Special and Differential Treatment of Developing Countries in the WTO: Moving Forward After Cancún

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1. INTRODUCTION

INTERNATIONAL trade is important for development and poverty alleviation. It helps raise and sustain growth – a fundamental requirement for reducing poverty – by giving firms and households access to world markets for goods, services and knowledge, lowering prices and increasing the quality and variety of consumption goods, as well as fostering the specialisation of economic activity into areas where countries have a comparative advantage (Bhagwati, 1988; and Irwin, 2001). The primary determinant of the benefits from trade is a country's own policies. Establishing the appropriate trade and complementary policies should consequently figure in the design of national development and poverty-reduction strategies. To an increasing extent, however, countries' trade policies are also subject to multilateral and regional disciplines and individual countries' trade performance is affected by what other countries do. Measures that restrict market access for developing countries' export goods and services and that lower (raise) the prices of their exports (imports) have direct negative effects on investment

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incentives and the growth potential of their economies. For example, agricultural support policies – high rates of subsidisation and trade barriers – by developed countries increase world price volatility, lock developing countries out of major markets and can lead to import surges that have highly detrimental effects on developing country farmers. The existence of such policies has become a major political barrier to further trade policy reform in developing countries.

The WTO is a forum both to negotiate improved market access and to agree to 'rules of the game' for trade-related policies. Developing countries gain from both dimensions. A rules-based world trading system is beneficial to developing countries as they are mostly small players on world markets with little ability to influence the policies of large countries. The rules of the WTO can also be beneficial by reducing uncertainty regarding the policies that will be applied by governments – thus potentially helping to increase domestic investment and reduce risks.

Much depends, however, on getting the rules 'right'. 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 ('best practice') disciplines that have over time been put in place by them. Thus, the much greater latitude that exists in the WTO for the use of agricultural subsidisation, for example, reflects the use of such support policies in many developed countries. The same is true for the permissive approach that has historically been taken towards the use of import quotas on textile products – which in principle was prohibited by GATT rules. More recently, the inclusion of rules on the protection of intellectual property rights has led to perceptions that the WTO contract continues to be unbalanced.[1]

Ensuring that the rules are supportive of development and are seen to be so by the majority of stakeholders in society is perhaps the most fundamental challenge confronting the WTO from a development point of view. Traditionally, developing countries have sought 'differential and more favorable treatment' in the GATT/WTO with a view to increasing the development relevance of the trading system (Hudec, 1987; Finger, 1991; and Michalopoulos, 2000). Such special and differential treatment (SDT) was made an element of the trading system in 1979 through the so-called 'Enabling Clause' (formally: Differential and More Favourable Treatment, Reciprocity and Fuller Participation of Developing Countries). This calls for preferential market access for developing countries, limits reciprocity in negotiating rounds to levels 'consistent with development

[1] The *ex post* dimension to the asymmetric balance of rulemaking in the WTO has arguably been most important historically, in that rules that are perceived to be 'too difficult' to abide by are only honoured in the breach – e.g., the GATT Art. XI ban on quantitative restrictions and disciplines on trade-distorting policies in agriculture, for which the US obtained a waiver in 1955. See World Bank (2002), Michalopoulos (2001) and Hoekman and Kostecki (2001) for further discussion and references to the literature.

needs' and provides developing countries with greater freedom to use trade policies than would otherwise be permitted by GATT rules.

The Doha Ministerial Declaration reaffirmed the importance of SDT by stating that 'provisions for special and differential treatment are an integral part of the WTO agreements'. It called for a review of WTO SDT provisions with the objective of 'strengthening them and making them more precise, effective and operational' (para. 44). The Declaration also states that 'modalities for further commitments, including provisions for special and differential treatment, be established no later than 31 March 2003' (para. 14). Efforts during 2002 to come to agreement on ways to strengthen and operationalise SDT provisions were not successful. Indeed, it became apparent that there are deep divisions between WTO members on the appropriate scope of SDT and how to improve SDT provisions.[2] Many developing countries regard SDT provisions as being meaningless, while many developed countries regard them as bad economics and outdated.

There are currently two major dimensions of SDT in the WTO: market access and rule-related. On market access, SDT involves a call for preferential access for developing countries to developed country markets, complemented by less than full reciprocity in negotiating rounds. On rules, SDT includes calls for developed countries to provide technical assistance to lower-income economies to help them implement disciplines, complemented with exemptions from certain WTO rules. Such exemptions may be transitory, and involve longer time periods for implementation. This is the case, for example, for the rules on customs valuation, the requirement to abolish trade-related investment measures (TRIMs), and the implementation of harmonised protection of intellectual property rights under the Agreement on TRIPS. Others are permanent, e.g., Article XVIII GATT.[3] A good case exists for both types of SDT in principle, but the specific instruments used arguably are often neither efficient nor effective.

In the run-up to the launch of the Doha Round, developing countries pushed hard for an expansion and strengthening of SDT. The central issue confronting members is how to recast SDT in a way that would assist the development of low-income countries, be seen to do so by developing countries, and be regarded as both 'legitimate' and appropriate by developed country members. There is widespread agreement that as it stands today SDT does not simultaneously ensure that poor countries see the WTO as a helpful institution and allow the membership as a whole to improve market access and multilateral rules through

[2] For a succinct but comprehensive summary of the post-Doha SDT discussions in the WTO, see the ICTSD/IISD Doha Round Briefing Series, Vol. 1, No. 13, February 2003 (www.ictsd.org).

[3] Article XVIII allows developing countries to use trade policies in the pursuit of industrial development objectives and to protect the balance of payments, imposing weaker disciplines than on industrialised countries. There are also many exhortations to developed countries to 'take into account' the interests of the developing countries in the application of WTO rules and disciplines.

recurring rounds of negotiation. The discussions to date have not focused on the economics of SDT rules, that is, on the costs and benefits of alternative options. Instead, developing country proposals have largely emphasised the need for more flexibility and 'policy space', and implicitly if not explicitly the need to be able to restrict trade to promote development. High-income countries have rejected suggestions along these lines.

This paper discusses options to strengthen the development relevance of the WTO.[4] Parts of the argument draw on a longer, unpublished, report that discusses the various dimensions of the SDT debate in greater depth and assesses the various proposals that were submitted to the WTO on SDT after the Doha meeting (Hoekman et al., 2003). Our premise is that recasting SDT is critical for the relevance of the WTO from a development perspective, and may also be important for the long-term viability of the institution. Cancún strengthened this perception in our minds: the inability to agree on SDT worsened an already bad atmosphere, while the lack of an effective SDT mechanism impeded progress on both the Singapore issues and merchandise trade – reflecting perceptions on the part of many OECD countries that there would be little reciprocal reduction in access barriers and a fear on the part of recipients of preferences that these would be eroded.

2. SDT: MARKET ACCESS

Historically, the major focus of efforts to operationalise SDT centred on preferential access through the Generalised System of Preferences (GSP) and ensuring that the extent of reciprocity in periodic multilateral trade negotiations was limited (Laird, Safadi and Turini, 2002; and Finger and Winters, 2002). In recent years, developed countries have deepened trade preferences for least developed countries (LDCs) and sub-Saharan Africa. Examples are the EU Everything But Arms initiative – which grants duty- and quota-free access for all goods exported by LDCs (with delayed implementation for three important products – sugar, rice and bananas), and the US African Growth and Opportunities Act, which does the same for a large number of African countries. Experience has shown that such schemes can have a significant positive effect on the exports of recipients, but that very much depends on their supply-side capacity, their ability to put the rents generated to good use, and on the ancillary documentary requirements that are imposed by preference-granting countries. Recent research reveals that liberal rules of origin are critical for a strong trade response in sectors

[4] See Hart and Dymond (2003), Keck and Low (2003), Oyejide (2002), Stevens (2002), Michalopoulos (2001), Page (2001), Pangestu (2000), Whalley (1999) and Youssef (2001) for complementary analyses.

such as textiles and clothing (Inama, 2002; Brenton, 2003; Brenton and Manchin, 2002; and Mattoo et al., 2002).

Preferences are by definition discriminatory – to give some countries preferential access implies, and depends for its effects on, not giving such access to others. A major policy question that arises is which countries should be eligible for preferential market access. In practice there is a hierarchy of preferences, with the most preferred countries generally being members of reciprocal free trade agreements (EU, NAFTA, EU-FTAs, etc.), followed by LDCs – which in principle often have free access to major markets – and other developing countries, which generally get GSP preferences. In many jurisdictions, GSP status does not involve duty-free treatment, instead being limited to a tariff reduction (Inama, 2003). From a poverty reduction point of view – and in light of the Millennium Development Goals – a good case can be made that preferences should focus on the poor, wherever they are geographically located, and not on a limited set of countries. In absolute terms, most poor people live in countries that are not LDCs – especially China and India. Limiting preferences to LDCs or concentrating on a specific geographic region such as sub-Saharan Africa – while appropriate in light of limited institutional capacity and infrastructure weaknesses in these countries – ignores the majority of the poor in the world today (Winters, 2001).

One way forward would be to agree on a single preferential tariff rate – zero – for all products currently benefiting from GSP status in developed countries (as is the case presently in the US), thereby removing all partial preferences. Extending preferential duty-free access to large countries such as India and China will be very difficult politically – one reason why duty-free access for much of Africa and the LDCs could be implemented is that these countries account for about 0.5 per cent of world trade. Given the political reality that developed nations will not grant large and/or higher income developing countries unconditional preferential market access, improved market access for these countries can only occur through MFN liberalisation. In turn, this will require a willingness on the part of developing countries to engage in reciprocity. This is in their own interest, for, as mentioned above, much of the benefit from trade policy reforms is generated by a country's own actions.[5] Thus, rather than seeking to extend GSP programmes for all developing countries – which have proven to be of limited value, with only a few countries benefiting significantly – more sustainable gains can be obtained through MFN liberalisation. This is also something that the WTO is designed to deliver. Thus, our first recommendation is to give priority to MFN liberalisation of trade in goods and services in which developing countries have an actual or potential export interest.

[5] Our support for reciprocity in the market access context does not extend to other elements of SDT discussed below, in particular the need for differentiation in the reach of resource-intensive WTO agreements that may not be development priorities.

A strong case can be made that MFN-based market access will have the greatest beneficial impact on development. One reason for this is that it involves an element of 'rebalancing' of the WTO by removing elements of 'reverse SDT' – special opt-outs and exemptions that benefit interest groups in industrialised countries at the expense of developing countries. Examples include agricultural export subsidies, textile import quotas, and tariff peaks and escalation in products such as footwear, textiles and apparel that imply high rates of effective protection for developed country industries. Continued protection of these products implies that things poor people produce are subject to higher tariffs than things produced by the non-poor. Reversing this situation through an MFN-based liberalisation programme that centres on these sectors would not only be very beneficial to developing countries (and developed country consumers), but also help remove a major political barrier to further trade reforms in developing countries by providing a positive demonstration effect.

In addition to defining negotiating modalities – where a formula approach makes good sense[6] – WTO members should set a concrete timetable (deadline) and agree on specific benchmarks for product coverage and the maximum tariff that is to be permitted. We suggest that a target be set that at the end of the Doha Round implementation period – say 2010 – MFN tariffs on manufacturing products of export interest to developing countries, defined to include the set of labour-intensive products such as footwear, textiles and apparel, will not exceed five per cent and those in agriculture ten per cent. Additionally, it could be agreed that by 2015, the target date for the achievement of the Millennium Development Goals, all tariffs on developing country exports of manufactures will be eliminated, in effect removing the problem of tariff peaks and associated tariff escalation. Both of these measures will benefit the millions of poor in all developing countries who are employed in these activities.

Reciprocal concessions will be necessary in order to make complete developed country liberalisation politically feasible but this too will be beneficial and assist the battle against poverty. Here again we believe a formula-based approach to tariff reduction is appropriate. This should focus on a commitment by all developing countries to bind all tariffs, to reduce current tariff bindings to come much closer to applied rates, as well as further reduction in applied rates. Given the resource allocation distortions created by tariff structures that are highly differentiated, one benefit of a formula approach is that it can be used to reduce the variance in tariffs.[7]

[6] A Swiss-type formula, as proposed by the Chair of the WTO market access committee, is much preferable to a request-offer or linear cut approach (Francois and Martin, 2003). The suggested formula is an augmented 'Swiss' formula that makes the cut in tariffs a function of the initial average level of protection. The proposal is that all countries bind at least 95 per cent of all tariff lines and value of imports, but that LDCs be exempted from tariff cuts. See TN/MA/W/35, www.wto.org

[7] See Tarr (2002) for a discussion of the benefits of relatively uniform tariff structures.

While reciprocal tariff reductions by developing countries need not fully match the proposed liberalisation in developed countries proposed above, they must be significant enough to trigger substantial developed country liberalisation of products of interest to developing countries. As the variance in applied tariffs is higher in developed countries than in developing economies, while bound tariffs are much higher in developing countries, a 'Swiss-type' formula that centres on reducing the average bound tariffs can do much to both reduce tariff peaks and escalation in OECD countries *and* give credit to developing countries for past reforms (Hoekman, 2002).[8]

Services are of great importance to developing countries and there are substantial opportunities both to expand exports and to liberalise further access to developing country markets. While the latter will bring the greatest gains, opening developed countries service markets to temporary inflows of workers – so-called mode 4 of the GATS – and a binding of the current liberal policy set that is applied to cross-border trade (modes 1 and 2 of the GATS) – would both be valuable and assist governments in pursuing domestic reforms. Walmsley and Winters (2002) conclude that an opening of developed country labour markets to allow additional temporary entry by foreign workers equal to three per cent of the current workforce (some 16 million workers) would generate welfare (real income) gains greater than what would obtain from full merchandise trade liberalisation.[9]

In the case of services (the GATS), the multilateral rules allow substantial discretion to government to apply policies that discriminate against foreign firms. For developing countries what matters most is market access – as with goods. This should imply that negotiating modalities are agreed to focus on the removal of barriers to trade on those services and modes of supply in which developing countries have an export interest. Many developing countries have begun to exploit the opportunities offered by the Internet and telecommunication networks to provide services through cross-border trade. At present, such trade is largely free of restrictions, and this desirable state of affairs should be locked in through the GATS (Mattoo, 2003).

a. Least-developed and Similarly Poor and Disadvantaged Countries

Currently the only clearly defined subset of developing countries in the 1979 GATT Enabling Clause is the LDC group, and this is the group that has recently been granted deeper preferential access by major trading powers. There are a

[8] The pre-Cancún 'cocktail' proposal for possible modalities circulated by the Chairman of the WTO Non-Agricultural Market Access Negotiating Group (discussed above) allows for these objectives to be met.

[9] Data on existing cross-border flows of temporary workers are very weak. Walmsley and Winters (2002) conclude that the existing total is at least 20 million workers. This does not include illegal entrants.

number of countries that are not formally classified as LDCs but have similar levels of per capita income and equally limited supply capacity.[10] This fact suggests that efforts should be made to move beyond the LDC category in terms of granting deep trade preferences. Any such attempt will be divisive – experience to date suggests that there is strong resistance to country differentiation in the WTO. Thus, all that is likely to be feasible is extension of full duty- and quota-free access programmes for LDCs. However, if agreement can be obtained to pursue an approach to SDT for WTO rules that distinguishes between countries on the basis of objective criteria such as per capita income – see below – whatever criteria are agreed should also be used for granting deep market access preferences.[11]

Of great importance here is both the coverage of duty-free access (which should extend to *all* products), and the use of liberal rules of origin (Inama, 2002; Brenton, 2003; and Mattoo et al., 2002). Efforts to adopt identical liberal rules of origin would do much to reduce transactions costs associated with utilising preferences. It is noteworthy that this is an area that has never been subject to GATT/WTO rules, despite attempts that date back to the 1960s and 1970s (Hoekman and Kostecki, 2001). Indeed, the lack of progress on simplification and harmonisation of preferential rules origin is another reason to favour an MFN-based approach to market access for developing country exports.

There is a tension between deepening preferences for LDCs (or an LDC+ group, if agreement is obtained to follow a more differentiated approach) and MFN-based liberalisation, as the latter will erode the former. Given that research suggests that to date many LDCs have not benefited significantly from preferences – because of limited product coverage, only partial reductions in tariffs, and tight origin requirements as well as local supply-side difficulties – there should be limited concern with the erosion of current preferences that is associated with an MFN approach. We recognise the danger that deepening preferences increases the scope for future preference erosion and potentially generates more opposition to MFN liberalisation from the beneficiaries.[12] Provided not too much is invested in extending preferences now and provided that the proposed MFN liberalisation is also pursued, this danger can be managed.[13]

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[10] Such as, for example, Ghana or Nigeria. For a fuller discussion see below.

[11] Such access should also be granted by middle-income countries to the set of poor countries that satisfy the criteria. As extending deep preferences to poor countries that are not classified as LDCs runs foul of WTO disciplines (Part IV and the Enabling Clause) requiring identical preferential treatment to be extended to all developing countries that are not LDCs, pursuit of this suggestion will require a change in this Clause.

[12] Ozden and Rheinhart (2003a and 2003b) argue that countries with preferential access to markets have less of an incentive to pursue trade liberalisation.

[13] Sugar is an example. Current quota allocations in protected markets such as the EU go disproportionately towards a few countries that are relatively high-cost producers – for example, Mauritius has 38 per cent of EU quotas (Mitchell, 2003). Given that a number of LDCs are significant

It will be important that alternative instruments to assist the poorest countries be made available and/or strengthened. Additional aid to assist in improving the investment climate, trade logistics, (re-)training workers and maintaining incomes of poor households for some period of time to facilitate adjustment will be important. Given that income transfers through trade preferences come at a high cost to importing countries, mobilising the resources to undertake the needed transfers should be feasible. Ensuring that this actually happens requires concrete action on the part of current preference-granting countries, and could be part of an overall agreement in the Doha Round.

Another market access dimension of SDT in the WTO relates to current commitments by developed countries to apply instruments such as anti-dumping, countervailing duties and safeguards less vigorously against developing countries through the use of *de minimis* and similar provisions. Such provisions are beneficial, and should continue to be understood to apply to exports from all developing countries. This will help to create an element of desirable differentiation in the reach of SDT, given that full duty-free access would be provided only to a subset of developing countries.

3. SDT: WTO RULES

Much of the SDT debate centres on issues related to making the WTO more development relevant, and the perceived need to both revisit some of the existing disciplines and to take action to ensure that, in the future, new rules support development. Many WTO rules make sense from a development perspective. An example is the prohibition on non-tariff barriers to trade except in well-defined circumstances linked to security, protection of the environment or safety (Finger, 1991; and Hoekman and Kostecki, 2001). In some cases, current agreements need to be rebalanced to reflect developing country interests – in particular the Agreements on Agriculture and TRIPS. And for some rules, as we will discuss below, it must be recognised that one size does not fit all. One way of making WTO rules more supportive of development is to distinguish between core and non-core rules.

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producers of sugar and are lower-cost suppliers than Mauritius, the extension to 2009 of duty- and quota-free access to the EU market for all LDCs will result in preference erosion for Mauritius. This partial unwinding of trade diversion will benefit more cost-effective LDC producers but is still costly in global welfare terms relative to MFN liberalisation. Moving to free trade in sugar markets would benefit the non-LDC producers, generate higher global welfare gains, and increase both world sugar prices and sugar trade. Coordinated global liberalisation across all products should also offset some of the lost preference rents. It has been estimated in the case of sugar that the world sugar price increase would offset about half of the lost quota rents for countries that currently have preferential access (Mitchell, 2003).

a. Core Trade Policy Rules: One Size Fits All

In our longer report, Hoekman et al. (2003), we survey some of the voluminous empirical literature that has investigated the effects of trade protection and its removal on the performance of firms and industries in developing countries. The overwhelming tendency of this literature is to conclude that the case for using traditional trade policy instruments such as quotas and quota-like policies such as trade-related investment measures to achieve economic development objectives is weak. Government interventions are justified where there are market distortions, but in most circumstances such distortions should be addressed through interventions other than through trade.

This does not imply that developing countries should give up their rights to use all kinds of trade policies – countries have the right under the WTO to impose tariffs and quotas as well as export taxes if they desire to do so, under certain well-specified circumstances.[14] Nor does it deny the distortions that are created by industrialised country trade and subsidy policies, or the need to recognise that there are adjustment costs associated with trade reforms. What it does imply is that there is a clear ranking of policy instruments, with quotas and quota-like instruments being particularly costly. A significant body of theory and evidence suggests these are not efficient tools to promote industrial development (Noland and Pack, 2003; and Hausmann and Rodrik, 2002). It also implies that GATT/WTO rules that impose disciplines on the use of such instruments will benefit consumers and enhance welfare in developing countries. Similarly, there are benefits associated with binding tariffs – including that this is a major negotiating coin in the WTO. There is also a good case for WTO rules relating to transparency of trade policy and for the criteria that should be applied when taking actions against imports that are deemed to injure a domestic industry.

In our view the core rules span MFN, national treatment, the ban on the use of quantitative restrictions, and binding tariffs.[15] These should apply to all members. Currently they do not, in part because of specific provisions in the GATT (e.g., Article XVIII) and in part because of the Enabling Clause (which, e.g., provides much greater leeway for developing countries to discriminate in favour of each

[14] As is the case for determining priorities for development assistance, the priorities and the appropriate set of policy instruments to pursue development objectives should be determined at the national level through a process of consultation in which all stakeholders can participate.

[15] A major feature of the 1979 Enabling Clause is that it calls on industrialised countries not to seek reciprocal concessions from developing countries that are 'inconsistent with their individual development, financial and trade needs'. No one supports the making of inappropriate concessions, but the overuse of the 'nonreciprocity' clause has, in the past, excluded developing countries from the major source of gains from trade liberalisation – namely the reform of their *own* policies. Non-reciprocity is also a major reason why tariff peaks today are largely on goods produced in developing countries.

other in the context of regional integration, and allows for limited reciprocity in terms of tariff bindings). This is not to deny that weak institutional capacity and severe market imperfections combined with a lack of financial resources may require that developing countries pursue second-best trade policies. However, existing WTO provisions – safeguards, waivers and renegotiation – already provide ample scope for countries to do so. In moving towards a uniform approach for the core rules, provision could be made for one-off, time-limited exceptions (Keck and Low, 2003), but in principle these should have universal applicability. Note that an implication of this suggestion is that some basic WTO provisions should be reconsidered.

As discussed further below, the need for such reconsideration and renegotiation is more general. A good case can also be made that some existing WTO disciplines and provisions discriminate against developing countries – e.g., the restrictions that limit access to special safeguard provisions under the Agreement on Agriculture to the (mostly developed) countries that introduced TRQs in the Uruguay Round. Others are not in their interests. These issues are discussed at length in Hoekman et al. (2003). In a sub-section below we synthesise the conclusions that emerge regarding the possible need to revise some of the major WTO agreements.

b. Rule Making and Implementation of Resource-intensive Agreements

Reciprocity is the engine of the WTO negotiating process. By not engaging in reciprocity countries lose both a mechanism that can be used to support the pursuit of beneficial trade policy reforms, but also remove an instrument that can generate better access to export markets. The reciprocal exchange of trade liberalisation commitments benefits all countries that engage in the process – one reason why we believe the core WTO trade policy rules should apply to all members. 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 (Hoekman, 2002). A good case can be made that when it comes to regulatory policies that affect trade only indirectly (if at all), one quickly gets into a situation where apples are traded for oranges, with significant potential for a negative net outcome for low-income countries.

This suggests that attention should focus on redefining the principle of calibrated reciprocity in the Enabling Clause to apply only to policy disciplines that are resource-intensive to implement or may not be development priorities for poor and small developing economies, such as Customs Valuation or TRIPS. Similarly, consider the so-called Singapore issues. It is very difficult to conceive of rules in these areas that do not differentiate across countries. In the case of competition law, for example, most developing countries that have such laws

have not had them for long, often have not been enforcing them and generally need to develop much more experience to determine what works and what does not. To some extent differentiation across countries can be achieved through the choice of negotiating modalities. Thus, in the case of investment or trade facilitation, the adoption of a GATS-type positive list approach to the sectoral coverage or depth of policy disciplines can ensure differentiation. But such an approach will be much more difficult to apply to issues such as procurement or competition policy if the multilateral disciplines are to have meaning. In these cases there is a need to recognise that implementation may be resource-intensive and not a priority for low-income countries.

The ability to implement and to benefit from implementation of WTO disciplines will vary from country to country, depending not only on size and income but also on factors such as the skills of the workforce and institutional capacity. These observations suggest there is a need for 'differentiation' between developing countries in determining the reach of resource-intensive WTO rules. The basic rationale for differentiation is that certain agreements may simply not be development priorities or they may require many other preconditions to be satisfied before implementation will be beneficial. These preconditions can be proxied by the attainment of a minimum level of per capita income, institutional capacity and economic scale. Some WTO disciplines may not be appropriate for very small countries in that the required regulatory institutions may be unduly costly – countries may lack the scale needed for benefits to exceed implementation costs.

Several options have been proposed to take into account country differences in determining the applicability of WTO disciplines that have significant resource allocation implications.[16] Such 'rule-related SDT' could involve:

- Total flexibility for developing countries as long as other WTO members are not harmed (Stevens, 2002) – this approach was implicit in many of the proposals made by countries to the WTO in 2002;
- An agreement-specific approach involving country-based criteria that are applied on an agreement-by-agreement basis to determine whether (when) agreements should be implemented. This could be linked to the provision of technical assistance and development of a national action plan for ultimately assuming the WTO obligations concerned (Wang and Winters, 2000); or
- A country-based approach that places trade reform priorities in the context of national development plans such as the PRSP, and would employ multilateral surveillance and monitoring to establish a cooperative framework

[16] Resource-intensive in what follows is defined as either requiring significant investments to implement effectively, or an agreement involving substantial transfers from certain 'types' of developing countries to high-income nations – a net outflow. An example where such a transfer will occur is the TRIPS Agreement, as very poor countries are primarily consumers of products that benefit from IPRs.

under which countries are assisted in gradually adopting WTO norms as part of a more general programme of trade-related reforms (Prowse, 2002; and Hoekman, 2002).

Both the second and third approaches have the major advantage of allowing the issue of defining general eligibility (country differentiation) to be avoided. They are also likely to result in more attention being devoted to the economic costs and benefits of implementation of WTO rules. However, they have downsides as well. An agreement-specific approach entails 'implementation audits' and associated negotiations and would make the WTO a focal point for trade-related development assistance. Reasonable people may disagree about the magnitude of assessed costs and benefits or the specific criteria that are suggested for agreement-specific SDT. Determining criteria that could be used in the implementation context will require input from stakeholders, government agencies and development institutions. While this could help to strengthen the coherence of policy at both the national and international levels, it would also make the WTO negotiation and enforcement process much more complex. Widening the set of actors involved in implementation of a new approach towards SDT may reduce the risk of countries adopting appropriate programmes of trade and regulatory reform, but care would be needed to ensure that it did not lead to cross-conditionality.[17]

A country-specific approach has the advantage of not centring on WTO requirements only. Presumably, the focus would be to support developing countries in managing their trade reform agenda. Although eminently sensible from a development perspective, it is difficult to make consistent with the binding nature of the WTO negotiating process, as national considerations would take precedence over implementation of WTO obligations. In effect the country-specific approach implies a shift towards development institutions – national and international – taking the lead in regulatory areas, with the multilateral negotiations focusing on the market access agenda, an area they have proved they can do well. This could certainly help to avoid unconstructive outcomes caused by taking up domestic policy issues in multilateral negotiations in the absence of clearly defined developing country priorities and constituent interests.[18]

[17] Many countries were concerned in the Uruguay Round about avoiding possible 'cross-conditionality' between WTO and international financial institutions; this led to a ministerial declaration on 'coherence' to call for 'avoiding the imposition on governments of cross-conditionality or additional conditions' resulting from cooperation between the WTO and the international financial institutions. See Declaration on the Contribution of the World Trade Organization to Achieving Greater Coherence in Global Economic Policymaking, 15 December, 1993.

[18] Finger (2002) argues that in the behind-the-border areas the development banks must lead. 'Their processes include technical, cost-benefit analysis, their instruments include country-project specific legal commitments. These give the development banks comparative advantage over multilateral negotiations to address behind-the-border issues. In this view, SDT on such issues can never be more than identifying what the multilateral negotiations cannot do, not about what they can do to support development.'

Another alternative is a rule-of-thumb approach – based on criteria such as size and income per head – that would allow the bulk of the identified difficulties to be tackled at low (or zero) negotiating cost. Defining country eligibility for rule-related SDT provisions to include a subset of developing countries could do this. Such SDT could comprise an opt-out for countries that satisfy the criteria, basically the LDCs and another group of low income, small economies with weak institutional capacity and would be broadly applicable across those disciplines where it has been agreed there are substantial implementation issues.[19] This approach implies redefining the three-fold country group classifications currently used in the WTO – the LDCs, all other developing countries, and the developed country group. This would seem sensible given that many countries that define themselves as developing have per capita incomes that are many multiples of those in the poorest countries. Ghana, Nigeria and St. Lucia are very different from Argentina and Korea and their institutional capacity significantly weaker.[20] Their needs for assistance are much closer to those of the LDCs than middle and higher income countries, which still call themselves developing. In our view low income and small economies should receive SDT. Others should not. Although this has been a politically sensitive issue in the WTO, much of the discussion on greater country differentiation has (implicitly, if not explicitly) been driven by market access preferences, where country classification is inherently arbitrary. In the case of implementation of resource-intensive WTO agreements, a more general approach based on objective criteria should be feasible. To allow for flexibility, such a rule of thumb approach could be supplemented by a fairly demanding appeals procedure for countries that feel they have been particularly hurt as a result of not satisfying the criteria.[21]

Defining the appropriate approach is something that WTO members must determine for themselves. Determining which agreements are resource-intensive in the sense used here will be an important part of the equation. The same is true as regards enforcement of rules, i.e., whether specific rules should be subject to the

[19] For a fuller discussion see Hoekman et al. (2003). Once countries have increased per capita incomes or exceeded the criteria thresholds that are established, the various disciplines would become applicable. The objective is not to create permanent exclusions.

[20] Nigeria meets all the criteria for LDCs except size, the limit of which has been set at 75 million of population; but Bangladesh with a larger population size has been grandfathered and is considered an LDC.

[21] The agreement-specific approach noted above is a less centralised approach to categorisation that entails negotiating different country categories for different WTO agreements. Although system-wide categories may not always be the right identifier across different agreements, an agreement-specific approach is likely to give rise to similar discretion and process-related negotiating costs as a case-by-case approach. When it comes to resource-intensive agreements there will not be that much variation in the ability to implement. That is, if a country confronts institutional/resource constraints in implementing TRIPS it is also likely to have problems implementing the Agreement on Customs Valuation.

WTO Dispute Settlement Understanding (DSU), or whether countries satisfying specific criteria under a new approach to SDT should be exempted from the DSU. Arguably, what matters most at this point is that WTO members recognise that capacities and priorities differ hugely across the membership and consider alternative approaches along the lines sketched out above. Given the steady expansion of the WTO into regulatory areas, this would help make 'development relevance' more than a slogan.

A new approach towards SDT that is anchored much more solidly on economic analysis and a rational process of identification of development priorities could do much to enhance the 'ownership' of the institution in developing countries. Whatever the specific approach chosen, agreement on a methodology through which to determine *ex ante* the costs and benefits of implementation will help provide a basis for identifying the rules and disciplines that small or poor countries should not be expected to implement. It must be recognised that some types of rules will fail a cost/benefit test at the level of individual WTO members.[22] In the interim, the extension of transition periods and postponing the implementation of some agreements (especially TRIPS) for LDCs and other low income and small economies should be adopted.

Mechanisms also need to be strengthened to allow for regular monitoring of the implementation of SDT. This should extend to the provision of information on trade-related development funding and investments in trade capacity enhancement, as well as to regular reporting to the WTO on the importance of trade-related priorities identified in national development plans or strategies. A first step in this direction has already been taken by the DAC and WTO, building on a database of bilateral and multilateral development projects. More attention is needed at the national level to identify priorities, where trade issues rank in this overall set of priorities, and within the trade agenda, what will generate the highest social rate of return. The Integrated Framework for Trade-related Technical Assistance is one important vehicle that supports the achievement of this objective (Tsikata, 2003); the WTO Trade Policy Reviews provide another mechanism that can be used for this purpose.

c. Rebalancing Existing Agreements

Much of the SDT debate revolves around specific WTO agreements. Getting agreements 'right' requires an agreement-specific approach, and may require differentiation, not only by type of country, but by an explicit focus on what makes sense from the point of view of safeguarding the interests of vulnerable groups in poor societies. This paper cannot consider all WTO agreements. Instead,

[22] An example of an agreement that may require both significant investments for implementation and give rise to potentially large net resource outflows is the Agreement on TRIPS.

we focus briefly on two agreements that are of great importance for developing countries – agriculture and TRIPS.[23]

In the case of agriculture, the so-called 'Green box' of permitted subsidies does not cover the types of market imperfections that are likely to be found in developing countries. Developing countries may also need to pursue 'second-best' policies in so far as their realities dictate that in the foreseeable future they will not have the institutional capacity to pursue first-best policies in reducing poverty. An example here is a need to allow for special safeguards in agriculture for low-income countries that do not have the capacity to implement an adequate safety net. The Agreement on Agriculture needs to focus on a set of measures to enhance food security and stimulate agricultural production of the rural poor in developing countries on a permanent basis. These measures should not be seen as 'exceptions' or SDT, but rather as a rebalancing of the rules. Allowance should be made for:

- Direct and indirect investment and input subsidies or other supports to households below the national poverty line in order to encourage agricultural and rural development. Such supports could be product specific as well as general – what is needed is that they are effectively targeted to the rural poor.
- Programmes that support product diversification in small, low-income developing countries currently dependent on a very small number of commodities for their exports, including programmes involving government assistance for risk management.
- Foodstuffs at subsidised prices in targeted programmes aimed at meeting food requirements of the poor, whether urban or rural, as part of an overall effort to enhance food security.[24]
- Transportation subsidies for agricultural products and farm inputs to poor remote areas.
- Programmes involving government assistance for the establishment of agricultural cooperatives or other institutions that promote marketing, quality control or otherwise strengthen the competitiveness of poor farmers.
- A new Special Safeguard provision, available only to developing countries, to provide rapid but time-limited protection against import surges that hurt poor producers.

Many of the above provisions were included in the so-called 'Harbinson' draft prepared prior to Cancún to cover liberalisation commitments in the current

[23] Some of the provisions of the WTO can be argued to be welfare-reducing. One oft-noted example is the latitude to use anti-dumping.

[24] Consumption subsidies are already available under the WTO, but providing them via producer subsidies for goods that are barely traded is generally not permitted because developing countries registered no subsidies during the Uruguay Round and are bound by a commitment not to increase subsidies above historical levels. The delivery of such subsidies via producers may be desirable for reasons of administrative simplicity.

WTO negotiations on Agriculture.[25] The draft also contained a large number of provisions permitting developing countries greater leeway in protecting agriculture through border measures, such as tariffs and tariff quotas, than would be the case for developed countries. Such SDT could be justified because low-income developing countries do not have the fiscal capacity to support agriculture through less trade-distorting direct income supports. On the other hand, this additional flexibility could also lead, over time, to the same kind of inefficiencies in agriculture as have undermined competitiveness of many developing country industries nurtured behind high protective barriers.

Agreement will be needed on thresholds or criteria to determine to which countries the above type of provisions will apply. In our view it is important that criteria include administrative capacity and an indicator of poverty. One option would be to use a rule-of-thumb approach, as proposed above for resource-intensive disciplines. A simple measure that could be used is a combination of national GDP per capita and size. Alternatively, more specific criteria could be adopted, as under an agreement-specific approach to SDT discussed above.[26]

Turning to the TRIPS agreement, it has now been well established that the most appropriate level of intellectual property protection varies by income level (Grossman and Lai, 2002; and Lai and Qiu, 2003). Thus, low-income countries that are less likely to benefit from domestic innovation should stage the implementation of the agreement. In addition, the TRIPS agreement affects the supply of international collective goods in several areas and is weak in reflecting developing country (and global) interests. Possible remedies to this situation include:

- Providing for the development of suitable contracts that balance private interests and public objectives in the area of extracting biogenetic resources from developing countries;
- Providing for the establishment of new forms of IPRs over collective and traditional knowledge; and
- Permitting the reconciliation of possible conflicts between a global IPR system enforced by the TRIPS agreement and public interest in resource conservation and biodiversity.

Generally, more information and analysis of the costs and benefits of alternative rules, and the distribution of the costs and benefits within and between countries is also necessary. There is often substantial uncertainty regarding both dimensions. Given substantially weaker social safety nets and insurance mechanisms, and the

[25] A recommendation to include programmes in support of product diversification was not included. See WTO, Negotiations on Agriculture, 'First Draft of Modalities for the Further Commitments' (Revised), TN/AG/W/1.Rev.1, 18 March, 2003.

[26] Stevens (2002) develops a very useful checklist that could be used as the basis for a determination on how to classify agreements from a development/implementation perspective.

high rates of poverty in developing countries that entail much greater vulnerability to negative shocks, there is a clear need for more attention and resources to be devoted to a costing out of implementation requirements and calculation of cost-benefit ratios. The same applies to monitoring of outcomes, to allow for policies to be adjusted if necessary.

4. BEYOND THE SDT REVIEW: IMPLICATIONS OF CANCÚN

During 2002–3, the SDT debate in the WTO focused on 88 specific proposals made by developing countries relating to existing agreements and provisions, with some discussion of a possible new 'Framework Agreement' and a Monitoring Mechanism to track delivery of SDT and its effectiveness. The various proposals can be classified into four categories:

- Calls for improved preferential access to industrialised country markets;
- Exemptions from specific WTO rules, implying either greater freedom to use restrictive trade policies that are otherwise subject to WTO disciplines, or exemptions from rules requiring the adoption of common regulatory or administrative disciplines;
- Making promises to provide technical and financial assistance to help developing countries implement multilateral rules binding, and thus enforceable; and
- Expansion in development aid to address supply-side constraints that restrict the ability of firms to take advantage of improved market access.

The discussion on SDT was plagued by procedural and substantive disagreements. In an effort to break the impasse, the Chair of the General Council offered in the spring of 2003 a procedure for dealing with the proposals that had been tabled. He suggested classifying proposals into three categories: a set to be agreed before or at Cancún (38 mostly agreement-specific proposals); another group of 38 proposals that should be addressed in negotiating groups dealing with the substantive issues in question as part of the Doha Round; and a residual set of 12 proposals where it was clear that consensus would be very difficult to reach. The Chair proposed to leave cross-cutting proposals, including those relating to a Monitoring Mechanism, for future deliberation.[27]

The 'early harvest' set – Category 1 – included 12 proposals on which agreement had already been reached during deliberations in 2002 – mostly technical assistance and information/transparency-related – as well as a group that in the Chair's view were important in terms of having a development impact and in which agreement appeared possible. These included proposals relating to Article XVIII

[27] See *Bridges Weekly Trade News Digest*, Vol. 7, Nos. 13 and 17 (www.ictsd.org).

GATT (balance-of-payments and infant-industry protection), reviews of actions by developed countries to enhance developing country trade performance, favourable consideration of requests for waivers and transition periods, lowering the burden of notification requirements under some agreements (e.g., import licensing), incentives for the transfer of technology under the TRIPS Agreement, and simplification of rules of origin.

The Chair's Category 2 proposals spanned suggestions relating to rules on regional integration, anti-dumping, subsidies, agriculture, GATS, dispute settlement, SPS, TRIMS, safeguards and TRIPS. Several of these proposals, e.g., on TRIPS and Agriculture, are consistent with proposals made in this paper.[28] We disagree with others, however: for example, some of the proposals to reduce restraints in the use of trade measures to address balance of payments difficulties that are incompatible with good development practice. As mentioned, disciplines in this area should in our view be part of the core rules of the WTO. We also feel that some of the proposals in Category 3 – e.g., the proposal to exempt LDCs from the TRIMS agreement, or the suggestion that LDCs, 'notwithstanding any provision of any WTO Agreement, shall not be required to implement or comply with obligations that are prejudicial to their individual development needs . . .'[29] – are too open-ended to be beneficial.

Nonetheless, we agree with the overall approach to address many specific SDT proposals as part of ongoing negotiations on these subjects. An important issue that needs to be determined is how much can and should be done up front, as a 'pre-condition', and how much of these types of changes will need to be negotiated. Clearly some of what has been proposed in the previous sub-section can and should be implemented without reciprocal concessions. Examples are ensuring that TRIPS is interpreted so as to allow public health concerns to be addressed by governments (as has already been agreed), and developing effective monitoring of actions by developed countries to implement provisions relating to technical assistance, technology transfer, *de minimis* thresholds, etc. It can be argued that developing countries should not be expected to 'pay again' for improved rules, but without active engagement in defining and defending specific rule changes, the objective of making the rules more development-friendly will not be realised. We therefore support the suggestion to (re-)negotiate when it comes to the rules of individual agreements.

What the current approach to SDT, including efforts to narrow the gaps in Cancún,[30] does not do is go beyond the Doha Ministerial mandate. While this is

[28] Some proposals have already been agreed in other fora (e.g. the recent TRIPS Council decision for a review mechanism of developed country efforts to provide incentives for technology transfer to LDCs under Article 66.2 of TRIPS).

[29] Proposal by the African Group, TN/CTD/W/3/Rev.2.

[30] In Cancún, a number of additional proposals were accepted by members on an *ad referendum* basis.

understandable, in our view it is inadequate. What is needed is to re-think the framework for SDT in the WTO. This is as much a forward-looking issue as it is a backward-looking one (dealing with existing rules). Such a re-think should be an explicit one, and not an implicit decision. Thus, the suggestion by the Chair to address most of the substantive SDT proposals in specific negotiating groups, if adopted, makes sense in terms of allowing countries to re-negotiate existing rules, but could also result in a *de facto* choice to pursue an agreement-specific approach to SDT. Whether this is the best approach is open to question. Making eligibility for SDT within agreements negotiable could give rise to substantial transactions costs and uncertainty, and wasteful strategic behaviour. A major contribution of the WTO to world welfare is that it promotes transparency and predictability. These are essential for both producers and users of internationally traded goods and underpin the investments that ultimately help to raise living standards. Thus, our preference is that the WTO address the issue explicitly and decides on how to deal with SDT moving forward. Our preference is to specify broad criteria for access to SDT, in large part because of the low associated transactions costs once criteria have been agreed. If these prove unduly burdensome in exceptional cases – as may be the case for very small economies – these can be handled by an appeal to the Committee on Trade and Development and ultimately requests for waivers (based on existing WTO rules).

These types of issues are best addressed in the context of designing a new framework agreement for SDT – the cross-cutting approach that to date has not been the focus of deliberations. The need for such a rethinking arguably increased post-Cancún. If a good framework for SDT had been in place that ensured that poor and/or small countries would not be subject to significant downside risks from accepting to negotiate on the Singapore issues, the Cancún meeting might have ended successfully. What the precise approach should be requires considerable thought, consultation and debate.[31] Realism suggests that it will be very difficult to come to rapid closure on the complex issues associated with country differentiation. What can be sought rapidly, however, is agreement in principle to move in the directions advocated above, not least because that would facilitate progress on both new subjects and more traditional issues like liberalisation. A first step could be to establish a broad-based, high-level group operating under the auspices of the WTO General Council to explore different options, possible mechanisms and details of an alternative approach, including establishing criteria to determine which rules are resource-intensive in implementation, with recommendations to be made before the end of the Doha Round. The terms of reference of such a working group should be relatively broad, with

[31] See Stevens (2002) and Page (2001) for discussions of options and issues in this connection.

membership extending beyond the community of trade officials to include both national economic policymakers and representatives of the international development community.[32]

a. Supply-side Capacity, Technology Development and Trade-related Assistance

A major constraint limiting export growth in many LDCs and other small and low-income countries is a lack of supply capacity and the high-cost environment in which firms must operate. Firms in these countries may also find it more difficult to deal with regulatory requirements such as health and safety standards that apply in export markets. Development assistance can play an important role in helping to build the institutional and trade capacity needed to benefit from increased trade and better access to markets. This assistance must go beyond the implementation of WTO rules narrowly defined and focus on supply capacity more broadly, as well as addressing adjustment costs associated with reforms.

More aid is needed to address trade-related policy and public investment priorities, to help adapt to a reduction in trade preferences following further non-discriminatory trade liberalisation, and to assist in dealing with the potential detrimental effects of a significant increase in world food prices, should these materialise as a consequence of reforms in agriculture. There are also numerous actions that could be taken by developed countries to assist developing countries acquire and absorb knowledge and technology.

Key areas here include capacity building in intellectual property rights and technical regulations and standards, establishing public and public-private research facilities, facilitating technology-related services trade, and training programmes in the functioning of modern technology markets.[33] Many high-income country governments offer incentives to firms to locate in or provide technologies to lower-income areas within their own countries. They might constructively offer identical fiscal benefits to firms transferring technologies to developing countries as to less advantaged home regions. Similarly, developed countries could offer the same tax advantages for R&D performed in developing countries as for R&D done at home.[34] Other options to increase incentives for

[32] In June 2003, the WTO Director-General set up a Consultative Board chaired by former GATT/WTO Director General Peter Sutherland. The Board is tasked with preparing a report on how to strengthen the WTO as an institution. It appears that the terms of reference of this group are primarily on the procedures and functioning of the WTO, and not on the types of questions that are addressed in this paper. See *WTO Reporter*, 24 June, 2003.

[33] What follows draws on Hoekman, Maskus and Saggi (2003).

[34] To meet the terms of TRIPS Article 66.2, there might be somewhat greater advantages offered for R&D performed in the poorest countries (LDCs).

outward flows of technology include fiscal policies to encourage enterprises to employ, on an explicitly temporary basis, recent scientific and engineering and management graduates from developing countries, public resources to support research into the technology development and technology transfer needs of developing countries; grant programmes for research into technologies oriented towards poor countries' social needs, such as water treatment, energy, and the environment; and action to expand information flows. For example, in recognition of the role that technical standards play in diffusing production and certification technologies developed countries could commit to greater access to experts from developing countries in deliberations of their own standards-setting bodies.

In our view the best approach is to embed the delivery of trade-related capacity building in the national agenda and priority-setting processes that are used by governments and the donor community. The development community made commitments to this effect at the International Conference on Financing for Development in Monterrey in March 2002 – what is needed now is a clear articulation of trade-related demands by developing countries. Development assistance is (and should be) primarily country-focused. In order to maximise financing for trade-related assistance *and* to ensure that assistance in this area addresses priority areas for intervention, the trade-related technical assistance and capacity-building agenda must be embedded in a country's national development plan or strategy. In the case of low-income countries for which SDT should be provided the primary example of such an instrument is the PRSP – implying that governments and stakeholders must take action to embed trade in PRSPs in those instances where trade is seen as a priority.

It is important to avoid a situation in which a desire by donor countries to see developing countries implement certain WTO agreements leads them to divert assistance flows towards trade institutions at the expense of recipients' own priorities. For these reasons, we do not support suggestions (e.g., Finger and Schuler, 2000) to make technical assistance a binding requirement and to link implementation of WTO agreements to the provision of such assistance. We recognise that disallowing such linkages may make it more difficult to secure developing country agreement to future WTO rule changes, but would argue that if developing countries are to be 'compensated' for adopting new rules, they should be confident that this is not at the expense of donor support for other objectives. Whatever the national priorities are, over time, as income levels and institutional capacity increases, countries will become better able to implement resource-intensive WTO rules. Whatever specific new framework for SDT is adopted in the WTO to recognise capacity and related differences across countries, the primary objective of such a new framework should be to ensure that rules are only implemented if this is appropriate from a national perspective.

5. CONCLUDING REMARKS

The traditional approach to SDT in the GATT/WTO has not been a success in promoting development. Indeed, a good case can be made that the approach is fundamentally flawed in that it helped create incentives for developing countries not to engage in the process of reciprocal liberalisation of trade barriers and the rule-making process. It has also not helped the institution move forward in the rule-making arena. There is a need to recast SDT if the WTO is to become more effective in helping developing countries to use trade for development.

The basic elements of a new approach could include a concerted effort to reduce market access barriers and agricultural trade distortions on a non-discriminatory basis; recognising that resource constraints in small and low-income countries may require temporary exemptions from multilateral rules; considering a more 'flexible' approach towards rule-making and enforcement; and making greater efforts to tie implementation of rules to national development priorities.

First and foremost is to improve access to markets – both developed and developing. This can do much to help achieve both the income MDG target, as well as other goals. In our view market access should be pursued primarily on an MFN basis, span both goods and services, and rely on the mechanics of reciprocity. This is not a new suggestion – this type of SDT dates back to the 1960s (Hudec, 1987) – with the differential treatment comprising an acceptance on the part of the major WTO members (large markets) to eliminate tariffs and other trade barriers on the goods and services in which developing countries have a comparative advantage. As mentioned, it does not imply the immediate end of current preference programmes, the value of which should be enhanced by greatly simplifying rules of origin. This would provide some additional value to the countries that benefit from preferences during the period in which MFN rates are reduced. But, preferences are not a long-term solution – as discussed, they come at a high cost to excluded countries and may not benefit recipients much either.[35]

In order to assist low-income developing countries to benefit from market access opportunities a significant increase is needed in technical and financial assistance to support programmes to facilitate adjustment, expand supply capacity and improve the investment climate. The need for this is acute in absolute terms, but is made even stronger as the trading system moves in the direction of lower MFN trade barriers and the consequent erosion of preferences for those countries that currently benefit from effective preferential access. What is required is a de-linking of development assistance from trade policy – a shift from the current strategy of permitting a small subset of countries to benefit from the large

[35] They are also very inefficient transfer mechanisms. The cost to the EU and US of providing $1 of preferential access has been estimated to exceed $5 (Beghin and Aksoy, 2003).

distortions created by developed countries on their markets, to one that puts the emphasis on direct support to expand trade capacity and improve performance.

Turning to rules, there is clearly a need to 'get the rules right' from a development perspective. This will require the re-opening of certain existing agreements. The heart of the SDT issue revolves around the need to recognise that one size does not fit all when it comes to regulatory disciplines and the 'behind the border' policy agenda that is increasingly being pursued in the WTO. Differentiation is required, both in terms of negotiating mechanics (how much reciprocity should be sought) and the reach of disciplines across countries. Country differentiation requires agreement on the criteria used to define eligibility for SDT. This has for a long time been a non-starter in the WTO, with the result that SDT provisions have not been very effective. Indeed, the experience to date suggests that the depth of the differential treatment granted will be inversely related to the number of eligible countries. Thus, eligibility for SDT should be restricted to fewer WTO member countries than is currently the case under the self-declaration approach that is used to identify developing countries. This means essentially expanding the LDC list to include other low-income and small economies with weak institutional capacity.

In practice, SDT and 'development relevance of WTO rules' are often conflated in discussions, with calls for specific types of SDT essentially being motivated by a perception that a certain rule is 'anti-development' and that developing countries should be exempted from it. In our view the appropriate solution to such problems is to re-negotiate the rules rather than seeking an opt-out. Indeed, Cancún suggests that redefining the negotiating set is an urgent matter for WTO members.

The elements of the approach sketched out above are both consistent with, and would do much to realise, the objectives laid out in paragraph 2 of the Doha Ministerial declaration:

> . . . we shall continue to make positive efforts designed to ensure that developing countries, and especially the least developed among them, secure a share in the growth of world trade commensurate with the needs of their economic development. In this context, enhanced market access, balanced rules, and well targeted, sustainably financed technical assistance and capacity-building programmes have important roles to play (WT/MIN(01)/DEC/1).

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