

The Evolution of Special and Differential Treatment in the Multilateral Trading System

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Prepared for International Centre for Trade and Sustainable Development

Workshop 6 December 2004, Geneva

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1. Understanding the purposes of S&DT

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 (S&DT) 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 current perceptions about the characteristics of 'developing countries' and about the nature of what normal, non-special treatment is or should be. The purpose of this note is to examine briefly the history of each of these influences, then to look at how the WTO itself has evolved, and finally to examine the evolution of S&DT measures in the light of this history. It deals directly only with S&DT in trade and other international activities currently under the GATT or WTO, although the same historical trends have influenced the treatment of developing countries in other international institutions and in other trade relationships, and these have interacted with S&DT in the multilateral trading system. Other strains on developing country trade (e.g. oil and commodity crises; changes in bilateral trade relationships) can increase the need for or change the feasibility of trade measures within the multilateral system. Increases or decreases in effective assistance to developing countries by other means, such as aid, can alter the need for using trade for development. Changes in the types of trade policy considered useful and legitimate in one context (for example, the 'Washington Consensus' view characterised as promoting trade and financial liberalisation) affect what countries can do in practice, regardless of what WTO rules may permit.

There are in current discourse two types of purpose seen for S&DT directed at developing countries: to help development and to help the international system by easing the integration of developing countries into it. This paper will give most emphasis to the former, because it takes the underlying objective of this programme to be concerned with developing countries, not with the international legal framework. Strengthening those aspects of the rules and institutions which themselves contribute to development can be considered part of the former, although they can also be advocated for systemic reasons.

If defining the purpose of S&DT as to help developing countries integrate into the trading system is based on an assumption that an effective regulatory system is itself an important tool for development, then it need not be considered a separate purpose. But it can also be argued that there are important, but non-developmental, benefits to world welfare from an effective system, and that there are other (perhaps better) ways of promoting development and, if appropriate, meeting the costs to development of the system. This is a newer concept, and has been less clearly defined, but it appears at a minimum to mean assisting developing countries to comply with current rules (the Uruguay Round innovation of transition periods plus technical assistance; the July 2004 agreement tying of compliance with rules to technical assistance). It is also, however, used to suggest increasing obligations on them, for example of greater trade liberalisation or reduced exemption from rules. Past examples could include restricting liberalisation towards developing countries (the Agreement on Agriculture's authorisation of subsidies and higher tariffs than in non-agricultural goods; the MFA and then Agreement on Textiles on Clothing), if it could be argued that such measures were intended to avoid disruptive changes in trade flows, rather than being exercises of negotiating power to achieve protection. If such measures do have important world welfare benefits, and if any direct or indirect costs to development can be met, without reducing other assistance to developing countries, they may be justifiable, but it might be less confusing to find an

alternative terminology for measures that treat developing countries differently for the sake of the system, rather than S&DT: measures that treat developing countries differently for the sake of development.

A presentational purpose for S&DT (for example, as suggested in Singh 2003: 'S&DT also provides an opportunity for the multilateral trading system to regain the necessary public legitimacy which it has evidently lost in the recent period' p. 5) could be considered consistent with the integration or institutional purpose for S&DT, if it assumes that a legitimate international system has an important global purpose.

'Development' rather than 'developing countries' is here normally taken as the objective, again in line with the purpose of this programme, 'a perspective integrating sustainable development, trade liberalisation and legal (WTO) visions'. Helping developing countries as political entities, through increasing their power and influence within the international system is one, but not the only, avenue towards promoting development, if we take one of the views of development as a particular type of outcome which have most influenced thinking and policy in the last 60 years. These are defined in section 2. A more power-based definition of development might lead to considering strengthening developing countries as the only path.

The WTO classifies S&DT measures into six categories: to promote market access for developing countries; to safeguard interests of developing countries; flexibilities; transitional periods; provision of technical assistance; and flexibilities for Least Developed Countries. This is highly unsatisfactory because it mixes purposes and tools, and some of the definitions are redundant, because the last three are merely tools to achieve or rephrasing of the first three.

S&DT to help development through trade measures conceptually can be designed to increase any advantages which trade may offer for development or to reduce any disadvantages. Both of these can include the advantages or disadvantages which the multilateral trading system itself has for development. 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) could consider any changes in the international system a 'risk', and therefore justify exclusion from any obligations. S&DT can also, however, be designed to target more directly some of the possible elements of 'development': to promote industrialisation, innovation or good policy, or the other objectives discussed below. The three conventional types of S&DT 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.

Any such measures would be consistent with a model of development that suggests that the process of development benefits from different policies, and therefore a different international system, from those that benefit growth in developed countries. If developing countries need to transform the structure of their economies, not merely expand and alter at the margins an existing structure, 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. But most such measures could also be consistent with a view that development needs the same policies as growth, but that developing countries should have more opportunities.

Although the terminology of S&DT 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, and this paper will therefore start from then, rather than accepting the view that the 'doctrine of S&DT' begins with Prebisch and UNCTAD (e.g. Singh 2003). 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. The next sections 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 S&DT 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. Following Keynes, the discussion will need to relate provisions not always to current analysis, but to lagging perceptions of previous changes. The last section will consider the implications of how well the S&DT system which has emerged from this history fits current understanding.

To write a history of economic thought, policy, events, and institutions over 60 years and use this to analyse 60 years of international trade policy would take more than a short paper. This report, therefore, can only suggest broad trends through reckless generalisations.

2. Evolving views of what 'development' is

In each period, there will be many different views on what the characteristics of development are, and on the policies to promote it. All of the 'development' definitions discussed here would have been accepted by at least some analysts and some policy makers at most times. Many would now argue that all or most 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 this section will try to characterise the dominant view among international policy makers and leaders in developing countries at each period. It will trace some of the intellectual and theoretical bases for the views, but the emphasis will be on what is believed, more than on why it was believed, and not on whether what was believed was right.

Industrialisation (late 1940s-1950s)

Terms such as 'Industrial Revolution', and 'industrialised countries' and 'newly industrialising countries' as classifications of developed and advanced developing 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

It 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 move from 'primary' to 'secondary' suggesting a progression over time, from an early period, to a second one. This at the time was generally interpreted as meaning to introduce the same (or some of the same) sectors as the advanced countries.

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. The dominant one-sector macro models of the day, from Keynesian to Harrod-Domar (see Harrod 1939 and Domar 1957) to Solow 1956, seemed to have relatively little relevance for societies not primarily concerned with business cycles or steady state properties' (Ranis 2004, p. 1). On the other hand, much literature on developing countries described how they differed from economies with these problems. They lacked technology and had dualist economies. Without a dynamic theory of development, it was not possible to understand how to pass from one state to the other, or, as became gradually recognised as an essential gap, how to start the transition. Terms such as 'take-off', Rostow, 1963, also suggested a step change, not a process. Rosenstein Rodan, 1943, followed by Lewis, 1954, and other authors like Fei, Ranis, 1961, who described economic transitions, 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 a necessary condition (which the transition could mobilise as well as use) which was capital (Ranis 2004).

Power, or reversal of dependency (1960s to 1973)

The end of colonialism in Africa and the emergence of increasingly divergent political trends in Latin America shifted the focus to political development. Economic understanding of development was influenced by these political events, with control over a country's own economy (or own resources: this was a period of nationalisation as well as nationalism) 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 as well as because they made it poor. 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, may have had some influence on the commodity promotion, by example. They encouraged seeing economic sectors as economic weapons and as possible policy instruments. This placed the policy emphasis, for 'how to develop', on national action.

Economic analysis was still absorbing the mechanisms and descriptions developed in the 1950s. The pattern of development was still assumed to be one of 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.

Growth, resistance to economic crises, stability (1970s to early 1980s)

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 the objective of moving to higher incomes and 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: should countries facing the terms of trade crisis caused by oil prices borrow (the remedy many recommended for developed countries, in the expectation that there was a temporary problem until OPEC demand rose)? Or should they adjust by cutting imports? 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. 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. For these, however, at least initially, there was less analysis, either in the countries or from outside of their experience, although later it would be argued that they had followed the same type of policies as the now-developed countries. In both, development seemed to have happened outside theoretical analysis.

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 seeing development (in the 1950s sense), 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 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, providing policy that allows marginal signals to work seemed more relevant; inflation and intervention, in contrast, 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.

Institutions (1980s-1990s)

The growing emphasis on good 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 adopt to exogenous shocks, the process of policy implementation became as important as, perhaps more important than, the nature of the policy. In general economic theory, there was increasing interest in transactions costs, and the role of institutional arrangements in reducing these. In the 1970s, Kuznets (1971) had already put emphasis on the process of structural change, although not necessarily on controlling or directing this, so that a focus on developing institutions could be consistent with promoting structural change as well as with preparing good macroeconomic policy. The role of institutions and the disadvantages of their absence were also seen as major influences in the uncertain transition of the eastern European economies from their 1980s economic systems towards structures more like those of Western Europe.

The revival of the distinction between transition and development (which repeated that between reconstruction and development of the 1940s and 1950s) also refocused attention on

what was 'different' about development: the transition (and the reconstructing) economies 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, but with the risk of circularity (a good institution is one that produces 'good policy', but this is also the only way to recognise one), and therefore of being more a description of the problem than an analysis with policy implications.

Institutions, even more than the other definitions of development, raised difficulties for finding a reproducible development path. 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 concentrated on developed country problems. Definitions of good institutions and policy were more difficult and controversial than of 'efficient trade' or 'growing production'. At the same time the problem that good institutions may be required to implement more complex forms of assistance (detailed trade provisions, for example) made the difficulties more acute.

Poverty reduction (mid-1990s-200?)

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. Reducing poverty was an explicit objective in development plans (especially in some Asian countries, such as India) and the nature of poverty seen as an obstacle to development (Sen, 1992), but poverty was not seen as the correct immediate objective in development strategy.¹ In aid discourse, however, since the late 1990s poverty reduction has almost replaced the language of development, and is now seen as not only the goal but the definition of development. This is in some ways a regression (to emphasising an outcome, rather than a process or an enabling system). It is again a static comparison between a characteristic (high income) of developed countries and the situation in developing countries, rather than an analysis of a process. It is interpreted in formulating policy in ways that have implications for economic structure because it is combined with an emphasis on direct effects, rather than indirect effects based on understanding economic and social (market and political) interactions. Therefore, 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 or assumption that all these are related, and substitutable. In an aid sense, the policy implication of defining low development as poverty is simple: give more money, although even this is not consistent with the broader definition of different elements of poverty.

Technological innovation (intermittent)

That long term development at global level is closely associated with moving to new technology would be generally accepted, but as the process of innovation is even less

¹In the 70s a "basic needs" approach, zeroing in on the direct provision of essential commodities, and thus short-circuiting income, made an appearance but was short-lived, partly because it never fashioned firm theoretical links to what else we know about development, partly because it was never really accepted abroad [outside the US] where it was seen as a device for explaining away lower aid levels.' Ranis 2004, pp. 13-14.

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 distinction between innovation (finding new technologies) and adoption of existing knowledge can be used to make a distinction between growth, seen as requiring innovation, and development, seen as principally adoption, 'catching up', but analysis of how each happens in practice has tended to suggest that the processes and the institutions or environments that promote them are not as different as this distinction might imply. The extensive literature on technology in the context of developed countries, from Solow 1957 on, has, however, led to only a few analyses of its role in development. Lall (2003) has examined the different paths followed by countries with different technologies, while Amsden (1989), among others, has placed great weight on the importance of technology to Asian development.

Micro-development (intermittent)

All these definitions of development assume that it is a national or macroeconomic characteristic, even if wide divergences are possible within countries. There has always, however, also been a strand that focuses on changes at the microeconomic level, on markets or types of production, and on the effects of these on other relationships at that level, building up from that, rather than on larger changes, and the interactions of these at national level. The contrast is between looking at the shift from primary commodity to manufactured exports, leading to higher income..., and looking at the activities of a household, and the changes in income and distribution within it. This type of approach may have attracted increasing interest in recent years. Ranis 2004 cites studies of 'the role of women in household decision-making, and the effects of the proportion of household resources controlled by women, on the health and nutrition of their children' or the micro effects of 'poorly functioning markets' or informal networks. This has been most evident in the literature on micro-finance, but is starting to influence perceptions and the literature on trade as well (Carr 2004).

Is development different from growth?

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 and whether being poorer than existing developed countries is a problem of absolute levels (so analogous to the position of developed countries in the past) or of relative levels. The role of S&DT is likely to be different under different assumptions about whether there are differences in the nature of developing countries, or just variations in level. Do they need different policies, or just more favourable versions of the same policies?

3. Evolving views of what interventions can promote development

S&DT in trade is based on the assumption 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. Therefore there may be historical reasons for expecting trade to be more

important. But it was not so perceived in the early part of the period examined here. Arguably trade only became central to thinking on development in the 1980s when two processes coincided: the success of the East Asian countries began to be noticed, and that they were successful and unconventional traders; for other developing countries, the constraints imposed by the changes in their terms of trade and by the lack of external funding (and growing debt) required them to focus on their external sectors.

Planning as normal (war and reconstruction)

World War II had shown, more impressively than any previous war, 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 and make them win, at least in the context of a command economy with a unifying national purpose. 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 for obvious reasons first of conflict, then a situation where international payments regimes remained disrupted. 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. There was also 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 not good or necessary in itself, but it was likely to be controlled as part of a general system; trade 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 development had to be nationally based. In such a view of development, special treatment in trade was not an obvious tool for development. Import substitution was more a policy residual than an objective: to promote local industrialisation, local markets had to be reserved for local producers, because external markets were assumed not to exist. 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.

In the late 1970s and 1980s, the intellectual and political climate turned against direct intervention by governments: this was partly based on the argument that such intervention had not been effective, because some governments' policies were wrong but also because no governments could act as efficiently as markets (a revival of a 1930s debate). It was also based on an ideological shift away from intervention. There was a shift back to emphasis that prices and efficient allocation matter, led by Little, Scitovsky, Scott 1970 (Ranis 2004). 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.

Trade as a tool for development

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 does the obvious connection between exports and the various possible 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 the comparative static one, 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. This has an effect on average productivity through improved allocation of resources. 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 S&DT in trade. But under this scenario, the principal role in development would remain with national responses, 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. Simply finding an association between exports and growth cannot prove this because in a growing world, there will be some relationship through multiplier effects. It is uncontroversial that a country with a relatively large external sector (as many developing countries have) will grow faster if its exports grow rapidly, because of the direct effect on output. In a developing country, particularly 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. One extension from this is to argue (or assume) that raising exports is the only, or best, way of stimulating growth, either because it is impossible to raise other, domestic sources of demand directly (the country is small or the government is not willing to intervene directly) or because there is a binding balance of payments constraint (consistent with 1950s analysis). But a more radical interpretation was that external demand contributes to development not simply by increasing growth but by stimulating behavioural or structural changes. It suggested that competition from trade would increase 'x-efficiency' (efficiency in the popular sense of how well a firm performs relative to some standard of best practice, not the economic sense of whether it allocates resources and production according to relative prices) because it may challenge a producer in 'the sheltered domestic markets they face under import substitution....productivity growth could be slow because of the absence of a competitive spur or because the entrepreneurial skill of management was poor, or for other reasons' (Krueger 1983, p. 53). Although she recognised that 'little is known about the dynamics of productivity increase; it is not at all clear the extent to which increases in output per head are achieved within existing plants; by new higher-productivity firms driving out older ones; and by competition among firms' (*ibid*), her and similar arguments acquired a strong following in the early 1980s. Such views would imply that developing countries need both more opportunities for exports (so supporting a demand for S&DT for this) and more imports (suggesting more than normal liberalisation).

There is an analytical difficulty in treating exports or external exposure to imports as having a special role, of being equivalent to, or a substitute for, developmental stimulus by a government targeting changes in productivity and structure. It is inconsistent to assume, in the same model, both the traditional benefits of open markets and developmental, supply-side effects. The former assume that exports follow demand, with gains coming from changes among sectors, each of which is able to respond efficiently to the new signals. Thus, each must already be efficient in its own production. The latter, however, assume that sectors or firms are not operating efficiently because they face comfortable markets and do not have efficient operation, and that they are not able to respond to market incentives. The income raising effect from trade assumes that factors of production can move efficiently to new patterns of demand; the efficiency effect assumes that they need to be 'developed' for this to

happen. If producers do not respond to signals, then providing more signals cannot be a solution, and the doubts expressed in the theoretical (if not the policy) discussions of these effects show some understanding of this.

There was a related argument, that exporting, especially to markets which are more advanced, imposes certain standards of quality and thus has a type of training effect on productivity. But it is not clear which way the causation goes: that those who export are already seeking to improve quality or that the exports stimulate this. If 'development' requires changing the nature of producers, any instrument relying on 'normal' responses may fail to have 'normal' effects.

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 S&DT for its exports; if not, any S&DT which raises exports above what they would otherwise be could be helpful. But the long-term evidence on the correlations between rapid export growth and rapid development (in the sense of growth) remains indeterminate. It is not possible to say whether the countries which succeeded in exporting and growing did so because of special effects from trade or because they were able to alter their economies in such a way as to be able to respond to, and create opportunities in, a time of rapidly growing trade. Most had rapid growth and transformation in domestic demand as well, while many countries with similar degrees of access to markets and facing the same external demand, did not grow.

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, S&DT to promote exports is seen as an alternative to S&DT which allows countries to intervene directly, rather than as complementary.

Adjustment to shocks

One conventional view is that shocks damage development; that developing countries should be allowed to follow a smooth path towards their development goal. But both the analysis of some types of development in terms of step changes and the emphasis on learning to respond to signals and to adapt suggest that a smooth path is not possible or desirable. The assumption that held until the oil crises that external financing should normally be available to developing countries facing shocks so that they could pursue a long-term programme of planned development has been transformed into one that they should learn to adjust, and that this is a more important benefit than a long term programme. In particular cases, like the analysis of commodity prices, it has been shown that some shocks are harmful, but some are not as serious as the traditional view would suggest, so only a low-cost method of smoothing the shocks would increase welfare (reviewed in Page, Hewitt 2001). The implications of the findings that some shocks, but not all, are damaging for trade are particularly uncertain because it is not clear whether trade increases or reduces uncertainty (more influences increase the potential for shocks but also the potential for offsetting shocks). If some risky changes, moving into new exports and new markets, are a necessary part of development, then reducing the potential costs from such risks could be beneficial. Artificially increasing the risks of change (S&DT which is vulnerable to changes in decisions by developed countries), however, would seem an aggressive way of training countries to absorb shocks.

Reducing poverty

While growth increases the potential to reduce poverty, it does not necessarily reduce poverty. There has long been controversy over whether growth may have a temporary effect of increasing poverty, by increasing income differentials, but it now seems sufficiently clear that even if income inequality increases, this need not increase poverty. Thus poverty is not seen as in conflict with growth, even in the short term. The relationship may also go the other way. Effective improvements in human development may make growth more sustainable. For the other potential definitions of development, such as industrialisation or innovation, the long term effects are to increase potential income, but the connection to poverty is less direct, and the possible short term consequences less well-determined. The effects of trade on these, therefore, have little weight in a poverty assessment.

There are also potential effects directly from trade to poverty, both macroeconomic and microeconomic. 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. 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).

Poverty focus has contributed to the growing emphasis on S&DT for the Least Developed countries (a category designed for aid purposes, focusing not only on income, but on social factors and structural disadvantages). The argument is for S&DT to be designed to 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.

Interventions for technology

This remains an area where the impact from theory to policy has been weak.² Research into technologies that could promote development, particularly into agriculture, is part of government intervention, in circumstances where this is considered beneficial and acceptable, but this has been relatively small. It is certainly not seen as being as effective an instrument for development as trade. It is also often seen as better done in the private sector (again, except in agriculture which here, as in other policies, enjoys a special status), and therefore not as a usable tool for intervention. It is identified as potentially in conflict with some types of trade measure if lack of competition reduces the incentive to make innovations, but the arguments for and against this are similar to the others on the effect of trade on productivity.

Trade the residual tool

Trade is recognised as an uncertain tool in development, 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

²A striking exception is the Venezuela position pre-Seattle (Venezuela 1999) that technology 'is obviously of extreme importance to developing countries since the competitiveness of their own production and trade depends on narrowing the international gap in technological development.' It does argue for changing the international system to improve access to technology and to encourage the transfer of technology to developing countries.

only counter influence is the growing interest in poverty reduction as a direct objective, rather than a consequence of development, and the distrust of trade in that context.

4. The changing perception 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 highly dependent on primary products. On the other side, developed countries are dependent for some of their supplies of such inputs on exports by developing countries. These relationships are similar to those pre-GATT (and in some cases, pre-independence), often with special trading relationships which reinforce the mutual dependence. 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 are so opposed to liberalisation, that there is no point in negotiating for changes. For those countries dependent on primary products, therefore, that is most in the beginning, the weakest now, 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, as well as 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, S&DT in trade is either a way to carve out existing trading relations and exempt them from normal GATT/WTO rules (with the effect of also removing GATT/WTO from the policy priorities of these countries) or irrelevant. For developed countries, as long as they considered developing countries as primary producers, there was no reason to take account of their interests in GATT/WTO rules.

Emergence of a few competitors

The corollary of the view that developing countries don't export manufactures was that they were not competitors for the developed countries. When some did emerge, this unexpected situation had to be 'managed', and it was. For the major threat, textiles, this was through the long series of agreements on textiles, starting in 1961. But 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'. On the developing country side, only a few countries were affected (and initially some developed countries, notably Japan, were also controlled) so that this appeared to be a special sector.

The growth of exports from the Asian countries, and a few Latin American, in the 1970s was seen as a series of threats, 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 (Page 1987), this was through a series of *ad hoc* non-tariff barriers, which (like many of the special arrangements for primary producers in the past) were ignored by the GATT system.

'Voluntary' export restraints started to spread from imposition on Japan to the more advanced developing countries during the 1970s, and the restrictions on clothing exports were starting

to become important, but most developing countries, while facing potential barriers, were either not increasing their exports or diversifying into still uncontrolled sectors.

Emergence of many special cases, and of markets

By the beginning of the Uruguay Round, 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.

It was during the 1970s that developing countries, as a whole, shifted on average to being exporters of manufactures, and for some, manufactures were 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.

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. There clearly were still, however, 'traditional' developing countries producing primary products plus a few manufactures, but too few or too inefficiently to worry about. For these, identified as the Least Developed countries, the old treatment was still considered appropriate.

This suggests that special treatment is seen by developed countries 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. This is potentially a variant of the view that S&DT should be intended to integrate developing countries into the international trading system: it enables those who are unable to integrate on their own to have some elements of integration. For those that can integrate, it may only be available in borderline or transitional cases, when they are not yet competitive.

5. Changes in the position of developing countries in GATT/WTO

Irrelevant, in the face of US, then US/EU power

In the first part of the period, from 1947 to the 1970s, even the developed countries other than the US could be characterised as weak participants. The US was the principal market, but also the principal provider of both public and private capital to the other developed countries, and it would have been difficult to regard any negotiations as among equals. On the other hand, the US had strong non-economic motives for building up the economic strength of Europe and later Japan, so that its bargaining power was constrained. The trade and monetary crises of the 1970s meant that Europe became both stronger and less dependent on the US

than it had been, while the US felt decreasingly superior in competitiveness, and therefore less willing to concede to 'weaker' partners (Frieden, Lake 1995). 'Real' negotiations started to become both possible and necessary. The shift of negotiations from the pre-Tokyo pattern of commodity-by-commodity negotiations to a more complicated interplay of interests over a wide range of subjects simultaneously meant that developing countries with small shares in trade were not automatically excluded.

Two technical rules have 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.

Developing country issues were not high on the agenda for GATT negotiations before 1986. Temperate agriculture was effectively excluded; many tropical agricultural products had special arrangements or long-term trading arrangements; clothing and textiles 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.)

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). The examples of successful developing country action within GATT were with the purpose of distancing them 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. Any S&DT which developing countries wanted was, most thought, best assured outside the GATT system.

Emergence of some developing countries and some developing country interests

By the time of the Tokyo Round (1973–9), some developing countries were already moving into manufactures and starting to see advantages from negotiations, but most were still eligible for preferences and had not been damaged by the trade policies of others. Negotiations in the Tokyo Round were very much based on EU-US leadership, (McDonald 2000). There were no important developing country interests to be addressed in the Round: commodities remained dominant in most countries' exports; the EU and the US were united in supporting the continued exclusion of temperate agriculture; and the few developing countries which were exporting manufactures were only starting to face non-tariff barriers. The Tokyo Round conclusion again allowed 'plurilateral' arrangements on rules to continue and allowed export subsidies by developing countries and thus allowed developing countries to participate only partially in GATT (Croome 1999).

Some 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 (Rege 1999). It remained possible, however, for most to stay outside that part of the agreement altogether.

Active participation by developing countries

For most, both those which were members at the beginning of the Round and the 31 countries which joined during it, the Uruguay Round was the first negotiation in which they bargained. They wanted changes in areas of major interest to developed countries, agriculture and textiles and clothing, where asking for special treatment or exclusion could not succeed. 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. It became clear in the round that if countries were to obtain any of the concessions which they wanted, they (particularly the more advanced) would now be expected to make offers.

In the Uruguay Round, for the first time, the developing countries secured a commitment that there would be an agreed programme of negotiations, so that at least formally the sidelining of GATT and the rest of the members by the US and the EU observed in the Tokyo Round could not be repeated. Five years later at the Seattle Ministerial in 1999, developing countries' refusal to accept a process from which they had been excluded led to a collapse of the meeting. There were other reasons for the failure, but the developing countries concluded that there had been a further shift in the real balance of power: developing countries could not only negotiate, they could block negotiations. This meant negotiations were now a potentially useful alternative to remaining outside both obligations and requests.

This increase in power within the WTO seemed to be confirmed at Doha, in 2001. While the broad support for the successful anti-subsidy position in agriculture precludes claiming this as a developing country achievement, the developing countries were a visible part of the alliance, and other achievements were clear. The meeting accepted that S&DT would be 'an integral part' of any final settlement. It also extended the times for the Least Developed to comply with subsidy and intellectual property rules. Both these were achieved in spite of initial strong opposition by developed countries, indicating that developing countries thought that they were a necessary part of any bargain. The Doha meeting also showed that developing countries could initiate new negotiating issues, putting on the agenda, for example, linkages between debt and trade.

In the preparations for the mid-term ministerial meeting to review progress on Doha at Cancún, September 2003, again all countries, including the least active negotiators among the Least Developed, presented positions and participated in meetings of groups. At Cancún, developing countries placed two new issues on the agenda: the effect of US agricultural subsidies on cotton and the effect of general liberalisation on the few countries which are highly dependent on preferences and other types of special access.

At Cancún there was the first semi-formal recognition of groups among the developing countries, integrating them into the system. Countries presented positions saying that they were on behalf of groups like the Africa and Least Developed countries, eventually merged into what later became called the G90. For them and the G20 (see below), the Chairs of the groups were chosen to represent developing countries in both the informal consultations on various issues during the conference and in the Green Room in the final stages with explicit arrangements for them to 'report back' to their 'constituencies'.

Developing countries have also been increasingly active in the regular activities of the WTO, including taking initiatives in the disputes procedures to restrain unilateral actions by developed countries, but also to protect individual country interests against other developing countries (see next section).

Growing differentiation of objectives among developing countries

It became clear during the Uruguay Round that there were different interests among the developing countries, partly because of their different importance to developed countries: only the rich or large (in Asia) were really pressed to liberalise markets to developed country exports, but also because of their own interests: the opening by south East Asia was also welcomed, if not actually sought, by other Asian developing countries, and more importantly 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. The developing countries as a group initially opposed all inclusion of services in GATT (corresponding to the Indian and Brazilian interests of highly protected domestic sectors), but the long duration of the Round gave time for some countries to identify their advantages, of cheap labour and no traditional, inefficient sectors.

Although the growing importance of regional trading groups among developing countries has led to an interest in using these as negotiating blocs, 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, the 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 and acquired prominence at Cancún 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 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 the economy) so that they are not seen as (although they initially saw themselves as) leaders of the old developing country alignment. The emergence of the G20, combined with the strong divide on the Singapore issues between the developed and developing countries, meant that the Cancún Ministerial was perhaps the first meeting since the 1970s where the divisions were almost uniformly between developed and developing countries. The interest group alliances such as the Cairns alliance of the Uruguay Round or the EU-ACP alliance to secure continuance of the waiver at Doha, or other developed-developing alliances, were no longer important.

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, and dependent on bilateral rather than multilateral relationships, and those 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. An alternative interpretation is that the role of the Five Interested Parties was a return to an expanded version of the duopoly of the US and the EU.

Both the new groups, the G90 and G20 are like the sectoral interest groups in the Uruguay Round in that they have specific negotiating objectives (market access in agriculture and some non-agriculture; preservation of preferences, or some equivalent assistance, for example), not a general desire to exclude themselves from negotiations.

Changes in regional and bilateral relationships between developed and developing countries

Both developed and developing countries started (or intensified) regional negotiations during the period following the Uruguay Round, with MERCOSUR becoming more integrated in Latin America and starting to form bonds outside the original four, and the proposal for an FTAA from the US, leading to the possibility of NAFTA, MERCOSUR, the Caribbean group, and the rest forming one region. African groups like COMESA, SADC, East Africa and some of the West African either resumed moves towards trade integration or introduced them. The EU announced in 1997 that it expected to transform its purely preferential arrangements with its associated African, Caribbean and Pacific countries into regional trade agreements, and negotiated agreements with Mexico, Chile, and South Africa; it started negotiations with MERCOSUR, and strengthened its links with the north African countries. These initiatives have not apparently led to a shift of negotiating resources or developmental interests away from the multilateral regime, but they have slowed the shift toward this. Developing countries have thus seen the continuance of alternative paths to the WTO for achieving 'special' relations with developed countries.

6. Changes in GATT/WTO

Regulation of barriers

While many of those who have supported GATT 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, even if some might have been found to be against the letter of the rules on Most Favoured Nation treatment. If the objective was not uniform treatment, but clearly predictable treatment, the only need for 'special' treatment was for those countries or situations where there were exceptional needs for rapid changes in their trade rules. Permanent and predictable 'different' treatment was normal, not special.

Reduction of barriers

The momentum of successive rounds, combined with the general move by developed countries to more liberalised trade, strengthened the liberalisation function of GATT. At first, this was principally in manufactured trade. For most developing countries, this was irrelevant on the export side, because they were not exporting manufactures and/or had better access through preferences. Most of them were not relevant to the negotiations on the import side because they were small markets. The first negotiations in which they were potentially significantly affected were the Uruguay Round negotiations which brought agriculture and

textiles and clothing into the GATT, so that they saw some of their most important trading and producing interests being affected. The focus on agricultural reform in the current Round has intensified this. Whether they hope to gain or fear to lose, they have an interest in seeing special protection for their concerns.

The other consequence of reducing barriers is that the value of their arrangements with markets outside GATT, through preferences and in a few cases regional agreements, is reduced, so that they have an increased interest in special treatment either bilaterally or multilaterally in order to receive some equivalent for the advantages which they are losing.

Regulation of trade

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. There have also been attempts to reduce the ambiguity of articles like Article XXIV which regulates customs unions and free trade areas. 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. 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.

Regulation of trade-related activities

The extension of WTO jurisdiction to areas like intellectual property, and proposals to extend it further in the debate over the Singapore issues, have further reduced the types of policy which are free of control. This increased the types of policy where countries must follow WTO rules or seek explicit exemption from them.

Enforcement of rules

The Uruguay Round strengthened the disputes procedure of the WTO by providing a clear path from complaint to decision, 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.

7. S&DT in GATT and the WTO

Articles I, XVIII and other original GATT provisions

I, 2. The provisions of paragraph 1 of this Article shall not require the elimination of any preferences in respect of import duties or charges which do not exceed the levels provided for in paragraph 4 of this Article and which fall within the following descriptions:...

Immediately following the assertion of Most Favoured Nation treatment, GATT from the beginning recognised the reality that preferences existed. It then listed all those preferences which were accepted as part of the initial conditions to be bound. Like any other provisions, they could be changed by further negotiations, but this section can best be seen as part of the first transparency function of the GATT: recognising, rather than reforming, trade rules.

GATT 1947 also had from the beginning the possibility of temporary derogation from obligations, explicitly in Articles XII for balance of payments reasons and Article XVII.

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.

XVIII, 2. The contracting parties recognize further that it may be necessary for those contracting parties, in order to implement programmes and policies of economic development designed to raise the general standard of living of their people, to take protective or other measures affecting imports, and that such measures are justified in so far as they facilitate the attainment of the objectives of this Agreement. They agree, therefore, that those contracting parties should enjoy additional facilities to enable them (a) 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. Table 1 summarises the interaction between the forces analysed in sections 2 to 6 and the various forms of S&DT mentioned here. At the same time, in 1956, GATT adopted a 'Resolution on Particular Difficulties Connected with Trade in Primary Commodities', and appointed the Haberler Commission to consider what more was needed to change in the GATT rules.

Part IV

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.

XXXVI, 4. *Given the continued dependence of many less-developed contracting parties on the exportation of a limited range of primary products, there is need to provide in the largest possible measure more favourable and acceptable conditions of access to world markets for these products, and wherever appropriate to devise measures designed to stabilize and improve conditions of world markets in these products, including in particular measures designed to attain stable, equitable and remunerative prices, thus permitting an expansion of world trade and demand and a dynamic and steady growth of the real export earnings of these countries so as to provide them with expanding resources for their economic development.*

XXXVI, 5. *The rapid expansion of the economies of the less-developed contracting parties will be facilitated by a diversification of the structure of their economies and the avoidance of an excessive dependence on the export of primary products. There is, therefore, need for increased access in the largest possible measure to markets under favourable conditions for processed and manufactured products currently or potentially of particular export interest to less-developed contracting parties.*

XXXVII, 1. *The developed contracting parties shall to the fullest extent possible... accord high priority to the reduction and elimination of barriers to products currently or potentially of particular export interest to less-developed contracting parties, including customs duties and other restrictions which differentiate unreasonably between such products in their primary and in their processed forms.*

Part IV encouraged developed countries to open their markets, non-reciprocally, to developing countries, as a concession, not as part of normal negotiations.

XXXVI, 8. *The developed contracting parties do not expect reciprocity for commitments made by them in trade negotiations to reduce or remove tariffs and other barriers to the trade of less-developed contracting parties.*

By this time, some developing countries, as noted above, were promoting their own interests in trade, and had encouraged the formation of UNCTAD in 1964. This also explicitly recognised a connection between 'trade and development', and like Part IV treated developing country interests as principally outside those of normal trade relations, not a special subsection of these.

But trade was not at this point to be the only way of promoting development. Part IV saw planning by developing country governments as an essential element in using trade.

XXVIII, 2. *In particular, the CONTRACTING PARTIES shall:...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....*

Enabling Clause

In 1971, GATT authorised preferences (new preferences, not merely those allowed as existing tariffs under Article I) through a waiver, the Decision of 25 June 1971, which established '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, by individual developed countries, not through GATT. The explicit call in Part IV on developed countries not to expect reciprocity from developing countries was largely observed during the Tokyo Round, in the 1970s.

In 1979, following the Tokyo Round, the Enabling Clause was adopted (by decision, not as an amendment to the GATT agreement). This not only allowed preferences for developing countries, but included further flexibility in the application of rules, for example on regional trade agreements (flexibility in the obligations under Article XXIV). It made explicit what had been implicit in the provisions of previous rules, that

contracting parties may accord differential and more favourable treatment to developing countries

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 then happening under GSP which was mentioned in a footnote). It also was 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 of any conflict or 'undue difficulties' for other developing countries' trade was not foreseen. In practice, the special provisions for the Least Developed were used only for marginal improvements in the coverage of a few developed countries' preference schemes for the next 20 years, so this lack of concern for the interests of other developing countries was largely correct.

The signalling out of Article XXIV for special mention is notable. Regions among developing countries had started to be important in the 1960s. They became less important in the 1970s, but there was still a view in the development literature that they were good instruments of development, under the industrialisation and import substitution model, so their inclusion may have reflected that thinking (suggested by the ? in Table 1). There had, however, been no indication that any would be challenged under GATT rules (the few controversies about their effects on developed countries, for example the Andean pact rules on profits and investment, were not in areas covered by GATT rules).

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. It argued that the GSP required measures to be 'non discriminatory'. The Appellate Body agreed that the measures complained of were not acceptable, but 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'). It did not agree that they were not non-discriminatory. It drew a distinction between discrimination in the sense of treat less favourably and discriminate in the sense of differentiate, and judged that the Enabling Clause in its reference to the non-discriminatory nature of GSP was intended to forbid prejudicial differentiation, not any differentiation (George 2004). This did not (Vinod Rege, personal communication), however, correspond to the intentions of the negotiators at the time, so that for that period, the Enabling Clause can be interpreted as accepting only two classes of developing country, Least Developed and other, with different, but not conflicting interests.

Derogations

During the 1970s the same time as GATT was formally accepting and strengthening more favourable treatment for developing countries within the multilateral system, it was accepting, by formal derogation (in the case of the Multi-Fibre Arrangement) and by omission for the plethora of 'voluntary' export agreements and other non-tariff barriers, an increase in barriers to some products from some developing countries. The Tokyo Round attempted to discourage non-tariff barriers, and the Uruguay Round strengthened this, but new tools such as anti-dumping and modification of GSP schemes to exclude specific products with high or rapidly growing export continued the process of excluding particularly successful developing country exports from both special and normal treatment.

That developing countries could have exports that were so competitive that they were seen as a threat to parts of the economies of developed countries seemed inconsistent with all the assumptions (by both developed and developing countries) on which the treatment of developing countries in GATT was based, and was not explicitly reconciled with this. Implicitly, developing countries in this position were treated as developed. The lack of an effective way for developing countries to challenge developed countries either in negotiations or in disputes allowed the barriers to continue.

Uruguay Round attitudes and agreements

The Uruguay Round 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 shift to formulae for tariff reductions, begun in the 1960s, had already reduced the scope for differentiation to reflect possible differences in economic roles for different sectors. The major developing countries which were leading in the negotiations regarded the bringing of agriculture and textiles and clothing into (or at least towards) normal rules as justified because 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.

The arguments for new rules, most notably in intellectual property, but also other trade rules, including tighter restrictions on subsidies, were that these were good for all countries. There might be adjustment costs, but these could be met by spreading compliance over time³. The 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.⁴ Both arguments, therefore, rejected or ignored the Enabling Clause

³ It is not clear if this was meant to reduce the difference between actual and required rules (by specifying a later date) or to reduce the present value of the cost by delaying it.

⁴ Whether or not these estimates of costs and benefits were correct is irrelevant to perceptions at the time.

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.'

The outcome for non-Least Developed countries was a combination of smaller commitments and more time to implement them, but no exemptions from new rules. Least Developed countries thus maintained the developing country position as outside commitments on trade, but even they were required to comply with all new rules. The final agreement repeatedly mentioned technical assistance, but this was explicitly to permit implementation of and compliance with the rules, not to promote more general development.

Legal aspects of S&DT

The new strength of the dispute procedure and therefore of enforcement in the WTO made both informal S&DT which favoured developing countries and the informal derogations by developed countries which damaged them less secure. In the 1990s, developing countries began to challenge unilateral restrictions on trade by developed countries, whether the ostensible reasons were environmental standards (shrimps, petroleum), protection (EU clothing quotas and Turkey), or even benevolence (GSP for drug producers). They also, however, began to see the loss of existing bilateral or informal preferences (Lomé, bananas) because of growing legal enforcement of WTO rules. Even for those aspects of special treatment which have not been challenged, they fear challenge. They have therefore become more interested in defining S&DT precisely. These trends reflect the growing wish by developing countries to depend on enforceable obligations, rather than the good will of developed countries.

Current trends and proposals

Poverty-driven S&DT

The 1990s, as suggested in section 2, saw a shift to treating development as a poverty problem, and from 1993, with the Decision of December 1993 in Favour of LDCs, a shift towards sharp differentiation in favour of Least Developed Countries in preferences. The major developed countries extended the commodities for which LDCs have different treatment within their GSPs, and in 2000 the EU announced that they would have duty and quota free entry (slightly modified, when it was introduced in March 2001, to impose a few delays to 2008). Such measures assumed both that development assistance should be concentrated on the poorest⁵ and that trade opening was an effective form of assistance for them. Proposals to encourage greater opening to the Least Developed in the Doha Round, in both goods and services, follow this argument. Some developed countries take it 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.

⁵The LDC category omits some of the poorest, but is presented as 'the poorest' in trade rhetoric.

Negotiated S&DT

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 services, and in other areas (including 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. A corollary is that they may have negative effects for those who are excluded. 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, notably the divide between extending access and preserving preferences, but if negotiating by developing countries is viewed as no different from other negotiations, this is not surprising or shocking.

A framework for S&DT

Some countries, developed and developing, however, also see a need for a new framework to give legal standing to S&DT across WTO rules. This reflects a view that there can 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 there are at least some interests of developing countries should remain outside the normal flow of trade negotiations. One proposal was that WTO agreements should be evaluated for their contribution to the Millennium Development Goals, adopted in a UN context and an aid, rather than a trade, target. The Doha mandate referred to the possibility of a framework, although not committing to it. But as there is no agreement now on the fact of different interests or on what the interests 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. Some who support the old position may not yet have identified their specific interests.

Enforceable S&DT

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 technical assistance in the Uruguay Round settlement are equally inconsistent with the legal obligations in the rest of the agreement. There are therefore proposals to make both trade preferences and technical assistance bound in the same way as other obligations under the WTO. These proposals suggest developing countries have interests within the institutions; strengthening their ability to use such institutions is seen as an essential part of development.

July 2004 Decision

The agreement on the negotiating process gave only brief attention to measures explicitly identified as S&DT: S&DT 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: differentiated treatment for developing countries was found in the agricultural and, less explicitly, in the non-agricultural sections. These were of the same form

as in the Uruguay Round: smaller and probably slower changes by non-LDC developing countries and no commitments by LDCs. As in that, therefore, there was no view that developing countries needed policies that were different in kind. The proposals were, however, significant moves in the direction of developing country positions, reflecting negotiating success. The removal of three of the Singapore issues was a significant achievement of developing country interests. The tying of implementation of any agreement on trade facilitation to technical assistance was a new acceptance of a developing country demand. The only new provision was formal acceptance of the problem of preference erosions, although without an effective remedy. This was an issue placed on the table by the preference dependent, i.e. the primary commodity dependent, weaker, developing countries, so that there was an active negotiating success by the traditional, not only the more successful, developing countries. There was also, therefore, by implication an acceptance, even by the primary producing developing countries, that participation in negotiations was an acceptable and now an effective way of pursuing their interests. Unlike many of the more advanced developing countries, however, most of the poorer would also see other routes, including direct relations with particular developed countries as essential supplementary methods. There was little evidence of acceptance, on either developed or developing country sides, that development was outside normal trade or negotiations.

Fair trade

The movement to encourage better conditions for labour and better returns from trade in developing countries through importers' voluntary acceptance of higher prices and of an obligation to examine how exports are produced has evolved outside official trade regulations. (A few preference regimes have special rules for 'handicrafts', but these are not explicitly tied to 'fair trade'.) Any discrimination in favour of such trade has been informal, and has not attracted formal support or formal opposition. It does provide some special treatment for developing countries, and reflects the micro-production strand in development thinking. It has never become a major issue with developing country trade policy makers.

Innovation

While a major strand in conceptual thinking about development, this has had little effect on trade policy. The only exception could be argued to be the liberalisation of e-commerce, but this was not directed differentially at developing countries.

8. Timing: Adapting legal rules to current needs

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 S&DT is available now. But (Table 1) the understanding of development and of the ways of promoting it which they reflected are not those that most policy makers would accept in their current proposals. Other views have emerged and some have disappeared during the last 50 years. And the characteristics of both developing countries and the international system have changed. That the 1950s and 1970s provisions have been adapted to very different philosophies and circumstances has been possible partly because, until the last decade, the system was flexible. The adaptability may also have been achieved because, partly by explicit change, partly by self-exclusion, the use of S&DT has been gradually confined to 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 some part, outside 'normal' regimes. In

analysing the merits of current proposals (which is not the subject of this paper), it will be necessary to consider whether the inconsistencies between the bases of the legal system and current perceptions and the reliance on *de facto* exclusions can survive when differences in interests and the ability and will to use legal instruments are increasing.

Two elements of the Enabling Clause that may have seemed almost irrelevant at the time, the differentiation of Least Developed countries and the provisions for developing country regional arrangements, combined with one which was not recognised at the time, the lack of a clear definition of 'non-discriminatory' in the footnote referring to the 1971 decision on the GSP, are now particular challenges. As long as the provisions for Least Developed Countries were minor modifications of GSP systems, and as long as discrimination in other parts of GSP were used with moderation, the potential for conflicting interests between favoured LDCs, or others, and less favourably treated developing countries was only a hypothetical risk. As long as developing country regions had limited coverage, of small countries, exempting them from controls was little more than recognition that no one had an interest in challenging them. Now, without any clear agreement on a development definition or strategy, these conflicts can only be resolved through negotiation and legal challenges, so that some of the most essential elements of S&DT are inevitably coming under normal negotiating procedures.

9. New S&DT for new conditions or old S&DT for traditional problems?

In the 1950s, most economic decisions were not subject to GATT rules, and the constraints that did exist were limited. Trade access was not an issue for new exports and not an issue for GATT for most traditional ones. The increase in the scope and reduction in the flexibility of GATT/WTO rules has 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, and 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, even other developing countries, has grown. The 'space' for S&DT which is both significant in development terms for the country benefiting from it 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.

There is still no agreement on what 'development' is or on how to achieve it. The countries which have developed, in the past or in the last 50 years, have not followed formulae. The development of the countries which were most successful in exporting cannot be explained as a response to changes in external demand, or to preferences, or as a result of opening their economies to external demand or other macroeconomic policies. The process was more active: finding new potential for exports, and changing structure to meet this, and repeating this process continuously. They moved to more rapidly growing or opening markets, and then to newer markets. There is a risk that S&DT for the 'still economically small' or 'still commodity dependent' becomes a policy to compensate or to pacify losers, rather than a policy to promote development. But given the lack of understanding of how to create the first stages of development, perhaps this is better than nothing.

The belief that developing countries are different has become less generally accepted, and even developing countries want to act as ordinary countries, for example in negotiating for their own interests, as well as preserving a special position. 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, first blocking, now increasingly initiative power. This has allowed them to secure some of the 'specially favourable' trade advantages which they have wanted, although arguably these could be considered 'normal' negotiating gains, rather than 'special'. In contrast, they can only secure permanent exemptions through the good will of all members, i.e. asking for special treatment to be given to them, not by securing it by their own efforts.

There remains, however, an implicit recognition that 'small' countries are different. As such, this is not new, although often neglected.⁶ But what has changed is what is regarded as small. Robinson (1963) took Belgium and Switzerland as small; Ranis (2004) calls Taiwan small; current positions in the WTO (and in the UN debates on the subject) would put the limit at 1.5 to 2 million population. This reduction in what is defined as small is consistent with greater development and greater interdependence, so that the size at which a country is no longer highly vulnerable to others or at which it becomes potentially able to affect them is smaller. But except for some *de minimis* provisions, there is no S&DT for small countries, so their legal obligations and the legal constraints on them are the same as on others. Unlike 'development', 'largeness' cannot be easily defined as an objective, the promotion of which can justify special treatment and special privileges; acceptance of size as a constraint would be accepting a potentially permanent difference. And it is not always evident that measures within the competence of a trade regime would be those best able to increase economic size.⁷

Similarly, the countries which are still dependent on primary products (many of which are also small) are also 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 S&DT with the theoretical assumptions or the practical forms which we have seen in this paper can help countries which have not responded to other changes in the trading environment.

There is still general acceptance that exports can offer important benefits to developing countries, even if the range of effects expected may now be more moderate than in the 1980s. And there is some disillusion with other ways of promoting development, whether through internal planning or external assistance, and a distrust of using one instrument, aid, for both poverty assistance and long term development. This means that there is still a potential argument for S&DT for current problems, although there should be caution about putting weight on trade as the solution, simply because all the others look weak.⁸

Every country must be assumed to have done the basic calculation that the advantages of membership in the WTO outweigh the current costs, that some elements of regulation on others outweigh the benefits total policy freedom. They must still deal with the problem that any 'specially good' treatment for one country, must be 'specially bad' for another. If there could be agreement on both a definition of and priority for development, some cost-benefit analysis of any measure would be possible. In the absence of this, the current move to substitute negotiation for principles may be inevitable.⁹

⁶Robinson 1963 noted that while there was much informal discussion based on views about the disadvantages of small size, there was surprisingly little formal economic literature on the subject.

⁷ If economies have 'inherent handicaps which prevent them from deriving meaningful benefits from their participation in the multilateral trading system' (SADC 1999), it is not clear how S&DT can overcome these.

⁸This would be as dangerous to good trade policy as treating the WTO as the solution for all regulatory issues because it is the strongest international organisation.

⁹A stronger legal formulation of the Enabling Clause's references to causing 'difficulties' to others might specify differing '*de minimis*' levels of damage for countries where the offender was at a lower level than the offended (a developing country damaging a developed or an LDC a developing), at an equal level (developed to developed, the original situation envisaged in the Enabling Clause,

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.

developing to developing or LDC to LDC), or at a higher level (developed to developing, developing to LDC). Differing requirements for consultation would be a possible, but less transparent alternative.

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				Fair trade	
							Poverty	Negotiated	Framework	Enforceable		July 2004
What development is	X	X	X									
Industrialisation												
Power, or reversal of dependency						X		X	X	X		
Growth, stability				X	X							
Institutions						X		X		X		
Poverty Reduction											X	
Technological. Innovation												
micro-development												X
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	X
Intervening for technology												
Trade, residual tool						X				X	X	
Perceptions of developing countries												
Primary producers	X	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									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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