

Doing “Development” at the World Trade Organization:

The Doha Round and Special and Differential Treatment

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1 Introduction

The trade talks launched at the WTO's fourth ministerial meeting at Doha in November 2001 are supposed to have at their heart the needs and interests of developing countries, which are far more active in the World Trade Organization (WTO) than they were in the General Agreement on Tariffs and Trade (GATT). Yet, while some concessions are going to have to be made to developing country demands in order to reach a conclusion to the Doha Round, they are going to be hard won. So far the industrialised countries have not been prepared to set aside what they see as their commercial or political interests to make the Doha promises a reality.

As part of the focus on development, special and differential treatment (SDT) was one of three key issues put on the table for early resolution by the Doha ministerial conference. In previous trade rounds, the countries most effective at getting this kind of special treatment in the WTO have been the most powerful. Before the Uruguay Round, the United States of America (USA) and, later, the European Union (EU) managed to exclude their agricultural support systems from serious GATT discipline, and during it they negotiated substantial exemptions. This amounted to special treatment for politically powerful large farmers and agribusiness. They have managed to protect vulnerable industries such as textiles manufacturers during extended adjustment periods, and have been prolific users of the instruments that allow for short-term protection, such as the anti-dumping agreement. This special treatment has largely been at the expense of developing country producers, who have suffered from low prices, barriers to exports and dumping in their domestic markets as a result.

Developing countries argue that what they want is a “rebalancing” of agreements that are weighted against them, and that their special economic circumstances mean that instead WTO agreements should be biased in their favour. Their initial position, not surprisingly, is to ask for what all countries want – maximum flexibility for their own actions, with other countries bound to provide an open and stable trading environment, and assistance with the more difficult or costly parts of the trade policy agenda. The question for the negotiations is how far developing countries

should be treated more favourably, and what price they will pay for these privileges.

This article discusses the manoeuvrings that have gone on in the WTO since the launch of the Doha Round as industrialised countries have tried to manipulate the SDT agenda to ensure that developing countries pay the highest possible price for whatever is finally agreed. Developing countries are faced with a situation where, if they want early decisions on changes to SDT, they will have to agree provisions that are either very weak or apply to only a small number of the poorest countries. If they hold out for what they consider to be more meaningful provisions, this will involve protracted negotiations and run the risk that the price to be paid in concessions in other areas will be so high that the potential benefits of reformed SDT would be negated.

Though slow, and more concerned with issues of procedure than substance, the negotiations on SDT since Doha have revealed some of the issues and principles that may inform the SDT debate in the future, as it moves towards a discussion of the content of an agreement, and these are assessed in the second part of the article.

2 Background: special and differential treatment before Doha

The idea that developing countries should be treated differently is not in dispute. Since the 1979 “enabling clause” there have always been some elements of GATT and, later, WTO agreements that apply only to developing countries. SDT is the collective term used for the provisions scattered about the Uruguay Round agreements, which make special dispensation for developing countries. In general, industrialised countries have very few, if any, binding obligations towards developing countries, but developing countries have a number of exemptions from agreements – either longer periods to implement or less onerous commitments.¹

2.1 Non-mandatory special and differential treatment

- Various phrases are to be found in a range of WTO agreements calling on industrialised countries to pay special attention to the needs

of developing countries, and asserting that the purpose of trade is to contribute to sustainable development.

- There are also appeals to industrialised countries to provide technical assistance to developing countries, though the amount or type is not specified.
- The 1979 “enabling clause” allows WTO members to grant more favourable market access to developing (and to least developed) countries than they do to developed countries.

2.2 Mandatory special and differential treatment

- Developing and least developed countries are allowed longer periods than developed countries to implement various WTO agreements, either automatically or on request.
- Several agreements allow developing and least developed countries lower commitments than developed countries to reduce tariffs, subsidies and other trade distortions.

Utilisation of SDT by developing and developed countries has been patchy.

- *Developed countries.* A number of developed countries have preferential market access arrangements for developing countries. However, these often exclude particularly politically sensitive products that may be those where developing countries are most able to compete. Despite the intention to pay special attention to the needs of developing countries, industrialised countries have not done as much as they could to improve the trading environment for developing country producers. They have been accused of back loading tariff reductions on textiles and clothing, continued tariff escalation and unfair use of anti-dumping measures. Many developing countries also argue that much technical assistance is inadequate for the demands made of them, and delivered in ways that reduce its effectiveness.
- *Developing countries.* Most have taken advantage of the automatic delays in implementation. A

number of countries have sought to go further by using WTO provisions that allow them to request further delays in implementation. But the response of the developed countries has underlined the limitations of such contingent flexibility. They have frequently insisted on protracted negotiations. Such negotiations for delays in implementing the agreements on intellectual property and trade-related investment measures became highly politicised, with industrialised countries seeking to extract maximum political capital out of any concessions granted (for more details, see *Bridges Weekly Trade News Digest*, various issues October 2000–February 2001). In one case, the USA increased the pressure by commencing dispute settlement procedures against the Philippines while negotiations continued. The difficulty of agreeing delays in implementation has made developing countries extremely wary of case-by-case approaches to SDT.

Existing SDT is made up of what developing countries were able to extract from developed countries as concessions during the last round of negotiations. This has not led to a coherent set of trade policies to support developmental objectives, but rather to an *ad hoc* list of provisions. In particular, much of what developing countries were promised has turned out to be virtually worthless because industrialised countries were not bound by WTO rules to provide it. The objective of most SDT provisions is to give developing countries time to develop the administrative capacity to implement agreements, rather than to ensure they can implement the trade policy that is appropriate to their developmental objectives.

Developing countries have been arguing for some time that SDT provisions need to be reformed. Before the Doha Ministerial, a number of developing countries proposed the adoption of a “Framework Agreement” on SDT, which would set out a number of principles to guide the application of SDT across the range of WTO agreements (WTO 2001a). These aimed to give as much policy flexibility as possible to developing countries within all WTO agreements. The proposal was that:

- all future WTO agreements should be evaluated in terms of how they contribute to the

achievement of the millennium development goals;

- the implementation costs of any future agreement should be assessed and appropriate financial and technical assistance provided;
- any extended transition periods granted to developing countries should be linked to objective economic or social development criteria;
- developing countries should not be prevented from implementing any policy unless it is shown to have an adverse impact on trade;
- developing countries should not necessarily be bound by the single undertaking.

While this was not agreed at Doha, the ministerial declaration from that meeting did make specific reference to the idea of a framework agreement in the mandate it established for SDT reform in the WTO (WTO 2001b).

3 What’s happened to special and differential treatment in the “development round”?

The Doha Ministerial agreed that there should be early decisions – by the end of 2002 – on SDT, intellectual property rights in the area of public health, and a range of questions relating to implementation of the Uruguay Round agreements. Having these three issues in there was part of what WTO members hoped would make the Doha negotiations a “development round”. Early decisions would resolve them before the negotiations on the “big” issues of agriculture and services really got going. The idea was that this would provide a demonstration of commitment by the industrialised countries toward resolving the problems of developing country members of the WTO, and that the issues themselves would be addressed individually and not be subject to complex trade-offs.

It was agreed at Doha to review all SDT provisions, with a view to strengthening them and making them more ‘precise, effective and operational’ (WTO 2001b). The WTO’s Committee on Trade

and Development (CTD) was the body charged with carrying out this mandate in special dedicated sessions. The task was broken down into six components:

1. Identification of mandatory and non-mandatory SDT provisions in existing agreements.
2. Identification of the non-mandatory provisions that members consider should be made mandatory.
3. Consideration of the legal and practical implications of converting non-mandatory SDT provisions into mandatory provisions.
4. Examination of ways to make existing SDT provisions more effective.
5. Consideration of ways to assist developing countries to make better use of SDT provisions.
6. Consideration of ways SDT provisions may be incorporated into the architecture of WTO rules.

CTD members agreed to focus first on existing provisions. A deadline of 31 July 2002 was set for making specific recommendations for changes to make non-mandatory SDT provisions mandatory.

The discussion started inauspiciously, with rows about who should chair the special CTD sessions. The Pakistani Ambassador was rejected by industrialised countries as being too partisan, and in the end the Ambassador of Jamaica, Ransford Smith, was appointed chair of the CTD sessions working on SDT.

In the absence of agreement on any general principles to guide the process, the CTD was forced to go through the different SDT provisions one by one. More than 90 separate proposals for changes to existing provisions were tabled between February and July 2002.² It quickly became clear that agreeing which of these would be recommended to the WTO's General Council would be a huge task. Countries had very different understandings of the nature of the exercise in which the CTD was involved. These, in turn,

illustrated some of the differences of interest between industrialised and developing countries in the WTO generally.

Countries disagreed over whether the CTD was involved in a negotiation, and on the scope of the discussions. Developing countries tended to argue that the mandate on SDT was about making good the results of previous negotiations, rather than beginning a new set of talks on SDT. They argued that this did not involve renegotiating existing agreements, as 'special and differential treatment provisions were already negotiated in the adoption of existing agreements' (WTO 2002c). As they saw it, they were engaged in a process of operationalising what was already agreed, and any changes to existing agreements that might be required to achieve this should be seen in that light. However, industrialised countries preferred to define the exercise as a negotiating one, where new agreements were being made, and to argue that any changes to existing agreements would effectively involve new negotiations. For this reason, a number of developed countries (mainly the European Commission (EC)³ and USA) challenged the basis of the discussions in the CTD by arguing that it was not a negotiating body and therefore could not agree any changes to existing WTO rules.⁴ They preferred that anything presented to the CTD which involved agreements on which they were already negotiating in other established bodies should be referred to that body for discussion. Developing countries argued that this was unnecessary because agreements on SDT made in the CTD would not represent the outcome of new negotiations.

There was also disagreement on the extent to which the parameters of the review should be set at the outset. A number of developed countries (including Switzerland, Japan, Norway and USA) argued that the 'objectives and principles' of SDT had to be discussed first, before decisions could be reached on agreement-specific proposals. Although they had initially supported the idea of agreeing some criteria for deciding which SDT provisions should be made mandatory, developing countries feared that such a discussion would lead to a narrowing of the focus of the exercise, and therefore limit the scope of potential gains to be made. They have therefore opposed this move, and

preferred to discuss each specific proposal as it was presented (*Bridges Weekly Trade News Digest*, 17 July 2002).

This is not an innocent difference of interpretation of the Doha mandate. Developing and industrialised countries have very different interests in the SDT process, which must be seen in the context of the whole Doha agenda. For developing countries, gains were most likely if early decisions could be made on SDT, before they were expected to make concessions on other issues in return. They therefore wanted to push ahead on issues of substance. For industrialised countries, much of what was proposed on SDT was not of great commercial significance, but it was seen politically as another bargaining chip to be used to get developing countries to agree other parts of the Doha agenda. They hoped to delay agreement on the issues of most significance to developing countries, but to offer concessions on minor parts of the agenda to keep developing countries negotiating.

This difference of strategy became particularly clear after the 31 July 2002 deadline was missed, and the CDT attempted to agree a second deadline for discussions on SDT. A number of industrialised countries wanted the deadline extended to the end of March 2003, in order that decisions on SDT be taken at the same time as crucial deadlines for the negotiations on agriculture and on services. Observers argued that this was a device to get developing countries to give more ground on agriculture and services as the price for getting what they wanted on SDT. In the event, a December 2002 deadline was agreed, but almost nothing was agreed by that date. *De facto* most of the discussions on SDT will now take place at the same time as other key negotiations in the WTO.

The lack of movement caused by the failure to reach any early agreement on issues of SDT substance is calling into question the sincerity of the industrialised countries' intentions at Doha. As one African delegate said, 'this absence of progress on the specific mandate given by ministers in Doha is not sending the right signals for making the Doha agenda truly a development one' (*Bridges Weekly Trade News Digest*, 17 July 2002).

4 Special and differential treatment to Cancún

By December 2002, there was agreement on only five of the 90-plus proposals that had been tabled. One was to agree in principle the idea of a monitoring mechanism for SDT provisions. The fate of this proposal (WTO 2002c), originally made by the "Africa group", illustrates some of the complexities of the discussions on SDT. In the context of the many specific proposals for reform, it looked like a means of strengthening SDT in the future. However, it has been seized upon by industrialised country WTO members as an example of something they can agree which will give the appearance that progress and concessions are being made, but at almost no cost to themselves. Accordingly, developed countries are now among the most enthusiastic proponents of the "monitoring mechanism", while some of the original proposers of the idea are backtracking, arguing that the idea is meaningless without some resolution to the debate on specific proposals. 'We may have a monitoring mechanism, but it will have nothing to monitor', argues one developing country delegate.

Of the other four proposals agreed by December 2002, three were for measures in favour of least developed countries only. One requested simply that the WTO Secretariat call a meeting for least developed countries to assist them to identify their priorities in the negotiations on services. Another requested industrialised countries to establish contact points for service suppliers from least developed countries. The third encouraged countries to give market access to all exports from least developed countries. The final one called for requests for technical assistance to implement the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPs) to be dealt with favourably, but was non-mandatory. Unless there is a substantial change, if developing countries are to get anything on SDT before the next WTO ministerial meeting in Cancún in September 2003 it will be worth very little and offered to only the poorest countries.

It is now inevitable that negotiations on SDT will become a part of the bargaining that will take place over the content of agreements on agriculture and services, and over the decision that will be taken at

Cancún on whether to launch negotiations on investment, competition and government procurement. Hence, the original intention of ensuring an “early harvest” of decisions on key development concerns has been lost. While it may still be possible for developing countries to make some gains on SDT, this is likely to be at the cost of making concessions on other things. Given the complex trade-offs involved in the whole trade round, there is a danger developing countries will end up paying a high price for what they do manage to get on SDT. Any benefits they may obtain risk being undermined by the consequences of other agreements. The best outcome would be agreement on a large proportion of the most economically significant proposals made to the CTD, with few concessions on other issues. The worst is no agreement on SDT – and significant concessions on other issues. The most likely may well be only very few decisions on SDT at Cancún.

Whatever the outcome of Cancún, the first year of the Doha “development agenda” has illustrated the importance of an overarching agreement on SDT in the WTO setting out the principles that will apply to all of the specific agreements. Developing countries cannot be expected to pay over and over again for SDT. They must be sure that they will always be in a position to interpret or implement future agreements in ways that meet their development needs rather than undermining them. They need some protections against “bad” agreements. There is no guarantee, given their weakness in WTO negotiations, that all future agreements will be development friendly. It is necessary only to recall the experience with the TRIPs agreement. At the time it was heralded as being good for development. But it is now accepted by many previously enthusiastic observers as being an agreement, which is, at the very least, not the best that could have been achieved for developing countries. This precedent should make all trade negotiators humble in asserting that no protections are needed against the possibility of bad agreements in the future. As the scope of the WTO continues to widen, an agreement on SDT that makes clear the special status of developing countries with regard to all WTO agreements becomes ever more necessary.

5 The principles of special and differential treatment

The debate in the WTO so far has been more about determining the eventual price to be paid for SDT than about the content of SDT itself. However, in the course of these discussions a number of principles and issues have emerged that may guide an eventual agreement. Developing countries are arguing for SDT to take particular forms because it offers the potential of real commercial benefits to them. Industrialised countries are wary of changes that may threaten their economic interests, now or in the future. These economic interests will, at some point, be key in determining what kind of SDT emerges from the negotiations.

Although the proposals made in the CTD so far are all specific to particular agreements, they give an indication of general principles for SDT that are sought by developing countries. Developing countries want four types of change to SDT:

1. Greater flexibility in their implementation, interpretation and enforcement of WTO agreements.
2. Stricter rules for developed countries, to ensure that developing countries benefit from increased market access to their markets.
3. The provision of technical assistance sufficient to implement and benefit from WTO agreements.
4. Procedures to monitor and enforce SDT.

For developed countries, the main objection to many of these proposals is their lack of definition over which countries will benefit. This means they are reluctant to accept proposals that they would be willing to offer to less significant trading partners because they will be equally available to potential competitors. Hence a fifth element to the discussion has been over graduation and differentiation within the developing country group.

5.1 Flexibility

Many developing countries regard the preservation of what they consider sufficient flexibility in the

implementation of WTO agreements as the priority for SDT. Current SDT offers temporary exemptions from WTO agreements on the grounds of difficulties in implementation. Many observers agree that this is neither useful economically nor acceptable politically. Developing countries argue for exemptions on the grounds of development needs. They argue that analysis of the strategies used by successful developers in the past indicates that a whole range of policy instruments might be needed in particular cases to promote and support the domestic private sector in developing countries.⁵ Many observers agree that flexibility for developing countries on the grounds of both development needs and difficulties in implementation will be required in any future overarching SDT agreement. This could take the form of exemptions for some countries from whole agreements, or the agreement of different levels of obligations for countries within agreements. In either case, the outcome would be that developing countries had more flexibility than industrialised countries to use different trade policy instruments in the areas covered by WTO agreements.

Some negotiators and outside commentators (e.g. Amsden 2000) have argued that adequate flexibility already exists within WTO agreements to allow developing (and particularly least developed) countries policy leeway. Developing countries dispute this. The case cannot be resolved definitively since very little SDT has been tested in the dispute settlement system. It may be that while loopholes do exist in some agreements, the level of uncertainty created by the possibility of disputes means that developing countries do not exploit them. As the scope of WTO agreements increases, the risk to developing countries of getting their interpretation of SDT wrong and being taken to the dispute settlement mechanism also increases. This is a risk they are becoming unwilling to take.

It is likely that discussion of the justification and mechanisms for flexibility will continue for some years. A more nuanced method of agreeing what flexibility is allowed under WTO agreements is necessary to ensure both that SDT is useful and that it is acceptable to industrialised countries. This requires agreement on the criteria by which some countries will be exempted from some or all WTO agreements.

One possibility is to negotiate the rationale and the limitations of exemptions within each agreement and in relation to specific provisions within them. This has been the approach taken so far. The agreement-specific nature of the work of the CTD means that discussions have focused on the developmental benefits of offering some countries more leeway to use particular policy instruments such as subsidies. The response of industrialised countries has generally been to deny the usefulness of particular instruments, or to object to the principle of flexibility itself. Industrialised countries are wary of granting flexibility to large developing countries to close their potentially valuable markets. They also cavil at signing blank cheques for flexibility in future agreements. It is ironic that industrialised countries have been very successful in obtaining greater policy flexibility in areas of interest to them – agriculture and textiles being two examples that particularly rankle with developing countries – but are unwilling to grant the same to others.

The experience in the CTD demonstrates the need for a binding commitment by all WTO members to reach agreement on criteria for granting SDT on developmental grounds within each separate WTO agreement. Without this, developing countries will have to argue the case for development exemptions in each separate agreement, and give away new concessions each time. The best combination would be a generalised acceptance of the importance of flexibility on developmental grounds, coupled with a binding commitment to negotiate agreement-specific criteria and mechanisms. Agreement-specific criteria are already the basis for the proposal by various developing countries for a “development box” granting countries with certain economic and social characteristics exemptions from provisions in the WTO’s Agreement on Agriculture. This is a model that could be extended to other areas.

Agreement-specific criteria would be most appropriate in cases which combine a developmental justification for flexibility and a need for the policy instrument used to be closely related to the particular economic conditions and the objectives sought. However, where flexibility is offered on the grounds of difficulties in implementation there is scope for a more general

approach. One possibility for dealing with implementation problems is that total flexibility should be allowed for developing countries where this does not cause harm to any other country (Stevens 2002). If other countries were affected by non-implementation, it could be made conditional on receipt of assistance (the implication being that it would be in the interests of the international community to provide assistance in this case). Implementation may also be conditional on changes to other countries' trade policies if these are the source of the problem (e.g. if other countries are subsidising exports of a particular product and distorting the market); see Stevens (2002).

An alternative approach has been proposed in Prowse (2002). Rather than attempting to agree general principles for resolving the implementation difficulties of particular countries, more specialised agencies could be involved in arbitrating. The suggestion is that developing countries, together with the range of multilateral agencies involved in giving policy advice and providing resources, should individually present to a WTO "panel" a request for delays in implementation based on the existing capacity of the country to implement agreements, the agreed assistance that would be provided, and the nationally determined trade and development strategy of the country.

The idea of enlisting other institutions to argue on behalf of developing countries in the WTO is attractive if one accepts their *bona fides* as neutral development experts. In practice, however, the likely candidates have been anything but neutral: they have often demanded as loan conditions that developing countries give up even more trade policy flexibility than is necessary to comply with WTO agreements (Mangeni 2002). It is therefore difficult to see what they could contribute to SDT, from a developing country perspective.

Given that other proposals argue for a reversal of this relationship, it seems highly unlikely that developing countries would be willing to make SDT conditional upon support from the Bank and the Fund. A number of the specific proposals presented to the CTD are quite explicit that SDT should be usable by developing countries as a bargaining chip in discussions on loan conditionalities. There are proposals for explicit wording requiring other

institutions to respect SDT provisions when setting loan conditionalities, and one proposal that a WTO body should review the coherence between WTO agreements and policy advice offered by other bodies, with a specific mandate to ensure the maximum possible policy flexibility and market access for developing countries.

Whatever approach is taken, the requirement for greater policy flexibility is likely to be part of the "bottom line" for developing countries in negotiations on SDT. Unless they get significant improvements in this area they are unlikely to sign up to an agreement on SDT, and would be more reluctant to agree to other outcomes of the current trade round.

5.2 Market access

The proposal to build greater flexibility into WTO rules for developing countries goes together with an attempt to constrain developed country actions that affect development. A number of proposals put forward to the CTD argue that developed countries should make binding agreements to offer greater market access to imports from developing countries. The proposals reflect the concern that as tariffs are lowered a variety of non-tariff barriers are being applied, in particular anti-dumping actions, stringent and changing health and safety standards and an inflexible application of rules of origin.

The argument that developing countries should have better access to developed country markets can hardly be denied in an institution which claims to be committed to trade liberalisation. In the past, improving market access for developing countries has been seen by industrialised countries, and by many observers, as the key development issue in trade policy. However, market access on its own is not sufficient to overcome developing countries' declining role in international trade. As one Ghanaian observer (quoted in Christian Aid 2002) put it, 'The idea that we have a stockpile of products simply waiting for better market access is a myth'.

For market access to be effective it must be offered together with guarantees of sufficient policy flexibility to allow developing countries to develop their capacity to export and benefit from larger markets. In the WTO, the issue is the extent to

which any improvements in market access for developing countries must be reciprocal (i.e. must be accompanied by liberalisation in developing countries). On the whole, industrialised countries are willing to offer non-reciprocal market access to the least developed countries (whose exports are least likely to challenge domestic suppliers in industrialised countries), but are less willing to do so in the case of other developing countries.

Despite these disagreements, the debate has not become as ideological as the discussions on flexibility. Calls for more market access are broadly in line with what developed countries understand to be the trade liberalising purpose of the WTO.

5.3 Monitoring and enforcement

There is a recognition among all WTO members that the reason why the negotiations on SDT are happening is that the past efforts have been inadequate and ineffective. In part this is because the provisions themselves have been insufficient. However, it is also implicit in a number of the proposals that the WTO has not paid enough attention to monitoring and enforcing its own rules. Proposals have been made for improved systems of monitoring and enforcement. There is also a suggestion that, in addition to monitoring the implementation of SDT rules, there should also be regular monitoring of their effectiveness in relation to development objectives.

5.4 Technical assistance

Offers of technical assistance are a low-cost concession that industrialised countries have often made to developing countries in the WTO. Although reluctant to adopt binding rules on technical assistance, there has been a tendency both within the WTO and among a number of developed country governments to see technical assistance as the answer to most developing country problems. All developing countries also recognise the importance of appropriate technical assistance. Yet they have also emphasised in the negotiations that actual changes in the rules are required, not just more resources to implement them. They also emphasise, in the proposals to the CTD, the need for technical assistance to support the development of supply side capacity (not

merely compliance with rules) as an essential part of allowing developing countries to benefit from WTO agreements.

5.5 Graduation/differentiation

At the moment the category of developing countries in the WTO is self-selecting. In principle, any country that wishes can call itself developing and benefit from most SDT provisions. There are exceptions: some elements of SDT apply only to the United Nations category of least developed countries, and a few SDT provisions also differentiate between countries and offer the possibility of graduation. For example, countries with a *per capita* income of under US\$1,000 per year are exempt from the Agreement on Subsidies and Countervailing Measures.

The question of which countries might be eligible for SDT in the future is one of the main stumbling blocks in the current debate on SDT. On the one hand, developing countries are anxious not to enter into potentially divisive discussions on differentiation between themselves. On the other, industrialised countries are reluctant to sign up to SDT which could confer significant benefits upon countries such as India or Brazil, which are major traders and whose companies could provide serious competition.

Towards the end of 2002, the EC attempted to raise this issue through an informal paper. This was supported by most industrialised countries. It argued that without some agreement on differentiation, and the possibility of graduation out of SDT as a country develops, no substantial concessions would be forthcoming from industrialised countries. Developing countries argued that without some evidence of good intentions by industrialised countries they were not prepared even to consider the issue (*Bridges Weekly Trade News Digest*, 14 November 2002).

The debate is at a stalemate: industrialised countries are not prepared to offer anything significant on SDT until they are confident it will apply only to a specified group of countries, while developing countries are prepared to negotiate on differentiation only once they are offered something significant enough on SDT to make it

worth the potential problems it may cause. Most developing country delegates admit in private that it is an issue that will have to be addressed at some point. Some proposals, such as the pre-Doha proposal for a framework agreement on SDT which suggested objective criteria to determine the duration of SDT, implicitly endorse the idea of differentiation between developing countries and the possibility of graduation.

The problem is not going to go away, whatever form the discussions on SDT eventually take. Any solution is likely to involve a move away from the current classification of countries into just three categories: least developed, developing or industrialised. A shift to a more flexible system of classification might allay some of the fears of industrialised countries about offering open-ended concessions, yet result in sufficient benefits for enough developing countries to obtain their agreement. Two possibilities for greater flexibility involve agreeing different classifications of countries for each agreement, or agreeing SDT on a country-by-country basis.

Using different criteria for granting policy flexibility within each agreement would offer more scope to design SDT that deals effectively with the actual problems that developing countries face in specific areas. A corollary, though, is that it would require the creation of a number of different groupings of countries entitled to take advantage of SDT measures, depending on their particular economic structure and the relevance of the agreement in question. Almost all developing countries would be likely to get something, though not necessarily in every agreement. This would reduce the problem of divisions being created between developing countries. Though likely to be time consuming, this process could be assisted if general agreements on the rationale and purpose of SDT were made to guide the development of agreement-specific criteria for SDT.

For some observers, the difficulty of agreeing criteria for differentiating between countries is so great that the attempt should be abandoned altogether (Prowse 2002). Instead, each country would negotiate its SDT provisions separately, which might result in the development, over time, of implicit criteria for making decisions on SDT based on past practice.

Such country-by-country negotiations on SDT might be the logical conclusion of accepting that countries have different trade policy needs depending on their level of development, but in the WTO context it is likely to prove both inefficient and unfair. WTO processes tend to be very slow. The difficulty of agreeing delays to implementation on a case by case basis for particular agreements has been discussed above. The accessions process, provides another example of the dangers of a case-by-case approach. Countries seeking membership of the WTO negotiate individually on how and when they will implement existing agreements. This process is particularly unsuited to the needs of the poorest countries – not one least developed country has joined the WTO since 1995, and only one (Vanuatu) has begun formal proceedings with the holding of a Working Party meeting on accession (UNCTAD 2001).

For each developing country, negotiating individually is likely to lead to a worse outcome than negotiating together: weak delegations will be confronted by more powerful and better-resourced trading partners, without any externally agreed criteria to underpin their case. Again, this has been the experience of many of the countries attempting to accede to the WTO. Vanuatu, for example, was asked to forego some of the SDT benefits available to it, as a least developed country, and to join a number of WTO agreements that are optional (such as the Agreement on Government Procurement which, as Fenster (this volume) shows, has very limited developing country participation, probably rightly so). Even negotiating as a group, developing countries are weak in the WTO and it is unlikely that they will get better outcomes by negotiating separately.

6 After Cancún: the way forward

The discussion on procedural issues and agreement-specific proposals has dominated the first year of discussions in the WTO on SDT and is likely to be the main focus up to the Cancún ministerial in 2003. However, the Doha mandate also requires WTO members to consider ways SDT provisions might be incorporated into the architecture of WTO agreements. It makes specific reference to a “framework agreement”, which was prepared by a group of developing countries before Doha (WTO 2001b). This aims to set out general

principles guiding the design and implementation of SDT measures in each specific WTO agreement. It is a crucial part of renegotiating SDT in the WTO – and although there are good political reasons why it has not featured so far in the discussions, it is essential for developing countries that it is considered seriously at some point.

A more flexible approach, recognising that developing countries' trade policies may differ depending on their level of development, would focus attention on the impact of WTO agreements in meeting specific objectives, rather than, as now, on the extent of implementation for its own sake. The institutionalisation of a system to review WTO agreements against development criteria would imply a shift away from the assumption that trade liberalisation is the most desirable trade policy towards an approach more closely based on real experience and individual country needs. This is in line with developments in other institutions, such as the World Bank, where demands for structural adjustment programmes based on a set of universal assumptions have been changed to the (theoretically) more flexible and country-specific approach to loan conditionalities embodied in the Poverty Reduction Strategy Paper process.

Some observers have raised the possibility that giving a large number of developing countries permanent exemptions from WTO agreements could mean that all trade deals become effectively plurilateral, and that developing countries cease to commit any resources to trying to get good agreements (from their point of view) in the WTO. However, a failure to give developing countries any guarantees of special treatment in the WTO will lead to their effective exclusion from agreements as they fail to implement them, withdraw from the WTO system altogether as the costs mount up, or

simply block any further development of the WTO rule book. It is in everyone's interest to ensure that none of these scenarios becomes a reality and therefore to come to some mutually satisfactory agreement regularising the negotiating relationship between industrialised and developing countries.

7 Conclusion

The story of the first year of the Doha negotiating agenda has not covered the WTO with glory. Procedural tricks, a lack of willingness to discuss key issues, the breakdown of trust between delegations and the extremely slow pace of discussions have all shown how much work remains to put *development* into the "development round".

The negotiations on SDT have both a practical and a symbolic value. Some of the provisions under discussion, and the principles that are hidden in the proposals for specific changes, would be of real economic significance to developing countries as they try to participate in the international trading system in a way that reduces poverty rather than exacerbating it. SDT has also become something of a test of the seriousness of industrialised countries' intentions. Without some agreement, developing countries are unlikely to be in a mood to make concessions in other areas.

The story of WTO agreements up to now has been one of developing countries bowing to the agenda of the industrialised powers. If that happens again in the Doha Round – and in particular if it happens on issues as central to developing countries' concerns as SDT – they will be entirely justified in walking away from the WTO altogether. It is the responsibility of the industrialised countries to make sure that this does not happen.

Notes

1. This information comes from three documents prepared by the WTO Secretariat: WTO (2001c, 2002a, 2002b).
2. Twelve separate documents were submitted to the special session of the CTD before the end of July 2002. Most contained a number of specific requests for changes in existing SDT provisions, which together added up to more than 90 separate changes. Of the 12 documents, nine were from developing countries or groups of developing and least developed countries,

the European Commission (EC) and USA submitted one each, and one was submitted by Hungary. All are available on the WTO's document search facility, http://docsonline.wto.org/gen_search.asp.

3. The EC negotiates in the WTO on behalf of all member states of the EU. Negotiating positions in the WTO are influenced by a range of international political forces. Towards the end of 2002, as the crucial European Heads of State meeting loomed, at which key decisions were to be taken on

enlargement, a number of the countries hoping to gain entry to the EU became very vocal in supporting the EC's position in the negotiations on SDT.

4. This involved almost farcical tactics: the EC, for example, was reported to have spent a large part of the early meetings of the CTD special sessions arguing that the notation on the documents issued by
5. For a fuller discussion of the evidence, see Melamed (2002).

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