FOCUS WTO

VOL. 13 NO. 3

SPECIAL & DIFFERENTIAL TREATMENT

SEPT.-OCT. 2011

INDIAN INSTITUTE OF FOREIGN TRADE

FOCUS WTO

VOL. 13 NO. 3 • SEPT.-OCT. 2011

Editor
Dr. Anil K. Kanungo

Associate Editor
Ms. B. Pankti

Assistant Editor
Madanlal

The Institute brings out the bi-monthly Magazine, *FOCUS WTO* exclusively dealing with WTO and WTO-related issues. Each issue is dedicated to a particular theme. A distinct feature of the Magazine is its section, "Lead Articles" focusing on the theme. As the next issue is devoted to the theme "Future of Doha", we at *FOCUS WTO* invite highly analytical articles focusing on the theme for publication in the Magazine with a word limit between 3000 and 3500.

Potential contributors may directly get in touch with Editor (Phone: 011-26853952, 26965124; Fax: 91-11-26867841, 26853956. Email: akanungo@iift.ac.in)

Visit our website: ***www.iift.edu***

SUBSCRIPTION RATES

Single Copy	₹200 $20 (Air Mail)
One Year	₹1000 $100 (Air Mail)

For copies/subscription, please send DD/Pay Order drawn in favour of "Indian Institute of Foreign Trade" payable at New Delhi. In case of outstation DD/Pay Order, add ₹ 20/- for bank commission.

From the Director's Desk

K.T. Chacko

Since the inception of GATT, the rules of multilateral trade policy regime haven't adequately addressed the needs and concerns of developing countries. The adjustment costs borne by these countries in adapting to a changed environment have been disproportionately high. As a result, developing countries argue that taking on multilateral commitments and obligations would be difficult as they are currently in different stages of economic, financial and technological developments. They further insist that special advantages and flexibilities may be provided so that they are in a position to adopt appropriate national policies to support their trade regime. This in essence came to be known as Special & Differential (S&D) provisions.

However, the concept and interpretation of S&D provisions have changed over the years. From GATT to Uruguay Round (UR) to the establishment of WTO, S&D have undergone dramatic changes. Prior to the UR, the focus of S&D treatment was to recognize the special problem of development faced by developing countries and offer necessary flexibilities to pursue policy options appropriate for industrialization and economic development, whereas in the UR it was geared towards recognizing the special problems that developing countries may face in the implementation and signing the agreement as a single undertaking. Such shift in focus tends to provide limited policy flexibilities for developing and LDCs to negotiate on crucial issues like agriculture, NAMA and services.

In the current Doha round of negotiations the issue of S&D is gaining prominence as it has a direct bearing on the overall development dimension of developing countries. It is realized that to empower developing countries, it is important to strengthen the S&D provisions. Member countries in the Doha Declaration 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.

Besides, the Committee on Trade and Development is looking at the possibilities of improving the effectiveness of the current S&D provisions by identifying S&D measures that members consider should be made mandatory. It is also considering the legal and practical implications of converting the S&D measures into mandatory provisions. Thus the emphasis given to rectify the problems of developing and LDCs is seen as a marked change from the earlier stance of S&D provision in multilateral trade negotiations. However, the task ahead is an uphill one and no concrete outcomes are in sight as yet.

Special and Differential Treatment for Developing Countries in the 21st Century

Sajal Mathur*

The WTO agreements provide certain special provisions which are in the form of special rights given to developing countries. Through these special rights developed countries look into the possibility of treating developing countries more favourably than other WTO Members. These special provisions include longer time periods for implementing various WTO agreements and commitments, providing measures to increase trading opportunities for developing countries, supporting developing countries to build infrastructure for WTO work, handle disputes, and implement technical standards, and provisions related to Least-Developed Countries (LDCs). This paper makes an attempt to analyze the issues in detail and provide some guidelines in terms of measures needed to be negotiated to make developing and LDCs actively participate in world trade.

* Professor, Centre for WTO Studies, Indian Institute of Foreign Trade, New Delhi.

I. Introduction: Development Provisions in the Early Years of the GATT

The GATT/WTO has evolved over time. In 1947-48, GATT membership was limited to 23 Contracting Parties - mainly colonial powers and some newly independent States.[1] The GATT provided the framework for global trade in goods for nearly 50 years. Development provisions and the concept of special and differential treatment (S&D) only found their way in the GATT architecture with Articles XVIII and XXVIII *bis* in the 1950s and the inclusion of a few non-binding provisions in Part IV (Articles XXXVI to XXXVIII) during the 1960s. The Enabling Clause was negotiated during the Tokyo Round in the 1970s.

These provisions were closely linked to the prevailing development paradigms of the time. In these early years of the GATT, trade and development policies leaned heavily towards import substitution, infant industry protection through border measures and subsidies, steps taken to safeguard Balance of Payments (BOPs) and foreign exchange reserves, calls to redress declining terms of trade and falling commodity prices, and demands for preferential market access by developing and least developed countries.

Not surprisingly, S&D treatment provisions in the pre-Uruguay Round era were by and large limited to the pursuit of preferential access (e.g. Enabling Clause); policy flexibility (e.g. infant industry and BoP provisions in GATT Article: XVIII) and the concept of non-reciprocity or less than full reciprocity in tariff concessions and commitments (e.g. GATT Article XXVIII bis). [2]

Developing countries usually negotiated as a homogenous bloc. The 1979 Enabling Clause, however, formally introduced the concept of LDCs in the GATT system. LDCs, as defined by the United Nations, were established as a separate category though they were still considered a subset of developing countries.

While GATT Articles XVIII, XXVIII *bis*, Part IV and the Enabling Clause introduced the concept of S&D treatment in "favour" of developing countries, there was also a form of "reverse" or "adverse" special and differential treatment that emerged through the GATT trade rounds.[3] Sectors of particular interest to developing countries were carved or left out. The textiles arrangements under the Multi-Fibre Agreement (MFA) with quota restrictions for exports of textiles and clothing from developing to developed countries and the Voluntary

TABLE 1

SPECIAL AND DIFFERENTIAL TREATMENT PROVISIONS BY TYPE AND AGREEMENT

Agreement	*(i) Provisions to increase trade opportunities of developing country Members*	*(ii) Provisions that safeguard the interests of developing country Members*	*(iii) Flexibility of commitments, of action, and use of policy instruments*	*(iv) Transitional time periods*	*(v) Technical assistance*	*(vi) Provisions relating to measures to assist least-developed country Members*	*Total by Agreement*
Agriculture	1		9	1		3	14
Decision on NFIDCs		4			1		5
Application of SPS Measures		2		2	1		5
Textiles and Clothing	1	3				2	6
Technical Barriers to Trade		6	1	1	7	1	16
TRIMs			1	2		1	4
Anti Dumping Agreement		1					1
Customs Valuation Agreement		2	2	4	1		8
Decision on Texts Relating to Minimum Values and Imports by Sole Agents, Distributors and Concessionaires		2					2
Imports Licensing Procedures		3		1			4
Subsidies & Countervailing Measures		2	8	6			16
Safeguards		1	1				2
GATS	3	4	4		2	2	15
TRIPS				2	1	3	6
DSU		7	1		1	2	11
GATT 1994 Article XVIII			3				3
GATT 1994 Article XXXVI	4	3	1				8
GATT 1994 Article XXXVII	2	6					8
GATT 1994 Article XXXVIII	2	5					7
Enabling Clause	1		2			1	4
Decision on Measures in Favour of LDCs.						7	7
Waiver Preferential Tariff Treatment of LDCs.						1	1
Total	**14**	**50**	**33**	**19**	**14**	**24**	**155**

Source: Breckenridge, 2002; WTO, 2001a.

Export Restraints (VERs) and other trade arrangements in agriculture were examples of this "reverse" special and differential treatment (Whalley, 1999).

II. Special and Differential Treatment in the Uruguay Round

During the Uruguay Round negotiations, there was a subtle and gradual shift in the prevailing development policy paradigms with a move away from import substitution towards export promotion and more outward-oriented policies. Trade liberalization and the pursuit of domestic economic reforms dismantling the "Licence-Quota-Permit Raj" started emerging as new mantras for development. A few developing countries started peeling away from ideological positions and the pre-occupation with basic framework issues to active negotiation for market access and rules or disciplines in areas of interest (e.g. agriculture, textiles and clothing).

At the conclusion of the Uruguay Round, there were S&D treatment provisions carried forward from the GATT and new provisions added as a result of the negotiations in areas such as GATS, TRIPS and the multilateralization of the Tokyo Rounds Codes on standards, antidumping, safeguards, customs valuation, etc. Compared to the relatively narrow pre-Uruguay Round baseline, there was a big jump in developing countries' rights and obligations as a result of the "Single Undertaking". New subjects necessitated the inclusion of new types of S&D treatment provisions, most notably the provision of technical assistance to developing and least developed countries (LDCs) and recourse to time-limited transition periods.

There are around 155 special and differential treatment provisions in the WTO Legal Texts (see Table 1). A typology of these provisions has been provided by the WTO. The six types of special and differential treatment provisions are as follows (WTO, 2001a; Breckenridge, 2002):

(i) *Provisions aimed at increasing the trade opportunities of developing country Members:* Article XXXVI of GATT 1994, para 2(a) of the Enabling Clause, and Article IV of GATS are examples of such provisions. These provisions elaborated the actions to be taken by members but were often non-binding (best-endeavour) in nature. Their overall impact is therefore questionable and have led to discussions on the extent to which these provisions have contributed to increasing developing countries trade opportunities, and if they have not contributed what may be done to redress the situation.

(ii) *Provisions under which the WTO members should safeguard the interests of developing country members:* Examples of this type of special and differential treatment include: provisions in the Antidumping Agreement (Article 15), SCM Agreement (Article 27), Safeguards Agreement (Article 9), SPS Agreement (Article 10), TBT Agreement (Article 12), DSU (Articles 12 and 21), GATS (Article XIX.3), etc. These provisions concern actions to be taken or actions to be avoided by Members so as to safeguard the interests of developing country members.

(iii) *Flexibility of commitments, of action, and in the use of policy instruments:* Examples of provisions providing policy space and flexibility for developing countries are to be found in the Agreements on Agriculture (Articles 6.2, 6.4(b), 9.4, 12.2, 15), SCM (Article 27), TRIMs (Article 4), Safeguards (Article 9.2), DSU (Article 3.12) etc. These provisions relate to the flexibility and developing country exceptions or derogations from disciplines or commitments otherwise applicable to the WTO membership as a whole. Individual developing country members may choose to use or not use the flexibility available in these provisions on a case-by-case basis in line with their individual trade, financial and developmental needs.

(iv) *Transitional time periods:* Provisions allowing time limited transition periods for developing countries are provided for in the SPS Agreement (Article 10.2 and 10.3), TBT Agreement (Article 12.8), Customs Valuation Agreement (Article 20 and Annex III), TRIMs Agreement (Article 5.2), the TRIPS Agreement (Article 65) etc. Transitional time periods

were an innovation in the Uruguay Round. Their inclusion was the recognition that implementation of some Agreements, and the accompanying domestic reforms, could be challenging and give rise to a need for transitional periods.

(v) *Technical assistance:* Implementation of certain WTO Agreements highlighted the need for technical assistance and capacity building in developing and least developed countries. Provisions for technical assistance are provided for in the SPS Agreement (Article 9), TBT Agreement (Article 11), Customs Valuation Agreement (Article 20.3), GATS (Article XXV.2), TRIPS Agreement (Article 67), DSU (Article 27.2) etc. Like transition time periods, the introduction of these type of provisions were an innovation of the Uruguay Round.

(vi) *Provisions relating to Least Developed Country members:* Additional provisions specifically related to LDCs are provided for in the Enabling Clause, Agreement on Agriculture (Article 16), GATS (Article IV.3 and XIX.3), TRIPS (Article 66), WTO Ministerial Decisions/ Declarations/General Council Decisions (e.g. Marrakesh Ministerial Decision on Measures in Favour of LDCs or the Hong Kong Ministerial Duty Free Quota Free treatment initiative for LDCs, General Council Decision on the Accession of LDCs,[4] etc.). These provisions are all applicable exclusively to LDCs.

As indicated in the typology of special and differential treatment provisions, it is important to distinguish between mandatory or binding provisions and the best-endeavour or non-binding provisions. In subsequent discussions on the implementation of the WTO Agreements, developing countries have critically examined the nature, efficacy and operation of several of the S&D treatment provisions.

III. Doha Mandate on Special and Differential Treatment

Paragraph 44 of the Doha Ministerial Declaration (WTO, 2001b) reaffirms that special and differential treatment provisions are an integral part of the WTO Agreements. Noting the concerns expressed by developing and LDCs, Ministers agreed that S&D treatment provisions shall be reviewed "with a view to strengthening them and making them more precise, effective and operational."

The work programme on special and differential treatment elaborated in Section 12 of the Doha Decision on Implementation-Related Issues and Concerns (WTO, 2001c) was endorsed. The Committee on Trade and Development (CTD) was instructed to (i) identify the mandatory and non-binding special and differential treatment provisions and to consider the implications of converting special and differential treatment provisions into mandatory provisions; (ii) examine the possibilities of improving the effectiveness and utilization of existing special and differential treatment provisions; and (iii) consider how special and differential treatment provisions may be incorporated into the architecture of the WTO rules in the context of the Doha negotiations.

Pursuant to the Doha work programme on S&D treatment, the Members tabled a total of 88 Agreement-specific proposals in the Special Session of the CTD. These proposals were subdivided into 3 categories. Category I proposals were those with a greater likelihood of reaching agreement. Category II proposals were those in which there was some convergence and these proposals were referred to other WTO bodies and negotiating groups for consideration. Category III proposals were those with less convergence and progress on these would require redrafting of the proposals as originally presented. Of the proposals for consideration in the CTD Special Session, the Members reached an "in-principle" agreement on 28 proposals in the run-up to the Cancun Ministerial Conference though these have yet to be formally adopted. In addition, Members at the Hong Kong Ministerial Conference adopted 5 proposals specifically in favour of LDCs[5] (Pal, 2007; WTO, 2010).

Work on the remaining Agreement-specific proposals is ongoing.[6] There are also text-based negotiations on a new Monitoring Mechanism. The Mechanism has been proposed for

transparency purposes to oversee the implementation of S&D treatment provisions and as a forum to put forward proposals on special and differential treatment provisions, even after the conclusion of the Doha Negotiations. Discussions in the CTD Special Session suggest that this Mechanism could be applied to all special and differential treatment provisions contained in multilaterally agreed WTO Agreements, Ministerial and General Council Decisions. It is envisaged that the Mechanism will not be a negotiating body, but it would not be precluded from making recommendations or proposals to other WTO bodies (WTO, 2011).

IV. Special and Differential Treatment for Developing Countries in the 21st Century

Just as the GATT/WTO provisions have evolved over time - the approach, politics, economics, and the legal provisions forming the basis for special and differential treatment provisions may need to be critically examined to reflect the realities of the 21st Century. The Uruguay Round refocused earlier special and differential treatment discussions and the approach followed from the 1950s through the 1980s. The "Single Undertaking" changed the dynamics as attention had to be geared towards tackling the adjustment and implementation capacity constraints faced by developing countries in the light of new commitments. In hindsight, the Uruguay Round special and differential treatment provisions were somewhat "ad-hoc" in nature and could have profited from wider consultations with development and not purely trade interests in mind. Trade (not aid) negotiators from developed and developing countries negotiated provisions on technical assistance and lengths of transition periods. The results obtained left gaps and raised follow-up issues that came to the fore later, most notably in the context of the implementation-related issues and concerns raised by developing and least-developed countries post-1995.

(i) *Identification of the special problems faced by developing countries:* Moving forward, a first step would be to critically (re)evaluate any special problems faced by developing and LDCs in their integration into the multilateral trading system. Identification of issues need not be limited to the existing WTO Agreements but could also encompass potential challenges in new subject areas (e.g. in fishery subsidies or trade facilitation). Estimates of the costs of implementation of the Uruguay Round Agreements such as Customs Valuation, SPS and TRIPS have varied (see, for example, Finger and Schuler, 2000). It is clear, however, that adequate resources and political will is required to move any results of trade negotiations and the domestic reforms process forward. In reviewing special and differential treatment one needs to better understand what the adjustment costs are, the possible steps or sequencing involved, and the assistance actually needed to implement the provisions. The Aid for Trade initiative brings together the trade and development assistance communities and could be a way forward as it puts together an integrated and more holistic approach to trade-related capacity building. How far these initiatives are pushed forward depends on how actively proponents of S&D treatment pursue these issues. The ACP, African Group and LDC group have been active in the S&D treatment discussions during the Doha negotiations while other groupings (e.g. the Informal Group of Developing Countries) have been less so.

(ii) *Recognizing the heterogeneity in developing countries:* Developing country members in the WTO system are self nominated. Least developed countries are defined by the United Nations.[7] With a few exceptions, special and differential treatment provisions in the GATT/WTO Legal Texts are limited to these two categories of members, namely developing and least developed countries. Exceptions to this general rule, include provisions for transition economies in the SCM and TRIPS Agreements, provisions for developing countries identifying themselves as net food importing developing countries (NFIDCs) covered by the Marrakesh Ministerial Decision on "Measures Concerning the Possible Negative Effects of the Reform Programme on Least-Developed and Net Food Importing Developing Countries", more favourable treatment that was accorded to "small suppliers" in the Agreement on Textiles and Clothing, and the additional

flexibility available to LDCs and developing countries with a per capita income of less than US$1,000 covered by Article 27 and Annex VII of the SCM Agreement.

Post 1995, maintaining the homogeneity of developing countries has become an increasingly challenging task. Developing countries are often pursuing country/issue specific interests rather than negotiating as a bloc and pursuing bloc-wide interests. Some erstwhile developing country members are now also members of the OECD. In the Doha negotiations, without creating a new category of membership, there have been calls for recognition of the special challenges faced by Small and Vulnerable Economies (SVEs). Land-locked countries, Recently Acceded Members (RAMs), NFIDCs, etc. have all been articulating their particular concerns in the negotiations. These and other groupings or individual developing countries have been putting forward their views in the context of the Doha negotiations and in the modalities being negotiated for agriculture, NAMA, etc. Some developed country members have tried to distinguish between emerging economies and other developing countries. These developments and the pursuit of narrow rather than broader interests have directly and indirectly affected developing countries as a grouping. Even within the LDC group there are potential cracks emerging on the issue of preferential market access and the extension of duty-free quota-free treatment to all LDCs.

The prospect of multiple-tiers or differentiating between developing countries is risky and full of minefields. Developing countries would be reluctant to lose self nomination of their development status. What alternative criteria could be used is an open question. Criteria, e.g. per capita income or export market share (Pangestu, 2000), would have to be identified and agreed upon by the membership as a whole. Different approaches have been put forward on the premise that differentiation between developing countries would be necessary for meaningful special and differential treatment. Granting flexibility to "all" countries where non-compliance does not hurt others is not likely to address existing deficiencies. The underlying assumption is that operational S&D treatment provisions would be forthcoming only by accounting for differences among developing countries. Hoekman *et al.* (2004) have argued for S&D treatment to be limited to an "LDC+" grouping comprising of LDCs, low income and small economies with weak institutional capabilities. Again, this merely changes the goal posts and those left out of the pitch are likely to resist any tampering of the *status quo*. An implicit threshold approach has been put forward where eligibility for S&D treatment would be determined on a sector by sector or an issue by issue basis (Keck and Low, 2004; Breckenridge, 2002). This approach may have some advantages but would require analysis and considerable effort to define the provision specific thresholds. The challenge would be to ensure that countries that deserve inclusion, are included, and *vice-versa*. The ongoing negotiations on trade facilitation provide a glimpse of such an approach. The extent and timing of entering into commitments on trade facilitation is being linked with the implementation capacity of developing and least developed country members. Members would not be expected to undertake investments in infrastructure that are beyond their means and without the necessary support and assistance to implement the commitments.

(iii) *Transparency:* Improving the efficacy and ensuring coherence in the approach to be followed on S&D treatment would benefit from greater transparency. The Doha discussions have brought forward concrete proposals for a Monitoring Mechanism which could be adopted as part of an "early harvest". Transparency through this mechanism, however, is no panacea for all grievances in the area of S&D treatment. For instance, developing country proponents seeking to convert existing best endeavour clauses into mandatory ones (use of "shall" instead of "should") need to manage their expectations as this transparency exercise would bring systemic benefits that are for the longer term.

(iv) *Concluding the DDA Negotiations:* Apart from possible new approaches to special and differential treatment, concluding the Doha Development Agenda (DDA) or perhaps an "early harvest" on topics of interest to

developing and LDCs would be a substantive form of S&D treatment. Major gains were made by developing countries during the Uruguay Round through negotiations in areas such as textiles and clothing and agriculture and there is scope for further deliverables. Unfortunately, an opportunity to agree on an "early harvest" for LDCs was missed at the MC8. At an opportune time, it would be useful to revisit the considerable work already undertaken on the development-oriented issues in the DDA. These and/or other issues of interest to developing and LDCs could be fast-tracked in the negotiations. Future negotiations in the WTO may focus on how to empower developing and LDCs to a great extent so that they become active players in world trade.

NOTES

[1] In 1947-48, only 11 of the 23 original Contracting Parties could be considered developing countries. Developing countries have since constituted a majority of the GATT/WTO membership. In October 2011, there were 153 WTO members of which over 75 per cent are developing or least developed countries.

[2] See also Breckenridge, 2002; Chishti, 2002; and Michalopoulos, 2000 for a fuller account of the historical evolution of special and differential treatment in the GATT/WTO.

[3] This is not an issue of historical interest alone. There are implications here for present and future discussions on S&D treatment.

[4] The 2002 Guidelines for LDCs' accession (WT/L/508) were adopted pursuant to the mandate provided in paragraph 42 of the Doha Ministerial Declaration to facilitate and accelerate the accession negotiations of LDCs. Work is now underway to further strengthen, streamline and operationalize the 2002 Guidelines (WT/COMTD/LDC/19).

[5] Annex F of the Hong Kong Ministerial Declaration (WT/MIN(05)/DEC).

[6] The periodic reports of the Chairman of the CTD, Special Session to the Trade Negotiations Committee and/or the General Council track the progress made to date (WTO documents: TN/CTD/1 to 26).

[7] The UN defines LDCs on the basis of per capita income, quality of life, and economic diversification / vulnerability indicators.

REFERENCES

Breckenridge, Amar (2002), Developing an Issues-Based Approach to Special and Differential Treatment, Paper presented at the Inter-American Development Bank, March 2002.

Chishti, Sumitra (2002), Special and Differential Treatment to Developing Countries: Uruguay Round and After, *Focus WTO*, November-December 2002, IIFT, New Delhi.

Finger, M. and Schuler, P (2000), The Implementation of Uruguay Round Commitments: The Development Challenge, Policy Research Working Paper, World Bank, Washington DC.

Hoekman, Bernard, Michalopoulos, Constantine and Winters L. Alan (2004), Special and Differential Treatment of Developing Countries in the WTO: Moving Forward After Cancun, *The World Economy*, Vol. 27 (4).

Keck, Alexander and Low, Patrick (2004), Special and Differential Treatment in the WTO: Why, When and How? WTO Staff Working Paper, ERSD-2004-03, Geneva.

Michalopoulos, Constantine (2000), The Role of Special and Differential Treatment for Developing Countries in GATT and The World Trade Organization, Policy Research Working Paper, World Bank.

Pal, Parthapratim (2007), Special and Differential Treatment in the Doha Round of Trade Talks, *Focus WTO*, July-August 2007, IIFT, New Delhi.

Pangestu, Mari (2000), Special and Differential Treatment in the Millennium: Special for Whom and How Different? *World Economy*, Vol. 23 (9).

Senona, Joseph M. (2008), Negotiating Special and Differential Treatment from Doha to Post-Hong Kong: Can Poor People Still Benefit? *Journal of World Trade*, Vol. 42.

Whalley, John (1999), Special and Differential Treatment in the Millennium Round, *World Economy*, Vol. 22 (8).

World Trade Organization (WTO, 2001a), Implementation of Special and Diffferential Treatment Provisions in WTO Agreements and Decisions, Note by the Secretariat (Document WT/COMTD/W/77/Rev.1).

World Trade Organization (WTO, 2001b), The Doha Ministerial Declaration (Document WT/MIN(01)/DEC/1).

World Trade Organization (WTO, 2001c), The Doha Ministerial Decision on Implementation-Related Issues and Concerns (Document WT/MIN(01)/17).

World Trade Organization (WTO, 2010), Report by the Chairman of the CTD Special Session to the TNC for the purpose of the TNC Stocktaking Exercise (Document TN/CTD/25).

World Trade Organization (WTO, 2011), Report by the Chairman of the CTD Special Session to the TNC (Document TN/CTD/26).

●

G20 Report Warns against 'Retreat to Protectionism'

THE WTO cautioned "unilateral actions to shield domestic industries, although appealing from a narrow short-term perspective, will not solve global problems".

Ahead of the G20 Summit in Cannes (France) on 3-4 November, the World Trade Organization (WTO) has warned against the spectre of trade protectionism as "political reaction to current local economic difficulties — difficulties that trade restrictions are very poorly equipped to resolve, such as the case of currency fluctuations and macroeconomic imbalances".

In a report released in Geneva as a purely factual report under the sole responsibility of the WTO Director-General Pascal Lamy, the world trade monitoring body said the political climate in some regions is turning towards "a retreat into protectionism and that a tendency towards industrial support, combined with trade-restrictive measures, is emerging in some countries".

It also referred to calls made by some political leaders to give preference to domestic products over imported ones, or "not to import what can be produced at home". Though these political statements, seldom followed by specific trade measures, would nevertheless "inject uncertainty into world markets", it said.

Over the period under review between May to mid-October 2011, it found that "there is no indication that recourse to new trade restricting measures by the G20 as a group has slackened nor that efforts have been stepped up to remove existing restrictions, particularly those introduced since the onset of the financial crisis".

Deploring the various signs of a revival in the use of industrial policy to promote national champions and of import substitution measures, the WTO cautioned "unilateral actions to shield domestic industries, although appealing from a narrow short-term perspective, will not solve global problems; on the contrary, they make things worse by triggering a spiral of tit-for-tat reactions in which every country will lose".

Pointing out that the pace of implementation of new trade restrictions by G20 economies has not decelerated over the past six months, it however said the number of such measures and those that have the potential to restrict or distort trade introduced since the inception of May 2011 has declined to 108 from 122 logged during the preceding six months.

It noted that around half of the total measures recorded over this period could be deemed trade restrictive but conceded that not all G20 economies took trade restrictive steps while "some took the welcome step of introducing new measures to facilitate trade by reducing import tariffs".

It said new import restrictive measures taken during May to mid-October 2011 cover around 0.6 per cent of total G20 imports, which is the same recorded during the previous six months. Restrictive measures mainly affected machinery and mechanical appliances, articles of iron and steel, electrical machinery and equipment, organic chemicals, plastics and man-made staple fibres.

While the previous monitoring report focused on the uptrend in the imposition of export restrictions by G20 countries, affecting mainly food products and some minerals, this trend has been confirmed over the past six months too.

"Although the majority of these actions were justified on the grounds of national responses to rising food prices, to secure domestic supply or to address resource depletion, they nevertheless go against the G20 standstill pledge in this respect and have the potential to seriously affect trading partners".

Recalling that during 2008-09 global crisis G20 economies were for the most part able to resist protectionist pressures, it said their collective commitment is now being sorely tested by "weaker economic growth, high unemployment and fiscal austerity".

Under this uncertain circumstance, it held that "the best way to further open trade in a global, predictable and transparent manner remains the multilateral route" by appealing to all that the process of global trade opening continues.

For this to happen, it said, "G20 leaders as well as other participants to trade negotiations need to show leadership, pragmatism and determination to find a way out of the current impasse in the Doha Round".

The forthcoming 8th WTO Ministerial Conference provides "a possibility to find a path forward", it added

(*The Hindu Business Line*, 27 October 2011)

Simplify Import Permit, Tariff Regime: WTO to India

INDIA'S import regime remains complex, particularly its licensing and permit system and its tariff structure, with the latter having multiple exemption and rates varying according to product, user or specific export promotion programme. Surveillance of national trade policy is an important activity running throughout the work of the WTO and at the core of this work is the TPR.

The Commerce Secretary, Dr. Rahul Khullar, who is the country's chief trade negotiator in the WTO, expressed concern about world trade liberalization during India's trade policy review.

Reflecting a decrease in both agricultural and industrial average tariffs due to a shift towards lower tariffs, the simple average MFN (most favoured nation) tariff rate in India declined to 12 per cent in 2010-11 from 15.1 per cent in 2006-07. But the complexity in tariff structure in India remains, the WTO said.

While India's tariff is announced in the annual budget, individual tariff rates can be changed during the year. Besides the standard tariff rate, importers are required to pay an additional duty (countervailing duty) and a special additional duty instead of local taxes.

In order to determine the "effective" applied tariff rate (i.e. basic duties and other customs duty) on a particular product, separate customs and excise tax schedules must be consulted, which adds to "the complexity of the tariff".

While India's tariffs comprise mainly *ad valorem* rates (some 94% tariff lines) levied on cost, insurance and freight value of imports, *non-ad valorem* rates apply to 690 tariff lines of which five are specific items, while 685 are alternate rates affecting textiles and clothing.

"The use of specific rates considerably increases protection for certain products, in some cases to around and above 600 per cent," the WTO said.

Growth Story

Commenting on India's growth story, the WTO said its annual real GDP growth averaged over 8.4 per cent between 2006-07 and 2010-11, bolstered primarily by robust domestic demand.

Even as India's potential GDP growth has been estimated at between 8 and 8.5 per cent, the WTO argues that "sustained non-inflationary growth" would call for "addressing bottlenecks and investing in infrastructure and education. It will also need the simplification of the business environment by eliminating over-regulation and defining more transparent trade and investment regime".

While stating that India is a strong advocate of the multilateral trading system and historically remained a party to few regional arrangements, the WTO observes that "regionalism has increasingly become an element of its overall trade policy objective of enhanced market access for exports".

In its goal to double its share of global merchandise trade within five years, India is

implementing a mix of policies including tax incentives, export promotion and credit facilitation schemes to 'neutralize' the cost of imported inputs used in exports, the WTO said cautioning that "such schemes may contribute to the complexity of India's trade regime".

The review noted that India's merchandise trade as a percentage of GDP continued to increase to 40.3 per cent of GDP in 2009-10 from 30.1 per cent in 2005-06. While the share of manufactures in India's exports remained stable, the share of primary products decreased slightly from 33.9 to 33 per cent between the last and the latest review span.

Fuel products and machinery and transport equipment are the main components of Indian exports, followed by chemicals.

In its defence, the India report by the Commerce Ministry maintained that the country's commitment to trade openness did not falter even at the peak of global financial tsunami in a global milieu where deplorably numerous trade barriers were being erected.

(*The Hindu Business Line*, 16 September 2011)

India to Resist Fresh Pressure from Developed Nations at WTO

INDIA is unlikely to yield to a fresh effort by the developed countries to push for greater concessions by the larger emerging economies to salvage the World Trade Organization's Doha Round of global trade talks.

WTO Director General Pascal Lamy said that some developing countries now expect the larger emerging economies, including India, to compete on a level playing field. "The question is whether emerging countries are rich, developing countries or poor, developed countries, which will determine the future course of events," he said.

The Doha Round, launched in November 2001 in Qatar's capital city, has been deadlocked since July 2008 over the level of protection to be given to poor farmers against import surges and the debate whether tariff elimination in some sectors should be mandatory or voluntary. With the US leading the chorus to demand further concessions from countries like India, China and Brazil, which will have to eliminate tariffs on some products for the round to progress, the talks have been stalled.

Shri G.K. Pillai, former Commerce Secretary who led India at the WTO talks between 2005 and 2008, said there was little possibility of India giving in to the fresh demands. "Nobody (in India) is going to agree to it. We have about 40 per cent of the world's malnourished children in India and account for less than 2 per cent of world trade. We cannot be asked to give more while developed countries have a free ride."

Commerce and Industry Minister Shri Anand Sharma had also said categorically at a programme attended by Mr. Lamy, earlier this week, "Dilution of the Doha agenda can't be accepted."

The Minister had explained, "When the Doha Development Round was launched in 2001, it was clear that the development dimension has to be addressed and developing countries need to be given better access to markets. This course can't be changed."

Mr. Pascal Lamy, however, told *ET* that the Doha Round has a three-lane regime, as opposed to the two-lane regime that existed in GATT (General Agreement on Tariffs and Trade), which preceded the WTO. He said the framework already comprises separate regimes for the developed countries, emerging developing countries and poor developing countries. "What is needed is not a categorization debate but a transactional debate. Who exactly does what and where," he added.

ICRIER Professor Anwarul Hoda, who also served as a Deputy Director General at the WTO, conceded the political compulsions of the developed world, but ruled out further concessions from the emerging economies.

"When US politicians say that they can't accept special and differential treatment being given to such developing countries, politically there is some rationality in the attitude," Professor Hoda said, pointing to the changed global situation. While China has emerged as the world's leading supplier of goods, India and Brazil have also risen in stature. Yet, he emphasized, the Doha Round has a certain mandate and the best way to go about it is to complete the mandate and look for a new round.

Despite the shrinking political space for the developed world to commit to its obligations under the Doha Round, then, India does not seem prepared to bear disproportionate costs to facilitate a global trade deal.

(*The Economic Times*, 9 September 2011)

India to Give More Market Access to Neighbours Soon

INDIA has promised greater market access to its neighbours by pruning its sensitive list by a fifth next month under the South Asia free trade agreement. Commerce and Industry Minister Shri Anand Sharma announced at the first meeting of the South Asia Forum in New Delhi.

Items included in the sensitive list are not subjected to preferential tariff cuts and member countries of the FTA have to continue to pay normal tariffs on these.

India has committed to bringing down sensitive items, which are shielded from tariff cuts, by 20 per cent. India maintains a sensitive list of 431 items for least developed countries (LDCs) and 848 items for non-LDCs under the South Asian Free Trade Area, or SAFTA.

The benefit of a smaller sensitive list will be available to all SAARC members, including least developed countries – Bangladesh, Maldives, Bhutan, Nepal and Afghanistan and non-LDCs – Sri Lanka and Pakistan.

Ministers of Trade and Finance from all eight SAARC countries attended the meeting organized by FICCI in association with the Government of India and the SAARC Secretariat to discuss ways to move towards a South Asian economic union.

With the continued global economic crisis posing serious threats to flow of investment from the rich nations to the poor and needy under-developed countries, SAARC member nations need to tap intra-regional trade and investments by giving greater market access and facilitate free flow of investment through lowering of tariff and non-tariff barriers, Shri Anand Sharma said.

(*The Economic Times*, 9 September 2011)

India Pushes for Economic Integration of South Asia

UNDERLINING the need for expanding intra-regional trade and investment, India has pushed for "progressive economic integration" of South Asia ahead of the SAARC summit in the Maldives later this year. "We all know that our region is among the least economically integrated in the world; there are adequate studies that offer statistics in this regard," said External Affairs Minister Shri S.M. Krishna at SAARC countries participating in the first South Asia Forum.

"However, for me, the litmus test of integration is really whether we are able to make it viable for our businesses to expand intra-regional trade and investment flows," said Shri Krishna, urging the forum to "assemble a robust argument in favour of progressive integration of the region".

"If this can be incentivized either through policy measures or by means of forward-looking steps by our premier chambers of commerce and industry, the connective tissue of a South Asian economic community can begin to be created," he said.

The two-day South Asia Forum has been organized in association with the Government of India, FICCI and the SAARC Secretariat. The theme for the first South Asia Forum is 'Integration in South Asia: Moving Towards a South Asian Economic Union".

Touted as a Track 1.5 initiative, the South Asia Forum brings together government functionaries, businessmen, media and academics to generate 'out of box ideas' for facilitating greater regional economic integration and people-to-people contact.

The Minister also called for enhancing the participation of civil society in the SAARC integration process. "For future editions of the Forum, we may perhaps need to consider widening representation from the civil society, media, academia and business, while proportionately reducing the scale and extent of government presence," he said.

"It is only through an expansion in the number of stakeholders in the processes of regional cooperation that we can create a critical mass in favour of deepening and widening integration in

our region. The South Asia Forum creates precisely such a platform," he said.

On the inaugural day of the meet, Commerce and Industry Minister Shri Anand Sharma announced that India's negative list of imports will be pruned by 20 per cent (from 400 to 320 items) by October-end this year. The decision is expected to boost intra-regional trade and investment in South Asia.

(*The Financial Express*, 10 September 2011)

Special and Differential Treatment: Doha Round

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."

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. At the December 2005 Hong Kong ministerial, members agreed to five S&D provisions for LDCs, including the duty-free and quota-free access.

Research by the ODI sheds light on the priorities of the LDCs during the Doha Round. It is argued that subsidies to agriculture, especially to cotton, unite developing countries in opposition more than SDT provisions and therefore have a greater consensus.

Duty-free and quota-free access (DFQFA) currently discussed covers 97 per cent of tariff lines and if the US alone were to implement the initiative, it would potentially increase Least Developed Countries' (LDCs) exports by 10 per cent (or $1bn). Many major trading powers already provide preferential access to LDCs through initiatives such as the Everything but Arms (EBA) initiative and the African Growth and Opportunities Act. However, due to LDCs' narrow export-base, 100 per cent of tariff lines must be covered for real impact.

(http://en.wikipedia.org/wiki/Doha_Development_Round)

S&DT: An Integral Component of the Multilateral Trading System

SPECIAL and differential treatment (S&DT) is an integral component of the multilateral trading system. It allows developing countries to have transitional "special rights and obligations", which are designed to respond positively to their development needs. S&DT can entail a wide range of provisions, including longer implementation periods; greater flexibility of commitments, actions and use of policy instruments; and increased delivery of trade-related technical assistance and capacity building.

The objectives of S&DT provisions are to foster the ability of developing countries to become full participants in the multilateral trading system and to help them reap the benefits of WTO Membership. Thus, S&DT provisions are to become redundant as developing countries incrementally increase their ability and capacity to implement WTO agreements, decisions and related obligations.

The 2001 Doha Ministerial Declaration, which is the cornerstone of the current WTO trade negotiations, calls for the review of all Uruguay Round outstanding S&DT proposals with the view of strengthening them and making them more precise, effective and operational. The Doha Ministerial Declaration also requires taking S&DT into account in the various negotiations (e.g. in agricultural, non-agricultural market access, services, trade facilitation and rules negotiations). These two areas of focus with respect to S&DT were further asserted in the 2004 July Package of Frameworks and other Decisions and in the 2005 Hong Kong Ministerial Declaration.

As a result, WTO negotiating groups have been examining possible S&DT provisions as part of their wider technical discussions aimed at fleshing out modalities (i.e. methodologies for developing

detailed commitments). The Committee on Trade and Development in Special Session has also made considerable efforts to take a fresh look at the outstanding S&DT proposals. In Hong Kong, in December 2005, WTO Members came to an agreement on five outstanding S&DT proposals that had been put forward by least-developed countries.

Canada is committed to the principle of S&DT in the WTO and has been willing to examine S&DT proposals that make a constructive contribution to integrating developing countries into the multilateral trading system. Canada has continuously sought to address underlying issues to ensure that resulting measures are geared towards the problems they seek to address. Canada also recognizes the need for flexibility and calibration of S&DT measures, as developing country Members have different needs and capacities.

However, in doing so, Canada has argued against proposals that would require amending existing agreements, that prejudge current negotiations, that involve open-ended requests for trade-related technical assistance and capacity building or those that allow self-granted automatic extensions of S&DT provisions and/or blanket exemptions. In Canada's view, these would not help meet the objectives of S&DT.

(http://www.international.gc.ca)

Special and Differential Treatment for Developing Countries

THE concept that exports of developing countries should be given preferential access to markets of developed countries, and that developing countries participating in trade negotiations need not fully reciprocate concessions they receive. This principle was first widely discussed during the Kennedy Round, leading to the adoption of Part IV of GATT, which obligated the developed countries to pursue trade policies that take into account the development needs of developing countries.

The Tokyo Declaration subsequently proclaimed that exports of developing countries should receive particular benefits consistent with their trade, financial and development needs. Among proposals considered during the Tokyo Round negotiations for accomplishing this were: compensatory tariff reductions for exports of developing countries to offset any reductions in their margins of preference that might result from Tokyo Round tariff cuts; advance implementation of Tokyo Round tariff cuts affecting developing country exports; substantial reduction or elimination of tariff escalation; special provisions for developing country exports in any new codes of conduct covering non-tariff barriers; assurance that any new multilateral safeguard system would contain special provisions for developing country exports; and the principle that developed countries would expect less than full reciprocity for trade concessions granted to developing countries.

The Framework Agreement concluded at the end of the Tokyo Round provides a legal basis for special and differential treatment in favour of exports from developing countries, and some of the codes of conduct negotiated in the Tokyo Round provided for such treatment.

Under the Uruguay Round agreement, developing countries are given much longer than developed countries for phasing in trade liberalization measures in several areas including agriculture, intellectual property and investment. The Uruguay Round also strengthened pre-existing GATT rules regarding dumping and subsidization, and developing countries were given a longer timetable for coming into compliance with these rules.

(http://www.asycuda.org)

LDCs Make Strong Plea in WTO for Action on SDT

THE Special Session of the Committee on Trade and Development of the WTO met on 27 October 2005 to further consider in particular five Least Developed Country Agreement-specific proposals on Special and Differential Treatment, on which no consensus has been reached by Members so far.

Several LDCs made strong statements at the meeting calling for action to be taken on time for the Hong Kong Ministerial Conference to deliver some results.

The mandate of the Committee has been to review all Special and Differential Treatment

provisions in WTO agreements with a view to strengthening them and making them more precise, effective and operational, and to report to the WTO General Council with clear recommendations for a decision.

The proposals on these provisions had initially been categorized into three distinct informal categories (thematic clusters) but there was a failure to move forward in making concrete recommendations on these proposals to the WTO General Council.

This resulted in the Chair of the Special Session, Ambassador Faizel Ismail of South Africa, to look for a compromise on the way to proceed and concentrate the work on five Least Developed Country proposals.

The five LDC Agreement-specific proposals include greater flexibility for LDCs to take up commitments, consistent with their level of economic development; improved access for LDCs to temporary waivers regarding one or more of their obligations; duty-free and quota-free market access for goods originating from LDCs; and greater flexibility to use trade-related investment measures as a development tool.

At the meeting several LDCs made strongly worded statements, including one by Uganda, which the Chair characterized as a "passionate plea for us to take action" on time for the Hong Kong Ministerial to deliver some results.

Uganda made a call for "affirmative action" by the Members, and asked rhetorically several times what was the purpose for the LDCs to go to Hong Kong when there seems to be no hope of getting any improved market access for their products.

Uganda expressed regret over the fact that whatever the LDC group had proposed had been rejected, meaning that there would not be "any harvest" for the LDCs in Hong Kong.

"We will only go there to accompany those having harvest," Uganda pointed out. It added that the message from some other Members seems to be: "stay where you are or die, we don't care".

Uganda asked for an agreement on Special and Differential Treatment that would allow the LDCs to attract investment and increase their participation in world trade, which now stands at only around 0.6 per cent. The alternative is for the LDCs to feel neglected and marginalized, Uganda said.

Rwanda said that "we don't have any gains from this Round", while Lesotho said that "our patience has limits". Bangladesh "implored all Members to support our integration into world trade".

Zambia, speaking on behalf of the LDCs, said that the LDC Group has been in a continuous process of reducing its level of ambition. In a statement at the meeting, Zambia made some specific comments on the five proposals.

With respect to proposal number 23 (on allowing waivers to be provided to LDCs), Zambia said that the main opposition to this proposal appears to come from some developing countries that are not willing to consider further preferential market access being given to LDCs.

Moreover, Zambia added, replacing the mandatory words "shall" to "should" in this proposal as proposed by some Members would not only further weaken the proposal but would also erode the rights of LDCs contained in Article IX of the Marrakesh Agreement.

With regards to proposal number 36 (on providing duty-free and quota-free market access to LDCs), Zambia said that the LDC Group had proposed a number of alternative texts but none of them seem to have come close to satisfying the demands of a select few of the Members.

On proposal number 84 (with respect to the TRIMS Agreement), Zambia said that the LDCs have made major concessions. They had started with a request to be completely excluded from the TRIMS, and had consistently tried to take on board the concerns of other Members. To this end, the LDCs had modified their proposals.

"Despite all of these innovations and adjustments, we seem to be just as far from getting an agreement on Proposal 84 than we were when we were asking for a total exemption from the TRIMS Agreement," Zambia said.

"Given that we are having so much difficulty in reaching consensus on these five proposals, the prospects of being able to reach any kind of

agreement on the remaining proposals on Special and Differential Treatment look very bleak indeed," Zambia added.

Zambia said: "quite simply, we do not detect the political will of other Members to strengthen special and differential treatment provisions to make them more precise, effective and operational, as we all agreed to do in Doha".

The EC and the US on the other hand maintained that the situation was not as bad as was characterized by some LDCs, although they said that they understood the LDCs' frustration.

The EC said "we are getting closer to a mutually acceptable agreement", while the US said that there are real prospects for an agreement. The US also recalled that there are provisions already for Special and Differential Treatment in the WTO agreements, given both de facto and explicitly to the LDCs.

Brazil said the LDCs should not bear the burden of keeping the sanctity of the WTO agreements and principles, since flexibilities are used elsewhere.

China said that Hong Kong is important to show that the WTO is concerned about development, while Singapore said there is a need for an outcome in Hong Kong and an agreement on Special and Differential Treatment could be the only one, the way things are.

The Chair reported that Members are very close to an agreement on some of the proposals but there is a need for new wording to get full convergence.

Consultations have concentrated on two proposals, number 36 (on providing duty-free and quota-free market access to LDCs) and number 84 (on flexibilities with respect to the TRIMS Agreement for LDCs).

The Chair stressed that there is a need for political decisions on both proposals. He also reported on the situation of other proposals discussed in different Committees and Negotiating Groups, on which there appeared to be no better prospects for agreement.

(http://www.twnside.org.sg)

Doha Round Tariff Cuts "Will Still Hit" Poor Countries

TO allow least developed countries (LDCs) to protect nascent industries, they are not required to cut tariffs for industrial goods and fisheries in the Doha Development Round. However, tariffs cuts will affect them if they are members of customs unions where some of their neighbours are larger developing countries without LDC status.

For example, "Nigeria is not an LDC but the nine LDCs in the Economic Community of West African States (ECOWAS) may also be bound by the commitments that their more powerful neighbour agrees to in the Doha Round," explains Aileen Kwa in response to questions from IPS about what lies ahead for LDCs at the WTO during 2011.

Ms. Aileen Kwa is coordinator of the trade and development programme at the South Centre, an intergovernmental organization representing developing countries and based in Geneva.

"This is the problem: tariff cuts, whether in agriculture or NAMA (non-agricultural market access), are not going to help poor countries with food security, industrialization or increasing their domestic production. In most African countries, agriculture has been destroyed by liberalization, so they need to put up their tariffs instead of reducing them," Ms. Kwa argues.

This point of view is shared by an African diplomat who spoke on condition of anonymity due to the sensitivity of negotiating positions: "Sectorals (deep cuts or elimination of tariffs in certain industrial sectors by some developing countries, supposedly voluntary) will affect LDCs that are in custom unions with large developing countries, particularly those LDCs that depend on tariffs for their revenue.

"It is difficult to bring this subject to the negotiating table. In the economic partnership agreements (EPAs) being negotiated with the European Union there is at least the recognition that the implementation of the EPAs may have adverse effects. In the WTO we do not have that."

Mr. Mohammad Abdul Hannan, Bangladesh's ambassador and coordinator of the LDCs group at

the WTO, admitted in an interview with IPS that the Doha Round would cause preference erosion for LDCs.

"That is an issue. LDCs have duty-free and quota-free market access to most developed countries under various autonomous preference schemes. Reduction of tariffs across the board will make LDCs less competitive in comparison to other developing countries. Therefore, there should be other measures to compensate LDCs for subsequent losses," says Mr. Hannan.

LDCs need more clarity from other WTO Members on tariff cuts and tariff lines where LDCs will be given duty-free and quota-free market access, he adds.

Ms. Aileen Kwa doubts that the conclusion of the Round will benefit LDCs at all. She points to studies showing that, apart from a handful of developing countries like Brazil, China and India that would suffer losses but also enjoy gains, the majority of developing countries are facing mainly losses.

LDCs' total share of world trade is only one per cent and their exports consist mainly of natural resources and some manufacturing and agricultural products.

"The issue is production and until these countries can actually produce, having market access holds no real value for them. The gains for LDCs and other lower income countries from the Doha Round are not apparent," Ms. Aileen Kwa further argues.

Mr. Hannan disagrees on this point: "Richer countries and large developing ones will benefit the most from the conclusion of the Round because of their capacity to trade. But through special and differential treatment LDCs can also benefit from the international trading system.

"Developed and developing countries who are able to do so have to support the efforts of the LDCs to build and expand their supply-side (production) capacities." Special and differential treatment involves exemptions and assistance for developing countries.

Mr. Hannan adds that, "as LDCs, we expect the Doha Round to protect and augment our productive capacity and enhance our effective market access. The Doha Round, with development at its core, came about to correct the imbalances of the previous rounds.

"The final outcome of Doha must ensure that development remains the centrepiece of the agreement."

Mr. Hannan is confident that trade liberalization will bring about growth, employment and development for the poorest countries: "For us, market access, cotton and services are very crucial. These have to be complemented with aid for trade for capacity building and trade facilitation for LDCs to beneficially integrate into the multilateral trading system.

"We are encouraged by the momentum generated recently and would like to believe that we are in the last lap of this decade-long round. Failure to conclude the round would affect LDCs the most."

(http://ipsnews.net)

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 flexilibility 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 the WTO'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)

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

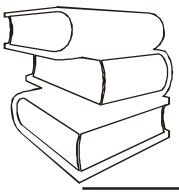
The report finds a compelling case for continued relevance for infant industry protection. Explaining this, the former Director General, RIS, Dr. Nagesh Kumar, who led the report team, said that all the developed countries of today have extensively employed protection in the process of their industrialization 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)

•



BOOKS/ARTICLES NOTES

BOOKS

The Political Economy of the World Trading System: The WTO and Beyond by Bernard M. Hoekman and Michel M. Kostecki, Third Edition, 2009; Oxford University Press.

THE third edition of this book offers a self-contained introduction to the political economy of the multilateral trading system. A brief synthesis of basic economic concepts and the effects of trade policy instruments have been extended to include a brief treatment of the welfare effects of trade in services, trade preferences and preference erosion, and discrimination in government procurement.

This book aims to provide a succinct description of the principles, rules and procedures of the multilateral trading system, as well as a political economy-informed discussion of how it functions. This book does not provide a detailed negotiating history—how did what and when—although the result of negotiations and ministerial meeting are discussed at some length, including the subjects that were on the table in the Doha Development Agenda. Being an introduction, this book cannot be more than a starting point. Guides to further reading are provided at the end of every chapter. Readers interested in pursuing specific subjects in greater depth should consult the works recommended there as well as the bibliography.

The book is divided into five parts. *Part I* provides a brief historical overview of the evolution of the multilateral trading system, major developments in world trade and introduces the basic functions of the trade regime (Chapter 1). *Part II* deals with the WTO as an institution. Chapter 2 describes the organizational structure of the WTO, its scope and functions. Chapter 3 discusses WTO enforcement and dispute settlement provisions, and summarizes the case load to date. Chapter 4 analyzes the role of the WTO as a forum for negotiations. Special attention is given to the concept of reciprocity, as this is a key element of multilateral trade negotiations.

Part III discusses the core disciplines of the WTO, which are contained in three multilateral agreements. Chapter 5 describes the GATT rules for merchandise trade—disciplines on tariffs, quotas, subsidies, customs procedures and product standards, among others. In each instance the authors discuss the political economy rationale underlying the rules, using cases and examples drawn from practice to illustrate their relevance and operation. Chapter 6 turns to the major sector specific agreements that have been negotiated under GATT auspices, the three most important being the Uruguay Round Agreements on Agriculture and on Textiles and Clothing, as well as the Information Technology Agreements (ITA). Both sectors have a long history of protectionism in many countries, and both continue to have higher level of protection in many countries than other sectors. Chapters 7 and 8 discuss the two major additions that were made to the trading system in the Uruguay Round: disciplines on policies affecting trade in services as embodied in the GATS, and the agreement on TRIPS respectively.

In *Part IV*, Hoekman and Kostecki describe and assess the major 'holes and loopholes' in the WTO. The various mechanism allowing for the re-imposition of trade barriers are discussed in Chapter 9, which summarizes the rules on–and the economics of–the use of instruments of contingent protection. These have been very important in dealing with domestic political pressures for (re)imposition of protection. Although often abused to the detriment of both national and global welfare, recent research has shown that they can also play a constructive political function by helping governments that decide to undertake far-reaching liberalization to implement and sustain economy-

wide policy reform. Chapter 10 deals with one of the most important exceptions to the most-favoured-nation (MFN) rule allowed by the WTO: preferential trade agreements (PTAs). Almost all WTO members are participants in one or more PTAs, raising serious questions about the practical relevance of the WTO non-discrimination principle. Since the creation of the WTO the number of PTAs has increased steadily, as have non-reciprocal duty-free access schemes for least developed countries (LDCs). As a result, multilateralization of preferential trade is one of the major challenges confronting the WTO. Chapter 11 discusses the provisions of the WTO allowing for the negotiation of so-called plurilateral agreements, which apply only to those members that sign them. The most important of these is currently the Agreement on Government Procurement. The use of such agreements may well increase in the future, as it allows for subsets of members to move forward in areas where consensus cannot be obtained.

Part V addresses recent trends and challenges confronting the WTO. Chapter 12 discusses the evolving role of developing countries and former centrally planned economies in the multilateral trading system, and the concerns that these countries have regarding its operation. Chapter 13 deals with a number of subjects that are likely to be on the negotiating agenda for some time to come, including competition (antitrust) policy, labour standards, investment and environmental policies. Chapter 14 turns to the question of governance of the trading system, the role of NGOs and the importance of ensuring domestic transparency of trade and investment policies.

The concluding chapter briefly summarizes some of the major themes that emerge from previous chapters and discusses possible futures for the WTO and the challenge of sustaining international cooperation in the trade area post-Doha.

The volume includes two annexes. Annex 1 provides a listing of the WTO members and some of the key characteristics that help determine their influence and participation in the institution. Annex 2 summarizes the economics of major trade policy instruments. It covers tariffs, quotas, trade in services, subsidies, externalities and market failure, price discrimination (dumping), FDI, trade preferences, preferential public procurement and rent seeking. Although the discussion in the volume is mostly non-technical, the authors hope inclusion of the material in Annex 2 will assist students of international relations, economics and business, as well as the interested reader, to relate basic economic concept and analytical frameworks to the trade policy instruments that are the subject of the WTO disciplines.

ARTICLES

Special and Differential Treatment, Trade and Sustainable Development by Maureen Irish, Law and Development Institute Inaugural Conference, Sydney, Australia, October 2010.

DEADLOCK over critical issues stalled further negotiations in the Doha Round launched in November 2001. Agreement appears elusive. There have been stalemates and missed deadlines. Law review articles are now being published with titles such as "Doha Round Betrayals" and "The Demise of Development in the Doha Round Negotiations." In the view of many, the Doha Round was intended to remedy the development deficit of the GATT Uruguay Round negotiations, which led to the establishment of the World Trade Organization in 1995. Optimism has, however, given way to frustration and disappointment.

This paper argues that the situation is not entirely bleak for the WTO law of development, at least as expressed in special and differential treatment (SDT) in favour of developing countries. The committee charged with revising the existing SDT provisions in the Doha Round has reached agreement on some clauses. More generally, SDT was reinforced when sustainable development was included in the Preamble of the newly-created WTO in the Marrakesh Agreement. A widely-accepted feature of sustainable development is the principle of common but differentiated responsibilities that takes into account the needs and capabilities of different countries. When SDT provisions are interpreted by the WTO panels and the Appellate Body in accordance with the Vienna Convention on the Law of Treaties, existing jurisprudence on

SDT obligations in favour of developing countries will be strengthened.

The paper outlines the progress of special and differential treatment in the Doha Round and discusses the concept of sustainable development. Subsequent sections then present analysis and argument concerning legal interpretation by the WTO panels and the Appellate Body.

The GATT Uruguay Round produced some disappointing results for the developing countries. In that Round, new clauses providing special and differential treatment tended to be merely temporary, allowing developing countries extra time for a transition period, but not granting policy space or special treatment to address development needs on a long-term basis for so long as the need lasted. SDT became an adjustment tool rather than a development tool, and the trend was towards a "one-size-fits-all" approach. Effect was heightened by the requirement that Members of the new organization had to accept all the new agreements as a single undertaking, except for a few agreements that remained optional. Previously in GATT, each country had been able to choose whether it wished to join the various non-tariff barrier agreements that clarified and expanded on the GATT provisions. Developing countries could pick only the ones they considered suitable. In the WTO, the whole single undertaking became compulsory, including new agreements on services, regulatory standards and intellectual property. While developing countries made some progress on agriculture, on safeguards and on textiles and clothing, the Uruguay Round results overall were troubling.

The Doha Round began in November 2001 with the declared intent of placing the needs and interests of developing countries "at the heart of" the new Round. The initial deadline for a "modalities" or framework agreement under which specific commitments would be negotiated was set at January 2005. The Ministerial conference in Cancun in September 2003 ended without agreement and the initial deadline was not met. In December 2005, at the Hong Kong Ministerial conference, Members resolved some matters and the modalities deadline was set for April (and then June) of 2006. When that date also passed without success, negotiations were suspended until February 2007. A modalities agreement was nearly reached in Geneva in July 2008, but talks broke down. At the most recent Ministerial conference, in Geneva in December 2009, Members affirmed the end of 2010 as the deadline for a modalities agreement. It is widely anticipated that that deadline will also be discarded.

The Doha mandate directs a review of existing special and differential treatment provisions "with a view to strengthening them and making them more precise, effective and operational." The WTO Committee on Trade and Development was instructed "to consider the legal and practical implications for developed and developing Members of converting special and differential treatment measures into mandatory provisions," "to examine ... ways in which developing countries, in particular the least-developed countries, may be assisted to make best use of special and differential treatment provisions" and "to consider ... how special and differential treatment may be incorporated into the architecture of WTO rules." As the WTO Secretariat noted, critics argue that the existing SDT provisions "are couched in best endeavour language and merely exhort Members to take certain steps, rather than making this action mandatory and binding."

The Committee on Trade and Development convened in special session to deal with its part of the Doha negotiations. The Secretariat prepared a survey of existing SDT provisions, treating them as mandatory if they used the word "shall" rather than "should," and classifying the mandatory provisions as either obligations of conduct (requiring Members to follow a certain course of conduct) or obligations of result (requiring Members to achieve a certain result). Article 10.1 of the Agreement on Sanitary and Phytosanitary Measures, for example, was classified as a mandatory obligation of conduct, as it states that, in the preparation of SPS measures, Members "shall take account of" the special needs of developing country Members and least-developed country Members. Similarly, Article 15 of the Agreement on the Implementation of GATT Article VI (Anti-Dumping Agreement) was a mandatory obligation of conduct, requiring that constructive remedies "shall be explored" before a Member applies anti-dumping duties that affect the essential interests

of developing country Members and Article IV:3 of the General Agreement on Trade in Services (GATS) was also a mandatory obligation of conduct, since it requires that "(p)articular account shall be taken" of the difficulties of least-developed countries (LDCs) negotiating specific commitments, in view of their development, trade and financial needs. The Secretariat's approach received some criticism. In a review in May 2002, South Centre argued that a linguistic trigger such as the word "shall" was not sufficient to identify a binding obligation, since the content and beneficiaries of the obligation might still be unclear.

Maureen Irish mentions in the paper that there are many challenges for special and differential treatment in the WTO apart from the up-dating of existing provisions. Since the conclusion of the Uruguay Round, regional agreements have proliferated, covering large segments of international trade. In order to enter into such a regional agreement with a developed country, developing countries may accept obligations beyond those in the WTO Uruguay Round agreements, without receiving special and differential treatment in return. Debates continue over the design of SDT and the effectiveness of provisions that are merely time-limited transition periods. The author argues that SDT must be more nuanced if it is to "ensure the proportionality of trade agreements, commensurate with the levels of development of developing countries and their capacity to manage the burdens of the adjustment process." To be a tool of development, SDT would reflect economic and social criteria relevant to the needs of each country. It should also be accompanied by positive measures such as technical assistance and capacity-building as appropriate, operating coherently with programmes of the World Bank and other institutions.

The sustainable development objective should enhance the effectiveness of existing WTO provisions for special and differential treatment in favour of developing countries, with an emphasis on the process of decision-making, the author advocates. The WTO Secretariat was correct to classify many current SDT provisions as mandatory obligations of conduct and of result in its report in 2001. For obligations of conduct such as in GATT Articles XXXVII and XXXVIII and Article 15 of the Anti-Dumping Agreement, it is appropriate to expect that a duty to consult or a duty to negotiate will be enforceable by a WTO panel or the Appellate Body. It is appropriate that the Members will have a burden to demonstrate that they have explored alternate remedies before imposing measures on products of a developing country, or that they have taken account of the interests of the developing countries and LDCs.

The addition of sustainable development as an objective for the WTO must be taken seriously in the legal interpretation of the WTO agreements. The author says that provisions of special and differential treatment in favour of developing countries are strengthened by the acknowledgement of common but differentiated responsibility as an element of sustainable development. The current jurisprudence of the International Court of Justice on sustainable development emphasizes the effectiveness of procedural obligations such as duties to negotiate, consult and cooperate. Proper interpretation of existing SDT provisions will reinforce such duties as obligations of conduct that can be enforced through the WTO dispute settlement. Teleological interpretation will help to meet the Doha mandate of strengthening those existing provisions and making them more "effective and operational."

Differences remain, of course, over whether SDT provisions should be temporary transition periods or more reliable tools of development available for as long as the needs last. In the ongoing negotiations, the current provisions on special and differential treatment should not be underestimated. Viewed in accordance with a traditional, well-established, teleological approach to legal interpretation, the existing treaty obligations have significant legal force.

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 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.

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.

•

DOCUMENTS

Negotiating Group on Rules

Fisheries Subsidies: Special and Differential Treatment

Communication from Brazil, China, India and Mexico

The following communication, dated 8 February 2010, is being circulated at the request of the Delegations of Brazil, China, India and Mexico.

This legal draft was the result of contributions from the co-sponsors as well as other delegations that actively participated in the drafting process. It remains open for the subscription of other delegations.

This document is intended to follow up on the latest contributions by Developing Country Members regarding **the special and differential treatment issue (S&DT) and the applicable controls in the future disciplines on fisheries subsidies**. Those contributions include the joint statement on S&DT presented by Brazil, China, Ecuador, Mexico and Venezuela (document TN/RL/W/241/Rev.1) and legal text proposals such as the ones circulated by China, India and Indonesia (TN/RL/GEN/155/Rev.1) and by Brazil and Argentina (TN/RL/GEN/151/Rev.1).

This text is an attempt at putting together all those contributions side by side with the Chair's November 2007 draft consolidated text, taking into account the debate on the pertinent questions of the December 2008 roadmap for fisheries subsidies.

Our main objective is to make real the Hong Kong mandate in that "appropriate and effective special and differential treatment for developing and least-developed Members should be an integral part of the fisheries subsidies negotiations, taking into account the importance of this sector to development priorities, poverty reduction, and livelihood and food security concerns".

The focus on S&DT and its applicable controls is the reason why only Articles III, IV and V of the Chair's first draft text are dealt with in this document. **This does not mean that the proponents agree with the Chair's suggestions on the other parts of that draft text**, rather the proponents just seek to convey what they believe is needed for fulfilling the Hong Kong mandate regarding S&DT.

Our assumption here is that the prohibition of subsidies causing excessive fishing effort and negatively impacting fisheries resources can and shall be reconciled with the important role of fisheries subsidies in the economic development of developing countries. The applicable controls should allow developing countries to achieve development priorities, poverty reduction, and address their livelihood and food security concerns.

On the issue of **small-scale, artisanal fisheries**, the proponents decided to bring forward **a definition based on socio-economic criteria**, inspired by the current Article 6.2 of the Agreement on Agriculture. We believe that this is the best way for striking a satisfactory balance, in the absence of internationally-agreed definitions on

those fisheries activities by other Organizations more directly involved in fisheries issues. Each Member should be able to work on its own definition, insofar as the criteria set forth in the future WTO disciplines are observed.

On the **larger scale fisheries**, criteria such as the boat size and the area of capture were replaced with **provisions structured on the rights Members have under the international law**. For those activities the controls in Articles IV and V would fully apply, in order to implement the Hong Kong mandate consistently with its main goal: to bar harmful fisheries subsidies that create over-fishing and produce overcapacity, as well as distort trade or production. Artificial distinctions such as the Exclusive Economic Zone limitation and the 10 meters threshold were thus deleted.

The provision of fisheries adverse effects in Article IV were strengthened by a definition of these effects in paragraph 2, followed by a list of situations where fisheries adverse effects would be deemed to exist. We are suggesting two types of analyses under that Article: a complete one in which the occurrence of fisheries adverse effects would have to be demonstrated by the complaining Member; and a simplified one in which only the aspects presented as "shortcuts" would need to be demonstrated.

Article V was streamlined by means of splitting its paragraphs concerning the content of fisheries management systems, the relationship between them and international standards and, finally, transparency obligations. On the content aspect, this proposal follows the principle that **only the core elements of fisheries management systems should be included in the final Agreement, leaving room for their implementation by Members on a case by case basis and adequate to their fishing activities**. Notwithstanding their attempts on that matter, the proponents' views on Article V are dependent on a final understanding on its scope and coverage, in particular its application beyond the S&DT exceptions and the nature of the overall notification requirements of the fisheries disciplines.

This legal draft is a work in progress and does not constitute Members' final position on the subject.

Article III

Special and Differential Treatment of Developing Country Members

III.1 The prohibition of Article 3.1(c) and Article I shall not apply to least-developed country ("LDC") Members.

III.2 For developing country Members other than LDC Members, **the subsidies referred to in Article I.1 shall not be prohibited**

~~(a) Subsidies referred to in Article I.1 shall not be prohibited where those subsidies relate exclusively to marine wild capture fishing performed on an inshore basis (i.e., within the territorial waters of the Member) with non-mechanized net-retrieval, provided that (1) the activities are carried out on their own behalf by fishworkers, on an individual basis which may include family members, or organized in associations; (2) the catch is consumed principally by the fishworkers and their families and the activities do not go beyond a small profit trade; and (3) there is no major employer-employee relationship in the activities carried out. Fisheries management measures aimed at ensuring sustainability, such as the measures referred to in Article V, should be implemented in respect of the fisheries in question, adapted as necessary to the particular situation, including by making use of indigenous fisheries management institutions and measures.~~

where the benefits of those subsidies are conferred on low income, resource poor or livelihood fishing activities, provided that these activities are performed by fishworkers on an individual or family basis or employed by associations or micro-enterprises or individual boat owners. Fisheries management measures aimed at ensuring a sustainable level, such as the measures referred to in Article V, should be implemented in respect of the fisheries in question, adapted as necessary to the particular situation, including by making use of indigenous fisheries management institutions and measures.

III.3 ~~(b)~~ In addition, subject to the provisions of Article V**, the following subsidies referred to in Article I.1 shall not be**

prohibited for developing country Members other than LDC Members:

(a) ~~(1)~~ Subsidies referred to in Articles I.1(d), I.1(e) and I.1(f) ~~shall not be prohibited~~.

~~(2) Subsidies referred to in Article I.1(a) and I.1(c) shall not be prohibited provided that they are used exclusively for marine wild capture fishing employing decked vessels not greater than 10 meters or 34 feet in length overall, or undecked vessels of any length.~~

(b) ~~(3)~~**(2)** ~~For fishing and service vessels of such Members other than the vessels referred to in paragraph (b)(2),~~ **S**ubsidies referred to in Article**s** I.1(a) **and I.1(c),** ~~shall not be prohibited~~ **where their purpose is to exploit stocks over which the subsidizing Member has (i) jurisdiction, sovereignty or sovereign rights[1] or (ii) fishing quotas or any other fishing rights[2] established by a regional fisheries management organization or arrangement (RFMO)[3] or applicable international instruments for identified target stocks,** provided that ~~(i) the vessels are used exclusively for marine wild capture fishing activities of such Members in respect of particular, identified target stocks within their Exclusive Economic Zones ("EEZ"); (ii)~~ those stocks **are** ~~have been~~ subject to prior scientific status assessment conducted in accordance with relevant international standards, aimed at ensuring that the resulting capacity does not exceed a sustainable level **as determined by their maximum sustainable yield.** ~~; and (iii) that assessment has been subject to peer review in the relevant body of the United Nations Food and Agriculture Organization ("FAO")~~.

III.4 ~~III.3~~ Subsidies referred to in Article I.1(g) shall not be prohibited where **the access rights are acquired by a developing country Member and** the fishery in question is within the EEZ of a developing country Member, provided that the agreement pursuant to which the rights have been acquired is made public, and contains provisions designed to prevent overfishing in the area covered by the agreement ~~based~~ **referenced** on internationally-recognized best practices for fisheries management and conservation as reflected in the relevant provisions of international instruments aimed at ensuring the sustainable use and conservation of marine species, **where they exist**, such as, inter alia, the Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 Relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks ("Fish Stocks Agreement"), the Code of Conduct on Responsible Fisheries of the Food and Agriculture Organization ("Code of Conduct"), the Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas ("Compliance Agreement"), and technical guidelines and plans of action (including criteria and precautionary reference points) for the implementation of these instruments, or other related or successor instruments. These provisions shall include requirements and support for science-based stock assessment before fishing is undertaken pursuant to the agreement and for regular assessments thereafter, for management and control measures, for vessel registries, for reporting of effort, catches and discards to the national authorities of the host Member and to relevant international organizations, and for such other measures as may be appropriate.

III.5 ~~III.4~~ Members shall give due regard to the needs **and resource constraints** of developing country Members in complying with the requirements of this Annex, including the conditions and criteria set forth in this Article and in Article V~~;~~**.**

III.6 ~~and~~ **Members** shall establish mechanisms for, and facilitate, the provision of technical assistance **for developing country Members** in this regard, bilaterally and/or through the appropriate international organizations.

Article IV

General Discipline on the Use of Subsidies

IV.1 No Member shall cause, through the use of any subsidy **[***referred to in paragraphs 1 and 2 of Article 1***]**, **fishery adverse effects to the interest of other Members in respect of identifiable wild marine fish stocks.**

IV.2 For the purpose of paragraph 1, fishery adverse effects shall include any case in which it has been demonstrated that the subsidizing Member's fishing capacity[4] for those stocks has increased above the level necessary to harvest a sustainable allowable catch[5] and it has resulted in more than moderate exploitation, so that there remains no potential for further non-subsidized expansion of production. ~~depletion of or harm to, or creation of overcapacity in respect of, (a) straddling or highly migratory fish stocks whose range extends into the EEZ of another Member; or (b) stocks in which another Member has identifiable fishing interests, including through user-specific quota allocations to individuals and groups under limited access privileges and other exclusive quota programmes.~~ The existence of such situations shall be determined taking into account available pertinent information, including from other relevant international organizations, **and referencing to** ~~Such information shall include the status of the subsidizing Member's implementation of~~ internationally-recognized best practices for fisheries management and conservation ~~as reflected in the relevant provisions of international instruments~~ aimed at the sustainable use and conservation of marine species**, where they exist**, such as, inter alia, the Fish Stocks Agreement, the Code of Conduct, the Compliance Agreement, and technical guidelines and plans of action (including criteria and precautionary reference points) for the implementation of these instruments, or other related or successor instruments.

IV.3 Fishery adverse effects in the sense of paragraph 1 shall be deemed to exist in the following situations:

(a) a Member invoking any of the exceptions provided in Articles II, III.3 and III.4 does not have a national fisheries management system in place compliant with Article V;

(b) a subsidy referred to in Article I is used for fishing stocks the status of exploitation of which is declared "overexploited", "depleted", or "recovering" by a regional or international organization with jurisdiction over the fishery in question, or has other equivalent status; or

(c) a subsidy referred to in Article I results in the increase of the gross tonnage, volume of fish hold and/or engine power of the subsidizing Member fishing vessels with respect to any fishing stock the status of exploitation of which is declared "overexploited", "depleted", or "recovering" by a regional or international organization with jurisdiction over the fishery in question, or has other equivalent status.

IV.4 ~~IV.2~~ Any subsidy referred to in this Annex shall be attributable to the Member conferring it, regardless of the flag(s) of the vessel(s) involved or the application of rules of origin to the fish involved.

Article V

Fisheries Management[6]

V.1 Any Member granting or maintaining any subsidy as referred to in Article II or Article ~~III.2(b)~~ **III.3 and III.4** shall operate a fisheries management system regulating marine wild capture fishing within its jurisdiction, designed to prevent overfishing. Such management system shall be ~~based~~ referenced on the relevant internationally-recognized best standards and practices for fisheries management aimed at ensuring the sustainable use and conservation of marine species**, where they exist,** such as, inter alia, the Fish Stocks Agreement, the Code of Conduct, the Compliance Agreement, technical guidelines and plans of action (including criteria and precautionary reference points) for the implementation of these instruments, or other related or successor instruments.

V.2 ~~The~~ **A** fisheries management system **within the meaning of paragraph 1** shall include regular science-based stock assessment, as well as capacity, effort **and catch-based** management measures~~, including harvesting licences or fees~~; vessel registries; ~~establishment and allocation of fishing~~

~~rights, or allocation of exclusive quotas to vessels, individuals and/or groups, and related~~ enforcement mechanisms; ~~species-specific quotas, seasons and other~~ stock management measures; vessel monitoring ~~which could include electronic tracking and on-board observers~~; systems for reporting in a timely and reliable manner to the competent national authorities and relevant international organizations data on effort, catch and discards in sufficient detail to allow sound analysis; and research and other measures related to conservation and stock maintenance and replenishment. To this end, the Member shall adopt and implement pertinent domestic legislation and administrative or judicial enforcement mechanisms. It is desirable that such fisheries management systems be based on limited access privileges[7].

V.3 Members shall notify information as to the nature and operation of these systems, including the results of the stock assessments performed~~, shall be notified to the relevant body of the FAO, where it shall be subject to peer review prior to the granting of the subsidy.~~ References for ~~such~~ the legislation and mechanism **required under paragraph 2**, including for any modifications thereto, shall be notified to the Committee on Subsidies and Countervailing Measures ("the Committee") pursuant to the provisions of Article VI.4.

V.4 ~~V.2~~ Each Member shall maintain an enquiry point to answer all reasonable enquiries from other Members and from interested parties in other Members concerning its fisheries management system, including measures in place to address fishing capacity and fishing effort, and the biological status of the fisheries in question. Each Member shall notify to the Committee contact information for this enquiry point. **The Committee shall discuss issues related to fisheries management system brought to its attention by any Member in a dedicated session at least on an annual basis.**

NOTES

[1] For the purpose of this article, "jurisdiction, sovereignty or sovereign rights" shall mean the exclusive rights a Member has under the international law with respect to the exploitation of natural resources in areas such as the Territorial Sea and the Exclusive Economic Zone.

[2] For the purpose of this article "fishing quotas or any other fishing rights" means enforceable quantitative limits, established through scientific assessment, imposed on fish volumes for specified period, or limits to fishing efforts on a given fishery, area or time as may be incorporated in conservation measures.

[3] If the Member in question is not a member of the FAO, the peer review shall take place in another recognized and competent international organization. For the purpose of this Annex, RFMOs are international organizations or arrangements which: (a) carries out management activities over specific fisheries in a determined area; (b) are open to new entrants; (d) publish a list of all conservation measures in force; (c)have specific procedures to deal with illegal, unreported and unregulated fishing; (d) and have a decision-making process in accordance with an agreement, convention or procedure.

[4] For the purpose of this Article, "fishing capacity" means the total capacity authorized by the Member for the fishing of identifiable wild marine fish stocks or group of stocks.

[5] For the purpose of this Article, "sustainable allowable catch" means a total allowable catch below levels which are capable of producing a long term maximum sustainable yield, based on the best scientific evidence available.

[6] Developing country Members shall be free to implement and operate these management requirements on a regional rather than a national basis provided that all of the requirements are fulfilled in respect of and by each Member in the region.

[7] Limited access privileges could include, as appropriate to a given fishery, community-based rights systems, spatial or territorial rights systems, or individual quota systems, including individual transferable quotas.

(www.wto.org TN/RL/GEN/16311 February 2010)

•

Negotiating Group on Rules

Need for Effective Special & Differential Treatment for Developing Country Members in the Proposed Fisheries Subsidies Text

Submission by India and Indonesia[1]

The following communication, dated 21 April 2008, is being circulated at the request of the Delegations of India and Indonesia.

I. Introduction

Paragraph 28 of the Doha Ministerial Declaration provides the mandate for negotiations in the area of fisheries subsidies, which *inter alia* provides that participants shall aim to clarify and improve WTO disciplines on fisheries subsidies. The Declaration[2] adopted at the Hong Kong Ministerial Conference in December 2005 reaffirmed the Doha mandate and provides further guidance for negotiations in its Annex D, which specifically emphasizes that appropriate and effective special and differential treatment for developing and least-developed Members should be an integral part of the fisheries subsidies negotiations, taking into account the importance of this sector to poverty reduction and livelihood and food security concerns.

The Chair's draft text on Rules (TN/RL/W/213) has added an Annex VIII on Fisheries subsidies to the Agreement on Subsidies and Countervailing Measures, which has been intensively discussed from December 2007 to March 2008. Many developing countries have made known their strong concerns on the draft text particularly on the provisions relating to grant of Special & Differential (S&D) Treatment to developing country Members and the conditionalities of fisheries management prescribed to avail the S&D treatment.

In this paper, we make a strong case for effective and unconditional S&D provisions in the Chair's text. In Section II, we give a brief background of the nature of the marine fisheries in most developing countries. In Section III, we analyze the text and explain why developing countries would have a problem in accepting the S&D provisions in their current form. In Section IV, we provide a similar rationale for the difficulty in accepting Article V on Fisheries Management. In Sections V and VI, we give our position on the Notification and Surveillance requirements (Article VI) and Transitional Provisions (Article VII). We offer concluding remarks in Section VII. Finally, we have provided an Annexure, where amendments to the Chair's text on Fisheries Subsidies have been suggested.

II. Background on Fisheries in Developing Countries

Most developing countries have large sections of their population involved in fisheries. More often than not, fishing is a means of livelihood in such countries, as opposed to its pre-dominantly commercial nature in developed countries. Further, the fisheries sector is characterized by unpredictability and seasonality of catch, where prices obtained for catch on any given day can be highly uncertain. Available evidence also suggests that coastal fishing communities, in general, have lower levels of literacy, a lower sex ratio, and poorer conditions of housing, as compared to national averages.[3] Evidence also suggests that fishing communities are faced with a deteriorating quality of life as a result of pollution, sea erosion, increased pressure on coastal lands, degradation of the coastal environment and displacement.

In addition, the technology used for fishing in developing countries is also very basic, with large sections of the fishing community using unpowered boats or at best, vessels with minimal motorization (up to 10 Horse Power outboard motors). For example, 44 per cent of the fishing vessels in India are unpowered, but contribute to less than 10 per

cent of the marine fish production. If the small motorized vessels (up to 10HP motors) are also taken into account, these, together with the unpowered vessels account for about 75 per cent of the vessels and 50 per cent of the fish production. Most of these vessels are up to 20m length overall. Similarly, in Indonesia, 85 per cent of fishing vessels are small and traditional, operating mostly in the territorial waters. There are about 9,337 unpowered vessels and 77,339 small motorized vessels, which form this small and traditional fleet. Most of these vessels are also about 20m in length.

The fishing infrastructure in most developing countries is under-developed and in need of large doses of state intervention. For example, India has a long coastline of 8,118 sq. km and an Exclusive Economic Zone of 2 million sq. km. However, there are only 6 major and 41 minor fishing harbours and 2,000 landing sites. Most of the landing sites are rudimentary and in need of maintenance and repair. Clearly, there is a need to build more fishing harbours and landing sites.

It is therefore clear that developing countries need to protect the livelihood concerns of their poor fishermen and also take up major infrastructure development. Further, given the public good nature of the infrastructure and the involvement of huge investments with long gestation lags, it is clear that the State would have to continue to support such activities. Some of the possible marine fishery policies that developing countries need to develop or are already implementing could be *inter alia*:

1. Mechanization of country craft and introduction of new mechanized boats
2. Taking up repair and maintenance of existing harbors and landing sites and beginning Greenfield projects for new harbours and landing sites. Overall technological upgradation in the fishery sector.
3. Provision of training facilities.
4. Support to small and artisanal fishermen through providing income support, fishing equipment and tax waiver on fuel.
5. Developing efficient mechanisms to preserve and market the catch.
6. Putting in place effective management techniques on stock assessment of various species, using remote sensing to help such assessment, development and conservation of fish stock, electronic tracking of vessels, etc.

The rationale for the above steps is quite clear. Small country craft do not operate beyond a few miles from the shore and spend much of their time in going to and from the fishing grounds. Consequently production per unit of effort is low. Basic mechanization of fishing operations (for example, fitting of inboard or outboard motors of about 10 Horse Power) would enable the fishermen to reach deeper into the territorial waters or into areas in the EEZ contiguous to territorial waters and also to fish for longer hours, thereby enabling them to get out of the vicious cycle of poverty.

Given the above, it is evident that the Chair's text on fisheries subsidies will not only restrict the efforts of developing countries at formulating and implementing public policies to address livelihood concerns of poor fishermen, it will also hinder their efforts at building infrastructure. Moreover, it seems to be unfair to restrict the very subsidies that developed countries have historically given to their small and artisanal fishermen and for developing their infrastructure.[4]

Having analyzed the state of fisheries in many developing countries, it may also be kept in mind that most developing countries are Members of the FAO, where they have subscribed to the various agreements such as the UN Fish Stocks Agreement (FSA) and the Code of Conduct for Responsible Fisheries (CCRF). They also have fisheries management systems in place or are in the process of devising and operationalizing such systems.[5] However, the FAO agreements are voluntary in nature, which gives developing countries the necessary comfort and flexibility. Hence, committing to these systems irreversibly at the WTO is not only undesirable, but would also expose developing country regimes to being challenged through the dispute settlement mechanism.

III. Why the Chair's Text Militates against Developing Country Interests

The Chair's text is basically a bottom-up approach and is organized as follows: Article I lays

out the subsidies that are prohibited, Articles II and III are exceptions to the prohibition, Article IV deals with adverse effects, Article V lists the components of a Fisheries Management system, Article VI deals with Notification issues, Article VII addressed the final and provisional measures and Article VIII deals with dispute settlement issues. Out of these, the core concerns of developing countries are Articles I, II, III and V. Let us see why.

III.1 Proposed Prohibited Subsidies (Article I)

In general, any subsidy, except in the case of least-developed countries (LDCs), the benefits of which are conferred on any fishing vessel or fishing activity affecting fish stocks that are in an "unequivocally overfished condition" is proposed to be prohibited. This includes subsidies to fishing activities in the territorial sea, EEZ and the high seas. The legal/biological implications of "unequivocally overfished condition" need to be clarified. Unlike in the case of temperate waters, it can be argued that fish stocks in an "unequivocally overfished condition" may not exist in tropical waters. **We therefore suggest that the text be amended to reflect the situation in tropical fisheries.**

III.2 General Exceptions (Article II)

Article II has listed general exceptions to the prohibition and these apply to both, developing and developed Members. These subsidies are proposed not to be prohibited for both developed and developing countries subject to the requirements of a comprehensive fisheries management system as listed in Article V. Further, these subsidies can contribute to better fisheries management, to greater protection of the environment, to greater safety of fishing operations, and to better welfare of fishers and fishing communities. In general, we have no opposition, in principle to the objective of environmental protection and conservation. However, a careful reading of the list above shows that most of the subsidies are likely to be granted in developed countries, rather than in developing countries, which are yet to build their fleets or develop their infrastructure. Issues such as vessel or crew safety, early retirement, retraining or selective fishing techniques are predominantly associated with conditions of fishing in developed countries.

III.3 Special and Differential Treatment of Developing Country Members (Article III)

The S&D treatment and its implications for developing countries are analyzed below. One thing that must be noted here is that the exemption from prohibited subsidies is available to developing countries only if they have an operational fisheries management system as prescribed in Article V.

III.3.1 Inshore fishing vessels [III.2(a)]

The prohibited subsidies under Article I are proposed not to be prohibited for vessels engaging in fishing activities in inshore waters (which in this instance refer to the territorial waters - up to 12 nautical miles from the shore where the sovereignty of the coastal State applies). There is a requirement to manage fisheries to ensure sustainability and a reference has also been made to the fisheries management measures referred to in Article V. However, the following conditions have to be met for the non-prohibition:

- Fishing should employ non-mechanized net-retrieval;
- Fishing activities should be carried out on their own by fishworkers;
- The catch should be consumed principally by fishworkers and their families;
- The activities should not go beyond a small profit trade;
- There should be no major employer-employee relationship in the activities carried out.

It will be clear from the above description of fisheries in developing countries that some of these conditions such as 'small profit trade' are not clearly defined. Others such as 'non-mechanized net retrieval', 'employer-employee relationship' and 'catch principally for self-consumption' will be difficult to meet. Some of the boats can have basic mechanization for net-retrieval, particularly where the boats occasionally enter the EEZ after 2-3 miles off the coast. Similarly, in many cases fishing operations are performed on employer-employee relationship basis. Elsewhere, there are a number of operations where fishermen have come together in small groups or formed a cooperative and

financed the boat by pooling their savings and/or taking a loan. Finally, the catch is rarely for self-consumption. Indeed, since this is their livelihood, the catch is principally for selling in the market so that the fishermen can run their homes and send their children to schools. **We would therefore like the conditions to be dropped and the reference to Article V should also be deleted.**

III.3.2 Capital subsidies for infrastructure development, income support and price support [Article III.2(b)(1)]

Capital subsidies for port infrastructure, fish landing, storage or fish processing facilities; income support for fishers or fishing companies; and price support for fish from marine wild capture fishing are proposed not to be prohibited for developing countries subject to the operation of a fisheries management system as described in Article V.

As described above, developing countries are at various stages of developing their infrastructures and need the flexibility to pursue their development goals. Making the exception to the prohibition conditional on having a fisheries management system will restrict the policy space of developing countries. Indeed, as we have argued above, developed countries have already provided these very subsidies historically to develop their fisheries sector, which in turn has landed us in the current situation of overfished waters. Why then, should developing countries pay this 'management' tax without at least developing their fisheries sector? **We would therefore like conditionality of Article V to be dropped.**

III.3.3 Decked vessels up to 10 m or 34 ft in length, or undecked vessels of any length [III.(2)(b)(2)]

There are broadly three types of subsidies that are proposed to be permitted in this sub-section: (a) Capital subsidies for acquiring, constructing, repairing, renewing, renovating, modernizing or modifying fishing or service vessels; (b) operating costs subsidies, including license fees, fuel, ice, bait, personnel, social charges, insurance, gear and at-sea support of fishing or service vessels; and (c) subsidies to post-harvest activities such as landing, handling or processing activities for products of marine wild capture fishing; or subsidies to cover operating losses of such vessels and activities.

As is evident from the discussion in Section II and Section III.3.1 above, the restriction of 10m would render most motorized vessels and many unpowered vessels ineligible to benefit from this exemption. **We would therefore like the length of the decked vessels be raised to 24m and conditionality of Article V to be dropped.**

III.3.4 Larger decked vessels [III.(2)(b)(3)]

This sub-section permits capital subsidies for acquiring, constructing, repairing, renewing, renovating, modernizing or modifying fishing or service vessels [I.1 (a)] for other types of vessels, possibly larger ones, provided that such vessels would be used exclusively for identified target stocks within their EEZ, where these stocks have been subject to prior scientific stock assessment, conducted in accordance with relevant international standards, and where the assessment has been subject to peer review in the relevant body of the FAO. **If the length of the vessel is raised to 24m as discussed above, we have no objection to this provision except that peer review provision should be dropped.**

III.3.5 Permission for subsidies for access rights in another developing country

Subsidies to the fishing industry of a Member to access fisheries resources under the jurisdiction of another developing country Member (III.3) are proposed to be permitted as long as the acquired fishing rights are made public, and contain provisions to prevent overfishing based on UN Fish Stocks Agreement, CCRF and the Compliance Agreement, and science-based stock assessment, regular assessment for management and control measures, for vessel registries, for reporting of effort, catches and discards to the national authorities of the coastal State and to relevant international organizations.

This is a provision that puts a number of developing countries in a dilemma. On the one hand is the dependence of a number of countries on the revenues generated by access payments received mostly from developed countries. On the other hand, developed countries would be

permitted to subsidize their fishing fleets to fish in the waters of developing countries. This will basically allow developed countries to continue subsidizing most of their fishing activities. This is because developed countries have created the present situation of overfished waters in their EEZ and have fanned out to look for fish stock in the EEZ of developing countries. **Given the importance of access fees to developing countries, we have no objection to the current text in Article III.3. However, it must be explicitly mentioned that even developing countries have the right to access the waters of other developing countries.**

III.3.6 Fishing in international waters

We note that there is no explicit provision for any disciplines on fishing in the high seas or international waters. We understand these waters to mean those beyond the EEZ. Available evidence suggests that large scale fishing in international waters is carried out in an unsustainable manner, which has led to overfished waters in the major oceans and seas. Not only that, the adjoining EEZ is also adversely affected. **We therefore suggest that there be an explicit mention of a notification requirement by those fishing in international waters.**

IV. Fisheries Management (Article V)

For granting or maintaining any subsidy, the operation of a fisheries management system designed to regulate marine capture fishing is proposed either at the national or regional level. It is proposed to be based on internationally-recognized best practices for fisheries conservation and management. These practices include UN Fish Stocks Agreement, FAO Code of Conduct for Responsible Fisheries, FAO Compliance Agreement, various FAO technical guidelines and plans of action, science-based stock assessment (which is proposed to be peer reviewed by FAO or its regional bodies), and capacity and effort management measures. It is further proposed that it would be desirable to have fisheries management systems based on limited access privileges such as community-based rights systems, spatial or territorial rights systems, or individual quota systems, including individual transferable quota (ITQ) systems. It is also proposed that an enquiry point to answer all reasonable enquiries about the fisheries management system shall be in place. Such an enquiry point would also provide information on measures in place to address fishing capacity and fishing effort and the biological status of the fisheries in question.

Most developing countries have ratified the UN Fish Stocks Agreement and have adopted the 1995 FAO Code of Conduct for Responsible Fisheries and have embraced international best practices, in principle. Many developing countries, including India already have a science-based stock assessment system. They also have capacity (fleet rationalization) and effort management measures under implementation (mesh size regulations, closed areas, closed seasons, restriction on fishing gear, prohibition of destructive fishing methods, prevention of incidental take of turtles, etc). Various measures such as resource-specific fleet development programme (e.g. to harvest the estimated tuna potential) are expected to match fishing capacity with potential fisheries resources. However, there are a number of measures that are yet to be adopted. Moreover, many of the measures are yet to be included in domestic legislation[6]. **We therefore propose that developing countries be given the flexibility to adopt the measures proposed in Article V and undertake domestic legislation at their own pace.**

V. Notification and Surveillance (Article VI)

There are detailed notification and disclosure requirements for subsidies that are not prohibited. There is also a requirement of advance notification of any measure invoking Article II (General Exceptions) and Article III (S&D measures). If a subsidy is not notified that subsidy would be presumed to be prohibited and the subsidizing Member would have to demonstrate that the subsidy in question is not prohibited. In the event of a dispute, the panel would seek advice from fisheries experts chosen by the panel in consultation with the parties. The panel may also establish an advisory technical fisheries expert group or consult recognized and competent international organizations.

While we welcome the notification and surveillance requirements, we feel that non-notification need not be equated to a presumption of prohibition since non-notification could occur because of a number of administrative reasons **(Article VIII.2 Dispute Settlement**). Further, the requirement of advance notification will also be difficult to implement. **We therefore suggest that aforementioned presumption and the advance notification requirement be dropped.**

VI. Transitional Provisions

Article VII requires that a subsidy programme which has been established before the date of entry into force of the results of the Doha Round and which is inconsistent with the Agreement on Subsidies and Countervailing Measures (Article 3.1(c) and Article I) has to be notified to the Committee 90 days after the date of entry into force of these results (180 days for developing countries. Further, these programmes have to be bought into conformity with the ASCM 2 years from the date of entry into force of the results of the DDA (4 years for developing countries). **While transitional provisions are acceptable, we suggest that the period given for conformity for developing countries should be raised from 4 to 10 years.**

VII. Conclusion

To summarize, a three tier S&D provision has been proposed in Annex VIII. Except for the proposed prohibited subsidies on transfer of fishing or service vessels to third countries [I (b)] and subsidies conferred on any vessel engaged in IUU fishing [I (h)] all subsidies that are proposed to be prohibited are brought under S&D treatment for developing countries, subject to Article V.

The implication of the above S&D regime is that even if a developing country Member subscribes to a fisheries management system, only three categories of fishing vessels can benefit from S&D provisions: inshore fishing vessels (mainly confined to territorial waters); decked vessels not greater than 10 m or 34 ft in length overall or undecked vessels of any length; and fishing vessels that are used exclusively for specific target stocks within their EEZs. We have demonstrated above why the S&D provisions will be difficult to invoke if the present text is accepted. We have also suggested amendments that will make the S&D provisions effective.

In the light of the above, and given the development priorities, food security and livelihood concerns of developing countries, we believe that effective special & differential treatment for small scale, artisanal fisheries in the new disciplines is essential. We recognize and share the objective of the importance of management of fishery resources towards sustainable fisheries and have undertaken resource management measures, including closed season fishing, regulation of mesh size, earmarking areas for fishing vessel. Most developing countries are a signatory to UNCLOS and have also adopted various provisions of the FAO Code of Conduct for Responsible Fisheries even though the Code is voluntary. Further, institutional and legal mechanisms for management of fisheries are in place, which are also being constantly improved and upgraded. Prevention of IUU fishing, Management of fishing capacity, promotion of sustainability concept in fishing operations and checking over fishing are the main management objectives in the marine sector. We are willing to engage actively on this subject as on range of other issues impinging upon the nature and structure of any new disciplines in fisheries sector, special and differential treatment for developing countries, in accordance with the Doha mandate as elaborated in Hong Kong Ministerial Declaration.

ANNEXURE

ALTERNATE TEXT PROPOSED BY INDIA AND INDONESIA

(Additions are in bold letters and deletions are in strikethrough)

Article I

Prohibition of Certain Fisheries Subsidies

I.1 Except as provided for in Articles II and III, or in the exceptional case of natural disaster relief[7], the following subsidies within the meaning of paragraph 1 of Article 1, to the extent they are specific within the meaning of paragraph 2 of Article 1, shall be prohibited:

(a) Subsidies the benefits of which are conferred on the acquisition, construction, repair, renewal,

renovation, modernization, or any other modification of fishing vessels[8] or service vessels[9], including subsidies to boat building or shipbuilding facilities for these purposes.

(b) Subsidies the benefits of which are conferred on transfer of fishing or service vessels to third countries, including through the creation of joint enterprises with third country partners.

(c) Subsidies the benefits of which are conferred on operating costs of fishing or service vessels (including licence fees or similar charges, fuel, ice, bait, personnel, social charges, insurance, gear, and at-sea support); or of landing, handling or in- or near-port processing activities for products of marine wild capture fishing; or subsidies to cover operating losses of such vessels or activities.

(d) Subsidies in respect of, or in the form of, port infrastructure or other physical port facilities exclusively or predominantly for activities related to marine wild capture fishing (for example, fish landing facilities, fish storage facilities, and in- or near-port fish processing facilities).

(e) Income support for natural or legal persons engaged in marine wild capture fishing.

(f) Price support for products of marine wild capture fishing.

(g) Subsidies arising from the further transfer, by a payer Member government, of access rights that it has acquired from another Member government to fisheries within the jurisdiction of such other Member.[10]

(h) Subsidies the benefits of which are conferred on any vessel engaged in illegal, unreported or unregulated fishing.[11]

I.2 In addition to the prohibitions listed in paragraph 1, any subsidy referred to in paragraphs 1 and 2 of Article 1 the benefits of which are conferred on any fishing vessel or fishing activity affecting fish stocks that are **declared to be** in an over fished condition shall be prohibited.

Article II

General Exceptions

Notwithstanding the provisions of Article I, and subject to the provision of Article V:

(a) For the purposes of Article I.1(a), subsidies exclusively for improving fishing or service vessel and crew safety shall not be prohibited, provided that:

(1) such subsidies do not involve new vessel construction or vessel acquisition;

(2) such subsidies do not give rise to any increase in marine wild capture fishing capacity of any fishing or service vessel, on the basis of gross tonnage, volume of fish hold, engine power, or on any other basis, and do not have the effect of maintaining in operation any such vessel that otherwise would be withdrawn; and

(3) the improvements are undertaken to comply with safety standards.

(b) For the purposes of Articles I.1(a) and I.1(c) the following subsidies shall not be prohibited:

subsidies exclusively for: (1) the adoption of gear for selective fishing techniques; (2) the adoption of other techniques aimed at reducing the environmental impact of marine wild capture fishing; (3) compliance with fisheries management regimes aimed at sustainable use and conservation (e.g., devices for Vessel Monitoring Systems); provided that the subsidies do not give rise to any increase in the marine wild capture fishing capacity of any fishing or service vessel, on the basis of gross tonnage, volume of fish hold, engine power, or on any other basis, and do not have the effect of maintaining in operation any such vessel that otherwise would be withdrawn.

(c) For the purposes of Article I.1(c), subsidies to cover personnel costs shall not be interpreted as including:

(1) subsidies exclusively for re-education, retraining or redeployment of fishworkers[12] into occupations unrelated to marine wild capture fishing or directly associated activities; and

(2) subsidies exclusively for early retirement or permanent cessation of employment of fishworkers as a result of government policies to reduce marine wild capture fishing capacity or effort.

(d) Nothing in Article I shall prevent subsidies for vessel decommissioning or capacity reduction programmes, provided that:

(1) the vessels subject to such programmes are scrapped or otherwise permanently and

effectively prevented from being used for fishing anywhere in the world;

(2) the fish harvesting rights associated with such vessels, whether they are permits, licences, fish quotas or any other form of harvesting rights, are permanently revoked and may not be reassigned;

(3) the owners of such vessels, and the holders of such fish harvesting rights, are required to relinquish any claim associated with such vessels and harvesting rights that could qualify such owners and holders for any present or future harvesting rights in such fisheries; and

(4) the fisheries management system in place includes management control measures and enforcement mechanisms designed to prevent overfishing in the targeted fishery. Such fishery-specific measures may include limited entry systems, catch quotas, limits on fishing effort or allocation of exclusive quotas to vessels, individuals and/or groups, such as individual transferable quotas.

(e) Nothing in Article I shall prevent governments from making user-specific allocations to individuals and groups under limited access privileges and other exclusive quota programmes.

Article III

Special and Differential Treatment of Developing Country Members

III.1 The prohibition of Article 3.1(c) and Article I shall not apply to least-developed country ("LDC") Members.

III.2 For developing country Members other than LDC Members:

(a) Subsidies referred to in Article I.1 shall not be prohibited where they relate exclusively to marine wild capture fishing performed ~~on an inshore basis (i.e.,~~ **within the territorial waters of the Member** ~~) with non-mechanized net-retrieval, provided that (1) the activities are carried out on their own behalf by fishworkers, on an individual basis which may include family members, or organized in associations; (2) the catch is consumed principally by the fishworkers and their families and the activities do not go beyond a small profit trade; and (3) there is no major employer-employee relationship in the activities carried out. Fisheries management measures aimed at ensuring sustainability, such as the measures referred to in Article V, should be implemented in respect of the fisheries in question, adapted as necessary to the particular situation, including by making use of indigenous fisheries management institutions and measures.~~ **without deploying any of the internationally recognized destructive fishing methods, provided that the activities are carried out by fish workers, on an individual basis or organized in associations or on employment basis.**

It is desirable that adequate measures for ensuring sustainability and to prevent environment degradation are adapted as necessary to the particular situation, by making use of indigenous fisheries management institutions and measures.

(b) In addition, ~~subject to the provisions of Article V~~:

(1) Subsidies referred to in Articles I.1(d), I.1(e) and I.1(f) shall not be prohibited.

(2) Subsidies referred to in Article I.1(a) and I.1 (c **),** shall not be prohibited provided that**:** ~~they are used exclusively for marine wild capture fishing employing decked vessels not greater than 10 meters or 34 feet in length overall, or undecked vessels of any length.~~

(i) they are used exclusively for marine wild capture fishing employing decked vessels not greater than 24 meters or 82 feet in length overall, or undecked vessels of any length; and

(ii) adequate measures for ensuring sustainability and to prevent environment degradation are adapted as necessary to the particular situation, by making use of indigenous fisheries management institutions and measures.

(3) For fishing and service vessels of such Members other than the vessels referred to in paragraph (b) (2), subsidies referred to in Article I.1(a) shall not be prohibited provided that (i) the vessels are used exclusively for marine wild capture fishing activities of such Members in respect of particular, identified target stocks within their Exclusive Economic Zones ("EEZ"), and (ii) those stocks have been subject to prior scientific status assessment conducted in accordance with relevant international standards, aimed at ensuring

that the resulting capacity does not exceed a sustainable level. ~~and (iii) that assessment has been subject to peer review in the relevant body of the United Nations Food and Agriculture Organization ("FAO")[13]~~.

III.3 Subsidies referred to in Article I.1(g) shall not be prohibited where the fishery in question is within the EEZ of a developing country Member, provided that ~~the agreement pursuant to which the rights have been acquired is made public,~~ **(i) those stocks have been subject to prior scientific status assessment conducted in accordance with relevant international standards, aimed at ensuring that the resulting capacity does not exceed a sustainable level; (ii) that assessment has been subject to peer review in the relevant body of the United Nations Food and Agriculture Organization ("FAO")[14] (iii) the agreement pursuant to which the rights have been acquired is made public, and** (iv) contains provisions designed to prevent overfishing in the area covered by the agreement based on internationally-recognized best practices for fisheries management and conservation as reflected in the relevant provisions of international instruments aimed at ensuring the sustainable use and conservation of marine species, such as, *inter alia*, the *Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 Relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks* ("*Fish Stocks Agreement*"), the *Code of Conduct on Responsible Fisheries of the Food and Agriculture Organization* ("*Code of Conduct*"), the *Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas* ("*Compliance Agreement*"), and technical guidelines and plans of action (including criteria and precautionary reference points) for the implementation of these instruments, or other related or successor instruments. These provisions shall include requirements and support for science-based stock assessment before fishing is undertaken pursuant to the agreement and for regular assessments thereafter, for management and control measures, for vessel registries, for reporting of effort, catches and discards to the national authorities of the host Member and to relevant international organizations, and for such other measures as may be appropriate.

III.4 Every Member deploying fishing vessels in the international waters shall notify to the Committee and relevant international and regional fishery organisations the type and dimensions of the fishing vessels or service vessels being deployed, the quantity of catch removed and the measures adopted to ensure that the removal of fish from areas adjoining the EEZ boundary of any member shall not adversely impact the fishery within the adjoining EEZ of the other member (s).

III.5 Members shall give due regard to the needs of developing country Members in complying with the requirements of this Annex, including the conditions and criteria set forth in this Article and in Article V, and shall establish mechanisms for, and facilitate, the provision of technical assistance in this regard, bilaterally and/or through the appropriate international organizations.

Article IV

General Discipline on the Use of Subsidies

IV.1 No Member shall cause, through the use of any subsidy referred to in paragraphs 1 and 2 of Article 1, depletion of or harm to, or creation of overcapacity in respect of, (a) straddling or highly migratory fish stocks whose range extends into the EEZ of another Member. ~~or (b) stocks in which another Member has identifiable fishing interests, including through user-specific quota allocations to individuals and groups under limited access privileges and other exclusive quota programmes.~~ The existence of such situations shall be determined taking into account available pertinent information, including from other relevant international organizations. ~~Such information shall include the status of the subsidizing Member's implementation of internationally-recognized best practices for fisheries management and conservation as reflected in the relevant provisions of international instruments aimed at the sustainable use and conservation of marine species, such as, *inter alia*, the *Fish Stocks Agreement*, the *Code of Conduct*, the *Compliance Agreement*, and technical guidelines and plans of action (including criteria and precautionary reference points) for the implementation of these instruments, or other related or successor instruments.~~

IV.2 Any subsidy referred to in this Annex shall be attributable to the Member conferring it, regardless of the flag(s) of the vessel(s) involved or the application of rules of origin to the fish involved.

Article V

Fisheries Management[15]

V.1 Any Member granting or maintaining any subsidy as referred to in Article II ~~or Article III.2(b)~~ shall operate a fisheries management system regulating marine

wild capture fishing within its jurisdiction, designed to prevent overfishing. Such management system ~~shall~~ **could** be based on internationally-recognized best practices for fisheries management and conservation as reflected in the relevant provisions of international instruments aimed at ensuring the sustainable use and conservation of marine species. ~~such as, *inter alia*, the *Fish Stocks Agreement*, the *Code of Conduct*, the *Compliance Agreement*, technical guidelines and plans of action (including criteria and precautionary reference points) for the implementation of these instruments, or other related or successor instruments.~~ The system shall include regular science-based stock assessment, as well as capacity and effort management measures, including harvesting licences or fees; vessel registries; establishment and allocation of fishing rights, or allocation of exclusive quotas ~~to vessels, individuals and/or groups, and related enforcement mechanisms; species-specific quotas, seasons~~ and other stock management measures; vessel monitoring which could include electronic tracking and on-board observers; systems for reporting in a timely and reliable manner to the competent national authorities ~~and relevant international organizations~~ data on effort, catch and discards in sufficient detail to allow sound analysis; and research and other measures related to conservation and stock maintenance and replenishment. To this end, the Member shall adopt and implement pertinent domestic legislation and administrative or judicial enforcement mechanisms. It is desirable that such fisheries management systems be based on limited access privileges[16]. ~~[17]. Information as to the nature and operation of these systems, including the results of the stock assessments performed, shall be notified to the relevant body of the FAO, where it shall be subject to peer review prior to the granting of the subsidy[18].~~ References for such legislation and mechanism, including for any modifications thereto, shall be notified to the Committee on Subsidies and Countervailing Measures ("the Committee") pursuant to the provisions of Article VI.4.

V.2 Each Member shall maintain an enquiry point to answer all reasonable enquiries from other Members and from interested parties in other Members concerning its fisheries management system, including measures in place to address fishing capacity and fishing effort, and the biological status of the fisheries in question. Each Member shall notify to the Committee contact information for this enquiry point.

Article VI

Notifications and Surveillance

VI.1 Each Member shall, ~~notify to the Committee in advance of its implementation any measure for which that Member invokes~~ **and developing country Members shall, to the extent possible, notify to the Committee prior to invoking any of** the provisions of Article II or Article III.2; except that any subsidy for natural disaster relief[19] shall be notified to the Committee without delay[20]. In addition to the information notified pursuant to Article 25, any such notification shall contain sufficiently precise information to enable other Members to ~~evaluate~~ **comment upon** whether or not the conditions and criteria in the applicable provisions of Article II or Article III.2 are met.

VI.2 Each Member that is party to an agreement pursuant to which fishing rights are acquired by a Member government ("payer Member") from another Member government to fisheries within the jurisdiction of such other Member shall publish that agreement, and shall notify to the Committee the publication references for it.

VI.3 The terms on which a payer Member transfers fishing rights it has obtained pursuant to an agreement as referred to in paragraph 2 shall be notified to the Committee by the payer Member in respect of each such agreement.

VI.4 Each Member shall include in its notifications to the Committee the references for its applicable domestic legislation and for its notifications made to other organizations, as well as for the documents related to the reviews conducted by those organizations, as referred to in Article V.1.

VI.5 Other Members shall have the right to request information about the notified subsidies, ~~including about individual cases of subsidization,~~ about notified agreements pursuant to which fishing rights are acquired, and about the stock assessments and management systems notified ~~to other organizations~~ pursuant to Article V.1. Each Member so requested shall provide such information in accordance with the provisions of Article 25.9.

VI.6 Any Member shall be free to bring to the attention of the Committee information ~~from pertinent outside sources (including intergovernmental organizations with fisheries management-related activities, regional fisheries management organizations and similar~~

~~sources) as to~~ **on** any apparent illegal, unreported and unregulated fishing activities.

VI.7 Measures notified pursuant to this Article shall be subject to review by the Committee as provided for in Article 26.

Article VII

Transitional Provisions

VII.1 Any subsidy programme which has been established within the territory of any Member before the date of entry into force of the results of the DDA and which is inconsistent with Article 3.1(c) and Article I shall be notified to the Committee not later than 90 days, or in the case of a developing country Member 180 days, after the date of entry into force of the results of the DDA.

VII.2 Provided that a programme has been notified pursuant to paragraph 1, a Member shall have two years, or in the case of a developing country Member ~~four~~ **ten** years**,** from the date of entry into force of the results of the DDA to bring that programme into conformity with Article 3.1(c) and Article I, during which period the programme shall not be subject to those provisions.

VII.3 No Member shall extend the scope of any programme, nor shall a programme be renewed upon its expiry.

Article VIII

Dispute Settlement

VIII.1 Where a measure is the subject of dispute settlement claims pursuant to Article 3.1(c) and Article I, the relevant provisions of Article 4 and of this Article shall apply. Article 30 and the relevant provisions of this Article shall apply to disputes arising under other provisions of this Annex.

~~VIII.2 Where a subsidy that has not been notified as required by Article VI.1 is the subject of dispute settlement pursuant to the DSU and Article 4, such subsidy shall be presumed to be prohibited pursuant to Article 3.1(c) and Article I. It shall be for the subsidizing Member to demonstrate that the subsidy in question is not prohibited.~~

VIII.~~3~~ 2 Where a further transfer of access rights as referred to in Article I.1(g) is the subject of a dispute arising under this Annex, and the terms of that transfer have not been notified as required by Article VI.3, the transfer shall be presumed to give rise to a subsidy. It shall be for the payer Member to demonstrate that no such subsidy has arisen.

VIII.~~4~~ 3 Where a dispute arising under this Annex raises scientific or technical questions related to fisheries, the panel should seek advice from fisheries experts chosen by the panel in consultation with the parties. To this end, the panel may, when it deems it appropriate, establish an advisory technical fisheries expert group, or consult recognized and competent international organizations, at the request of either party to the dispute or on its own initiative.

VIII.~~5~~ 4 Nothing in this Annex shall impair the rights of Members to resort to the good offices or dispute settlement mechanisms of other international organizations or under other international agreements.

NOTES

[1] This is without prejudice to India's or Indonesia's position on these issues. It is also without prejudice to additional views or any future submissions by India or Indonesia on this or other aspects of S & DT for fisheries subsidies in any new disciplines.

[2] WT/MIN(05)/DEC, 22 December 2005.

[3] Rural Poverty among Coastal Fishers in India: Profile and Possible Interventions. Publication of International Fund for Agriculture (IFAD). October 2003.

[4] Even a demandeur for disciplines on fisheries subsidies such as Norway had a large subsidies programme until the 1980s to protect their small and artisanal fishermen. Another demandeur, namely the United States continue to give fuel subsidies to fisheries to this date. According to the 2000 APEC study on fisheries subsidies, the United States extends 'diesel and gasoline excise tax exemption' to the fisheries sector since 1951. As per the U.S. Notification to the WTO (WT/CTE/W/80/Add.1, dated 21 September 1999), quoted in the APEC study, the United States had forgone US$150 million per year in uncollected excise taxes on account of this scheme. The programme treats "fishermen comparably to farmers in the provisions of a partial exemption from the motor fuel excise tax for fuel consumed in the course of business". Its objective is to "exempt non-highway users of diesel and gasoline from federal excise taxes".

[5] For example, in India, responsibility for fisheries is spread over several agencies and Ministries at the

Central and State levels. While the Central government is responsible for fisheries in the exclusive economic zone (EEZ) — marine space beyond the territorial sea up to 200 nautical miles from the baseline — the responsibility for fisheries in the territorial waters — the marine space up to12 nautical miles (22 km) from the baseline — rests with the State governments. At the national level, the basic fisheries legislation is the Maritime Zones of India (Regulation of Fishing by Foreign Vessels) Act, 1981. Fisheries within the 12-mile territorial limits are managed under the Marine Fishing Regulation Acts (MFRAs) of the coastal States, which regulate fishing vessels in the12-mile territorial sea mainly to protect the interests of fishermen on board traditional fishing vessels. These MFRAs are basically the fisheries management systems, some of which need to be further fine tuned and need time to stabilize.

[6] For example India is yet to adopt and implement a comprehensive legislation to manage its EEZ fisheries (it already has a comprehensive legislation to deal with foreign fishing in the Indian EEZ).

[7] Subsidies referred to in this provision shall not be prohibited when limited to the relief of a particular natural disaster, provided that the subsidies are directly related to the effects of that disaster, are limited to the affected geographic area, are time-limited, and in the case of reconstruction subsidies, only restore the affected area, the affected fishery, and/or the affected fleet to its pre-disaster state, up to a sustainable level of fishing capacity as established through a science-based assessment of the post-disaster status of the fishery. Any such subsidies are subject to the provisions of Article VI.

[8] For the purposes of this Agreement, the term "fishing vessels" refers to vessels used for marine wild capture fishing and/or on-board processing of the products thereof.

[9] For the purposes of this Agreement, the term "service vessels" refers to vessels used to tranship the products of marine wild capture fishing from fishing vessels to on-shore facilities; and vessels used for at-sea refuelling, provisioning and other servicing of fishing vessels.

[10] Government-to-government payments for access to marine fisheries shall not be deemed to be subsidies within the meaning of this Agreement.

[11] The terms "illegal fishing", "unreported fishing" and "unregulated fishing" shall have the same meaning as in paragraph 3 of the International Plan of Action to Prevent, Deter and Eliminate Illegal Unreported and Unregulated Fishing of the United Nations Food and Agricultural Organization.

[12] For the purpose of this Agreement, the term "fishworker" shall refer to an individual ~~employed~~ **engaged** in marine wild capture fishing and/or directly associated activities.

[13] If the Member in question is not a member of the FAO, the peer review shall take place in another recognized and competent international organization.

[14] If the Member in question is not a member of the FAO, the peer review shall take place in another recognized and competent international organization.

[15] Developing country Members shall be free to implement and operate these management requirements on a regional rather than a national basis provided that all of the requirements are fulfilled in respect of and by each Member in the region.

[16] Limited access privileges could include, as appropriate to a given fishery, community-based rights systems, spatial or territorial rights systems, or individual quota systems, including individual transferable quotas.

[17] Limited access privileges could include, as appropriate to a given fishery, community-based rights systems, spatial or territorial rights systems, or individual quota systems, including individual transferable quotas.

[18] If the Member in question is not a member of the FAO, the notification for peer review shall be to another relevant international organization. The specific information to be notified shall be determined by the relevant body of the FAO or such other organization.

[19] As provided for in Article I.1 and footnote 77.

[20] For the purposes of this provision, "without delay" shall mean not later than the date of entry into force of the programme, or in the case of an ad hoc subsidy, the date of commitment of the subsidy.

(www.wto.org TN/RL/GEN/155 22 April 2008)

•

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 pro-posals 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)

●

SELECT PUBLICATIONS

PUBLICATIONS

1. **India's Regional Trade Agreements: Impact on Indian Economy,** Vijaya Katti, Sunitha Raju and Rajan Sudesh Ratna, 2010, ₹375
2. **अंतरराष्ट्रीय व्यापार : अवधारणा, नीतियॉं, प्रक्रिया,** डा० रवि शंकर, संतोष कुमार वर्मा (सम्पादक); 2005, ₹125/-

OCCASIONAL PAPERS

1. **Competing for the Indian Market: Local Firms vs. MNCs,** Aneel Karnani, 1996, ₹50 (*out of Stock*)
2. **Foreign Direct Investment in India: Facts and Issues,** B. Bhattacharyya and Satinder Palaha, 1996, ₹50
3. **Regional Trade Enhancement: SAPTA and Beyond,** B. Bhattacharyya and Vijaya Katti, 1996, ₹50
4. **Towards Economic Integration through Regional Trade Blocs,** Satinder Palaha and H.L. Sharma, 1996, ₹50
5. **Duty Free Access to India within SAPTA Framework,** B. Bhattacharyya and Somasri Mukhopadhyay, 1996, ₹50
6. **India's Trade Liberalisation Since 1991: A Statistical Appraisal,** B. Bhattacharyya, Somasri Mukhopadhyay and Bimal K. Panda, 1996, ₹50
7. **Indian Garments Industry in the Post-MFA Period,** Satinder Bhatia, 1997, ₹50
8. **Impact of Economic Reforms on India's Major Exports: Policy Guidelines,** H.A.C. Prasad, 1997, ₹50
9. **Intellectual Property Rights in the Present Indian Context,** Shahid Alikhan, 1997, ₹50
10. **India's Competitiveness in Export of Garments in the MFA Phase-Out and Post-MFA Phase-Out Periods,** H. Ashok Chandra Prasad, 1997, ₹50
11. **Democracy and Human Rights,** Justice P.N. Bhagwati, 1997, ₹50
12. **Currency Turmoil in South East and East Asia: Impact on India's Exports,** B. Bhattacharyya, 1998, ₹50
13. **Chinese Response to Asian Economic Crisis: Implications for India's Trade,** B. Bhattacharyya, 1998, ₹50
14. **Trade and Environment Issue in the WTO: Indian Experience,** B. Bhattacharyya and L.D. Mago, 1998, ₹50
15. **Advent of Euro: Implications for India,** B. Bhattacharyya and Vinayak N. Ghatate, 1998, ₹50
16. **Non-Tariff Measures on India's Exports: An Assessment,** B. Bhattacharyya, 1999, ₹50
17. **Export Product Diversification in the US Market Indian Experience,** B. Bhattacharyya and Prithwis K. De, 2000, ₹50
18. **Export Performance: Increasing Competitiveness through New Sources of Productivity Growth,** B. Bhattacharyya, 2001, ₹50
19. **Dispute Settlement System under World Trade Organisation,** Sumitra Chishti, 2001, ₹50
20. **Impact of WTO on Marketing Cooperatives,** B. Bhattacharyya, 2002, ₹50
21. **Food Trade, Trade Flows and Trade Policies: A Comparative Analysis of World and India,** Sunitha Raju and Tamanna Chaturvedi, 2004, ₹50
22. **Rules of Origin under Generalised System of Preferences as a Market Access Barrier to Indian Textiles and Clothing Exports: With Special Reference to US and EU Markets,** K. Rangarajan, 2004, ₹50
23. **Development of an Enduring Involvement Scale Using Flow Concept in Hypermedia Computer Mediated Environments,** Anshu Saxena and D.P. Kothari, 2005, ₹50
24. **A Review of India-Sri Lanka Trade Cooperation,** Biswajit Nag, 2006, ₹50
25. **ASEAN-India FTA: Emerging Issues for Trade in Agriculture,** Sunitha Raju, 2010, ₹50

Orders for publications may be sent to:

Section Officer (Publications)
Indian Institute of Foreign Trade,
B-21 Qutab Institutional Area, New Delhi-110016
Phones: 26965124, 26965051, 26966563, 26965300
Fax: 91-11-26853956, 26859520, 26867851
E-mail: publications@iift.ac.in

ISSN 0972-2076

Printed and published by **Dr. L.D. Mago,** Registrar, for Indian Institute of Foreign Trade, B-21 Qutab Institutional Area, New Delhi-110016 at I.G. Printers Pvt. Ltd, Okhla Phase-I, New Delhi-110020.