



The North-South Institute • L'Institut Nord-Sud

**SPECIAL AND DIFFERENTIAL TREATMENT IN THE DOHA
DEVELOPMENT AGENDA – CANADIAN PERSPECTIVES**

A DISCUSSION PAPER

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SPECIAL AND DIFFERENTIAL TREATMENT IN THE DOHA DEVELOPMENT AGENDA – CANADIAN PERSPECTIVES

Recommendations

We recommend that the Canadian government adopt a more flexible approach to Special and Differential Treatment (S&DT), on the grounds that its present position is not warranted by the evidence on the relationship between trade and development, nor on the cost-benefit ratio of being more flexible, nor in keeping with the Doha declaration.

CIDA, along with other countries' development agencies, has a critical role in terms of ensuring greater coherence between Canada's trade policies and its commitment to the Millennium Development Goals (MDGs). It can also contribute knowledge of development realities, and support its partner countries to elaborate what policy flexibilities they need and to undertake impact assessments of proposed changes in WTO rules. CIDA is likely also to be involved in discussions of how aid can compensate some countries for preference erosion and to strengthen supply-side capacities. But it should be the first to underline that aid cannot be a substitute for SDT in the WTO.

Negotiations on agriculture:

- An end to Northern dumping is critical for many developing country farmers and Canada should press the US and EU to go further and faster than their present proposals.
- Canada should support the capacity of developing to protect their producers through a generous approach to tariff cuts, special safeguards, and criteria for Special Products in developing countries, which are important for development outcomes in larger countries like India as well as LDCs and other low-income countries.
- Canada should maintain its support for state-trading enterprises and supply-side measures in developing countries.
- Canada should support a compensation fund for preference erosion which is of major concern to a number of developing countries
- An 'early harvest' on cotton is urgently needed, in recognition of the serious problems facing West African farmers.

Non-agricultural market access (NAMA) negotiations:

- Canada should support coefficients and a formula that will allow developing countries to support their nascent industrial sectors (and tariff revenue) while ending tariff peaks in Northern markets.
- SDT provisions exist for LDCs, but they are also needed for others, especially low-income countries, to have flexibility to maintain adequate tariffs. This includes a generous mark-up for unbound tariffs and less than formula cuts (if any).
- Countries faced with preference erosion should be compensated whether through a fund or through credits as proposed by the Caribbean.
- Canada and other importing countries should extend bound duty-free, quota-free tariff schemes to LDCs and other low-income countries.

Negotiations on Services

- Mode 4: Canada should support the creation of an international study group to consider the expansion of temporary movement of less-skilled workers from developing countries, the associated changes required in trade rules and other mechanisms to ensure the well-being of temporary workers (as set out in the UN Convention on the Rights of Migrant Workers). Within this study group, Canada should examine the extension of its own pilot projects for the temporary movement of less-skilled workers, binding them within the WTO, and considering ways to facilitate their use by workers from LDCs and low-income countries.
- Public services: Canada should maintain its position of excluding health and public education from its requests of developing countries. It should also support the right of developing countries to exclude public services from their offers, particularly in the area of health and education, which are critical to the realization of the MDGs.
- Canada should not support the introduction of numerical targets for liberalization of services which would alter the basic structure and flexibility of the GATS.

TRIPs

- Canada should support the recommendations of the Commission on IPR including exemption from TRIPs until 2016 for LDCs and low-income countries, with further exemptions being made possible according to economic and technological development criteria.
- Canada should provide support through its Trade-related Capacity Building (TRCB) programming to help countries make use of the policy flexibility within TRIPs when implementing the agreement through national legislation.

Least-Developed Countries Issues

- The Government of Canada should seriously consider and respond to the five issues proposed by the LDCs in the CTD-SS.
- While the government has introduced tariff-free, quota-free market access for LDCs, it should make this more predictable and secure by binding it.

Implementation Issues

- Canada should support an agreement at Hong Kong on the 28 Agreement specific proposals that were agreed in principle prior to Cancún.



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TRAITEMENT SPÉCIAL ET DIFFÉRENCIÉ DANS LE PROGRAMME DE DOHA POUR LE DEVELOPPEMENT – PERSPECTIVES CANADIENNES

Recommandations

Nous recommandons au gouvernement canadien d'adopter une approche plus souple au Traitement spécial et différencié (TSD) du fait que sa position actuelle n'est pas justifiée, d'après la relation entre le commerce et le développement ou encore le ratio coûts-avantages d'une plus grande souplesse, ni n'est conforme à la Déclaration de Doha.

À l'instar des agences de développement d'autres pays, l'ACDI a un rôle fondamental à jouer pour garantir une plus grande cohérence entre les politiques commerciales du Canada et son engagement envers les Objectifs du Millénaire pour le développement (OMD). Elle peut également partager ses connaissances des réalités du développement et aider ses pays partenaires à élaborer les assouplissements politiques dont ils ont besoin, et à entreprendre des évaluations de l'impact des modifications proposées aux règles de l'OMC. L'ACDI participera probablement aux discussions sur la façon dont l'aide peut compenser certains pays pour l'érosion des traitements préférentiels et renforcer les capacités visant l'offre. Elle devrait toutefois être la première à souligner que l'aide ne peut être un substitut pour le TSD à l'OMC.

Négociations sur l'agriculture :

- La fin du dumping du Nord est critique pour de nombreux agriculteurs de pays en développement, aussi le Canada devrait-il exercer des pressions sur les États-Unis et l'Union européenne pour qu'ils aillent plus loin et plus vite que ce que prévoient leurs propositions actuelles.
- Le Canada devrait appuyer la capacité des pays en développement à protéger leurs producteurs grâce à une approche généreuse aux réductions tarifaires, à des sauvegardes spéciales et à des critères pour les produits spéciaux de pays en développement, lesquels sont importants pour les résultats du développement de plus grands pays tels que l'Inde, ainsi que les PED et les autres pays à faible revenu.
- Le Canada devrait poursuivre son aide aux entreprises commerciales d'État et aux mesures visant l'offre de pays en développement.
- Le Canada devrait appuyer un fonds de compensation pour l'érosion des traitements préférentiels qui préoccupe sérieusement un certain nombre de pays en développement.
- Des « résultats anticipés » sur le coton sont immédiatement nécessaires, en reconnaissance des graves problèmes auxquels sont confrontés les fermiers d'Afrique occidentale.

Négociations sur l'accès aux marchés des produits non agricoles :

- Le Canada devrait appuyer les coefficients et une formule permettant aux pays en développement d'aider leurs secteurs industriels naissants (et les recettes douanières) tout en mettant fin aux flambées des tarifs dans les marchés du Nord.
- Il existe des dispositions TSD pour les PED, mais celles-ci sont également nécessaires pour d'autres, particulièrement les pays à faible revenu, pour assurer une certaine souplesse afin de maintenir des tarifs adéquats. Il faut notamment une majoration généreuse des tarifs renégociés et des réductions inférieures à la normale (le cas échéant).
- Les pays confrontés à l'érosion des traitements préférentiels devraient être compensés soit par l'intermédiaire d'un fonds ou de crédits, comme cela a été proposé par les Caraïbes.
- Le Canada et d'autres pays importateurs devraient élargir leurs régimes d'accès en franchise et hors contingent aux PED et à d'autres pays à faible revenu.

Négociations sur les services

- Mode 4 : Le Canada devrait appuyer la création d'un groupe d'étude international chargé d'examiner l'élargissement du mouvement temporaire des travailleurs peu qualifiés venant de pays en développement, les changements afférents indispensables aux règles sur le commerce et à d'autres mécanismes pour garantir le bien-être des travailleurs temporaires (conformément à la Convention des Nations unies sur les droits des travailleurs migrants). Dans le cadre de ce groupe d'étude, le Canada devrait examiner l'élargissement de ses propres projets pilotes au mouvement temporaire des travailleurs peu qualifiés, les lier au sein de l'OMC, et chercher des moyens de faciliter leur utilisation par les travailleurs des PED et des pays à faible revenu.
- Service publics : Le Canada devrait maintenir sa position sur l'exclusion de la santé et de l'éducation publique de ses demandes de pays en développement, et appuyer le droit des pays en développement d'exclure les services publics de leurs offres, particulièrement dans les domaines de la santé et de l'éducation, lesquels sont critiques à l'atteinte des OMD.
- Le Canada ne devrait pas appuyer l'établissement de cibles numériques pour la libéralisation des services, ce qui pourrait avoir des répercussions sur la structure de base et la souplesse de l'AGCS.

ADPIC

- Le Canada devrait appuyer les recommandations de la Commission sur les DPI, y compris l'exemption des ADPIC jusqu'en 2016 pour les PED et les pays à faible revenu, d'autres exemptions pouvant être également accordées selon des critères de développement économique et technologique.
- Le Canada devrait apporter son appui par l'intermédiaire du renforcement des capacités liées au commerce (RCLC) afin de permettre à des pays d'utiliser la souplesse de la politique des ADPIC lors de la mise en application de l'entente dans les lois nationales.

Questions concernant les pays les moins avancés

- Le gouvernement du Canada devrait sérieusement examiner les cinq points proposés par les PED, dans le CCD-SS, et y répondre.
- Bien que le gouvernement ait mis en place un système d'accès en franchise et hors contingent pour les PED, il devrait en faciliter l'accès et le rendre obligatoire.

Questions liées à la mise en application

- Le Canada devrait appuyer une entente à Hong Kong sur les 28 propositions spécifiques de l'Accord qui ont fait l'objet d'une entente de principe avant Cancún.

TABLE OF CONTENTS

INTRODUCTION	3
1. REVIEW & ANALYSIS OF CURRENT SDT PROPOSALS	4
1.1 OVERVIEW OF SDT	4
1.2 EXAMINATION OF SDT PROPOSALS IN THE DDA	12
1.2.1 AGRICULTURAL NEGOTIATIONS	12
1.2.2 NON-AGRICULTURAL MARKET ACCESS (NAMA)	20
1.2.3 SERVICES	29
1.2.4 TRADE FACILITATION	31
1.2.5 TRIPs	32
2. CANADIAN PERSPECTIVES	35
2.1 OFFICIAL POSITION	35
2.2 NON-GOVERNMENT VIEWS	45
3. CONCLUSIONS AND RECOMMENDATIONS	57
REFERENCES	61

Boxes and Tables

Box 1: LDCs, SDT, and WTO implementation issues.....	6
Box 2: Are industrial policies good for development? An unresolved question.....	8
Box 3. Enhancing transparency of SDT in the SPS agreement.....	36
Table 1. The CCM proposal for tariffs.....	25
Annex	
Table 1. Agricultural trade and other indicators relating to CIDA's 25 Countries of Focus	
Table 2. Industrial tariffs and other indicators relating to CIDA's 25 Countries of Focus	
Table 3. Emerging Market Economies: Comparative Economic and Social Indicators	

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INTRODUCTION

As trade negotiators prepare for the Hong Kong ministerial meeting of the World Trade Organization (WTO), scheduled for December 2005, the issues of Special and Differential Treatment (SDT) for developing countries remain at the centre of the ongoing debate about the future of the WTO and the multilateral trading system. With little progress since the breakdown of the fifth ministerial in Cancún in September 2003¹, there is a strong sense of disillusionment in many developing countries about the prospects for Hong Kong. Major developed countries appear unwilling to make the changes in their agricultural policies needed to improve the prospects for the world's poorest farmers, to liberalize services trade in ways which would benefit unskilled workers from developing countries, or to relax barriers on imports of various labour-intensive industrial products. At the same time there are continuing expectations from developed countries (and many international development agencies) of substantive changes in developing country policies – in terms of opening domestic markets for agricultural and industrial products as well as services, whether it be through cutting and binding tariffs or limiting government intervention through behind-the-border measures. This has led to strong criticism about the shrinking development options or 'policy space' available for developing countries to prosper in a liberal international trade environment.

When the Doha Development Agenda – now also known as the Doha Development Round – was launched in November 2001 at the fourth WTO ministerial meeting, many developing countries saw this as an opportunity to make amends for some of the unexpected costs associated with the previous round of trade negotiations – the Uruguay Round – which resulted in the creation of the WTO and a new set of rights and obligations for all WTO member countries. It was also expected to provide for continuing improvements in rules governing agricultural trade, industrial goods and services.

The WTO provisions had addressed a number of developing country interests in market access, policy flexibility and financial assistance. But the provisions setting out this special and differential treatment (SDT) had been found wanting. They were unable to adequately take into account the different capacities and needs of many countries. The obligations of developing countries were binding and onerous, but the assistance or other special measures they could expect from developed countries were generally limited to 'best efforts.'

For developing countries, therefore, a major objective in the Doha Development Round, is to review and strengthen the WTO's SDT provisions in order to make them more precise, effective and operational. At the same time, the development outcomes of the negotiations will be evaluated in terms of the opportunities they create for developing

¹ The other ministerial meetings that have taken place since the inception of the WTO in 1995 have been: Singapore (1996), Geneva (1998), Seattle (1999) and Doha (2001).

countries through new obligations undertaken by developed countries (notably with respect to agriculture, industrial products, services and rules). The discussions and decisions that are taken during this round are important for the future of the WTO, for the precedents they may set for other trade arrangements, and for the longer term role that trade plays in growth and poverty reduction in developing countries.

After the abrupt ending of the Cancún Ministerial, WTO members set July 2004 as a deadline by which a negotiating framework would be needed if the Doha Round negotiations were to proceed and conclude by the end of 2006. And indeed in July 2004, a package was agreed, on which negotiators have built since that time.

The aim of this paper is to summarize and analyze the present set of proposals for SDT and the broader changes in WTO rights and obligations that are critical for the future of sustainable development. We are also interested in the role which Canada is playing in this dimension of the WTO negotiations. What informs Canada's position on SDT? What particular approaches to SDT in the various issue areas would be most coherent with Canada's development objectives? Does the Government of Canada take into account the particular interests of its development partners, and its broader commitments in the context of Millennium Development Goal 8 to support efforts to make the world trading system open, rule-based, predictable and non-discriminatory, with attention to the special needs of the least-developed countries (LDCs)?

The paper is divided into three sections. First, we review the background to SDT and analyze a number of proposals put forward since the launch of the Doha Round, particularly in the July package and after, focusing on SDT issues being discussed in the context of agriculture, non-agricultural market access, services, trade facilitation and trade-related intellectual property rights (TRIPs). Second, we consider the various Canadian perspectives on SDT more broadly as well as in these particular issue areas, covering both the positions of the Canadian government and non-government views. Third, we conclude with a number of recommendations about how Canada might contribute to moving the SDT discussions forward before Hong Kong.

1. REVIEW & ANALYSIS OF CURRENT SDT PROPOSALS

1.1 OVERVIEW OF SDT

The term 'special and differential treatment' (SDT) refers to the legal provisions in different GATT and WTO agreements that have allowed developing countries (and developed countries on their behalf) to deviate from rules and commitments agreed in successive multilateral trade rounds. Broadly speaking, in the days of the GATT, developing countries were only expected to cut tariffs or other measures during trade negotiations to the extent consistent with their level of development, financial and trade needs. In contrast developed countries were expected to offer each other reciprocal tariff

Special and Differential Treatment in the Doha Development Agenda
Canadian Perspectives

and other cuts.² Second, in cases of balance of payments problems or injury to infant industries, developing countries were allowed to take defensive action, such as raising tariffs above their bound levels, or introducing quotas to limit imports.³ Third, developed country members agreed to give priority to cutting tariffs and other barriers facing products of particular export interest to developing countries.⁴ Fourth, with the addition of the ‘Enabling Clause’ in 1979,⁵ developed countries were able to offer imports from developing countries differential and more favourable treatment whether through cuts in tariffs or other barriers – this was a departure from the GATT requirement that imports from all countries be treated equally (the so-called Most Favoured Nation or MFN rule). As a result several developed countries introduced preferential tariff schemes for many developing country products. In Canada the scheme is known as the General Preferential Tariff (GPT), in other countries the Generalized System of Preferences (GSP).

Following the oil and debt crises of the 1970s and 80s, the Uruguay Round (1986-1994) coincided with a new sense of engagement by developing countries in the multilateral trade regime. This was associated in some countries with a shift to more open economies and a commitment to trade liberalization as a source of economic growth and poverty reduction. Many were also frustrated with the failure of the SDT framework to secure meaningful market access for their exports. At the same time there was increased pressure from industrial countries for developing countries to assume similar obligations in a broad range of areas (older areas such as market access, as well as newer ones like TRIPs, services and investment). There was a particular focus on the more advanced, emerging market economies, reflecting the increasing differentiation between countries, though even the lower middle income and low income countries were expected to conform to the new WTO rules within a fairly short timeframe. Only in the case of the LDCs was the earlier GATT approach of non-reciprocity largely extended. To make matters worse, while developing countries assumed binding obligations, many developed country commitments and obligations to assist them, in recognition of their development needs, were often no more than ‘best efforts’. In sum, SDT shifted from a development tool in the GATT -- to ensure trade liberalization supported development, to being an adjustment tool in the GATT -- to help developing countries meet their WTO trade liberalization obligations (Tortora 2003 and ICTSD 2003).

Since the end of the Uruguay Round and the launching of the WTO in 1995, there has been a growing concern among many developing countries about the costs and benefits of WTO rules for developing countries. Some of these concerns were articulated in a list of so-called ‘implementation issues’ addressed in the Doha Ministerial. The Doha Declaration noted that all SDT provisions would be reviewed “with a view to strengthening them and making them more precise, effective and operational” (para. 44).

² Under Part IV, Article XXXVI, added in 1964 and then amended

³ Article XVIII

⁴ Article XXXVII

⁵ The Enabling Clause is officially known as the 1979 Understanding on Differential and More Favourable Treatment, Reciprocity and Fuller Participation of Developing Countries.

Special and Differential Treatment in the Doha Development Agenda
Canadian Perspectives

Trade ministers endorsed a work program on SDT as part of their Decision on Implementation-Related Issues and Concerns, to be handled by the Committee on Trade and Development (see Box 1). Beyond this single committee, SDT issues have also been integrated into the other main Doha Round negotiating groups such as agriculture, non-agriculture market access, services, trade facilitation, and rules. Current SDT negotiations, therefore, are characterized by this two-track process.

Box 1: LDCs, SDT, and WTO implementation issues

At the Seattle Ministerial meeting in 1999, developing countries raised a number of concerns with the implementation of the Uruguay Round agreements and their obligations as WTO members. Some 50 issues were resolved in 2001 at the Doha Ministerial, in the Decision on Implementation-Related Issues and Concerns which formed part of the Doha Declaration. But there remained some 88 issues to consider. These were to be addressed either within the relevant negotiating bodies, or by the relevant WTO bodies as a matter of priority. More generally the Committee on Trade and Development (CTD) was tasked with identifying ways to make SDT provisions more precise, effective and operational, as well as considering how to include SDT in the negotiations. An initial deadline of July 2002 was set for the conclusion of these discussions, to be held in special sessions of the CTD (known as CTD-SS). But this date passed, as did two subsequent deadlines, with major differences remaining.

To advance matters, in 2003 the 88 issues were divided into 3 categories – those where progress seemed likely (38 proposals), those to be considered within the agreement-specific negotiating groups (another 38), and those where little progress seemed likely in the immediate future (15). By the time of the Cancún Ministerial in September 2003, there was agreement on 27 proposals in the first category -- as set out in the Annex C of the so-called Derbez text. These have been shelved even though it would have been possible, under the Doha Declaration, for them to be agreed and passed as an early result of the Doha Round at any subsequent General Council meeting.

In order to break the continuing deadlock over the remaining 61 issues, in 2004, the Chair of the CTD-SS, Faizel Ismail, suggested distinguishing between agreement-specific proposals and those that raised cross-cutting issues (such as differentiation and monitoring mechanisms). Several developing countries, however, opposed this approach on the grounds that it might lead to undue attention on differentiation and graduation.

The July 2004 framework called for an expeditious review of the SDT provisions relating to agreement-specific proposals and others relating to WTO bodies, leading to recommendations by July 2005. It also agreed that special attention be given to developing country interests, including those of food security, rural development and livelihoods, during the agricultural and non-agricultural market access negotiations.

In 2005 the CTD-SS has focused on agreement-specific proposals, with priority being given to five LDC proposals. These relate to:

1. positive consideration of LDC requests for waivers
2. measures in favour of LDCs (such as binding duty-free access and compensation for preference erosion),

Special and Differential Treatment in the Doha Development Agenda
Canadian Perspectives

3. the Enabling Clause (and ensuring consistency between LDC obligations and development conditionalities)
4. exemption of LDCs from WTO rules on trade-related investment measures (TRIMs), and
5. measures in favour of LDCs (ensuring their obligations are compatible with their development needs and capacities).

These raise cross-cutting issues linked to market access, policy flexibility and financial assistance and capacity building, and have triggered a range of reactions from developed and developing countries. For instance, some low-income countries are worried about the trade and investment losses they may experience should SDT be enhanced for neighbouring LDCs. Other countries consider that the TRIMs exemption should continue to be time-limited and subject to WTO scrutiny, as in a waiver, in order to protect the integrity of the multilateral trading system. As the Chairman of the Trade Negotiations Committee noted in July 2005, when commenting on the lack of consensus, despite agreement ‘that it is important to provide the LDCs with a certain degree of flexibility and assistance in implementing the WTO Agreements, there continues to be a difference in perception about the nature and extent of this flexibility.’

Overall engagement on even these five SDT proposals has been limited and there is a concern that without additional, substantive, input from capitals in both developed and developing countries the negotiations are unlikely to meet their deadlines, raising questions both about commitment to making the Doha negotiations a Development Round and the sincerity of members to give priority to LDC interests.

SDT today consists of 145 provisions spread across various WTO agreements.⁶ Of these, 107 were adopted at the conclusion of the Uruguay Round. According to the WTO Secretariat, these provisions can be grouped into six categories of SDT: 1) provisions to increase the trade opportunities of developing countries; 2) provisions to safeguard the interests of developing countries; 3) flexibility of commitments, of action, and use of policy instruments; 4) transitional time periods; 5) technical assistance; and 6) provisions relating to LDCs.⁷ In the course of the Doha Round of negotiations and in parallel policy discussions, these have all been raised in different ways. For instance, a number of proposals to improve market access for the products and services of developing countries fall within the first category.

The third category of SDT measures is more controversial (Page 2004). In general it is recognized that there are both economic and political reasons for rejecting the “one size fits all” approach to management of trade-related policies. However, there is a debate on what sort of policy flexibility is needed, for how long and under what conditions developing countries should be exempted from the application of certain WTO rules, and allowed to restrict imports or subsidize exports. Such debates bring back older

⁶ This includes the Agreement on Trade in Goods, the General Agreement on Trade in Services, the Agreement on Trade-Related Aspects of Intellectual Property, the Understanding on Rules and Procedures Governing the Settlement of Disputes, and various Ministerial Decisions.

⁷ This is the typology set out in WTO Secretariat, ‘Implementation of Special and Differential Treatment Provisions in WTO Agreements and Decisions,’ WT/COMTD/W/77, 25 October 2000.

discussions about the successes and failures of industrial policy and infant industry protection, where both the defenders of broad flexibility and those adopting a more restrictive approach are re-examining and re-interpreting the empirical evidence on the topic (see Box 2). Some analysts stress the prevalence of so-called unorthodox interventionist measures used in industrialized countries and most recently in East Asia to correct for market failures that inhibit sustained economic development and diversification. Their aim is to ensure that trade agreements maintain the policy space to conduct different types of industrial policies (Akyuz 2005; Chang 2002; Wade 2003). Others are challenging whether flexibility in the application of WTO rules is pro-development and have called for a more restrictive approach to SDT policy flexibility. These authors emphasize the poor track record of infant industry protection in spurring industrial development in developing countries, and maintain that such policies lead to the emergence of vested interests that impose significant costs on the domestic economy by prolonging and entrenching the misallocation of scarce resources (Hart 2003; Kerr 2005; UN Millennium Project 2005).

Box 2: Are industrial policies good for development? An unresolved question

Beyond the legal issue of what government measures are WTO-compliant, part of the SDT debate is about whether economic policies contribute to industrialization, growth and poverty reduction. Some have made the point that the WTO should not be an academic forum to debate what economic policy is good for development, as the WTO negotiations have to be based on developing countries' own definition of their interests (Page and Kleen 2005). Nevertheless, academic research and publications can influence the views of policymakers and thus the positions adopted in trade negotiations. A large part of this debate is structured around the concept of industrial policy. The literature and the empirical evidence on industrial policy do not offer an unequivocal answer to the question of whether such policies should be used; as yet there is no consensus on this point.

Market failure. A significant body of literature highlights how industrial policies can be a useful tool for industrialization. Such analysts often stress and examine the wide range of interventionist measures used by today's industrial countries, and more recently in East Asia, to achieve sustained economic growth and ultimately development. (Amsden 1989, Amsden. 2001; Chang 2002, 2005; Rodrik 2001, 2004). In East Asia, an outward trade orientation was combined with 'unorthodox' policies such as: "export subsidies, directed credit, patent and copyright infringements, domestic-content requirements on local production, high levels of tariff and non-tariff barriers, public ownership of large segments of banking and industry, and restrictions on capital flows, including direct foreign investment" (Birdsall et al. 2005). Besides examination of the historical record, economists have examined the theoretical arguments that underpin the rationale for industrial policy. In addition to various versions of the older infant industry arguments, these have included 1) knowledge spillovers and dynamic scale economies 2) coordination failures and 3) information externalities (Pack and Saggi 2005; Hausman and Rodrik 2003).

Government failure. There is also an important body of economic literature challenging whether industrial policies have been successful, which focusses on Asian experiences with such policies.

Special and Differential Treatment in the Doha Development Agenda
Canadian Perspectives

This literature usually presents the success stories of Japan, Korea and Taiwan as “largely the result of getting macroeconomic policy right: responsible government monetary and fiscal policy, low inflation and maintaining the correct real exchange rates” in addition to large investment in the education system (Noland and Pack 2003, p. 5). The World Bank’s assessment of the “East Asian miracle” (1993) supported this view and also stressed the importance of human capital as well as a high level of domestic savings and domestic private investment to achieve high growth rates. The World Bank report recognized that Japan, Korea, Taiwan and to a lesser extent, the newly industrializing countries of Southeast Asia (Thailand, Malaysia and Indonesia) used a wide range of government interventions, but that only in some of these countries did industrial policy result in higher growth. The report also mentions the role of distributive policy to ensure shared growth and asserts that institutional capacity requirements to be successful with these instruments are such that most developing countries cannot hope to follow this path (UN Millennium Project 2005).

Interestingly, both sides converge on one critical point: that their respective development strategies both lead to increased technological learning, absorption and ultimately innovation. Those advocating for open, non-discriminating economies reason that positive technological spillovers from trade and FDI help to improve the productivity of domestic firms and efficiency in the allocation of resources. From this point of view, keeping an economy more closed is akin to retarding technological development and inhibiting growth. Conversely, those favouring a balance between an inward and outward-orientation contend that openness on its own, is no guarantee that technological deepening will occur in a given economy. Instead, in most cases they argue that the state must play a leading role in fostering and coordinating domestic capabilities and investment, which can then lead to indigenous technological development; openness will not automatically and costlessly lead to technology transfer – i.e. openness is no substitute for a coherent development strategy.

In their review of the literature supporting and opposing industrial policy, Pack and Saggi (2005) conclude that “evidence does not come out strongly in favour of one group. While there certainly are cases where government intervention co-exists with successes, in many instances, industrial policy has failed to yield any gains. Above all, the real issue is that the relevant counterfactuals are not available. Consider the argument that Japan’s industrial policy was crucial for its success. Since we do not know how Japan would have fared under *laissez-faire*, it is difficult to attribute its success to industrial policy. Maybe it would have done still better in the absence of industrial policy or maybe it would have done much worse [...] perhaps this is why the debate over industrial policy has remained unsettled and may remain so in the future” (p. 3).

This raises larger questions about what actually constitutes a development agenda for the WTO, reflecting the ongoing academic and political debates about the linkages between economic integration and development. For instance, some have questioned the impact of trade openness on economic growth (Rodrik and Rodriguez 1999), while other researchers are grappling with the complex linkages between trade liberalization and poverty (see McCulloch et al. 2001) and the critical role played by institutions in process of economic development (Birdsall et al. 2005). Indeed, when economic liberalization stretches to include reforms in the enforcement of intellectual property rights and in services such as health, education and water, on top of traditional ‘at-the-border’ reforms, the ‘development’ picture becomes even more complex and challenging.

Special and Differential Treatment in the Doha Development Agenda
Canadian Perspectives

Historically, trade negotiations have operated on the reciprocal exchanges of concessions among trade partners; e.g. country A agrees to remove tariffs on sugar in exchange for country B removing its tariffs on telecommunications equipment, or Country C accepts stronger limits on anti-dumping duties against Country D enforcing stronger intellectual property rights. A trade policy process truly driven by development objectives would mean a significant change in the operations and norms of the multilateral trade regime. Some have expressed concerns about this new ‘development-driven’ trade regime. “Affirming as WTO members have since Doha, that the WTO’s production function must today internalize a development-promoting function, implies that national negotiators must somehow pursue world welfare objectives and place these above home country objectives and interests. The political sustainability of such a proposition would appear tenuous at best” (Sauvé 2003). Others have wondered whether such idealism is simply more rhetoric or use of symbolic politics on the part of trade negotiators. In his questioning of what a development mandate for the WTO means, Evenett (2003) asks whether it should focus on the decision-making process of the WTO, so as to ensure that it better reflects the interests of developing countries or whether it should be targeted at specific development outcomes. In this vein, others have examined the prospects and drawbacks of using the Millennium Development Goals (MDGs) for that purpose (Weston and Morton 2004).⁸

Given the contested pro-development nature of SDT, the challenge for negotiators is to find a balance between a very broad approach which would allow wide flexibility in adopting trade and industrial policies and a more limited approach which may be needed to keep industrial countries engaged in the WTO.

To this end, a number of other ‘big picture’ ideas have been circulating:

- Taking a middle road, Keck and Low (2004) generally agree with a more restrictive approach to SDT, while also recognizing the legitimate use of infant industry protection on the grounds of market imperfections and dynamic external economies of scale. As they put it, “A good case can, however, be made for a paced phasing-out of trade-distorting measures and

⁸ The MDGs are development targets to be achieved by 2015 and one of the goals, MDG 8, which aims at building economic partnership between industrial and developing countries, included a number of trade-related targets. MDG 8’s trade-related aspects include Target 12: “develop further an open, rule-based, predictable, non-discriminatory trading and financial system” and Target 13: “address the special needs of Least Developed Countries” which includes “tariff and quota free access for LDC exports”. In addition, Goal 8 specifies four indicators under the heading of “market access”. These include: Indicator 37, proportion of exports (by value and excluding arms) admitted free of duties and quotas; Indicator 38, average tariffs and quotas on agricultural products and textiles and clothing; Indicator 39, domestic and export agricultural subsidies in OECD countries; Indicator 40: Proportion of ODA provided to help build trade capacity. Target 17 is also relevant: “In cooperation with pharmaceutical companies, provide access to affordable, essential drugs in developing countries”. This target has the indicator “Proportion of population with access to affordable essential drugs on a sustainable basis”.

Special and Differential Treatment in the Doha Development Agenda
Canadian Perspectives

the provision of time to adjust.” According to them, graduation from SDT “should be gradual, provision-specific and driven by detailed analysis of development needs” (2004, pp. 29-30) These needs would be defined by a set of measurable criteria that would also establish a threshold, beyond which use of agreement-specific SDT measures would no longer be permitted.

- This approach to SDT can be contrasted to that of Stevens (2002), who has advocated for very broad flexibility for developing countries with regards to the implementation of rules on condition that such measures do not impose significant negative pecuniary costs on other WTO members. Stevens has also proposed SDT access criteria focusing on agriculture and food security, and ways to identify food insecure countries and the specific actionable modulations of WTO rules for which they would be eligible. The agricultural criteria put forward are three-fold: a minimum per capita calorie intake of 2500/day, a minimum share of agricultural value-added in GDP of 20 percent, and a maximum 0.25 per cent share in world agricultural exports.
- Another approach to tailor SDT to developing country needs has been advanced by the International Centre for Trade and Sustainable Development (ICTSD). Its so-called ‘situational approach’ aims to define a limited number of development situations based on three criteria: 1) a description of the problem in terms of economic and trade circumstances (e.g. lack of competitiveness and supply-side constraints), 2) specific policy objectives to address the given problem, and 3) SDT provisions useful in resolving the problem and in achieving policy objectives. Moreover, instead of using broad indicators such as GDP per capita to define problems, ICTSD proposes indicators that are as focused as possible on the characteristics of a given development situation. Thus, in the case of limited competitiveness, suggested indicators could include: a global market share of non-agricultural export lines representing 40 percent of total non-agricultural exports that is below a pre-established ceiling, the degree of export diversification and/or technological intensity of exports below a pre-established value (2005).
- In recognition of the difficulty of this balancing act, the recent report of the Consultative Board (2005) on the future of the WTO makes a number of suggestions. One is for ‘variable geometry’ within a WTO context – this would require making it easier for WTO members to negotiate plurilateral agreements in which some WTO members could negotiate more ambitious commitments. Yet they note the need for rules to ensure this is not a divisive approach. Another is to follow a GATS scheduling approach in which members determine their own pace for market access and national treatment offers. For LDCs, they propose a contractual right to appropriate technical assistance and capacity building, in preference to a blanket exemption from WTO obligations.

- Another way forward for SDT in the current round has been proposed by Hoekman (2004), who suggests that all WTO members agree to a core set of trade rules.⁹ This approach would be complemented by a rule-of-thumb provision allowing developing countries to opt-out of resource-intensive agreements “for all countries satisfying broad threshold criteria such as minimum level of per capita income, institutional capacity, or economic scale.” The emphasis is on providing poorer countries with flexibility only on agreements whose implementation costs would be disproportionately high relative to the resulting development benefits.¹⁰ According to Hoekman, such agreements “may not pass a cost-benefit analysis test” and should only be implemented as countries grow out of threshold criteria conditions. Recognizing that many developing countries oppose a case-specific SDT format, he suggests ‘soft-law’ flexibility to dispute settlement that promotes cooperation and information sharing between governments. Rather than invoke the threat of dispute settlement, soft-law would take into consideration the development level of a given country, while also multilaterally monitoring “the impacts of policies and their effectiveness in attaining their objectives” (p. 9).¹¹

The paper now turns to agreement-specific SDT approaches found within individual WTO negotiating committees themselves. This allows for a detailed view of how SDT principles are evolving over the course of the DDA.

1.2 EXAMINATION OF SDT PROPOSALS IN THE DDA

1.2.1 AGRICULTURAL NEGOTIATIONS

In this section we review the proposals being made in the agricultural negotiations with particular emphasis on issues of SDT. As the agricultural negotiations are amongst the most complex, the focus here is on the broad approach.

The Uruguay Round was the first time that agriculture was brought within the norms of the multilateral trade rules. While marking a major step forward in this respect, it left considerable scope for further negotiation. In fact the Agreement on Agriculture set out a

⁹ This would include: MFN, national treatment, banning of quantitative restrictions, tariff ceiling binding commitments, and “engaging in the process of reciprocal trade liberalization” (p. 4).

¹⁰ Examples of such kinds of agreements include: Customs Valuation (Article VII), Sanitary and Phytosanitary Measures, and Trade-Related Aspects of Intellectual Property Rights (TRIPS).

¹¹ Hoekman views the work of the Integrated Framework for Trade-Related Technical Assistance to LDCs (IF) as an important step in coordinating trade policy aims with national development strategies, and donor-funded assistance (2005). The IF first emerged out of the WTO Singapore Ministerial Conference in December 1996. The participating agencies are: the IMF, ITC, UNCTAD, UNDP, World Bank, and WTO.

Special and Differential Treatment in the Doha Development Agenda
Canadian Perspectives

process for agricultural negotiations to resume in 2000, and these were then wrapped into the DDA. At Doha, WTO members agreed to negotiate substantial improvements in market access, reductions in all forms of export subsidies with a view to phasing them out, and substantial reductions in trade-distorting domestic support (para. 13). SDT was to be integral to all elements, in operationally effective ways and to enable developing countries to take account of their development needs, including food security and rural development. At the same time, the non-trade concerns usually associated with developed country agricultural interests were also to be taken into account.

For developing countries the DDA negotiations on agriculture are a critical opportunity for reviewing both the impacts to date of their Uruguay Round commitments and to consider how far the domestic, border and export practices of developed countries continue to undermine their national development efforts. In terms of the latter, it has become clear that the WTO rules have failed to adequately discipline developed country practices with the result that developing country producers have seen major losses in income with dumping on their domestic markets as well as world markets. Exporters have continued to face difficulties in accessing developed country markets as a result of tariff quotas, high tariffs, and tariff escalation, as well as increasingly stringent SPS, labelling and private sector barriers to trade. These facts have been well-documented by reports from, amongst others, the World Bank (2005), UNDP (2003), FAO (2003), Oxfam (2003, 2005) and the Commission for Africa (2005).

Despite common experiences associated with these overall general trends, different groups of developing countries have emerged with somewhat different views on the way forward. Some countries with particularly large export interests are interested in disciplining developed country use of domestic and export subsidies, as well as securing improved access to developed and other developing country markets; their higher productivity means that they are less worried about their smaller domestic producers. Others are particularly concerned about protecting domestic producers – initially from dumped products but in the longer term from more competitive foreign agribusinesses. Many countries have a mixture of interests in maintaining domestic support while also improving access for exports.

The WTO negotiations since 2001 have produced several proposals from different countries, both independently and as part of various groupings, and from the chairs of the negotiating group on agriculture. These have addressed the three pillars of the negotiations – domestic support, export competition and market access – with varying degrees of reference to SDT.

The US has actively advocated ending export subsidies and improving market access by cutting tariffs and trade-distorting domestic support.¹² It has also proposed eliminating

¹² The US WTO Agriculture Proposal, at <http://www.fas.usda.gov/itp/wto/proposal.htm>, last modified March 24, 2004.

Special and Differential Treatment in the Doha Development Agenda
Canadian Perspectives

export monopolies and state-trading enterprises (STEs) such as the Canadian Wheat Board. Its own domestic support programs have grown significantly in recent years (under the Farm Bill of 2002) and it has sought to protect this approach by broadening the coverage of the WTO's Blue Box of allowable subsidies¹³ and suggesting that domestic support be phased out more slowly than export subsidies. In the case of market access, it has advocated an ambitious Swiss formula¹⁴ that would see higher cuts in higher tariffs leading to a cap of 25 percent, and has favoured focusing on applied tariffs which tend to be lower than bound tariffs especially in developing countries. These cuts would be phased in over five years, with a date to be agreed for eventual elimination of all tariffs. While accepting the need for some flexibility for sensitive products for other developed countries and special products for developing countries, it expects some market access improvements to be made even for these product categories. Overall its view on SDT is fairly narrow; it has focused on allocation of TRQ expansion to non-traditional developing countries, and exempting developing countries from a ban on export taxes and from subsidy limits on domestic support for subsistence, resource-poor and low-income farmers.

The EU has sought substantial liberalization whilst maintaining the right to address non-trade concerns, such as environmental protection, rural development and food safety concerns.¹⁵ It has generally articulated more support for SDT, both in terms of market access (e.g. proposing the Uruguay Round formula¹⁶ as providing developing countries with flexibility, as well as cuts in tariff escalation and even duty-free treatment for products of interest to developing countries) and domestic support, in recognition of their food security, rural development and other multi-functional needs. Initially, however, it also suggested that LDCs contemplate a minimum level of market access commitments. It favours tighter controls on food aid and the provision of cash whenever possible to buy

¹³ The WTO's Agreement on Agriculture distinguishes between three categories of subsidies – Green Box, Amber Box and Blue Box. *Green Box* subsidies are allowed as they are considered to have a minimal impact on trade. They are government-funded, do not involve price support, and are generally not linked to particular products; for instance they may involve income support that is not linked to farmers' current output. *Amber Box* subsidies are measures that are linked to production, prices and/or trade and are generally prohibited -- *de minimis* i.e. small amounts of support are allowed – equal to 5% of the value of agricultural production in developed countries and 10% in developing countries. *Blue Box* subsidies are amber box measures which are conditional on farmers' limiting production. In the past there was no ceiling on Blue Box measures but some countries would like now to introduce one to prevent their abuse. WTO Background Factsheet on Domestic Support in Agriculture, WTO website.

¹⁴ The Swiss formula is $Z = \frac{AX}{A+X}$ where X is the initial tariff rate, A is the coefficient and Z is the resulting lower tariff rate. It is intended to harmonize tariffs, i.e. narrow the range between high and low tariffs, as it leads to higher cuts in higher tariffs. In fact the 'co-efficient' in the formula establishes the highest tariff after the cuts are made. Switzerland proposed the formula in the Tokyo Round but does not favour its use in the Doha Round agricultural negotiations.

¹⁵ The EC's January 2003 proposal for modalities in the WTO agriculture negotiations is at <http://europa.eu.int/comm/agriculture/external/wto/officdoc/mod.pdf>

¹⁶ The formula adopted in the Uruguay Round agricultural negotiations was a linear cut in the average tariff of 36% for developed countries and 24% for developing countries with minimum cuts of 15% and 10% respectively.

Special and Differential Treatment in the Doha Development Agenda
Canadian Perspectives

food from within a country or from other developing countries. At the same time it is keen to maintain support of EU farmers through a variety of mechanisms ranging from Green Box subsidies and a flexible approach to market access for sensitive products, to special safeguards and new rules on geographical indications.

The **G10** developed and developing countries are net agricultural importers keen to see a balance struck between an ambitious outcome on agriculture in the DDA and flexibility to safeguard policies promoting non-trade concerns such as food security, the viability of rural areas and rural development.¹⁷ They have essentially supported the EU's approach for sensitive products, which would be subject to minimal tariff cuts and a case-by-case approach to TRQ expansion. More generally they favour tariff cuts being heavily weighted towards the Uruguay Round formula. While prepared to reduce trade-distorting subsidies they oppose any quantitative limits on Green Box measures. They see themselves as having some common interests with developing countries seeking flexibilities for special products. But many developing countries with export interests are concerned that the limited cuts proposed by the G10 for tariffs, TRQs and domestic support will limit their own gains from the DDA. Moreover the attention given to developed countries' sensitive products has detracted from the focus on developing countries' special products, and led to suggestions of an inverse or negative SDT.

The **G20** formed in 2003 in large part to increase the SDT content of the agricultural negotiations, in response to the approach being promoted by the US and the EU, namely of increasing pressure on developing countries to increase access to their markets while offering vague and limited cuts in their trade-distorting domestic and export support as well as improved market access. The group includes several large developing countries (China, India, Brazil, Egypt) and a number of leading agricultural exporters.¹⁸ It has argued strongly for tougher disciplines on developed country support measures and increased access to developed country markets while limiting the extent of developing country commitments in both areas. According to some observers, however, the strength of the G20 was weakened by the inclusion of India and Brazil in the Five Interested Parties (FIPs) (with the US, EU and Australia). The latter group produced the key components of the July 2004 Framework which has been much criticized for its limited development content.¹⁹ Yet the G20 has continued to play a key role in the agricultural negotiations in 2005, maintaining pressure for an immediate standstill in export subsidies, significant reductions in trade-distorting domestic support by developed countries to offset their use of inflated baselines, and tight disciplines on the Green and Blue Boxes to avoid box-shifting. It has called for the tariff reduction formula to be negotiated before

¹⁷ The G10 are Bulgaria, Iceland, Israel, Japan, Korea, Liechtenstein, Mauritius, Norway, Switzerland and Chinese Taipei. http://www.taiwanwto.ch/doc/pages/statements/index/g10_statement0704.htm

¹⁸ The G20 includes Argentina, Bolivia, Chile, China, Cuba, Ecuador, Egypt, El Salvador, India, Indonesia, Mexico, Nigeria, Pakistan, Paraguay, Peru, the Philippines, Thailand, South Africa, Tanzania, Venezuela and Zimbabwe. It accounts for some 26% of global agricultural exports and 17% of agricultural imports, some 51% of the world's population, 63% of farmers and 20% of agricultural production.

¹⁹ Walden Bello and Aileen Kwa at <http://www.urfig.org/wto-sup-bello-kwa-g20-geneva-triumph-pt.htm>

Special and Differential Treatment in the Doha Development Agenda
Canadian Perspectives

flexibilities are addressed – and for the formula to respect the SDT principles of progressivity, proportionality and flexibility.²⁰ In particular it advocates a linear approach within bands, tariff caps, binding all tariffs in value terms, eliminating special safeguards for developed countries and allowing them lesser liberalization for only a very limited number of sensitive products.²¹

The **G33** members, led by Indonesia, have common interests in measures to support a range of special products (SPs) including a Special Safeguard Mechanism (SSM) in order to address their food security, livelihood security and rural development concerns. For them a flexible approach is key; this will involve developing countries being able to use a range of indicators to identify which products need such special treatment. Any tiered formula for tariff reduction should not aim for harmonization but take into account the different tariff structures that exist in developing countries. Besides maintaining tariff protection, *de minimis* support²² is also considered an important tool, and one which should not be reduced.

The **G90** which groups countries that are members of the African Union, the African, Caribbean and Pacific (ACP) beneficiaries of the Cotonou Convention with the EU, and LDCs, has made several suggestions for SDT with a particular emphasis on market access issues. Here it has identified areas where developed countries should make specific commitments, such as binding duty- and quota-free treatment for LDCs, and reducing high tariff, tariff peaks and escalation for other countries. Preserving developing countries' right to limit access to their own markets though tariffs and special treatment for self-selected products is also important as is aid to support the development of supply capacities, and compensate for the erosion of preferences. The Africa Group has been particularly concerned to see early resolution of the problems facing its cotton producers, including the phasing out of US and EU domestic support and export subsidies for cotton, and compensation in the interim. LDCs have insisted on a flexible approach to binding their own tariffs and exemption from all reduction commitments, binding duty-free quota-free access for all exports, compensation for preference erosion, and assistance with the development of their supply-side capacities.²³

The **Groser text** of July 2004 attempted to find a common ground among these different positions. But one analysis considered it “severely inadequate in addressing development needs in agriculture ... (its) provisions on SDT are disappointing.”²⁴ In this respect it appeared to be a step back from the Derbez text on the table at Cancún, or as TWN put it,

²⁰ G20 Ministerial Declaration, March 20, 2005 at http://commerce.nic.in/wto_sub/g20/min_decln.htm

²¹ G20 Bhurban Ministerial Declaration, September 2005.

²² This refers to Amber Box measures that are allowed in developing countries if they fall below 10% of the value of agricultural production.

²³ Fourth LDC Trade Ministers' Meeting, Livingstone Declaration, 26 June 2005.

²⁴ ILEAP Negotiation Note No. 4, A Comparative Reading of the Groser Draft Text on Agriculture from a Development Perspective, 2004

Special and Differential Treatment in the Doha Development Agenda
Canadian Perspectives

‘an asymmetric Doha-minus’.²⁵ For example it gave more specificity to developed country concerns with sensitive products leaving developing country sensitivities to be addressed more extensively later, creating a type of reverse SDT. Weaker provisions for market access and tariff caps for these products would limit the market access benefits of the DDA for developing countries. Similarly, the expansion of Blue Box measures appeared likely to allow developed countries to avoid cuts by shifting more domestic support to this category.²⁶

Several of these weaknesses were then reflected in the **July 2004 framework**, agreed by WTO members in Geneva, which provoked a wide range of responses, with some observing that on agriculture it represented a ‘remarkable turnaround from Cancún’ and established the basis for moving ahead to negotiation of more detailed modalities, while others claimed there were ‘few causes for celebration’ and it ‘leaves much to be done.’²⁷ The agreement committed developed countries to cut trade-distorting support by 20 percent in the first year following the final DDA agreement, to agree to a date for eventual elimination of export subsidies, and to substantial overall tariff reductions through a tiered formula approach and addressing tariff escalation.

The framework also endorsed several aspects of SDT. For instance in the cases of domestic support this amounted to lesser cuts, longer implementation periods and the exemption of *de minimis* support for subsistence and resource-poor farmers. On market access, SDT was recognized as an integral element of all elements, with proportionality to be achieved through lesser tariff cuts or expansion in TRQs. Developing countries were given the right to designate an appropriate number of products, according to criteria relating to food security, livelihood security and rural development, which would be given more flexible treatment. This would involve less liberalization, not exemption from reduction commitments which is only available for LDCs. The framework also endorsed the concept of a special safeguard mechanism for developing countries.

However there were three major criticisms – lack of details on ending export subsidies, increased flexibility for developed countries in terms of domestic support through the redefinition of Blue and Green Boxes and in terms of market access through the designation of sensitive products, and failure to achieve an early harvest on key issues of importance to vulnerable developing countries such as cotton and tropical products.

From July 2004, despite several meetings and various new proposals and studies to clarify their implications, there was limited progress in the agricultural negotiations. As noted by the Chair of the Trade Negotiations Committee (TNC) in late July 2005, major

²⁵ Chakravarti Raghavan, July 19 at <http://www.twinside.org.sg/title2/5618b.htm>

²⁶ Seven countries use Blue Box (EU, US, Japan, Norway, Iceland, Slovenia, Slovakia) according to TRALAC.

²⁷ Oxfam, Arrested Development? WTO July framework agreement leaves much to be done, July 2005 at www.oxfam.org.uk

Special and Differential Treatment in the Doha Development Agenda
Canadian Perspectives

differences remained between countries on all three agricultural pillars but especially on market access. These differences were reflected in the flurry of proposals presented in September-October ahead of the Hong Kong ministerial. While most countries recognized the centrality of agriculture to concluding the Doha Round, and particularly to secure a meaningful outcome for developing countries, the EU and the G10 insisted that progress on agriculture would be difficult without significant movement on industrial goods and services.

On agricultural market access, proposals ranged from an average tariff cut for developed countries of 46% from the EU²⁸ to 54% from the G20/G33 and 75% from the US. For developing countries the average cut was expected to be 36% (G20/G33) or two-thirds of the developed country level (EU). The US did not specify a target though it expected developing countries to accept only slightly lesser reductions and to make meaningful commitments to reflect their importance as emerging markets.²⁹ Most accept that the cuts would be achieved through a tiered approach, with tariffs in higher tiers being cut proportionately more, and tariff caps (e.g. 100% for developed and 150% for developing countries as proposed by the G20 and the EU, or 75% as proposed by the US for developed countries) though these have been rejected by the ACP. Overall the main developing country criticism of the US market access proposals is that they are too aggressive, and should not be a condition of subsidy cuts; in particular the US has failed to give due consideration of the SDT criteria agreed in the Doha Declaration and the July framework. On the other hand the EU proposal is too limited, and likely to leave some fairly high tariffs.

Countries also differed on the extent to which certain products might be treated as sensitive (SePs) and thus eligible for lower tariff cuts if any. For instance the EU proposed that countries be able to list up to 8% of tariff lines as SePs, whereas the G20 argued for a limit of 1% of tariff lines for developed and 1.5% for developing countries. The ACP favoured listing a number of preference-receiving tropical products as SePs on which importing countries would delay MFN tariff cuts, but this contradicted the G20 position that no tropical product be a SeP.

For Special Products (SPs), the G33 has identified a series of criteria for countries to use; for instance, in the case of food security, one would be the share of a product in total calories per capita, and for rural development, the extent to which production occurs on small and medium-sized farms. They have also suggested that any product which receives subsidies in other countries automatically be categorized as SP.³⁰ The G33 has also emphasised the use of special safeguards, involving the use of additional duties for twelve months if necessary to protect domestic producers from a surge in imports or a

²⁸ NB the EU offer does not provide an actual average tariff cut – these are estimates based on its proposed cuts for each tier. The US estimates that the EU offer is worth closer to 39%. Associated Press, Oct. 28, 2005 on <http://web.worldbank.org>

²⁹ U.S. Proposal for WTO Agriculture Negotiations, October 10, 2005.

³⁰ JOB(05)/230, 12 October 2005.

Special and Differential Treatment in the Doha Development Agenda
Canadian Perspectives

sharp drop in import prices. The US, however, argues that safeguards be used for transitional protection only and not to avoid increased access to developing country markets.

While much attention has been given to market access, several proposals have also addressed domestic support and export subsidies, with higher proportionate cuts for countries with higher spending. The G20 has proposed more substantial cuts of 85%, 75% and 70% respectively for subsidizers spending more than \$60 billion in trade-distorting support, \$10-60 billion and below \$10 billion, compared to the EU's 70%, 60% and 50% and the US' 75%, 53% and 51%. The US and EU offers, however, have been criticized as unlikely to lead to meaningful cuts in the immediate future.³¹ There is concern amongst some developing countries that the proposed criteria for Blue and Green Box spending may not effectively limit their impact on international trade. The eventual elimination of domestic support subsidies is forecast by the US to take at least 15 years. For export subsidies, the US proposes elimination in five years, or sooner for some products, but the EU wants to go further i.e. to limit export credits and non-cash food aid.

To sum up, amongst the key points raised with these latest proposals are: the failure of the US to take SDT seriously; the lack of transparency associated with several meetings taking place amongst the FIPs; and the linkage of progress by the US within agriculture between cuts in subsidies and improvements in market access, and by the EU between cuts in agriculture to other negotiating issues, notably NAMA and services, to which we now turn.

³¹ According to an Argentinian official, the US approach would even allow it to increase its current trade-distorting subsidies by \$2 billion to \$23 billion, while Oxfam estimates that the cut in both trade distorting and Green Box measures might be as little as 2%. TWN Info Service, 15 October 2005.

1.2.2 NON-AGRICULTURAL MARKET ACCESS (NAMA)

The aim of the NAMA negotiations is to reduce or eliminate tariffs, tariff peaks, high tariffs, tariff escalation, and non-tariff barriers to non-agricultural goods trade.³² Appearing first in the 2003 Cancún Ministerial talks, the ‘Derbez text’ became the basis for the draft prepared by the chair of the NAMA negotiating group (NGMA) in 2003, which in turn contributed to the NAMA modalities (as set out in Annex B of the July 2004 package).³³ Whereas developed countries (US, EU and Canada) generally supported the contents of the Derbez text, some developing countries (particularly from Africa and the Caribbean) expressed outrage that the text initially emerged in the July package unmodified.³⁴ In the end, however, developing countries accepted it with only slight modifications; namely, that “additional negotiations are required to reach agreement on the specifics of some of these elements” (para. 1). As reported by the TNC Chairman in July 2005, negotiations one year later had not progressed very far and generally remained hampered due to slow-going agricultural negotiations.³⁵

The main sticking point has been in finding a balance between the level of ‘ambition’, i.e. how far countries agree to liberalize, while leaving enough room for flexibility, i.e. to respond to the needs of different countries, and especially developing countries, for protection. This balance was to be struck not only between different negotiating areas (agriculture, NAMA, services, etc.), but also among the different key issues found within NAMA itself. To further understand the state of negotiations, we review the elements found in the July 2004 framework against which we then compare the spectrum of SDT approaches currently on the NAMA table.

The July Framework There are six main SDT elements in the framework: the tariff reduction formula, treatment of unbound tariff lines, sectoral tariff elimination, non-tariff barriers, preferences, and capacity-building.

³² Tariff peaks are tariff levels of 15% and above. High tariffs are tariff levels that are at least three times a given Member’s overall simple average. Tariff escalation refers to higher import tariffs applied to products of greater value-added processing: lower duties for raw materials, higher duties for semi-processed and finished products. Non-tariff barriers are barriers to trade generally related to areas such as import licensing, rules of origin, and environmental and other technical standards.

³³ See ‘Chair’s Draft Elements of Modalities’ – TN/MA/W/35/Rev.1 (19 Aug 2003); and, ‘Doha Work Programme’ – WT/L/579, pB-1 (2 Aug 2004).

³⁴ See Broude (2003), Khor and Goh (2004), Oxfam International (2005).

³⁵ See ‘Report by the Chairman of the Trade Negotiations Committee to the General Council’ – TN/C/5 (28 July 2005).

Special and Differential Treatment in the Doha Development Agenda
Canadian Perspectives

First, on the issue of tariff reduction, it is proposed that a line-by-line non-linear³⁶ tariff reduction formula would be applied to all bound non-agricultural tariffs. The formula would build upon the so-called Swiss formula³⁷ and includes a coefficient ‘*B*’ whose value will be determined during the negotiations.³⁸ While SDT is possible within the formula itself, it is proposed that developing countries also be given more flexibility through longer implementation periods and less than full formula cuts. Particular groupings of countries are also to be given special treatment, including: credits for post-Uruguay Round unilateral liberalization, and added flexibility for newly acceded members as well as LDCs (which are conditionally exempted from committing tariff reductions). Countries with bound tariff coverage of less than a certain share of their tariff lines – tentatively put at 35 percent – would also be exempted from cutting their tariffs according to the formula.

Developing country flexibilities, however, are not open-ended. For instance, one suggestion is that non-exempt countries might make less than formula cuts for, say, 10 percent of their bound tariff lines. But this would be subject to conditions such as: a) the tariff cuts must be no less than half the formula cuts; and b) the selected 10 percent of tariff lines must not exceed 10 percent of a country’s total value of imports. Furthermore, while countries with low bound tariff coverage may be exempted from formula reductions, they would be expected to increase their binding coverage, perhaps to 100 percent, and to bind their tariffs at a level not greater than the average for all developing countries (estimated as 27.5 percent). LDCs would also be expected to expand their bindings even while being exempted from the tariff cuts.

Second, for non-exempt countries, reduction of unbound tariff lines are to commence from a level of, say, twice the MFN rate in the base year. They may be able to exclude from binding a small number, say, 5 percent of all tariff lines, worth no more than 5 percent of a country’s total imports, or to exclude them from formula cuts. Flexibility for

³⁶ Non-linear formulae are just one kind of tariff reduction formulae. Non-linear and linear formulae both aim to have higher reductions for higher tariff rates, and are thus considered to ‘harmonize’ tariff schedules – i.e. making the overall schedule much less dispersed from one product to the next. While the size of the tariff reduction for both formulae depends on the initial tariff rate, the size of the cut is larger with the non-linear formula for higher initial tariff rates, whereas the size of the cut under a linear formula stays proportionally the same with increasing initial tariff rates. For further detail, see, ‘Formula Approaches to Tariff Negotiations’ – TN/MA/S/3/Rev.2 (11 Apr 2003).

³⁷ The original Swiss formula is: $t_1 = \frac{a \times t_0}{a + t_0}$

where, t_1 is the final rate, to be bound in *ad valorem* terms, t_0 is the base rate, a is the coefficient.

³⁸ The Chair’s version of the Swiss formula proposed is as follows: $t_1 = \frac{B \times t_a \times t_0}{B \times t_a + t_0}$

where, t_1 is the final rate, to be bound in *ad valorem* terms, t_0 is the base rate, t_a is the average of the base rates, B is a coefficient with a unique value to be determined by the participants

Special and Differential Treatment in the Doha Development Agenda
Canadian Perspectives

unbound tariff treatment may be denied if a country has opted to apply less than full formula cuts to up to, say, 10 percent of tariff lines – as mentioned above.

Third, in the discussions on sector-to-sector tariff elimination, SDT provisions are still to be clarified. Although not specifically mentioned in the July package, the sectors initially proposed by the former Chair included: electronics and electrical goods; fish and fish products; footwear; leather goods; motor vehicle parts and components; stones, gems and precious metals; and textiles and clothing. All countries, other than LDCs, are expected to participate in this component, but negotiators have not yet defined “product coverage, participation, and adequate provisions of flexibility for developing-country participants.”

Fourth, the language surrounding non-tariff barrier modalities is also preliminary and conditional. Various forms of approaches (i.e. request/offer, horizontal or vertical approaches) could be taken into consideration, within which SDT principles ‘should’ be taken into account.

The fifth element is a ‘best endeavour’ provision for LDCs, calling upon developed and other willing countries to autonomously grant complete duty and quota-free access to non-agricultural goods originating from LDCs. The sixth element provides for “appropriate studies and capacity building measures to assist least-developed countries to participate effectively in the negotiations.”

We now examine a range of key individual and joint country suggestions made in the NGMA, contrasting them to the six SDT elements raised above.

More restrictive SDT proposals Joint proposals, in which individual country stances are blurred, will be the focus here as they permit countries to be grouped into negotiation ‘blocs’, which can then be compared and contrasted to other joint negotiating positions.

The **Canada, EC and US** proposal is of particular interest because it is a mixture of the countries’ initial negotiating positions, combined with considerations derived from the former Chair’s initial modalities. For instance, similar to the Canadian, EC and US individual proposals, the joint communication aims for an ambitious harmonization of member tariff levels, through the use of the Swiss formula with a single (as yet undetermined) coefficient, without any discussion of its differentiation for developing countries. Although this is a step back from the Chair’s draft variation of the Swiss formula, the joint proposal offers somewhat greater flexibility than that in the three countries’ individual proposals by granting a form of credit, which would reduce formula cuts by a yet undetermined factor. This credit would be based on tariff binding commitments of 95 percent or greater. Linking formula cuts and tariff binding coverage in this way is in line with the structure of the draft modalities, which also makes such a

Special and Differential Treatment in the Doha Development Agenda
Canadian Perspectives

link, particularly for LDCs.³⁹ The joint proposal adds IDA-eligible countries⁴⁰ as qualifying for less than comprehensive bindings.

For tariff reductions, the proposal allows longer implementation periods for developing countries, LDCs and newly acceded members. It also allows for less than formula cuts for a limited number of tariff lines or value of trade. This provision was absent from the three countries' initial positions and represents some movement on their part towards the original draft modalities. Moreover, as in the Chair's draft, the concession is not left open ended, as it is subject to a minimum cut and to limits on its use by sector.

As an incentive to increase binding coverage, the proposal also suggests flexibility with regard to the level of tariff binding. Unlike the Chair's draft modalities, which binds unbound tariffs at twice the applied MFN rate in a base year (2001), Canada, the EC and the US have left the binding multiplier to be negotiated, albeit while still using the applied MFN rate as a base.

Aside from these major positions, the proposal only provides flexibility for preference erosion, vaguely calling upon the Bretton Woods institutions to help address adjustment needs. It offers little, if any, SDT with regards to sectoral tariff elimination initiatives and NTBs, consistent with the draft modalities' generally weak SDT language on these issues.

In sum, these countries have moved from more hard-line positions towards the Chair's modalities and the July package, while still interpreting SDT more restrictively. The joint proposal incorporates aspects previously absent in initial country positions, particularly with regards to such key SDT concepts as formula 'credit', less than full application of tariff cuts, and the level at which unbound tariffs are bound. But the lack of specificity for the multiplier reflects the US approach to negotiate SDT details only after securing initial modalities, while other elements such as participation in sectoral tariff reductions and NTBs are not given much, if any, flexibility.

Less Restrictive SDT proposals The LDC proposal concentrates on provisions for these countries with little reference to SDT for developing countries as a whole. Unlike the draft modalities, the proposal puts particular emphasis on maintaining preferential access for LDC exports. It includes strong language to expand and improve current GSP arrangements, while also allowing LDCs to self-select 'sensitive' tariff lines deemed vulnerable to preference erosion on which LDCs may request developed countries to postpone the staging of certain tariff reductions by five years, or to spread the reductions over a period of ten years. Preference-giving countries would have the right to refuse

³⁹ The cross linkage is also found in the draft modalities' treatment of sectoral tariff elimination initiatives.

⁴⁰ There are 81 countries currently eligible for long-term interest-free loans from the World Bank's International Development Association; in most of which the average per capita GNI is less than US\$965.

Special and Differential Treatment in the Doha Development Agenda
Canadian Perspectives

such requests, but must provide justification for so doing. The issue of NTBs is also raised here, highlighting their impact on preference utilization.

The LDCs would exempt themselves from committing to tariff reduction as applied through any formula. Rather than broad binding commitments in return, they suggest that LDCs contribute to the negotiations through the binding of a limited number of products or sectors, at levels that remain higher than their applied rates of tariffs. They also propose giving credit, and thus additional flexibility, to LDCs that have already autonomously liberalized.

The position of the **African Group** of countries is largely consistent with that of the LDCs, but with some additional details. First, the proposal supports the Chair's version of the Swiss formula, provided developing countries are allowed a higher coefficient value. As with the LDCs, the African Group would not make this differential treatment conditional on tariff binding coverage. It explicitly treats these issues separately, permitting developing countries to self-select the scope and level of tariffs to be bound. It also uses the concept of 'sensitive products' and underlines the inadequacy for the African Group of binding tariffs at a level merely twice the applied rate. For African countries that have undertaken unilateral liberalization, however, the group proposes increasing binding coverage. In return, these countries, along with newly acceded members, would be permitted higher formula coefficients, with longer implementation periods following a grace period.

Second, also similar to the LDC position, the African Group proposes special measures to address preference erosion. It suggests the establishment of a 'correction coefficient' mechanism for affected countries. For instance, this coefficient could be used by importing countries to limit their tariff cuts on third-country products and/or deepen them on African products, which would help maintain and improve the preferential margins for certain designated products of interest to African producers. Third, the proposal expands exemption from sectoral tariff initiatives to non-LDC developing countries, particularly in Africa. Again, SDT flexibility on this issue would not be conditional on increasing tariff binding coverage.

The **African, Caribbean and Pacific (ACP) Group** proposal is largely in line with the positions submitted by LDCs and the African Group, with one important distinction. This is in the proposal's treatment of preference erosion, which establishes an 'index of vulnerability' to identify sensitive products. The ACP Group proposes a formula based on: a) the dependence of a given exporting country on a single product and importing market; b) the market share of this product in the importing market, and c) the world market share of the exporting country for the product.

In summary, the various proposals covered in this section take SDT beyond the Chair's modalities in a number of ways. They would remove any tariff binding conditionality from the 'less than full reciprocity' measures granted to LDCs and non-LDC developing

countries. This is particularly evident in the proposed higher coefficient for developing countries, and exemptions for LDCs. As such, these Southern proposals reassert the issue of tariff binding coverage as a negotiating concession in itself. Moreover, the proposals give developing countries much more leeway in self-selecting the scope and level at which tariffs are to be bound. For this they draw on the concept of ‘sensitive products’, a term also used in the agricultural negotiations, i.e. a limited number of products which would be allowed greater flexibility. But they take it beyond discussions of their own import regimes, as in proposals for minimum required tariff cuts, to the issue of preference erosion and sensitive export products, as identified through the ACP’s vulnerability index. In terms of the formula modality itself, these proposals generally support use of the Chair’s version of the Swiss formula which would vary according to countries’ different levels of development.

The Way Forward? The joint proposal from **Argentina, Brazil and India (ABI)** in April 2005 suggested the use of adjusted coefficients in the Chair’s version of the Swiss formula. SDT flexibility would also be provided through “longer implementation periods, less than formula cuts for some tariff lines and the exclusion of some tariff lines from any formula cut.” LDCs and other members with low binding coverage would be exempt from tariff reduction commitments, but unconditionally. Also of particular interest is the proposal’s treatment of unbound tariff lines. While recognizing 100 percent binding coverage as a desirable objective, ABI propose marking up unbound lines by an unspecified factor of the average applied rate in a base year. These would then be bound at an average level after the application of formula cuts, thus providing more flexibility than in other proposals. Argentina, Brazil and India suggest a slightly modified Swiss-type formula for unbound tariff lines, to be applied only on the tariff average and not on a line-by-line basis.

Developed countries such as the US, EU, Canada, as well as some Latin American countries (such as Mexico and Peru) have criticized the ABI proposal partly because of the limited cuts it envisages, and partly because of the way in which it would create inequities and tariff dispersion between countries. Some developing countries are concerned that the proposal only offered flexibility for countries that have maintained higher average tariffs with little consideration for those that have already undertaken liberalization unilaterally. Conversely, several developing countries, including Malaysia, Jamaica, Ecuador, and Trinidad and Tobago have supported the proposal’s inclusion of the average tariff within the reduction formula as a way of preserving “the freedom to use tariff structure to promote industrialization and investment.” Moreover, most of these countries also agreed with the proposal’s de-linking of SDT and less than full reciprocity principles, whereas other proposals sought to merge the two.⁴¹

Lastly, the **Chile, Colombia and Mexico (CCM)** proposal combines a menu of options, for a given level of ambition. These options are based on four key elements in the

⁴¹ See Goh (2005)

Special and Differential Treatment in the Doha Development Agenda
Canadian Perspectives

negotiations, namely: final binding coverage, the value of the coefficient in the formula, exceptions to the application of the formula, and the length of the implementation period (see Table 1). Each developing country would choose a particular option, with each option being mutually exclusive and not to be combined.

Special and Differential Treatment in the Doha Development Agenda
Canadian Perspectives

TABLE 1. The CCM proposal for tariffs

Elements	Option 1	Option 2	Option 3	Option 4
Final binding coverage (%) ⁴²	Lower [95%]	Medium	Full binding	Full binding
β coefficient in the non-linear formula	β_1	β_2	β_2	β_4
Exceptions / deviations from the formula ⁴³	No	No	Yes	No
Implementation period	Shorter	Medium	Longer	Medium
	=	=	=	=
Equivalent overall level of ambition				

Where: $\beta_1 < \beta_2 < \beta_4$

The proposal notes:

For this exercise to be meaningful, it has to ensure that the different options entail real tradeoffs. In other words, greater flexibility in one of the elements would have to be offset by an equivalent tightening of one or more of the other elements. All options should attain the same overall level of ambition (para. 10).

The proposal also supports the Chair's provisions regarding exemptions given to LDCs and members with binding coverage of less than 35 percent, unlike other Southern proposals, including the ABI, that de-link binding coverage from tariff reduction.

Of the last two joint proposals, the latter adheres more closely to the July package and the Chair's original draft modalities. It does not go beyond what has been provided by the Chair and as such is less restrictive than the Canada, EU and US position, but much more restrictive than all the other Southern positions. Aspects of the ABI proposal extend beyond the Chair's established SDT boundaries and can thus be considered less restrictive than the CCM stance but somewhat more restrictive than proposals by groups in Africa and the Caribbean.

The ABI and CCM proposals illustrate the dynamic nature of the negotiations, and the various attempts in recent months to find an acceptable balance between the flexibility sought by many developing countries and the level of ambition sought by many developed countries. Another example of an attempt at convergence in the past months was the US move in March 2005 away from its single tariff reduction coefficient stance to accept two separate coefficients, one for developed and one developing countries

⁴² In accordance with paragraph 8 of Annex B of the July framework.

⁴³ Ditto. .

Special and Differential Treatment in the Doha Development Agenda
Canadian Perspectives

respectively. While the difference in coefficients would be slight, the US would only agree to ‘dual coefficients’ on the condition that all WTO members bind all their tariff lines, and apply a Swiss formula reduction.⁴⁴

Although certain countries, such as the ABI and its supporters, have opposed such demands, other developing countries such as the 21 Asia Pacific Economic Cooperation (APEC) countries this past June issued a joint statement largely in support of the recent US position, and furthermore agreeing to an US-Canadian sponsored ‘critical mass’ approach to sectoral tariff reductions on a voluntary basis.⁴⁵

Alternatively, other countries have sought to further flesh out the US dual coefficient position. For instance, Pakistan has suggested a Swiss formula with two coefficients based on the simple average of bound tariff lines of developed and developing countries. Thus, developed countries would be given a coefficient of six, whereas developing countries would be given a coefficient of 30.⁴⁶

Others, such as Antigua and Barbuda, Barbados, Jamaica and Trinidad and Tobago have gone the other direction, building upon the ABI proposal’s Swiss-type formula that includes the tariff average, to also include an ‘à la carte system of credits’ into the calculation. These credits are accumulated according to a number of pre-defined ‘developmental’ factors, which in turn help cushion the impact from formula cuts.⁴⁷

On the issue of unbound tariffs, other countries have responded to the ABI proposal. Mexico, for example, has put forward a non-linear formula to mark-up unbound tariff lines before the application of tariff cuts. This has the effect of marking up unbound tariffs at low applied rates by a greater percentage than unbound tariffs at higher applied rates, a particular concern for Mexico and other countries that have already fully bound and substantially cut tariffs.⁴⁸

Although a consensus in NAMA has yet to be reached, the ABI, CCM proposals, as well as other recent offers illustrate the dynamic nature of the negotiations, and the various

⁴⁴ Bridges Weekly. 2005. ‘NAMA Week Underway, Members Look at New Proposals’, Vol.9 No.9, 16 March, <http://www.ictsd.org/weekly/05-03-16/story5.htm>

⁴⁵ Bridges Weekly. 2005. ‘NAMA Week: APEC Declaration Said to Indicate “Some Convergence”’, Vol.9 No.20, 8 June, <http://www.ictsd.org/weekly/05-06-08/story3.htm>. For more information on the US-Canada critical mass proposal, see the Canadian Government NAMA-specific position below.

⁴⁶ Communication from Pakistan. 2005. ‘The Way Forward’, TN/MA/W/60, July 21.

⁴⁷ These factors are: 1) substantial tariff binding coverage; 2) autonomous liberalization; 3) revenue dependence; 4) maintenance and strengthening of infant industries, and the policy space to further industrial development; 5) loss of preferential market access as a result of multilateral liberalization; 6) degree of openness of economy to trade; and 7) economic vulnerability to shocks. See, Hormeku, Tetteh. 2005. ‘Caribbean countries propose new formula at NAMA meeting’, TWN-Africa and Africa Trade Network, July 5.

⁴⁸ Communication from Mexico. 2005. ‘A rational approach for setting base rates for unbound tariff lines’, TN/MA/W/13/Add.1, 21 June.

attempts in recent months to find an acceptable balance between the flexibility sought by many developing countries and the level of ambition sought by many developed countries.

1.2.3 SERVICES

The General Agreement on Trade in Services (GATS) is often presented as offering, by design, much flexibility to developing countries. Indeed, each WTO member can fine-tune their commitments to their level of development and needs, given the manner in which market access and national treatment commitments can be made by sector and by mode of supply.

Moreover, there are some SDT measures in the GATS. For instance, Article XIX:2 on the negotiations of specific commitments specifies that flexibility shall be granted to developing countries to open fewer sectors, and to liberalize fewer types of transactions; such gradual liberalizations should be in line with their development situation. Article IV:1 of the GATS states that “the increasing participation of developing country members in world trade shall be facilitated through negotiated specific commitments [...] relating to a) the strengthening of this domestic services capacity and its efficiency and competitiveness inter alia through access to technology on a commercial basis; b) the improvement of their access to distribution channels and information networks and c) the liberalization of market access in sectors and modes of supply of export interest to them” (see WTO 2002).

Reflecting these negotiating guidelines, we should note that Canada has not made any market access request of LDCs in the current negotiations. Nor has Canada made a request of any developing (or developed) country with respect to health or public education services, in keeping with Canada’s own decision not to make any offers in this area. In terms of Mode 4 (relating to the movement of people to provide services), the Canadian government considers it has made a strong offer, focused on the temporary movement of certain categories of highly skilled workers such as engineers and computer specialists. Analysts suggest that liberalization of the movement of low-skilled workers would most benefit developing countries, but the political opposition to such commitments is very strong in industrial countries (see Blouin 2005).

The Guidelines for the services negotiations adopted by members in 2001 (S/L/93) reaffirmed the SDT provisions of the GATS. In 2003, the members adopted a document further specifying the modalities for the special treatment for LDCs in these negotiations (TN/S/13). It states that members shall “exercise restraint in seeking commitments from LDCs. In particular, they shall generally not seek the removal of conditions which LDCs may attach when making access to their markets available to foreign services suppliers to the extent that those conditions are aimed at achieving Article IV of the GATS”. The document also points out that trade in services through Mode 4 is for LDCs one of the most important means of supplying services internationally. It therefore states that

Special and Differential Treatment in the Doha Development Agenda
Canadian Perspectives

members shall to the extent possible consider making mode 4 commitments in all categories identified by LDCs in their requests.⁴⁹

Some of the proposals on SDT which have been on the table recently have targeted trade in services, usually seeking to make the existing provisions more visible, transparent and operational.⁵⁰ Three of these proposals have already been agreed to in principle. One specifies that WTO members need to provide information on what special measures they have taken to make sure that LDCs receive priority in the implementation of measures which aim at increasing the participation of developing countries in trade in services (as per Article IV). The second measure concerns trade capacity building arrangements with the WTO Secretariat and other relevant international institutions and the third, technical cooperation related to telecommunication infrastructure.

Three other proposals are in areas on which mandated negotiations are ongoing and relate to Article IV of the GATS which aims at increased participation of developing countries in world trade. In addition to proposing the setting of benchmarks and the monitoring of financial and technical cooperation and arrangements to implement this article, the African Group proposed that developed countries create quotas for developing countries suppliers in sectors of export interest.

In mid-September 2005, proposals were put forward by the EU, Japan, Australia, Switzerland, Korea and Taipei which may jeopardize the flexible character of the GATS negotiations. These proposals state that the current request-offer method of negotiation has not delivered sufficient liberalization commitments and therefore they propose new benchmarking approaches to achieve greater services liberalization. The benchmarking would be established by developing a quantitative measurement of members' offers. The proposals describe how to establish a score (number of commitments, of sectors and sub-sectors, of modes of supply vs. number of restrictions and limitations placed on the commitments).⁵¹ All members would need to reach a certain score in their proposed

⁴⁹ In the case of Bangladesh, a recent report from the Centre for Policy Dialogue using the International Standard Classification of Occupation (ISCO-88), suggests that such categories of interest to Bangladesh in the short-run might include: nursing and midwifery professionals, secretaries, personal service workers, guards, sales persons, farmers, miners, building finishers, painters, machinery mechanics and fitters, metal workers, handicraft workers, printers, food processing workers, machine operators, sea farers, domestic helpers, cleaners and launderers, drivers, caretakers, agricultural labours, construction workers, garbage collectors and related labourers, manufacturing labourers, transport labourers and freight handlers. See Raihan and Mahmood April 2004.

⁵⁰ Canada has played a lead role in the discussions on transparency within the so-called Friends of Services and more broadly (see TN/S/W/47 and TN/S/W/42). These are not specifically targeting developing countries, but by making more information available about relevant laws, administrative guidelines etc that accompany horizontal mode 4 commitments, the aim is to ensure their greater use. For instance this would allow greater understanding of the economic needs or labour market tests that might be applied before a work permit may be obtained.

⁵¹ "The EC's proposal forms the primary base on which other proposals are built up. It calls for binding commitments in a minimum number of sub-sectors, calculated in terms of a percentage of the total number mentioned in a basic classification document. A country will have the freedom to select the sub-sectors to

commitments. Several developing countries have expressed concerns that this new approach would mark a fundamental change to the nature of the GATS, in particular by removing the flexibility which allows developing countries to liberalize and make commitments at the pace and in the sectors which they deem appropriate for their own development. For the time being, Canada appears to support the idea of benchmarking.

1.2.4 TRADE FACILITATION

Trade Facilitation (TF) is the only one of the four ‘Singapore issues’ that was finally included in the Doha negotiations, after being incorporated in the July 2004 framework. We briefly review progress in this area as it illustrates a new approach to SDT.

TF refers to the measures for ‘further expediting the movement, release and clearance of goods, including goods in transit.’ This includes both the procedures and the physical infrastructure for clearing imports and exports at customs posts, ports and airports. In many countries, poor infrastructure and manual procedures can seriously delay trade and thereby increase its costs. Awareness of these constraints has grown as tariffs and other trade barriers have been cut. While there are strong domestic interests in improving TF, many developing countries were reluctant to accept new norms in these areas in the WTO. This stemmed from their concerns about the distribution of costs and benefits of meeting these new TF norms – drawing on their experience with WTO norms with respect to TRIPs – and whether they would be able to bear these costs, or even should do so. A related question was whether TF norms should they would be faced with trade-related penalties if they were not able to meet the TF norms.

The July framework, which aims ‘to clarify and improve relevant aspects of Articles V (freedom of transit), VIII (fees and formalities) and X (publication and administration of trade regulations) of the GATT 1994’ proposed a novel approach to SDT for TF, which went beyond the usual WTO practice of allowing LDCs and other developing countries longer transitional periods for meeting any new obligations. In particular countries agreed to relate the extent and timing of new commitments to LDC and developing countries’ implementation capacities, and further to exclude any requirement for investments in infrastructure ‘beyond their means’ (Annex D para. 2). The linkage of commitments to countries’ ‘individual development, financial and trade needs or their administrative and institutional capabilities’, however, is only made for LDCs (not all developing countries as in GATT Part IV) (para. 3). But the framework makes connections between commitments and technical assistance or other support for capacity building that are much more explicit than in previous negotiations or in other areas of the current negotiations. On the specific issue of infrastructure, it acknowledges that a limited

confirm to the minimum number. Out of these sub-sectors, certain percentages will be covered by commitments on the four mode of supply. “B.L. Das, Rocking the WTO Boat once again, Third World Network, October 10, 2005.

number of countries may not be able to implement commitments if they do not receive such assistance, and in this case, ‘where a developing or least-developed Member continues to lack the necessary capacity, implementation will not be required’ (para. 6).

However it is this very conditionality that has become a contentious issue in the TF negotiating group. A paper by Pakistan and Switzerland, tabled at a meeting in September 2005 proposed a review process, undertaken by an independent body, to determine whether the support provided to a particular country is effective and whether the country can then take on its new TF obligations.⁵² Some developed countries, however, considered this approach too open-ended preferring to identify TF obligations before committing to levels of technical assistance. Developing countries wanted to secure such commitments first, and on a longer-term basis as needed; they also raised concerns about the authority of an independent body.⁵³

To illustrate some of the potential costs involved, the OECD has undertaken a number of case-studies.⁵⁴ While the studies note the difficulty of such assessments, and that the costs are likely to be highly sensitive to country characteristics, they reach a number of general conclusions. For instance, ‘the most radical and costly changes were in the most technically demanding procedural areas of risk assessment, audit-based controls and special procedures for authorized persons. Costs incurred in these areas were primarily related to the recruitment and training of specialized staff and for equipment. Those costs were by no means large in the overall context, however, with the probable exception of those pertinent to ICT...’ (OECD 2004, p. 8). In Chile the costs of introducing a risk assessment system (to allow quicker screening of goods or companies assessed to pose a ‘low risk’) were some US\$0.33 million (p. 13). In Uganda, the cost for audit-based controls in the first year were some US\$0.16 million (p. 27).

The study on the benefits of trade facilitation measures found that in Mozambique, customs reforms (such as the introduction of computerized systems, more selective physical examinations) had improved the efficiency of customs clearance procedures. This in turn led to an increase in revenues collected from the late 1990s, even while duty levels were cut, to the point where customs duties accounted for half of domestic revenue in 2002 (OECD 2005, p. 9).

1.2.5 TRIPs

⁵² Trade Facilitation Alliance website, October 5, 2005. This would involve an independent body

⁵³ Bridges Weekly Newsletter, 12 October 2005

⁵⁴ Evdokia Moïsé, *The Costs of Introducing and Implementing Trade Facilitation Measures: Interim Report*, OECD Trade Policy Working Paper No. 8, 10 November 2004, and Evdokia Moïsé, *Trade Facilitation Reforms in the Service of Development: Country Case Studies*. OECD Trade Policy Working Paper No. 12, 22 February 2005, at www.oecd.org

Special and Differential Treatment in the Doha Development Agenda
Canadian Perspectives

In contrast to the GATS, the WTO agreement on TRIPs makes very little space for SDT. Developing countries were generally granted a five-year transition period whereas LDCs were originally granted 10 years (until 2006). At Doha, the LDCs were given until 2016 to implement TRIPs provisions for pharmaceutical products. In addition, the agreement includes provisions regarding technical and financial assistance to developing countries to implement TRIPs and provisions to encourage technology transfer to LDCs.

At the WTO, members have made some proposals to strengthen these provisions. One position that has been agreed upon concerns technical and financial cooperation related to intellectual property rights. It specified that the assistance comprise “enhancing enforcement mechanisms, increasing training of personnel at the various levels, assisting in the preparation of laws and procedures in an effort to encourage and monitor technology transfer, making use of the rights and policy flexibility of the Agreement...” Some developing countries are concerned that the latter element is often neglected in trade-related capacity building activities.

In the category of proposals where it is likely that members will come to an agreement, we find the African proposal that developed countries offer incentives to private organizations to transfer technology to the LDCs. The proposal includes a reporting mechanism. Another proposal, under consideration by the TRIPs Council, was put forward by the LDCs to extend the transition period before they have to implement TRIPs fully for another 15 years. This request was made on the grounds that their conditions which had justified the initial exemption had barely changed – i.e. their economic, financial and administrative conditions did not allow them to implement TRIPs while they continued to need flexibility in order to develop a viable technological base. This request has been generally accepted by other developing countries, but several developed countries have argued instead for a case-by-case approach, creating uncertainty and an administrative burden for LDCs.

Outside the WTO, other proposals to increase the level of SDT in the implementation of TRIPs have been made, recognizing the high costs and small benefits it has produced to date for developing countries. For instance, Michalopoulos (2002) has proposed to modify the TRIPs so that developing countries, at least LDCs and other low-income countries, do not have to introduce patents in sectors of their choice. However, recognizing the Doha negotiating mandate does not allow such revision of the TRIPs, the author suggests that the transition period for LDCs should be extended beyond 2016, and not limited to pharmaceuticals and should be offered to all low income countries. He also suggests strengthening the protection of traditional knowledge, which would increase the benefits of TRIPs for developing countries, and establishing specific financial targets for technology transfer to LDCs.

The Commission on Intellectual Property Rights reached relatively similar conclusions in its final report published in 2002. This independent expert commission supported by the UK’s Department of International Development (DFID) expressed reservations about the

Special and Differential Treatment in the Doha Development Agenda
Canadian Perspectives

TRIPs as it extended a high level of IP protection to all developing countries. But the Commission recognized that the WTO members are not likely to renegotiate the agreement. Therefore, they recommended that “LDCs should be granted an extended transition period for implementation of TRIPs until at least 2016. The TRIPs Council should consider introducing criteria based on indicators of economic and technological development for deciding the basis of further extensions after this deadline” (CIPR, 2002, p. 162). Ideally, this procedure should be applied to all low-income developing countries. Indeed, the Commission stressed that low-income country governments are facing more critical issues in terms of health, food security and education and that implementing an IP regime which is not appropriate to their level of development will incur large costs.

2. CANADIAN PERSPECTIVES

2.1 OFFICIAL POSITION

During most of the postwar period, trade relations with developing countries have been peripheral to Canadian trade policy and interests, with ever increasing trade flows between Canada and the United States being the key focus both at the multilateral and bilateral levels. Indeed, one analyst highlighted from a Canadian perspective the main function of the GATT was “to restrain and discipline the trade policies and practices of the United States and the other larger countries which are its main trading partners. These restraints and disciplines can be exerted more effectively within a multilateral system of rules, [...] than within bilateral relationships where Canada would almost always be a junior partner with correspondingly smaller bargaining leverage” (Stone, 1984, pp. 209-210).

In this context and given that trade with developing countries has represented only a small part of Canadian international trade in the past, Canada was generally open to offering SDT.⁵⁵ Canada did not generally expect reciprocal exchanges of concessions when negotiating with developing countries. One important element of the SDT granted to developing countries by Canada was the adoption of a preferential tariff scheme, under the aegis of the UNCTAD’s General System of Preferences. The Canadian General Preferential Tariff (GPT), adopted in 1974, covered almost all developing countries and all goods except for textiles, clothing, footwear, supply-managed commodities, refined sugar and other food products, and some electronic products. The tariff reduction of the scheme was initially equivalent to one-third of the MFN tariff rates.

The scheme has been reformed several times. In 1983, LDCs were given duty-free treatment for all GPT products. In 1996 GPT rates for other countries were cut, to reflect MFN cuts following the Uruguay Round, and 200 products added. It was further improved in 2000 when several products were added for the benefit of LDCs alone, though many were of little export interest to them. Despite these changes, the scheme is generally considered to have had a limited impact on imports from developing countries, which in 2002 were still paying a total of \$1.34 billion (roughly 46% of Canadian ODA). A large number of covered products already entered the country duty-free. For dutiable products covered by the scheme, some countries were unable to meet the rules of origin, while those where they would have had less difficulty (notably labour-intensive manufactures like clothing) were excluded. In addition some countries had supply and export capacities that were too limited to take advantage of the provisions.

⁵⁵ Developing countries’ share of Canadian exports has actually fallen from about 8% in the early 1970s to 9% in the early 1990s and 4.4% in 2003. In contrast their share of imports fell from 12% to 9% before rising to 16.6% over the same period. Corbo and Havrylyshyn, 1980 and NSI, Canadian Development Report 2005, pp. 251.

Special and Differential Treatment in the Doha Development Agenda
Canadian Perspectives

Until the late 1980s, SDT was essentially about market access and included two components. Developing countries were not expected to take on market access commitments and industrial countries offered preferential access to their markets through GSP schemes. Subsequently Canada, as other industrial countries, moved away from this model toward a preference for greater reciprocity in trade negotiations. The “grand North-South bargain” (Ostry, 2000) of the Uruguay Round marked a turning point where developing countries had to become full members of the multilateral trading regime and take on the same obligations as all members of the newly created WTO. Developing countries agreed to be signatories to a range of agreements, especially on intellectual property and trade in services in exchange for market access improvements in textiles/clothing and agriculture.

The new Canadian approach based on greater reciprocity and weaker SDT can also be observed in its regional and bilateral trade relations. For example, in the NAFTA negotiations, Mexico was treated as an equal partner and was subjected broadly to the same obligations. A similar approach has been adopted in negotiations with Central American countries in recent years (see Blouin, 2002).⁵⁶

The exception to the reciprocity-based approach concerns the LDCs which have received new preferential market access treatment with the implementation in 2003 of a scheme allowing duty-free, quota-free entry of LDC imports into Canada. This market access initiative was accompanied with flexible rules of origin requirements⁵⁷ and has had an important impact on imports from Asian LDCs, which already have production capacity (Bangladesh, Cambodia, Laos, Nepal) (UNDP, 2005, p. 26).

Canada’s approach to SDT more generally reflects the government’s belief in the importance of the WTO. With Canada’s medium-sized economy highly dependent on access to international markets, particularly that of the United States, “current and future prosperity depends on open markets, a stable trading environment and a means to settle trade disputes based on right, rather than political and economic might.” This in turn leads government policy makers to emphasize trade liberalization and integration into the global economy as critical for all countries to achieve economic prosperity.⁵⁸

This is not to oversimplify the government’s perception of the developmental process. It merely represents the conceptual framework within which the issue of SDT is defined.

⁵⁶ Some more sensitive products were given longer time-frames for liberalization or occasionally excluded altogether while in some bilateral agreements Canada agreed not to include disciplines that the partner developing country found particularly onerous (as in the case of Costa Rica on investment provisions) (Weston 2003).

⁵⁷ A minimum 25% of value must be added in the exporting country if an additional 15% comes from another developing country or from Canada. Eggs, poultry, milk and dairy products are excluded.

⁵⁸ See International Trade Canada (ITC). 2000-2005 ‘Opening Doors to the World: Canada’s International Market Access Priorities’, <http://www.dfait-maeci.gc.ca/tna-nac/goods-en.asp#1>.

Special and Differential Treatment in the Doha Development Agenda
Canadian Perspectives

For instance, while the government recognizes that trade liberalization is no panacea,⁵⁹ it nonetheless frames SDT as allowing flexibility in the application of the rules, and not in the rules themselves. As it states, “At issue is the pace of adherence, not adherence itself.”⁶⁰ Furthermore,

While the intention is to allow for flexibility, the ultimate aim is inclusion not exclusion. By joining the WTO, Members have accepted the underlying notion that global trade rule-making and liberalization play an important role in promoting the liberalization and expansion of trade and in fostering economic growth, development and employment.⁶¹

The government has rejected the broad ‘one-size-fits-all’ approach to SDT common in negotiations up to the Uruguay Round. Rather than grant self-selected, open-ended exemptions to rules, it favours SDT tailored to specific and justifiable development needs. This approach firstly introduces differentiation between developing countries, ensuring that “countries not qualify for special treatment in cases where it is not warranted.”⁶² Secondly, it limits the orientation of SDT, accepting only measures it deems constructive to the integration of developing countries into the multilateral trading system.⁶³ Thus, SDT is narrowly defined in terms of rule compliance, providing developing countries with the means to fully implement agreed obligations. Only then can the benefits of WTO membership accrue to these countries. To this end, SDT “should reinforce the adoption of sound economic and governance policies and open trade policies. It is these policies that secure the economic growth and prosperity sought.”⁶⁴

The Canadian government’s commitment to SDT has also been to emphasize trade-related technical assistance and capacity building (TRTA/CB) in order for developing countries better to prepare and participate in multilateral trade negotiations. For instance, since 2001 Canada has provided over C\$3.1 million for both TRTA/CB, 91 percent of which was disbursed by CIDA.⁶⁵ As part of its Doha commitment, approximately C\$1.8 million has been allocated to the WTO’s Global Trust Fund and Training Institute.⁶⁶

⁵⁹ ITC. 2002. ‘A New Global Partnership: The Doha Development Agenda’, http://www.dfait-maeci.gc.ca/tna-nac/global_partnership-en.asp ; ITC. 2005. ‘Canada and the WTO’, http://www.dfait-maeci.gc.ca/tna-nac/c_wto-en.asp [accessed: June 17 2005].

⁶⁰ Submission by Canada. 2002. ‘Realizing Trade and Development Objectives through Special and Differential Treatment’, WTO Committee on Trade and Development Special Session, TN/CTD/W/21.

⁶¹ Ibid.

⁶² Standing Committee on Foreign Affairs and International Trade (SCFAIT). 2002. ‘Building an Effective New Round of WTO Negotiations: Key Issues for Canada’, Nineteenth report, May.

⁶³ ITC. 2003. ‘Development – Special and Differential Treatment: Canada’s Position in the WTO and FTAA Negotiations’, <http://www.dfait-maeci.gc.ca/tna-nac/DS/special-en.asp> [accessed: June 17 2005].

⁶⁴ Submission by Canada to CTDSS, TN/CTD/W/21.

⁶⁵ Pelz, Blanka. 2004. ‘A Framework for Poverty Reduction through Trade-related Capacity Building’, ITC Trade Policy Research. See, http://www.dfait-maeci.gc.ca/eet/research/TPR-2004/pdf/TPR-2004_-_Chapter_06_-_Pelz-en.pdf

⁶⁶ ITC. 2003. ‘Canada Contributes \$500,000 in Trade-Related Assistance to Developing Countries’, News Release, March 10. See, http://w01.international.gc.ca/minpub/Publication.asp?FileSpec=/Min_Pub_Docs/105947.htm&Language=E ; ITC 2002. ‘Canada Contributes \$1.3 million in Trade-Related Assistance to Developing Countries’,

Special and Differential Treatment in the Doha Development Agenda
Canadian Perspectives

While Canada is recognized as an important provider of TRTA/CB, some interviewees suggested that its projects overly focus on issues of rule compliance, reflecting Canadian views on SDT, rather than responding to developing countries' broader trade needs.

Perhaps most indicative of Canada's stance is the near absence of SDT and discussion of the importance of policy flexibility for development from the two most relevant chapters (Commerce and Development) in the recently released International Policy Statement (IPS). In the former, it is merely stated that, "We are working in the WTO to devise new rules to take account of the interests of developing countries" (p. 22). And the latter, while promising to improve the ability of developing country exporters to access Canadian and global markets, simply mentions that Canada will "continue to press for an ambitious conclusion to the Doha round of trade negotiations in the World Trade Organization (WTO)."⁶⁷

While the overall impression of Canada's official SDT position, as described here, is relatively restrictive, Canada seems nonetheless engaged in building consensus on how to operationalize SDT for developing countries. In the case of the SPS agreement, on which discussions are ongoing rather than strictly being part of the Doha negotiations, an example of the difficult issues and tradeoffs is presented in the following Box, detailing the opposing viewpoints on SDT expressed by Canada and Egypt.

Box 3. Enhancing transparency of SDT in the SPS agreement

In March 2002, the Egyptian WTO delegation proposed to the SPS Committee the addition of a box to the notification format that would require developed countries notifying others of any new SPS measure being proposed or adopted, indicate the SDT component. Furthermore, the Egyptian proposal required notifying countries to detail the developing country exporters that would be affected by the measure, as well as the type of assistance offered to help these countries reach compliance. Canada, while encouraging increased transparency in the use of SDT, disagreed with the Egyptians on two points. First, Canada argued that information on SDT should not be made at the time of notification (*ex-ante*), suggesting countries first enter bilateral discussions before possible SDT solutions are explored (*ex-post*). Second, Canada disagreed with requiring an importing country to notify exporting countries of potential harm from the new measure, which it saw as the responsibility of the exporting country.⁶⁸

In response, Egypt stressed three key points. First, it noted the limited capacity of developing country governments to promptly attend to the many notifications submitted by trading partners. This lack of capacity restricts the ability of developing countries to effectively safeguard their

News Release, March 10. See,

http://w01.international.gc.ca/minpub/Publication.asp?FileSpec=/Min_Pub_Docs/104992.htm

⁶⁷ Government of Canada. 2005. 'A Role of Pride and Influence in the World: Development', Canada's International Policy Statement (IPS), CIDA.; Government of Canada. 2005. 'A Role of Pride and Influence in the World: Commerce', Canada's IPS, ITC.

⁶⁸ Submission by Canada. 2002. 'Enhancing Transparency of Special and Differential (S&D) Treatment within the SPS Agreement', CTDSS, TN/CTD/W/17 (also issued as G/SPS/W/127), 8 Nov.

Special and Differential Treatment in the Doha Development Agenda
Canadian Perspectives

interests. Second, Egypt questioned the use of bilateral discussions to arrive at mutually acceptable solutions, stating, ‘This, in our view, is “best endeavour” language, setting no mandatory commitments on the side of the notifying importing country to provide the required S&D to the exporting country. We would also seek clarification from Canada on what would be the case if no mutually acceptable solution is reached during bilateral discussions.’⁶⁹

Third, it outlined how SDT could be offered at the time of notification. This includes identifying: exporting countries impacted by the measure, the type of technical requirements likely needed for compliance, the type of SDT on offer, and the types and source of financial and technical assistance that the notifying member is ready to provide.

The Committee on SPS ultimately adopted the Canadian proposal in October 2004. While some of Egypt’s concerns relating to ex-ante SDT notification were addressed, they were largely couched in best endeavour language. Moreover, if no mutually acceptable solution is reached, the decision requires the notifying member to examine “how the identified problem could best be addressed to take into account the special needs of the interested exporting developing country Member.” Also if SDT is provided, the decision requires that it be provided equally to all developing country Members.⁷⁰ Although the decision is subject to further elaboration of the procedures, it remains largely consistent with the original SDT Canadian proposal that is less onerous for importing developed countries.

Agriculture-specific Canadian position Canada has played an active role in the negotiations, reflecting its significant interests as an agricultural producer and trader,⁷¹ even if it is no longer a leader of the negotiations now that the Five Interested Parties (FIP – i.e. Australia, Brazil, India, the EU and the US) has taken over from the ‘Quad’ Official statements present the primary objectives as being ‘the complete elimination of export subsidies, substantial reductions in trade-distorting domestic support, and significant improvements in market access for all agriculture and agri-food products’ and ‘to address foreign subsidies and tariff barriers that hinder our ability to compete fairly in foreign markets.’⁷² At the same time, the government is committed to defending the five Canadian supply-managed sectors and the right of producers to market their products through orderly marketing systems such as the CWB and supply management.

According to the government, Canada’s range of interests (both strong export interests and some ‘import sensitivities’) positions it to act as a bridge between different groups of countries. Certainly it has tried to find some common interests with developing countries

⁶⁹ Submission by Egypt. 2002. ‘Comments on the Canadian Proposal’, CTDSS, TN/CTD/W/24 (also issued as G/SPS/GEN/358), 6 Dec.

⁷⁰ Decision by the Committee. 2004. ‘Procedure to Enhance Transparency of Special and Differential Treatment in Favour of Developing Country Members’, Committee on SPS, G/SPS/33, 2 Nov.

⁷¹ Canada was the fourth largest exporter of agricultural and agri-food products in 2003 after the US, the EU and Brazil. It is the world’s fifth largest importer.

⁷² Levelling the International Playing Field for Canadians. Reaching a Milestone in the WTO Agriculture Negotiations

at <http://www.agr.gc.ca/itpd-dpci/english/consultations/infodocIII.htm> modified 2004-12-22

Special and Differential Treatment in the Doha Development Agenda
Canadian Perspectives

in order to build support for the elimination of trade-distorting domestic support in key exporting countries.

While the government's primary focus has been on developed country practices, it has shown particular interest in improving access to developing country markets where Canadian exports have experienced above average growth rates in recent years.⁷³

Canada has advanced proposals for: a harmonizing approach to reducing trade-distorting domestic support; an equitable approach to product-specific caps; ensuring Green Box measures have no, or minimal, distorting effects on trade or production; increased market access for sensitive products by combining tariff cuts and tariff quota expansion, with no mandatory tariff cuts; a base for tariff quota expansion using coherent and equitable criteria; transparency of SDT in SPS⁷⁴; and most recently a reduction formula for harmonizing tariffs.

In terms of SDT, Canada's approach has been to emphasize developing country export interests. As an AAFC document notes, 'Increased production and export of agricultural goods can respond directly to alleviating rural poverty through increased employment.'⁷⁵ The argument advanced by AAFC is that as trade-distorting subsidies are eliminated and market access barriers reduced, trade should contribute to development. It therefore supports SDT in the form of longer implementation periods as well as (unspecified) 'effective measures to promote trade and development' complemented by technical assistance and capacity building TRCB that 'support the DDA'⁷⁶ (which likely means focusing on the negotiations and some implementation issues rather than helping countries address supply-side or adjustment problems).⁷⁷

While it is clear that agricultural trade can provide opportunities to enhance development, in many developing countries the focus on trade is secondary or tertiary relative to more fundamental goals such as rural development, balanced regional development, food security and environmental conservation. As UNDP notes (2003, p. 123) these are public goods and services that are undervalued by the market. CIDA's policy statement on 'Promoting Sustainable Rural Development through Agriculture' recognizes the

⁷³ Ibid.

⁷⁴ G/SPS/33, 2 November 2003

⁷⁵ Trade and Development at <http://www.agr.gc.ca/itpd-dpci/english/topics/td.htm> modified 2004-03-26

⁷⁶ Trade and Development op cit

⁷⁷ Examples of trade policy capacity building include AAFC work in South Africa and Viet Nam. Need more information about the details of the Canadian Agriculture and Food International (CAFI) Program, details of project goals, countries and amounts involved. 'The CAFI trade-advocacy component will support Canadian industry initiatives to proactively promote and defend Canada's trade interests, particularly through working with like-minded foreign industry groups and governments, to press for greater trade liberalization and influence policy development in key countries.' At http://www.agr.gc.ca/int/cafi-picaa/index_e.php?page=commerc Modified 27-10-2003

Special and Differential Treatment in the Doha Development Agenda
Canadian Perspectives

importance for developing countries of sustainable livelihoods and ecosystem health.⁷⁸ A broad range of strategies is essential to achieve such goals including measures to improve small farmers' access to land, increase their productivity through appropriate and sustainable technologies, and sell their products at fair prices, and to generate off-farm employment for instance through agri-processing. Many countries have reduced state involvement in the supply of inputs or marketing outputs, but this has left poorer households worse off.⁷⁹ Exports may provide opportunities to increase rural and national incomes, but several domestic factors affect who will benefit from such exports – the way in which such exports are marketed can influence producer incomes, as the Canadian experience has shown. Also, a commitment to exports does not necessarily mean an openness to imports; again experience in Canada and elsewhere shows that imports may need to be managed to enable domestic producers to meet their livelihood needs as well as domestic food security objectives.

Interviews with officials suggest that Canada would accept a flexible approach to SDT, i.e. that it would not preclude larger and more competitive countries such as Brazil or India, as it is aware that even here certain sectors may need support. For this reason an income per capita criterion for graduation would not be appropriate. In general Canada realizes that its goal of an ambitious overall result will require flexibility for developing countries. Nonetheless there is a need for clear criteria for SDT – whether for the selection of SPs or for the use of a SSM. Canada considers that there needs to be a tradeoff between the scope and depth of SDT. It would not support the recent Indian proposal for a SSM to be available for all products and for all developing countries. AAFC would be interested in perspectives of development NGOs on possible criteria (in addition to the feedback it receives from industry groups directly and via Industry Canada). It has found the analysis of some such NGOs to be influential – for instance the work of Oxfam International on the negative impacts on rice farmers of food aid in Guinea altered official views and now Canada is pressing for changes in WTO rules on food aid.

The Canadian position (as set out by AAFC) is that food aid should be used to assist those in genuine need and that WTO rules should prevent food aid disrupting local markets, displacing commercial sales or being used as a tool for market development.⁸⁰ In September 2005, the government announced a decision to untie food aid up to 50% to suppliers in lower income developing countries.

⁷⁸ April 2003, at http://www.acdi-cida.gc.ca/cida_ind.nsf/vall/ECE27220C9FA44AF85256C4D006A0B4D?OpenDocument 'The internal complexities, as well as the external linkages, of agriculture must be simultaneously managed to attain development that is integrated, equitable, and sustainable.'

⁷⁹ see Ruffer et al 2002, p. 17 on Malawi, for example

⁸⁰ Canadian food aid averaged \$244 mn in the decade to 2003, or 13.5% of total CIDA aid. CIDA has a detailed assessment of its Food Aid Program, undertaken in December 2003. See [http://www.acdi-cida.gc.ca/INET/IMAGES.NSF/vLUIImages/HealthNutrition/\\$file/Food_aid.pdf](http://www.acdi-cida.gc.ca/INET/IMAGES.NSF/vLUIImages/HealthNutrition/$file/Food_aid.pdf)

Special and Differential Treatment in the Doha Development Agenda
Canadian Perspectives

While SPS is not strictly part of the Doha negotiations – but the subject of parallel discussions – the Canadian position is of interest here, namely that SDT on such issues cannot be treated in the same way as tariffs, as governments have an overriding obligation to protect and promote their consumers' health. Thus the government is generally not willing to consider delays or differences in SPS standards for imports from developing countries as suggested in some developing country proposals. Nor is it willing to commit the additional resources that would be needed for the Canadian Food Inspection Agency (CFIA) to assess the impact on all developing countries before introducing any changes in SPS and to assist them to meet any new standards, let alone to compensate developing countries for any related losses in export earnings.⁸¹ Instead Canada has proposed ways to increase understanding of how SDT might be operationalized in the area of SPS, and to facilitate use of the SDT provisions already in the SPS agreement (see Box above). This would help to address the lack of specific requests to date for SDT in SPS, even though developing countries have raised several SPS issues at the CTD.⁸²

In November 2004, Canada's proposal was essentially adopted for implementation for one year in the first instance, after which it will be reviewed. The proposal set out a process for notification of changes to SPS, with special provisions for extending the time for comments and ways to address any special needs raised by any interested exporting developing country, with any such SDT measures to be offered to all other developing countries and notified to the WTO.⁸³

Another agreement on SPS to which Canada has made a significant contribution relates to TRTA/CB. In 2002 WTO members agreed to establish the Standards and Trade Development Facility (STDF), which involves the FAO, World Organization for Animal Health, WHO, World Bank and WTO, which acts as Secretariat. The STDF is intended to help developing countries both in the negotiation of SPS standard setting at the Codex (for food safety), IPPC (plant health) and the OIE/WOAH (animal health), and in their implementation. Canada is one of five countries which have made contributions to the STDF.⁸⁴ It has also given C\$1.2 million to the trust funds for Codex and the OIE.

The CFIA also provides TRCB with CIDA funding. For instance, it has been involved in an effective program managed by the Inter-American Institute for Cooperation in Agriculture (IICA), and presently has major projects in Mexico, Cuba, and China (a

⁸¹ However the CFIA might be able to give priority to reviewing LDC requests, for instance for risk assessments to be given priority or to be addressed within a certain timeline, were these to be included in SPS procedural guidelines.

⁸² Five of the 88 outstanding issues being addressed at the CTD related to SPS, according to Gitonga (2005).

⁸³ A response to developing country concerns might involve a change in the measure to be applied on a MFN basis, technical assistance to the affected exporting country and/or SDT.

⁸⁴ It donated C\$0.3 million in March 2005. The other donors are France, the Netherlands, Denmark and the UK. Initial funds came from the World Bank Development Grant Facility and the WTO DDA Global Trust Fund.

Special and Differential Treatment in the Doha Development Agenda
Canadian Perspectives

C\$6.5 million project). CFIA would be keen to work with CIDA to develop an agency-wide strategy in this area. In particular it would support similar initiatives to those in China or IICA being undertaken in different regions of Africa, where needs seem particularly pronounced given many countries' plans to expand agricultural production and agri-processing for the domestic market and export.

NAMA-specific Canadian position Canada's position in the NAMA negotiations has changed over the past few years, but remains fairly restrictive. Its objective, as communicated in October 2002 to the Negotiating Group, is in

reducing and binding applied tariff levels which are not yet bound, reducing high bound rates and re-binding them at lower rates, and expanding the scope of duty-free trade. In addition, we favour eliminating "nuisance" tariffs and maximizing the use of *ad valorem* rates.

In the next paragraph, it goes on to further explain,

In cases where there are substantial gaps between bound and applied rates, even large percentage cuts in bound rates can frequently result in little or no reduction in applied rates. ***In this context, we will not agree to bind valuable real cuts in our applied rates in return for purely pro forma liberalization, i.e. where cuts in bound rates result in no decrease in applied rates – in other words, no improved market access.*** (WTO, TN/MA/W/9, emphasis added)

To meet these objectives, a combination of approaches was suggested, including formula-based, and request/offer approaches, as well as sectoral agreements (both zero-for-zero and harmonization).

In terms of provisions for SDT, flexibility was primarily provided in the form of longer phase-in periods for reduction commitments lasting generally five years, but longer or shorter transitions could be considered depending on the country's circumstances. In the case of sectoral agreements, implementation periods could be decided on a case-by-case basis with country-specific flexibility, again depending on the situation.

There were also some references to flexibility in Canada's proposal for formula modalities. Recognizing the need to be sensitive to the varying circumstances of members, it suggested differentiation according to level of development and tariff structure. Credit for increased flexibility was also offered but in return for autonomous measures taken over the course of current negotiations that go beyond existing Uruguay Round commitments on tariff binding coverage.

Aside from the longer implementation period mentioned above, sectoral agreements were not provided any further flexibility. According to the proposal, "expanded membership would have positive spin-off benefits for all." Canada also supported negotiations of new zero-for-zero sectoral agreements in areas of interest to both developed and developing countries. More specifically, it proposed agreements in sectors such as fish products,

Special and Differential Treatment in the Doha Development Agenda
Canadian Perspectives

forest products, fertilizers, energy-related equipment, non-ferrous metals, as well as environmental goods.

On the issue of NTBs, Canada's position is to curtail unnecessary barriers to trade, while retaining the right of governments to regulate for legitimate objectives in the public interest. To avoid duplication of work, it suggested these issues be addressed in their respective committees, as well as under the rubric of trade facilitation. To this end, the proposal also emphasized Canada's strong support for technical assistance and capacity-building, "recognizing that meaningful participation by developing countries will be an indispensable ingredient in a successful negotiation."

Canada co-authored a communication with the EC and US in September 2003, which reflects an evolution in its thinking on SDT. The joint proposal uses the Chair's draft modalities as an "acceptable broad framework for the negotiations", and modifies it accordingly (see above for comparison). Unlike Canada's initial statement, the joint proposal offered more flexibility, extending SDT beyond simple considerations of lengthier implementation periods, to conditionally allowing less than formula cuts for a limited number of tariff lines and/or value of trade. Moreover, the joint proposal also allows flexibility with regards to the level at which tariffs are bound and for LDCs, flexibility to not comprehensively bind all of their tariff lines.

However, certain characteristics of the original Canadian proposal remain present. For instance, credit is to be granted for tariff bindings greater than 95 percent, or for narrowing the gap between bound and applied duties. Credit is used to offer developing countries some flexibility within the proposed Swiss formula, which would harmonize tariffs on a line-by-line basis and use a single coefficient still to be negotiated. These provisions, although presented somewhat differently in the joint proposal, still effectively address Canada's stated position of achieving improved market access in developing countries, while also introducing a form of differentiation based on a country's tariff structure. Also similar to the Canadian position, the joint proposal does not contain any SDT provisions in sectoral agreements besides focusing on products of particular interest to developing countries, such as textiles and apparel. On NTBs, it supports the SDT language provided by the Chair's modalities. In terms of complying with trade rules, the proposal calls on Bretton Woods institutions to assist in the adjustment.

More recently, aside from also participating in a joint communication with Norway on the elimination of low duties, in preparation for the use of a tariff-cutting formula, Canada along with Hong Kong, China, New Zealand and Norway issued a proposal on how to calculate the base rates for unbound tariffs. As opposed to the Chair's suggestion to use double the MFN applied rate for unbound tariffs, the proposal alternatively suggests a non-linear mark-up that adds five percentage points to each unbound rate prior to the application of formula cuts.⁸⁵

⁸⁵ See, TN/MA/W/51 (8 Mar 2005)

Canada also recently issued a joint statement with the US, proposing participation in sectoral agreements to be based on share of world trade that can be defined as a 'critical mass'.⁸⁶ Although much has yet to be determined in this process (such as product coverage, target tariff rate, and definition of critical mass), like-minded countries representing a threshold share of world trade can negotiate a sectoral harmonization rate (zero or other) that would be made available on an MFN basis to all WTO members. With regards to SDT, the proposal does consider product sensitivities and less than full reciprocity for developing countries in order to attract more participation.

Of the various proposals put forward to the negotiating group by developing countries, the approach taken by Chile, Colombia and Mexico is most in conformity with the structure of the July package. Canadian officials disagree with the ABI proposal due to its use of the Chair's original Swiss-type formula, which include the average bound rate within the formula calculation for both bound and unbound tariff lines. Furthermore, Canadian officials criticize the suggestion that the formula for unbound tariff lines be applied on the tariff average and not on a line-by-line basis. The Argentina, Brazil, India proposal, they believe, would potentially lead to pro forma liberalization that did not actually reduce applied tariff rates, as well as reduce the gap between applied and bound duties.

This approach has been criticized for deviating from past negotiation practice. As Oxfam puts it,

As recently as the Uruguay Round, the USA could not accept the line-by-line application of a non-linear formula, agreeing instead to cuts in average tariff levels according to which lines it chose to cut, the way it cut them, and by how much it cut them. The heavy-handed message from rich countries is: 'Don't do as we did, do as we say'. (2005, p. 12)

Furthermore, for those countries not given exemption, the modalities provided in the July package for tariff reduction and sectoral initiative are characterized by what Oxfam calls '*more* than full reciprocity', insofar as developing countries would undertake larger tariff cuts due to their generally higher tariff structures vis-à-vis developed country members. Relatively speaking, these developing countries would thus provide much greater market access than they would receive.

Thus, despite some loosening of the Canadian government's official negotiating position on SDT, it remains at odds with the flexibility most strongly articulated by emerging economies such as Argentina, Brazil and India.

2.2 NON-GOVERNMENT VIEWS

⁸⁶ See, TN/MA/W/55 (20 Apr 2005)

Special and Differential Treatment in the Doha Development Agenda
Canadian Perspectives

Canadian non-governmental organizations, academics and representatives of the private sector offer a diversity of perspectives on special and differential treatment. This section reviews these perspectives as they relate to a general approach to be developed regarding the application of WTO rules to developing countries. Specific views on rules in agriculture are discussed next. In general, NGOs involved in international development such as CCIC and its 100 member organizations support an approach to SDT which grants considerable flexibility to developing countries in the implementation of existing or new WTO obligations, and in adopting new import liberalization commitments. For instance, on agriculture they believe that “trade rules must allow for national policy flexibility, including border measures, to support and protect domestic agricultural development.”⁸⁷

Similarly, the International Institute on Sustainable Development (IISD) based in Winnipeg and Geneva adopts a general approach where “one size fits all” is clearly presented as inappropriate. In its policy brief on Special and Differential Treatment, IISD advances two strong arguments for renewing S&D provisions. First, the pragmatic argument is that it will be very difficult to conclude the Doha round without such reforms as developing countries are not willing anymore “to put their trust in vague phrases that might subsequently be defined judicially in unexpected ways” (IISD, 2003, p. 3). Secondly, it is developmentally undesirable for some countries to follow policies that may make sense for others, or that may translate into the diversion of resources from more pressing development needs.

One IISD interviewee stressed that, based on empirical evidence, for developing countries to be able to benefit from trade liberalization, there needs to be a number of prerequisites in place, such as regulatory bodies, infrastructure, rule of law, etc. In their absence, the potential benefits from trade liberalization will not materialize. We will fail at fulfilling the development mandate of the WTO, if we do not take these prerequisites into consideration. In order to do so, two strategies need to be adopted. First, WTO members need to work at improving the conditions in developing countries, so that they are in a position to take advantage of the benefits of trade liberalization. An interesting model may be the Integrated Framework, even though there have been major problems with its implementation up to now. A second strategy is to tailor trade commitments to each country, to reflect differences among different levels of development. Annex D on trade facilitation in the July package is a good example of how this could be done. In trade in services, the tailored approach can have strong applications. If the prerequisite legal framework is not present in a country, for instance if there are no independent regulatory bodies, there is strong evidence that trade liberalization will not lead to competition and economic benefits.

⁸⁷ CCIC, Principles for International Agricultural Trade Rules and Joint Demands for the Doha Agenda, at <http://www.ccic.ca>.

Special and Differential Treatment in the Doha Development Agenda
Canadian Perspectives

On investment, IISD supports more flexibility regarding trade-related investment measures (TRIMs), as the WTO should not be able to ban performance requirements. It should be up to countries to decide if this could work for them or not. Indeed, evidence shows that in some cases these have been a useful economic tool. Finally, on differentiation between different developing countries, the interviewee proposed the idea of “safe differentiation”, i.e. an approach which would not erode the SDT available to larger countries, but provide more flexibility for smaller and poorer countries. The process should not be entirely based on self-declaration; it should include a process of independent assessment of the capacity of the country to take trade commitments.

Other Canadian NGOs (for example unions) which are focusing on domestic issues usually support an approach similar to development NGOs which favour broad flexibilities; however, this issue is not one on which they focus, given their other priorities. For instance, the position of the Canadian Labour Congress on SDT stems from its view that exports and trade liberalization are not the engine of economic growth, but the outcome of domestic growth policies. The latter are the critical factor to consider and each country should be able to adopt its own development policies. The capacity of the industrial sector to gain experience in the internal market is often key to growth and development; therefore, protection from foreign competition can be a useful tool in the early development of a new sector. Trade liberalization should be undertaken at each country’s own rhythm; developing countries should make trade commitments only when they reach a certain level of development.

Regarding the preferential access schemes that Canada offers to developing countries, it was suggested that these should be used as incentives to promote respect of labour rights in developing countries. The bilateral agreement between the United States and Cambodia is seen as an interesting model to examine. Technical assistance is another instrument which can be used to improve the respect of basic labour rights in developing countries, but support for these activities is still very limited. More generally, Canadian trade policy is perceived as not taking into account a broader range of views and interests, and focusing too much on the commercial interests of some exporters and producers. Finally, the interviewee stressed that the Canadian government offers very few adjustment programs to face the domestic consequences of its trade policy choices. The case of textiles and clothing is presented as a clear example of lack of planning and inaction to prepare for external shocks which affect tens of thousands of Canadian workers.

The Canadian private sector’s position on trade policy does not focus on developing countries, given that almost 90 percent of Canadian trade is with the United States. Official statements such as the 2004 Policy Resolution of the Canadian Chamber of Commerce on Canada’s International Trade and Investment Priorities do not mention SDT at the WTO. It mentions bilateral trade negotiations with developing countries (such as Central American countries, CARICOM and the Andean countries) but to stress

Special and Differential Treatment in the Doha Development Agenda
Canadian Perspectives

that these “niche arrangements will likely not have a broad impact upon the Canadian economy” and that “both government and the business community have limits to their capacity to manage a large number of negotiations”. In their joint statement for the launch of the Doha round, the Canadian Chamber of Commerce and the Canadian Council for International Business affirmed that “it is critical that developing countries share in the benefits of multilateral trade liberalization” but their comments focus on technical assistance and capacity building, not on other types of SDT (CCC and CCIB, 2001).

The Conference Board of Canada is one organization which works closely with Canadian businesses but also has direct experiences with WTO and developing countries through its trade-related capacity building work. In an interview, emphasis was placed on the very limited capacity of developing countries, especially of poor countries, to take and implement commitments. In their capacity-building work in Asia, the representative from the Conference Board of Canada was struck by the constraints these countries have to deal with in their trade negotiations and implementation of their commitments. The organization does not have positions on SDT per se, but based on earlier work in Asia, the interviewee noted that the trade-oriented strategy of the “Asian tigers” included elements of strategic protectionism which the WTO rules would now preclude. Regarding SDT in terms of preferential access to the Canada market, the respondent stressed that there are only small pockets of the Canadian economy which are still protected such as textiles and clothing and wondered why we do not adopt an unilateral liberalization in these sectors, if, as often argued, it will increase Canadian welfare. The key policy issue to focus on here is the issue of adjustment to such liberalization.

In recent years, Canadian academics have put forward a number of analyses and views on SDT. Some years after the end of the Uruguay Round, Whalley highlighted the ad hoc nature of the new SDT measures found in the Uruguay Round agreements and that they “lacked an integrated intellectual structure” (1999, p. 18). Regarding whether developing countries benefit from having SDT which allows them to maintain tariff protection, his assessment of the literature was that most economists support free trade as the appropriate policy option, especially for smaller countries, but that protection is still a practice which finds a rationale in the economic literature. For instance, “the infant industry justifications of old are far from intellectually discounted... A catalogue and fuller discussion of the precise circumstances where developing country protection of various forms is merited and of what form, on what basis (time limits) and for precisely which countries seems to be the place to begin with discussion on any new S&DT” (Whalley, 1999, p. 19).

On the regulatory requirements imposed by WTO agreements on developing countries, Wolfe (2003) proposes that the WTO aim more at compatibility than regulatory convergence between developed and developing countries. Indeed, in an examination of telecommunications regulation and food safety standards, he notes the difficulty for developing countries, even middle-income, to implement WTO standards. He does not

Special and Differential Treatment in the Doha Development Agenda
Canadian Perspectives

see technical assistance as the solution to this problem “because regulatory transparency engages the whole of a country’s governance infrastructure, not just a small number of officials in the trade ministry (Wolfe, 2003, p. 173).” On sanitary and phyto-sanitary (SPS) standards, Henson and Loader (2001) stress industrial countries need to take more account of the situation of developing countries agricultural exporters when adopting new standards and that such an approach does not have to mean lower standards of health protection. “Rather, it suggests that SPS measures should minimize, wherever possible, incompatibilities with the systems of production and marketing applied in developing countries (Henson and Loader, 2001, p. 100).

More flexibility in the WTO rules has also been suggested regarding the TRIPs agreement in order to reflect the challenges of developing countries, especially regarding the impact of patents on access to pharmaceutical drugs. “The leading industrialized countries must pay attention to the social and economic needs of developing countries. However, this would likely require a considerable departure from the existing attitude towards IPRs (Lanoska, 2003, p. 194). Other Canadian scholars have expressed concern not only about the lack of flexibility in trade rules for developing countries, but the need for the WTO framework to be more accommodating for public policies of all countries, especially as they relate to cultural diversity and pluralism (Drache and Froese, 2005).

A dissenting view regarding the usefulness of SDT provisions at the WTO has been expressed by two researchers at the Centre for Trade Policy and Law (CTPL) based at Carleton and Ottawa universities (Hart and Dymond, 2003). They generally oppose SDT for developing countries on the grounds that these provisions are more likely to retard than contribute to development. They consider the infant industry argument and other justifications for SDT are not supported in the economic literature. “The benefits of an open economy, and the costs of a closed economy, are now among the most widely shared canons of economic orthodoxy and yet discussion of S&D treatment proceeds as if the issue remains an open question. The appeal of SDT is thus wholly political and bereft of any economic underpinning” (Hart and Dymond, 2003, p. 395). Nevertheless, they recognize that most LDCs are in a different position, given their lack of capacity to implement their WTO obligations and to take advantage of market access gains made at the WTO.

NON-GOVERNMENT VIEWS ON AGRICULTURE Canadian perspectives on the agricultural negotiations and the treatment of developing countries vary widely. However there appears to be a genuine interest in preserving and promoting the rights of LDCs to protect their own farmers. The challenge is to determine how far other developing countries – and particularly the more competitive agricultural exporters and emerging markets -- should be exempted from disciplines or opening their markets for particular products let alone their entire agricultural sectors. Also, how far will their interests be taken into account when options are considered for increasing access to developed country markets and reducing developed country support of agriculture?

Special and Differential Treatment in the Doha Development Agenda
Canadian Perspectives

For most Canadian producer groups and development NGOs the key issue in the DDA is to address the malpractices of leading developed country producers and exporters i.e. to limit their use of domestic production and export subsidies which have distorted world prices and affected Canadian agricultural incomes as well as those of developing country producers. Improvements in access to export markets are also important for many Canadian producers but there are some differences, with supply managed groups being particularly concerned that changes in market access rules allow supply management to continue to be viable in Canada. In contrast other agricultural producers would support more significant openings in the Canadian market if necessary to achieve an ambitious outcome in other developed – and developing – countries, while some members of the Canadian Agri-Food Trade Alliance (CAFTA⁸⁸) actively advocate such improvements for their imports into the Canadian market. For its part, the Canadian Wheat Board is keen to avoid any new disciplines on STEs or single desk marketing on the grounds that existing WTO rules (e.g. under GATT Article XVII and the rules on dumping and subsidies) are adequate. Finally, the Canadian development NGO community is primarily concerned to ensure that changes in rules are made with the objective of improving food security in developing countries, while strengthening the livelihoods of small producers. At the same time it is committed to fostering a healthy agricultural sector in Canada.

The Canadian Federation of Agriculture (CFA) believes that the WTO negotiations on agriculture should establish rules and standards that apply equally to all countries. Nonetheless it recognizes the principle of special and differential provisions for certain categories of countries.⁸⁹ In general its overall approach to SDT distinguishes between LDCs, competitive exporters and emerging markets. There is wide support for an enabling environment for LDCs i.e. with minimal if any new requirements of LDCs in terms of the three pillars. The Canadian Wheat Board (CWB) has taken an enlightened if self-interested approach, arguing that it is important for developing countries to protect their farmers in order to support economic development and growth, which in turn is expected to lead to increased markets for the CWB. Nonetheless it does support some differentiation – for instance requiring countries with mature export sectors to be bound by the same rules governing export subsidies as developed countries. For CAFTA, SDT should consist of longer time frames, shallower cuts and a clearly defined and transparent SSM for non-LDCs. It does not support exemptions of any products or any disciplines for countries other than LDCs.⁹⁰

Several Canadian groups consider that for competitive exporters the same standards should be applied as for developed countries e.g. with respect to disciplines on domestic

⁸⁸ CAFTA includes Agricore United, Canada Beef Export Federation, Canadian Cattlemen's Association, Canadian Meat Council, Canadian Oilseed Processors Association, Canadian Sugar Institute, Canola Council of Canada, Cargill, Food and Consumer Products Manufacturers, Grain Growers of Canada, Malting Industry Association of Canada. These groups are reported to account for over 80% of Canada's agriculture and food exports and more than 60% of farm cash receipts.

⁸⁹ Standing Policy 2004, pp. 4. and 10.

⁹⁰ Email correspondence

Special and Differential Treatment in the Doha Development Agenda
Canadian Perspectives

support, export subsidies and market access. This may reflect the fact that Brazilian and Argentine oilseed producers, for instance, are now highly competitive with Canadian producers (n.b. Canadian analysts acknowledge that this is with low levels of government support i.e. competing subsidies are not the critical factor for Canadian farmers⁹¹). There are also some market access issues (e.g. tariffs on Canadian wheat in Brazil). Some groups are therefore keen to completely exclude competitive exporters like Brazil and Argentina from any SDT. For instance the CFA states: ‘Countries with well developed agricultural sectors (e.g. Brazil) should not be eligible for SDT under the Agreement on Agriculture.’⁹²

For emerging markets, a primary Canadian concern is market access, often to secure treatment equal to competing or substitutable products from third countries such as the US which face lower MFN or preferential tariffs. Examples are the Indian and Korean tariffs on Canadian canola oil and canola which are higher (85 percent, 20 percent respectively) than those for US soya beans and oil (45 percent and 5 percent), or the Korean tariff for feed peas which is higher than for competing feed products like lupins.⁹³ Other issues include tariff escalation (canola oil is also an example) and SPS. In general, the CFA has an ambitious market access objective – the maximum possible access for agricultural exports, including zero-for-zero agreements for specific products, while maintaining domestic interests and orderly marketing structures. With respect to products with TRQs, it seeks clean real minimum access from every country⁹⁴ i.e. 5 percent access with in-quota tariffs of zero, though no improvements should be expected of sectors/products which have already met this threshold.

The CWB is sensitive to the potential for significant harm to developing country farmers if liberalization occurs too quickly or suddenly, and it would be necessary to define significant harm to justify when a special safeguard was used.

CAFTA seeks substantial real increases in market access. It has proposed an aggressive reduction formula for tariff cuts with an overall tariff cap and expansion of minimum access to 20 percent of domestic consumption in developed country markets⁹⁵ by expanding TRQs and lowering tariffs. It argues that a minimum 5 percent market access option (through removal of the in-tariff quota for existing TRQs or through the creation of new TRQs for products presently covered by high import tariffs) would create little change in imports in many developed and developing countries for key Canadian

⁹¹ Eg George Brinkman, ‘Viability of Canadian Agriculture,’ presentation, ? 2004, at http://www.cfa-fca.ca/upload/nat_sym_g_brinkman.pdf

⁹² Standing Policy 2004, p. 10. CFA calls for clear criteria for the designation of countries to be eligible for SDT; more than one category to an end to self-designation; a review of country designation at regular intervals.

⁹³ Opening Doors to the World. 2003 pp. 94 and 98.

⁹⁴ CFA Standing Policy 2004, p. 43. According to CAFTA, Canadian exporters face 1300 TRQs most of which are filled. Presentation by Liam McCreery, December 2004.

⁹⁵ Email correspondence

Special and Differential Treatment in the Doha Development Agenda
Canadian Perspectives

agricultural exports.⁹⁶ A CAFTA document on market access options identifies a number of developing (as well as developed) countries as having relatively high average tariffs, TRQs and special safeguards on products of interest to Canadian exporters. While emphasizing the need for deeper tariff cuts in developed countries (an average of 75 percent is estimated as needed to result in increased actual market access given the difference between applied and actual tariffs), CAFTA indicates that ‘for any additional trade into developing country markets .. the required reduction would have to approach 50 percent.’⁹⁷

Finally, on special products (SPs), CAFTA seeks clear criteria for selection and treatment, arguing that SPs should still be subject to WTO disciplines including access improvements, yet treated in such a way as to facilitate the development of a country. In terms of special safeguards (SSMs), it argues for tariffs (not quotas) for specific products, during times of vulnerability, with a transparent and binding phase-out and sunset provision.

Groups representing the supply-managed sectors (dairy, poultry and eggs) are generally sympathetic to developing country interests in protecting smallholder farmers. Alliances are being struck with developing countries to secure their understanding and support for the Canadian policies of supply management and single-desk selling or STEs. While not many developing countries have yet followed these approaches, the Canadian view is that they should reserve the right to use these policy tools in the future, as a means to empowering their farmers in the marketplace. L’Union des producteurs agricoles (UPA), for instance, has used CIDA support for TRCB to build up alliances with farmers’ organizations in seven countries in West Africa, at the same time as increasing their knowledge of trade negotiations.

Several Canadian development NGOs have joined with the CFA to support Canadian approaches to orderly marketing. This is in contrast to development NGOs elsewhere which are concerned that sensitive products will be used by developed countries to unduly limit import competition from developing countries. The **Canadian Food**

⁹⁶ CAFTA, ‘Limiting Agricultural Market Access to 5% of Domestic Consumption Will Not Create Any Substantial Improvements in Market Access’, December 2003 at <http://www.cafta.org/5%25%20access%20analysis%20December%2003.doc> This identifies several developing as well as developed countries where TRQs are already exceeded or where imports already account for more than 5% of domestic consumption.

⁹⁷ CAFTA, An Assessment of the Blended Formula, no date at <http://www.cafta.org/An%20assessment%20of%20market%20access%20options.pdf> The document shows higher or equal average applied tariffs in developed than developing countries for all 9 key commodity groups of interest to CAFTA – but developing countries have higher average ‘water in the tariff’ in 5 groups -- dairy, wheat, coarse grains, vegetable oils and sugar. Further market access constraints in emerging markets such as India, China, South Africa, Thailand and Colombia are elaborated in another note. ‘Emerging Markets: Will Canada Meet the Challenge? Business Round Table Discussion on the development of an emerging markets strategy, November 30, 2004 at http://www.cafta.org/emerging_markets.html

Special and Differential Treatment in the Doha Development Agenda
Canadian Perspectives

Security Policy Group (CFSPG)⁹⁸ is a strong advocate of policy flexibility for developing countries in order to achieve food security. While supporting Canadian and global efforts to end dumping of agricultural produce, which has seriously affected smallholders and other farmers in many developing countries, it is critical of Canadian government support of ‘rules that pry open developing country markets’ and specifically, the ‘forced removal of tariffs.’ Instead, it calls for rules that ‘allow all governments to pursue what have become hallmark Canadian solutions to agricultural development – the promotion of orderly markets, including supply management and single desk exporting.’ In particular it recommends the government ‘1. actively support trade rules that provide developing countries adequate flexibility to implement food security initiatives, and 2. defend the rights of governments to promote orderly markets through diverse national and international strategies.’

Amongst detailed suggestions for SDT the group argues for developing countries to be able to: designate a limited number of special products as key food security staples exempted from tariff reductions, raise tariffs to defend themselves against dumped products, and introduce special safeguards to address import surges and price volatility. While border measures are most affordable for many countries they should still be allowed to provide targeted domestic support to smallholder farmers as needed. Also, the group supports alternative ways of managing markets, such as supply management, state trading agencies or producer cooperatives, to strengthen small farmers buying and selling power in increasingly concentrated global agricultural supply chains, and also to regulate commodity prices. Finally, they call for asymmetrical concessions – i.e. not to require developing countries to make agricultural policy changes that might damage their smallholder farmers in return for benefits in other non-agricultural areas.

Many of these points were reinforced at a recent meeting in Ottawa, and reflected in a joint declaration, which noted that ‘Trade rules must respect and allow policies supporting the diversity of local agricultural systems provided they don't result in dumping on international markets.’⁹⁹

⁹⁸CFSPG members include the Canadian Council for International Co-operation, Canadian Foodgrains Bank, Developing Countries Farm Radio Network, Development and Peace, ETC Group, Inter Pares, Mennonite Central Committee Canada, National Farmers Union (Canada), Oxfam Canada, Partners in Rural Development, Rights and Democracy, UPA Développement international, USC Canada and World Vision Canada. “The FSPG seeks to promote development assistance and international trade rules that protect and enhance food security in developing countries. We are committed to the development of a global governance system that will contribute to fulfilling the human right to food, strengthen the livelihoods of small food producers in developing countries and foster a healthy agricultural sector for farmers in Canada.” ‘A Food Security Perspective on Canada’ International Trade and Development Assistance Policies. A Discussion Paper for the Government of Canada’s International Policy Review, October 2004, at http://www.ccic.ca/e/docs/003_food_2004-10_fspg_ipr_recs.pdf

⁹⁹ Principles for International Agricultural Trade Rules and Joint Demands for the Doha Agenda, May 16, 2005, at http://www.ccic.ca/e/003/food_2005-06-01_principles_international_agricultural_trade_rules_joint_demands_doha_agenda.shtml

Special and Differential Treatment in the Doha Development Agenda
Canadian Perspectives

Another issue raised by CCIC is how to ensure that the benefits of liberalization flow to smaller farmers – rather than being absorbed by larger agribusinesses.¹⁰⁰ This may be addressed in part through the modalities for liberalization (for instance giving priority to improved access for crops grown by smallholders; exempting subsidies directed at smallholders from cuts; ensuring rules allow for STEs or cooperativization of production and marketing of smallholder crops). But other measures not presently on the negotiating agenda may be needed, such as rules to curb agribusinesses' oligopolistic practices, as well as complementary assistance e.g. institutional support to help small farmers become more organized and take advantage of new market opportunities.

Concerns about food security and the promotion of smallholder livelihoods have led several Canadian NGOs to be concerned about the potential for **food aid** to have negative impacts when it is inappropriately managed. The Canadian Foodgrains Bank has therefore supported calls from the EU as well as from various developing countries for these issues to be addressed in the DDA. For instance the CFB has suggested: making all food aid in grant form (i.e. ending concessional sales) and introducing disciplines and/or limits on monetization.¹⁰¹

Some Canadian agricultural organizations, such as the CFA, also support such moves to increase efficient and cost-effective delivery of aid as well as to the limit the scope for food aid to distort trade and undermine agricultural development in developing countries. This partly reflects the fact that food aid -and monetized food aid- is less important for Canadian farmers than for US farmers. In 2005 the CFA has endorsed all food aid being in grant form and also that food aid not be tied to the purchase of other agricultural products or of other goods and services. It has also passed a resolution calling on CIDA to allow the untying of Canadian food aid up to 50 percent, i.e. to allow purchases from eligible supplier countries, instead of the current rules which require that 90 percent of Canadian international food aid be purchased in Canada.¹⁰²

NON-GOVERNMENT VIEWS ON NAMA Many of the various organizations (private sector, developmental, academic) surveyed in this research do not have an established NAMA policy position. Nonetheless, their points of view broadly recognize the role of SDT in providing the flexibility within which industrialization can take place in

¹⁰⁰ The WTO August 1, 2004 Framework: What's in it for Development? A CCIC Briefing Note, November 2004.

¹⁰¹ See C. Stuart Clark, 'Food Aid in WTO Agricultural Trade Policy', Canadian Foodgrains Bank November 2001, who proposes a minimum financial efficiency for monetized food aid and/or a percentage limit on food aid that is monetized which could be reduced over time.

¹⁰² The eligible suppliers include some 113 developing countries and territories. It excludes large agricultural exporters such as Argentina, Brazil, Malaysia,, Mexico and Chile, though it does include China, Thailand, India and Indonesia, who were also in the world's top 15 agricultural exporters in 2003 according to the WTO. In contrast present rules in the US require 100% tying though there are moves in Congress for untying of US food aid of up to 25%.

Special and Differential Treatment in the Doha Development Agenda
Canadian Perspectives

developing economies. Most would agree that liberalization can bring economic benefits to developing countries, provided that these countries first attain a level of development that allows them to compete in international and domestic markets. For some the lessons from East Asia's interventionist developmental strategy are clear, as are the contradictions found in today's international trade regime (such as disciplines on export subsidies, intellectual property, and quantitative restrictions on imports) that outlaw the use of similar policies.

On the other hand, some organizations while generally supportive of SDT, focus on the need for the application of such measures to be transparent, open and conducive to a competitive market economy. From this point of view, Canada's objective should be to construct a level playing field for all market actors. This is linked to the idea that SDT should not be in the form of a 'blank cheque' and should not give preferences to potential rivals of Canadian manufacturing exporters. However, on the issue of SDT graduation or differentiation, all organizations interviewed were well aware of and sympathetic to the poverty still found in the large emerging economies. Some believed Canada should support continued policy flexibility for these countries, while others thought that SDT could be targeted more specifically within a given country.

It was also noted that despite this general discourse on SDT, Canada's actual trade in developing countries is relatively low. As such, Canada's promotion of trade liberalization is not seen as directly relating to access in these markets. Nonetheless, some developmental NGOs were critical of the government for offering SDT with strings attached, requiring developing countries to effectively 'pay' for SDT by demanding concessions in return. From their point of view, the government of Canada's approach in NAMA is clearly diluted, if not distorted from the agenda agreed to in Doha to strengthen, and make more precise, effective and operational SDT provisions.

In terms of the textile and clothing sector, Canadian industry representatives indicate that support for further commitment on tariff reductions is unlikely so soon after the end of the Multi-Fibre Arrangement (MFA). Indeed, with the post-MFA impact still uncertain, some domestic producers are calling for the reimposition of quotas, while others are seeking graduation for Bangladesh from the duty-free access granted to LDCs in January 2003.

Aside from the policy 'space' side of SDT, some private sector organizations are also involved in the capacity building and technical assistance side of the equation. Some of these approve of current government programs that aim to enhance developing country competitiveness by upgrading productive and administrative capacity. Others remain somewhat more skeptical, noting the limitations of donor-driven programs that do not adequately address the needs of recipient countries. This latter stance is corroborated by developmental NGOs and academics critical of private sector-led technical assistance and capacity building projects that are too narrowly focused on compliance with trade rules. The conventional approach, from their point of view, limits alternative forms of technical

Special and Differential Treatment in the Doha Development Agenda
Canadian Perspectives

assistance and capacity building that are more conducive to the interests of the recipient countries.

3. CONCLUSIONS AND RECOMMENDATIONS

In this paper we have focused on SDT which was a key issue when the present round of WTO negotiations was launched in November 2001 with the Doha Development Agenda. For developing countries who form the majority now of the WTO membership, SDT is seen as a way to redress some of the inequities in the outcomes of the previous Uruguay Round, particularly in agriculture as well as in the overall balance of results. Many have experienced problems with implementation of their Uruguay Round commitments and also with realizing the benefits projected by many analysts. The Doha Round is expected to address these problems, in particular by strengthening and making SDT provisions for developing countries more precise, effective and operational.

SDT refers both to specific provisions in the WTO rules – allowing developing countries flexibility in terms of the level and timing of their obligations – and to a focus on developing countries' needs in substantive areas of the negotiations, such as agriculture and services. Providing developing countries, especially lower-income and LDCs, with financial support to strengthen their negotiating capacities, increase their ability to use and implement WTO rules, and develop their capacities to take advantage of new trading opportunities, is another aspect.

Certainly there are high expectations of the Doha Round with its outcomes critical for many countries' development strategies. The failure to incorporate an adequate degree of SDT in the resulting obligations for developed and developing countries could undermine the achievement of MDG8 in which developed countries committed to a number of trade targets. For developing countries the conundrum is that if the Round breaks down over failure to reach an agreement over appropriate levels of SDT, this could accelerate developed countries' pursuit of bilateral and regional FTAs in which SDT elements are often weaker.

The high stakes involved have led many developing countries to be fully engaged in the negotiating process, in a way that is unprecedented in the history of the WTO or the GATT, at both the political and technical levels. This is reflected in the large number of proposals that they have produced whether individually, as Southern groups, or in partnership with developed countries. While there is a common interest in maintaining development policy space, it is clear that priorities differ among countries, depending on their level of development and other national characteristics. There is growing pressure on the larger countries with more advanced sectors, such as Brazil and India, to adopt greater obligations. It has led to the inclusion of these two countries along with the EU, US and Australia, in the group known as the Five Interested Parties or FIPs, which has assumed leadership of the negotiations.

But the resistance from developed countries to live up to the Doha declaration obligations on SDT has extended well beyond Brazil, India and other emerging market economies.

Special and Differential Treatment in the Doha Development Agenda
Canadian Perspectives

As underlined in the review of the negotiations in the key areas of agriculture, non-agricultural market access and services, there has been intense pressure on most developing countries with the exception of the LDCs to assume greater obligations – in particular in the form of increasing access to their markets. There has been some attention to opening Northern markets and reducing Northern dumping of agricultural produce. But there has been very little progress on the specific SDT provisions carried over from the Uruguay Round, nor on addressing the newer issues raised by West African cotton producers. Instead of a round primarily promoting both developing countries' offensive and defensive interests, they have been confronted with demands to bind and reduce tariffs to generate increased imports and to open up new services sectors. This approach is not consistent with the Doha declaration, nor is it appropriate from a development perspective.

Here we have addressed the Canadian perspective on SDT in key negotiating areas, by reviewing Canada's official negotiating position on SDT and explaining this in terms of the domestic factors determining this position. We have identified a range of offensive exporting interests, both direct and indirect, as well as some defensive, import-competing, interests. Some development agencies and NGOs as well as producer groups have brought broader interests, and in particular an appreciation of the need for SDT to allow trade to support national choices about how to promote rural livelihoods, develop industries and reduce poverty. The government, however, is promoting a restrictive approach to SDT, reflecting in part Canada's narrower commercial interests and a belief in the application of WTO norms, and especially binding trade liberalization, as contributing to development. There are exceptions such as a willingness to consider SDT for special agricultural products, though the limits remain to be negotiated. At the same time it is a strong advocate of technical assistance and capacity building, to ensure trade benefits are realized.

Recommendations

In general we recommend that the Canadian government adopt a more flexible approach to SDT, on the grounds that its present hard-line position is not warranted by the evidence on the relationship between trade and development, nor on the cost-benefit ratio of being more flexible, nor in keeping with the Doha declaration.

CIDA, along with other countries' development agencies, has a critical role in terms of ensuring greater coherence between Canada's trade policies and its commitment to the MDGs. It can also contribute knowledge of development realities, and support its partner countries to elaborate what policy flexibilities they need and to undertake impact assessments of proposed changes in WTO rules. CIDA is likely also to be involved in discussions of how aid can compensate some countries for preference erosion and to strengthen supply-side capacities. But it should be the first to underline that aid cannot be a substitute for SDT in the WTO.

Special and Differential Treatment in the Doha Development Agenda
Canadian Perspectives

LDC Issues

- The Government of Canada should seriously consider and respond to the five issues proposed by the LDCs in the CTD-SS.
- While the government has introduced tariff-free, quota-free market access for LDCs, it should make this more predictable and secure by binding it.

Implementation Issues

- Canada should support an agreement at Hong Kong on the 28 Agreement specific proposals that were agreed in principle prior to Cancún.

Agriculture

- An end to Northern dumping is critical for many developing country farmers and Canada should press the US and EU to go further and faster than their present proposals.
- Canada should support a generous approach to tariff cuts, special safeguards, and criteria for Special Products in developing countries, which are important for development outcomes in larger countries like India as well as LDCs and other low-income countries.
- Canada should maintain its support for state-trading enterprises and supply-side measures in developing countries.
- Canada should support a compensation fund for preference erosion which is of major concern to a number of developing countries
- An 'early harvest' on cotton is urgently needed, in recognition of the serious problems facing West African farmers.

NAMA

- Canada should support coefficients and a formula that will allow developing countries to support their nascent industrial sectors (and tariff revenue) while ending tariff peaks in Northern markets.
- SDT provisions exist for LDCs, but they are also needed for others, especially low-income countries, to have flexibility to maintain adequate tariffs. This includes a generous mark-up for unbound tariffs and less than formula cuts (if any).
- Countries faced with preference erosion should be compensated whether through a fund or through credits as proposed by the Caribbean.
- Canada and other importing countries should extend bound duty-free, quota-free tariff schemes to LDCs and other low-income countries.

Services

- Mode 4: Canada should support the creation of an international study group to consider the expansion of temporary movement of less-skilled workers from developing countries, the associated changes required in trade rules and other mechanisms to ensure the well-being of temporary workers (as set out in the UN

Special and Differential Treatment in the Doha Development Agenda
Canadian Perspectives

- Convention on the Rights of Migrant Workers). Within this study group, Canada should examine the extension of its own pilot projects for the temporary movement of less-skilled workers, binding them within the WTO, and considering ways to facilitate their use by workers from LDCs and low-income countries.
- Public services: Canada should maintain its position of excluding health and public education from its requests of developing countries. It should also support the right of developing countries to exclude public services from their offers, particularly in the area of health and education, which are critical to the realization of the MDGs.
 - Canada should not support the introduction of numerical targets for liberalization of services which would alter the basic structure and flexibility of the GATS.

TRIPs

- Canada should support the recommendations of the Commission on IPR including exemption from TRIPs until 2016 for LDCs and low-income countries, with further exemptions being made possible according to economic and technological development criteria.
- Canada should provide support through its TRCB programming to help countries make use of the policy flexibility within TRIPs when implementing the agreement through national legislation.

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Special and Differential Treatment in the Doha Development Agenda
Canadian Perspectives

Special and Differential Treatment in the Doha Development Agenda
Canadian Perspectives

Annex Table 1. Agricultural trade and other indicators relating to CIDA's 25 Countries of Focus

	Ag. imports as % of GDP	Daily per cap calorie supply	Vulnerability index	NFIDC	Bound average ag. tariff	Applied ave. ag. tariff 2004	Cotton producer
	1999	1997					
AFRICA							
Benin	6.00	2487	5.060		60	22	X
Burkina Faso	4.65	2121	4.923		100	14	X
Cameroon	1.60	2111	4.952		80	23	X
Ethiopia	2.55	1858	4.786				X
Ghana					99	20	X
Kenya	3.12	1976	4.935	X	100	20	X
Malawi	2.44	2043	5.200		125	15	X
Mali	3.48	2029	5.083		60	14	X
Mozambique	4.55	1832	4.907		100	16	X
Niger	6.70	2097	4.957		50	14	X
Rwanda	3.63	2056	4.797		80	13	X
Senegal	10.40	2418	5.026		30	14	X
Tanzania	2.96	1995	5.035		120	18	X
Zambia	2.80	1970	5.549		123	21	X
LAC							
Bolivia	2.37	2174	4.691		40	10	X
Guyana	8.31	2530	7.953		100	19	
Honduras	8.07	2403	5.373	X	35	10	
Nicaragua	13.50	2186	4.920		42	10	X
ASIA							
Bangladesh	4.51	2085	4.744		197	22	X
Cambodia							X
Indonesia					48	8	X
Pakistan	3.95	2476	4.795	X	101	25	X
Sri Lanka	n/a	2302	5.076		50	24	
Vietnam							X
EUROPE							
Ukraine							

Sources: WTO on-line data, Stevens 2004

Special and Differential Treatment in the Doha Development Agenda
Canadian Perspectives

Annex Table 2 Industrial tariffs and other indicators relating to CIDA's 25 Countries of Focus

	Development status			Average Applied Duties (simple average)	Average Bound Duties (simple average)	Binding Coverage (percentage)
	LDCs	LIC	LMIC			
AFRICA						
Benin	X			14.2	11.4	30.1
Burkina Faso	X			14.3	13.1	29.9
Cameroon		X		17.6	50	0.1
Ethiopia	X			na	na	na
Ghana		X		13.5	34.7	1.2
Kenya		X		16.6	54.1	1.6
Malawi	X			13.2	43.3	14.9
Mali	X			10.6	14.1	31.6
Mozambique	X			12.5	6.6	0.4
Niger	X			14.3	38.1	96.2
Rwanda	X			18.8	91.5	100
Senegal		X		14.3	30	100
Tanzania	X			22.7	120	0.1
Zambia	X			12.7	42.2	4
LAC						
Bolivia			X	9.3	40	100
Guyana			X	9.7	50	100
Honduras			X	6.7	32.6	100
Nicaragua		X		4.9	41.5	100
ASIA						
Bangladesh	X			21.7	42.9	3.1
Cambodia	X			na	na	na
Indonesia		X ²		8.4	35.6	96
Pakistan		X		19.9	35.3	36.9
Sri Lanka			X	8.8	19.2	28.3
Vietnam		X		na	na	na
EUROPE						
Ukraine			X	na	na	na
	12	8	5			

¹or latest year

²Indonesia is also considered an EME ie emerging market economy

LDC -- Least Developed Country

LIC -- Low income country

LMIC -- Low middle income country

Sources: World Bank and WTO on-line data.

Special and Differential Treatment in the Doha Development Agenda
Canadian Perspectives

Annex Table 3. Emerging Market Economies: Comparative Economic and Social Indicators

	BRAZIL	CHINA	INDIA	CANADA	US
Population (millions)	176.6	1,288.4	1,064.4	31.6	291.0
Avg. annual % pop. growth (1990-2003)	1.4	1.0	1.7	1.0	1.2
PPP GNI per capita dollars (\$)	7,480	4,990	2,880	29,740	37,500
Population below national poverty line (%)	17.4	4.6	28.6	-	-
- Urban	13.1	<2	24.7	-	-
- Rural	32.6	4.6	30.2	-	-
Population below international poverty line (%)					
- below \$1 a day	8.2	16.6	34.7	-	-
- below \$2 a day	22.4	46.7	79.9	-	-
Percentage share of income or consumption					
- lowest 20%	2.0	4.7	8.9	7.0	5.4
- highest 20%	64.4	50.0	41.6	40.4	45.8
Gini index	59.1	44.7	32.5	33.1	40.8
Life expectancy at birth (years)	69	71	63	79	77
Under-5 mortality rate (per 1,000)	37	38	90	7	8
Adult Literacy rate, % of people 15 and above	86	91	61	-	-

Note: '-' denotes data not available.

Source: World Bank, World Development Report 2005.