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A Primer on Development Dimension of Trade Negotiations in the WTO

The Doha Development Agenda

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Abstract

This paper documents the developments in the WTO negotiations from Doha to present day, in the context of substantive work programme on special and differential treatment (S&D) for developing countries. From the evidence so far, the current round of trade negotiations, the Doha Development Round does not yet deserve the epithet of a “development round”. Developed countries have relegated on their promises to redress the imbalances—including the challenges faced by poor countries and the inequities generated by previous rounds of trade negotiations. The Doha Round has failed to deliver on S&D. No substantial progress has been made in strengthening the S&D proposals and making them more precise, effective and operational as mandated in Doha. It appears developed countries are likely to be more amenable to agree to more operational, meaningful and binding S&D provided there is clarity on who, the beneficiaries are. Developing countries need to have a very honest discussion (among themselves) on issue of differentiation and graduation. Given that economic and social conditions vary across countries, one option would be to tailor different types of S&D measures to specific circumstances and needs of developing countries on the basis of their levels of development.

JEL Classification: F13, K33, O34.

Key words: Doha Development Round, Doha Development Agenda, Special and Differential Treatment, World Trade Organisation, WTO, Trade and Development, Preferential Market Access, Agreement Specific Proposals.

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1 Introduction

Development issues have gained the centre stage of multilateral trade negotiations since the November 2001 Ministerial declaration in Doha, Qatar which launched the Doha Development Round. The declaration provides a mandate for negotiations on a range of areas in support of development, spanning the negotiations on special and differential treatment (S&D) for developing countries; implementation-related issues and concerns; technical assistance and capacity building; and unique challenges faced by least developed countries (LDCs) and small economies as well as negotiations on agriculture; non agriculture market access (NAMA); services; trade-related aspects of intellectual property (TRIP); Rules (anti-dumping, subsidies and countervailing measures—SCM); trade facilitation; regional trade agreement; trade and environment and dispute settlement understanding. This broad approach ensures that development issues are considered in all the areas being negotiated, reaffirmed by the Decision adopted by the General Council on 1 August 2004 (July Package) and Hong Kong Declaration.

The incorporation of development issues in all core areas of multilateral trade negotiations is out of realisation that market failures are pervasive and that any path to economic development and integration of poor countries into the world economy requires a multifaceted approach and liberal dose of differential policy towards developing countries. It was widely felt that that S&D on its own is an inadequate instrument to facilitate integration of developing countries and least-developed Members into the multilateral trading system. It needed to be part of a broader framework that put the fundamental interests of developing countries at the fore—securing a more effective market access and fair trade conditions for their exports, capacity building, balanced rules and good governance in the WTO as well as ensuring resources for development support (e.g. to help relieve supply-side constraints), and the policy interventions needed towards competitiveness, diversification and productive sector development.

Thus, the inception of Special and differential (S&D) treatment provisions for developing countries (emphasized in the Uruguay Round), and other related provisions—supportive of development issues—was a recognition that the rules-based multilateral

trading system requires a development dimension. That is, one that addresses the requirements and special needs of the weaker member states, including avenues for poverty reduction, growth, welfare and development that work for all members (beneficiaries) of the global trade system. The inception of Doha ‘Development Round’ was encouraging sign of shared responsibility for the challenges faced by poor countries and the perceived inequities generated by previous rounds of trade negotiations. The WTO Members felt that multilateral trading system had failed to provide anticipated benefits to majority of developing countries. Share in global trade of the 49 poorest countries fell from 0.8 percent in 1980 to 0.4 percent in 1999, as areas of export interest to developing countries faced face high tariffs and non-tariff barriers. Inequality widened between developed and developing countries, making it even more difficult to anticipate integration of developing countries particularly the least developed among them, into the multilateral trading system.

In view of these concerns, the nations of the world agreed in Doha to put development at the centre of multilateral trade negotiations (to redress some of the imbalances of the past). The Doha Ministerial Declaration (in Doha Qatar in November 2001) set out an ambitious agenda; Members committed themselves to reduce agricultural trade barriers; improve non-agricultural market access; make special and differential treatment provisions more effective, precise and operational; and improve rules on TRIPS/ public health, anti-dumping, dispute settlement; among others things.

This paper traces this journey from Doha to present day, to help us understand the substantive work programme on special and differential treatment (S&D) in the WTO since 2001. Beginning with the major decision taken in Doha, it reviews the progress made in the implementation of the Doha Development Agenda (DDA) work programme on special and differential treatment, including how the process of operationalisation or improving effectiveness of S&D has been conducted in the WTO. It asks, have S&D provisions fulfilled their objectives? How can they be made more precise, effective and operational? It examines major elements of the upcoming work on S&D, and the systematic and institutional cross-cutting issues relating to the functioning of the S&D, including:

- (i) reviewing various S&D provisions prior to and following the Doha Declaration;
- (ii) identifying the difficulties that prevent developing countries from maximizing the benefits from use and implementation of S&D provisions;
- (iii) identifying S&D provisions that have not been reviewed, and also those where the review has been problematic;
- (iv) indicating how S&D provisions can enhance the participation of developing countries in trade negotiations and assist them in implementing their WTO obligations; and
- (v) presenting proposals for the improvement of S&D treatment in the ongoing and future negotiations in the WTO.

The remainder of this paper is organized as follows: The next section addresses the need for a development round. It examines some elements of the experience of developing countries in previous trade negotiations. Section three and four examine the substantive work programme on special and differential treatment (S&D) in the WTO since 2001, beginning with a review of the major decision taken in Doha—and progress in the operationalisation or improving effectiveness of S&D, and section five concludes.

2 The need for a development round

At the 1999 Geneva conference on the WTO and the developing countries, Joseph Stiglitz, the then Vice President of the World Bank, proposed that the next round of WTO negotiations be labeled the “Development Round”. This direction was reinforced by Mike Moore who was Director General of the WTO at that time. In Doha (Qatar), November 2001, the nations of the world agreed to a new round of trade negotiations that would redress some of the imbalances of the past—the Doha Development Round.¹

This section takes a step back from the Doha Round and examines some elements of development issues particularly, special and differential treatment (S&D) provisions for developing countries and the experience of developing countries in previous trade negotiations.

2.1 Special and differential treatment provisions for developing countries

Special and differential treatment (S&D) for developing countries in the multilateral trading system refers to special rights granted to developing countries with respect to their obligations under the GATT and WTO. It includes measures to meet their trade and development needs, on account of their disadvantaged position vis-à-vis their developed trading partners. S&D finds expression in 145 provisions in Uruguay agreements—spread across different disciplines, including Agreements on Trade in Goods; the Agreement on Trade-Related Aspects of Intellectual Property; the Understanding on Rules and Procedures Governing the Settlement of Disputes; the General Agreement on Trade in Services; and in various Ministerial Decisions.

In 1964 the GATT adopted a specific legal framework to address the concerns of developing countries. Three new Articles, XXXVI to XXXVIII were introduced in Part IV of GATT dealing specifically with Trade and Development. Part IV of GATT

¹ See Hertel, Thomas, W ; Preckel, Paul ,V; Cranfield, John A.L. and Ivanic, Maros. “Poverty impacts of multilateral trade liberalization”, GTAP Working Paper # 16

encompasses the new principle that reciprocity in the rounds of multilateral trade negotiations should be limited to whatever is consistent with the development needs of developing countries (Article XXXVI). The measures introduced included, (1) provision of more favourable market access conditions to products of export interest to developing countries, (2) introduction of the concept of non-reciprocity; (3) elimination of restrictions which differentiate unreasonably between primary and processed products, (4) establishment of the Committee on Trade and Development (CTD) to review the application of Part IV and to consider any changes to these provisions to strengthen the objectives of trade and development.

These underlying conceptual premises resulted in 155 S&D provisions in the Uruguay Round agreement, which include provisions

- a) aimed at increasing trade opportunities (there are altogether 12 such provisions);
- b) which urge WTO Members to safeguard the interest of developing countries, especially while using trade remedies (49);
- c) offering flexibility of commitments (30);
- d) offering transitional time periods (18);
- e) related to technical assistance (14);
- f) in favour of least developed countries (22).

In 1979 (the end of Tokyo Round) a Framework Agreement was negotiated that included the so-called Enabling Clause - officially called *Differential and More Favourable Treatment, Reciprocity and Fuller Participation of Developing Countries*. Enabling Clause provides for departures from *Most Favoured Nations* (MFN) principles and other GATT rules, but also gives permanent legal cover for operation of the Generalized System of Preferences (GSP) established under the auspices of the UNCTAD. Enabling Clause codified principles, practices, and procedures regarding the use of trade measures by developing countries, giving developing countries relatively “more” flexibility in applying trade measures to meet their “essential development needs.” Enabling Clause is the legal basis for most the existing S&D provisions in the different WTO agreements, which formed the core of the ‘development dimension’ of the multilateral trading system.

2.2 What objectives were S&D meant to achieve?

First, the objective of S&D was not clearly defined in GATT and still remains unclear today. Members feel that the S&D provisions were to enable greater participation or integration of developing countries into the multilateral trading system. It was recognized that developing countries lacked the institutional strength to manage the full weight of WTO rules. Moreover, they might well find the returns to building the necessary capacity outweighed by the costs. They also lacked the resources to overcome natural obstacles to trade or to pursue policies to address market failures.

During the Uruguay Round (1986–1993), developing countries were trying to defend their growing trade interests. They faced a number of challenges concerning access for their exports to developed country markets. Among other things, these challenges in developed country markets included increased discrimination through higher tariffs on products of export interest to developing countries, proliferation of restraints on exports in textiles and clothing, lack of adequate disciplines in agriculture, use of grey area measures (that is, voluntary export restraints and orderly marketing arrangements that were imposed on developing countries bilaterally by major developed countries). At the same time, developing countries desired to have S&D provisions that would adequately take into account their development objectives.

However, maintaining the flexibility that developing countries had enjoyed before the Uruguay Round through S&D treatment became increasingly difficult in view of the rising levels of growth in a number of developing countries, the growing gap among developing countries, and the increasing pressure exerted by developed countries for reciprocal obligations and concessions from developing countries. This was exacerbated by the rising level of obligations that some developing countries came to accept in reciprocal regional trade agreements.²

² This trend continued with the establishment of free trade areas with high levels of commitments and progressive liberalization that was accepted by developing countries in free trade areas with developed countries, such as in the case of Mexico in NAFTA and, of developing countries in the Mediterranean region with the European Union.

Another issue of great concern to developing countries during the Uruguay Round negotiations was that of the erosion of preferential tariff margins granted to developing country exports under the GSP schemes. Such erosion was an inevitable consequence of the reduction of the overall level of tariffs under the Uruguay Round. It is not clear whether this concern has led to any gains in dealing with S&D provisions or in negotiations in other areas.

In June 1993, the Uruguay Round was finally brought to a close (the Round started in 1986). Part of the drive for members to conclude the Uruguay Round was the promise of large welfare gains that many researchers had projected. In 1992–93 the World Bank, the Organisation for Economic Co-operation and Development (OECD), and a few other institutions estimated that conclusion of the round would lead to global welfare gains on the order of \$200 billion a year; with about one-third of the total gains, that is, up to \$90 billion going to developing countries (OECD 1993).

2.3 Did S&D achieve its objectives?

If the question is about how it has helped developing countries to integrate into the multilateral trading system, the answer is certainly *no*. However, if the question about S&D is whether it has been able to provide some flexibility to developing countries, the answer is a qualified yes.

Let's look at the first question. Incidentally, the papers by Hindley (1987) and Wolf (1984), which were written as countries were preparing to launch the Uruguay Round, had predicted that many of the policies that are permitted by the GATT/WTO would be ineffective or inefficient.

In aftermath of Uruguay Round, S&D increasingly became perceived as an ineffective instrument. It had not delivered what it was supposed to: greater participation of developing countries in the multilateral trading system (Wolf, 1984; Whalley, 1999). Only about 25 countries (among them, Malaysia, Brazil, China, Hungary, India, Mexico, and Thailand) have been able to break into the global markets – and substantially increased their ratio of trade to income over the last two decades. As mentioned earlier, share in global trade of the 49 poorest countries fell from 0.8 percent to 0.4 percent between 1980 and 1999, accompanied by widening inequality between the rich and poor countries.

The World Bank and OECD's estimates on the gains of the Uruguay Round—particularly the estimates for developing countries—were overly optimistic.³ One reason why the projections did not materialize, according to some commentators, was that the modeled scenarios were detached from actual events.⁴ A number of reforms did not proceed as envisaged early in the negotiations such as the Agreement on Textiles and Clothing (ATC) and liberalizing agricultural market access. These were the major sources of predicted gains. ATC was structured to significantly backload liberalization, the ability of tariff-rate quotas to liberalize agricultural market access was overestimated, and the costs of implementation were largely ignored.

The Uruguay Round agenda reflected, in large measure, the priorities of developed countries. Market access gains, for example, were concentrated in areas of special interest to developed countries. Only marginal progress was made on the priorities of developing countries, especially in agriculture and textiles. This imbalance is reflected in the Uruguay Round outcomes. Specific concerns of developing countries remained unaddressed - affecting their economic development and integration into the multilateral trading system. After the implementation of Uruguay commitments, the average OECD tariff on imports from developing countries was four times higher than the tariff on goods originating in the OECD countries (Laird 2002). Domestic protection (particularly agricultural subsidies) also remained much higher in developed countries, amounting to more than \$300 billion in 2002. Producers in the poorest developing countries were most affected by the OECD protectionist policies.

Martin and Winters (1995) observe that though the Agreement on Agriculture achieved a great deal in terms of defining rules for agricultural trade, it achieved little in terms of immediate market access. Indeed, the level of OECD farm protection was not significantly reduced. In 1986–88 transfers were equivalent to 51 percent of all OECD farm production. Fourteen (14) years later, after the implementation of Uruguay Round commitments, they accounted for 48 percent of all farm production (roughly \$320 billion) (OECD 2003). Trade-distorting measures of industrial nations displace the agricultural exports of

³ UNDP found that 70 percent of the gains of the Uruguay Round would go to industrial countries, with most of the rest going to a relatively few large export-oriented developing countries. It also found that the round would leave many of the poorest countries in the world worse off (UNDP 1997).

⁴ See Joseph E. Stiglitz and Andrew Charlton—A report prepared for the Commonwealth Secretariat by the Initiative Policy Dialogue (IPD) in collaboration with the IPD Task Force on Trade Policy.

developing countries. By suppressing world prices, these policies have a direct effect on farm incomes.⁵

In nonagricultural goods (NAMA), developed countries maintain high import barriers on many of the goods exported most intensively by developing countries. When weighted by import volumes, developing countries face average manufacturing tariffs of 3.4 percent on their exports to developed countries—more than four times the 0.8 percent average tariff they impose on goods imported from developed countries (Hertel and Martin 2000). Moreover, aggregate data hide tariff peaks. In the United States post-Uruguay Round tariff rates on more than half of textile and clothing imports are 15–35 percent. In Japan, 22 percent of textile imports face tariffs of 10–15 percent (UNCTAD 1996). Tariffs on fully processed food are 65 percent in Japan, 42 percent in Canada, and 24 percent in the European Union. By contrast, tariffs on the least processed products are just 3 percent in Canada, 15 percent in the European Union, and 35 percent in Japan (World Bank 2002). Such tariff peaks are manifestly unfair and have a particularly pernicious effect on development by restricting industrial diversification in the poorest countries.

Whereas developing countries received a small share of the gains from the Uruguay Round, they accepted a remarkable range of obligations and responsibilities. New trade rules and domestic discipline were introduced, but they reflected the priorities and needs of developed countries more than developing countries'. For instance, subsidies were permitted for agriculture but not industrial products. Many of the rules limited developing countries' policy options, in some cases prohibiting the use of instruments that had been employed by developed countries at comparable stages of their development.

Many of the new obligations imposed significant burdens on developing countries. In return, the least developed countries were promised financial assistance with implementation costs and extensions of preferential market access schemes. However, these commitments were nonbinding, leaving developing countries at the mercy of the goodwill of developed countries. As Finger and Schuler (2000, p.514) aptly put it, "The developing countries took bound commitments to implement in exchange for unbound commitments of assistance." Implementing the Uruguay Round placed on developing

⁵ Estimates of the downward impact on world prices caused by OECD domestic support are 3.5–5.0 percent for many agricultural commodities, including wheat and other coarse grains and oilseeds (Dimaranan, Hertel, and Keeney 2003).

countries enormous demands, particularly with regard to intellectual property, customs valuation, technical barriers to trade, and agricultural food safety. Many developing countries have been unable to meet their Uruguay Round obligations because of these high implementation costs.⁶

After the Uruguay Round, the general view was that the TRIPS agreement needed to be reviewed, particularly in its application to public health.⁷ Many developing countries felt that the agreement as it stood purely reflected intellectual property rights protection in favour of developed countries, in disregard of the realities in developing countries. The benefits of GSP have declined for other reasons too, including the increased use of non-tariff measures (NTMs) in GSP schemes, additional conditionalities that are imposed by preference-giving countries and the unpredictability of the system.⁸ However, priority consideration should be given to how to make the best use of the present GSP schemes and how these schemes can be improved in practical ways for the benefit of developing countries.

The results of the Uruguay Round reflect the balance of power and capabilities prevailing during negotiations. From a developing country perspective, more could have been achieved. This is also the case with regard to the S&D provisions, which could also have been better formulated and made more precise and effective. The next section reviews the major decisions taken in Doha with respect to S&D provisions and progress so far in implementing those decisions.

⁶ By January 2000, up to 90 of the WTO's 109 developing country members were in violation of sanitary and phytosanitary standards, customs valuation, and the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS). Estimates of the cost of complying with the Uruguay agreements vary widely, depending on the quality of each country's existing systems and the strength of its institutions. Hungary spent more than \$40 million upgrading sanitary conditions in its slaughterhouses. Mexico spent more than \$30 million upgrading its intellectual property laws. Finger (2000) suggests that for many of the least developed countries in the WTO, compliance with these agreements is a less attractive investment than expenditure on basic development goals, such as education.

⁷ Article 71.1 provides for a review of the implementation of the agreement after 2000 and for possible reviews "in the light of any relevant new developments which might warrant modification or amendment."

⁸ The GSP is granted by developed countries on a unilateral, voluntary and non-binding basis. They can amend, modify or withdraw benefits unilaterally and at any time.

3 The DDA work programme on special and differential treatment

After a few years of implementing S&D provisions, many developing countries accordingly felt that most of the S&D provisions are: non-binding, in the form of ‘best endeavour clauses’, apparently mandatory, yet de-facto non-binding and only a few provisions are mandatory and binding provisions.

Ministers at Doha, recognising that problems existed with respect to S&D treatment set out a work programme in para 44 of the declaration, which reaffirmed that SDT is an integral part of the WTO, (2) noted that there are concerns about the implementation of S&D provisions, (3) directed that all S&D provisions should be reviewed to strengthen them and to make them *more precise, effective and operational*

Here, our aim is to understand the substantive work programme on special and differential treatment (S&D) in the WTO since 2001. This includes reviews of the major decision taken in Doha as well as how the process of operationalisation or improving effectiveness of S&D has been conducted in the WTO, and major elements of the upcoming work on S&D, the systematic and institutional cross-cutting issues relating to the functioning of the S&D.⁹

3.1 Review of the major decisions taken in Doha

The Doha Ministerial Declaration accorded special and differential treatment a central place in the current round of rule negotiations. It reaffirmed that “provisions for special and differential treatment are an integral part of the WTO Agreements” and directed that “all special and differential treatment provisions shall be reviewed with a view to strengthening them and making them more precise, effective and operational” (WTO,

⁹ This section benefited from WTO TN/CTD/15 CTD Special Session 28 April 2006 Report to the Trade Negotiations Committee; TN/CTD/18 26 July 2006 Report to the General Council, TN/CTD/M/26 5 September 2006 Note to the Meeting on 7 July 2006; among other WTO resources.

2001: paragraph 44). The Doha ministerial also endorsed the Work Programme on special and differential treatment set out in the Decision on Implementation-Related Issues and Concerns (paragraph 12.1 of Doha declaration), and directed the Committee on Trade and Development to:

(1) ...“identify those special and differential treatment provisions that are already mandatory in nature and those that are non-binding in character, to consider the legal and practical implications for developed and developing Members of converting special and differential 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;

(2) ...examine additional ways in which special and differential treatment provisions can be made more effective, to consider ways, including improved information flows, 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 report to the General Council with clear recommendations for a decision by July 2002; and

(3) ...consider, in the context of the Work Programme adopted at the Fourth Sessions of the Ministerial Conference, how special and differential treatment may be incorporated into the architecture of WTO rules.”

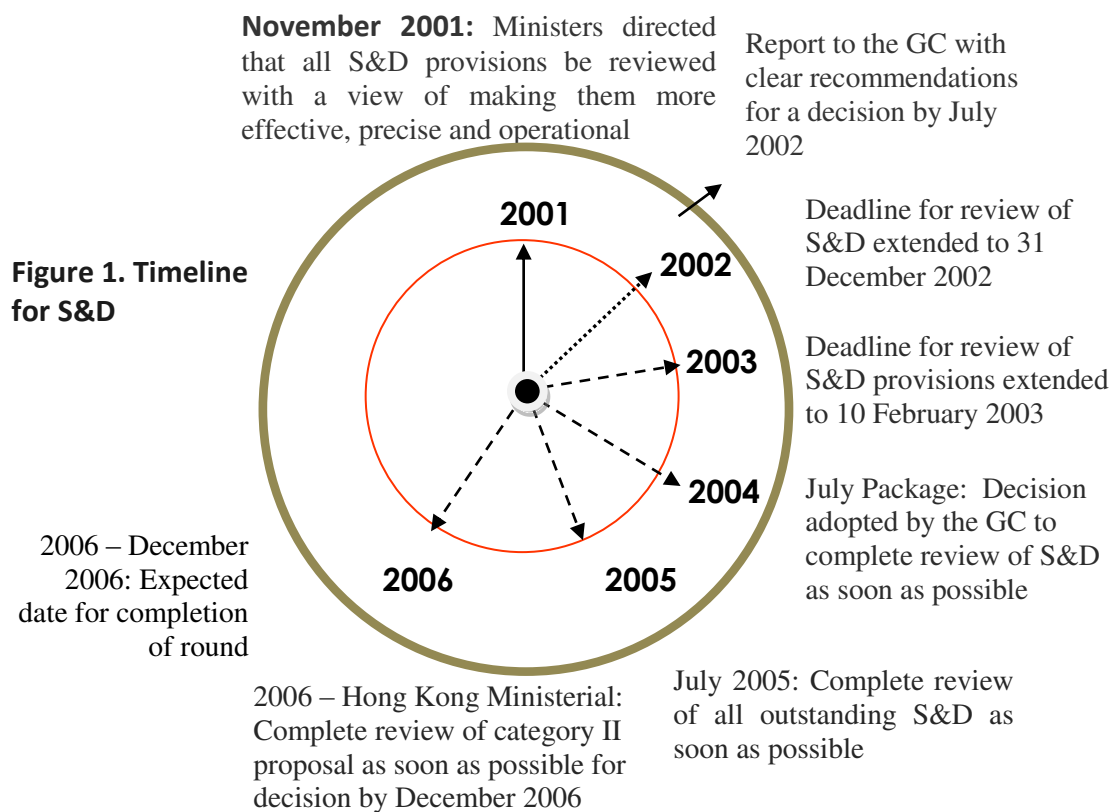
Paragraph 44 of the Doha Ministerial Declaration and paragraph 12.1 of the Decision on Implementation-Related Issues and Concerns (reproduced above) provide the basis of the work that WTO Members have undertaken since the Doha Ministerial Conference.

3.2 Elements of the work on S&D: from Doha to Hong Kong

The Doha mandate was an opportunity for developing countries to push some of the S&D provisions closer to their original expectations, by strengthening them and making them more effective and operational – and if needs be, to change some ‘best-endeavour language’ into mandatory obligations. In 2001, the Trade Negotiations Committee (TNC) – the body responsible for overseeing the Doha Round *negotiations* – decided that the

mandate on special and differential treatment would be dealt with in Special Sessions of the Committee on Trade and Development (CTD).

The Committee was expected to report to the General Council by 31 July 2002, “with clear recommendations for a decision,” on the review of “all special and differential treatment provisions ... with a view to strengthening them and making them more precise, effective and operational.” As virtually no recommendations were ready for 31 July 2002, the General Council instructed the Special Session to “proceed expeditiously to fulfil its mandate” and report to the General Council “with clear recommendations for a decision by 31 December 2002.” The deadline was extended a second time to 10 February 2003 (Figure 1), but Members were unable to agree on any “recommendations for a decision” by that time. Why?



The Special Session of the Committee on Trade and Development reported in its February 2003 report to the General Council that “an important area of difference has been the interpretation of some of the aspects of the Doha Mandate”. While Members appreciated the importance of the need to review all the S&D provisions (“with the view

to strengthening them and making them more precise, effective and operational’) as mandated at Doha, there were considerable differences in opinion on how this could be achieved in practice.

Some Members thought that one way to make S&D provisions more precise, effective and operational was to make them mandatory by changing the existing language of some of the ‘best endeavour’ provisions. That, doing so was part of the mandate. Others thought that amending the text of the Agreement had the danger of altering what they considered to be the existing balance of rights and obligations. Some delegations felt that such proposals would be best referred to negotiating bodies, while others doubted whether such action was consistent with the Doha Mandate.

In May 2003, the Chair of the General Council circulated a list, which categorised the 88 agreement-specific proposals put forward by developing countries.¹⁰

Category I consisted of 38 proposals on which agreement was seen to be possible before Cancun, probably because they received most support from Members or they were considered to be most urgent. Category II comprised another 38 proposals that were sent to relevant WTO bodies in late May 2003. Category III included the 15 proposals on which Members had the most difficulty in finding consensus. Although the Special Session of the CTD considered many of the proposals, both in open-ended informal meetings and smaller plurilateral consultations, positions could not be bridged on most of them.

In the course of the work in the CTD Special Session and later in the General Council, Members finally agreed to make recommendations for possible adoption by Ministers in Cancun in 2003 on some of the 25 agreement-specific proposals. During consultations at Cancun, some developing countries were concerned about the value of these recommendations, contained in Annex C of the draft Ministerial text and had reiterated the view that the proposed package would be strengthened by the addition of some agreement-specific proposals. This led to inclusion of three additional recommendations in Annex C at Cancun, bringing the number to 28 agreement-specific recommendations in Annex C of the Cancun Draft Ministerial text. However, the failure of the Cancun

¹⁰ A total of 88 agreement specific proposals were made, mainly by the least-developed countries and the African Group.

Ministerial meant that the 28 recommendations were left un-adopted. Thus, these 28 still remains as an agreement in principle, until they are adopted by Members.

The tone of the discussions also showed some differences of opinion on most cross-cutting issues particularly, issues relating to the principles and objectives of special and differential treatment; a single or multi-tiered structure of rights and obligations; utilisation; and universal or differentiated treatment, including graduation. Some Members considered these issues as fundamental and insisted that they should be examined in greater depth. They said that better understanding on these issues would facilitate consensus on the agreement-specific proposals.

However, others insisted that the principles and objectives of special and differential treatment were already provided in Part IV of GATT 1994 and doubted whether these issues were within the mandate of the Doha Ministerial Declaration. Some submitted that, in some cases, differentiation amongst developing countries would be necessary if S&D was to be made more effective and targeted. Others did not agree.

On the question of the definition of developing countries, there were those who felt that such a definition was necessary to make S&D more precise, effective and operational and to confer legal predictability and certainty regarding the beneficiaries. Majority however disagreed, saying that any attempt to differentiate amongst, or define a developing country was inconsistent with the Doha mandate.

The slow progress resulted in the General Council in the 2004 July Package simply instructing the CTD Special Session to “expeditiously complete the review”- giving the Committee on Trade and Development Special Session a July 2005 deadline for completing its review of all outstanding agreement-specific proposals and reporting to the General Council “with clear recommendations for a decision”. Four deadlines for that report were missed since Doha to the run-up to Hong Kong Ministerial Conference. Several factors accounted for this slow progress.

3.3 In the run up to the Hong Kong Ministerial

Going by the discussions in the Special Session of the S&D and later in the General Council, by the deadline of July 2005 it appeared that developed countries were likely to be more amenable to agree to more operational, meaningful and binding S&D provided

there was clarity on who the beneficiaries are. S&D provisions are targeted and seek to alleviate specific problems and concerns. There is an indication of the time and/or level of economic development up to which S&D would be available; and there is an objective and clear criterion of graduation (the “Enabling Clause” included language on graduation – S&D policies were to be phased out as the recipient countries reached a certain level of economic development although criteria for this were not clearly defined).

The impasse in the Doha-mandated special and differential treatment (S&D) negotiations stems from the polarisation of WTO Members around two concerns. The first is how to improve the development content of S&D and the second is the eligibility of developing countries to S&D benefits. It was increasingly becoming clear that any constructive solutions aimed at overcoming the deadlock must respond to both sets of concerns if the Doha-mandated S&D negotiations were to move forward. On the other hand, these solutions should be framed in broader considerations on mainstreaming development in the multilateral trading system.

As presented in meetings in November and December 2004, Faizel Ismail had proposed to cluster the agreement-specific proposals on the basis of their motivations or "underlying issues". This approach attempted to overcome the disagreement between developed countries, who wanted more focus on cross-cutting issues, and developing countries, who wanted more emphasis on agreement-specific issues. However, a number of developing countries expressed concerns at the meeting that the approach gave undue emphasis on cross-cutting or "horizontal" issues and could introduce differentiation amongst developing countries.

These concerns came to the forefront when a 6-7 April 2004 meeting of the CTD Special Session fell apart after Members were unable to agree to an agenda that allocated a full day, of a two day meeting, to cross-cutting issues. The agenda which was proposed at the meeting reportedly would have divided all the cross-cutting and agreement-specific proposals into two broad categories - flexibility and capacity building. The entirety of the April meeting would have focused on the proposals in the flexibility category and examined agreement-specific proposals on the first day and cross-cutting on the second day with a May meeting looking at capacity building proposals.

Several developing countries including India, Malaysia, Mexico, Colombia and Peru refused, saying that they had not been adequately consulted about this classification and expressed fears that structuring work along those lines would shift negotiations towards cross-cutting issues instead of ensuring that Members focus their attention on agreement-specific proposals which, they said, had a stronger mandate to deliver by July and the Hong Kong ministerial under the Doha Declaration. As a result, they refused to accept the agenda and the meeting adjourned early. This return to the old dichotomy between the two types of proposals was a step backwards in the negotiations.

Negotiations in the CTD Special Session in 2005 moved away from earlier debates on the relative priority to be given to agreement-specific proposals vis-à-vis cross-cutting issues and instead focused on agreement-specific proposals in the hopes of making concrete progress on the mandate given to the group in the run up to the Hong Kong Ministerial. At their first meeting on 9 February, Members decided to move forward on agreement specific proposals, with priority to be given to LDC proposals, while keeping Chair Faizel Ismail's proposed "situational flexibility" approach to the negotiations as a reference point.

Following extensive consultations, however, meetings on 10 and 12 May 2005 forged ahead by looking at five agreement-specific proposals from LDCs with the understanding that Members could bring up cross-cutting issues as solutions to these proposals as appropriate. This was the first time that the agreement-specific proposals had been looked at in earnest by the group in the two years since the Cancun Ministerial. Members looked at proposal 22 and 23 (relating to Understanding in Respect of Waivers of Obligations), 38 (Enabling Clause), 84 (TRIMS Agreement), 88 (Measure in Favour of LDCs) and 36 (Enabling Clause para. 3b). Members suggested that these proposals needed to be redrafted in order to update them after the July Package and other developments.

A number of developed countries also added that LDCs could not expect to make no commitments or receive a perpetual blanket exemption, as the objective of WTO Membership was to integrate LDCs into the multilateral trading system at some point and LDCs retorted that their proposals intended to address the costs of implementation of WTO disciplines. In addition, during the meeting and during informal consultations

shortly afterwards, LDCs were encouraged to redraft the proposals in order to better address the underlying needs behind the proposals.

At the meeting of the CTD Special Session on 16th and 17th June, 2005, LDCs presented new versions of its proposals but, owing to its late presentation, it did not receive immediate and complete reactions from Members. Sources suggested that the changes were largely cosmetic and that the proposals could still use work to make them clearer and ensure they address the stated needs of the proponents. Members also raised questions about the automaticity of some of the exemptions in the proposal and many opposed the blanket exemption from TRIMs disciplines in proposal No.84. The group proceeded to focus on these LDC proposals with an aim of having agreed text on at least four of them for the July 2005 deadline. However, the meeting did go on to look at all the remaining agreement-specific proposals where they suggested some revisions and, after looking at LDC proposals, considered taking these up at subsequent meetings.

In late November 2005, Members agreed that their positions on key issues remained too far apart for the original goals of Hong Kong Ministerial Conference to be met. They had to find ways to ensure that momentum would not be lost post-Hong Kong, and an ‘ambitious’ outcome could still be reached either by the end of 2006 or early in 2007.

4 Post Hong Kong: Some developments and elements of the work on S&D

At the Hong Kong Ministerial Conference, Ministers reaffirmed that “provisions for special and differential treatment (S&D) are an integral part of the WTO Agreements” and renewed their determination “to fulfil the mandate contained in paragraph 44 of the Doha Ministerial Declaration and in the Decision adopted by the General Council on 1 August 2004; namely, that all S&D provisions be reviewed with a view to strengthening them and making them more precise, effective and operational.” In this regard, the CTD Special Session was instructed to:¹¹

¹¹ TN/CTD/15 26 July 2006 Special Session of the Committee on Trade and Development, Report by the Chairman, Ambassador Burhan Gafoor (Singapore), to the General Council

- expeditiously complete the review of all the outstanding Agreement-specific proposals and report to the General Council, with clear recommendations for a decision at the latest by December 2006; and
- resume work on all other outstanding issues, including on the cross-cutting issues, the Monitoring Mechanism and the incorporation of S&D into the architecture of WTO rules and report on a regular basis to the General Council.

In addition, the bodies in which the Category II proposals are being addressed were instructed to complete consideration of those proposals and report to the General Council, with the objective of ensuring that clear recommendations for a decision are made by December 2006. In this regard, the Special Session has been directed to continue to coordinate its efforts with these bodies, so as to ensure that this work is completed on time.

The Special Session of the Committee on Trade and Development mentioned in its 26 July 2006 report to the General Council that, since the Hong Kong Ministerial Conference, the Special Session has held four formal meetings – on 6 March, 7 April, 1 June and 7 July 2006, and a number of informal plurilateral consultations.¹² That, in these meetings and consultations, the Special Session have continued to focus the process on a text-based discussion of the 16 remaining Agreement-specific proposals (eight from Category I and eight from Category III), bearing in mind that the Committee was mandated by the Ministers at Hong Kong to make clear recommendations for a decision on these proposals by December 2006.

Overall, since work began in February 2006, Members has made some progress on seven out of the remaining 16 Agreement-specific proposals (Table 1). The formal and informal consultations have led to revised texts on four of the proposals, three relating to Article 3.5 of the Agreement on Import Licensing and one proposal relating to Article XVIII of the GATT. On two of the proposals relating to the SPS Agreement, informal discussions have continued on the basis of alternative texts proposed by some

¹² e.g. informal group meeting on 5 July to continue work on some of the Agreement-specific proposals, in particular on proposal Nos. 24 and 25 and also proposal No. 79, all of which related to the Agreement on SPS. The discussions on proposal Nos. 24 and 25 were based on earlier small group discussions that were held in May.

Members. The report states that “while the revised language on these six (7) proposals provides a basis for further discussions, it is clear that work on these proposals is far from complete and further progress will require Members to show greater flexibility.”

Table 1. Proposals on which substantial progress has been made

Proposal Number		Progress	Comments
28, 29, 30	Relating to Article 3.5 of the Agreement on Import Licensing Procedures	Revised language which was discussed at the formal meeting held in March.	work on these proposals still far from complete
13	relating to Article XVIII of the GATT 1994	Revised language which was discussed at the formal meeting held in March.	
24, 25	Relating to the SPS Agreement.	Chairman had held several rounds of informal discussions. Discussions were based on earlier small group discussions that were held in May	The delegations of China and Egypt had put forward some suggested language on these proposals which had provided a basis for future discussions.
79	Relating to the Agreement on SPS measures	More work was needed and the Chairman promised to continue informal consultations on that proposal.	

In proposals 24 and 25, Members continued to face some difficulty in finding a right balance between predictability on the one hand, and automaticity on the other. Members needed to continue their work and although they had made progress, it was not going to be easy to find a balance. On proposal No. 79, Members had made some progress in terms of gaining a better understanding what the proponents were seeking. Still, the Chair was to continue consulting on that proposal although he understands that the proponents were considering revising the proposal and coming up with alternate language in the form of a decision-making text. The discussions at the informal, small group meeting proved to be productive, but there is clearly more work to be done.

The CTD Special Session July 2006 report also indicates considerable divergences on the remaining nine proposals (Table 2) – for these, Members have not yet been able to prepare any revised or alternative texts, which was not a simple question of drafting or semantics. The divergences were on substance and there had to be convergence on the basic ideas before Members could engage in textual discussions.

Table 2. Proposals in which considerable work is required to reach convergence

Proposal No.	Area
14	on Article XVIII:A of the GATT 1994
22	on the Understanding in Respect of Waivers of Obligations under the GATT 1994
77	on the Understanding on the Interpretation of Article II.1 (B) of the GATT 1994
78	on the Understanding on the Interpretation of Article XXVIII of GATT 94
82, 83	on the Agreement on Technical Barriers to Trade
85	on the Agreement on Trade Related Investment Measures
86, 87	on the Agreement on the Implementation of Article VII of the GATT 1994.

For that to happen, Members, and more particularly the proponents, were asked to reflect and engage in bilateral and informal consultations. It was important to come up with clear recommendations by the December deadline. The Chair had expressed optimism that as Members reflected on the larger process, they would be able to continue engaging in consultations.

The issue of predictability of outcome versus automaticity in the granting of flexibility has been a contentious one, according to the CTD SS report. Unless Members can strike a balance between the two it will be difficult to make progress. Some Members have also raised questions regarding the utilization of some of the provisions the proponents are seeking to strengthen. In their view, they do not see the justification in seeking to amend provisions that have not caused practical problems. The proponents have however reiterated that paragraph 44 of the Doha Ministerial Declaration calls for all S&D provisions to be strengthened, not just those that have proved to be problematic in their implementation and utilization. Members have been encouraged to continue with the meeting to narrow their differences.

In the discussions on the Agreement-specific proposals, the LDCs have continued to stress the importance they attach to a quick and effective implementation of the duty-free quota-free (DFQF) market access decision adopted in Annex F at Hong Kong. The LDCs have formally tabled two submissions in the Committee, one on rules of origin and the other on market access.¹³ The paper on the rules of origin points to the need for the DFQF decision to be accompanied by a single set of simple rules of origin and makes reference to the LDCs' preferred criteria for conferring origin. The paper on market

¹³ TN/CTD/W/30 and W/31 respectively.

access points to how the LDCs would like to see the DFQF market access decision implemented. It urges Members, including developing country Members declaring themselves to be in a position to do so, to make their positions known as early as possible, on how they intend to implement the decision.

In the preliminary discussions that have taken place, Members, while reiterating their commitment towards implementing the decision, have sought certain clarifications on the two papers. Some Members have expressed the view that further work on the DFQF decision should be undertaken in the Regular Session of the CTD, and not in the Special Session. However, the LDCs have maintained their position that further work to set out the means by which Members will implement this decision should be carried out in the Special Session of the CTD. It has been suggested that questions and clarifications on the two submissions, as well as any responses to them, be put in writing. Discussions on this issue will continue at the next meeting of the Special Session. At the same time, Members, particularly the key stakeholders, have been argued to continue their bilateral consultations with each other.

As for the proposals referred to other bodies (Category II proposals), Members were informed at the formal meeting held on 7 April 2006 that progress on the proposals has not been forthcoming. In some cases, this had been due to a lack of engagement amongst Members. The proponents remain concerned about the lack of progress on these proposals and have supported the suggestion made by some other Members that these proposals should be addressed in dedicated meetings of the different bodies.

The cross-cutting issues were considered in the formal meeting held on 7 July 2006. In the discussions that have been held, Members have generally emphasised the importance of a Monitoring Mechanism. While a number of elements have been mentioned in the context of the cross-cutting issues, it is clear that the Monitoring Mechanism is viewed by many as an important step in the continuing review of the effectiveness and operationalization of the S&D provisions. Members have stressed the need to reach an understanding on the scope of the Mechanism and have agreed that further discussions on the Monitoring Mechanism take place in informal meetings. To facilitate these discussions, and at the request of Members, the WTO Secretariat has

circulated a compilation of all the earlier proposals made on the Monitoring Mechanism.¹⁴ If we are to make progress on this issue, Members themselves need to clarify their thoughts and ideas as to what they expect from a Monitoring Mechanism.

What next?

When the negotiating process starts again, Members intend to continue the text-based discussion with a view to making clear recommendations on all the remaining Agreement-specific proposals. The aim would be to build convergence on as many proposals as possible, and construct a package of proposals that will bring this long-standing issue to a closure. Meanwhile, the Chair of the CTD promises to continue to coordinate with the Chairpersons of the WTO bodies to which the Category II proposals have been referred.

5 Conclusion and recommendation

The current round of trade negotiations, the Doha Development Round does not yet deserve the epithet of a “development round” from the evidence so far. Developed countries have relegated on their promises to redress the imbalances—the challenges faced by poor countries and the inequities generated by previous rounds of trade negotiations. The Doha has failed to deliver on S&D. The Doha mandate was an opportunity for developing countries to push some of the S&D provisions closer to their expectations, by strengthening them and making them more precise, effective and operational – and to the extent possible, to change some ‘best-endeavour language’ into mandatory obligations. This has not happened. Given the stalemate, developing countries need to have a very honest discussion (among themselves) on issue of differentiation and graduation. Recognizing that economic and social conditions vary across countries, one option would be to tailor different types of S&D measures to specific circumstances and needs of developing countries on the basis of their levels of development.

¹⁴ JOB(06)/229 dated 25 July 2006.

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Annex

