

**“WHY DEVELOPING COUNTRIES OF THE WTO NEED SPECIAL AND DIFFERENTIAL TREATMENTS?”**

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Stephan Rabimov, Global Political Risk Consulting, LLC

The Doha Ministerial Declaration (DMD), namely Doha Development Round, only contains two paragraphs addressing the issue of least-developed countries (LDC) out of 52 comprising the DMD. Even so, these two provisions have produced more controversy than any other issue at the DMD. What makes LDC different from any other country? How should we define a “developing country” or “least-developed country”? Should “special and differential treatment” (SDT) be granted to these countries and what kind of advantages or difficulties would it bring to the world trade and international community?

These questions are complex and involve a number of criteria which we first must define before engaging in the discussion in support of SDT. According to the International Policy Council (IPC), these are the classification for the various stages of developing countries:<sup>1</sup>

Least Developed Countries (LDCs):

Countries with per capita incomes below \$900, weak human resources and vulnerable economies;

Lower Middle Income Developing Countries (LMIDC):

Countries with gross national income per capita between \$901 and \$3,035; and

Upper Middle Income Developing Countries (UMIDC):

Countries with per capita income between \$3,035 and \$9,385

For the purposes of our discussion we will utilize the IPC’s criteria for defining a “developing country” or LDC. There are 39 least developed countries that fall under this classification system, 49 developing countries rank as lower middle income, and 34 WTO members categorize themselves as upper middle income developing country; in total that’s 122 countries that seek special and differential treatment from the WTO.

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<sup>1</sup> International Policy Council, Food and Agricultural Trade, “A New Approach to Special and Differential Treatment”, page 1-3

When GATT was established in 1947, no formal recognition existed between the contracting parties (CP), by definition all rights and obligations applied uniformly to all CP. Nevertheless, 11 out of 23 of the original GATT members would be classified under IPC criteria as “developing country.” Struggling, they participated on the equal game field, jeopardizing their economies and further development for a number of reasons:

- Developing countries were intrinsically disadvantaged in their participation in international trade
- Trade policies that maximizes sustainable development in one countries may not necessarily do so in another country<sup>2</sup>
- The quantitative analysis of individual country performance makes it pretty clear that the GATT dispute settlement system is, at the margin, more responsive to the interests of the strong than to the interests of the weak.<sup>3</sup>

These underlying imperfections led to the SDT provisions in the newly emerged

WTO during the Uruguay round. Although with correct intentions in mind, these provisions led many participating countries to question the “principles and objectives of the SDT, utilization, graduation, and universal vs. differentiated treatment approaches.”<sup>4</sup>

Post-Uruguay round the SDT provisions in the WTO comprise a set of conditions that all countries universally must maintain toward developing countries: to increase trade opportunities, to safeguard developing countries’ interests, to offer flexibility of commitments under the WTO rules, allow transitional time periods, provide technical assistance to the LDC, and finally allow provisions in favor of LDC.<sup>5</sup>

“One rationale for SDT is essentially that very small and/or low income economies lack the institutional development or minimum scale to manage

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<sup>2</sup> Association of Caribbean States, “The Greater Caribbean in Trade Negotiations: Special and Differential Treatments”, Port of Spain, July 2003, page 3-5

<sup>3</sup> Hudec, Robert E. Enforcing International Trade Law: The Evolution of the Modern GATT Legal System, Butterworth Legal Publishers, page 353.

<sup>4</sup> Association of Caribbean States, “The Greater Caribbean in Trade Negotiations: Special and Differential Treatments”, Port of Spain, July 2003, page 11

<sup>5</sup> “Understanding the WTO: Uruguay Round”, [http://www.wto.org/english/thewto\\_e/whatis\\_e/tif\\_e/fact5\\_e.htm](http://www.wto.org/english/thewto_e/whatis_e/tif_e/fact5_e.htm)

the full panoply of WTO rules or, at least, might find the returns to creating the institutions to apply them effectively far outweighed by the costs.”<sup>6</sup>

LDC may also lack the resources to overcome various obstacles to trade or to use policies that would be the most efficient in addressing market failures, giving stronger support to a case for offering such countries preferential access to markets as well as financial (IMF, World Bank), humanitarian, and technical assistance (NGOs).

Experience has shown that various bilateral agreements and trade facilitation strategies with LDC do in fact assist in advancing such countries economically toward the same level as developed countries. Examples include European Union’s “Everything but Arms” agreement, and US African Growth and Opportunity Act. However, critics argue that such agreements assist only a number of more advanced developing countries, and that SDT should focus on the deeper issues like poverty reduction, since all of the LDC have majority of their populations under the poverty line. A number of developing countries have said that current SDT provisions have major shortcomings because they are mainly in form of “best endeavor clauses,” de-facto non-binding, and employ a plethora of discretionary language:

“...Contracting parties may accord differential and more favorable treatment to developing countries.” [Enabling Clause para1]

“Members agree to facilitate the provisions of technical assistance to other Members, especially developing countries members.” [Article 9, SPS]

Understanding that the SDT supports development is the most challenging problem addressing DMD round, especially given that there is a world of difference between the WTO members. In fact, developing countries have complained that, in

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<sup>6</sup> Hoekman, C. Michalopoulos, L.A. Winters, M. Pangestu, K. Saggi and J. Tybout. 2003. ‘Special and Differential Treatment for Developing Countries: Objectives, Instruments and Options for the WTO’, mimeo.

general, developed countries have failed to live up to their commitments by failing to provide necessary technology transfers, failing to provide necessary incentives for technology transfers to the LDC, and that transition periods given to LDC were inadequate to implement necessary changes to utilize the technology transfers.

A good example when WTO rules without the SDT provisions showed negative impact is Mexico. During the period of 1980-1997, Mexico's share in world manufacturing exports increased tenfold, a more detailed analysis showed that Mexico's share in the world income has decreased by 13 percent, and its share in world manufacturing value decreased by 0.7%.<sup>7</sup> "Increased exports with no multiplying effect in the domestic market are worthless in terms of sustainable human development."<sup>8</sup>

Earlier in the paper we established that there is a clear need for developing countries to have SDT, although these treatments are discriminatory by their nature, a proper definition should be applied to categorize which countries fall under LDC status. In fact, Nigeria has been excluded for only one reason; by definition of LDC there is a population size limitation of 75 million. These and other discriminatory practices should be addressed within the DMD to incorporate SDT that are transparent, clearly defined, with minimum discriminatory power.

The issue of graduation should also be looked at, developing or LDC countries should not indefinitely benefit from SDT provisions, proponents of graduation planning argue that "case by case" approach would help countries to withdraw from SDT and become full competitive members of WTO. However, the administration of this process

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<sup>7</sup> United Nations Conference on Trade and Development (UNCTAD), Trade and Development Report, 2002, page 80

<sup>8</sup> Alejandro de la Pena, "Making the Doha Round Responsive to the Developing Countries" Cancun Trade and Development Symposium, September 11-13, 2003. page 10.

alone would be inconceivable. Another approach to speed-up the development, and bring LDC countries to the same level as developed members, is to use step-by-step approach: application of WTO rules in a clearly-defined time frame. Just like the IMF uses fiscal and monetary approaches to gradually improve world economies, WTO could utilize gradual yet time-defined strategies for the LDC.

There are two widely different schools of thought with respect to the effects of trade and liberalization concerning LDC. Some argue that liberalization alone would lead to the development of the LDC, and if problems arise, it is only because of the faults in implementation of market liberalization reforms. Others sustain that “in order to fully benefit from liberalization, developing countries should actively pursue trade and investment policies only in accordance with their needs and possibilities.”<sup>9</sup>

The appropriate balance between the developed and developing world market needs will benefit everyone; DMD has a complex agenda, but not the impossible one. The quid pro quo that developed countries currently provide under the SDT should be reevaluated to meet the needs of the developing countries and to start integrating the more advanced developed developing countries into the full spectrum of WTO law. DMD should address the highest priority areas like poverty, access to health drugs, and SDT provisions that address the ultimate drivers of the trade barriers in these countries.

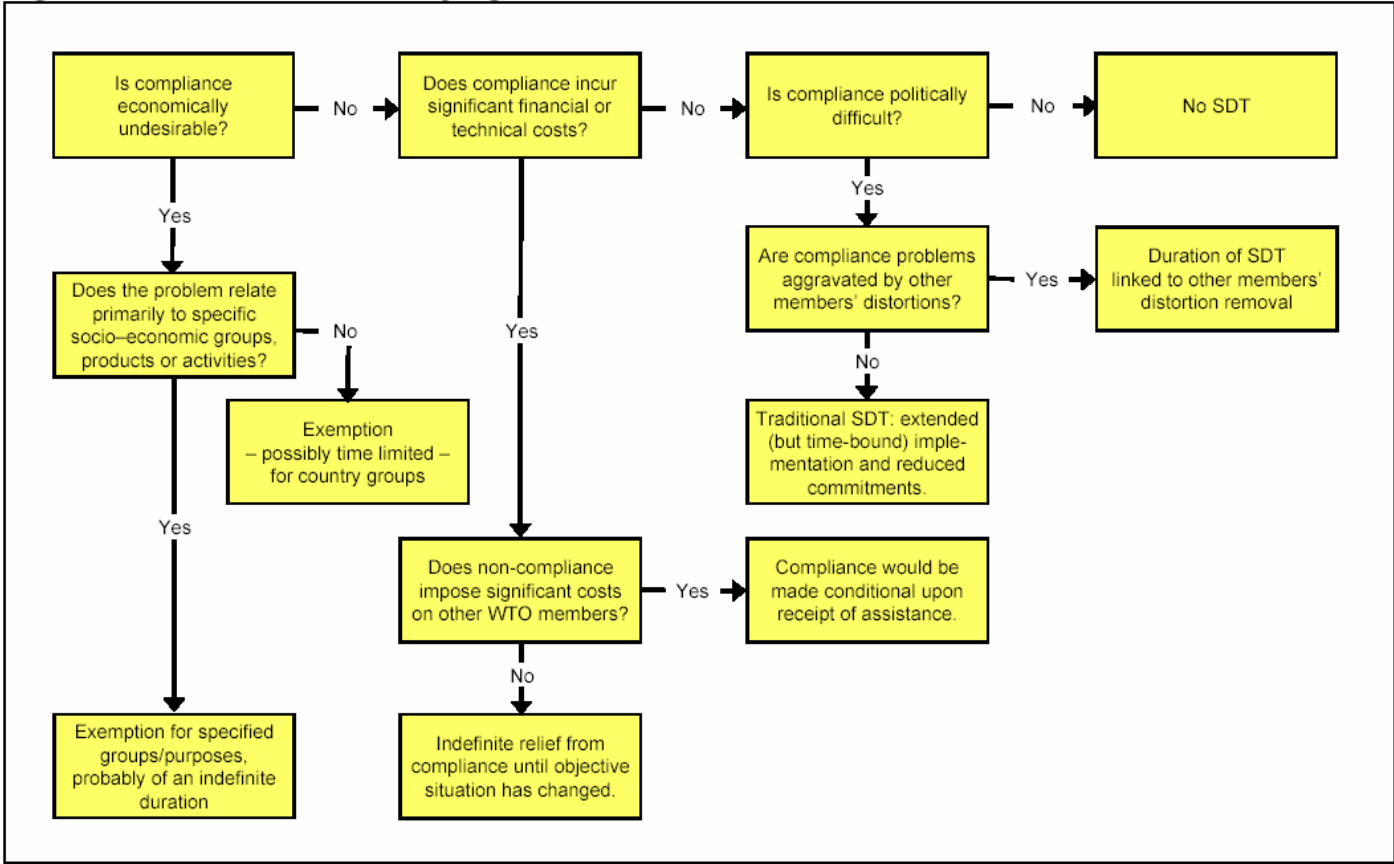
As stalled as the process might look now, we have begun to see some fruit of the SDT provisions and policies within the WTO that focus on the LDC. Nine of the original 39 LDCs are currently in the accession process, and no LDC has joined the WTO since 1995.<sup>10</sup>

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<sup>9</sup> *ibid* pages 11-15

<sup>10</sup> Author's note: the 30 LDCs that are WTO Members, were parties to the GATT before the creation of the WTO

Figure 1. Check-list for classifying SDT issues and solutions



Source: Christopher Stevens, Institute for Development Studies

Figure 2

**Proposed special and differential treatment for agriculture by country designation and pillar**

	<b>Least Developed Countries (LDCs)</b> <i>GDP per capita &lt;\$900; weak human resources and vulnerable economies (39 countries)</i>	<b>Lower Middle Income Developing Countries (LMIDCs)</b> <i>GNI per capita \$901-\$3,035 (49 countries)</i>	<b>Upper Middle Income Developing Countries (UMIDCs)</b> <i>GNI per capita \$3,036-\$9,385 (34 countries)</i>
<b>Market Access</b>	<ul style="list-style-type: none"> <li>Exempt from tariff cuts and minimum market access commitments</li> <li>Create a simplified special safeguard (SSG)</li> <li>Designate limited number of products as Special Products</li> <li>OECD countries should grant duty- and quota-free access</li> </ul>	<ul style="list-style-type: none"> <li>Shallower tariff reduction commitments implemented over a longer period than developed countries and UMIDCs</li> <li>Allow low, uniform tariffs for government revenue purposes</li> <li>Expand minimum market access commitments, but by less than developed countries and UMIDCs, and over a longer period</li> <li>Create a simplified special safeguard (SSG)</li> <li>Designate limited products as Special Products</li> <li>OECD countries should grant duty-free access within TRQs</li> </ul>	<ul style="list-style-type: none"> <li>Implement the same tariff commitments as developed countries, but over longer period</li> <li>Implement the same minimum market access commitments as developed countries, but over a longer period</li> <li>Create simplified special safeguard (SSG)</li> <li>OECD countries should grant duty-free access within TRQs</li> </ul>
<b>Export Competition</b>	<ul style="list-style-type: none"> <li>Reduce or eliminate export subsidies over a longer time than LMIDCs</li> <li>Allow transportation subsidies covered by Article 9.4</li> </ul>	<ul style="list-style-type: none"> <li>Reduce or eliminate export subsidies over a longer time than UMIDCs</li> <li>Phase out transportation subsidies provided under Article 9.4 over a longer period than UMIDCs</li> </ul>	<ul style="list-style-type: none"> <li>Reduce or eliminate export subsidies over a longer time than developed countries</li> <li>Phase out transportation subsidies allowed under Article 9.4 over the same period as developed country export subsidy phase-out</li> </ul>
<b>Domestic Support</b>	<ul style="list-style-type: none"> <li>Continued access to 10% <i>de minimis</i> and 10% product specific support</li> <li>Clarify, expand, and make permanent all Article 6.2 measures</li> <li>Make Article 6.2 subsidies non-actionable if directed at low-income, resource poor farmers</li> <li>Provide access to all Green Box measures</li> <li>Use World Bank Poverty Reduction Strategy Paper process to establish domestic priorities</li> </ul>	<ul style="list-style-type: none"> <li>Shallower amber box reduction commitments reduced over a longer period than UMIDCs</li> <li>Continued access to 10% <i>de minimis</i> and 10% product specific support</li> <li>Clarify, expand, and make permanent all Article 6.2 measures</li> <li>Make Article 6.2 subsidies non-actionable if directed at low-income, resource poor farmers</li> <li>Provide access to all Green Box measures</li> <li>Use World Bank Poverty Reduction Strategy Paper process to establish domestic priorities</li> </ul>	<ul style="list-style-type: none"> <li>Shallower amber box reduction commitments reduced over a longer period than developed countries</li> <li>Shallower <i>de Minimis</i> reduction commitments over a longer period than developed countries</li> <li>Clarify, expand, and make permanent all Article 6.2 measures</li> <li>Make Article 6.2 subsidies non-actionable if directed at low-income, resource poor farmers</li> <li>Provide access to all Green Box measures</li> <li>Use World Bank Poverty Reduction Strategy Paper process to establish domestic priorities</li> </ul>

Source: International Policy Council, Food and Agricultural Trade