Can Special Trade Measures Help Development, when Trade Tools are Weak and the Conditions for Development are Uncertain?

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1. Trade and development

Madmen in authority, who hear voices in the air, are distilling their frenzy from some academic scribbler of a few years back. (Keynes, 1936, p. 383)

Just as 'practical men' are 'the slaves of some defunct economist' (*ibid*.), when policy makers and negotiators argue over what types of Special and Differential Treatment (SDT) in trade can best promote development or the interests of developing countries, they are making implicit assumptions about what 'development' is and about whether and how policy and trade can influence this. They are also influenced by contemporary perceptions about the characteristics of 'developing countries' and about what normal, non-special treatment is or should be. Increases or decreases in effective assistance to developing countries by other means, such as aid, also alter the need for using trade for development.

Suggesting that 'special' treatment in trade will help development assumes that trade matters for development; that it is a significant influence, even a determining influence, on the success or failure of countries' strategies for development. This is not a universal view, and certainly not a traditional one. Histories of developed countries' industrial transformations focus on the role of innovation (UK), of governments (Japan), or of strong private sectors (US). Trade is an instrument with some useful (or damaging) characteristics, but is not central to the story. One difference in developing countries is that for many trade became a significant element of national income early in their development because they were opened by more developed countries, in many cases by colonisers.

Trade is recognised as an uncertain tool, even by its strongest advocates, but the other tools are often less acceptable (government intervention) or seen as even weaker (research and development). This puts a heavy weight on it: unless policy makers accept that development cannot be stimulated, they must find ways of promoting it through trade.

The problem for policy is that at the same time as trade has become increasingly emphasised as important for development the scope for using the conventional SDT trade tools seems to be diminishing. Lower tariffs, more restrictions on how national policies can affect trade, and stronger enforcement of rules limit what trade policy towards or by developing countries can do. A second problem is that some current definitions of 'development', emphasising reduction of poverty rather than structural change in the economy, make it difficult to define clear paths from trade to development.

'Development' rather than 'developing countries' is normally taken as the objective, but helping developing countries as political entities, through increasing their power and influence within the international system would be an alternative, political avenue towards promoting development.

2. What SDT means

SDT to help development through trade measures can be designed to increase any advantages which trade or the multilateral trading system may offer for development or to reduce any disadvantages. SDT can also, however, be designed to target more directly the possible elements of 'development': to promote industrialisation, innovation or good policy, or the other definitions we will examine. The three conventional types of SDT come under these headings:

Improved access to developed country markets: this increases the benefits of trade.

Allowing delays in, or partial compliance with, obligations requested by others: this reduces the potential costs of trade.

Permission to follow policies that would otherwise be against WTO rules (because they reduce the benefits other countries can receive from trade): this reduces the costs imposed by the international system of rules itself.

The disadvantages can be either known costs or risks. More broadly, a very risk-averse approach (often argued as appropriate to very poor people within countries, so arguably valid for poor countries) could consider any changes in the international system a 'risk', and therefore justify exclusion from any obligations.

Any such measures could be consistent either with a model of development that suggests that the process of development needs different policies, and therefore a different international system, from those that promote growth in developed countries or with a view that development needs the same policies as growth, but that developing countries should have more opportunities. Developing countries need to transform the structure of their economies, not merely expand and alter at the margins an existing structure, so the gains from the efficiency effects of trade (and thus the losses from not having these) may be less important relative to the gains from other types of economic policy.

Although the terminology of SDT and many of its instruments date from the 1960s, treating developing countries differently and more favourably in their trading relations was accepted from the first negotiations for an international trading system in the 1940s. Arguably the origins could be traced to the international acceptance of differential treatment of the relations between colonies and their governing countries in the complex of trading arrangements of the century before 1940, but this was based on respect for national, and colonial, sovereignty, rather than on economic or developmental principles. This paper will therefore trace views of development, theoretical understanding of the role of policy interventions, and perceptions and actual evidence on the role of developing countries in the international system and the effects of the system on developing countries since the late 1940s. These will be used to attempt to analyse the reasons for the principal elements of SDT in the GATT/WTO: Article XVIII, Part IV, the Enabling Clause, the Uruguay Round provisions and Doha Round proposals, but also of some of the less explicit shifts in the system, towards quotas and other protection in the 1960s and 1970s, towards a more legally binding approach in the 1990s and 2000s, and towards an interest in very targeted interventions. The last section will consider what role SDT can have now. Table 1 summarises how the analysis and the policies can be reconciled.

Many would argue that all the 'development' definitions discussed need to be considered in any complete view of development, and that the interactions among them make it impossible to separate them out even conceptually. But these sections will try to characterise the dominant views among international policy makers and leaders in developing countries at each period. The emphasis is on what is believed, more than on why it was believed, and not on whether what was believed was right.

3. Late 1940s – 1950s: Industrialisation and planning

Terms such as 'Industrial Revolution', 'industrialised countries' and 'newly industrialising countries' confirm the long-standing close identification of industrialisation with development. This view of development argues (supported by theories on the supply of labour and dualist economies) that productivity cannot be increased in agriculture or other primary production (at least not as fast as in manufactures). Evidence and theory supported a belief that in spite of possible relative scarcity, primary prices would fall relative to those of manufactures. Arthur Lewis (1954) argued for industrialisation to increase incomes and for diversification (which, in a primary economy, could only mean industrialisation) to increase choice. For prices, Prebisch (1950) and Singer (1950) pointed to the disadvantages of primary products, because of the changing composition of demand, the characteristics of markets, and price variability. Simple observation suggested that the richest countries were the most industrialised, and World War II had shown the advantages of strong, well-established industries, and the damage that could be done to an economy by destroying its industry. Of course there were counter examples, and food was also important, but these were seen as exceptions, and food as a constraint. To develop, therefore, a country had to 'industrialise', with the distinction between 'primary' and 'secondary' itself suggesting a suggesting a progression over time.

The question of *how* to develop as opposed to the concept of what it meant to *be* developed, however, was only beginning to emerge in this period. The 1930s had concentrated, in both theory and policy, on the problems of growth and cycles in mature economies. Without a dynamic theory of development, it was not possible to understand how to pass from one state to the other, in particular, how to start the transition. Terms such as 'take-off' (Rostow, 1963) suggested a step change, not a process, and most authors analysed the mechanics of the transition from low productivity agriculture (with fixed land and surplus labour) to a modern sector, but not why or when the transition could happen. They did identify mobilising capital as a necessary condition (Ranis 2004).

World War II had shown that planning could transform the structure of an economy and greatly increase the output of key sectors. Governments could, to use a later phrase, pick winners. Under reconstruction, the various developed countries followed different paths, but many still imposed controls or strong incentives and disincentives for particular sectors. Trade was also planned, and in some cases promoted, but the basic model was autarkic. This was not surprising given first conflict, then disrupted international payments regimes. Some developing countries, notably Brazil and South Africa which had been cut off from normal trade during the war, had also followed strongly nationally directed paths. And there was the model of the Soviet Union in the 1930s, which had transformed that economy as a deliberate development exercise. For countries beginning their national development in the 1950s and 1960s, planning was the only current model. It was not always successful, and there were various forms, but laissez faire was out of date. Trade was a source of income, sometimes an important one, but a static element, not a dynamic or leading sector. Controlling trade was therefore not necessary in itself. It was likely to be controlled as part of a general system, but had no special role. This was reinforced by the prevailing view that development was about industrialisation. Everyone ‘knew’ that developing countries did not export manufactures. Therefore markets for industrial goods had to be national. In such a view of development, special treatment in trade was not an obvious aid tool. Import substitution was more a policy residual to promote local industrialisation than an objective. Later trade theory offered other reasons for import control: to capture economies of scale or technological gains, in order to provide a basis for structural change and future development, but again the focus was on the special role which domestic production can have (and therefore the need to reduce imports) rather than on trade itself as a tool.

4. 1960s to 1973: Power, or reversal of dependency

The end of colonialism in Africa and the emergence of increasingly divergent political trends in Latin America shifted the focus to political development. Control over a country's own economy (or own resources: nationalisation as well as nationalism) was seen as essential to secure economic independence as well as political independence. Characteristics such as commodity dependence were still seen as aspects of lack of development, but because they weakened a country. Commodity agreements, culminating in OPEC and the oil crisis of 1973-4, suggested that there was an alternative to industrialisation, or at least a complementary path, through using primary production and exports aggressively. The successes in the establishment of some industries in some countries during the 1960s also placed the policy emphasis for 'how to develop' on national action.

Economic analysis still assumed that development meant moving into secondary activities, although there was slightly more interest in finding particular patterns within this, rather than treating all industrialisation as a single phenomenon.

5. 1970s to early 1980s: Growth, economic crises, and exports

This period is difficult to characterise, partly because of differing and conflicting views, but also because the first and second oil price crises and then the debt crises and economic stagnation, and in some cases regression, that followed meant that in some countries the need to manage and mitigate the consequences of declines in income replaced development as the central concern. For African and Latin American countries, and for the donors and development practitioners who were emerging as important policy-makers, the questions were not about development, but rather: whether they should borrow (in the expectation that there was a temporary problem) or adjust by cutting imports. As borrowing was not in practice as feasible as theoretical analysis had suggested, and as the first crisis was followed by a second, this became a debate about how to adjust. The debt problems of the early 80s intensified this shift.

In other countries, notably south-east Asia, there were growth and structural change, and industrialisation. Export promotion and export led growth were happening in Asia, and were beginning to emerge in the literature, but the consensus (perhaps in these decades the 'UNCTAD consensus'?) did not yet recognise these as possibilities. Later it would be argued that they had followed the same type of policies as the now-developed countries.

There was thus a sharp dichotomy, approximately between South-East Asia, on the one hand, and Africa and Latin America on the other, between those countries which were achieving industrialisation but were not yet influencing analysis (in part because they did not depend on aid or advice) and those whose current problems were too serious for development to remain the goal.

The attention to adjustment and therefore to finding ways to contract an economy, combined with the reduced emphasis on structural change, turned policy emphasis to macroeconomic objectives, first fiscal and later monetary balance. The intellectual and political climate turned against targeted intervention. This was based partly on an argument that such intervention had not been effective, because some governments' policies were wrong, but also on the view that governments could not act as efficiently as markets. There was a shift back to emphasis that prices and efficient allocation matter. The types of policy considered good in advanced economies were being seen as important also for developing countries. With changes no longer clearly structural, and therefore non-marginal, policy should allow marginal signals to work; intervention could hinder the signals and the adjustment. Like the previous emphasis on industrialisation, this view of development was in part based on identifying some characteristics of advanced economies, and assuming that developing countries could become more advanced by becoming more like developed countries.

For those countries which made this shift, whether by choice or because they depended on donors who had changed their views, removing planning, which had been a central tool for development, meant that those instruments that remained became more important. One of these was trade. The Asian countries showed that developing countries *could* export manufactures, and that this was closely *associated with* very rapid growth and structural change. So the obvious, if not the logically flawless, conclusion was that exports *led* to development.

How did the connection between exports and the various elements of development work? This became the subject of much analysis and more assertion in the 1980s. The important change in what could be identified as conventional views was from emphasis on the efficiency role of trade to a view that there were dynamic effects.

Even if the principal effect of trade is merely to increase income through reallocation of resources, this can be a large effect, or series of effects, in a country which has high barriers and substantial potential for structural change in its economy. Whether this then translates into a second development effect through the resulting higher income being allocated effectively depends on how the income is used. Even the first round effect would be sufficient to justify concluding that helping developing countries to trade more effectively would be a useful tool for development, and therefore could be used to argue for SDT in trade. But under this scenario, the principal role in development would remain with national responses in the second round, i.e. with how the country responds to the potential achieved through trade.

But a much stronger view of the effects of trade emerged, that exports were the best, if not only, way of improving productivity and therefore growth, and perhaps also innovation, in an economy. Clearly a country with a relatively large external sector (as many developing countries have) will grow faster if its exports grow rapidly. In a foreign exchange-constrained situation, this will also relax any balance-of-payments constraint on imports, and through them on investment and long-term growth. If it is impossible to raise other, domestic sources of demand directly (the country is small or the government is not willing to intervene directly), exporting is the only, or best, way of stimulating growth. But a more radical interpretation was that external demand contributes to development additionally by stimulating behavioural or structural changes, by increasing productive, not only allocative, efficiency. Such views imply that developing countries need opportunities for exports more than developed do (so supporting even more strongly a demand for SDT).

Whether the direct impact of external demand on exports needs to be modified, because a country wants to influence the sectoral development, not simply adjust to whatever demand appears, depends on whether a country believes that development depends on the structure of the economy, i.e. on whether it considers industrialisation or innovation or the other structural definitions to hold. If so, it may want to have specially targeted SDT for its exports; if not, any SDT which raises exports above what they would otherwise be could be helpful. The long-term evidence on where causation lies in the correlations between rapid export growth and rapid development (in the sense of growth) remains indeterminate.

There is nothing in either the arguments for government intervention or those for trade that suggests that they cannot both have a role, and much analysis of the Asian economies argues that they used both. But the ideological debate of the 1980s led to extreme positions on both sides, and a residual view that they are alternatives. If so, SDT to promote exports (e.g. preferences) should be seen as an alternative to SDT which allows countries to intervene directly (e.g. policy freedom), rather than as complementary.

6. 1980s - 1990s: Institutions and adjustment

The growing emphasis on good macroeconomic policies, combined with that on adjustment, rather than following a pre-fixed plan, led to concern for good institutions. If countries needed to become able to follow advanced policies and to be able to adapt to exogenous shocks, the existence of good policy institutions became important. The transition economies of Eastern Europe also offered evidence on this. They were like developing economies in their lack of capital and industry (at least, efficient, 'developed' industry), but were expected to, and in most cases did, return to 'developed' status much more quickly than developing countries. Institutions were a possible explanation of the difference. There was a risk of circularity (a good institution is one that produces 'good policy', but this is also the only way to recognise one), and therefore that this is more a description than an analysis

Institutions, even more than the other definitions of development, raised difficulties for finding a reproducible development path. Definitions of good institutions and policy were more difficult and controversial than of 'efficient trade' or 'growing production'. And the policy implication is unclear. If a developing country, by assumption, has 'bad' or 'weak' institutions, can it use these to create good ones? Or must it wait for some process to evolve them? Worse, it moved the problem of development out of economics (which may not have solved it, but where there was a strong interest and large literature) into policy and social sciences, which were even more based on developed country problems.

7. Mid-1990s - 2004: Poverty reduction

That people in developing countries have lower incomes than those in developed is not a new perception, of course, but in most of the periods sketched here, this has been viewed as a consequence, not the essence, of the problem. In aid discourse, however, from the late 1990s poverty reduction almost replaced the language of development, and was seen as not only the goal but the definition of development. Analytically, this is a move backwards. It is again a static comparison between a characteristic of developed countries and the situation in developing countries. It can have implications for economic policies because it is combined with an emphasis on direct, rather than indirect, effects and on simple solutions, not those from economic and social (market and political) interactions. Policy is concentrated on those activities where there are more poor people (agriculture) and on directly poverty reducing activities (health and education), rather than on growth or structural change. Poverty itself is increasingly defined as a set of characteristics: low income, lack of assets, lack of education and health, lack of political power, with an explicit rejection of the economic insight that all these are related, and substitutable.

This means that trade is not the obvious policy tool, although the overhang of the 1980s glorification of trade has obscured this. All the links from trade to poverty are weak. Growth increases the potential to reduce poverty; it does not necessarily reduce it. The poverty literature has directed attention to the direct effects on labour and household incomes of particular activities which gain or lose from particular changes in trade (Bird 2004, Conway 2004). Trade increases some incomes, through both consumption and production effects, but these need not be of the poor. The general effects of trade, therefore, may have little weight in a poverty assessment.

There are potential negative effects directly from trade to poverty. The poverty literature views both shocks and structural changes less favourably than the growth literature, often appearing to put a higher weight on losses than on gains in analysing the net effects of a policy. It also puts more weight on the short term effects and on direct effects. This substantially reduces the expected benefits from trade.

Poverty focus has contributed to the growing emphasis on SDT for poor countries, usually interpreted as the Least Developed Countries. This assumes SDT should favour those most in need; the arguments for it in the preceding sections were based on determining who would gain most or what form would contribute most.

8. Other aspects of development

No one would question hat long term development is closely associated with moving to new technology, but as the processes of innovation are even less understood (or agreed) than those of industrialisation or good policy, this has normally been left to one side in analysis of development, and assumed to come in association with high income, or industrialisation, or good institutions. The extensive literature on technology in the context of developed countries, from Solow 1957 on, has led to only a few analyses of its role in development, (e.g. Lall, 2003 and Amsden 1989),

Research into technologies that could promote development, particularly into agriculture, is an accepted part of government intervention, in circumstances where this itself acceptable, but has been relatively small. Promoting innovation can be identified as potentially in conflict with some types of trade measure if lack of competition reduces the incentive to make innovations, but technology has rarely entered the policy debate. The question of whether development involves the same processes as growth, of whether developing countries are 'different', applies not only to the question of whether innovation is different from adoption, but also to whether copying industries or institutions is the same as creating them.

9. The changing roles of developing countries in the international system

Primary producers

Like ‘industrial countries’ for developed countries, 'primary producers’ has been virtually synonymous with 'developing countries'. Most developing countries were dependent on primary exports in the first 25 years of GATT, and some remain so. On the other side, developed countries are dependent on exports by developing countries. These relationships are similar to those pre-GATT (and in some cases, pre-independence), and are often reinforced with special trading relationships. In minerals, this complementarity means that neither side has had an interest in trade barriers, so that there has been no *need* to negotiate changes. In agriculture, the developed countries have been so opposed to liberalisation that there was no *point* in negotiating for changes. For those countries dependent on primary products, therefore, the international trading system seems irrelevant. Some of the relationships, notably the quotas in sugar, serve to transfer income to the developing countries (by offering higher than world prices plus guaranteed access to markets), and thus bring an aid relationship directly into trade, and further remove the relationship from the normal GATT/WTO regime. For primary-dependent countries, therefore, SDT in trade is useful only as a way to carve out existing trading relations and exempt them from normal GATT/WTO rules.

This was reflected in the GATT. Developing country issues were not high on the agenda for GATT negotiations before 1986. Temperate agriculture was effectively excluded; clothing and textiles, their first manufactured exports, were under the Multi-Fibre Arrangement, MFA (and its predecessors), from the 1950s; and many developing countries had special trading relationships with the colonial powers, later the ex-colonial powers, which gave them better than the MFN treatment offered by GATT and thus no incentive to participate in GATT negotiations. (They had some incentive to avoid and discourage these, as any improvement in MFN reduced their advantage, but this does not seem to have been fully understood by negotiators or analysts until the 1990s.)[1]

The countries starting to industrialise did want special treatment. As will be described below, however, the preferential access they received was on a bilateral basis, not through GATT, and much of the policy flexibility that they wanted was *de facto* available to all countries because GATT rules were rarely enforced.

Most developing countries considered UNCTAD more important than GATT for information and representation and their relations with traditional trading partners more important than GATT for securing access for their exports. But in both these fora, they did not negotiate: they argued for special treatment (whether for reasons of development theory in UNCTAD or special ties with their traditional markets). ‘Successful’ developing country action within GATT meant achieving exemptions from the normal GATT regime. India, for example, had led the successful pressure for the addition of Part IV (1966) to the GATT agreement which effectively allowed them to maintain their own policies to protect or direct trade.

Emergence of a few competitors

It was during the 1970s that developing countries, as a whole, shifted on average to being exporters of manufacturers, and for some, manufactures achieved high shares of their total exports, but the perception remained until the 1980s that successful exports of manufactures were exceptional. Developing countries were still seen as infant exporters and so weak that even with special treatment they were not (normally) competitors for developed countries.

The growth of exports from the Asian countries, and a few Latin American, in the 1970s was seen as a series of threats. It attracted policy responses, especially at a time of increased concerns about both balances of payments and industries facing slow growth and contracting demand, but while there was a clear and significant increase in protection, this was through a series of *ad hoc* non-tariff barriers. These (like many of the special arrangements for primary producers in the past) were ignored by the GATT system. For the major threat, textiles, there was a long series of agreements on textiles, starting in 1961. But even this did not alter the general view that most developing country exports were not competitive, and therefore were not part of the normal business of GATT negotiations, because of an implicit assumption that the conditions for textiles were 'special'.

In the negotiations, by the time of the Tokyo Round (1973–9), some developing countries moving into manufactures were starting to see reasons to negotiate, although most were still eligible for preferences. Negotiations in the Tokyo Round, however, remained very much based on EU-US interests. There were no important developing country interests to be addressed in the Round: the EU and the US were united in supporting the continued exclusion

[1] Two technical rules contributed to their *de facto* exclusion: until 1990, GATT operated on the basis that the major traders in a commodity negotiated together, and then presented an agreement to the rest and any change in tariff had to be negotiated with ‘principal suppliers’. There are few commodities for which developing countries were principal suppliers or purchasers (and of these, many were either subject to special arrangements, such as commodity agreements or protocols, or duty-free). And the few agreements on rules were treated as separate from the main agreement, as plurilateral agreements, which countries could elect to join or not. Non-participation in the negotiations did not lead to agreements being imposed on them.

of temperate agriculture. A few rule issues started to emerge as areas of developed-developing country negotiation, and therefore for some countries such as Brazil and India it ceased to be possible to remain outside the negotiations e.g. on customs valuation. But the Tokyo Round conclusion again allowed ‘plurilateral’ arrangements on rules to continue and allowed export subsidies by developing countries and thus most rules did not impinge on most developing countries.

Emergence of many special cases, and of markets

By the beginning of the Uruguay Round, in 1986, the position of the developing countries was very different from 1973. They were providing an eighth of manufactured exports at the beginning of the Round and more than a fifth by the end. Some countries were already committed to changing from an inward to an outward-orientated approach to development at the beginning of the Round, so that access for their exports had become essential for their development strategy, and others moved increasingly to this position during the difficult economic conditions of the late 1980s. Their own trade was becoming significant in world markets: about a quarter of the total, so that other countries wanted access to them and felt threatened by competition from them.

This was the first negotiation in which a significant number of developing countries bargained. They wanted changes in areas of major interest to developed countries, agriculture and clothing, where asking for special treatment or exclusion was not enough. And, on the other side, the growing role of developing countries as competitors and markets meant that developed countries wanted changes from developing countries. In areas of rules as well, what developing countries did, or did not do, was affecting the interests of developed countries. They were no longer too small to matter.

Developing countries are competitive and big; the uncompetitive and small are the special cases

The growing share of developing countries in world exports of manufactures and in all developed country markets was finally noticed, and in 1990s dealing with them by negotiation, not by leaving them to one side, became the norm. This increase in economic power seemed to be translated into negotiating power at Doha, in 2001. Developing countries could influence how agriculture and SDT were on the agenda and initiate new negotiating issues. By Cancún, September 2003, all countries, including the least active negotiators among the Least Developed, presented positions and participated in meetings of groups. There was the first semi-formal recognition of groups among the developing countries, integrating them into the system.

The growing differentiation of objectives among developing countries would raise difficulties for any concept of what ‘developing countries’ need. It had become clear during the Uruguay Round that there were different interests among the developing countries; the negotiations over both the MFA and agriculture, the central ‘developing country’ issues, had to take account of important divisions: between the MFA quota-bound countries and the non-quota; between exporters of food and importers benefiting from food subsidised by developed countries. On services, there was a move from a united developing country position to interest-based differences between the interests of highly protected domestic sectors and those of countries with cheap labour and no traditional, inefficient sectors.

The principal groups in the Uruguay Round were common interest groups such as exporters of particular commodities. These suggested that developing countries were no longer operating in any special way in the negotiations. At Doha, and since, however, common characteristic groups seem to have become more active and more effective than the interest groups: the Least Developed secured a range of special mentions, and avoided any expressions of opposition to special treatment for them; the small economies got a ‘work programme to examine issues’. Another group which started to emerge in Seattle (1999) and acquired prominence at Cancún (2003) is a much more fluid group of leading developing countries. The leadership of India and Brazil was extended to include Egypt, Nigeria, and South Africa, and to become the G20 before Cancún. All these have a common interest in continuing liberalisation in the WTO context, although with very different (and potentially opposed) interests in particular elements of the negotiation. Their interests are also in some respects very different from those of the smaller economies (for whom trade is a much more important part of their economies) so that they are not seen as (although they initially saw themselves as) leaders of the old developing country alignment.

In the period between Cancún and July 2004, and in the negotiations then, there was growing recognition that the interests of the G90, of those countries which were in some ways still like 'traditional' developing countries: primary producers, dependent on bilateral rather than multilateral relationships, and the interests of the G20: the competitive developing countries, had diverged significantly. There could therefore be said to be a shift to a new line of differentiation in the WTO, no longer developed-developing or by commodity interest group, but developed-competitive developing-traditional developing.

One question for future SDT, therefore, is whether it is all ‘developing countries’ or the 'traditional' developing countries producing primary products (roughly identified as Least Developed Countries) for whom special treatment is either appropriate or acceptable to developed countries. Developed countries are moving to restrict it to LDCs. This suggests that they see special treatment as a way of providing compensatory aid for countries that cannot trade effectively, rather than as a way of improving their performance so that they can trade efficiently, as aid rather than as development focused.

10. SDT in GATT and the WTO

Recording and regulation of barriers, 1947–1994

While many of those who have supported GATT and the WTO have always wanted greater liberalisation, the principal initial objective was to provide transparency and certainty in international trade: for central information about, and binding of, trade barriers to replace the unpredictable national trade policies of the 1930s. In this context, different barriers (including, if wanted, higher barriers by developing countries) and even different treatment (including preferences) were not contrary to the spirit of the system.

In its first article immediately following the assertion of Most Favoured Nation treatment, GATT recognised the reality that preferences existed. It then listed all those preferences. Like any other provisions, they could be changed by further negotiations. GATT 1947 also had from the beginning the possibility of temporary derogation from obligations, e.g, in Article XII, for balance of payments reasons.

The first major recognition that developing countries had different problems and therefore could be subjected to different disciplines came with the reform of Article XVIII in 1954-5. In order ‘to raise the general standard of living of their people’ they could ‘take protective or other measures affecting imports… in so far as they facilitate the attainment of the objectives of this Agreement’. And they have the right ‘to maintain sufficient flexibility in their tariff structure to be able to grant the tariff protection required for the establishment of a particular industry and (b) to apply quantitative restrictions for balance of payments purposes in a manner which takes full account of the continued high level of demand for imports likely to be generated by their programmes of economic development.'

This accepted the views that development required industrialisation; that governments should act to achieve this; and that trade (through imports) was an input into a development strategy, not a driving force of development. At the same time, in 1956, GATT adopted a 'Resolution on Particular Difficulties Connected with Trade in Primary Commodities'.

In 1966, a new Part was added to the basic GATT instruments. Part IV was called 'Trade and Development' and accepted explicitly that 'the CONTRACTING PARTIES may enable less-developed contracting parties to use special measures to promote their trade and development'. It recognised that most developing countries were primary product exporters, and supported special measures to assist these, but also for the first time saw exports of manufactures as one way to promote industrialisation and diversification, and encouraged developed countries to open to potential exports as well as to current exports, with the emphasis on 'processed or manufactured products'. This opening was to be non-reciprocal, not part of normal negotiations. This was largely observed in the 1960s and 1970s.

But, consistent with the 1960s views identified above, trade was not to be the only way of promoting development. Part IV saw planning by developing country governments as an essential element in using trade. GATT members were to 'collaborate in analysing the development plans and policies of individual less-developed contracting parties and in examining trade and aid relationships with a view to devising concrete measures to promote the development of export potential and to facilitate access to export markets for the products of the industries thus developed and, in this connection, seek appropriate collaboration with governments and international organizations'

In 1971, GATT finally authorised preferences (new preferences, not merely those allowed as existing tariffs under Article I) through a waiver, the Decision of 25 June 1971, which allowed 'generalised, non-reciprocal and non discriminatory preferences beneficial to the developing countries'. These were justified as increasing market access. These were gradually implemented, under the Generalised System of Preferences, but always by individual developed countries, not through GATT. In 1979, following the Tokyo Round, the Enabling Clause not only allowed preferences for developing countries, but included further flexibility in the application of rules, for example on regional trade agreements.

Although it included a provision that any such treatment should be designed 'not to raise barriers to or to create undue difficulties for the trade of any other contracting parties', and provided for notification and 'opportunity for prompt consultations' if there were objections, it did not suggest that such treatment should be negotiated. Implicitly, it was to be unilaterally offered (as was happening under GSP). It also included the first GATT differentiation of 'Least Developed Countries', suggesting different treatment might be justified for these. The additional special treatment for the Least Developed was to be 'in the context of any general or specific measures in favour of developing countries', suggesting that the possibility that this might create conflict or 'undue difficulties' for other developing countries' trade was not foreseen. In practice, this was correct for the next 20 years as the special provisions for the Least Developed were used only for marginal improvements in the coverage of a few developed countries' preference schemes.

There were no changes in SDT in the Uruguay Round, but *de facto* a move away from it. This took place at the height of international and national policy makers' faith in trade and the low point of their faith in government policy. The slow growth of Latin American and African countries, contrasted with rapid growth in Asia, was interpreted as showing the benefits of exports and the failure of planned, import substituting development. General liberalisation would benefit all countries, developed and developing, although there might be transitional problems. The major developing countries which were leading in the negotiations justified the bringing of agriculture and clothing into (or at least towards) normal rules on the grounds that there should be no special cases, but the developed countries then argued on the same basis for opening in developing countries (at least in those that were becoming successful).

Negotiations on services led to an agreement that would have permitted the equivalent of preferences for goods, but in the climate of development thinking of the time, this was not taken up.

Preferences obviously depend on the existence of (higher) barriers to others. Two changes in the Uruguay Round and the years following it, the late 1990s, substantially reduced their usefulness. The gradual fall in tariffs over the post-war period had been eroding the value of preferences on most products, but not on the products which were of most interest to developing countries: agriculture and clothing. The Uruguay Round saw the first reforms in these. In the case of agriculture, this was achieved through an alliance of developed and developing countries, reducing the scope for achieving a differentiated result. Secondly, from 1999, the date of the WTO's Decision in favour of LDCs, there were measures to concentrate any increase in advantages on the Least Developed Countries (whether as part of the poverty focus or from fear of competition from other developing countries). Most developed countries introduced or intensified differential treatment in their preference schemes, culminating in the EU's 'Everything But Arms' in 2001 which removed all barriers to LDCs, immediately for most products; by 2009 for bananas, rice and sugar. Non-LDC developing countries thus saw reduced preferential margins and loss of their relative position to the LDCs. This produced renewed interest in finding ways of restricting the discretion of developed countries in offering preferences.

In 2003-4, India took a dispute against the EU on the grounds that the Enabling Clause allowed only the one type of discrimination specified, i.e. between Least Developed and other developing countries, not the other forms of discrimination that the EU then had, in particular that for countries in need of help to move away from illegal drug production.[2] It argued that the GSP required measures to be 'non discriminatory'. The Appellate Body agreed that the measures complained of were not acceptable, although on the grounds that they were non-transparent and not based on objective criteria, and that they had not been justified in terms of the Enabling Clause's specification of objectives ('to respond positively to the development, financial and trade needs of developing countries'). Although there has been no formal attempt to challenge special treatment for the LDCs, there is increasing dissatisfaction on the part of others. It may be no longer possible to rely on discretion to prevent 'undue difficulties'.

Regulation of trade, 1986 to present

Since the Tokyo Round, at least, but particularly since the Uruguay Round, GATT has moved to regulate what types of barriers and reductions in barriers countries can offer. This includes: increasing restriction of non-tariff barriers; controls and detailed specifications for subsidies, domestic and export; rules on technical barriers and sanitary and phyto-sanitary regulations and regulatory structures; anti-dumping investigations. The single undertaking, the requirement in the Uruguay Round that all countries sign all agreements, ended the ability of countries to stay outside any new regulations.

[2] This had originally been offered to the Andean countries, but was extended to Pakistan after the war in Afghanistan.

The argument for new rules, most notably in intellectual property, was that these were good for all countries. There might be adjustment costs, but these could be met by spreading compliance over time. An alternative argument, accepted by some developing countries explicitly and perhaps more implicitly, was that some of the rules were not good for them, but that the costs were less than the benefits from other parts of the negotiations, especially the reform of the MFA and of agricultural trade. Both arguments, therefore, rejected or ignored the Enabling Clause commitment that 'the developed countries do not expect reciprocity for commitments made by them in trade negotiations...i.e., the developed countries do not expect the developing countries, in the course of trade negotiations, to make contributions which are inconsistent with their individual development, financial and trade needs.'

All these changes have reduced the areas outside GATT/WTO jurisdiction, in which all countries have freedom to do what they like (as they still do in most financial or labour regulations, for example). Actions which were unregulated are now regulated and the scope to plan development (or other) strategies using unregulated actions is reduced. Therefore there may be more need for 'special' measures within areas now regulated by the WTO. Any exceptions for particular groups of countries, such as developing countries or those with a 'special' bilateral relationship, must be explicitly allowed.

Enforcement of rules, 1994 to present

The Uruguay Round strengthened the disputes procedure of the WTO, and thus increased the probability that violation of a rule would bring costs. There is still no WTO jurisdiction to bring actions as an organisation, so that some 'informal SDT' (Stevens 2002) is implicitly allowed: all countries can do anything, until or unless there is a complaint. But the greater ease of bringing cases and the more serious consequences of losing them have made countries more anxious to obtain formal recognition of any special treatment, rather than take the risk of hoping to be ignored.

The disputes settlement mechanism has also itself started to define some rules more closely. Some judgments have been directed at the developed countries, including the tax and environmental rules of the US, for example, but other cases have defined limits on what developing countries can do or what can be done for them. The cases on what regional arrangements are allowed to do in their relations with non-members (India-EU-Turkey, for example) or what discrimination is allowed within preferences (India on GSP) have limited the scope for measures to be considered to be outside the rules, and therefore increased the potential need for special rules.

Current negotiations and proposals, 2001 to present

There are proposals to encourage greater opening to the Least Developed in the Doha Round. Some developed countries go further and would encourage non-LDC developing countries also to open preferentially to Least Developed countries. Leaving to one side the probability that opening by most developing countries would have very small effects, this goes even further than the Uruguay Round in ignoring the Enabling Clause's exhortation not to require opening by developing countries. It puts poverty reduction, not development or trading institutions, at the centre of policy.

Most, if not all, developing countries have specific aims to secure 'special' treatment in some aspects of the current negotiations, and this is reflected in the proposed formulae for negotiations in agricultural and non-agricultural goods, in the way proposals are being made in services, and in other areas (notably the new area of trade facilitation). After the scepticism of the 1980s, there is now growing acceptance that preferential trade arrangements can have positive effects, and are having such effects for some countries. Preference erosion, the inevitable consequence of barrier reduction, is now part of the agenda, and there is a commitment to find ways of countering it. The corollary, that preferences may have negative effects for those who are excluded, is also now recognised. These positions, for and against preferences, are now all explicitly stated because they are inputs into a detailed negotiation. The view that developed countries should not make negotiating demands on developing countries has disappeared. On some of these aims, as noted above, developing countries are in conflict among themselves, notably the divide between those seeking access and those wanting to preserve preferences.

Some countries, developed and developing, see a need for a new framework to give legal standing to SDT across WTO rules. This reflects a view that there can still be an agreed view of development as an objective, outside or above the specific aims of individual trade agreements. This would be a partial return to the 1950s view that at least some interests of developing countries should remain outside the normal flow of trade negotiations. The Doha mandate referred to the possibility of a framework, although not committing to it. But as there is no agreement now that development requires different rules or on what the rules might be, any such framework would itself have to be negotiated, potentially a contradiction to the idea that it is outside negotiations. It is difficult to reconcile the old position that developing country interests are outside trade negotiations with the specific objectives many have within them.

The permissive form of the Enabling Clause, that developed countries 'may accord differential and more favourable treatment to developing countries', while exercising 'the utmost restraint in seeking any concessions or contributions', does not fit well with a legally enforceable system. The provisions encouraging, but not requiring, technical assistance in the Uruguay Round settlement were equally inconsistent with the legal obligations in the rest of that agreement. There are therefore proposals to make both trade preferences and technical assistance 'bound' in the same way as other obligations under the WTO. Such proposals reinforce the view that developing countries have interests within the institutions; strengthening their ability to use such institutions is seen as an essential part of development.

The most recent agreement, the July 2004 decision, gave only brief attention to measures explicitly identified as SDT: SDT is 'an integral part of the Doha Ministerial Declaration' and is an integral part of the WTO agreements; but all the substantive parts had important elements of special treatment. In trade in goods, there are to be smaller and probably slower changes by non-LDC developing countries and no commitments by LDCs. The removal of three of the four 'Singapore issues', the new areas requested by some developed countries, was a significant achievement of developing country interests. Implementation of an agreement on trade facilitation was tied to receipt of technical assistance, a move towards legal binding. And there was formal acceptance of the problem of preference erosion although without an effective remedy.

11. What SDT for the future?

Although some sections of this paper and of Table 1 have dates attached, the provisions of GATT 1947 (with a few amendments) and of the Enabling Clause remain in force. Together with the Agreement reached in the Uruguay Round, it is these which determine what SDT is available now. But the understanding of development and of the ways of promoting it which they reflected is not what most policy makers would accept in their current proposals. The characteristics of both developing countries and the international system have changed. That the old provisions have been adapted to very different philosophies and circumstances has been possible partly because, until the last decade, the system was flexible, with enforcement depending on consensus. The apparent adaptability may also have been achieved because, partly by explicit change, partly by self-exclusion, the use of SDT has been gradually concentrated on those countries which are still nearest to the position of the 1940s ‘developing countries’; weak primary producers, for whom there is still some agreement that development considerations should allow them to be, at least in part, outside 'normal' regimes.

This paper has identified problems for current system which will not be met by the proposals in the Doha Round. There is no longer a shared understanding of what constitutes ‘development’, so the purpose of any SDT is unclear. If it is simply poverty reduction, any market processes may be inferior to simple transfers; even offering SDT to the ‘poorest’ may be more a gesture than a practical assistance. If it is some combination, unique to each country, of structural change in the economy, maturing of institutions, and perhaps political independence, the role of any general policy will be difficult to define. Even for the purely economic definitions of development, there was no agreed understanding of how trade could help (or hurt). The Asian countries used the SDT available to them (both preferences and policy flexibility) effectively and they developed, but their development strategy was not guided by the policy consensus of the time or by the current consensus. It remains for debate whether it was the SDT elements of policy, their own effectiveness at designing policy, or particular conditions which differentiate them from the countries which have not succeeded. China and India are now offering two other models of development and of trade. Without knowing what helps, it is difficult to define what flexibility in trade policy and trade concessions by others might be needed for the next generation.

Even if it is possible to identify what development is, and how trade can help, the current multilateral system makes it harder to use trade policy. It has a greater probability of restricting ‘desirable’ policies (by or for developing countries) than the 1960s system. It covers more aspects of international and national policy and it can now enforce some rules. The scope for traditional SDT is reduced because liberalisation has eroded the value of preferences. The existing SDT provisions for technical assistance and preferences have been effectively weakened because most are harder to enforce than other WTO rules. And finally, there is an uneasy combination of a system based on developed countries offering concessions and the newly emerging one where developing countries define their own interests and negotiate for them.

The differentiation of the Least Developed Countries is now a particular challenge. As long as the provisions for LDCs were minor modifications of GSP systems, and as long as discrimination in other parts of GSP was used with moderation, the potential for conflicting interests between the more favourably treated LDCs, or others, and the less favourably treated developing countries was only a hypothetical risk, and the lack of a satisfactory definition of those more in need had little practical importance. Consensus, tolerance of anomalies and lack of legal remedies allowed the system to work.

Against that, the increase in the scope and the reduction in the flexibility of GATT/WTO rules have come because countries, both developed and developing, found they were at risk of damage from the unregulated actions of others. Even the Enabling Clause foresaw the risk of 'undue difficulties' for other countries. As developing countries have become economically larger, the potential for their actions to cause 'difficulties' has increased. And as they have become more politically and legally powerful, their ability to defend themselves from 'difficulties' caused by others, developed or other developing countries, has grown. The potential scope for SDT provisions which are both significant in development terms for the country benefiting from them and small enough in economic terms not to damage others has shrunk. This was not obvious in the decades when development was redefined as simple growth or even stability, the 'lost decades' for development thinking of the 1960s and 1970s, but is now becoming a difficult conflict.

The belief that developing countries are different, that development needs a special regime, has become less generally accepted, and in some areas developing countries want to act as ordinary countries, for example in negotiating for their own interests. An increasing number of developing countries have chosen negotiation within GATT and the WTO rather than securing exemptions from the international trading system as the best way of promoting their development and trade interests. The consensus-based system has given developing countries an opportunity to exercise power there. This has allowed them to secure some of the 'specially favourable' trade advantages which they have wanted,

There are still categories of country that want SDT and that other countries recognise as 'different'. First, the 'small' because they are vulnerable to trade changes and may lack administrative capacity to deal with rules. Except for some *de minimis* provisions, however, there is no SDT for small countries. But the traditional GATT reasons for SDT were to promote attainment of 'normal' status. Acceptance of size as a constraint would be accepting a potentially permanent difference. And it is not evident how trade measures can overcome the problems of size.

Similarly, the countries which are still dependent on primary products (many of which are also small) are often seen as different, if only because so many other countries have been able to move into more diversified production, suggesting that there is some special condition which holds back those that remain. But again, it is not clear that trade SDT with the theoretical assumptions or the practical forms which we have seen in this paper can help countries which have not responded to special privileges in the trading environment up to now.

If we take a traditional view, that development involves diversification and probably moves into manufactures and/or services, then there are a few opportunities for traditional SDT. When tariffs on manufactures were high (and in the few cases where they still are, notably clothing), preferences can serve their original purpose of permitting countries to diversify into new, more advanced production. The scope for this now, however, is very limited. Most tariffs are not high enough, and the growth of regional arrangements opening both the EU and the US to some more advanced developing countries means that even a preference does not protect less advanced developing countries from more efficient producers. Services markets are much more closed than goods, so in principle there would be opportunities for the equivalent of preferences here (and these are allowable under GATS). Possible services in which developing countries could compete are transport services and, of course, those involving movement of labour, such as construction. Where these are open, this is already happening. There may be relatively few which are not open but which countries would be willing to open to developing countries.

New preferences could create the risk of new problems of preference erosion. Vested interests in existing preferences have given protectionists in developed countries support from lobbies in preferred developing countries, to the disadvantage of total world welfare and the non-preferred developing countries. But this need not happen. Of the two areas of high protection and therefore large vested interests in preferences, agriculture and clothing, only the former is creating serious blockages to liberalisation. In textiles and clothing, those subject to quotas and those exempt reached an alliance in the Uruguay Round, and reconciled their interests through a long phase out period (and the expectation that high tariffs would preserve part of the preference). In agriculture, the 'preferences' have been serving the opposite purpose from that originally planned. They have encouraged countries to remain in inefficient, vulnerable, and stagnant demand primary products (notably sugar) by providing not an incentive to increase and diversify production, but a 'rent' through the difference between the preferential price paid and the world market price. If we assume that these schemes can and should be replaced by a more normal form of financial transfer (aid), the remaining problems of preference erosion are small, and can be seen as normal transitions. Even in clothing, much of the move from the 1970s leaders to new producers would have happened without any quota system.

Preference erosion is a serious problem for the negotiation of the Doha Round because the highly preferred position of about 50 countries means that they have little to gain and the risk of loss. But the number of countries that would have large losses and the size of those losses are not large (particularly as ambitions for the Round weaken). A fund to act as insurance against preference erosion could 'buy back' preferences (this would use only some of the gains to world welfare which liberalisation will bring). By providing a guarantee that no country would lose from the Round (as some did, because of preference erosion, in the Uruguay Round), it could break the alliance between the protectionists in developed countries and a few developing countries. Such a fund would have to be 'bound' into the WTO in some way (even if not administered by it), and when it was first suggested this seemed difficult. Now there is a facility for costs from liberalisation in the IMF, and an EU fund for sugar exporters, and the idea is no longer unthinkable.

The increasing competitiveness of some developing countries has greatly reduced the willingness of developed countries to offer preferences to all developing countries. The developed countries would prefer to offer deep preferences only for the least successful, but there are two problems with this. The increased power of developing countries in the WTO has made implementing a discrimination which most would oppose difficult and, a more fundamental one, there seems no reason to believe that more preferences would help these countries. The evidence on how trade can help development remains inconclusive, but it does seem clear that it depends on appropriate policy and investment initial conditions and responses. These countries lack these complementary conditions. The LDCs are the countries that have had the highest preferences in the past, and have not been able to use them effectively. It may be necessary to look again at what national policy can do. The corollary of this is that trade cannot be seen as a substitute for aid. Aid will provide the only route out of the most serious problems of preference erosion (the EU Plan of Action for sugar to compensate for the reduction in the value of sugar quotas), and, as in the case of the current proposals for an agreement on Trade Facilitation, it will increasingly be needed to fund countries' compliance with rising standards for trade. Aid is a less distorting substitute for the role of preferences in improving the terms of trade of developing countries.

Where trade offers appropriate incentives, and identifiable benefits for development, preferences and flexibility for countries' own trade policies have a role. But to use trade as a residual instrument is not only ineffectual. Because there is no confidence in alternative measures, it is potentially harmful. The trading system has important functions that are damaged by inappropriate preferences and derogations. Developing and developed countries need the conventional benefits from trade, of efficiency though price and cost comparisons. The developing countries which can use trade effectively in their development strategies can be damaged by developed country preferences which discriminate against them or by SDT which allows other developing countries to restrict imports or have flexibility in applying other trade rules.

One way to recognise that normal trade interests are also important, and should not always be subordinated to judgements about development policy would be to strengthen the Enabling Clause's reference to 'undue difficulties' and require not only 'consultation' but compensation or a negotiated agreement for any developing country damaged by a measure to help another. Arguably, there should be a parallel provision for consultation when a developing country uses its 'flexibilities' to restrict the trade opportunities of another, or to reduce its rights under particular rules. Such requirements would probably narrow the scope for permissible SDT even further. But by recognising that developing countries have the right to protect their own interests, they would recognise their new role in the WTO.

Reducing the need for SDT by reducing the coverage of WTO rules (or at least not increasing the coverage) is another approach. The defeat of three of the four new areas proposed by developed countries in the Doha Round, the Singapore issues, shows that this can be attained by negotiation, but if any of the spirit of the Enabling Clause remains, this should be taken as an indication not to propose similar extensions. The WTO is now an inclusive organisation, deliberately aiming to include all countries, not merely (as in 1947) all those that shared a particular approach to trade and markets (here it is appropriate to remember than even major traders like Mexico could remain outside until the 1980s). The possibility that some countries are not able to meet all standards and the certainty that not all share the same economic views must now constrain how much and how fast the WTO can expand its responsibilities.

Whatever forms of SDT remain must be bound. A rules based system cannot include an informal, concessionary, set of rules once the countries affected by this are too large to matter and too powerful to accept others' discretion.

The definitions of development which have informed GATT/WTO policy, as noted at the beginning, have been based on outcomes. But if it is the power of developing countries which is taken as the measure of their development, then there is the possibility of a virtuous circle in which their increasing economic power gives them the opportunity to secure for themselves increasing economic advantages within the trading system, even if that system also places constraints on them.

Table 1. Summary of influences on S&DT

	GATT 1947-55	Part IV 1965	Enabling 1971-79	Derogations 1970s	Uruguay 1986-93	Legal SDT 1990s	Current trends and proposals for S&DT				
							Poverty	Negotiated	Framework	Enforceable	July 2004
What development is											
Industrialisation	**X**	**X**	**X**								
Power, or reversal of dependency						**X**		**X**	**X**	**X**	**X**
Growth, stability				**X**	**X**						
Institutions						**X**		**X**		**X**	**X**
Poverty Reduction											**X**
Technological. Innovation											
What promotes development											
Planning	**X**	**X**	**?**						**X**		
Trade as a tool for development		**X**	**X**		**X**	**X**	**X**				**X**
Adjustment to shocks					**X**						
Reducing poverty											**X**
Intervening for technology											
Trade, residual tool						**X**				**X**	**X**
Perceptions of developing countries											
Primary producers	**X**	**X**	**X**								**X**
Emergence of few competitors											
Many special cases & markets				**X**	**X**					**X**	**X**
Uncompetitive & small are special					**X**	**X**				**X**	**X**
Position of developing countries				**X**							
Irrelevant: US/EU power	**X**	**X**	**X**								
some developing countries, interests		**X**	**X**								
Active participation by developing					**X**	**X**				**X**	**X**
Differentiation of objectives					**X**	**X**					**X**
Regional relationships outside WTO				**X**							**X**
Changes in GATT/WTO										**X**	
Regulation of barriers	**X**	**X**	**X**								
Reduction of barriers		**X**	**X**								**X**
Regulation of trade			**X**		**X**					**X**	**X**
Regulation of trade-related			**X**		**X**						**X**
Enforcement of rules					**X**					**X**	

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