion of limiting additions is not costless.

For new agreements, therefore, there does not seem to be a role for non-binding SDT. Exhortations of the type found in the July 2004 agreement that members 'should' provide duty and quota free access to LDCs have a negotiating role now, as countries will try to convert them during the



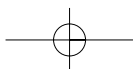
negotiations to a bound requirement. But if this effort does not succeed, including this as a wish in a final settlement would probably be as counter-productive as the 'best endeavours' clauses of the Uruguay Round. They raise expectations and therefore increase dissatisfaction.

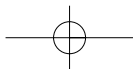
Given that the provisions that do exist must be assumed to have been intended not to have any legal force, making any of them binding is clearly a new negotiation, not a 'clarification'. Restricting those where it now appears that there is a risk of damage to third countries (which was not perceived properly when they were introduced), however, probably is a correction, rather than an innovation.

For preferences, if we accept that they are useful (or that most developing countries want them), a limited form of binding would be possible. Most countries that offer these 'bind' them in terms of their own domestic legislative or regulatory provisions for a fixed term, and it would be more transparent and more in keeping with the WTO's other provisions on market access (for regions, whether under Article XXIV or the Enabling Clause, as well as MFN tariffs) for these to be not only notified, with their time limits, to the WTO (the Enabling Clause already requires notification), but then treated as bound. For agreements which are nominally not limited by time (such as EBA for the EU and CBERA for the US), notifying them as permanent to the WTO would give additional certainty to them because countries could rely not only on their being 'unilaterally bound' (EGDI, 2004), but on the WTO's enforcement mechanisms to ensure that they would continue. The WTO might need to find ways of presenting them in standardised form, but a set of preferences would be no more disparate than the sector-by-sector GATS offers or the regulations for notified regions. Preferences with temporary binding could also be used in other types of agreement. This might have provided a faster route to the agreement on access to drugs signed in September 2003. Combined with clarifying the obligations on transparency and non-discrimination, whether through interpretation or modification of the existing rules (this requires legal judgement), this could improve the consistency of preferences with the WTO system.

The role of purely 'rent' type preferences (guaranteed prices for a fixed quantity) is harder to justify as contributing to the purposes of either SDT or the WTO, so removing these from the definition of allowable preferences under the Enabling Clause, rather than binding them, might be considered.

The corollary of this is that countries could not offer preferences or other special treatment that did not meet WTO rules. Messerlin (in Griffith 2003) has proposed that developed plus some developing countries should immediately offer access to a group, apparently larger than the LDC but smaller than the current definition of developing countries, for non-agricultural goods. In return, the beneficiaries would be asked to bind their tariffs (probably not below their current applied rates). The proposal by the



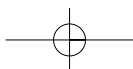


then European Commissioner for Trade in May 2004 that a group identified as the G90 (roughly LDCs, plus other African and other ACP, but there is no formal definition by the WTO or the members) should all have the exemptions from obligations proposed for LDCs took a similar approach, of suggesting that developed countries should impose discrimination among developing countries. Either of these would, under current rules, be non-permitted discrimination. Messerlin suggested that it would be done by a waiver, which would meet the criteria. The Commissioner's proposal might have been formalised into an EU negotiating offer. If it had been implemented without agreement, then (rightly by the criteria suggested here) developing countries that did not meet the new definition would have had the right to claim either compensation (on the model of countries damaged by regional agreements) or changes in the rules (under a disputes procedure).

Giving additional preferences for the LDCs, as developed countries have done since the Uruguay Round, formally meets WTO rules, but may not always meet the criterion of not damaging other countries without their consent. When the Enabling Clause first distinguished between LDCs and other developing countries, the resulting discrimination was relatively small, and this remained true through the 1980s and 1990s. Developed countries concentrated their main preferences on other groups. LDCs did have substantial potential gains from their exemption in the EU market from MFA rules, but only Bangladesh was big and competitive enough to have an impact here. In the 1990s, and then after 2000, this changed, particularly in EU policy, with EBA offering duty and quota free entry and even, under the special provisions for sugar, valuable temporary quotas.

While it is true that all countries, including non-LDC developing, have formally accepted this discrimination, because they accepted the Enabling Clause, this is a clear example of a rule whose effects are now different from what was expected when countries agreed to it. To increase these preferences still further would formally meet the criteria if the clause that developed countries 'should' provide access appears in the final agreement, and if developed countries state their intention of using it. If it does not, or if developed countries increase preferences during the round (it might be appropriate to apply standstill to preferences as well as protection), or if they appear unwilling to do so, but then offer the preferences unexpectedly after the Round³³, then non-LDC developing countries might have legitimate

³³ Arguably, the announcement of EBA in September 2000 when the EU's June 2000 agreement with the ACP countries had suggested that the EU only had 'improved' access in mind violated such a criterion.



grounds for complaint. Some observers, however, continue to encourage increased benefits for LDCs. Some observers suggest that all developed countries should 'extend preferential market access for LDCs, and...simplify eligibility criteria, especially rules of origin' (Hoekman *et al*, 2003 p. 3).

8 Analysis of proposals using the proposed principles

8.1 Monitoring

The conventional system to 'monitor' WTO agreements is for countries (and exporters) to watch for problems, and then take them up, first informally, ultimately in the dispute settlement mechanism. The Africa Group (WTO, 2002b) made a proposal, later taken up by the US, EU and Canada (WTO, 2002g; 2002h; 2002i), for some committee, whether of the WTO General Council or outside it, to 'monitor' SDT agreements. The Committee on Trade and Development, however, had agreed in 2002 to establish a 'Monitoring Mechanism' (Tortora, 2003), and the proposal remains on their agenda. It is not clear whether it is intended to have an information function or an enforcement one, or whether it is to apply only to obligations by developed countries or to all SDT related activities. The original Africa Group proposal was that it monitor performance by the developed countries; the developed countries wanted it also to look at results, and thus by implication the effectiveness of SDT (ICTSD and IISD, 2003). Other observers (e.g. Hoekman et al, 2003) suggest that it should also look at the role of trade in national development plans, but for this it is not clear to whom it would report.

The Africa Group (WTO, 2002a) suggested that it review the use of SDT and the compliance with its requirements, working with the Trade Policy Review Mechanism (TPRM) to produce assessments of individual developing country's needs, as well as producing more general reports about the effectiveness of SDT and assessing proposals for new WTO policies according to their usefulness for SDT. The implication is that it would deal mainly with the general SDT provisions (as proposing amendments to the agreements on agriculture of non-agricultural goods would be unlikely to be acceptable in the middle of negotiations). But, limiting its scope to those areas that come under headings of 'development' could omit essential elements of agreements.

A more recent modification suggested by some African negotiators would be that the group could also consider requests for waivers to allow extra, or modifications of, SDT. An alternative approach would be to impose an additional requirement on all committees to include a report on implementation of SDT in the different agreements (Mangeni, 2003).

The original discussions implied that it was to deal mainly with the non-bound elements of SDT, and as such it could be considered complementary to the disputes mechanism (which can only be easily applied to bound

agreements). If countries want to avoid non-bound agreements in the future (and reduce the number of existing non-bound agreements), its role would be limited and gradually reducing, but it could provide useful information, like the reporting and informational role of the committee on Regional Trading Arrangements. There is, however, some scepticism about how useful this has been in regulating regions. The TPRM is a more encouraging precedent for giving a useful picture of the trading needs of a particular country. The original function of the Committee on Trade and Environment was more similar to the proposal for a body to make continuing recommendations for modifying WTO policy, but it has not been effective in doing this. The Textile Monitoring Body provides an example of a quasi-judicial body set up to monitor compliance with an agreement. Such a body could provide evidence and de facto encouragement to a country to use the dispute mechanism where there are formal requirements. For non-bound elements of SDT, it could give prominence to assessments of compliance (as the CRTA does). These could be effective if there is political will to comply.

If the Monitoring Mechanism was seen as explicitly for enforcement, this would suggest a transformation to institutional enforcement (from the types of enforcement characteristic of contracts and commercial law within countries to one more like those used for laws to defend public interests, such as the criminal codes). When the TPRM was introduced during the Uruguay Round, members, especially the developing countries, opposed any use of this for enforcement, rather than simply for information. Giving another committee (which like the TPR body would be the General Council meeting under a different name) these responsibilities would be unlikely to be more acceptable.

Giving a committee a role in judging only some countries (those asked to offer SDT) might also be unacceptable. Such a role might, however, be justified if it is believed that developing countries do not have the capacity to watch trading partners and judge their compliance in the way in which countries are expected to in the WTO or if they do not have as much capacity to take enforcement measures through the disputes procedure (Hudec in Hoekman et al, 2002). As the examples quoted in chapter 5 show, while some developing countries have used the disputes mechanism effectively (and extensively), some of the smallest and all the LDCs have never used it. It seems unlikely that there have been no violations of WTO rules that have affected them (Brazil's success in the cotton case against the US, which also interested some West African producers is evidence against this). Although the Dispute Settlement mechanism does work for most developing countries that use it, others may need either assistance to use it (the Advisory Centre on WTO Law was established for this purpose) or an alternative. The principle of preserving equal treatment as far as possible would give preference to improving the ability of developing countries to use the dispute procedures, rather than setting up a two-track system.

The July 2004 agreement seems to have abandoned the idea of a new monitor, and refers to 'monitoring and surveillance' only in the context of agriculture, and there suggests only 'enhancing' the existing system of notifications. The fact that the significant contributions to SDT are more in specific agreements than in the general provisions suggests that integrating any monitoring mechanism(s) into substantive agreements may be the most effective answer.

8.2 Transition periods

There are two types of argument for giving countries more time to meet a rule: first, that there are adjustment costs to moving to it which can be reduced if the movement is slower than any general adjustment period built into a new agreement, i.e. that there are immediate costs and long term benefits, and the balance between these can be altered by deferring some of the costs, or, in a modified version, that countries can only implement a limited number of reforms at any time (e.g. Breckenridge, 2002 suggests that 'countries should concentrate on core areas of reform as a first priority, with the implication that this will be reflected in their implementation obligations'). The alternative argument is that some rules are not suitable for countries at particular levels of development, but will be when they reach a more advanced level. The type of fixed time periods that have been used meet the first argument, but not the second, although for that they are a 'blunt instrument' (Breckenridge, 2002). If agreement could be reached on different levels as criteria for SDT (see chapter 9), then transition period could be designed to meet the second need.

In the various proposals on SDT, countries have asked for the right to determine for themselves when they are ready to move to full compliance (Keck and Low, 2003). This is normally rejected, as insufficiently certain, but self identification is accepted in other areas of the WTO (the status of developing country, or the ability to use the TRIPS/access to drugs provisions for importing). If it is the case that a measure will be beneficial to a country, once certain conditions are satisfied, then the country would have no interest in choosing to remain exempt forever (although there might be a flexibility argument for complying without accepting the obligation: an equivalent for rules of lowering applied tariffs without altering the bound level).³⁴ If the rule is permanently disadvantageous to a particular country, then periods must be standard or eligibility must be regulated. Where there is an element of discretion now, for example where countries are allowed to apply for extensions on the normal periods of compliance, as applies for many rules, including customs, reaching full compliance with Article XXIV for regions,

³⁴ Hoekman (2004a) suggests that countries should take on the disciplines when 'they recognize the value' or by being given an additional inducement.

TRIPS, this is sometimes regarded as a disadvantage because it allows non-relevant considerations to be introduced (all such agreements can be tied to lobbying or pressure on other issues³⁵). But given that there is a balance to be struck between discretion and rules, and that there is probably increasing acceptance that development and the relevance of particular rules are too uncertain to be handled by fixed, immutable, adjustment periods, this may be the best way of meeting the SDT criterion of offering favourable treatment to developing countries.

There are different views on the appropriate length of adjustment periods, whether it is better to make a costly adjustment quickly or slowly (clearly this must be linked to whether assistance is provided), and whether long periods actually mean slower adjustment or simply that a rapid adjustment happens at the last minute.

8.3 Flexible policy ('policy space')

'A balance must clearly be struck between the 'policy space' required and the need to maintain the inherent value of a rules-based trading system' (ICTSD, 2004 p. 6). This statement by an NGO supporting the development interests of developing countries in the WTO sums up the debate, and is perhaps the strongest statement that can be generally agreed. Any more detailed suggestion will be controversial; this is a point where the criteria of redistributing benefits to developing countries and of limiting the costs to others conflict. Messerlin (in Griffith 2003), for example, suggested that all countries that have not bound all their tariffs should do so, at a rate not far above their applied rates. As discussed in chapter 5, while this might not appear to constrain any countries from anything they are currently doing, it does risk reducing their ability to take actions that they might want in the future. Under Messerlin's proposal, the bargain would be that they would receive free access to their markets. For low-income developing countries as a group, this might produce a gain; if it did not do so for every country (and some have virtually free access to all relevant markets, chapter 4), it would not be a complete solution, because it is members, not groups, which are the decision makers in the WTO.³⁶

³⁵ The decision by the EU to introduce the question of a the waiver to extend its authorisation to offer the Lomé preferences to the ACP countries at the Doha Ministerial meeting, which was neither the time (several months late) nor the place (it is a General Council decision) to deal with it may not have been unconnected with securing support by the ACP countries in the meeting so this is not a speculative fear.

³⁶ Messerlin in Griffith 2003 also suggests that 'the poorest countries should pledge to adopt a uniform tariff' p. 12, because this would be good for them. This would violate the criterion that countries should decide for themselves what is good for them. It would also impose a stronger rule on developing than on developed countries, which would violate the criterion that SDT is to give developing countries an advantage.

8.4 Soft law

In contrast to the requests by developing countries for more certainty in both what is allowed to them and what is required of developed countries, some researchers have proposed that new rules could be introduced, but without enforceability under the dispute settlement mechanism, and even that some existing rules should be moved back to this basis, for example Stevens (2003b) and Hoekman (2004a and 2004b). Either by having the freedom to take on only those obligations which they felt were beneficial to them or by receiving some protection from the normal enforcement provisions once they have taken on obligations, developing countries would find themselves with a less rigorous set of obligations than other countries. The purpose would be to restore to developing countries some of the *de facto* flexibility that all countries had before the dispute mechanism was strengthened in the Uruguay Round and to allow the WTO to move ahead on new areas, without making these mandatory for all. It could be done by altering the enforceability of provisions completely or by significantly raising the *de minimis* thresholds for damage.

For new or revised agreements, whether countries would be required to accept full compliance (and ultimately enforceability) or not would be decided by discussion, and presumably consensus (suggested in Prowse, 2002). This could be regarded as simply an extension (or even simply a restatement) of the existing flexibilities, but the purpose would be to create the presumption that a significant number of developing countries would get extra flexibility and/or time to comply.

Hoekman suggests that developing countries could not be taken to the dispute settlement body without 'prior approval of an independent oversight body that has assessed the likely net benefits of implementation' (Hoekman, 2004b p. 10). This would remove certainty of a remedy from the country taking the developing country to dispute, and it is not stated whose interests would prevail if that country were also a developing country. Even if it is a developed country, it is not clear why any particular developed country (or, *a fortiori* a particular group of its exporters) should lose a normal remedy because of the development interests of another country.

A variant of this would give the committee or group assessing whether and how far a country needed to comply, a more general role in the country's development, trying to identify a full programme of technical assistance and capacity building (cited sceptically in Keck and Low, 2004).

The GATS approach, of allowing each country to make an offer of what it wants to liberalise, not constrained by formulae or standard clauses,³⁷ would be consistent with the first strand of this 'soft' approach, that countries could

³⁷ The suggestion in the July 2004 Framework that there should be 'no a priori exclusion of any service sector' may suggest a less accommodating approach.

offer what they wanted, if we take the negotiating group on services to be equivalent to the unspecified body assumed in these proposals. (It does not have a formal commitment to look at countries' national policies, etc., but *de facto* this could be done.) The problem with the GATS negotiations, however, is that making an offer as opposed to participating in negotiations on formulae, is not easy, and most developing countries have missed all the deadlines. The even more flexible approach, available to LDCs in the negotiations on goods, is to do nothing, as they are not required to make tariff or subsidy cuts. They have learned that the 'flexibility' not to take any interest in other countries' positions is not a real option because actions by others will affect the access that they have; it will reduce their preferences. Therefore any assessment of their needs by a benevolent body would also have to assess all the actions of their trading partners, and this brings the proposal back to the normal negotiation procedures.

It is important to note that lack of firm procedures and rules is one of the criticisms made by developing countries of the WTO's negotiations and institutions. It is harder for inexperienced countries to adjust to open systems and flexible rules. A system of consultations and discussions gives the advantage to countries that have the capacity, in terms of both numbers of people and experience, to analyse policies quickly and effectively. Any such system would also differentiate the developing countries unfavourably by treating them not just as countries with different obligations, but as a class of countries to be assessed and discussed. What is called a 'peer' assessment, if it only applied to developing countries, would rapidly become an assessment from above.

The principal disadvantage is that, as long as any exemption is not permanent but discretionary, it creates the same uncertainty from which developing countries suffered in the Uruguay Round, of not knowing whether or when they would be expected to comply. The conclusion developing countries drew then, both those that participated and those that did not, was that staying out of negotiations (on TRIPS) because they thought they would be exempt was a dangerous mistake (Page, 2003). Only if the WTO or its developed members could establish a new degree of trust might developing countries consider the risk acceptable. If, on the other hand, developing countries negotiated the agreement as if they expected (or feared) they would have to apply it, then the benefits to developed countries of allowing them exemption so that they could negotiate a stronger agreement, not one 'watered down' to meet the lowest common denominator, would be frustrated. Developing countries no longer want what would be a *de facto* return to plurilateral agreements, but with even less security of exemption.

If exemption were introduced after an agreement, for issues where the WTO members would now agree that there is a real doubt about the medium (or even long) term benefits for certain categories of developing

countries, (the obvious candidate would be the TRIPS agreement), then it would clearly offer advantages in reducing the costs of the international system for them. Moving from the existing agreement (where they know they have the costs) to a discretionary one (where they have temporary exemption but might be brought back in if the discretionary judgement changed), would be an improvement. It is harder to see how they could see negotiation of a new agreement with such a clause as an improvement over not negotiating it (or negotiating an agreement which they could live with now).

8.5 Plurilaterals

There will continue to be conflicts between the wish of some countries to go further in liberalisation or international regulation in new issues, such as competition or investment policy after the Doha Round, and the costs that agreements on these might impose on small or poor countries, which see few benefits and high administrative costs. Under GATT, this was resolved, for a few subjects, by plurilateral agreements, which countries could choose to join if they saw gains, but these have been considered unsatisfactory since the Tokyo Round. For subjects that are closely related to trade, it might be undesirable to have agreements with less than universal membership, but for some topics they might be acceptable.

The formal plurilateral agreements within the WTO are the Civil Aircraft Agreement and the Agreement on Government Procurement (GPA). The first is a hybrid, but mostly a sector MFN-tariff agreement, which could probably be brought into the full WTO system. The GPA has survived as a plurilateral one and the refusal by the majority of WTO members to introduce government procurement into the Doha negotiations suggests that it will remain as a plurilateral one, not be 'threatened' with multilateralisation. The Information Technology, Telecommunications, and Financial Services agreements are *de facto* plurilateral, so agreements that apply to only some WTO members remain possible.

There is scope for a new role for plurilateral agreements as SDT. They offer a way for countries to define for themselves what would be consistent with their 'development, financial and trade' needs, and a strengthened Enabling Clause (see Proposal) might provide a legal basis for some agreements to be optional for developing countries.

For Trade Facilitation, the only new area left on the table in the Doha negotiations, a full plurilateral agreement would not make sense because it is largely in trade with developing countries that the developed countries want to see improvements. If there are elements of the eventual agreement which are only advantageous to countries when they have reached a higher level, and which have either start-up or permanent costs to others, then the only remedies are those proposed in the trade facilitation annex: that countries

have time to adjust and be paid to implement sooner, if that is advantageous to their trading partners. But developing countries need to have these as 'hard' commitments, not 'soft' discretionary ones, if they are to risk signing such an agreement.

Any agreement completely outside the WTO's structure could be plurilateral (all the environmental agreements, for example). As long as the proposals to apply their disciplines even to countries that have not signed up to them are kept in the legal limbo where they belong, such agreements are acceptable.

8.6 Technical assistance

There are risks in using this as an afterthought, as with the assumption in the Uruguay Round that developing countries can meet any rule given assistance.³⁸ It is not a substitute for analysing in advance whether a rule is on balance beneficial for developing countries. It can only reduce the initial costs, not remove long-term disadvantages, if the rule is inappropriate for particular types of country, whether because of their level of development or because of their natural characteristics. As noted in chapter 5, the adjustment costs can be significant, but they are not normally the principal reason that developing countries have wanted to avoid exemption.

The proposals in the Uruguay Round had no binding force, and much of the discussion since then and in the context of the current negotiations has been on whether this can be introduced.³⁹ The July 2004 declaration does not alter this.

The July agreement embodies one approach which could be extended to other compliance: of accepting that assistance may be a necessary condition, and then effectively leaving it to developed countries to decide whether securing compliance by developing countries is 'worth' the cost of the assistance; if not, failure to comply becomes legitimate. If developing countries want to comply, they can take the initiative to seek assistance. For this to be applied, developed countries would have to designate the assistance that they wanted to be taken as complying with the agreement as 'trade facilitation related', and it might be necessary for the WTO (or another professional body, such as the World Customs Organization for customs rules) to certify that the assistance had met, in whole or in part, the

³⁸ In commenting on the initial draft negotiating framework in July, Brazil pointed out 'our concern that the emphasis in terms of SDT seems to be on Trade Related Technical Assistance and on differentiation between developing countries, rather than on actually concentrating on making S&D more effective and operational. In other words, instead of addressing deficiencies in, and therefore, expanding and strengthening S&D provisions in the WTO, the text seems to indicate that we would be looking at a redistribution of the meagre benefits that currently exist.' (Missao do Brasil en Genebra 22 July 2004).

³⁹ As EGDI 2004 p. 6 suggested, 'to facilitate implementation, commitments should possibly be linked to a specific level of trade-related technical assistance and capacity building.'

need identified. At present, the Committee on Trade and Development has to approve the WTO's own annual programmes but does not have a formal function of appraising them relative to needs (Mangeni, 2003 p. 34).

The implication of such an arrangement is that this is an area where benefits accrue to an identifiable set of countries and the costs to a different, also identifiable, set. There is no reason not to include such an agreement in the WTO (provisions for trade in any commodity have direct benefits for those who trade in it, and only indirect for the rest of the world), provided all the countries involved support it.

Previous proposals that countries should designate some of what they presently spend on technical assistance in assistance budgets specifically for WTO compliance costs assumed that it would come out of aid budgets.⁴⁰ If an agreement is believed, by all members, to be of ultimate benefit to all members, rather than seen as a bargain, this could be justified. In the arguments for including TRIPS in the Uruguay Round, supporters did take the position that it was of benefit to all. More detailed assessment, however, suggested that there was a difference of interest between countries that are net exporters and those which are net importers of technology. In such a case, aid would not be appropriate as the motive would be the interests of the donor, not the recipient.

8.7 Adjustment funding and compensation

In addition to the costs of adjusting to rules, some developing countries will also face costs of adjusting to a less distorted trading system, if the current Round achieves this. The preferences that they have received will be reduced, and therefore their rents from higher prices and in most cases also the volume of their exports will fall, reducing their income. The corollary of the numbers quoted in chapter 4 and table 6 for the high benefits to some countries from preferences is that they will suffer significant losses if trade is liberalised. Total world welfare will be increased, because removing protection will remove trade distortions, with the gains going to both the currently protecting countries (principally the developed countries because the largest share of preference income comes from sugar, which they protect) and the currently non-preferred developing countries. Some of the currently preferred countries will gain because their other exports will rise. The problem is that there remains a small number of countries for whom these gains are too small to compensate for their preference losses, so the criterion that SDT should increase the benefits to developing countries from trade suggests action is necessary. Because it is only a small number of countries, the cost of providing them with funds to meet the losses is also small.

⁴⁰ UNCTAD (in UNCTAD, 2004a p. 255) defines the problem as 'supply-side preferences', or combining technology, FDI, and finance to help improve LDCs' trading position.

Until 2003, the view was that the losses were too small to matter. The losses would have been smaller then because some of the losses now expected are the result of new schemes. The moves since 2000 to improve preferences, particularly for LDCs, have increased the potential loss. Countries now giving duty and quota free access for all or essentially all LDC exports include Canada, the EU, New Zealand, Norway and Switzerland. Calculations have shown that for some countries losses are large (IMF, 2003; Gillson, 2003, and others).

It is in manufactures that there was first awareness of preference erosion. The potential impact on those who gain from the MFA has been known since its end was negotiated in 1994. The effects, however, are still largely in the future because full liberalisation was postponed until 2005. Calculations of the effects of the end of the MFA suggest that Mauritius, Bangladesh, Sri Lanka, and the Maldives are likely to be the most serious losers. The major gains would go to India, China, and Pakistan (National Board of Trade, 2004; Page and Davenport, 1994).

In February 2003, the IMF (IMF, 2003) presented striking results, confirmed in their more recent calculations (IMF, 2004b; Alexandraki and Lankes, 2004). The major losses would be in agriculture. The principal losers in relative terms would be Malawi, Mauritania, Haiti, Cape Verde, and Sao Tome and Principe. The value of the exports lost by all LDCs was in total USD530 million (of which USD222 million was for Bangladesh), so that the absolute numbers are not large on a world economy scale. The largest effects from all preferences are in sugar (42 percent of the effect for middle-income countries), bananas (19 percent), and clothing (12 percent).

The first WTO negotiating drafts that recognised the problem, in 2003, suggested maintaining 'to the maximum extent technically feasible' nominal margins of tariff preferences and some LDC, ACP, and African positions have supported this. This is, however, clearly impossible when preferred countries already have 0 tariff access, and it is unacceptable to countries like Brazil and India which are attempting to increase their access, and where access will reduce poverty. Because the largest losses are for exporters of primary products, changes in rules of origin will not resolve all the losses.

The initial reaction once the extent of the problem was realised was that this was an aid or adjustment problem that should be dealt with by the IMF (for immediate adjustment assistance) and the World Bank, but, as discussed below (see chapter 8.10...) the World Bank does not accept that it has a role in this, and if the purpose is not only to provide assistance for development but to secure an agreed settlement, and if the international agencies do not want to provide a formally coherent approach to international economic management, there may be no external solution.

Mauritius, the most affected country, with preferences in both sugar and clothing, had suggested in January 2003 a compensation mechanism. In mid-2003, the LDCs and the ACP repeated this, specifying that there should be

technical assistance to improve infrastructure, productivity and diversification. The EU and US initially suggested that it was a problem for the IMF and World Bank. The July 2004 framework still assumes it can be resolved within the existing agenda. For the worst affected, however, any gains on services, trade facilitation or public health are likely to be smaller than the losses on trade in goods.

One argument could be that there is no case for adjustment assistance: the countries knew that their income depended on preferences, and knew that trade policies could change, so their losses could have been anticipated. There are two reasons for rejecting this, one practical, one developmental: the first is that if they are not offered some compensation, they will have an incentive to delay or frustrate a settlement (see chapter 4), which will damage other countries' welfare. The second is that they are developing countries and that the principles behind SDT suggest that developing countries should have some advantage in WTO agreements. De Rato (2004) for the IMF argued that funding 'gives affected countries an additional lever in dealing with vulnerabilities, while allowing developing countries as a whole to reap the benefits of improved conditions for their exports'. Therefore, they should have support in order to be able to make the investments in physical and human infrastructure and in productive capacity to permit alternative production, although this should not disadvantage those who need aid by traditional criteria.

In January 2005, the EU recognised the principle that countries which had benefited from preferential trade because of EU policies on sugar should be 'supported' to adjust to changes in these. In presenting its Action Plan (EC, 2005), it noted that 'Several ACP economies are significantly dependent on sugar exports to the EU'. They have made investments and development plans based on expectations about these. It suggested combining 'trade and development measures' to meet the 'challenges'. In proposing that the assistance be used to improve the competitiveness of countries' sugar sectors, to promote diversification away from sugar, and to assist adjustment more generally, it is substituting development assistance directly for some of the traditional purposes of preferences (see chapter 2).

The calculation of losses from preference erosion is in principle no different from any other WTO calculation of losses from trade distortions or changes (such as are done when regions form or disputes are settled). The International Monetary Fund established a Trade Integration Mechanism (TIM), and is calculating their losses for the purposes of offering loans (IMF, 2004b). It has now provided the first funding under this, to Bangladesh, to meet the costs of the end of the MFA (de Rato, 2004). (This is discussed below in the section on Assistance and synergies.) The question has been raised of whether the 'loss' should be the total effect of losses from preferences or the net effect (if negative) from all parts of any WTO settlement. i.e. offsetting the preferences lost by any gains on other goods or

services. The former would not be consistent with the normal WTO assumption that any deal will represent a mix of losses and gains (but SDT might suggest a more generous interpretation). Only preferences that are allowable under the WTO, whether under the Enabling Clause or specific waivers, could be covered. Countries need non-repayable support in order to be able to make the investments in physical and human infrastructure and in productive capacity to permit alternative production, adapted to the new trading conditions. The IMF TIM is not the answer to a permanent loss of income, and more debt is the last thing such countries need. The increase in world welfare suggests that there are gains to be directed to the losers. The question which the WTO and supporters of trade liberalisation in the current round have not been able to solve is the form which the transfer should take.

The question of whether the WTO needs a financial mechanism has been raised in other contexts. Losses as a result of other types of trade policy change, for example when a regional trade area is formed or if a country wins a dispute and the 'offending' country does not change its policy, have always been recognised as suitable for compensatory action in the WTO. 'Compensation' in these contexts, however, means some other trade action. There is no WTO provision that allows monetary compensation, although it has been proposed in the disputes procedures, when there are no obvious retaliatory actions to take. And while the Enabling Clause called for consultations if preferences caused problems for other countries, it did not require agreement or compensation.

Financial compensation for negative consequences of trade liberalisation was implied in the agreement in the Uruguay Round that Net Food Importing Developing Countries (NFIDC), who were expected to be hurt by a rise in food prices as a consequence of the agricultural reforms, should get special consideration. In practice, no action was taken, by either the WTO or financial and donor institutions, partly because the reforms have not had clear consequences for prices, but also because of the lack of clear allocation of responsibility. The cotton exporters raised the possibility of financial compensation for subsidies.

The normal WTO answer to meet the consequences of proposed changes would be that this is a negotiation question: the countries which are requesting a change in tariffs, in this case principally the non-preferred developing countries, such as Brazil and the G20, along with some efficient developed country producers, like Australia and the Cairns Group, have to make an offer that will secure agreement. They can either offer to fund adjustment in the losers themselves or demand that the developed countries, which created the problem by combining high protection with deep preferences, compensate the losers. In bargaining terms, the expectation would be that the net effect of either form of agreement would be the same: either the demandeurs use all their bargaining power to secure removal of

protection, and distribute some of their gains to the losers, or they use some of their power to ask the developed to make the transfer, and thus do not gain as much.

But if SDT is intended to improve the position of developing countries in the WTO, then the problem that some will lose from a conventional agreement seems to imply a clear role for SDT. The transfer should be made by the developed countries as part of their contribution to SDT to benefit both the gainers and the losers among developing countries.

Developing countries and protected producers remain divided on whether financial compensation would be a satisfactory substitute for preferences. Many prefer trade mechanisms, as more likely to be durable, and some believe that it would be possible to hold back reform and maintain some of the special arrangements. Developing countries will not willingly give up privileges to which they believe they have a right without a clear and certain offer from the developed countries.

If the current plus potential future dispute cases being taken by developing countries, led by Brazil, against the US on cotton and the EU on sugar lead to the current subsidies being declared contrary to the WTO, the EU and US should end them, but would have the option of keeping them in force and offering compensation to Brazil, and others who can show damage. If they follow this policy, the outcome will be less satisfactory than removing them for total world welfare, but would at least redistribute income towards a less inefficient position.

There is alternatively a 'public good' argument for an international fund to meet the costs of compensation: removing (or reducing) distortions to trade will improve efficiency and welfare at the world level, and this is an aim to which countries might be expected to contribute according to their incomes or shares in trade. On either this or the preceding argument, a question could arise about whether all developed countries or all non-preference receivers or just the most egregious preference givers should 'pay'. Justice might demand the third, as a sort of delayed fine for bad behaviour, but the WTO, like other legal systems, is based on rules, not (at least not directly) on moral obligations. Normal SDT criteria and also the history of preferences suggest that it is developed countries as a group who should pay: they instituted and preserved the system of discretionary preferences and they have the largest interests in the trading system.

To meet the technical assistance demands, the WTO established the DDA Trust Fund, based on contributions, but specifying a target figure. This was not compulsory. But if either technical assistance or compensation funding were to be 'bound' in a Doha settlement, members could be asked to make 'offers' to contribute to a fund with these offers being subject to negotiation and eventual binding, like any other offer in the Round. To reach an agreement, some contribution by the developing countries who gain and/or the most advanced developing countries may be required (this is discussed

further in chapter 10).

As with other 'public goods', and *a fortiori* other WTO penalties, it would be wrong to consider this an aid payment. If we take a normal aid or development approach, making transfers to countries according to the degree of preference that they enjoyed in the past does not meet any criterion for aid, whether to encourage development or to reduce poverty. In practice, whether or not it is 'counted' as aid in official estimates of development assistance, countries will make their own decisions about where to find the funds to allocate to this. As those who reform their agricultural systems will have both budgetary savings and national income gains, it is not inevitable that it will come from current aid budgets.⁴¹

The funds might be administered by aid agencies, because they are the most experienced in this, but the allocation among countries should be clearly on trade criteria, and any conditions on its use within countries based on judgements about what will produce the most efficient and appropriate adjustment, not according to which countries or types of spending most 'deserving' on normal aid criteria⁴². There may be excellent arguments for using some of the increase in world welfare to increase the spending on development assistance, but this should be kept clearly separate from using some of the potential gain to ensure that the liberalisation actually happens.⁴³ If it is seen simply as 'compensation' for a previous benefit, then it could be allocated to countries with no conditions. It would not be appropriate to give it directly to the exporters who lose revenue because the WTO is an agreement among countries, not among private companies.⁴⁴ If it is seen as SDT, to improve the benefits which developing countries get from the WTO, it could be allocated (as a benefit) without restriction, or it could be designed to find alternative sources of foreign exchange (whether exports or import substitution), i.e. used to restructure production.

⁴¹ Proposals to identify specific sources of funds, such as taxes on importers, have no logic either in economic terms (the benefit accrues to the country as a whole) or in a direct relationship to the preceding preferences (as it was sugar subsidies that were the most important element) as well as being subject to all the normal objections to 'hypothecated' taxes (taxes whose revenue is tied to a specified purpose). Funding for the EU's support to sugar exporters would come from a designated line in the Community Budget.

⁴² That donors will insist that any funds designated as aid go to their priorities in areas such as poverty reduction, rather than to trade assistance or development of new activities, is probably more of a risk than the one cited in Hoekman et al 2003, that donors might divert aid to trade, rather than to recipients' priorities. If assistance to compensate sugar producers has to compete in aid priorities with health or infrastructure spending, it will lose.

⁴³ It may be argued that the rent-type preferences (sugar quotas at high prices) were really intended as aid, and therefore that compensation payments for the end of subsidies could also be considered 'aid'. Such a claim, however, would suggest that these preferences were not meeting the original aims of the GATT waiver and then the Enabling Clause. Even this, however, would at least mean a transfer of aid payments to a more efficient form, as supported by Hoekman 2004a, provided other aid was not cut back.

⁴⁴ The US decision to allocate the revenue from anti-dumping levies to the producers who complained was contrary to at least the spirit of WTO rules.

Although the loss from preference erosion is 'permanent' in the sense that it is not the same as a temporary adjustment problem (caused for example by a bad harvest or temporary fall in demand), no trade pattern or trade policy can ever be treated as permanent. Therefore while the losers have a claim, on either the preference donors or the efficient producers who will take their markets, in the short to medium term, because they have lost what were legitimate expectations that the distorted system would continue, they do not have a claim to permanent support.

The length of the transition period can be debated: the MFA was given 10 years adjustment; the EU Action Plan for sugar is for 8 years; internal adjustments in countries are sometimes much faster; restructuring an entire economy dependent on a single agricultural commodity for most of its exports is unlikely to be accomplished as rapidly as moving to or from clothing production. Whatever the period, here the arguments for certainty probably override those for flexibility (as the countries will have faced one shock, predictability will have a high value), and during it the payments should decline in a pre-determined way (but perhaps not linearly: the backward loading of the removal of the MFA eased its introduction, and distance in time is giving some security to the agreement now that the large changes are coming in).

Can this be bound? One argument against binding the technical and financial assistance offers in the Uruguay Round settlement was that countries could not or would not bind their aid budgets into the future for the sake of a trade agreement. Will they be willing to bind other spending? They do bind spending to promote or to prevent trade (in the case of protection and subsidies), and they do bind government financial plans by agreeing to bind tariffs. Those countries that would need parliamentary or other approval for spending plans would probably already need it for a WTO agreement with tariff and subsidy components. The failure of the NFIDC provisions (and other parts of the Uruguay Round Agreement which were left to discretion) means that an enforceable mechanism is essential if developing countries are to agree.

Can the WTO require spending as opposed to changes in trade policy? An international treaty may change anything to which its signers agree. Introducing the possibility of 'binding' financial payments in addition to trade policy could be useful for other elements of the WTO. The possibility of financial transfers could mitigate the difficulty of finding adequate ways of compensating countries, damaged by trade policy, who win disputes. Up to now, the only sanctions have been ending the trade rule violation (which does not compensate for past losses) or taking retaliatory action (which may not be easy for countries with different sizes or limited trade flows) (c.f. Gibbs, 1998).

8.8 Flexibility for regional arrangements

The failures at the WTO Seattle and Cancún Ministerials brought fears that countries would turn to regional trade arrangements⁴⁵ because of disappointment at slow progress in the Doha negotiations or dissatisfaction with their coverage (too narrow for some developed countries, in particular the EU which wanted the Singapore issues; too wide for some developing countries). These, like similar fears in the Uruguay Round, have proved to be exaggerated: regions have a rationale that is different from multilateral negotiations. Contrary to some analysis, they do not lead to deeper integration; they stem from it, and are normally among countries with ties that go beyond trade (Page, 2000). If these are absent or weak, negotiations to form a region hit the same obstacles of different economic interests that obstructed the WTO negotiations (e.g. the 2004 collapse of EU-MERCOSUR negotiations), and there has been little progress in regional negotiations since Cancún. But regions are being negotiated alongside the multilateral negotiations, and these efforts are leading to proposals to change the current regulation of regions in the WTO. The Doha mandate included 'clarification and improvement' of the provisions on regional agreements, and this is being dealt with in the Negotiating Group on Rules.⁴⁶ 'Improvement' hides a conflict between those who want clearer rules and those who want fewer controls.

The Enabling Clause allowed regions among developing countries to be examined by the Committee on Trade and Development, rather than under the Committee on Regional Trading Arrangements procedures, and therefore, *de facto*, meant that they were not required to meet the full Article XXIV rules. In particular they could have more limited coverage than 'substantially all trade'. There were no special procedures for regions including developed and developing countries, although Article V of GATS, adopted when such regions had begun to emerge, did allow asymmetric liberalisation and absence of substantial coverage. The simplest proposals are to harmonise these Articles by introducing a differentiation in Article XXIV for mixed regions, for the rules on substantially all trade, the transition period, and that the restrictions on other countries should be 'not on the whole higher' (Onguglo and Ito, 2003).

⁴⁵ 'Regional' is used in the WTO sense of any reciprocal trade agreement among two or more members which offers better-than-MFN terms.

⁴⁶ The proposals for reform are complicated by two systemic problems: that the legal status of the Enabling Clause has occasionally been challenged and that the provisions in Article XXIV fail to define key provisions, requiring liberalisation of 'substantially all' trade among the members of regions and mentioning 'other regulations of commerce' without defining either term. In the past, the first has not been a problem because there were few countries with an interest in challenging regions formed by small traders, while the second gave *de facto* much of the flexibility that current proposals request.

Some proposals by developing countries, and in particular by the ACP countries which have been asked to negotiate FTAs with the EU, go much further and ask effectively for at least the same lack of constraints allowed to pure developing country regions by the Enabling Clause. In June 2004, the ACP countries proposed that both Articles, GATT XXIV and GATS V, be liberalised for any regions including developing countries and developed countries to give more flexibility on 'substantially all trade', 'other regulations of commerce', and by extending the allowed transition period from 10 years to 18. But they also wanted relaxation of the rules on transparency during the period of transition and protection of regional arrangements from challenge in the disputes procedures. The last two would give regions more protection than even pure developing country regions have at present. It would effectively remove such regions entirely from WTO regulation. They could avoid any notification during the 18 year transition, and then, once notified, regardless of the results of any examination by the Committee, they would be unchallengeable (Missão do Brasil June 2004). The EU questioned some of the details of the ACP proposal but supports the principle of adding SDT to Article XXIV.⁴⁷

A change to allow SDT in mixed regions, subject to specific approval by the WTO members, would fit the criteria for SDT suggested here. Removing them entirely from international supervision would not because of the potential effects on third countries. It would be bizarre to treat regions including the US or the EU as not in need of control when a large pure developing country region like MERCOSUR is being examined under Article XXIV procedures. The implicit justification for the relaxed control of the Enabling Clause was that developing countries were small traders, so any adverse trade diversion effects from regions among them must also be small; the benefits to the developing country members would therefore outweigh the costs. Given the growing importance of developing countries in trade, including in the trade of other developing countries (see chapter 4 and the tables) a review of regional rules now might be more likely to tighten the controls on mixed regions than to relax them.

8.9 Consistency in the WTO

Within the WTO, the provisions for lower, or no, commitments, longer transition periods, and formal derogations have emerged as responses to particular cases, not as part of a formal assessment of which, or which combination, is most appropriate to each subject. This is not abnormal for any regulatory system, and changes to be more consistent would have costs, but it is important to try to define the roles of the different types of

⁴⁷ An ex EC official had questioned whether the ACP should ask for full exemption from all controls (Luyten in ACP, 2003).

provision, and aim to introduce new provisions and changes in old ones that move in the direction of a more logical system. The possible need for exceptions or modifications needs to be considered when agreements are made, not as an after thought (Stevens, 2002), although even this rule cannot hold when countries identify the need for special treatment after a rule has been adopted. A practical problem (c.f. EGDI, 2004) is that while the WTO can regulate commitments and derogations, it can at present only recommend technical assistance and financial assistance, and if a country needs more fundamental developmental changes, in the structure of its economy or in its institutions, no external body can require or instigate the changes. Therefore, the WTO can only regulate parts of a package.

It would be possible for an agreement to be of the form: a country must reach full compliance with the rule (or compliance modulated for different classes of country) by a set date, provided that it receives set amounts of assistance. If this were not made available then (as in the proposal for Trade Facilitation in the July draft), compliance would not be required. In the Customs Valuation rules, for example, extensions can be negotiated on a case-by-case basis, and 'once agreed, are time limited and accompanied by a technical assistance and capacity building plan that is supposed to address the specific constraints which impede the reform process.' (Breckenridge, 2002). The problem with such a provision is that 'technical assistance' cannot guarantee a fixed outcome, so calculating the assistance required is not like calculating the cost of a new road. Whether the assistance is given effectively, whether the country has the capacity and the interest to respond to the assistance and use it effectively, and whether unexpected events help or hurt the outcome will all affect whether the assistance achieves the expected target.

In principle, there could also be a statement that the members believed that the countries need (defined) adequate institutions in order to comply, and that if the country did not have these at the end of the period, it could apply for an extension. This is not strictly necessary, because all the rules provide for extensions if a country applies and it is approved, and, as discussed above, it is not clear that adding unenforceable statements of intent is useful in WTO provisions, but if this gave comfort, rather than false expectation of help, it would be acceptable.

One inconsistency in the WTO is between the use of categories of countries for trade SDT and transition periods for others. It would be more consistent either to assume that LDCs and other developing can be brought up to 'normal' trading rules within a fixed time, given sufficient appropriate assistance, or to alter the provisions on rules to allow designated categories permanent derogations from the rules. Support seems to be growing for widening the use of categories.

8.10 Assistance and synergies among the international organisations

Developing countries' trade can benefit from assistance by other international organisations: 'clearly not all the needs that developing countries may have for solving supply-side constraints related to their insertion in global trade can be addressed by means available in the WTO' (ICTSD, 2004 p. 21). In defining development policy and appropriate types of assistance for individual countries, the international organisations are trying to move to variations on an Integrated Framework approach. For LDCs, and some others, this requires the WTO, World Bank, IMF, International Trade Centre, and UN agencies to look together at the country's needs, and then define a package of measures including support from any or all of them, according to what is most relevant. The arguments that a substantial number of countries may be not yet, or not ever, able to use WTO SDT, because their problems are not in origin related to trade, suggest that a similar coordination should take place at the international level, and not be restricted to the current country-by-country exercises.

In principle, comprehensive assessment and co-ordination must be considered 'good things', and coordination with other agencies is one of the functions proposed for the 'monitoring' mechanism. A risk, however, is that this system is basically an aid approach, where the agencies confront the country. The extent to which the country defines its own needs or the agencies 'help' it to do so varies with the competence of country. (Any empirical evidence on this is difficult to trust because both sides have an interest in exaggerating the role of the country.) A simple copy of the way it operates at country level, therefore, might not meet the criterion that countries should define their own needs. The advantage of the WTO over the international financial organisations has been that its structure and the requirement that all countries join a 'consensus' for most agreements give developing countries a direct voice in decisions that they do not have in the international financial agencies (because of the system of weighted voting and representatives on a Board) or the UN (where the direct effect of decisions is less clear).

A second disadvantage to this proposal is that many developing countries do not share developed countries' confidence in the World Bank and the IMF as 'neutral development experts' (Melamed, 2003a). These institutions have had an approach to trade liberalisation which goes against the basis of the WTO: the economist's approach of seeing the economic welfare advantages of unilateral liberalisation rather than the negotiator's approach of preferring agreed simultaneous liberalisation. They are seen as prescriptive rather than consultative. Rather than treating all their members as equal, they distinguish formally and in their operational activities between developed countries, with which they have dialogues, and developing, for

which they design solutions. It is possible that an international forum where all developing countries face the agencies, rather than the Integrated Framework position of one country against the agencies, could alter the balance of power.

Another solution could be sequential coordination. If it is agreed that some form of funding needs to be a part of the WTO or its agreements, then organisations which have more experience in administering financing are likely to be better suited to managing this than the WTO itself. In the past, the informal phrasing of WTO agreements, that technical or other assistance 'should' be provided or that the non-food importing developing countries 'should' receive support, has not been regarded as binding by other international agencies. There is no formal way of passing a recommendation from the WTO to the financial organisations for action. The case where this came closest to happening was with the issue of preference erosion. The combination of needs for immediate assistance and eventual support for adjustment looked appropriate for IMF and World Bank funding. Following a joint letter from the IMF and the World Bank to the WTO, stating that they recognised the problem (IMF, 2003b), both organisations announced at Cancún that they were considering setting up mechanisms (Krueger, 2003; World Bank, 2003a).

The IMF had seen a need for intervention as soon as it realised the scale of the losses. It first suggested that the losses should be taken into account as part of the normal assessment of balance of payments needs, but in March 2004, it established the Trade Integration Mechanism (TIM) (IMF, 2004b) designed to 'mitigate concerns that implementation of WTO agreements might give rise to temporary balance of payments shortfalls'. It will provide funding within existing facilities, based on estimates of expected losses from preference erosion, with simplified procedures if these estimates prove too low. It is on normal IMF terms (i.e. interest bearing). The (normal IMF) criterion of balance of payments difficulties means it is not directly tied to either a country's total loss from preference erosion or its net loss from a WTO settlement.

The World Bank was less convinced that there was a problem, or that it had a responsibility. It emphasised that most poor in developing countries were not in the preference dependent countries or the LDCs, so that measures to help these did not meet development needs. Although it noted the IMF results, it thought that preference erosion could be largely compensated by expansion in other exports (partly because it did not allow properly for sugar quota effects), while trade facilitation and more liberal rules of origin would 'attenuate the impact' (World Bank, 2003b p. 218).

Although it temporarily reversed its position and joined the IMF before and at Cancún in offering to help, it has now returned to opposing special measures. Any needs, including those arising from preference erosion, should be considered as part of normal development assistance (Wolfensohn, 2004).

This, however, does not provide the certainty or formal link to WTO changes that developing countries want. It does not believe that an automatic entitlement would be consistent with its fiduciary responsibility or its development mission. As there is no formal requirement for it to coordinate with the WTO on policy (only an informal one), it fears that this would be regarded as yielding to external pressure and external concerns.

A formal link, such that the WTO could identify a need, and delegate it to the IMF and the World Bank to fill, would be a major increase in international coordination, but might be a necessary step in improving international governance. UNCTAD (2004b p. 76) argued that ‘the “openness” approach, in order to work, requires coherence between national development strategies and global processes and disciplines, as well as policy coherence between and within the various aspects/ sectors of the global economy that impact on development prospects of developing countries. All these are lacking to some extent in today’s global economy’.

9 How to determine eligibility for SDT

The July 2004 WTO statement refers to four categories of countries: developed, developing, least developed, and, in the agriculture section, net-food importing developing countries (NFIDC).⁴⁸ It also recognises a, presumably temporary and changing, category of 'recently acceded' countries. By implication, it recognises developing countries dependent on cotton as another relevant category. The WTO Agreement on Agriculture recognises a broader category than LDC as entitled to different rules on subsidies, and the agreement modifying the application of TRIPS to drug imports established another distinction, between those countries that declared they would not use it and those that did not. For agreements on rules, including Customs Valuation, TRIMs and TRIPS, individual countries can ask for delays in compliance, and this is regularly conceded. Acceding countries have sometimes been subject to different rules from existing members in their 'class' (for example China has a different *de minimis* rule from other developing on agricultural subsidies, Swiss Delegation, 2004), and have faced more pressure to reduce their barriers to imports than countries faced in the last multilateral negotiations.

Some of these categories are in principle determined by fixed criteria. Those under the Agreement on Agriculture are based on income in 1994 and the LDC are based on income plus other characteristics (see below), but even membership in these categories is subject to formal designation, not automatic. It is the agreed list of countries, not the fact of having the characteristics, that is legally binding. Some use less well defined criteria, but are subject to approval, such as the NFIDCs and the individual derogations. Some are in form self-designated: the 'developing' and those who have not withdrawn from the TRIPS provisions, but in practice these are subject to challenge. There is thus already a range of different systems of classification, general, by sector, and on a case-by-case basis, and different provisions for defining membership, so any proposal for change can find some precedents in the current system.

All the fixed definitions are now basically poverty measures, although earlier versions of the LDC definition had more of a development content. This is not consistent with the justifications for special treatment in trade: that countries at different stages of economic or administrative development have different trading or policy needs, not that the poorest need most help. They also frequently exclude large countries (e.g. the definition of LDC includes a population maximum). The argument that SDT represents a

⁴⁸ The Chair's first draft of the statement referred to an additional class (or classes), 'preference dependent, commodity dependent countries' and mentioned 'the concerns of small, vulnerable developing economies' but specifically said that these should not be a sub-category (WTO, 2004d).

balance between assisting developing countries and limiting the damage done to the interests of others justifies reducing the expected 'damage' (as always, in WTO, mercantilist, terms) by excluding large or more competitive developing country traders or simply by reducing the total number of countries. This may also increase the benefits if it increases the acceptability of any proposal.

There has been acceptance of other groups in the application of preferences, defined by long-term relationships or geography. Some have had formal approval through waivers; others are allowed *de facto* because they have not been challenged.

There are a variety of proposals for modifying the criteria used, particularly at the least developed-developing line. Some are attempts to find a more rational way of measuring poverty and/or need for special trade access or rules; some introduce new or more cut offs. As the negotiators are proposing them for specific purposes, countries' special interests are of course in play, but this is no more true here than in all trade negotiations. It need not prevent others from looking at their costs or benefits, to the proposers and to other countries, and, from a more objective point of view: asking if they come closer to trade or SDT criteria including: efficiency, help to change developing countries, equity, transparency, simplicity, consistency.

Two general questions about the type of classification are (1) whether it is administratively (or politically) feasible to have separate definitions for different aspects of trade policy, and (2) how many levels are enough to provide good targeting without being too complicated. There is also the issue of whether countries should describe themselves or be placed in categories by some external assessment. There is then a range of proposals for alternative bases for classification to replace the current definitions. The final question is how to decide when a country should move from one level of a classification to another. If countries are offered special treatment because being small or vulnerable means they have different needs, this could also be subject to negotiated self-selection.

9.1 Possible methods of classification

General or issue specific or country-by-country classification

Common and transparent rules are one of the objectives of the WTO trading system, and achieving a more unified system was stressed in the Uruguay Round, so the choice has been for minimising the number of categories and the number of different periods of adjustment, but all the justifications suggest a need to differentiate more precisely among countries.

The long tradition of country-by-country assessment for rules, and the comprehensive Trade Policy Reviews and the discussions of them by WTO members suggest that there are no practical arguments against a country-by-country and issue-by-issue approach to granting special treatment. This

might, if there were no problems of balancing a country's needs against 'damage to others' lead to an 'ideal' solution (c.f. EGDI, 2004). But there is also a negotiation issue: SDT requires other countries, especially the developed, to accept some 'damage' in order to increase the benefits of integration for developing countries. Developing countries, particularly the weakest, feel more confident in acting in groups, normally led by larger or more developed countries (even in the G90: Bangladesh for the LDCs, Mauritius for the ACP and Africa and, in some cases, South Africa for Africa).

Developed countries (as discussed in chapter 6) have argued that they would be willing to offer more to groups more concentrated at the lower end of the 'developing country' group, but developing have generally decided that they will gain more by staying in larger groups which offer additional bargaining power than they will lose by not relying on developed country offers.⁴⁹ In the discussions of general SDT, this has produced a deadlock. In the specific issue negotiations, the traditional groups have achieved some changes, while the proposed new groups, such as the 'small' or 'vulnerable', have not achieved recognition.

Regulated or self designation

It is normally assumed that a rule-based organisation like the WTO cannot allow unregulated choices of category, i.e. allow individual members to choose whether to accept the rules, and that it is an anomaly that there is no formal regulation of the designation 'developing country'. Both GATT and the WTO, however, have chosen to continue this 'anomaly'. While it is argued that the GATT, as a provisional agreement, never had the power to define a group, and had to live with the categories in its original treaty, the fact that it changed many of its other provisions, and added the category of LDC contradicts this. It seems possible that the WTO, by a declaration or interpretation of its rules (even in the absence of a negotiating Round) could define the coverage of concessions for developing countries. It is not done because the opposition of developing countries prevents it. Moreover, it is not certain that all developed countries want a definition.⁵⁰

The history of changes in the 'developing country' group does not suggest a consistent or development-based approach. There was pressure on Korea

⁴⁹ 'Agreeing to a more secure WTO basis for partial preferences during the Doha Round would put a huge strain on developing country unity which (given the WTO's consensus decision making) is a *sine qua non* for an agreement, but without it preferential market access is unlikely to provide an effective palliative to unfair Quad protectionism.' (Stevens, 2003 p. 12).

⁵⁰ The recently announced reform of the European GSP suggests that the EC wants to use its own definitions.

to give up its right as a developing country to take balance-of payments measures. More recently, India has been restricted, under a dispute, from taking such action, although on the grounds that it did not need it for the development purpose stated, not that it was not a developing country. Some developing countries have deselected themselves (when joining the EU, for example). Others were effectively excluded because they could not be active in the developing country group (South Africa in the 1980s). Others have been added when they could have been excluded (Mexico joined GATT when it was already considering membership in NAFTA), or effectively excluded on accession (China). This suggests that the definition is negotiated, not determined by neutral criteria. The WTO is about negotiations, not about aid to the most deserving, so this is not intrinsically against its purpose.

Some of the criteria-based classifications (including that for LDCs) have an element of self-selection because they include policies that countries can influence, and because countries can lobby for or against reclassification. If countries' own policies can influence whether they are eligible for special treatment (as may be true for the social or diversification indicators), there may be worse problems (of 'moral hazard' when countries are or consider themselves better off outside the normal rules) than from open negotiation.

It is not realistic to suggest that any classification be defined only on 'objectively quantifiable indicators of a country's level of development and ability to undertake commitments' (EGDI, 2004). There are no agreed measures of 'level of development'. Different political priorities would determine what weight should be given to different indicators. It would be very difficult to establish indicators of a country's ability and institutional capacity to undertake commitments, or agree who should make such an assessment. Even if indicators could be agreed, the fact that SDT represents a balance between a country's needs and damage to others means that the boundary must be negotiated. In any definition of criteria, the choice of criteria will be influenced by countries' knowledge of where they will fall.

The most recent WTO agreement, on extending the TRIPS exemptions for public health purposes to importing countries, August 2003, did not attempt to define criteria. Although trying to define a small number of countries that did not have access to cheap medicines, from either their own production or other sources, might have seemed a logical approach to bridging the differences during 18 months of negotiations, it was never suggested.

The mention of 'those economies where cotton has vital importance' in the July 2004 statement did not attempt to define this, but implicitly takes those countries which have lobbied for special standing as the relevant group.

The WTO is not an impartial development analyst, and will not behave like one. This of course means that a new classification could also be

negotiated, for example if countries are offered special treatment because being small or vulnerable means they have different needs.

9.2 Possible classifications⁵¹

Developmental differences

For the LDCs, implicitly since the Enabling Clause, explicitly from the Uruguay Round, the WTO has used the list adopted by the UN. The concept had been introduced by UNCTAD in the late 1960s; its list was adopted by the UN in 1971. The definition is not stable: its composition has been altered and is subject to political pressure. The formal definition as given by the UN (UN, 2004) is by list, not by criteria. Its first list of 'least developed' countries in 1971 was based on per capita income (below USD100), adult literacy (below 20 percent) and share of manufacturing in GDP (below 10 percent). It was thus a combination of poverty and economic structure. At the time, 24 countries were included.

In 1991 (now through the Committee for Development Planning) the list was revised, to add a criterion of size (a population of under 75 million, except for Bangladesh which had already been included), and to introduce more complex measures of social and economic development. Income remained one component. The Human Resources measure became the APQLI, an average of indices of education (in turn decomposed into the primary and secondary enrolment ratios and adult literacy, the original indicator), nutrition: daily calorie intake, and health: life expectancy at birth. The Economic Diversification index became an average of share of manufacturing (as before), share of industrial employment, export concentration, and energy consumption per capita. A least developed country was

- EITHER one below a cut off on all three components: for income, this was an absolute number; for the education and diversification criteria, it was the boundary below the most developed quartile of 67 low income countries,
- OR below the income level
 - o AND below either of the others limits,
 - o AND having 'other qualitative elements': limited agricultural land, mineral exports, rainfall, instability of agriculture, high aid dependency, land locked or isolated, prone to droughts, cyclones of floods, or a population of under 1 million.

There was a margin between the eligibility and the graduation points to avoid over-rapid graduation.

⁵¹ Based in part on Page 2001. Appendix B summarises the definitions used by the World Bank, IMF, and OECD for aid purposes.

The 2000 revision of the index numbers, conserved in 2003, kept the population limit and a fixed income level (now USD750 for inclusion, USD900 for graduation). It revised the Human Resources measure by altering calorie intake to percentage of daily requirement and the mortality to child mortality. It renamed the Economic Diversification index Economic Vulnerability, thus clearly shifting the justification for this measure from its trade-related origins in UNCTAD to a poverty/aid focus. Vulnerability was, by intention, a condition that a country cannot easily alter, while diversification was a result of initial conditions and policy. This moves it away from criteria suitable for temporary SDT. Although it kept export concentration and merely changed share of manufactures to manufactures plus modern services in GDP (economically justifiable, but probably not available in most countries' data), it substituted instability of exports of goods and services and instability of agricultural production for energy and industrial employment. It also added a population size variable, partly because the General Assembly had resolved (UN 1998 vulnerability) to devise a 'vulnerability index...for small island developing states'. To be added to the list, a country must be Least Developed on all three measures; to remain in LDC, it must be on two of the measures.

The significance for the economy of the fluctuation variables in the UN index, for exports and agricultural output, is in practice likely to be closely related to diversification: more diversified exports may fluctuate less, and the importance of agricultural variability is less if output is diversified. Economic vulnerability still depends partly on good or bad policies and partly on income level, and is not a long-term characteristic, as well as open to 'moral hazard'. The LDC measure is therefore inappropriate by the criteria of certainty and transparency, even if these problems mean that the 'vulnerability' measure is not succeeding in its intention of identifying permanent characteristics.

In addition to all these criteria, however, there was the additional criterion of approval by the General Assembly: only three countries have accepted graduation (Botswana, Cape Verde and the Maldives). Timor-Leste was added to LDCs in 2003. The way the 2000 review was conducted suggests the classification is partially negotiated. Vanuatu qualified and was recommended for graduation in 1994 and 1997, but persuaded the General Assembly not to graduate it. The 2000 review allowed all the borderline countries to stay least developed (non-index vulnerabilities or uncertainties about the data were found for all). In addition, Ghana, Senegal, and Congo were found to be now eligible. Senegal was recommended for inclusion; Congo was not because 'its high level of economic vulnerability is associated with its status as an oil exporter'. This seems surprising as high oil or mineral exports was to be an indicator to put a country's status down, not up, suggesting other reasons for not favouring Congo. Ghana was eligible, but had refused 'demotion' in 1994, and did so again.

The disadvantage of including social indicators of health and education is that this 'rewards' countries that have a large discrepancy between what they could achieve with their income and how they allocate it. Income alone would avoid the problem of rewarding poor social policies. It is inadequate as a measure of ability to adjust, but may be a better measure of the ability to meet the costs of adjustment. It would also increase the certainty and transparency of the definition, and thus be nearer to the criteria for SDT suggested here.

For either the composite measure used for LDCs or a simple income measure, there is an important question of whether the current boundary is wrong. Other divisions between lower and higher levels of developing countries can be found at a higher level, for example the AGOA classification (which excludes only South Africa and Mauritius) and the Agreement on Agriculture classification for subsidies (at about USD1000 per capita). Even the current definition of LDC, however, gives 50 countries; not all are members of the WTO, but 30 are, so 20 percent of the members. A measure that included 64 members (as the G90 does) would be more than 40 percent. These are high shares to treat as 'special'. Raising the cut off point is not under discussion⁵², although analysts have tried to identify 'clusters' of countries and suggest that there should be a higher boundary, e.g. OECD 2003. Introducing a new category would be difficult at this stage of the goods negotiations, as the proposals are based on finely balanced bargains. In the other SDT negotiations, it would be possible, but would reopen the sterile debate of whether the category or the new concessions should be discussed first. Any discussion of changing the boundaries would be divisive (c.f. Hoekman et al, 2003). Although the LDC category is divisive, new divisions would seem more painful than old ones.

Developing countries are self-chosen (see below). The characteristics considered important, in addition to those included in the designation of LDCs, are institutional weakness and specifically inexperience in using international institutions. As noted above, for many specific purposes, there is differentiation within this category (NFIDCs, cotton producers, non-pharmaceutical producers, etc.), but there is no formal differentiation for institutional or infrastructural weakness.

In this context it is worth recalling that the implementation of some WTO agreements (i.e. Customs Valuation, Anti-Dumping, TRIPS) is burdensome for countries that have poor resources, shortcomings in administrative capacity and/or an underdeveloped infrastructure. This is less of an issue for the LDCs, who often are relieved of the obligations in these agreements.

⁵² 'There are no good reasons - except the difficulty to agree on specific extension criteria and the "*droits acquis*" of LDCs - not to enlarge the group of very poor countries that receive LDC treatment at WTO.' (Swiss Delegation, 2004 p. 5). Unfortunately for such recommendations, this difficulty is probably insuperable.

However, other poor developing countries that do not have LDC status are severely affected (National Board of Trade 2004, p. 273). This problem has in one way or another to be dealt with in the discussions on SDT in WTO, both within the present Doha Round and beyond.

De facto differentiation happens through formal or informal exceptions from rules, but, as argued above, these are less satisfactory than a formal provision would be.

Permanent differences

There has been increasing advocacy of taking countries' natural 'vulnerability' into account (as the 2000 LDC definition tries to do). If unalterable conditions are allowed to modify a country's obligations, this requires both careful analysis of how far they (or their consequences) are in fact beyond policy intervention and good measurement of their effects. The most often mentioned is natural disasters. How well countries prepare for these and manage their consequences, however, is a major determinant of the size and nature of their effects (in crude terms, natural disasters are likely to have physical effects if preparations and management are poor and financial costs if preparations are good). The costs should be expected to constrain growth, *ceteris paribus*, but countries differ in other characteristics as well. Evidence suggests little correlation between disasters and slow growth (Encontre, 1999 on disasters in islands, supported by more recent findings by the World Bank). The effects may be significant for poverty (if the poor are either more subject to shocks or slower to recover).

More permanent characteristics include: geographical dispersion (mountainous countries or archipelagos, for example), because it raises production and administration costs; unfavourable climate (too hot or too cold); poor natural endowments (land, minerals, marine resources). The first vulnerability index (Briguglio, quoted in Briguglio, in Page ed. 2000) included dependence on trade, transport costs (measuring remoteness), and proneness to natural disasters. The Commonwealth Secretariat has developed this and proposed a combination of: a cut-off for population, income, income variability, share of exports in output, low diversification, and natural disasters. The Caribbean Development Bank has attempted an ambitious index (Crowards, 2000) including several diversification measures, susceptibility to natural disasters, dependence on imported energy, and reliance on external finance, but also 'peripherality' (measured by the cost of freight). Several of these do not seem to meet its objective of measuring 'external shocks largely beyond the control of the country'. The extreme version of the view that some countries are at a permanent disadvantage is that they are so small or without resources that there is no economic structure which will make them competitive (even finding their comparative advantage only makes them less poor, not developed) (Winters and Martins, 2004).

There are three problems with all of these as criteria, however. First, there are no convincing correlations of any of them with long-term slow growth. Second, that every country suffers from at least one (and in the absence of evidence that any are more serious than the others, will make a case for it). Finally, it is not clear how trade preferences or exemptions from trade rules could counter any ill effects from these problems. Aid policy may want to take such characteristics into account, perhaps providing assistance in an emergency (when a country is least likely to be able to seek markets) or by building appropriate infrastructure⁵³. Other temporary 'situations' are also likely to need non-trade measures. Low commodity prices, for example, suggest a need to invest to diversify. It will, however, always be more efficient to provide goods from a more suitable region than to encourage inefficient production.

Size

Size has been strongly advocated as an important characteristic. It is normally interpreted as population, with 'small' defined at about 1.5 million, but as with 'least developed', those just above with similar characteristics also want flexibility, and a larger group have identified themselves as 'small' in the WTO. The 2000 UN index for LDCs included a variable which takes account of all countries' populations, but most of the discussion assumes that only the extremes matter; middle range countries have no special advantages or disadvantages from size; exceptionally large should not receive special treatment and are excluded from LDC status, although not from developing, and exceptionally small need more assistance. Flexibility only for small countries restricts the effect on protectionist importers or on the international system of rules, while flexibility for large countries will have large effects. Arguments for size as a criterion also cite the correlation of size with other characteristics regarded as disadvantages (being an island, or susceptible to natural disasters, for example, Commonwealth Secretariat/World Bank, 2000 p. 5) but it seems better to consider these individually.

Large is in practice defined as India and China. From the point of view of other countries and the international system, one reason is that anything they do or any product they export has a very large effect, so that the boundaries between allowing special treatment and avoiding damage to others must be moved. As being large may suggest that they have less need of external markets, and therefore that trade preferences are less necessary and perhaps also less beneficial, the damage to their development may be less than refusing SDT to smaller countries would cause. There is no shortage

⁵³ Guillaumont, 1999 found that the marginal contribution of aid to growth was highest in vulnerable countries.

of people to implement rules. If the WTO's objective were to promote development, excluding a large number of poor people would not be consistent. If it is to promote all countries' trade and growth, this can be justified. But accepting their exclusion requires minimising any further disadvantages to them from granting SDT to others. They should not suffer from trade diversion as well as losing the possibility of trade creation from preferences; flexibility in rules for other countries should avoid disadvantaging them.

For small countries the '*de minimis*' argument has many precedents, in the WTO and other legal systems, but is perhaps more difficult to make in the WTO because of the great stress placed on the WTO being a 'rule based' system, i.e. that the certainty and fairness of the rules are central, not merely instruments to achieving welfare improvements, and the argument used earlier, that even small countries can have large effects on small trading partners. If damage to others is the criterion, a measure such as share in world trade would be more appropriate than population, but is not proposed, although there is the flexibility given by *de facto* immunity from disputes if they do not damage others.

Smallness may inhibit diversification, and for this small population is likely to be relevant. Large markets must be found abroad, if they do not exist at home: this implies that market access is more important than normal for such countries. For very small countries the minimum efficient units of production for some industries will not be attainable, limiting the range of activities, and the total number of products will be constrained. The potential for domestic competition may be reduced, making the transition to international competition more difficult, and companies will be small, at a disadvantage in world markets. Lower trade barriers gain further importance because they seem to reduce the disadvantages of size for companies. Many transport systems or routes are only economic with regular large shipments, which small producers cannot offer. In practice, however, many move to heavy dependence on services or remittances, where domestic production scale is less important, so that diversification is different, rather than less. Small countries do have more volatile growth, but there is no evidence that this matters. Even a study supporting a vulnerability index found that small states have higher income and grow more rapidly than large (Atkins *et al*, 2000 p. 5).

A small and concentrated population clearly increases vulnerability to single natural disasters: one cyclone or flood can damage virtually all of a small country, but the same area or population would be only a small part of a large one. Against this, large areas may suffer more events assuming an even distribution.

Small population's obvious WTO-relevant effect is a limited number of people to administer or change rules (CS/WB, 2000 found a wage bill for the public sector of 31 percent for small countries and 21 percent for large). If

the rules are good for efficiency and the international system, however, these countries get particular benefit from them. If both costs and benefits are higher, it cannot be certain that they should have more of the costs met by the international system (through technical assistance, for example, c.f. IMF and World Bank, 2000 p. 5).

However plausible they seem, both the economic and the natural disadvantages of smallness can be answered by the lack of evidence that small countries are poorer or more slowly growing. It is intellectually interesting to determine what affects fluctuations in output and income, and in particular the contribution of size to this, but the only justifications for special treatment which seem demonstrable are that they have restricted domestic market structure and are more dependent on external markets, therefore they are more helped by access, and that they may have administrative constraints on adjusting rules, and therefore need extra time or assistance. SDT for them therefore could be justified on the criteria suggested here. But the fact that small states cannot demonstrate that they are poor makes it difficult for them to make a development case, and the fact that they are small limits their negotiating power.⁵⁴ Clearly if some small countries feel that the general rules are so inappropriate that the advantages of certainty and consistency are completely offset, they have the choice of leaving the WTO. None has done so (and more are joining). If they do have different needs, this adds to the pressure for either a less standardised system, or permanent differentiation, but the evidence is too weak to support major changes.

Islands led the pressure for special treatment in the 1990s. Small Island Developing States (SIDS) are still officially areas of concern for UNCTAD. In addition to 'smallness', islands claim remoteness (both distance from markets and distance within archipelagos). This significantly raises transport costs (Briguglio in Page ed. 2000). Not all islands share it (e.g. the Caribbean), however; sea transport has always been relatively low cost (compared to land); and isolation may have some advantages (e.g. for tourism, Encontre, 1999 and Read, 2000 notes that islands tend also to offer a high ratio of coast to land and biodiversity). The costs may be diminishing with better communications and the growth of traded services. There are no

⁵⁴ Some have suggested that size should not be included in natural characteristics 'largely beyond control': if smallness is a disadvantage, small countries should merge, and if they do not, they should accept that this is a choice which they have made, for whose costs they should not expect special compensation. Leaving aside questions of how far conditionality should impinge on sovereignty, there are practical problems with this solution. Many of the small countries are small because population centres are widely separated for natural reasons (islands, mountainous countries). Others are small because political or strong economic policy differences have made joint action effectively impossible. (The history of decolonisation attempting to leave behind 'viable regions' in Africa is as discouraging as the attempt to preserve the Spanish vice-regencies in Latin America.)

examples of seriously affected islands that are not also small, so it is not clear that a separate category is needed, and dividing the 'small' countries would further weaken them from a negotiating point of view. Perhaps more important in defining an efficient response, the problems of islands make all conventional trade particularly difficult. Improving market access or other WTO-related SDT may not be a solution. Allowing islands to subsidise transport costs would, like any subsidy, encourage diversion of production into inefficient sectors.

The view by some small states that they need special status (Grynberg and Remy, 2004) has not been accepted. The special mentions of small islands in WTO documents led to an attempt for 'large agrarian' economies to achieve the same (agriculture is associated with poverty and volatility, so needs special consideration), and to some lobbying by land-locked states, and it could have led to a general increase in special pleading. It is not clear how much of this was serious and how much an effort to stop small states and islands, but the result has been the latter. In the discussion before July 2004 there was increasing opposition to any move to give small states formal status, and the proposal in the first draft of the decision (WTO, 2004d) to take account of 'the concerns of small, vulnerable economies...without creating a sub-category of members' were altered in the final draft (WTO, 2004c) to a reference to the 'trade-related issues identified for the fuller integration of small, vulnerable economies into the multilateral trading system'. The July 2004 statement avoided giving them any special status, and was in some ways a step back even from the Doha mandate.

9.3 Selection and graduation

As long as the SDT offered to LDCs was little different from that for other developing countries, as long as all SDT was regarded as an unimportant issue by most developed countries, and as long as GATT regulated only lightly what types of SDT were actually offered by developed countries and to which developing countries, the issue of which countries were in which classes was more for academic debate than active negotiation. All these conditions have changed. For non-LDCs at low income levels, often with close regional association to LDCs (Kenya in East Africa, Zimbabwe or Mauritius in southern Africa, Ghana or Nigeria in West Africa), what was a minor technical difference is becoming a conspicuous disadvantage, a potential cause of diverted investment, and at a minimum a complication from rules of origin in their own regions and in exports to other markets.

There has also been pressure to find ways of moving countries from 'developing' to 'developed' because of the wish by developed countries to concentrate SDT on a smaller number of countries. Outside WTO negotiations, in their own GSP programmes, they have wanted to continue to make their own definitions. Developing countries suspect that the developed

countries want to divide and weaken the developing country group. It is probably fair to say that no one has a consistent position on graduation. Constant categories imply a profoundly pessimistic model economically, but could have some negotiating advantage if the more successful 'developing' (and least developed) countries remain committed to the interests of those still in need, i.e. resistance to graduation may benefit not only the reluctant country but those who gain from its advocacy.

Non-LDC developing countries cover a much wider income range than LDCs from around USD400 per capita to around USD10000, from countries which would be 'least developed' by one or two criteria to some with income levels above some developed. As in any broad category, those at the lowest end feel seriously disadvantaged, while developed countries, as mentioned above, claim that if some at the higher end were excluded they would be more sympathetic to offering SDT (the costs would be lower). The questions of where the boundaries should be set, and how many classes there should be, are now important, and closely related. If, as several countries have suggested, there were more categories, with smaller differences in treatment, the boundaries would matter less, and the shock of moving from one to another would be smaller (Tortora, 2003), but the negotiating power of each group would be less.

The need to secure General Assembly approval to change a country's LDC classification has made it *de facto* as difficult to change LDC status as to persuade a developing country to redesignate itself as developed. The stickiness of the categories is such that there has even been pressure to consider instituting temporary measures to meet exceptional needs, if a developing or even a developed country finds itself badly affected by an external event or needs to recover from bad policies (of a former government, to avoid moral hazard). The reaction of some developing countries, that they could not allow developed countries to be eligible, suggests that the categories have come to be regarded as 'rights', as negotiating achievements, at least as much as suitable treatment for needs. As noted above, however, normal SDT is unlikely to be the best way of dealing with a temporary problem.

The history of the SDT negotiations in the current Round (chapter 6) suggests that formal graduation is not a practical proposal, Developing countries suspect the motives of developed countries, believing that they want to remove privileges from some countries at the upper end of the 'developing' category. They do not trust their argument that developed countries want to offer more to those at the lower end. Formally defining which countries are eligible to be 'developing' and then a procedure for graduating them would cause controversy, and there are contradictory criteria for such definitions. Any 'logical' structure from a development point of view, with more categories and boundaries determined by economic criteria, not past alliances, might make negotiation more difficult. If there is

any validity in the analyses which suggest that least developed or small countries are at a disadvantage in trade and in trade rules, it is hardly surprising that the developing country leadership in international institutions usually comes from non-least developed, non-small countries.

Excluding some of the most advanced developing countries from 'developing' status would have little practical effect and could be an obstacle to encouraging and demonstrating effective developing country participation in negotiations. There is little support by developed or developing countries for forced graduation. Although some low income non-LDC may see excluding the most advanced developing as the only practical way in which they will get significant preferences, and a coalition of low income non-small, non-LDC would have some large members (India, Indonesia, Pakistan as well as other Asian and African countries), of these only India is a major actor in the WTO, and it normally acts with the higher income developing countries. At present, there is no effective support for redefining 'developing'.

But the record of self-selection offers some potential for breaking the stalemate. The precedent of the agreement-specific list in the Agreement on Agriculture shows that a non-standard income group can be accepted, and the new framework for agricultural negotiations, with special mentions for cotton and NFIDCs, carries this further. The format of the services negotiations allows individual treatment.⁵⁵ The declaration by some developing countries, not corresponding to any income or other group, that they would not use the TRIPS/drugs import provisions could be copied, and given more legal status, in other agreements. The suggestion that 'particular concerns' 'should be taken into consideration, as appropriate, in the course of the Agriculture and NAMA negotiations' (WTO 31 July 2004) suggests that special exceptions could be built into other issues. There is thus already differentiated SDT according to a country's level of development (as suggested in EGDI, 2004), which could be extended, but it is increasingly varied, with different categories for different purposes. There is a history of opposition to introducing such differentiation into individual negotiations, and it is not explicitly provided for in the Doha mandate (Missão do Brasil, 22 July 2004). Nevertheless, if other possibilities are excluded, it may be less impossible than the alternatives.

It might seem that the obvious solution to the difficulty of persuading countries to 'graduate' would be to make graduation attractive, either by highlighting its advantages, if it has them, or by giving it advantages. But while this is possible in some cases, most graduation is likely to remain unattractive. For any country, to be a 'free rider', to have all the benefits of

⁵⁵ The old, pre-formula, product by product negotiations in the goods negotiations could also allow some differentiation, for example liberalisation on tropical products in the Uruguay Round.

membership in an organisation, and to ensure that all the other members obey all the rules in a predictable way, but to be allowed freedom from making concessions or obeying rules, is an attractive proposition. It is true that if countries listened to economists they would 'know' that liberalising is beneficial, not a matter of making concessions, and if they listened to some public choice theorists, they might believe that accepting rules would strengthen their governments against uninformed publics. But there is no reason to expect developing countries to believe these theories and act on them; developed countries do not. For a few countries, the labels matter, and 'graduation' is seen as intrinsically desirable: Ghana's refusal to accept LDC status; South Africa's decision to remain developed, when it could have declassified itself in the 1990s; the promotion of the Mediterranean countries on entry to the EU.

A more convincing demonstration that most countries consider that the new rules are actually beneficial (with a willingness to change them if they are not) could help. If developed countries actually believe that the rules are beneficial and that more open market access is good, then they have no reason to believe that developing countries will not choose to graduate. If they do not believe this (and the fact that most have not liberalised all their own trade gives that impression to their trading partners), the issue should be seen not as graduation, but as negotiating for differentiated access. A clear move towards reducing trade barriers for all (so that it became clear that the benefit of being least developed or developing was only temporary better access, not indefinite exclusive access) would reduce the reluctance to move.

The whole concept of SDT to help development in the context of a rules-based system to improve the economic conditions for all inevitably mixes development, economic, and negotiating objectives. Particularly with respect to the more advanced developing countries, developed countries may do better to move more to negotiation. The different types of differentiation for different pillars in the annex on agriculture in the July 2004 agreement represent a move in that direction, and the new areas like GATS in the Uruguay Round and Trade Facilitation in the Doha Round offer more possibility of differentiation, secured through agreement.^{56,57}

⁵⁶ It would be wrong, however, to regard the type of formula proposed before Cancún for non-agricultural goods, where the size of a country's tariff cuts was to be determined by its initial average, as SDT. It seems to have been intended as that by the Chair of the negotiating group, and interpreted as that by some developed countries (c.f. Swiss Delegation, 2004), but although the average bound tariff rates of developing countries are higher than those of developed countries, there are wide variations and no systematic variation by level of development.

⁵⁷ The proposal in May 2004 by the European Trade Commissioner that a new, not clearly defined, category be created (the G90) could be interpreted as an attempt to combine the LDC and small categories, plus the countries slightly above the limits in both categories who might feel most aggrieved if they were excluded. It did match a negotiating group, and could therefore be considered a step in the direction suggested here. But it was not defined in such a way as to correspond to any of the criteria under discussion and has not gone further.

That SDT is a compromise between development needs and trade objectives suggests that a classification that has more than one element may be necessary, to identify need for SDT, subject to constraints of effects on others. The current definition of LDC attempts to do this by combining a composite measure of poverty with population size, but the discussion above suggests that these are not sufficiently good measures of either need or effect. For any issue-specific SDT, it might be possible to choose appropriate and identifiable measurements, for example a country with no preparation for new rules (such as TRIPS in the Uruguay Round or Trade Facilitation) would need the maximum adjustment time and assistance; a country with a large recording or entertainment industry, or major importance as an entrepôt trader, might impose particular costs if it did not adopt the rules. For trade in goods, what a country 'needs' in SDT and its ability to use this freedom are more difficult to define in detail, but perhaps more obvious in general terms (more access will be good for most countries; more ability to define their own policy is potentially good for most).

Here, or for other areas where there are no specific criteria possible, and in the absence of any agreed measurement of economic development, income would be a reasonable proxy for need and share in world trade for risk of impact. Trade share is suggested in Davenport 2001, on either an aggregate or sectoral basis; others have argued that a sectoral basis is necessary because of disparities within countries.⁵⁸ This, however, brings in areas within the policy control of country governments. The WTO has to deal with countries, not with individual sectors or regions within them, and certainly should not

⁵⁸ Stevens, 2002 pp. 13, 24 suggests a more elaborate assessment for agriculture, based on livelihoods, dependence on imports, and other measures relevant to food in order to 'identify a coherent group with special needs' according to criteria 'relevant to the 'problem' identified and measurable using existing data'. This would produce a classification that was 'relevant and highly justified' as suggested by Swedish Board of Agriculture 2004, although different from the classifications proposed there. To avoid 'friction' caused by exclusion he suggests multiple new groups in an attempt to reproduce the cross-cutting interest groups which produced agreement in the Uruguay Round. It is unlikely that groups determined by external criteria can serve the same purpose as the self-selected groupings in the Uruguay Round, and not all analysts or countries would accept the particular model of food 'needs' used by Stevens, or by the Swedish Board of Agriculture, so it is probably impossible to meet the third criterion proposed by them, 'objective'. Other authors (surveyed in Matthews SDT 2003) have also tried to identify countries on the basis of food security criteria, and found widely varying groups. The exercise does suggest, however, that if countries did want to find a feasible 'relevant group' and agreed on 'relevance', e.g. on food security, it could be done. OECD 2002 attempted a similar exercise for services.

OECD 2002 also analysed non-least developed developing countries based on income, share in world trade, and the share of exports in their GNP, and then added additional variables for more detailed sectoral analysis, and for governance. From all this they identified clusters that suggested some of these countries were grouped with developed countries, while others were grouped with the LDCs. Their conclusion, that because some countries have different levels of development by their criteria, 'The results suggest that these countries... have indeed different priorities and needs in a trade policy context' (OECD, 2002 p. 20) takes a very technocratic view of trade policy.

reward countries for inequalities. Bringing national development strategies into the picture (as suggested in Hoekman *et al*, 2003) would give a more complete picture of need and ability to use SDT, but would introduce more uncertainties because of differences in what countries view as effective development strategies.

Where country-by-country assessment is likely to remain relevant is not in the negotiations, but in dealing with problems raised by completed agreements: the technical assistance needed to meet new rules, financial assistance for that or to meet the costs of preference erosion, temporary derogations.⁵⁹ The dilemma is that developing countries will expect to use group negotiating power to reach satisfactory settlement, because they do not trust developed countries to offer enough to make individual negotiation safe, and then they need to have confidence that they will be able to rely on discretionary judgements on the assistance necessary for them to meet the new requirements. In the Uruguay agreement, this process was followed, and 'worked' in the rules negotiations in the sense that there has not been massive dissatisfaction with the ways the rules committees have administered discretion on extensions of time. But there is massive dissatisfaction with the outcome then on agriculture, because it did not produce real gains in access, and on TRIPS, where there was no permanent differentiation⁶⁰, and disappointment at the amount of technical assistance. Finding answers to these three issues might reduce the legacy of distrust. It will still probably be the case that disappointment with the Uruguay Round means that less can be left to discretion in the current Round.

⁵⁹ The US (WTO, 2003b) suggested that for Trade Facilitation 'transition periods could be established for various discrete commitments within an agreement on trade facilitation, with a clear potential for varying lengths of transition established in terms that are linked to the individual Member's situation'.

⁶⁰ Michalopoulos, 2003 p. 2, suggests that the 'TRIPS Agreement should have contained substantial SDT provisions', and that it should be reopened to introduce differentiation. This is not, however, provided for in the Doha mandate.

10 How to achieve more effective SDT

SDT cannot be a substitute for national or international development strategies. But development is important and should not be hindered by the WTO. If possible, the WTO should promote it, but the WTO is a trade organisation. It functions by negotiation, and works best by offering a way for different interests and different approaches to operate without conflict, not by trying to achieve an agreed purpose. This is in some ways closer to the regulatory approaches of the GATT than to the exhortatory rhetoric of the Development Round. But it does not mean that the WTO should be neutral about development. It can encourage reforms and rules that promote development, and a more coherent international system could assist countries for whom adjustment is difficult.

SDT gives additional trade and resources to developing countries, and they are using the flexibility on policy that it offers. There is particularly strong interest in the differential provisions in particular agreements. SDT also gives the WTO the flexibility that it needs to reconcile the demands by some members for more rules and more enforcement and the extra burdens these place on other members, and thus preserve its role as the regulator of world trade. Any changes will need to be achieved through negotiations, not by a *deus ex machina* in the form of a group of the wise who will decide how to balance different countries' interests. This will require approximate matching of needs and outcomes. Discretion, controlled by well-defined processes, can then be used to improve individual outcomes. A combination of negotiations and agreements on ad hoc derogations (the WTO can allow any country or group of countries derogations of any type from any rule) could lead to better policies towards developing countries without any general rule. But a public commitment by WTO members could provide guidance and help a coherent approach. It could also help to rebuild the trust needed to operate a semi-discretionary system.

10.1 A framework – or some general guidelines for SDT in the WTO?

In the past, provisions for SDT have been introduced into WTO (and GATT) agreements in the past without the need for a framework. The issues which are most important according to the criteria discussed here and those which have attracted most interest on the part of developing country negotiators have been in the specific negotiating areas: special treatment in all the areas of agriculture; differential cuts and special access in non-agriculture; individual needs and possibly the introduction of new safeguards

in services, minimising the costs and maximising the benefits of Trade Facilitation.

In the Doha Round, the efforts to negotiate a framework have used negotiating capital with, so far, little result. Some of the points that would need to be settled in a framework, such as the purpose of SDT and the criteria for eligibility of countries, are more controversial than the practical decisions needed for specific areas. Defining the 'ultimate purpose' of SDT (EGDI, 2004) is not easy when it is not designed to operate on its own, but rather to be a set of modulations of WTO rules to make them better for developing countries. A framework for SDT would 'ensure predictability...it could also provide guidance in connection with the drafting of provisions in specific agreements...A framework agreement could help conserve developing countries' negotiating capital and prove a useful instrument in connection with efforts to harmonise trade and development.' Having a framework might also allow us to analyse what the existing provisions achieve. A new framework was originally proposed by some developing countries, and has been informally supported by some developed countries, including the US and members of the EU.

A middle way – a revised Enabling Clause

One way to break this deadlock could be to try to build on earlier solutions and texts. In the choice of trying to reach agreement on a Framework or come up with nothing, a middle way could be to build on the existing Enabling Clause and adapt it to the problems of today, taking into account the developments that have taken place over the last 25 years. The clause does not represent a full-fledged framework agreement. Rather it could be characterised as a set of general principles and a legal cover for various types of preferential treatment, as well as some very general formulations on the concessions and contributions that could be expected from developing countries in trade negotiations.

We propose language for such an updated Enabling Clause following this chapter. This could reaffirm that the WTO accepts the principle that some countries have different needs. It would provide renewed legal certainty for SDT. By putting the principles behind this back on the table it could help to encourage a coherent approach to SDT in all the individual applications, but without replacing these. Like the old Enabling Clause, it would need to be sufficiently flexible to remain useful even when development fashions change. This now means recognising even more variable levels of development and need. As noted in chapter 8 it could also allow plurilateral agreements in areas that impose excessive burdens on developing countries.⁶¹

⁶¹ The proposed text does not suggest differential application of the TRIPS agreement because this does not follow as directly from the principles behind the original Enabling Clause.

Framework necessary for a coherent approach in each member country

Irrespective of whether a framework may be achievable in the WTO or not, any country developing its own position in the WTO does need one. For an individual country, a framework is necessary to ensure coherence across a broad range of policies.⁶² The criteria suggested here could guide policy makers to define how to apply their objectives for assisting developing countries to the issues raised in WTO negotiations, according to their own choices on the difficult balances to be struck: between their own policy and rules, between costs to themselves and benefits to developing countries, between long term interests and short term pressures. Such definitions by individual WTO members could benefit developing countries by improving the predictability and transparency of negotiating positions.

10.2 What arguments might work with the developed countries?

SDT can be argued for on the basis of development need or self-interest.

Developed countries have accepted in the aid context as well as in SDT that developing countries need or deserve special assistance, even if this imposes some cost. The basic principle of SDT, therefore, does not need justification, but increasing it, where there are costs to the developed countries, may need the same debate as increasing aid budgets.

But in the WTO, SDT is also a demand by negotiators whose consent will be required for a successful Round. If developed countries want something out of this Round, they must make more offers, and some of these may be for SDT. The weakness of this argument is that it has been unclear whether developed countries do want anything significant from negotiations. That developed countries did participate in building up the pressure for, and then achieving, a restart of the negotiations in July 2004 suggests that the extreme pessimism of late 2003 on this may not be justified, but there is evidence in both the US and EU countries that business interests are not as strongly committed to lobbying for a successful round as they were in the Uruguay Round, and that policy makers have other priorities. Even in services, there is little evidence in the US, UK, or Sweden that business interests consider achieving a WTO settlement a major business priority. (Some argue that it is trade in general, not just achieving new access, whose priority has fallen, so there may be a balancing gain: that there is less pressure for new protection.) An interesting example of achieving support for increased SDT at national

⁶² 'In order to contribute to the achievement of the goal of equitable and sustainable development, all the components of our policy must be consistent with one another.' (Swedish Government, 2003 p. 7).

level is the establishment, and then the improvement, and the continuation of the US import concessions for Africa under AGOA. For an area with fewer historical ties than between the US and Latin America or between the EU and Africa, two US administrations, from different parties, established a preference scheme which is regarded as one of the most generous in its rules. This was not achieved by lobbying by business interests, but by NGO and Black interest groups. These convinced Congress not only that it was desirable to help African countries, but also specifically that allowing the relaxed rules of origin was necessary for them to benefit fully. US observers suggest that the greater political content to trade policy (perhaps because it is a direct national responsibility not a delegated European one) made such an initiative possible. But European initiatives for poor countries (EBA, like AGOA, was for a less traditional area) have also been possible. The interesting difference is that the provisions of AGOA were designed with careful consideration of what was needed to increase African exports, while EBA was a broader, less planned gesture. The proposals for revising the EU's GSP also suffer from lack of clear objectives. This might be the result of the lack of the more direct inputs into trade policy found in the US.

The Doha Round was initially helped by the reaction to 9/11, and the perception that a multilateral approach to trade was a necessary counter-balance to threats from outside. This was similar to the GATT dynamic where strengthening the non-Communist economies was an important motive (Tussie, 2003). An interest in improving prosperity in developing countries to reduce the threat of terrorism has been used as an argument for pressing for negotiations, and for SDT within this, but does not seem powerful at the moment.

10.3 Achieving agreement on a fund for preference compensation

Chapter 8 argues that some countries will have a measurable negative outcome from any significant liberalisation of trade because their losses from preference erosion will be greater than their gains from other parts of the agreements, so that only financial assistance can give them a positive outcome. Compensating them through a fund, rather than other trade concessions would be a major new initiative for the WTO, and one that could seem inconsistent both with its role as a trade agency and with other funding by developed countries, through their aid programmes and the international financial institutions. The reason for suggesting it is that the other proposals for dealing with the problem of preference erosion are more unsatisfactory and more difficult:

- Ignoring the problem has not made it disappear.
- Suggesting that countries find gains in other trade does not work for

some countries on any calculations of the net effect of changes in trade goods.

- There are reasonable estimates of the losses but no alternative funding sources.
- There are high estimates, but no good calculations of potential gains from complete freeing of movement of people (mode 4 of GATS). Such gains would certainly reduce the number of countries facing loss, but would require a willingness to open to foreign labour that has not yet been seen in developed countries (and a major transformation in some developing countries to a migrant economy).
- Asking other agencies to deal with the problem did not work when attempted on an informal basis for the problems of food importers in the Uruguay Round, and has not worked for preference erosion, because these agencies have their own priorities.
- Requiring other agencies to deal with the problem would require changing the purposes of the other agencies, and a major change in the relationship of the WTO to them.
- Asking aid donors to treat it as a special aid problem is unlikely to work well because aid agencies have other priorities (in some cases, formally established).

For any of the routes that required using other agencies, a formal assurance would still need to be built into WTO negotiations, 'bound' as enforceably as the tariff changes that would give rise to the preference erosion, because countries could not rely on a 'best endeavours' type clause for a problem of this magnitude. For technical assistance, a route seems to have been found, by directly linking the 'binding' of trade facilitation to technical assistance. This is not possible for preference erosion because the countries suffering preference erosion have no control over either the tariff cuts or the response of other countries to them, so there is no similar sanction available.

IMF and other estimates suggest the sums required are equivalent to not more than 10 percent of current aid flows. Direct EU support for sugar exporters could reduce this figure. The fund would have to be secure. While the most obvious form would be a required contribution, from all developed countries (only the developed, if it was part of SDT), how the contributions were determined could have various criteria (share of trade, income, 'guilt' in preferences...). If developed countries preferred to make voluntary contributions, to avoid the inference that they were being compelled to do so because of past 'errors' in preferences, this would be feasible, provided the commitments were legally irrevocable. Developed countries with a commitment to SDT or to improving countries' trade performance might have a special interest in supporting a fund. More cynically, countries with a wish to make a gesture of support or to lead a high profile initiative could adopt this. Funding should not reduce other aid flows.

10.4 Other initiatives by developed countries

Although there are a variety of proposals - for instant concessions on all manufactures, all goods or all products of LDCs - the complications created by previous 'generous gestures' by developed countries suggest some caution. If the developing countries are accepted as negotiators, then making offers to them should be determined by what they request, not by unilateral initiatives.

Binding of preferences

Binding existing preferences, at least in the same terms and for the same period as they are legally in force under countries' own trade rules, would increase their value to beneficiaries, by providing transparency and security, without increasing their costs to the non-preferred. For those preferences which are indefinite in countries' own provisions, but which remain de facto, reversible (e.g. EBA), countries could bind them for a fixed period. Requiring this notification would be no more onerous than the similar requirement for regions, but would confirm that preferences are part of the WTO system, not independent of it. The evidence that improvements in preferences have had negative effects on expectations (chapter 4) suggests the binding should prevent changes in either direction. Finding ways of offering preferences in services would offer new benefits, and if these came from opening (allowing workers from LDCs or developing countries new forms of access), initial trade diversion could be limited, but when services were generally liberated, there would be preference erosion. Provided the preferences were concentrated on diversification promoting forms, not rent-creating, the eventual losses would be lower than those now appearing for goods.

Developed countries could make existing SDT work better by publicising it. It is obvious to anyone who has visited the African countries in AGOA in the last 3 years that although all are also eligible for ACP preferences (or the South African trade agreements with the EU), and most are also eligible for EBA preferences, both officials and manufacturers are aware of AGOA, and looking for, and finding, ways of using it; they do not always remember the EU preferences. Some of this is the inevitable result of novelty (although EBA is also new, it is not a major improvement on Lomé except in a few cases, such as sugar in the LDCs). Most is the result of deliberate promotion by the US, contrasted with emphasis on the restrictions and rules from the EU.⁶³

⁶³ Swedish Government 2003 notes that 'Sweden could increase its imports from developing countries by pursuing a policy of active promotion of these countries' exports.' (p. 39). In October 2004 it established the Open Trade Gate Sweden as an integral part of the National Board of Trade (www.opentradegate.se).

Rules of origin

In the process of simplifying trade rules and in the spirit of showing good faith in the upcoming negotiations on Trade Facilitation, donor countries in the WTO should give much higher priority to the question of simplifying and harmonizing rules of origin – both preferential and non-preferential. The former would need to be done outside the WTO, in national preference schemes, but could be done during the Round. The US has extended its flexible rules for low-income African countries. While this would not help those losing commodity preferences, it would provide direct assistance to many of the clothing producers who fear the end of the MFA. (These include several of the countries affected by the 26 December 2004 Tsunami.) Small countries, which find it particularly difficult to meet current rules, would benefit. As noted by the Sutherland Commission (WTO, 2005) the highly restrictive rules of origin of some preference schemes have a particularly negative effect on countries just starting production of a manufactured product or countries with a small manufacturing sector (and therefore without the structure of domestic supplies required). Both the EU Commissioner for Trade and the UK Chancellor of the Exchequer have declared their support for more liberal rules of origin. Because the largest losses are for exporters of primary products, however, changes in rules of origin can only help some countries.

10.5 What can the more advanced developing countries do?

The EU, US, and other developed countries have repeatedly insisted that the advanced developing countries should offer preferences to the LDCs (and possibly others) as part of any deal to improve SDT or to improve access by the more advanced to the developed countries. The context, in particular requests to the G20, suggest that this means China, India, and Brazil, although these are not the highest income countries in the developing category. To exclude China and India from some preferences could be justified because their size increases the ‘cost’ (in mercantilist terms) of offering access to them. It is possible, if they consent, that even arrangements which impose costs on them (through trade diversion favouring other low income countries) would be acceptable, if their size makes external markets less important to them. But asking them to open their markets is justifiable only if this would be a significant benefit to other developing countries. The data on trade barriers do not suggest that this would have a strongly beneficial effect on the LDCs, as only India has very high-applied tariffs.⁶⁴ It is a major market for some developing countries (Kenya, Mauritius and

⁶⁴ In 2000 the trade weighted tariff was 30 percent (Jha et al, 2004); it is now 19 percent.

Vietnam of those surveyed here), but not for LDCs. China is, actually or potentially, a major market for all developing countries, but its average applied tariff is only 12 percent.

It is unlikely that any trade diversion of exports from the LDCs to those which actually are the advanced developing would alleviate pressure on sensitive markets in the developed countries. These countries, e.g. Mexico, Chile and Singapore, do not have high tariffs, and many already offer preferences to the LDCs. It is true that any liberalisation by these countries would increase their own national incomes, and this could increase their trade, and this could in turn benefit both developed and developing countries, but this path is not mentioned as the reason for the request. It could be interpreted as the developed countries' taking the initiative to bargain for the LDCs, something which they could not achieve on their own, but there is no evidence that it is a negotiating priority for LDCs. It appears to be more intended as either a negotiating ploy to avoid liberalisation or a form of retaliation: if these countries ask the developed countries to open and to increase their SDT, the developed will demand the same from them. China, as a recently acceded country, might normally be expected to offer less than the formula, so the pressure may keep it from doing this.

Whatever the motive for the request, it is something that these developing countries could do, with benefit on economic criteria and limited 'cost' on mercantilist ones. As they want a settlement, they are likely to do it. Each could offer concessions (by introducing a GSP programme or by using the GSTP programme: as noted above, this was revived by UNCTAD in June 2004 so it is available for use). Doing it collectively, however, would appear to be a response to pressure.

If a fund to deal with preference erosion were established with voluntary donations, they could declare an intention of contributing to this, but would be unlikely to accept a compulsion to contribute to such a fund.

Some of these countries are excluded from special treatment because although poor, they are large. They need to decide how much special treatment for groups from which they are excluded they can accommodate without damaging their own development, and draw clear lines.

10.6 What can lower middle income countries do?

Many of these countries fear that they will gain little from the negotiations, if most new gains go to the LDCs. Most major concessions in MFN negotiations do not affect them directly because of preferences or because their products are already relatively freely traded. They need to identify their actual positions more precisely than many have done until now, and not allow themselves to be dominated by unconfirmed fears of loss. Those who have concentrated on the SDT negotiations might gain more from looking at

the issue negotiating groups. They may be able to secure special treatment in some of the categories used for these.

10.7 What can the LDCs do?

LDCs find themselves in what is a difficult negotiating position, of not facing any requests (except on services and rules), and being at risk of losing because of negotiations between other parties. They can try to formulate requests on services, for access as well as for more effective SDT there. If they identified large potential gains, they might want to make offers in other areas, for example accepting some extension of the LDC category (at least in the form proposed in the proposed revised Enabling Clause – see below). They need, as they have begun to do in the last 11 months, to acquire experience in negotiating and in identifying and using allies. (It is notable that the West African cotton producing countries have not used other cotton producers effectively, although these include some of the most active participants in the negotiations, like Australia, Brazil, and Egypt.)

Like the lower middle income, they need to identify their own, individual, positions. Some will be potential net losers from the round, and even more than of the lower middle income will gain little, so this is not likely to increase their enthusiasm for the round. By measuring the problem, however, they put themselves in a position to consider whether offers to compensate them are sufficient.

10.8 Improving the institutional capacity of developing countries to participate in the WTO

Institutional capacity to negotiate and to implement trade agreements, and to produce and to trade is a problem for developing countries. It is not possible to act directly on production in the context of the WTO (see below for the need for synergy), but the WTO has accepted some responsibility for implementation assistance since the Uruguay Round, and both the WTO and individual developed countries have tried to help developing countries to negotiate more effectively. It is clear from some of the uncertain aims identified here that capacity is still a problem, and it is certainly perceived as a problem by some developing countries. Distrust in their own abilities leads them to avoid new commitments as a protection against making the wrong ones (National Board of Trade, 2004).

Other negotiations offer both good and bad models for the WTO. In the EPA negotiations, the EU, although itself a party to the negotiations, offers direct assistance and advice to the ACP countries. The practical advice and financial assistance are useful aids to them, but the obvious potential conflict of interest means that they cannot use the advice with complete confidence.

EU members also offer assistance, with the same advantages and disadvantages.

In the Free Trade Area of the Americas (FTAA) negotiations, the three regional institutions, the Inter-American Development Bank, Organisation of American States, and UN Economic Commission for Latin America and the Caribbean have been funded since 1995 to provide support for the smaller or poorer countries in the negotiations (Devlin and Castro, 2002). The organisations had an existing history and reputation of independence of any of the regional powers, including the US, and under this programme, a designated team have developed their own personal relations with the countries, and helped the countries to develop trust among each other. This assistance has included capacity building in the negotiations (plus support preparing negotiating positions) and funding of physical and institutional infrastructure for trade. It has not been confined to aid to governments. It has also provided information and institution building for the private sector and NGOs (Granados, 2004). It has been accepted as a significant contribution to SDT in those negotiations, and by increasing institutional capacity it has reduced the need for negotiated SDT in the form of modified arrangements.⁶⁵

Developed countries have also offered assistance in the WTO negotiations. This has the same advantages, and slightly reduced disadvantages, as EU aid in the EPA negotiations because the negotiating relationship is not as direct. The WTO has offered some types of technical assistance, but does not have the capacity to do so on the scale (relative to need) that the IDB does in the FTAA negotiations. It also does not have the same position as a trusted adviser. The WTO has been perceived as working more closely with developed countries in negotiations (partly because these have been the principal players in most negotiations), and is also perceived as having its own views on trade policy. Its neutrality and willingness to support, rather than dictate to, developing countries are not completely trusted, although this distrust is much less than the distrust of the international financial institutions.

The absence of trusted support for the LDCs and low-income countries is one obstacle to reaching a consensus on which countries lose, and how much, which is an essential step to practical negotiations. If agreement on a new Enabling Clause increased LDC confidence in the system, this would make negotiations easier.

⁶⁵ Devlin and Castro, 2002, in an IDB publication, try to find parallel examples by the Asian and African Development Banks, but only find technical and infrastructure support in Asia and regional studies and regional projects in Africa. The African Development Bank probably does not have the same capacity or tradition of independent action that the Latin American institutions offer.

10.9 Institutional reform of the WTO

Developing countries change more than developed countries (unless they are failures). They change their needs, and they change their views on what they need from the international system. The extreme difficulty of making changes in the WTO is therefore more of a problem for them than it is for developed countries. This is not only a problem of the consensus rule, which is an important protection for them. Even with consensus, there are no institutional ways of making adjustments: there is uncertainty over the legal status of General Council declarations (even the Enabling Clause is some times questioned; the TRIPS concessions for imports of drugs are also potentially questionable), so these are rarely used, and considered unsatisfactory. But a full Round takes time, and consensus on all issues. The unsatisfactory way in which SDT was given in TRIPS, for example, with transition periods rather than modulated requirements, was probably more because of lack of consideration than by design, but will be difficult to change. There are also some reforms in the rules which are being proposed and which might be acceptable to most countries: on regional arrangements, the limited changes that would be required to make Article XXIV of GATT and Article V of GATS give consistent treatment, for example. And if new areas are introduced into the current Round, new mistakes could be made.

Finding ways of making some minor reforms during the current Round could counter some of the resentment about the outcome of the Uruguay Round. While resentment should not influence negotiators' calculations of costs and benefits, it is a risk. This could be done by finding a way to give legal force to General Council declarations.

10.11 Does the WTO need a new monitoring mechanism?

Many of the proposals for a 'monitoring mechanism' are proposals for developed or developing countries to check whether the other 'side' is performing 'properly', that developed countries are treating as bound all the unbound provisions on SDT or that developing countries are using all their opportunities in the trading system and turning into replicas of the developed. Clearly no proposals of this type will be accepted by all WTO members. Other proposals assume that a group of wise observers can reach conclusions on the performance of all members, either to encourage them to do better or to advise on what reforms are needed in the system.

But there are precedents in the WTO for committees to review and comment on implementation and compliance. Many of the provisions of the Uruguay Round are reviewed in other places, including the Trade Policy Reviews, the committees on various rules, the Trade and Development

Committee, and the Committee on Regional Trading Arrangements, as well as *de facto* in the negotiations. Particularly for the elements of SDT that are not directly enforceable, a review mechanism might refocus attention on the principles guiding implementation. For this the Committee on Trade and Development might be the appropriate location, both to identify the 'development, financial and trade needs' mentioned in the Enabling Clause and to assess how effectively SDT was being provided.

10.12 Achieving synergy in relations with developing countries, while avoiding domination

There is a clear need for consistency in policy, and coordination among policy makers and institutions is the obvious way to achieve it. But there is also the unfortunate example of the EU's relations with the ACP where combining the aid and the trade relationships over 30 years produced a dependency and weakness in trade negotiations that is only now starting to end. ACP countries produced effective negotiators in the WTO long before they were able to emerge in ACP relations, and even in the current EPA negotiations there are difficulties because of the dual relationship. This history suggests a cautious approach to involving the IMF and World Bank directly in the WTO. There is also the problem of developing country distrust of the views and ways of operating of the international financial institutions.

An alternative to joint action would be defining a clear way of communicating needs from one to the other (the model of calculating preference erosion costs and then requiring, rather than recommending, that the financial institutions take responsibility for assisting). This would satisfy the needs of the WTO side, but would leave the IMF and World Bank as agents, which they would find unacceptable.

Proposal: Revised Enabling Clause

(The text below follows the text from the Decision in 1979. Changes of a more substantial nature are shown in italics.)

SPECIAL, DIFFERENTIAL AND MORE FAVOURABLE TREATMENT, RECIPROCITY AND FULLER PARTICIPATION OF DEVELOPING COUNTRIES

We (i.e. Ministers) decide as follows:

1. Notwithstanding the provisions of Article I of the General Agreement on Tariffs and Trade (GATT) *and Article II in the General Agreement on Trade in Services (GATS)*, Members may accord special, differential and more favourable treatment to developing countries⁶⁶, without according such treatment to other Members.

2. The provisions of paragraph 1 apply to the following:⁶⁷

(a) Preferential tariff treatment accorded by developed country Members to products originating in developing countries in accordance with the Generalized System of Preferences;⁶⁸

(b) Differential and more favourable treatment with respect to the provisions of the GATT *and the GATS* concerning non-tariff measures governed by the provisions of instruments multilaterally negotiated under these agreements;

(c) Regional or global arrangements entered into amongst developing country Members for the mutual *or unilateral* reduction or elimination of tariffs and, in accordance with criteria *or* conditions which may be prescribed by the WTO, for the mutual *or unilateral* reduction or elimination of non-tariff measures, on products imported from one another;

(d) Special treatment for the least developed among the developing countries in the context of any general or specific measures in favour of developing countries.

3. Any special, differential and more favourable treatment provided under this clause:

(a) *shall promote the integration of developing countries in the world trading system and support the basic aims of the WTO;*

⁶⁶ The words 'developing countries' as used in this text are to be understood to refer also to developing territories.

⁶⁷ It would remain open for the Ministers to consider on an *ad hoc* basis under the WTO provisions for joint action any proposals for special, differential and more favourable treatment not falling within the scope of this paragraph.

⁶⁸ As described in the Decision of the GATT CONTRACTING PARTIES of 25 June 1971, relating to the establishment of 'generalized, non-reciprocal and non discriminatory preferences beneficial to the developing countries' (BISD 18S/24).

(b) shall be designed to facilitate and promote the trade of developing countries and not to raise barriers to or create undue difficulties for the trade of any Members;

(c) shall not constitute an impediment to the reduction or elimination of tariffs and other restrictions to trade on a most-favoured-nation basis;

(d) shall in the case of such treatment accorded by developed country Members to developing countries be designed and, if necessary, modified, to respond positively to the development, financial and trade needs of developing countries.

4. Any Member taking action to introduce an arrangement pursuant to paragraphs 1, 2 and 3 above or subsequently taking action to introduce modification or withdrawal of the special, differential and more favourable treatment so provided shall:⁶⁹

(a) notify the competent bodies in the WTO and furnish them with all the information they may deem appropriate relating to such action;

(b) afford adequate opportunity for prompt consultations at the request of any interested Member with respect to any difficulty or matter that may arise, *in particular any damage to the trade of any developing country*. The competent bodies of the WTO shall, if requested to do so by such Member, consult with all Members concerned with respect to the matter with a view to reaching solutions satisfactory to all such Members.

5. The developed country Members do not expect reciprocity for commitments made by them in trade negotiations to reduce or remove tariffs and other barriers to the trade of developing countries, i.e., the developed country Members do not expect the developing country Members, in the course of trade negotiations, to make contributions which are inconsistent with their individual development, financial and trade needs. Developed country Members shall therefore not seek, neither shall developing country Members be required to make, concessions that are inconsistent with the latter's development, financial and trade needs.

6. Having regard to the special economic difficulties and the particular development, financial and trade needs of the least-developed countries and other *developing country Members with limited administrative and legal resources and lacking relevant infrastructure or capacity*, the developed country Members shall exercise the utmost restraint in seeking any concessions or contributions for commitments made by them to reduce or remove tariffs and other barriers to the trade of such countries, and such countries shall not be expected to make concessions or contributions that are inconsistent with the recognition of their particular situation and problems.

⁶⁹ Nothing in these provisions shall affect the rights of Members under the WTO.

7. The concessions and contributions made and the obligations assumed by developed and developing country Members under the provisions of any WTO Agreement should promote the basic objectives of the WTO. Developing country Members expect that their capacity to make contributions or negotiated concessions or take other mutually agreed action under the provisions and procedures of any WTO Agreement would improve with the progressive development of their economies and improvement in their trade situation and they would accordingly expect to participate more fully in the framework of rights and obligations under the respective Agreements in the WTO.

8. Particular account shall be taken of the serious difficulty of the least-developed countries and *developing country Members with limited administrative and legal resources and lacking relevant infrastructure or capacity*, in making concessions and contributions in view of their special economic situation and their development, financial and trade needs.

Developed country members recognize that the provision of technical assistance and support for capacity building is vital for these countries to enable them to comply with their obligations.

9. All members will collaborate in arrangements for review of the operation of these provisions, bearing in mind the need for individual and joint efforts by Members to meet the development needs of developing countries and the objectives of the WTO.

Appendix A: Country examples⁷⁰

Brazil

Brazil, a developing country, is a member of the Southern Common Market (MERCOSUR). MERCOSUR has separate agreements with the US and Canada as well. It is also part of the Free Trade Area of the Americas (FTAA) and the Global System of Trade Preferences (GSTP). Brazil allows concessions on 97 products under the GSTP (WTO, 2000a). Brazil also trades with the EU, the USUS, and Japan under the GSP schemes (Alexandraki and Lankes, 2004).

Brazil is allowed to use the special provision to import pharmaceuticals (WTO, 2004b). As of 2000, Brazil has been a complainant seven times in the WTO's dispute settlement mechanism and nine times as a defendant. Brazil was involved as a third-party in four other disputes (WTO, 2000a).

India

India, a developing country, has helped to set up the South Asian Association of Regional Cooperation (SAARC), whose members all signed SAPTA, the South Asian Preferential Trade Arrangement. India has also signed into the Bangkok Agreement and is a part of the South Asia Free Trade Area (WTO, 2002d). India plans to join ASEAN by 2010 (Jha, 2004). It is in a free trade agreement with Sri Lanka. 'Indian products receive preferential treatment under the GSP schemes of Australia, Bulgaria, Canada, the EU, Japan, New Zealand, Norway, Belarus, Russia, Switzerland, and the US' (WTO, 2002d).

India's tariff quota for tea was 15 million kg/year at a preferential rate of 50 percent (WTO Trade Policy Review, 2000). India is a member of the GSTP and offers tariff concessions from 10 percent to 50 percent on 53 tariff lines at the HS six-digit level (WTO, 2002d). Indian exports of wheat, coarse grains, oilseeds, vegetable oils, sugar, dairy products, fruits and vegetables also benefited from special access and higher prices. In the 1990s, most of these subsidies were from the EU while the remaining 2 percent were from the US, Switzerland, and Norway (Jha, 2004).

India is granted special concessions in the TRIPS and Public Health Agreement, as it has been allowed to import pharmaceuticals under the WTO's special provision (WTO, 2004b). Since 1998, India has used the WTO's Dispute Settlement Mechanism nine times as a complainant and eight times as a defendant. It has also been involved in twelve other dispute proceedings as a third-party.

⁷⁰ Drafted by Nilah Pandian

Mauritius

Mauritius is a member of COMESA, the Common Market for Eastern and Southern Africa (known as Preferential Trade Area for Eastern and Southern African States (PTA) in the past). It is also a part of the Southern African Development Community (SADC), the Indian Ocean Commission (IOC), the Regional Integration Facilitation Forum (RIFF), the Organization of African Unity (OAU) and African Economic Community (AEC) (WTO, 2001d).

At the beginning of 2001, Mauritius began trading textiles, clothing, and sugar under the AGOA with the United States (WTO, 2001d). Only 40 percent of Mauritius' exports of textiles and apparel to the US comply with the AGOA Textiles and Apparel Provision since Mauritius is not a low income country (AGOA, 2004c) and therefore does not benefit from the more generous rules of origin. Under the Generalized System of Preferences scheme, Canada, Japan, New Zealand, Norway, Switzerland, and the United States grant preferences to Mauritius (WTO, 2001d). Mauritius is also allowed to export sugar to the EU markets under a special sugar quota, under highly preferential terms. Mauritius trades with Canada under GPT (Alexandraki and Lankes, 2004). Mauritius receives trade preferences with the EU under the Cotonou Agreement. ACP non-reciprocal trade preferences are valid until the end of 2007 (WTO, 2000b).

Mauritius has not been involved in any cases using the dispute settlements mechanism. Mauritius is allowed to use the special provision to import pharmaceuticals (WTO, 2004b).

Kenya

Kenya, a developing country, is a member of COMESA, EAC, OAU and the Inter-governmental Authority on Development (IGAD). Kenya, gives MFN treatment to all of its trading partners (WTO, 2000b). It is granted preferential treatment by the EU under the Cotonou Agreement, the US under the AGOA-Wearing Apparel Provision as a low income country, GSP from Japan, and GPT from Canada (Alexandraki and Lankes, 2004). Since 2001, 95 percent of Kenya's export of textiles and apparel comply with AGOA (AGOA, 2004a).

In relation to TRIPS, Kenya can import pharmaceuticals under the special provision (WTO, 2004b). It has requested further technical assistance, however, regarding help with issues for intellectual property rights. Kenya has not been involved with WTO dispute cases.

Malawi

Malawi, an LDC, is a member of COMESA, SADC, RIFF, OAU and the AEC (WTO, 2002e).

Malawi benefits from GSP treatment from all industrialized nations. Under the EBA, the EU gives duty-and-quota-free access on all goods except arms imported from Malawi. Malawi has also been able to export 10,000 tonnes of sugar to the US every year under duty-free EBA quota access and tobacco, tea, coffee, and sugar to the EU at zero tariffs (WTO, 2002e). In addition, the Sugar Protocol between Malawi and the EU enables Malawi to export 20,000 tonnes of sugar annually to the EU at 'prices higher than world levels'. Textiles and apparel are exported to the USUS under AGOA (AGOA, 2004b).

As of 2000, Malawi has been neither a complainant nor defendant in the WTO's Dispute Settlement Mechanism. Since it is an LDC, Malawi is allowed to use the special provision to import pharmaceuticals (WTO, 2004b).

Zambia

Zambia, an LDC and member of various preferential agreements, conducts most of its trade with the United States, European Union, and its regional trading partners. It is a member of the SADC, OAU, the African Union (AU), RIFF, COMESA and the AEC, creating a complex system, according to WTO 2002e, in which Zambia cannot efficiently make use of preferences from the various schemes.

The South African Customs Union (SACU) has allowed Zambia to export single-stage produced textiles and clothing duty-free to SACU countries for five years until 2005. Other goods also have non-reciprocal duty-free quota access. In 2001, SACU granted Zambia a 20,000 tonne quota on textiles and clothing. Currently, Zambia is also using the EU's EBA Initiative. The US's AGOA gives certain Zambian exports, including textiles, both duty-free and quota free access into the United States. Zambia is also granted preferential treatment under GSP. In order to promote growth of the agricultural sector Zambia offers duty-free access on agricultural machinery to investment-certificate holders.

Present allowances under TRIPS include its right to import pharmaceuticals under the special provision.

In its position in the DDA, Zambia placed emphasis on adding a technical assistance provision as it was not getting enough from the WTO and other international organisations. Zambia has been neither a complainant nor defendant in the WTO's dispute settlement mechanism (WTO, 2002e).

Vietnam

Developing country Vietnam's accession for the WTO is planned to be in January 2005. Vietnam is a member of the Association of South East Asian Nations (ASEAN), which incorporates the ASEAN Free-trade area or AFTA (Thang, 2004).

Vietnam is granted preferential treatment by the EU and Japan through GSP, MFN treatment with the US, and GPT with Canada (Alexandraki and Lankes, 2004).

Under Vietnam's bilateral trade agreement with the US, Vietnam has agreed to allow imports from the US. Two hundred forty-four out of the Tariff Schedule's 6300 items will have tariff reductions. One hundred ninety-five of these goods are agricultural products.

Vietnam's exporters are exempt from VAT or value-added tax and special sales tax. They are also granted preferential treatment relating to profit tax. It currently offers agricultural export subsidies. While other countries would like Vietnam to end these, it has not yet agreed to do so (Thang, 2004).

Appendix B: Differentiation of developing countries in non-trade contexts⁷¹

These are all in principle based on need for aid and therefore on 'poverty'. The World Bank and IMF have adopted their own definitions to apply to their activities. The OECD DAC (Development Assistance Committee) has adopted a definition for its appraisals of members' assistance. Except for the UN, they are based principally on income per capita. There are also various special purpose criteria (e.g. for the OECD Agreement on Export Credits).

World Bank and IMF

For the World Bank low income countries are those with GDP per capita currently less than USD765; but for operational purposes, IDA eligibility is USD895 (1998 prices); the cut off for IBRD assistance begins at USD5295. Descriptions, but not the eligibility manual, suggest that 'lack of creditworthiness' and 'good policy performance' are also criteria. The report to the small states forum (IMF/WB, 2000) indicated that small islands above the IDA cut-off but 'whose limited creditworthiness prevents their borrowing from IBRD, will continue [to be eligible] through...June 30, 2002', and probably after that. The World Bank also has an income-based definition for developing countries (USD9385 in 2004), and for dividing lower middle income from upper middle income at USD3035. The IMF uses the IDA level for eligibility for its Poverty Reduction and Growth Facility (quoting it at USD865).⁷²

OECD

The DAC also uses income, but with modifications. Its low income category includes all least developed countries (UN definition, for which the income limit is USD900) plus other low income countries with an income below USD760 in 1998. Its high income definition is a fixed level (USD9360 in 1998 levels, derived from the World Bank's definition), but countries are only moved out of the 'developing country' classification for the purpose of aid calculations once they have been above it for three consecutive years. Exceptions can be made (countries need not be moved or may be moved even if they do not meet this condition) (DFID, 2004). Between these levels, it also has definitional categories of Lower and Upper Middle Income.

⁷¹ Based on Page 2001

⁷² The Inter-American Development Bank gives preference for small states in its lending (Commonwealth Secretariat, World Bank, 2000 [CS/WB] p. 92).

UN

The UN makes distinctions between developed and developing countries for contributions to the regular budget and (with different lists) to special budgets. From 1971, it introduced the category of LDC (see main text).

UNDP

In 1990, UNDP introduced the Human Development Index. It is intended as a ranking (rather than a classifying) measure, based on life expectancy, knowledge (literacy and the enrolment rate), and income (UNDP, 2004). It is explicitly used to suggest that countries with a low ranking by the HDI relative to their income ranking should alter their social policies. It is more closely related to the LDC definition than to the income measures used by the World Bank and the OECD, but without the variables measuring economic activity or vulnerability. It has not been used for aid or trade allocation.

National Board of Trade in Sweden used HDI in its recent report to illustrate the effects of the WTO agreements on various developing countries according to their development level (National Board of Trade, 2004).

Usage

Not only is there a variety of definitions, but there are interesting discrepancies between those who devise and administer each definition and those who use it. The DAC, except for statistical purposes, only uses the 'developing country' category, and takes this from the World Bank. The World Bank maintains this for statistical purposes, but devises and uses its own definitions for IDA and IBRD eligibility. The IMF uses the World Bank definition. The UN supplies the LDC definition but does not use it.

Appendix C: Tables

Table 1. G8 imports from Africa: the broad picture
(all items imported from Africa in 2000 to a value of USD1 million or more)

	<i>EU</i>	<i>USA</i>	<i>Japan</i>	<i>Canada</i>
Number of tariff line imports from Africa >USD1m in 2000	1,710	498	172	116
Number for which no tariff data in TRAINS	8	7	9	—
Total items for which tariff data available	1,702	491	163	116
Number for which various preferences applicable to African countries available				
GSP ^a	1,452	118	35	11
LDC ^b	1,710	71	38	33
Cotonou	1,612			
AGOA		125		
South Africa	1,439			
Egypt	1,379			
Morocco	1,571			
Tunisia	1,550			
Algeria	1,497			
Summary				
MFN zero:				
	# of lines	453	207	88
	<i>percent of total lines</i>	27	42	54
At least one preference available:				
	# of lines	1,692	256	38
	<i>percent of total lines</i>	100	51	23
MFN > zero and no preference available:				
	# of lines	—	31	39
	<i>percent of total lines</i>	—	6	24
<i>Notes: (a) Figures do not take account of revised EU GSP in 2002 and revised Japanese GSP in 2003.</i>				
<i>(b) EU figure assumes all items free under EBA (even those for which phase-out not yet started). Canadian figure does take account of revised GSP for LDCs effective 1 September 2000 (even though not included on TRAINS).</i>				
<i>Sources: Trade data: EU – Eurostat 2001; Canada – UNCTAD TRAINS/WITS; Japan – Japan Customs; US – USITC; Tariff data: UNCTAD TRAINS/WITS; US Federal Register 2000.</i>				

Source: Stevens and Kennan, 2004a.

Table 2. LDC exports 1985–2002

	<i>World (USDm)</i>	<i>US</i>	<i>EU</i>	<i>Japan</i>	<i>India</i>	<i>Brazil</i>	<i>China, with Hong Kong</i>
1985	11102.9	18.6	45.9	4.4	1.8	1.3	1.4
1990	18790.4	20.7	43.2	5.0	2.1	0.6	1.9
1991	15791.9	21.8	43.7	5.4	2.8	1.2	1.8
1992	16531.5	23.8	40.7	5.7	2.1	0.5	2.3
1993	15887.0	23.6	33.1	6.5	2.4	0.9	3.8
1994	17603.5	22.3	36.6	5.7	2.5	0.8	2.9
1995	21745.2	19.8	35.2	5.8	2.8	1.6	5.2
1996	24067.0	20.6	32.9	5.7	2.6	2.7	5.3
1997	23901.7	22.5	32.5	4.2	2.6	1.2	7.7
1998	23129.5	23.2	35.4	3.5	3.4	0.6	4.0
1999	25337.6	21.9	30.2	3.1	3.8	0.4	6.2
2000	34458.0	23.7	29.1	3.0	4.2	0.8	11.1
2001	34424.3	22.9	31.7	2.6	4.4	0.7	7.7
2002	36989.0	21.2	31.4	3.7	4.2	0.1	9.3

Table 3. ACP exports 1985–2002

	<i>World (USDm)</i>	<i>US</i>	<i>EU</i>	<i>Japan</i>	<i>India</i>	<i>Brazil</i>	<i>China, with Hong Kong</i>
1985	46027.9	19.6	38.8	4.3	0.2	1.2	1.5
1990	56193.9	26.2	24.0	5.7	0.6	0.6	1.9
1991	55022.5	21.0	26.6	6.0	0.6	0.9	1.4
1992	58741.2	23.7	26.4	5.4	1.4	0.5	1.8
1993	59511.3	23.6	21.6	5.6	1.6	1.1	2.0
1994	65955.7	19.4	24.0	4.5	1.2	1.3	1.8
1995	74377.7	18.2	27.6	4.8	1.5	1.2	2.3
1996	84093.1	19.9	26.2	4.4	2.3	1.2	2.1
1997	85125.3	24.6	24.4	3.9	2.0	1.3	2.7
1998	78691.4	22.7	28.2	3.3	2.4	1.3	1.6
1999	77828.1	24.3	26.5	3.4	4.0	1.7	2.6
2000	84838.5	31.6	21.4	3.4	1.8	2.1	5.7
2001	90342.8	30.1	27.1	1.0	1.6	2.2	4.8
2002	93604.3	24.9	28.6	5.5	1.8	1.6	5.8

Table 4. AGOA exports 1985-2002

	<i>World (US\$M)</i>	<i>US</i>	<i>EU</i>	<i>Japan</i>	<i>Africa</i>	<i>India</i>	<i>Brazil</i>	<i>China, with Hong Kong</i>
1985	33775.3	11.4	43.5	4.3	7.6	0.2	1.6	1.4
1990	41826.1	28.0	21.9	5.9	10.5	0.6	0.5	1.5
1991	43053.8	20.1	26.2	5.8	10.5	0.8	0.9	1.1
1992	45969.7	23.8	26.6	5.1	10.9	1.7	0.4	1.7
1993	45603.7	24.3	21.4	5.1	10.9	2.0	0.9	2.0
1994	47444.8	20.8	25.4	3.9	11.5	1.6	1.5	1.7
1995	53936.5	19.5	29.1	4.4	13.8	2.0	1.4	2.3
1996	62366.9	21.2	28.1	4.1	13.6	2.9	1.3	2.1
1997	63643.2	22.3	25.3	3.6	13.8	2.6	1.5	2.9
1998	58369.0	18.6	30.6	3.3	15.9	3.1	1.6	1.7
1999	55947.3	20.4	28.2	3.3	15.4	5.4	2.3	2.8
2000	59102.4	31.0	22.3	3.2	15.8	2.4	2.9	5.7
2001	63842.5	28.2	29.9	4.1	14.7	2.2	3.1	4.3
2002	66062.2	22.2	31.6	6.4	14.9	2.3	2.2	5.3

Table 5. Contribution of Major Export Products to Preference Margin

	Percent of margin accounted for by preferences for:				
	<i>Total Preference Margin 1/</i>	<i>Sugar</i>	<i>Bananas</i>	<i>Textiles and clothing</i>	<i>Other products</i>
Middle-Income Countries 2/	4.9	42	19	12	27
Most Vulnerable 3/	15.6	51	24	8	17
Mauritius	39.9	84	0	13	3
St. Lucia	32.9	0	94	2	4
Belize	29.3	47	23	0	30
St. Kitts and Nevis	28.7	94	0	0	6
Guyana	24.2	95	0	1	4
Fiji	24.1	96	0	1	2
Dominica	15.9	0	97	0	3
Seychelles	12.2	0	0	0	100
Jamaica	9.7	67	8	7	18
St. Vincent and the Grenadines	9.4	0	89	0	11
Albania	8.9	0	0	48	52
Swaziland	8.2	97	0	1	2
Serbia and Montenegro	7.6	28	7	10	56
Honduras	6.7	56	9	19	15
Tunisia	5.9	0	1	79	20
Côte d'Ivoire	5.7	8	51	2	38
Morocco	5.7	0	4	64	33
Dominican Republic	5.5	23	16	27	34

1/ As a percent of the trade-weighted average world market price of the country's exports
2/ Average for 76 middle income developing countries, weighted by margin
3/ 18 countries with average preference margins greater than 5 percent

Source: Alexandraki and Lankes, 2004.

Table 6. Percentage decrease in average export unit values
- following a 40 percent cut in preference margins as a result of multilateral
tariff reduction (estimate).

Least Developed Countries		Other Developing Countries	
Malawi	6.6	Mauritius	11.8
Mauritania	4.8	St Lucia	9.8
Cambodia	4.1	Belize	9.1
Bangladesh	3.9	St Kitts and Nevis	8.9
Maldives	3.5	Guyana	7.9
Haiti	3.3	Fiji	7.8
Cape Verde	3.3	Dominica	5.5
São Tomé and Príncipe	2.7	Seychelles	4.2
Tanzania	2.4	St Vincent and the Grenadines	3.4
Comoros	2.0	Jamaica	3.3
		Albania	3.3
		Nicaragua	3.2
		Swaziland	3.0
		Serbia and Montenegro	2.9
		Tunisia	2.2
		Côte d'Ivoire	2.2
		Morocco	2.1
		Dominican Republic	2.1

Sources: Export structure and direction: COMTRADE (United Nations). Preference regimes: WTO Trade Policy Reviews, TRAINS database.

Note: Only preference erosion vis-à-vis Canada, the EU, Japan, and the United States considered. Calculation of current preference margins uses tariff data per 2-digit tariff line for each preference scheme. Direction of trade data are then applied to obtain a trade-weighted preference margin.

Source: IMF, 2004b.

Table 7. Brazil's exports 1985–2002 (percent)

	<i>World (USDm)</i>	<i>US</i>	<i>EU</i>	<i>Japan</i>	<i>India</i>	<i>China, with Hong Kong</i>
1985	25640.6	27.1	28.4	5.5	1.3	3.7
1990	31413.8	24.6	32.5	7.5	0.5	2.1
1991	31620.5	20.2	32.1	8.1	0.5	1.6
1992	37045.8	19.1	32.4	6.2	0.4	2.1
1993	38782.7	20.7	26.5	6.0	0.3	2.9
1994	43623.4	20.6	28.0	5.9	1.4	2.8
1995	46604.9	18.9	27.7	6.7	0.6	3.5
1996	47762.7	19.5	26.9	6.4	0.4	3.2
1997	53905.7	17.5	27.0	5.7	0.3	2.9
1998	51156.3	19.4	28.9	4.3	0.3	2.6
1999	48313.2	22.5	28.7	4.5	1.1	2.3
2000	56138.2	23.9	26.7	4.4	0.5	2.8
2001	58844.9	24.4	23.3	3.3	0.5	4.0
2002	60121.8	26.0	26.0	3.5	1.0	5.0

Table 8. India's exports 1985–2002 (percent)

	<i>World (USDm)</i>	<i>US</i>	<i>EU</i>	<i>Japan</i>	<i>Brazil</i>	<i>China, with Hong Kong</i>
1985	8265.36	18.9	19.3	11.1	0.2	2.1
1990	17813.0	15.1	27.7	9.3	0.0	3.2
1991	17873.1	16.4	28.3	9.3	0.1	3.7
1992	19232.1	18.4	29.7	7.9	0.1	4.2
1993	20989.1	18.5	27.3	7.9	0.3	6.8
1994	24195.8	19.3	27.5	7.9	0.2	6.5
1995	30537.2	17.4	27.0	7.0	0.3	6.9
1996	32324.9	19.1	26.2	6.4	0.4	7.1
1997	34619.7	19.5	26.1	5.6	0.4	7.5
1998	33662.7	21.1	28.8	5.1	0.4	7.1
1999	35920.1	22.5	25.9	4.7	0.4	8.0
2000	42624.4	21.3	23.9	4.1	0.5	7.9
2001	45250.3	20.7	23.6	4.4	1.2	8.0
2002	50521.3	22.4	22.4	3.8	1.1	8.6

Table 9. Mauritius' exports 1985–2002 (percent)

	<i>World (USDm)</i>	<i>US</i>	<i>EU</i>	<i>Japan</i>	<i>Africa</i>	<i>India</i>	<i>Brazil</i>	<i>China, with Hong Kong</i>
1985	432.6	15.0	77.9	0.1	2.9	1.1	0.0	1.0
1990	1201.7	12.7	79.4	0.2	0.1	0.1	0.1	0.6
1991	1194.6	11.8	79.0	0.3	4.6	0.0	0.0	5.7
1992	1300.8	12.4	78.0	0.2	5.1	0.1	0.0	0.4
1993	1302.8	17.9	71.4	0.4	3.9	0.1	0.0	0.6
1994	1341.7	18.1	69.2	0.4	5.7	0.3	0.0	0.9
1995	1538.9	14.8	72.0	0.6	5.8	0.5	0.0	0.9
1996	1800.2	13.4	74.1	0.6	6.9	0.4	0.0	0.7
1997	1595.3	14.3	74.0	0.6	5.7	0.9	0.0	0.5
1998	1704.1	16.7	71.8	0.6	6.3	0.4	0.1	0.6
1999	1554.8	18.0	70.4	0.5	6.7	0.2	0.0	0.5
2000	1488.2	20.2	67.1	0.5	7.6	0.2	0.0	0.6
2001	1524.8	19.8	66.9	0.5	9.0	0.1	0.0	0.3
2002	1707.2	20.1	64.4	1.6	7.9	0.2	0.0	1.6

Table 10. Kenya's exports 1985–2002 (percent)

	<i>World (USDm)</i>	<i>US</i>	<i>EU</i>	<i>Japan</i>	<i>Africa</i>	<i>India</i>	<i>Brazil</i>	<i>China, with Hong Kong</i>
1985	957.5	5.0	47.7	0.8	22.0	0.4	0.0	0.4
1990	1119.9	2.5	37.3	1.0	37.6	0.9	0.0	0.0
1991	1013.5	4.0	51.0	1.1	16.9	0.6	0.0	0.3
1992	1337.1	3.0	33.4	1.1	17.5	0.5	0.0	0.4
1993	1275.0	3.7	38.9	0.9	30.2	0.8	0.0	0.3
1994	1618.7	3.9	38.8	0.9	36.5	0.8	0.0	0.5
1995	1826.0	2.7	35.6	0.7	42.1	0.7	0.0	0.6
1996	2005.2	2.8	34.3	0.8	41.3	0.6	0.0	0.4
1997	1947.8	3.0	34.5	0.8	40.5	1.0	0.0	0.3
1998	1912.9	3.6	31.7	0.8	39.1	1.6	0.0	0.3
1999	2025.3	4.9	39.5	1.2	30.7	1.1	0.0	1.2
2000	1962.5	5.2	34.2	1.0	35.2	0.9	0.0	1.8
2001	2193.9	5.7	33.8	1.0	34.7	0.9	0.0	2.1
2002	2272.2	8.1	31.8	1.1	35.9	0.9	0.0	1.5

Table 11. Malawi's exports 1985–2002 (percent)

	<i>World (USDm)</i>	<i>US</i>	<i>EU</i>	<i>Japan</i>	<i>Africa</i>	<i>India</i>	<i>Brazil</i>	<i>China, with Hong Kong</i>
1985	227.5	11.1	60.3	3.5	18.5	0.0	0.0	0.0
1990	418.7	11.5	48.4	12.8	16.8	0.0	0.0	0.0
1991	481.9	14.7	40.3	14.6	13.7	0.0	0.0	0.2
1992	509.9	11.4	42.1	12.4	15.6	0.0	0.0	0.2
1993	414.8	14.6	28.8	11.5	20.3	0.0	0.0	0.0
1994	471.2	20.1	33.9	9.6	21.0	0.0	0.0	0.0
1995	421.2	13.5	48.8	5.2	16.4	1.1	0.8	0.4
1996	460.4	15.4	34.9	5.2	27.1	0.4	0.0	0.1
1997	537.3	14.9	35.7	5.7	22.2	0.3	0.5	0.1
1998	478.1	12.3	35.3	8.9	22.2	0.1	0.0	0.0
1999	482.3	14.3	39.2	4.4	19.8	0.1	0.0	0.2
2000	421.5	12.8	30.9	11.0	24.6	0.1	0.4	0.1
2001	474.3	16.1	32.0	6.9	24.1	0.1	0.4	0.1
2002	468.8	14.8	29.7	5.1	26.2	0.1	0.0	0.2

Table 12. Vietnam's exports 1985–2002 (percent)

	<i>World (USDm)</i>	<i>US</i>	<i>EU</i>	<i>Japan</i>	<i>India</i>	<i>Brazil</i>	<i>China, with Hong Kong</i>
1985	692.7	0.0	2.3	4.7	0.1	0.0	6.9
1990	2524.6	0.0	6.8	13.5	0.8	0.0	9.9
1991	2188.9	0.0	5.5	32.9	0.2	0.0	11.1
1992	2917.7	0.0	8.3	28.6	0.7	0.2	10.2
1993	2985.2	0.0	7.9	31.4	0.6	0.1	10.1
1994	4054.3	2.3	10.0	29.1	0.3	0.0	12.1
1995	5621.4	3.0	11.8	26.0	0.2	0.0	11.0
1996	7463.2	2.7	11.4	20.7	0.1	0.1	8.7
1997	9484.3	3.0	17.0	17.7	0.1	0.1	9.5
1998	9306.8	5.0	22.3	16.3	0.1	0.2	8.1
1999	11541.3	4.4	21.8	15.5	0.1	0.1	0.1
2000	14481.7	5.1	19.7	17.8	0.3	0.1	12.8
2001	15013.8	7.1	20.1	16.7	0.3	0.1	11.6
2002	15707.3	15.0	24.2	14.6	0.3	0.1	7.9

Source for tables 2-4, 7-12: Database compiled by Ian Gillson.

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