

# History of development issues in the multilateral trading system

Milton Ayoki

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## Introduction

This paper explores how special provisions for developing countries in the multilateral trading system have continued to evolve over time. An appreciation of the evolution of provisions designed specifically for developing countries in the multilateral trading system, as Alexander Keck and Patrick Low rightly put it, provides a valuable insight in considering the issue of development in WTO today especially Special and Differential Treatment (S&D).

The desire to make the world trading system more supportive of development started as part of the efforts to reconstruct the world in post Second World War era. After the Second World War, the United States and Great Britain began negotiations about the future of the post-war international economy. First, international financial institutions (for reconstruction) were to be in place, hence the Bretton Wood Conference, which created the World Bank and the International Monetary Fund. Initiatives, especially by the United States and Great Britain were motivated by the desire to have a stable world economy that would provide all trading nations with nondiscriminatory access to markets, supplies and investment opportunities. It was assumed at the time that trade was the route to achieving peace, and that nondiscrimination would improve foreign relations.

The US Reciprocal Trade Agreements Act of 1934 adopted the unconditional MFN principle - grounded in the principle of reciprocity. After the Second World War, this policy stance became part of the new draft charter of the International Trade Organisation (ITO) and the General Agreement on Tariffs and Trade (GATT). Development concerns and special needs of developing countries featured in the ideas embodied in the Havana Charter

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<sup>1</sup> *The views expressed in this paper are entirely those of the author and do not represent the views of the Institute of Policy Research and Analysis. Sent comments to [milton.ayoki@ipraa.org](mailto:milton.ayoki@ipraa.org)*

in 1947. The importance of international trade in commodities and special rights of developing countries were recognized at the time, but not in the context of providing them preferences. When the attempt to create an International Trade Organization (ITO) failed, the GATT (negotiated in 1947) became the sole legal instrument governing international trade (on provisional basis). Development issues subsequently evolved in the GATT/WTO system through four phases:

*From creation of the GATT to Tokyo Round: 1948-1973*

The first phase, which extends from the time General Agreement on Tariffs and Trade (GATT) entered into force (1948) to the beginning of Tokyo Round in 1973 placed more emphasis on increasing market access for developing countries exports (to developed country markets). During this time, a small number of developing countries were members of the GATT, which were based on a formal parity of obligations - that made no distinction between the rich and poor trading nations. Developing countries sought special treatment, but what they managed to get was the infant-industry protection clause that was added in Article XVIII of GATT. There was nothing good about the change other than ambiguous statements of good intentions that were non-binding. Rights and obligations remained unchanged without preferential access of developing countries goods to the market of developed countries.

**Evolution of development issues over 50 years**

| Geneva<br>1947                                  | Anncy<br>1949 | Torquay<br>1950-1951 | Geneva<br>1955-1956 | Dillon<br>1960-1962 | Kennedy<br>1964-1967 | Tokyo<br>1973-1979 | Uruguay<br>1986-1994 | Doha<br>2001- |
|---|---------------|----------------------|---------------------|---------------------|----------------------|--------------------|----------------------|---------------|
| SD: 48  | 48            | 46                   | 46                  | 50                  | 68                   | 71                 | 77                   | 76            |
| 1957-1980 independence process in ACP countries |               |                      |                     |                     |                      |                    |                      |               |

SD = Share of developing countries in total membership (%)

Towards 1960s, as more countries approached independence, the desire to give preferential treatment to developing countries increased. This led to modification of Article XVIII GATT in 1954/55 to include XVIII:b allowing developing countries to apply quantitative restrictions for Balance of Payment (BOP) purposes. This was preferences that attempted to afford poor countries access to rich country markets through, mainly tariff concessions.

Similar preferences had been in effect under the EU-ACP trade arrangements. Introduction of the first such preferences was in 1955 – based on the waivers for non-reciprocal trading arrangements under the Lomé. Skepticism among developing countries about the ability of GATT to deliver tangible benefits to poor nations became clear. This was partly the reason for the creation of the United Nations Conference on Trade and Development (UNCTAD)<sup>2</sup> in 1964, and the formation of a political bloc of developing countries in the UN referred to as the ‘Group of 77’ (G-77).

In addition, a Committee on Trade and Development was created and additional articles included to the GATT that addressed development issues (mid 1960s). In 1965, the demand by developing countries for special status in the multilateral trading system led to the drafting of a new part IV of the GATT, which introduced the concept of special and differential treatment (S&D) for developing countries. Part IV of GATT encompassed the new principle that reciprocity in the rounds of multilateral trade negotiations should be limited to whatever was consistent with the development needs of developing countries (Article XXXVI).

A new Part IV on Trade and Development was added to the GATT, albeit with no binding obligations, other than to consult.

During late-1960s and the 1970s, most developing countries (being dissatisfied with GATT) began to pursue self-sufficiency as priority, and insisted on protectionist policies (import substitution) to protect their infant industries and to address balance of payments problems. The negative consequences of such trade regimes for both trade expansion and overall economic growth became quite clear.

*Tokyo Round, 1973-79*

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<sup>2</sup> GSP was established under the auspices of the UNCTAD. International Trade Centre (ITC) was established to assist developing countries to expand their exports.

By the beginning of the Tokyo Round in 1973, GATT contracting parties particularly developing countries had realized the limitations and trade-distorting effects of excessive reliance on import substitution. Developing countries were to go through the painful process of liberalizing their own trade regimes in exchange for market access for their exports (to developed country markets). This period marked a large-scale membership of developing countries in GATT.

In 1979 a Framework Agreement was negotiated that included the so-called Enabling Clause - officially called *Differential and More Favourable Treatment, Reciprocity and Fuller Participation of Developing Countries*. Enabling clause provided for departures from MFN and other GATT rules, but also gave permanent legal cover for operation of the Generalized System of Preferences (GSP) established under the auspices of the UNCTAD. Enabling clause codified principles, practices, and procedures regarding the use of trade measures by developing countries, giving developing countries relatively “more” flexibility in applying trade measures to meet their “essential development needs”

The Enabling Clause is the legal basis for existence and application of the 155 S&D provisions in the different WTO agreements, which formed the core of the ‘development dimension’ of the multilateral trading system.<sup>3</sup>

Under these provisions, developing countries are not (at least by that time) expected to grant tariff concessions and bind tariffs. Most developing countries acceded under the succession procedure of Article XXV1.5c acquiring GATT rights and obligations previously accruing to their former colonial governments. They were able to accede without submitting tariff schedule. Non ex-colonies on the other hand, were required to negotiate accession under Article XXXIII GATT, which required establishing a tariff schedule).

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<sup>3</sup> The GATT members approved special waivers for the Generalized System of Preference (before then it required a waiver). through the “Enabling Clause” – making the 1971 waiver permanent (and included language on graduation – S&D treatment policies were to be phased out as the recipient countries reached a certain level of economic development although criteria for this were not clearly defined).

The Punta del Este Ministerial Declaration:

*CONTRACTING PARTIES agree that the principle of differential and more favourable treatment embodied in Part IV and other relevant provisions of the General Agreement ... applies to the negotiations ... Developed countries do not expect reciprocity for commitments made by them in trade negotiations to reduce or remove tariffs and other barriers to trade of developing countries (GATT, 1986:7).*

Developing countries were able to use S&D provisions as cover for not engaging in reciprocal concessions (e.g. tariff reduction). This was confirmed by ministerial meeting in 1973 (that launched the Tokyo Round) - that developed countries should not expect reciprocal concessions from developing countries. In stead, the negotiations should secure additional benefits for developing economies in order to achieve a substantial increase in their foreign exchange earnings, diversification of their exports and an acceleration of the rate of growth of their exports.

What distinguishes this phase (Tokyo Round) from the one before it is that it led to important provisions in favour of developing countries, which included the 'Enabling Clause' that provided for departure from MFN and other GATT rules but also provided a permanent legal basis for the operation of the Generalized System of Preferences (GSP). It sets the principles, required practices and procedures regarding the use of trade measures for balance of payment (BOP) purposes (Articles XII and XVIII).

In a way, Enabling Clause rendered GATT's Article XIX redundant by allowing developing countries flexibility in applying trade measures to meet their 'essential development needs'. It also reduced the scope of Article XXIV on regional integration by eliminating the 'substantially all trade' requirement and provision banning an increase in the average level of external protection for customs union. Enabling Clause became one of the central elements that transformed into the so called special and differential treatment (S&D) for developing countries.

*From end of Tokyo to end of Uruguay Round (1979-1995)*

Developing countries' integration into the GATT/WTO system deepened during the Uruguay Round, which was marked with a return to reciprocal relationships. By the end of the Uruguay Round, developing countries had assumed a much higher level of commitments within the multilateral system than ever before. The practice of international trade policy, and the rules of the multilateral trading system progressively moved to substitute the role of a development approach with that of a liberalisation strategy. Only some element of development was retained in the special and differential treatment for developing countries.

*From the end of the Uruguay/entry into force of the WTO (1995) until present*

With the entry into force of the WTO in 1995, the terms of participation of developing countries changed tremendously. The so-called "single-undertaking" subjected developing countries to most of the disciplines of the many agreements reached by the end of the Uruguay Rounds. This was a big reform of the trading system, which has had repercussions – including resurgence in demands for more effective S&D in the Doha round. The Doha Ministerial Declaration emphasized the importance of S&D, stating that "provisions for special and differential treatment are an integral part of the WTO agreements." Paragraph 44 called for a review of S&D provisions with the aim of "strengthening them and making them more precise, effective and operational." On the basis of this mandate, developing countries made 88 suggestions to strengthen S&D language in various WTO agreements.

Traditionally, developing countries have sought 'differential and more favorable treatment' in the GATT/WTO as a mechanism to help them (developing countries) appropriate more gains from trade. These S&D provisions call for preferential market access; longer tariff phase-down periods and flexibility in the implementation of GATT/WTO disciplines and rules for developing countries; and offers by developed countries to provide technical

assistance and capacity building to developing countries to facilitate the implementation of GATT/WTO agreements.<sup>4</sup>

Clearly, the traditional market access dimension of S&D (that of assisting developing countries to obtain more effective market access and fair trade conditions for their exports), have not effectively addressed the fundamental issues in the trading system. For instance, it has failed to address the issue of equity in the trading system. Developed countries have continued to distort global trade through protectionist policies thus stifling the development prospects of developing countries.

Moreover, the costs to developing countries of implementing unbalanced rules have been far higher than the benefits, with the benefits going mainly to the developed countries. Meanwhile, many developing countries still lack the capacity to participate in the trading system, compounded by lack of sensitivity on the part of the developed countries to the negative development impact of unfair rules (e.g. agricultural subsidies) and the relatively high cost of adjustment experienced by many developing countries through preference erosion.

The ‘single-undertaking’ under the WTO subject all Members to undertake obligations in *all* areas of rules – regardless of their level of development or the specific conditions of technical progress existing in their productive sectors. This has greatly expanded the scope of obligations for developing countries, with far reaching consequences on their access to various policy spaces that had previously been at their disposal.<sup>5</sup> As a result, pursuing

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<sup>4</sup> See Faizel Ismail (2005)

<sup>5</sup> The debate on policy spaces in WTO dates from 1999, when the Venezuelan Representative presented to the General Council the first document on the subject “Special and Differential Treatment and the Spaces for Policies in WTO: Two Elements of the Development Dimension in the Multilateral Trading System”, WT/GC/W/279. Since then international organizations concerned with development issues as UNCTAD, ECLAC and the UNDP, as well as international NGOs such as the ICTSD and Oxfam, and reputed scholars and trade specialists have made a cause of the defence of developing country spaces for implementing development strategies, while some mainstream economists strongly oppose the idea. Some interesting references on the matter can be found in Venezuela (1999), Esser (1999), Corrales (1998a, 1999, 2003b); Rodrik (2001, 2004b); UNDP (2003); Corrales et al (2003); Wade (2003); Lall (2004); UNCTAD (various); Hoekman (2004).

particular strategies for productive sector development or a programme of 'strategic trade integration' became difficult for developing countries.

The desired reform has often be assumed to be about increasing the effectiveness of special and differential treatment (S&D) provisions for developing countries in the WTO. This perception relegates the role of development dimensions in the WTO. Development objectives have not been the aim of trade rules design, but are regarded as an afterthought, generally falling under the rubric of provisions for special and differential treatment. Yet, developing countries have fundamental interests in the WTO that are at the core of the trading system and its functioning - fair trade, capacity building, balanced rules, and good governance. These systematic concerns constitute the core development dimension of the multilateral trading system.

This means that if the trade system is to be made fair and more supportive of development, the S&D system of provisions must become a framework of rules enabling implementation of a trade-supported policy package aimed at social and economic goals, which are conducive to strengthening and enhancing productivity, trade capacity and policy institutions (of developing countries). This should contribute to improving (their) ability to integrate in the global system; securing long term, stable economic growth, based in producing goods and services that meet the test of international competition under fair market conditions in a sustainable manner.

### **Narrow concept of development**

Promoting the development objectives in the multilateral system entails more than focusing on the use of S&D provisions particularly the traditional market access dimension of S&D (that of assisting developing countries to obtain more effective market access and fair trade conditions for their exports). It is important to consider two other dimensions often overlooked: that of resources for development support (e.g. to help relieve supply-side constraints), and the policy interventions needed towards competitiveness, diversification and productive sector development.

It has been argued that S&D on its own is an inadequate concept to promote development objectives in trade. It will need to be part of a broader approach that recognizes that the fundamental interests of developing countries in the trading system is to seek fair trade, capacity building, balanced rules and good governance in the WTO. This broader approach mainstreams the development dimension of trade and recognizes special and differential treatment as an important aspect of this development dimension.

These broader objectives within the multilateral system comprise the need to build greater equity in the trading regime, greater capacity for developing countries to benefit from trade, more balanced trade rules, and more inclusive and transparent decision-making in the WTO. A trading system which is unfair, insensitive to the lack of capacity of developing countries to benefit from trade, with imbalanced rules, and non-transparent and exclusive decision-making system, will have special and differential treatment that is not effective, and seen as palliative for an unfair and unjust system (Ismail, 2005). There has been an argument that special and differential treatment should be considered of secondary importance for developing countries in the trading system – their primary purpose is to ensure that the broader development dimension of the trading system is advanced.

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