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From the Director's Desk

K.T. Chacko

FROM its early days, the multilateral trading system shaped by the General Agreement on Tariffs and Trade (GATT) recognized the fact that the developing countries did not have the wherewithal to take commitments and obligations at par with their developed country counterparts. This recognition was reflected in the adoption of measures that provided special and differential (S&D) treatment to these countries, referred to as the less developed contracting parties by the GATT. The cornerstone of the S&D provisions was the principle of less than full reciprocity in commitments that the developing countries could enjoy in the acceptance of commitments during the successive rounds of multilateral trade negotiations under the GATT. The single most important advantage for the developing countries stemming from the S&D provisions was that they could suitably sequence their trade policy reforms, keeping in view their domestic compulsions.

The concept and interpretation of S&D provisions have, however, undergone significant changes particularly since the WTO was established. While the focus of the S&D provisions under the GATT was the recognition of the development imperatives of the developing countries, as a result of which these countries were allowed flexibilities to design appropriate policy measures, under the WTO, most S&D provisions merely take on board the problems that developing countries could face in the implementation of various covered agreements. Thus, S&D provisions have the form of longer implementation periods and somewhat lesser commitments in almost all the covered agreements under the WTO.

The dilution of the S&D provisions under the WTO was one of the major issues that had agitated the developing countries since the organization was established. The collective voice of these countries was eventually recognized in the shaping of the Doha Round of multilateral trade negotiations. The Ministerial Declaration that set out the agenda of the negotiations emphasized that positive efforts should be designed to ensure that developing countries secure a share in the growth of world trade commensurate with the needs of their economic development. Member countries of the WTO agreed that all special and differential treatment provisions should be reviewed with a view to strengthening them and making them more precise, effective and operational. The realization of these objectives is surely the most significant of the challenges that the developing countries are faced with, in the on-going negotiations.

Special and Differential Treatment in the Doha Round of Trade Talks

Parthapratim Pal*

The Doha Development Round promised to bring development at the core of WTO agenda. Consequently, in the Doha Declaration, member governments agreed that all special and differential treatment provisions would be reviewed with a view to strengthening them and making them more precise. While it is laudable that the Doha Ministerial has recognized some of the concerns expressed by developing countries about the poor effectiveness of the Uruguay Round S&D rules, it is also disturbing that lack of progress in the negotiations is pushing the potential gains away. Keeping in mind the Uruguay Round experience, developing countries must ensure that in this round, the S&D clauses are formulated in a way that is effective, operational and legally binding.

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I. Introduction

In the terminology of the World Trade Organization (WTO), Special and Differential Treatment (S&DT) refers to rights and privileges which are only available to least developed and developing country Members of the WTO but are not available to the developed country Members. Because of its discriminatory nature, S&DT is an exception to one of the most fundamental principles of GATT (and WTO), which is the Most Favoured Nation (MFN) principle. Under this principle, countries cannot normally discriminate between their trading partners. A GATT/WTO member country must grant all other member countries the "most-favoured-nation" or MFN status. However, the GATT/WTO allows certain exceptions to this rule, S&DT being one of them.

It was realized since the inception of the GATT that the rules of multilateral trade policy regime may not adequately take into account the development needs and objectives of the developing countries.[1] It was also clear that the costs faced by developing countries in adapting to a changed environment were disproportionately large. S&DT was a compensation offered to developing countries for agreeing to new disciplines of trade liberalization. The basic elements of S&D policies pursued in GATT were:

(i) Better market access for exports by developing countries so that they could boost economic development through exports.

(ii) A lower level of obligations for developing countries providing them the necessary flexibility to pursue policy options appropriate for industrialization and economic development and;

(iii) A modest level of expectation from developing countries as regards their application of various GATT agreements.

However, the concept of S&D and its interpretation have not remained the same over the years. A number of factors including the relative position of developing countries in the global trading system, the structure of the multilateral agreement and the dominant theoretical views of that time played an important role in formulating the S&D policies in the multilateral trading system.[2] As gradually the dominant theoretical paradigm shifted from 'import substituting industrialization' to 'export-led growth', a major shift in the focus of S&D policies occurred. The period of Uruguay Round (UR) negotiations coincided with a phase when some developing countries were gaining market power in international economic

structure and when the mainstream economic literature was espousing the virtues of free trade and export led economic growth. Consequently, the concept of S&D underwent a dramatic transformation during the Uruguay Round negotiations. Prior to the UR, the focus of S&D treatment was to recognize the special problems of development faced by developing countries and offer necessary flexibilities to pursue policy options appropriate for industrialization and economic development. But in the UR agreements, S&DTs are more geared towards recognizing the special problems that developing countries may face in the implementation of the agreements and offer implementation related flexibilities.[3] Not surprisingly, a significant percentage of S&D policies of the Uruguay Round Agreement involve lower level of commitments from developing countries and longer transition periods to implement those commitments. Secondly, unlike previous GATT rounds, developing countries had to sign the UR agreement as a single undertaking, i.e. they were not allowed to sign certain sections of the agreement but had to accept the UR agreement in its entirety. Developing countries allege that this fundamental departure from the traditional GATT approaches implied constraining of the policy space available to developing countries. In a joint communication to the WTO, a group of developing countries allege:

"The same policies could be applicable for countries at various levels of development. It was thought that all what was required was the grant of short transition periods and technical assistance for the developing countries."

It is notable here that among the S&D provisions of the Uruguay Round, some are legally binding which the WTO Members are required to follow. But some S&D clauses are non-binding in nature. These are known as the 'best endeavour' clauses where the WTO suggests that developed country Members 'should' do something to help a developing or least developed country Member of WTO. Because of their non-binding nature, these clauses have proved to be the least effective of S&D clauses. Interestingly, most of the S&D clauses related to technical assistance are such 'best endeavour' clauses and they hardly benefited developing countries during the implementation period of the WTO.

Overall, the design and implementation of the Uruguay Round S&D provisions did not prove to be very useful for developing countries. To make matters worse, increasingly there is a feeling that instead of providing additional flexibilities to developing countries and helping economic development in these countries, WTO rules are actually making 'an unlevel playing field less level'.[4] For example, it has been pointed out that in spite of the WTO disciplines, distortions continue in key sectors for developing countries like agriculture and services – farm subsidy still continues to distort trade and is the biggest stumbling block for multilateral trade negotiations and movement of skilled and unskilled labour is still as restricted as ever. There are also allegations by economists like Ha-Joon Chang and Joseph Stiglitz that the current international trade rules block most of the development paths followed by the current developed countries.[5] Many economists view this asymmetry as a fundamental problem with the prevalent multilateral trading system. Stiglitz and Charlon (2004) are of the opinion that the new trade rules and domestic disciplines introduced in the WTO reflected the priorities and needs of developed countries more than developing countries. They further argue that developed countries are using the WTO trade defence mechanisms as non-tariff measures to unfairly block industrialization of developing countries.

Empirical results also supported the hypothesis that poorer countries of the world are increasingly becoming marginalized in world trade. Stiglitz (2006) points out that most gains from the Uruguay Round trade liberalization have been appropriated by developed countries. According to him, *"Seventy per cent of the gains went to the developed countries – some $350 billion annually. Although the developing world has 85 per cent of the world's population and almost half of total global income, it received only 30 per cent of the benefits – and these benefits went mostly to middle-income countries like Brazil"*. p. 78.

II. Special & Differential Treatment in the Doha Round of Trade Negotiations

The Doha Ministerial Meet of WTO recognized some of these concerns expressed by the developing countries. It was decided that development should be the main plank of the new trade round of trade negotiations. Paragraph 2 of the Doha Ministerial Declaration says:

"The majority of WTO members are developing countries. We seek to place their needs and interests at the heart of the Work Programme adopted in this Declaration. Recalling the Preamble to the Marrakesh Agreement, 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."

It was also realized that to empower developing countries, it would be important to strengthen the S&D provisions. Therefore, in the Doha Declaration, member governments agree that all special and differential treatment provisions should be reviewed with a view to strengthening them and making them more precise.

Paragraph 44 of the Doha Ministerial Declaration agrees to review all the S&D treatment provisions with an objective of 'making them more precise, effective and operational'.[6] Also in paragraph 12 of the Doha declaration of the 'Implementation-related Issues and Concerns' the Committee on Trade and Development (CTD) has been instructed to examine the possibilities of improving the effectiveness of the current S&D provisions by identifying S&D measures that Members consider should be made mandatory. CTD is also to consider the legal and practical implications of converting the S&D measures into mandatory provisions. The emphasis given to solve the problems of developing and least developed countries was a marked change from the earlier round of multilateral trade negotiations. It was believed that enhanced and more effective S&DT will be one of the cornerstones of the Doha Development Round.

The Doha Ministerial Declaration (DMD) was signed in November 2001 and it was stipulated in the DMD that the single undertaking would be signed by 2005. However, WTO Member countries have failed to arrive at any consensus by the given deadline. Wide divergences in country positions regarding the framing of multilateral trade rules in agriculture, industrial goods and services have resulted in a serious deadlock in the negotiations. This failure has once again highlighted that all is not well with the Doha Round of negotiations. This has affected the talk on S&D issues as well. During the course of the current round of negotiations, the Members have submitted a total of 88 Agreement specific proposals in the area of S&D under the various WTO Agreements. To streamline the negotiating process, in a document dated 7 April 2003 (WTO Document Number JOB(03)/68) the Chairman of the General Council classified all S&D proposals into three broad categories. In the first category or Category I those proposals are put for which there "appears to be a greater likelihood of reaching agreement". There are 38 proposals in this category. The Chairman indicates that maximum negotiating energy should be spent on these proposals. In Category II, there are proposals for which there is some convergence of opinion and these include proposals from Agriculture, Services, Rules, etc. Category II comprises 38 proposals, among these 27 proposals cover areas in which mandated negotiations are continuing. There are also 11 other proposals the operative part of which is being considered in the respective WTO bodies. Category III includes proposals on which there is much less convergence. The Chairman felt that for these proposals, progress might not be possible without a certain degree of redrafting of the original texts that were presented. There are 12 proposals in this category.

However, even with this prioritization, not much progress has been made in this area of S&D treatment. Some promises have been made in the Hong Kong Ministerial about some S&D clause like Duty Free Quota Free access to least developed countries by developed and some developing countries (declaring

themselves in a position to do so) and the promise of Special Products and Special Safeguard Mechanisms to developing countries. But since the Hong Kong Ministerial the negotiation has again gone into a hiatus mostly due to rigid positions of some key countries in agriculture. It is difficult to say when the negotiation will come to an end but it can be safely said that by dragging the negotiation on, the development dimension of the Doha Development Round is increasingly becoming diluted.

III. Conclusions

The Doha Development Agenda tried to rectify some of the problems of the Uruguay Round by placing development at the heart of the current round of negotiations. Consequently, it was expected that the spread and depth of S&D provisions will also improve in this round of trade talks. Most of the S&D provisions are still under negotiation but to ensure more meaningful S&D provisions, the developing country Members must insist that the WTO should make sure that the S&D provisions are operationally effective and legally binding in nature. In this context it will also be important to resolve all the implementation related problems of the Uruguay Round S&D. Finally, as Singh (2003) says, "*the unequivocal endorsement of S&DT at Doha gives the international community a fresh chance to change course, to put economic development at the heart of the agenda for the current and future evolution of the multilateral trading system*" – developing countries must not squander this opportunity by trying to force a deal and compromise on these important issues. It will not be easy to get meaningful concessions from the developed countries but at least in this round, the developing country and country groupings (like the G-20 and G-33) are playing much more meaningful role in the negotiations.

NOTES

[1] In the context of Special and Differential Treatment, the term "developing country Member" will mean developing and least developed country Members of WTO. It will be mentioned specifically if a certain rule or clause is meant only for Least Developed Countries (LDCs). It is important to mention here that there are no WTO definitions of "developed" or "developing" countries. Developing countries in the WTO are designated on the basis of 'self-selection'. However, the WTO follows the United Nations list of least developed countries to identify these countries.

[2] See Keck and Low (2004), for a historical perspective of evolution of special and differential treatment in WTO.

[3] Proposal for a Framework Agreement on Special and Differential Treatment, Communication from Cuba, Dominican Republic, Honduras, India, Indonesia, Kenya, Malaysia, Pakistan, Sri Lanka, Tanzania, Uganda and Zimbabwe, WTO Document Number WT/GC/W/442 dated 19 September 2001.

[4] Stiglitz (2006), pp. 78.

[5] Stiglitz (2006) and Chang (2002).

[6] It says: "We note the concerns expressed regarding their operation in addressing specific constraints faced by developing countries, particularly least-developed countries. In that connection, we also note that some members have proposed a Framework Agreement on Special and Differential Treatment (WT/GC/W/442). We therefore agree that all special and differential treatment provisions shall be reviewed with a view to strengthening them and making them more precise, effective and operational.

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Special and Differential Treatment for Developing Countries

THE principle of special and differential (S&D) treatment is that international trade rules should adapt to the particular economic situation of developing countries. Within the WTO, S&D treatment has taken two main forms:

- With respect to market access commitments, S&D treatment has been implemented through non-reciprocal trade preferences designed to provide preferential access for developing country exports to the markets of developed countries.
- With respect to trade rules and disciplines, S&D treatment means that developing countries can be exempted from the need to implement multilaterally agreed rules or might be asked to accept less onerous obligations. In the Uruguay Round, S&D treatment also meant offering developing countries longer implementation periods and possibly technical assistance to help them meet multilaterally-agreed commitments

S&D Treatment in the Agreement on Agriculture

The WTO Agreement on Agriculture provides S&D treatment to developing countries in various ways.

Developing countries could opt to establish their initial bound tariff levels using ceiling bindings at whatever level they chose, rather than being required to convert their existing border protection measures into tariffs. They had lower reduction percentages and longer implementation periods for their tariff reduction, export subsidy reduction and domestic support reduction commitments (and least developed countries were not required to make any reduction commitments). Greater flexibility is provided in the use of certain policy instruments such as investment subsidies or export subsidies. Special provisions for net food-importing developing countries and the least developed countries were included in the Decision on Measures Concerning the Possible Negative Effects of the Reform Programme on Least-Developed and Net Food-Importing Developing Countries.

For these reasons, WTO disciplines are rarely binding on developing countries. For example, tariffs applied by a wide sample of 32 developing countries average 20 per cent even though their bound tariff levels (the maximum levels they can apply) average 84 per cent. Few countries are near their limit on permitted trade-distorting domestic support, and fewer still would be in a position to offer export subsidies even if they had this right. These generalizations do not mean that particular countries for particular commodities and disciplines might not find their freedom of action constrained by the commitments they have accepted under the Agreement on Agriculture.

Calls for a Development Box in the Agriculture Agreement

Nonetheless, many developing countries believe that the existing flexibility in the Agreement on Agriculture does not go far enough. They argue that they must retain the ability to provide protection and support to domestic food production for food security, livelihood security and rural development reasons, as well as to protect producers and consumers against volatile world prices and import surges. They also argue that there is an asymmetry about the current Agreement; the disciplines applied to developing countries ironically are often stricter than those applying to developed countries. For example, because few developing countries offer

domestic subsidies to their farmers, they are limited by the Agreement to *de minimis* amounts of trade-distorting support in the future. Developed countries, on the other hand, under the terms of the Agreement can provide their farmers with trade-distorting support well beyond *de minimis* levels. Nor has the Marrakesh Decision been followed up by concrete actions.

S&D Treatment in the Doha Round Negotiations

The Doha Declaration confirms that "special and differential treatment shall be an integral part of all elements of the negotiations on agriculture [..] so as to be operationally effective and to enable developing countries to effectively take account of their development needs, including food security and rural development." What this will mean in practice will be determined by the decisions reached in a number of negotiating areas.

- *Tariff Reductions*. While the intention is that developed countries will be required to make bigger cuts in their tariffs than developing countries (and least developed countries will not be required to make any cuts), the way in which the tiered formula agreed in the July 2004 Framework Agreement is implemented will be very important in establishing the extent of S&D treatment. Important issues here are the number and position of the tariff bands and the size of the reduction coefficients. Both developed and developing countries will be able to designate a certain number of products as sensitive products, with the possibility of implementing lower tariff reductions on these products than the tiered formula would require.
- *Special Products*. In addition, developing countries will be able to designate an appropriate number of products as Special Products, based on criteria of food security, livelihood security and rural development needs. These products will be eligible for more flexible treatment, with their criteria for selection and treatment to be specified in the further negotiations.
- *Special Safeguard Mechanism*. Producers in developing countries are vulnerable to import surges and imported price volatility, in the absence of alternative risk management and safety net instruments. It is accepted that a special safeguard mechanism will be established for use by the WTO developing country members, but key criteria such as the country coverage, product coverage, trigger levels and preconditions, type of remedy and duration remain to be decided.
- *Domestic Subsidy Commitments*. Developing countries have proposed some broadening of exempt Amber Box policies as well as other rule changes to increase their flexibility to be able to provide budgetary support to their producers.

Which Countries Should be Eligible for S&D Treatment?

S&D treatment is available to all developing countries in the WTO. But qualifying as a developing country is simply a matter of self-declaration. Thus the developing country category covers countries as different in their competitive capacity and economic potential as Singapore and South Korea, on the one hand, and Benin and Malawi on the other. Developed countries argue that greater differentiation among developing countries is required if they are to make more generous S&D treatment offers, and that the level of S&D treatment should be graduated according to a country's ability to accept WTO disciplines. So far, developing countries have rejected any suggestion that there should be greater differentiation.

(www.tcd.ie.iis)

Special and Differential Treatment and the WTO

SPECIAL & Differential Treatment (SDT) consists of measures to compensate developing countries for the structural asymmetries existing between them and developed countries. These are expressed mainly in reduced access to technology and finance and deficiencies in human resources and infrastructure and result in the low systemic competitiveness of these countries. SDT compensates for such asymmetries so as to ensure more equitable participation in international trade.

In fact, SDT treatment has been transformed into statements of good intentions with little concrete content, as shown by the most of the 145 SDT measures in the WTO Treaty.

Several arguments have been advanced against SDT. *First*, it is argued that the heterogeneity of developing countries makes the concept meaningless in practical terms. Many developing countries have reached the stage of "take-off" while others have achieved a sufficiently high level of economic sophistication for the internal generation of investment and technological innovation necessary to achieve self-sustained growth. A *second* argument is that SDT is part of the baggage that was dismantled with the liberalization and globalization processes. *Thirdly*, SDT is said to be an unnecessary "crutch" which protects inefficiency and hinders adjustment to the requirements of global competitiveness. A *fourth* argument is that SDT is trade-distorting and has encouraged the use of unsustainable subsidies.

The heterogeneity argument is partly valid in the sense that there is a wide variety of "developing countries" and the category is barely functional from the trade negotiations perspective. Nevertheless, several countries, for example those of South East Asia, have reached the take-off stage under conditions different from those sanctioned by the WTO, by using policies of protection and strong state support for industry.

The downgrading of SDT that resulted from the Uruguay Round negotiations was far more a product of the realities of power and the assumption that free trade by itself generates development, than of the fact that asymmetries among countries had disappeared or diminished. SDT was introduced in international trade for the purpose of: (1) introducing equity and fair competition when structural conditions are different, and (2) avoiding distortions brought about by the negotiating power of industrialized countries in the multilateral trade system. Both motives continue to be valid.

The idea that markets by themselves will unleash forces to eradicate the systemic weakness of a lack of competitiveness lacks a strong foundation. On the contrary, facing inequalities in markets without any compensatory mechanisms would worsen inequity by strengthening the economic, political and market power that distorts competition. This intensifies marginalization and poverty and renders national development even more onerous. SDT, therefore, continues to be a necessary and valid component of international trade arrangements.

(www.acs-aec.org)

WTO S&D Treatment Provision

IN the Doha Ministerial Declaration, the trade ministers reaffirmed special and differential (S&D) treatment for developing countries and agreed that all S&D treatment provisions "...be reviewed with a view to strengthening them and making them more precise, effective and operational." In the Declaration, the trade ministers endorsed the work programme on S&D treatment presented in another Doha document, Decision on Implementation-Related Issues and Concerns (Implementation Decision). That document called on the WTO Committee on Trade and Development to identify the S&D treatment provisions that are already mandatory and those that are non-binding, and to consider the implications of "...converting [S&D] treatment measures into mandatory provisions, to identify those that Members consider should be made mandatory, and to report to the General Council with clear recommendations for a decision by July 2002." It also called for the Committee on Trade and Development "to examine additional ways in which S&D treatment provisions can be made more effective, to consider ways...in which developing countries...may be assisted to make best use of [S&D] treatment provisions, and to report to the General Council with clear recommendations for a decision by July 2002."

The negotiations have been split along a developing-country/developed-country divide. Developing countries wanted to negotiate on changes to S&D provisions, keep proposals together in the Committee on Trade and Development, and set shorter deadlines. Developed countries wanted to study S&D provisions, send some proposals to negotiating groups, and leave deadlines open. Developing countries claimed that the developed countries were not negotiating in good faith, while developed countries argued that the developing countries were unreasonable in their proposals.

(http://resources.alibaba.com)

Breaking the WTO Logjam: Towards Enforceable Special and Differential Treatment

Should Developing Countries be Given Special and Differential Treatment?

SHOULD developing countries adopt the same trade rules as developed states – or should they be given Special and Differential Treatment (SDT)? Are existing SDT mechanisms out of synchronization with emerging rules of trade policy? How can researchers assist the incorporation of achievable SDT regimes within theWTO's rule-making process?

A paper from the Institute of Development Studies makes the case that consensus around SDTs must be reached if the current WTO negotiations to remove barriers to trade (the Doha Round) is to move forward. Warning against a rapid growth of country-specific mechanisms, it calls on the WTO to rise to the challenge of applying agreed SDT rules to broad groups of countries identified on the basis of objective data.

SDT had its origins in a view of trade and development that questioned the desirability of developing countries liberalizing border measures at the same pace as industrialized countries. Much of the 'old SDT' (particularly provisions relating to financial and technical assistance or technology transfer) is unenforceable within the WTO system and what is enforceable has often been overtaken by events.

The report notes that:

- By making dispute settlement binding, the Uruguay Round has removed the inherent ambiguity in the vague texts of the WTO's predecessor (the General Agreement on Tariffs and Trade – GATT) that were used by developed and developing countries alike.
- This means that there must be more explicit provision to allow the flexibility required by different countries' circumstances.
- Traditional SDT measures, such as extended implementation periods, are inappropriate for some of the new rules that are agreed. Different types of SDTs that relate to the specific problem are required.
- In some cases, such as patents and other Trade-Related Aspects of Intellectual Property Rights (TRIPs), the issue is whether or not it is developmentally desirable for small, poor countries to adopt the same rules as industrialized ones. What is required is not a longer period to implement the common rules, but permanent exemption until it is developmentally desirable to do so.
- In other cases, such as the WTO's very tentative steps to liberalize world agricultural trade, the problem being addressed has largely been created by rich country protectionism (such as that provided by the EU's common agricultural policy). It is the rich countries that need to have their misdeeds curtailed by new rules, not the poor ones.

The timetable for reviewing and systematizing SDTs agreed by the WTO in Doha in 2001 has slipped. Many developing countries are understandably wary of agreeing yet more new rules with complex effects when binding dispute settlement may result in unexpected costs. The rich countries' reluctance to adhere to the Doha timetable and make positive moves on SDT simply confirms these fears. Agreeing to new rules that they do not yet fully understand and without an 'SDT safety net' would place them in a dilemma: while the implementation of new rules may entail high administrative, financial or political costs, non-implementation might leave them open to the threat of trade sanctions by their trade partners following recourse to the WTO's dispute settlement provisions.

Both developing states and the multilateral trade system would gain from averting the current risk of a shift from multilateral to bilateral/regional decision-making. The development of appropriate new SDT to prevent the WTO rule-making process from seizing up – becoming strongly advisable rather than legally enforceable – will require:

- Acceptance within the WTO that while the one-size-fits-all approach is flawed, the interests of each member are not so dissimilar that they can only be dealt with through unique variations in their national WTO schedules.

- Recognition that for the "new agenda" of intellectual property rights and investment rules there is a dangerous lack of a research base to identify the differential impact for groups of states.
- More focused research to identify the shared interests of developing countries and elaborate "do-able" SDT prior to the final stages of the Doha Round.
- Identifying actionable modulations in the rules suited to the characteristics of groups of countries with common features.
- Research to demonstrate the feasibility and country eligibility of SDT in the "old areas" of trade policy – for example to create a "Development Box" or a "Food Security Box" in the agriculture sections of the WTO agreements.

(www.globalenvision.org)

IBSA Forum for Early Conclusion of WTO Talks

INDIA, Brazil and South Africa have urged the WTO members to reaffirm their commitment to achieve the necessary agreements so as to conclude the negotiations of the Doha Development Agenda.

The New Delhi Ministerial Communique 2007 issued at the conclusion of India-Brazil-South Africa (IBSA) Dialogue Forum adds that the three countries expressed the view that as members of the WTO Group of 20, they share the belief that the cornerstone of the current negotiations was the agricultural sector. This, the Ministers felt, was important as it was of utmost relevance for the well-being of most vulnerable sections of the populations in the three countries.

"In particular, agreement has to be reached to eliminate trade distortions, especially those limiting access to the developed countries' markets, including domestic support and other forms of internal support instrumented by the developed countries. Meaningful and operable *special and differential treatment*, which includes development instruments of Special Products and the Special Safeguard Mechanism are vital to address the concerns of developing countries with subsistence and low-income farmers," the Communique adds.

The Ministers emphasized that any progress towards achieving these goals would have a positive impact on the overall process of the Doha Round, in particular in the NAMA and services negotiations.

The Ministers noted that an effective "Aid for Trade programme" would enhance growth prospects and reduce poverty in developing countries. As this requires substantial, additional, targeted resources for trade-related programmes and projects, the Ministers urged developed countries to leverage their aid for infrastructural development so that developing countries, particularly LDCs, could benefit from the present level of market access available to them.

Open World Economy

The Communique underlined that a more open world economy which takes into account the promotion of financial flows, notably foreign direct investment, in a way that contributes to the sustainability of development, the transfer of avant-garde technology and the creation of decent employment, all of which are tools for the definitive fight against poverty.

The Ministers reaffirmed their commitment to implementing the determination of the Heads of State and Government concerning the expeditious establishment of the working group to focus on the modalities for the envisaged India-Mercosur-SACU Trilateral Free Trade Agreement (T-FTA).

The Ministers also stressed on the necessity of reforming the International Financial Architecture, specially by enhancing the voice and participation of developing countries in the Bretton Woods institutions and expressed concern at the slow rate of progress that has been achieved so far.

Earlier, addressing the meeting, the Minister for External Affairs, Shri Pranab Mukherjee said the trade target of $10 billion among the three countries by 2007 was likely to be achieved. "It will be our endeavour to further increase trade and investment flows among us," the Minister added.

(*The Hindu Business Line*, 19 July 2007)

Developing Countries Decry Private Safety Standards on Food Items

DEVELOPING countries exporting edible items or processed foods to rich countries find the private standards demanded by organization representing supermarket chains and other bodies, over and above governments or global organizations' safety standards, too costly and obstructing trade opportunities.

Official sources said that at a recent meeting of the WTO's Sanitary and Phytosanitary (SPS) Measures Committee, held in Geneva, the debate centered around if and how these private sector standards fall under the WTO's SPS Agreement, as well as about the economic implications for various countries.

Among the specific concerns highlighted are common gripes about the length of time some countries take to assess risk and approve imports and what some countries deem to be importing nations' failure to follow global standards to base their actions on science. Some members such as Chile and the European Union (EU) said that private standards could foster trade because exporters complying with the standards could sell their products more easily and the EU cited the case of Peruvian asparagus sold in EU markets.

Different Category

Interestingly, on the issue of special and differential treatment (SDT) for developing countries in the SPS Agreement (particularly Article 10.1) which might not be as effective and enforceable in practice as desired or as needed by developing countries, the EU, Japan, New Zealand and others said this discussion should not reduce members' ability to protect human, animal and plant health, which puts the SPS Agreement in a different category from some other agreements such as anti-dumping.

But some members such as St Vincent and the Grenadines, Bahamas, Egypt, Cuba and Brazil said that the proliferation of standards that are set without consultation causes a challenge for small economies.

Rise in Cost

Meeting the standards also raises costs, they pointed out. Some countries contended that in practice these voluntary private standards could become compulsory: if a supplier does not comply it is excluded from the market. A number of countries said the priority should be to help developing countries comply with official standards and cautioned that there is "a risk of losing sight of official standards if countries focus too much on private norms".

WTO Paper

A new 8-page WTO Secretariat paper circulated at the meeting takes a look at illustrations of private standards (individual firms; collective national schemes and collective international schemes) and the trade issues they trigger and how these relate to the WTO's SPS Agreement. Among the issues the paper urges the SPS Committee to consider include, the relationship between private and global standard-setting bodies; what governments might do to live up to their obligations to ensure private bodies comply with the SPS Agreement; the relationship with other areas of the WTO work such as technical barriers to trade; and "equivalence — authorities accepting different measures which provide the same level of health protection for food, animals and plants, particularly"; to help developing countries that use less sophisticated health and safety technologies.

Info Session

In the light of the latest SPS Measures Committee meeting, the WTO has said that an information session is being planned before the Committee's next meeting in June with EurepGap and other organizations. "EurepGap" requirements are "Good Agricultural Practices" set by the Euro Retailer Produce Working Group — Eurep. Also invited to attend would be the chairperson and WTO Secretariat of the Technical Barriers to Trade (TBT) Committee, which deals with product standards that do not come under SPS, the sources added.

(*The Hindu Business Line*, 8 March 2007)

Case for Differential Tariff Treatment for Developing Nations

CLOSE on the heels of the Commerce Ministry criticizing the tariff reduction formula for non-agricultural market access (NAMA) floated by the developed countries, the Research & Information System (RIS) for Developing Countries has argued that "the use of formulae and coefficients tends to make the negotiations and their impact non-transparent".

In its world trade and development report, the New Delhi-based policy think-tank said the way out would be to agree to the extent of reduction by developed and developing countries and work backwards to find a coefficient that would deliver the same outcome.

One way of achieving less than full reciprocity is for developing countries to effect lesser reduction in their absolute tariff numbers than the developed countries would cut (e.g., by 5 and 10, respectively) or by adopting a differential percentage reduction in tariffs; for instance, the developed and developing countries reduce their tariff respectively (e.g., by 60 and 40%).

Hence, it said, the primary target should not be the coefficients in the Swiss formula, rather it should be the percentage reduction in tariff. Then appropriate coefficients should be worked out in order to have such tariff reduction.

Beefing up SDT

Stating that the Doha Mandate specifically provided for taking care of the special needs and interests of developing and least developed countries, besides the less than full reciprocity in reduction commitments, the report urged the developing countries to ensure that the core objective of the tariff escalation and tariff peaks prevailing in developed countries for their products was addressed properly. This could be through the choice of appropriate tariff reduction modality such as a Swiss formula with lower coefficient for developed countries or limiting the tariff peaks to a maximum of twice of average tariffs.

In this context, the 130-page analysis of the state of play in WTO also plumps for beefing up the Special & Differential Treatment (SDT) for developing countries so as to make it "precise, operational and effective" and thereby retrieve the development policy space to them that has been "squeezed by different WTO agreements and proposals". It contends that SDT is needed to neutralize the adverse impact on development of distortions in global markets triggered by the protectionist policies of the rich.

Sequenced Approach

According to the report, countries that followed a gradual and sequenced approach to trade liberalization such as China, Vietnam and India have had a much greater success in expediting growth and reducing poverty, in contrast to those that adopted indiscriminate liberalization. Hence, developing countries should strive to retrieve and preserve this policy space for autonomous action to address asymmetries.

In this context, the report urged the coalition of developing world to seek a negotiation of a Framework Agreement to accord a legally binding status to SDT provisions, which, among others, could confer policy flexibility on developing countries.

This could be based on objective criteria such as a threshold of per capita manufacturing value added (MVA) for flexibility from commitments under NAMA, trade-related intellectual property rights and trade-related investment measures.

Infant Industry

The report finds a compelling case for continued relevance for infant industry protection. Explaining this, the Director General, RIS, Dr. Nagesh Kumar, who led the report team, said that all the developed countries of today have extensively employed protection in the process of their industrialization and development, with the US being the most protected and also the fastest growing economy until the Second World War.

Developed countries have also used soft patent laws and various industrial subventions widely in their process of development.

The report has argued that the extant impasse in the global trade talks under the umbrella of the WTO provides a good opportunity to reflect and

resolve the broader issues about the processes of agenda-setting and decision-making in multilateral trade talks so as to make them meaningfully inclusive and democratic.

(*The Hindu Business Line*, 26 February 2007)

Industrial Tariffs: India Assails Proposals from Some Developed Countries

INDIA voiced serious concerns over proposals flowing from a few developed countries in recent months on industrial tariff reductions, which not only "blatantly flout the less than full reciprocity mandate but seem to be looking at effacing the developmental dimension of the Doha Round."

A statement issued by the Department of Commerce said that in view of the adverse effect high tariffs in developed world have on developing country exports, the Doha Mandate for non-agricultural market access (NAMA) negotiations at the WTO requires reduction of tariff peaks, high tariffs and tariff escalation on products of export interest to developing world.

While making this demand on developed countries, the Doha Mandate, the July 2004 Framework Agreement and the December 2005 Hong Kong Ministerial Declaration unequivocally asserted that there should be "less than full reciprocity in reduction commitments (LTFR) and *special and differential* (S&D) treatment through flexibility to exempt certain tariff lines from formula cuts for developing countries to meet their domestic developmental objectives."

Stating that recent proposals referred to Swiss coefficients of 10 and 15 in tariff cut proposals for developed and developing countries, the statement said that this meant reduction commitments of 33 per cent for most developed countries and a whopping 66-70 per cent for most developing countries.

"If this is what the proposers believe that a development round should deliver, we need to re-examine the etymology of development."

The acceptance of the non-linear Swiss formula is itself a statement of a broad commitment by the developing countries. But a coefficient of 15 for the developing world seems more in tune with honouring a non-existent Doha Mandate of "reduction of tariff peaks, high tariffs and tariffs escalation only on products of export interest for developed countries."

The Mandate, on the other hand, prescribes the tariff cuts especially on products of export interest for developing countries.

Referring to number crunching on the developed world proposal, a Swiss coefficient of 10 for developed countries that is more than double of their average bound rates (such rates range from 4-5%) would lead to "insignificant tariff liberalization in terms of a one-third reduction commitment."

On the other hand, most developing countries with average bound rates in the region of 30-40 per cent are being asked to take on a Swiss coefficient less than half of their average bound rates, thereby cutting their average bound rates by two-thirds.

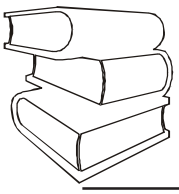
This reveals the "inequity of the proposals which inverts the mandate of the Doha Round. Ambition in reduction commitments must be circumscribed by the well-entrenched principle of LTFR."

It further noted that LTFR for a Swiss coefficient of 15 for developing countries as proposed by some developed countries would translate into a Swiss coefficient of less than one for developed countries.

"Are developed countries prepared to accept this? If not, they will need to rework the proposal," the statement said.

The contention that developed countries have made large commitments in the earlier rounds merits little consideration "when one considers that most of the tariff peaks and high tariffs maintained by them are on products of export interest for the developing world." India said that the reduction commitments by the developed world should harmonize its tariffs on "products of export interest for developed countries" with its tariffs on "products of export interest for developing countries."

(Contd. on page 28)



BOOKS/ARTICLES NOTES

ARTICLES

Generalized System of Preferences in General Agreement on Tariffs and Trade/ World Trade Organization: History and Current Issues by Norma Breda dos Santos, Rogério Farias, and Raphael Cunha, J*ournal of World Trade*, Vol. 39 Issue 4, August 2005, pp. 637-670.

THE present study investigates the history of the General System of Preferences within the General Agreement on Tariffs and Trade (GATT) and World Trade Organization (WTO) systems with a parti-cular view to define how developed and developing countries adapted their market policies to the demands of the multilateral trading system (MTS).

The article initially does a comprehensive review of the advent of S&DT in the WTO with the Havana Charter and the advent of the GATT, the growing of power dynamics between the developed and developing countries following GATT clauses, the enabling Clause, till it captures the development in the Uruguay Round. It then discusses the issue of MTS, as this has over a period acquired higher importance because the WTO's most favoured nation (MFN) clause as a concept is enormously important for developing countries in terms of market access worldwide. Under the MTS, special and differential market access for developing countries has been a serious bone of contention between developed and developing countries.

In this light, the article captures the history of the Generalized System of Preferences (GSP), it analyzes the role of the most-favoured-nation (MFN) clause and its consequences to developing countries' interests.

While studying the GSP, the authors talk about how America uses the GSP system and also about the dispute between India regarding the GSP system at the European Union. The study focuses on the fact that the WTO has not only witnessed conflict among developed and developing nations, but among developing countries also on the issue of special and differential treatment.

Special and Differential Treatment of Developing Countries in the WTO: Moving Forward After Cancun by Bernard Hoekman, Constantine Michalopoulos, and Alan Winters, *World Economy*, Vol. 27 Issue 4, April 2004, pp. 481-506.

THE article discuses the issue of special and differential treatment (SDT) for developing countries in the WTO. Though complimentary national policies can help in increasing a country's growth level, the age of globalization has also increased the importance of multilateral policies for determining a country's trend towards development. The article cites examples of agricultural support policies, in case of which the high rates of subsidization and trade barriers imposed by developed countries have impacted volatility in prices, have decreased access to markets for developing countries and their farmers.

Since smaller countries can hardly affect policy making decisions of bigger countries, the WTO can act as the forum establishing and influencing a rule-based trading system. Though optimistic about the role that the WTO can play in this direction, the authors are not very optimistic about the current scenario and believe that by far, the WTO has not been influential in getting the right policies for developing countries. The WTO has a history of favouring the larger players and being oblivious and silent towards the distortionary policies of bigger players.

Traditionally, developing countries have sought "differential and more favourable treatment" in the GATT/WTO with a view to increasing the development relevance of the trading system. The different rounds of GATT and various agreements have also favoured these STDs, particularly the Doha Development Round, but the cynicism of many developing countries towards STDs remains a matter of concern.

The issue of market access and rules under the STD points to the direction that some developing economies can ask for special treatment in terms of these two features, which is rejected by major developing countries on the premise that these countries are advocating restriction of trade to promote development.

The article then discusses in detail the various options to strengthen the development aspect of the WTO by aligning the market access and rules related aspects of STD. The traditional Generalized System of Preferences (GSP) has been found inadequate and the authors discuss how different options like of a single preferential tariff rate for all products currently benefiting from GSP status in developed countries, thereby removing all partial preferences. Reciprocal preferences from developed countries can also be worked out, as large and economically more powerful developing countries like India and China will not willingly be given preferential treatment by many developed countries.

Also, in some cases, current agreements need to be rebalanced to reflect developing country interests – in particular the Agreements on Agriculture (AoA) and TRIPS. The WTO stand on rules need to be discussed in terms of the core rules, which include MFN, national treatment, the ban on the use of quantitative restrictions, and binding tariffs, and also the non-core rules. Since even the Cancun round has not been able to go beyond the Doha resolutions, the issue of STD needs to be given special attention in current times.

Special and Differential Treatment in the Millennium: Special for Whom and How Different? by Mari Pangestu, *World Economy*, Vol. 23 Issue 9, September 2000, pp. 1285-1303.

THE Uruguay Round at the WTO had discussed several issues including the issues of special interests of developing countries, which were determined as being necessary to realize WTO's claim for rule-based multilateral trade regime, and the subsequent rounds of WTO talks have emphasized the full implementation of these special interest issues.

However, as the article discuses, even after the Seattle Round of the WTO talks, developing countries are still unsure about the direction in which these special treatment issues are being treated at the WTO, and effective implementation of these still remains an issue.

Against this backdrop, the article reviews the provisions for special and differential treatment at the WTO. It discusses how under the GATT negotiations, different issues for protecting interests of developing countries were shaped, and how more favourable treatment, preferential market access, preferential trade regime between developing countries, and special treatment to least developed countries (LDCs) emerged in the subsequent discussions.

The Uruguay Round emerged as the turning point for the S&DT provisions because by this time, the developing countries were being exposed to issues of decreasing domestic market, import substitutions, promotion of infant industries, and external challenges like changing market structure and increased competition. There was a lack of consensus in terms of policy issues even among developing countries, while some of them realized the importance of import substitution, others insisted on commodity exports. Newer developments also led to hanging preferences.

Against this, in the Uruguay Round, the developing countries entered the discussions with an eye on "dilution of special and differential treatment discussed in exchange for better market access and strengthened rules".

The article hereafter discusses the various limitations of the S&DT provisions which led to an erosion of preferences for S&DT among developing countries, including the problematic issue of implementing Generalized System of Preferences (GSP). The article then focuses on providing a framework for S&DTs. The issue of differential treatment is also discussed in terms of developed country, developing country and LDCs, and issues

of flexibility in disciplines, thresholds, obligations and transition period.

Institutional Choice in the Generalized System of Preferences Case: Who Decides the Conditions for Trade Preferences? The Law and Politics of Rights by Gregory Shaffer and Yvonne Apea, *Journal of World Trade*, Vol. 39 Issue 6, December 2005, pp. 977-1008.

THE article discusses a dispute settlement case at the WTO, EC — Conditions for the Granting of Tariff Preferences to Developing Countries. This particular case involves a challenge to the special tariff preferences granted by the European Community (EC) to 12 developing countries in order "to combat drug production and trafficking" (the Drug Arrangements), which was thrown in by India. The Drug Arrangements by the EC gives preferential tariff rates to Pakistan, along with 11 other countries over and above the Generalized System of Preference (GSP) provisions.

This article highlights some of the historical, political, sociological, and institutional contexts in which India's GSP claim have been interpreted, albeit in a normative way.

In a discussion of the preferential trade provisions under the GATT, the article cites GATT Article 1.1 which provides that, "with respect to customs duties and charges as well as other tax and regulatory matters, any advantage, favour, privilege or immunity granted by any contracting party to any product… shall be accorded immediately and unconditionally to the like product originating in…the territories of all other contracting parties". As stated, the interpretation is that a WTO Member is not to discriminate among the products of other WTO Members.

However, the United States, EC and other developed countries would not agree to a multilaterally coordinated GSP programme. These developed countries had always reserved the right to withdraw preferences where the developing country reached a "competitive level" in a given product sector or to graduate that country entirely from the programme once it reached a certain level of development.

As far the EC is concerned, on the time India's WTO complaint in March 2002, the EC's GSP programme was based on five separate schemes:

- A general one benefiting all developing countries
- An "everything but arms initiative" exclusively targeted at least developed countries
- Three specific incentive schemes providing additional tariff preferences to developing countries that applied for them on the basis of meeting defined labour, environmental, and anti-drug trafficking criteria.

When in 1998, the EC granted special preferences to those 12 countries with promised effective programmes to combat illicit drug production and trafficking (the Drug Arrangements), one issue that raised lots of questions was the lack of transparency in selecting the promising countries, as the country beneficiaries were simply designated upfront by the EC. On the basis of labour schemes, Moldova and Sri Lanka received additional preferences, and Pakistan received preferences under the Drug Arrangements.

This led to India's claim, initially relating to all preferential claims, and later on, restricted to the legal claim on the Drug Arrangements. The claim, launched on 5 March 2002, and revised on 28 February 2003 in terms of the Drug Arrangements, raised an issue which had always been taken note of by developing countries, but till then no country had legally challenged it under the Dispute Settlement Provisions.

The issue of special treatment under the Drug Arrangements was particularly problematic for India because these provided specific tariff advantages to Pakistani producers, which remains a primary level competitor to Indian producers in the region.

The article throws light on the considerations resulting in the decision of the Judicial Panel and the Appellate Body of the WTO in favour of India in December 2003, by saying that the GSP Drugs violated the most favoured nation (MFN) principle and was not justified under the Enabling Clause.

Later in the text, the article attempts a theoretical take on the textual ambiguities in WTO agreements which make it a playground for legal interpretation.

The detailed discussion of the normative frame for the WTO's preferential treatment rules in the article makes an interesting reading not only for developing country scholars, activists and officials, but also for the general understanding of the origin of the preferential programme, and the way powerful players may twist clauses to suit their preferential norm.

Special and Differential Treatment in the WTO Agricultural Negotiations by Alan Matthews, Institute of International Integration Studies (IIIS), Department of Economics, Trinity College Dublin, IIIS Discussion Paper No. 61, January 2005.

THIS paper examines the case for special and differential (S&D) treatment for developing countries within the WTO Agreement on Agriculture (AoA). Starting with a discussion of the reiterated importance of S&D treatment at the Doha Development Round of multilateral trade negotiations in 2001, it captures the implications of such treatment for agriculture.

Agricultural issues were given a preference during Uruguay Round Agreement on Agriculture (AoA), which has, over a period of time undergone numerous changes following many developing countries' stance that the Agreement represents a very unbalanced and skewed set of obligations.

While listing down the three main ways of providing special and differential (S&D) treatment to developing countries, which talks of reduction commitment, subsidies and domestic support provisions, the article throws light on how, over the years, developing countries have raised the issue that there is a need for greater flexibility and additional exemptions in these ways. Countries including Cuba, the Dominican Republic, El Salvador, Haiti, Honduras, Kenya, Nicaragua, Pakistan, Sri Lanka, Uganda, and Zimbabwe have suggested a Development Box, while India has suggestions for a Food Security Box. These demands were loosely given a form by these countries during the Doha Development Round, along with several developing country NGOs.

The Development Box provisions talk about

- market access,
- domestic support and
- export measures

These are discussed in relation to the S&D provisions in the August 2004 Framework Agreement for Establishing Modalities in Agriculture. The proponents of the provisions argue that special and differential treatment under the AoA is necessary as openness to trade is fundamentally damaging to food security in developing countries. Such liberalization helps only major farmers, thus marginalizing the poorer, leading to unemployment and poverty. Since agriculture carries greater importance in developing countries in terms of providing resources and employment, this can be a fit argument against the imposing of regular WTO disciplines.

Moreover, in these countries, agriculture is marred by severe limitations in terms of infrastructure and market access. In such a scenario, food security and the protection of the weak also become a major issue. Opening the front to liberalization may make the sector vulnerable and also, the support system may not adequately cover potential damages.

Against this backdrop, a special agricultural safeguard measure on a permanent basis for developing countries is justified, particularly in the case of food security products. However, the developing countries should also examine the area of market barriers and domestic support policies of the developed countries, which potentially can counter the market access and subsidy provisions granted to them by a mutually agreed set of preferential and special treatment.

(http://www.tcd.ie/iiis/policycoherence/index.php/iiis/wto_agriculture_rules/special_and_differential_treatment_ for_developing_countries)

A New Approach to Special and Differential Treatment by IPC Planetary Committee, International Food & Agricultural Trade Policy Council Position Paper No. 13, 15 September 2004.

WHILE in the Uruguay round of the WTO negotiations, few developing countries except the OECD members and the Cairns Group member countries could claim any bargaining power in terms

of negotiations, the Doha Development Round saw an increasing number of developing countries playing a central role in the negotiations. The article discusses the importance of this development in terms of agriculture.

Though it was the Uruguay Round which had virtually initiated the S&D treatment in agriculture, which was assumed to suit the specific needs of developing countries at that time, the greater presence and power of developing countries now at the WTO actually calls for a more aggressive approach in terms of such treatment rather than what is traditionally supported. Moreover, these days, developing countries not only need to have access to developed country markets, but also experience the need to enter into agricultural trade with other developing countries.

Therefore, it was no surprise that the changing realities of the S&D treatment became a core issue during the Doha Development Round. WTO Member countries agree that wider and more disparate interests of developing countries must be effectively addressed, and countries at very different levels of economic development should not be treated equally.

With this position paper, the IPC stresses that there are positive measures that can make S&D treatment more precise, effective and operational as called for in the Doha Declaration, and suggests measures to categorize developing countries in other categories than the currently recognized categories of least developed countries, as devised by the United Nations, and other developing countries, which are self-declared.

The recommendations of IPC are that apart from dividing the LDCs in terms of The World Bank and the International Monetary Fund criteria, which take into account the per capita income, there should be three more groups in this category:

Least Developed Countries (LDCs): Countries with per capita incomes below $900, weak human resources and vulnerable economies. The IPC also believes that all countries with per capita incomes below $900 be included in this category, even if they do not now qualify for LDC status under the UN definition.

Lower Middle Income Developing Countries (LMIDCs): Countries with gross national income per capita between $901 and $3,035.

Upper Middle Income Developing Countries (UMIDCs): Countries with gross national income per capita between $3,035 and $9,385.

Based on these criteria, the IPC also lists a series of recommendations regarding export subsidies, domestic support, and market access measures and believes that implementation of these can successfully address the issue of different needs of different developing countries.

(http://www.tcd.ie/iiis/policycoherence/index.php/iiis/wto_agriculture_rules/special_and_ differential_treatment_for_developing_countries)

Global Diseases, Global Patents and Differential Treatment in WTO Law: Criteria for Suspending Patent Obligations in Developing Countries by Bradly Condon and Tapen Sinha, *Northwestern Journal of International Law & Business*, August 2005, Vol. 26 Issue 1, pp. 1-41.

THE article takes up the subject of special and differential treatment in terms of life-saving medicines and patent protection. Along with the WTO's decision to amend the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) in 2003, and the World Intellectual Property Organization's (WIPO) attempt to adopt an agenda which can give the developing countries different intellectual property regimes appropriate to their individual circumstances, the issue of patent protection has acquired greater importance for developing countries with the full entry into force of their patent obligations on 1 January 2005.

While the article takes a survey of the concept of special and differential treatment for developing countries as progressing through the different rounds of talks at the WTO, it focuses on several WTO mechanisms for implementing special and differential treatment in TRIPS with respect to pharmaceutical patents. The article presents a new analytical framework for determining differential treatment of developing and least-developed countries and applies this framework in the context of TRIPS.

While TRIPS requires patents to provide patent owners with the exclusive right to prevent third parties from making, using, selling or importing a patented product without the owner's consent, the Articles 30 and 31 of the same authorize exceptions to these rights.

With an attempt to strike a balance between producers and users of patent, the authors dissect the various angles of both these Articles in detail and finds that Article 30 has serious limitations while resolving the issue of compulsory licensing for countries that lack adequate manufacturing capacity.

Special and Differential Treatment in Agricultural Negotiations by Anwarul Hoda and Ashok Gulati, Paper presented at the International Conference on Agricultural Policy Reform and the WTO: Where are We Heading?, Capri (Italy), 23-26 June 2003.

THE article reviews the development of the rules regarding differential treatment of developing countries in the history of the WTO, including the Article on Commitment, the Enabling Clause, and the AoA agreement. The detailed discussion on the various provisions under these rules during the various rounds of the WTO negotiations provides an exhaustive understanding of the issues involved in S&D treatment.

The contribution of the paper is in terms of devising a way forward against this backdrop, which raises serious concerns regarding the need for S&D treatment. No doubt, there is a need for protection of domestic agriculture against price volatility, protection in steep falls against international prices. But these issues can be addressed even without resorting to an all encompassing S&D treatment.

In terms of agriculture, there is a high chance that special and differential treatment can be used as a tool for trade distorting measures by both developed and developing countries, which is why over-emphasis on S&D treatment needs to be avoided in the changing pitch of the WTO regime.

(http://www.ifpri.org/pubs/confpapers/2003/hodagulati.pdf)

Proposed Changes to WTO Special and Differential Treatment Provisions: An Analysis from the Perspective of Asian LDCs by Mustafizur Rahman and Kazi Mahmudur Rahman, Asia-Pacific Research and Training Network on Trade, Working Paper Series, No. 13, April 2006.

THIS paper presents a comprehensive review of special and differential treatment (S&D) provisions introduced in the GATT and the WTO in the context of the developing country (DC) and least developed country (LDC) members, particularly the Asian LDCs.

Though the initial effort was to bring development closer to these countries by protecting their interests through differential treatment, these provisions have come under increasing scrutiny and criticism in recent years. Due to the design and formulation of these provisions, the enforceability and interpretation are open to lots of ambiguity.

Therefore, in many instances, these provisions have not been able to achieve the desired level of result. The absence of any binding commitments towards these, and the lack of differentiation in terms of categories of developing countries have also led to criticism. In view of the perceived ineffectiveness of the existing S&D provisions, most developing and least developed countries are trying to come to a common ground asking for changes in these provisions, to make them more precise, effective and operational.

Since the S&D provisions have no guarantee in terms of enforcement, and as most of them disturbingly depends on a substantive inflow of technical and financial support from the developed countries. While doing this, the paper also discusses the specific attributes of Asian LDCs. Given the fact that the Asian LDCs have higher degrees of openness in terms of trade liberalization, the paper underscores the need for a meaningful Development package for these countries, suited to their specific needs.

The various provisions at the WTO are also presented in details, and an LDC perspective is presented against these provisions. The article highlights some of the proposals which are of critical importance to the Asian LDCs, like enhanced market access, waivers from undertaking obligations,

deferred implementation of obligations, and strengthening of supply-side capacities.

(http://www.unescap.org/tid/artnet/pub/wp1306.pdf)

The Development Dimensions of Special and Differential Treatment by Douglas Lippoldt, OECD Trade Directorate, presented at the ICTSD, UNCTAD and UNDP International Dialogue on Making Special and Differential Treatment More Effective and Responsive to Development Needs, May 2003.

IN the WTO, the provisions for special and differential treatment covers 5 groups according to whether they are aimed at increasing trade opportunities, safeguarding developing country interests, providing flexibility of commitments, extending transitional time periods or extending technical assistance. The SDT extended to assist the least developed countries is another category of provision.

As such, SDTs are designed to be both adjustment tools as well as development tools, since these are offered as compensation for the shortcomings a developing nation might have. There have been numerous debates as to how the developing nations should utilize these treatments to benefit most from them. Not only that, the enforcement of these provisions has also drawn lot of attention in the Doha Development Round. The difficulty in removing the ambiguities inherent in these provisions also proves to be troublesome.

Most developing nations have experienced various facets of preferential treatment, which also involve certain tradeoffs like preferences might at times be potential encouragement for developing countries to specialize in types of production where a country does not have a comparative advantage. The casualty is that many countries actually start getting driven by vested interest rather than development oriented. OECD countries and experts from these countries, as expressed by the author, have often voiced the need for multilateral, rule based trade rather than a system of preferences.

The author cites an OECD study, the preliminary findings of which proclaim that trade liberalization in developed countries can actually be more profitable for developing countries. But this is less if the countries do not liberalize their systems. The gains for developing countries can be manifold if they engage in liberalizing their own markets.

However, trade liberalization cannot be an instant process, and needs to be assisted by complementary domestic policies. A 2001 OECD study has also pointed to the fact that variation across developing countries in terms of economic situation and institutional capacity necessitates a better tailoring of SDT to the situation in different countries or country groupings.

(http://www.ictsd.org/dlogue/2003-05-06/Lippoldt-SDT.pdf)

Special and Differential Treatment and Development Issues in the Multilateral Trade Negotiations: The Skeleton in the Closet by Manuela Tortora, UNCTAD.

THE special and differential treatment (S&D) is facing criticism as being obsolete and no longer relevant to the changing realities of trade. Even the developing countries are divided in their concept of such preferential treatment and achieving consensus on this crucial issue seems to be less and less achievable.

Since the multilateral trading system would require a set of criteria for advancing the interests of developing countries, at this juncture it is a wise concept to look critically and review the need for the S&D and "development issues" – in their various shapes, formats and names.

This is all the more necessary because developmental issues have remained at the core of the WTO agenda, and it is necessary to accommo-date the various interests and levels of development of the WTO members. This is more so because the problems and structural shortcomings that were at the heart of the devising of SDTs for developing countries like lack of infrastructure and easy market access still remain issues for these countries.

As the article views it, it is all the more relevant at this point of time to achieve deeper changes in the content of the S&D concept and rules, because if the multilateral and rule based trade regime is to stay in the world trade, the recent surge in bilateral

and regional trade agreements rather than the WTO devised multilateral framework would pose as a matter of concern.

No matter how countries progress in terms of mutually accepted trade agreements, the WTO provisions on S&D can still bear the significance as seen during the Uruguay Round of the WTO negotiations. The S&D has now acquired the tag of being more of an adjustment tool than a development to see the implementation of trade rules and the level playing field for developing countries with that of the developed countries owing to the lack of categorization between already developing countries and those on the bottom rung, and also the need for mutual trade agreements between interested nations.

The current WTO negotiations are marred by a series of problems related to enforceability of SDTs, the commitment issue, the subsequent issue of graduation of countries in terms of development, etc.

The article underlines the importance of the evolvement of the SDT concept to accommodate hanging trade realities, so that it can progressively contribute to development. It suggests various steps to proceed in this direction:

- avoid evolving towards provisions applicable to the LDCs only, even though LDCs remain a dominant criteria
- design sectoral S&D instruments adapted to each trade discipline
- avoid "graduations" based on linear criteria such as the income per capita or the volume of trade
- implement a pro-development coherence between the WTO and the international financial institutions; ensure that S&D provides developing countries with the means required to take advantage of trade liberalization.

(www.proses.sciences-po.fr/documents/Tortora_Special_Differential_Treatment.pdf)

Special and Differential Treatment in the Millennium Round by John Whalley, *World Economy*, Vol. 22 Issue 8, November 1999, pp. 1065-1094.

THIS paper discusses special and differential treatment (S&DT) for developing countries in the Millennium WTO trade round in Seattle. It argues that S&DT introduced in the Uruguay Round represented a sharp departure from pre Uruguay Round S&DT. Over the years, the S&DTs have acquired a special significance focusing on special rights to protect and to have preferential market access. The developing countries have also seen changes in negotiation.

Despite general skepticism as to the value of SDT benefits, the challenge is to more carefully rationalize and target these provisions, and to elaborate on them.

The article had pointed to various areas for negotiation in the Millennium Round, which can benefit developing countries, including MAI (Multilateral Agreement on Investment), built in agenda (BIA) like implementation issues and committed negotiations, opportunities for new reciprocal exchanges of concessions on trade barrier, etc.

The article that directed the way discussions can take place at the Millennium Round, also discusses the possibility of tiering the SDT benefits, because not all developing countries face the same amount of preferences for all issues, which is an advanced notion of what was to come in all future discussions of SDT treatments.

This view also gels well with the concerns of the developed countries that delivery of SDT benefits only the least developed is less costly device than general SDT, and one with which they can go further.

The article then lists carefully the various areas need to be discussed in the Millennium Round to make SDT preferences a tool for development.

Special and Differential Treatment in Multilateral Trade Negotiations by Shamim Shakur, Allan N. Rae and Srikanta Chatterjee, Department of Applied and International Economics, Massey University, Palmerston North, New Zealand

WTO trade negotiations stalled in recent years because of north-south trade conflicts reaching their lows during the Cancun fiasco of September 2003. Even the 2005 Doha Development Round left the key issues of further liberalization of agricultural trade and the state of many developing countries

(DCs) as well as the least developed countries (LDCs) in the post-MFA era.

One cornerstone of the Doha Development Agenda (DDA) is the provision of special and differential treatment (SDT) of developing countries. The WTO framework accord reached in July 2004 reaffirms that the least developed countries, which will have full access to all SDT provisions as stated in Section 2.2 of DDA, are not required to undertake tariff reduction commitments.

The WTO and some developed countries, on the one hand, reiterate their commitment to the development of the DCs and LDCs. However, most developed countries, which are far more advanced industrially, give the argument the provision of SDT have given these countries an instrument to restrict trade.

While on the one hand, developed countries have consistently attempted to highly safeguard agriculture and textile imports, such high levels of safeguarding occurs in the cases of both developed and developing countries. Therefore, the paper tries to use a computable general equilibrium (CGE) modeling framework to understand a trade liberalization scenario without SDTs. The results show that most developing countries' gains and welfare increase in situations where SDT is not applicable. But the welfare gains of the LDCs turn out to be either small or even negative under SDT arrangements. Ironically, the already-agreed elimination of agricultural export subsidies is shown to be welfare reducing for much of the developing world.

Even in terms of tariff cuts, the study reveals the surprising finding that developing countries can make substantial additional gains by accepting similar agricultural and manufacturing tariff cuts to those of the developed world.

DOCUMENTS

General Council
27-28 July 2006
ITEM 9

Work Programme on Special and Differential Treatment

Statements by Chairpersons under Item 9 of the Agenda: "Work Programme on Special and Differential Treatment: (a) Report by the Chairman of the Special Session of the Committee on Trade and Development (b) Reports by Chairpersons of other WTO bodies to whom Special and Differential Treatment proposals have been referred"

THE statements by Chairpersons under Item 9 of the Agenda of the General Council meeting on 27-28 July are being circulated for the information of Members.[1]

1 At the beginning of the Council's consideration of this Item, the Chairman recalled a statement by the TRIPS Council Chair at the May meeting of the General Council (WT/GC/M/102, Item 3(b)), in which the latter had indicated that the TRIPS Council had authorized him to report, first, that the situation in regard to the Category II proposals referred to that Council remained as reported in July 2005 in document IP/C/36; second, that the TRIPS Council reiterated its earlier recommendation as reproduced in that document; and third, that no further action was otherwise needed on the proposals referred to that Council. In the light of this report to the May General Council meeting, the Chairman indicated that he would not be inviting the TRIPS Council Chair to report further at the present meeting.

The Chairman then indicated that the Chair of the Special Session of the Committee on Agriculture was absent and would be unable to present his report which had been circulated in document TN/AG/22.

He further indicated that in the absence of the Chairs of the Special Sessions of the Services Council and the DSB, their reports would be circulated following the meeting. These reports have subsequently been circulated in documents TN/S/30 and TN/DS/18 respectively.

1. Chairman of the Special Session of the Committee on Trade and Development

"I have submitted two reports on the work of the Special Session: one to the TNC contained in document TN/CTD/17 and the other to the General Council contained in document TN/CTD/18. As the two reports have already been circulated to Members, I wish simply to highlight a few points.

"Firstly, I wish to underline that the Special Session has made some progress since Hong Kong. For example, on the Agreement-specific proposals, Members have been able to make progress on six out of the sixteen remaining proposals. On the outstanding issues, Members have agreed to focus work on the Monitoring Mechanism. While there has been some progress, there remain fundamental differences on many issues. The work is therefore far from complete. Nevertheless, I have been encouraged by the fact that Members have been working in an atmosphere of constructive engagement in the Special Session. With regard to the category II proposals, I should also add that the Special Session has been coordinating its efforts with the Chairpersons of those bodies to whom these proposals have been referred. I shall leave it to the Chairpersons of these bodies to provide updates later.

"Secondly, I wish to inform Members that the LDCs have tabled two submissions in the Special Session on the duty-free quota-free market access issue. One submission relates to the Rules of Origin and the other to Market Access. In the preliminary discussion that took place at the last meeting of the Special Session on 7 July 2006, Members reiterated their commitment towards implementing the DFQF decision. Some Members sought certain clarifications on the two papers tabled by the LDCs. I have urged Members, particularly the key stakeholders, to continue their bilateral consultations with each other as this is crucial in bridging the differences in views and differences in expectations on this particular issue.

"Like all the other Negotiating Groups, the Special Session will be undoubtedly affected by the suspension of negotiations across the board. It is however my hope that we can preserve whatever progress we have made so far in the Special Session, so that when we resume our negotiations we will be able to build on the progress made and bring closure to this very long-standing issue."

2. Chairman of the Special Session of the Committee on Agriculture

A report by the Chair of the Special Session of the Committee on Agriculture was circulated in document TN/AG/22.

3. Chairman of the Committee on Agriculture

"My progress report to the General Council relates to the consideration of a proposal by the African Group as part of the Committee's follow-up to the NFIDC Decision, as well as in the context of the Doha Ministerial Decision on Implementation-Related Issues and Concerns.[2]

"The African Group calls for developed-country Members to embody in their schedules of commitments undertakings on, and contributions to, a revolving fund for normal levels of food imports, providing food aid in fully grant form, and maintaining food aid levels consistently with recommendations and rules under the Food Aid Convention. "The situation remains unchanged since I last reported on this matter to the General Council at its meeting on 15 May 2006, and as reflected in document G/AG/22. The Committee on Agriculture will meet again in September and stands ready to consider any proposal that might be presented to it."

4. Chairman of the Negotiating Group on Rules

"I appreciate having this opportunity to provide an update on the status of the Category II proposals on special and differential treatment that the Chairman of the General Council referred to the Negotiating Group on Rules.

"The situation with respect to these proposals remains unchanged from my last report. As I reported at that time, while these proposals were on the agenda at a number of meetings, there was little discussion. Recognizing the resource constraints of small delegations, I will place any of these proposals on the agenda of a future meeting of the Group upon receiving affirmative confirmation from any of the proponents indicating that they wish to further discuss them.

"I should mention that while these specific proposals have not been the subject of significant discussion, that does not mean that the interests of developing Members have not been receiving attention. Developing Members are very active in the Group and have sponsored numerous proposals, including, in the last few months, special and differential treatment proposals from Kenya and India."

5. Chairman of the Special Session of the Council for Trade in Services

A report by the Chair of the Special Session of the Council for Trade in Services was circulated in document TN/S/30.

6. Chairman of the Committee on Safeguards

"As you may recall, my predecessors as chairs of the Safeguards Committee have reported to the General Council on many occasions on the S&D proposal referred to the Safeguards Committee. I myself, as the new chair, reported to the General Council on 15 May 2006. Notwithstanding numerous efforts, the situation has not developed at all since the Safeguards Committee reported in detail to the General Council in July 2003. In order to contribute

[2] See paragraph 52 of TN/CTD/W/3/Rev.2.

to the process as the new chair, after my previous report to the General Council, I tried to contact the proponents over the past months informing them that the S&D proposal would continue to be dormant unless the proponents raised it again with a certain level of support from other Members. However, so far, I have not heard anything, either from the proponents or from any other Member. That said, I fully recognize the resource constraints of small delegations.

"Under these circumstances, I have to say that the proposal referred to the Safeguards Committee has been effectively set aside, and will continue to be so, until the proponents decide to revive the matter."

7. Chairman of the Committee on TRIMs

"The Committee on Trade-Related Investment Measures has considered two S&D proposals submitted by the African Group relating to Article 4 and Article 5.3 of the TRIMs Agreement.

"Since my last report to the General Council, the TRIMs Committee held a formal meeting on 9 June to further discuss a revised text of the proposals submitted by Kenya on behalf of the African Group. In addition, I have pursued a number of informal contacts with interested delegations in order to explore possible ways to move further on this issue.

"The formal Committee meeting provided for a substantive discussion and a very constructive exchange of views. Some interesting ideas emerged that could be explored and perhaps help us find an acceptable solution.

"For example, it was suggested that we consider the proposals not as a single block but in different parts, so as to allow us to address first those areas in which reaching an agreement seems more likely. This has been supported by the proponents. Another idea that emerged was to work more specifically on the country-coverage of the proposals. In this respect, the proponents have shown their readiness to consider alternative language formulations. This, I believe, is an important step forward.

"In general, my feeling is that the proponents, as well as other delegations, are willing to look together for solutions. I therefore encourage Members to continue to show as much flexibility and creativity as possible, including, as appropriate, through the submission of new language. I would also suggest that Members continue consulting with each other taking into account the comments and ideas that have been offered at the last meeting.

"On my part, I intend to continue the discussion of the S&D proposals in the TRIMs Committee and through informal contacts."

8. Chairman of the Special Session of the Dispute Settlement Body

A report by the Chair of the Special Session of the Dispute Settlement Body was circulated in document TN/DS/18.

9. Chairman of the Committee on SPS Measures

"To ensure the greatest transparency on this important matter, on 13 July 2006 I circulated a written report, on my own responsibility as Chairperson of the SPS Committee, as document G/SPS/41. I would therefore draw the General Council's attention to a few of the main points contained in my written report.

"The SPS Committee has considered the issue of special and differential treatment at every available opportunity, and has kept this as a standing item on its agenda. Hence, when the SPS Committee was required to shorten the time allotted for its regular meeting in October last year due to preparations for the Hong Kong Ministerial Conference, S&D was one of the few issues that was kept on the agenda. It was included yet again when the regular meeting was resumed at the beginning of February this year. Informal meetings on this issue were also held in January, March and May of this year, but an informal meeting scheduled for 26 June had to be cancelled because of the impossibility of holding meetings at the WTO during that week. Nonetheless, the Secretariat was able to arrange for the regular meeting of the SPS Committee to proceed, and S&D was discussed on that occasion.

"With regard to the five specific proposals referred to the SPS Committee, substantive progress has been possible only when revisions of these proposals have been tabled. Hence, the revised African Group proposal on Article 9.2 of the SPS Agreement, first tabled informally on 28 March,

with a second revision tabled on 24 May, stimulated positive and constructive discussion. These revised proposals were, however, presented at informal meetings, on a likewise informal basis; hence, they have not been translated, and this has worked to the disadvantage of many developing country Members.

"There are many similarities between the revised proposal by the African Group and the procedure formally adopted by the SPS Committee in October 2004 (G/SPS/33) for requesting special and differential treatment whenever a new SPS measure has been introduced. Discussions have therefore focused on what additional elements have been proposed by the African Group, the extent to which these might be acceptable and how best they could be addressed. There has also been some discussion as to why no Member has yet used the existing procedure to request S&D in response to new SPS measures.

"Other discussions within the SPS Committee relating to Category II S&D proposals and to documents submitted by other Members have focused on improving technical assistance to ensure that it addresses, in the most effective way possible, the needs identified by developing country Members. This is an area in which the Committee has agreed to continue further, practical work. The African Group has signalled its intention to table a revised proposal in this regard, which would be a valuable input for the Committee's deliberations.

"It should also be noted that a special workshop on the problems faced by developing-country Members in implementing the SPS Agreement was held on 31 March, parallel to the formal meeting of the SPS Committee. The Global Trust Fund sponsored the participation of 40 officials, most of whom were from least-developed countries. Many of these officials submitted documents describing their experience and problems with implementation of the SPS Agreement. The workshop focused on identifying the most concrete and practical ways for Members to make better use of the SPS Agreement and thus improve market access for their products.

"The SPS Committee will continue to consider the S&D proposals and will seek to address the problems faced by developing country Members in a practical manner, with the objective of finding the most precise, effective and operational solutions. An informal meeting on S&D has been scheduled for 9 October, and the issue will once again be on the agenda of the formal SPS Committee meeting later that same week."

(www.wto.org WT/GC/108, 6 September 2006)

Committee on Agriculture, Special Session

Special and Differential Treatment for Developing Countries: Food and Livelihood Security and Rural Development

Specific Input by India

FOOD and livelihood security and rural development underpin agricultural policies in developing countries. The safeguards to address these concerns of developing countries must encompass flexibility to apply measures suited to the specific needs and situations of the agricultural sector of the developing country concerned.

The development needs of developing countries, highlighted in paragraphs 9 (fifth bullet) and 23(b) of the overview paper by the Chairman (*TN/AG/6*), emanate from features specific to their agriculture, in particular, dependence of a large proportion of the population on agriculture and related activities, the diversified nature of production, and the high incidence of poverty. The basic approach to address development needs must, therefore, serve to improve production systems, provide for opportunities to enhance income levels, reduce vulnerability to market fluctuations and enhance stability of prices of agricultural products, and ensure physical and economic access to sufficient, safe and nutritious food, through governmental

support as well as appropriate protection at the border through price-based and quantity-based measures.

The adverse role played by high levels of all trade-distorting support for domestic production and for exports by developed countries can not be disregarded while assessing the requirements for appropriately addressing the food security, livelihood and rural development needs of developing countries. As protection through tariffs applied at the border declines for all products in developing countries or support for production and exports continues to be provided across a broad array of products by developed countries, it becomes inevitable to safeguard the farmers of developing countries against surge in imports.

In this scenario, any consideration of the scope or coverage of applicable safeguards can not limit itself to one or the other characteristic of the agricultural sector in developing countries, but must focus on 'enabling developing countries to effectively take note of their development needs', which span diversified production systems and diverse food and nutritional requirements and preferences. Regional aspects of agricultural production systems of large agrarian economies, including agro-climatic conditions, also militate against establishing either a list of products eligible for protection or safeguards, or limiting recourse to protection through different instrumentalities.

Moreover, determining "essentiality" among different products pre-supposes that domestic agricultural policies in developing countries are product-specific and, therefore, largely static and without regard to evolution of a competitive and dynamic agriculture. Accordingly, developing disciplines based on "essentiality" may be neither feasible nor desirable. These compulsions also militate against any formulation for tariff reductions which encompass minimum cuts on bound tariffs on a tariff-line-wise basis.

Therefore, extending the special safeguard provisions of Article 5 to all developing countries for all products, is central to safeguarding the developing countries' farmers against any surges in imports as tariffs decline at the border for them. Integral to the tariff reduction commitments, that uphold the objective of food and livelihood security, product diversification and rural development in developing countries, is flexibility to adjust, without compensation, low tariff bindings.

A core element of food and livelihood security is physical and economic access to sufficient, safe and nutritious food to meet their dietary needs and food preferences for an active and healthy life. Appropriate protection at the border through price based and quantity based measures should be an integral part of the modalities. Products eligible for such special import measures shall include (i) food staples which account for a substantial proportion of total domestic production or total domestic consumption, (ii) products that play a vital role in the diet of low income consumers, (iii) products that are produced by a substantial number of farm households, (iv) products that are primarily produced by low-income and resource-poor farmers, and (v) products that are important for supporting livelihood in the rural areas such as the numbers of active population engaged in production of the product concerned or products where the proportion of landless agricultural labourers employed is high.

Committee on Sanitary and Phytosanitary Measures

Special and Differential Treatment

Report by the Chairman to the General Council

1. As was reported to the General Council last year (G/SPS/41), since the adoption by the SPS Committee of its substantive report on special and differential treatment in June 2005 (G/SPS/35), the Committee has followed a two-pronged approach to address the issue of special and differential treatment. That is, at each and every one of its regular meetings, the Committee has considered the proposals referred to it by the General Council, as well as the possible actions identified by the Committee to address some of the concerns underlying these proposals.

2. There has been little substantive discussion of the proposals as they are currently drafted, as Members maintain that their views on the proposed texts are known (as summarized in G/SPS/35) and have not changed. More substantive discussion has occurred when possible revisions to the existing proposed texts have been presented, as reported to the General Council last year (G/SPS/41, G/L/794).

3. At an informal meeting on special and differential treatment on 27 February and 1 March 2007, Egypt circulated a report on its analysis of the interpretation by WTO dispute settlement panels of provisions relating to special and differential treatment in the Agreement on the Implementation of Article VI of GATT 1994 (the Anti-Dumping Agreement), which use apparently mandatory language ("shall"), as in Article 10.1 of the SPS Agreement (JOB(07)/25). Egypt observed that the interpretations given in legal cases is that this language imposes no specific obligation on Members to undertake any particular action. Similar interpretation could be given to the provisions relating to technical assistance in the SPS Agreement. Egypt stated that it was undertaking an analysis of the procedure adopted by the SPS Committee by which Members could identify their need for special and differential treatment with respect to specific measures taken by trading partners (G/SPS/33). The analysis would examine why developing country Members are not making use of this procedure, and Egypt would propose a decision in this regard. Egypt stressed, however, that developing country Members were not seeking exceptions to the substantive provisions of the SPS Agreement that might result in health risks for Members, but were seeking assistance to enable developing country Members to meet the health requirements of their trading partners. Egypt indicated its intention to organize informal consultations on this matter prior to the June 2007 meeting of the SPS Committee.

4. At the same time, the Committee has continued to progress with its consideration of possible actions to address some of the concerns underlying the proposals. For example, a special meeting on transparency is being organized to coincide with the October 2007 meeting of the SPS Committee, and has been included in the WTO's 2007 Technical Assistance Plan so that funding might be available to facilitate the participation of officials from some developing country Members. Members were invited to respond to a questionnaire regarding the operation of their SPS Enquiry Points and National Notification Authorities, and to identify problems they faced in this regard (G/SPS/W/103/Rev.2). An analysis of the replies received (G/SPS/GEN/751) was discussed at an informal meeting of the Committee in February 2007, and the Committee agreed to hold another informal meeting in the margins of its June 2007 meeting to develop the agenda for the special meeting and consider how to best address the problems that have been identified, especially by developing country Members.

5. Other possible actions identified by the Committee focussed on technical assistance. In this regard, the Committee was informed that the medium-term strategy of the Standards and Trade Development Facility (STDF) included a greater focus on the provision of information regarding flows of technical assistance and evaluations of the effectiveness of SPS-related technical assistance and how it responded to the needs of the beneficiaries. The STDF was organizing regional consultations in 2007 to examine the provision and receipt of SPS-related technical assistance, and to identify good practice on the basis of concrete experience. The Committee also received information from both the

Secretariat and from participants regarding the first WTO specialized course on the SPS Agreement, as well as with regard to the second specialized course held in October 2006, in English. In light of the highly positive evaluations from the participants, a third specialized course, to be held in French, has been programmed to follow immediately after the October 2007 meeting of the SPS Committee.

6. At this point in time, it would appear that little progress is possible in the SPS Committee on the proposals as currently drafted, as the views of Members on these texts have not changed. Some progress may be possible on revised versions of the proposals, but this has been hampered by proposed revisions not being circulated for the consideration of Members in advance of meetings of the SPS Committee.

7. This is not to say, however, that the SPS Committee is failing to consider special and differential treatment and other ways to address the problems of developing country Members. On the contrary, special and differential treatment is a standing agenda item for every meeting of the SPS Committee, and usually the subject of informal meetings in the margins of the regular meetings. More importantly, the Committee continues its consideration of pragmatic and concrete actions to address the problems identified in the proposals, such as those relating to the identification of potential trade barriers, the effectiveness and appropriateness of technical assistance, and the actual provision of special and differential treatment in specific situations.

(G/SPS/44, 23 April 2007)

(Contd. from page 12)

This could only be construed as a correction in the historical tariff imbalance and could be met only by coefficients below four (for developed countries). Incidentally, it must be noted that higher the coefficients, the lower the percentage tariff cuts.

(*The Hindu Business Line*, 23 February 2007)

WTO Negotiations on S&D Treatment

THE concept of special and differential treatment in the WTO acknowledges the fact that developing countries are at very different stages of economic, financial and technological development and therefore have entirely different capacities as compared to developed countries in taking on multilateral commitments and obligations. Special and Differential (S&D) Treatment exists in various forms within a plethora of WTO agreements and in a number of different forms, such as the granting of grace periods by which developing and Least Developed Country (LDC) members have to comply with specific agreements. Examples of S&D Treatment provisions in the various WTO agreements include:

- Longer time periods for implementing Agreements and commitments;
- Measures to increase trading opportunities for these countries;
- Provisions requiring all WTO members to safeguard the trade interests of developing countries;
- Support to help developing countries build the infrastructure for WTO work, handle disputes, and implement technical standards; and
- Provisions related to LDC Members.

(www.tralac.org)

A New Approach to S&D Treatment

THE original purpose of Special and Differential (S&D) Treatment was to level the playing field and give developing countries more time to adapt to international competition. Currently, S&D provides few benefits to developing countries, and serves as a rationale for limited concessions on the part of developed countries. The IPC (International Food and Agricultural Policy Council) believes that there are positive measures that can make S&D more precise, effective and operational as called for in the Doha Declaration.

A New Approach to S&D Treatment advocates differentiating developing countries into three categories: Least Developed, Lower Middle Income Developing and Upper Middle Income Developing Countries for international trade. Each group of countries should undertake commitments in market access, domestic support and export competition according to their capability.

(www.agritrade.org)

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