

CPD Occasional Paper Series

**MAKING THE SPECIAL AND DIFFERENTIAL PROVISIONS
OF WTO AGREEMENTS EFFECTIVE FOR THE
LEAST DEVELOPED COUNTRIES:
PERSPECTIVES FROM BANGLADESH**

Paper 13

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*The core members of the CPD programme are: **Professor Rehman Sobhan** (Advisor), **Professor Mustafizur Rahman** (Project Director) and **Dr Debapriya Bhattacharya** (Principal Researcher).*

*The present paper "Making the Special and Differential Provisions of WTO Agreements Effective for the Least Developed Countries: Perspectives from Bangladesh " has been prepared by **Mohammad Shah Alam**, Deputy Secretary, Economic Relations Division, Ministry of Finance, Government of Bangladesh.*

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I. Introduction

1.1 World merchandise trade has continued to grow at a faster pace compared to world production throughout the post-war period inspite of periodic downturns in the global economy. This increased trade orientation is not novel in many respects. It has merely meant the return of the world trade to the "normal" or "golden" levels before those were interrupted by the two world wars and the Great Depression (ARAKI and MARCEAU, 1998 sic). The heightened perception today about international trade is due, mainly, to its phenomenal rise since World War II.

1.2 "Globalisation" and "liberalisation" have become the buzzwords of international trading arena over the past few years. These twin processes are said to have opened up "vast new opportunities" for economic and social progress in developing countries through greater integration into the world economy. However, integration into the world economy does not come without actual or potential costs. These costs are not only economic in nature. There can be social costs too in the form of marginalisation of individuals or social groups that are not equipped to take advantage of new opportunities and challenges created by globalisation and liberalisation.

1.3 Developing countries of the Asian and Pacific region have actively participated in the global economy in areas of trade, investment and finance. However, owing to a wide diversity in their economic and socio-political circumstances, the levels and pace of integration have differed. As a result, the impact of globalisation has varied significantly. The more industrialised East Asian economies have almost fully integrated into the world economy and have been benefited "enormously" from globalisation. South-East Asian countries on the other hand, have had a more mixed outcome as witnessed in recent years. In South Asian countries, economic reforms in the 1990s have stimulated their integration, although it is by no means of the same depth and scope as in South-East Asia. Overall, the level of integration of South Asia is much lower than that of the East Asian and South-East Asian Countries (ESCAP, 2000).

1.4 The least developed countries (LDCs) in general, and these of the Asia-Pacific region in particular, have largely remained unintegrated. Despite their efforts to deregulate and liberalise their policy regimes with a view to greater participation in the international division of labour, their capacity to do so is limited. The small size of their economies, the poor state of development of their transportation and communication infrastructure, their disadvantaged geographical locations, often far away from the major metropolitan centres of international trade and finance place formidable constraints on their integration into the globalisation and liberalisation processes. However, in order to make the global trading system truly global, it is imperative for these countries to become an integral part of this system without being further marginalised. One of the mechanisms by which the LDCs can be integrated effectively into the world trading system on a fair and equitable basis is through strengthening Special and Differential (S&D) measures in favour of them.

II. Evolution of S&D Measures

2.1 There was no multilateral rule and discipline on international trade until the middle of the 20th century. It was only after the world had witnessed the scourge of the Great Depression and World War II, that the need was felt for multilateralised and institutionalised trading rules. The unsuccessful attempt to create an International Trade Organisation (ITO)

immediately after the World War II left the General Agreement on Tariffs and Trade (GATT), negotiated in 1947, as the sole legal instrument governing international trade on a provisional basis. Very soon, the GATT became the central forum where international trade relations evolved continuously. This state of affairs continued till 1995, when the World Trade Organisation (WTO) became operational. Since then WTO has been providing the trading nations with an authentic international trade organisation administering various multilateral agreements.

2.2 In the initial years, GATT did not oblige its developed contracting parties to adopt any particular preferential policy towards developing countries (ROESSLER, 1985). In this context HOEKMAN and KOSTECKI (1995) identifies three stages in developing countries' participation in the multilateral trading system:

- a) **1947-64:** small-scale membership of low-income countries in GATT based on a formal parity of obligations,
- b) **1964-86:** broadening of developing country membership based on the concept of "more favourable and differential" treatment; and
- c) **1986 - :** deepening integration of developing countries into the GATT-WTO system with reciprocal responsibilities.

2.3 The concept of giving preferential treatment to developing countries gained prominence in the mid-1950s when a large number of colonies started becoming independent. The import substitution trade policies followed by developing countries during this early period gave rise to requests for changes in the multilateral trading system in the following four areas:

- improved market access for developing country exports of manufactured goods to developed country markets through the provision of trade preferences;
- non-reciprocity, or less than full reciprocity, in trade relations between developing countries and developed countries with a view to allowing developing countries to maintain protection that was deemed necessary to promote development;
- flexibility in the application of trade rules by developing country members of GATT disciplines for the same reason; and
- stabilisation of world commodity prices. (MICHALOPOULOS, 2000)

Prebisch was the most notable proponent of differential treatment for developing countries. He argued that developing countries needed protection to achieve industrialisation and development. He went further to propagate that a "new world trade order" was required to break the "vicious circle of underdevelopment". International trade was seen as an instrument of exploitation and self - sufficiency as beneficial. The institutional expression of this line of thinking was embodied in the founding of the United Nations Conference on Trade and Development (UNCTAD) in 1964. Significantly, Prebisch became the first Secretary General of UNCTAD.

2.4. Founding of UNCTAD and activism of Prebisch and others put GATT under considerable pressure to do something in favour of the developing countries. In 1965, developing country's demands for special status in the multilateral trading system led to the adoption of Part IV of the GATT. Part IV, entitled Trade and Development, came into force in 1966. Articles of this Part are primarily expressions of goals and impose few concrete obligations. Article XXXVI states that contracting parties are to provide "in the largest possible measure more favourable and acceptable market access conditions for products of

export interest to developing countries". It goes on to specify that during trade negotiations, developing country members should not be expected to make concessions, which are inconsistent with their level of development. Article XXXVII calls for the highest priority to be given to the elimination of restrictions, which differentiate unreasonably between primary and processed products. Article XXXVIII calls for joint action of contracting parties, through international arrangements, with a view to improving market access for products of export interest to developing countries. Thus none of the provisions of Part IV legally bound developed countries to undertake specific actions in favour of developing countries. Nevertheless, this Part has been relied on legal and policy argumentation in GATT, and has had considerable influence (JACKSON, 1997). Part IV launched the Special and Differential (S&D) measures in favour of the developing countries that reigned supreme for the next three decades. Developing countries were not expected to grant tariff concessions and bind tariffs. Instead, they were granted the "privilege" of free riding through the operation of the MFN principle. Developing countries successfully invoked Part IV as cover for not engaging in reciprocal reductions of trade barriers.

2.5. The principle of non-reciprocity, which formed the cornerstone of the S&D measures, got a further boost during the Tokyo Round (1973 -79). The 1973 Ministerial Meeting that finalised the agenda of the Tokyo Round stated that the MTN should secure "additional benefits" for developing countries in order to achieve a substantial increase in their foreign exchange earnings, diversification of their exports, and an acceleration of the rate of growth of their trade. It reaffirmed the principle of non-reciprocity by reiterating that the developed countries "should not expect reciprocal concessions from developing economies". Among the outcomes of the Tokyo Round of MTN was a Framework Agreement, which enshrined the now-famous "Enabling Clause". Formally titled as "Differential and More Favourable Treatment, Reciprocity and Fuller Participation of Developing Countries", it provided for the departures from MFN and other GATT Rules. Specifically it provides for:

- the preferential market access of developing countries to developed country markets on a non-reciprocal, non-discriminatory basis;
- 'more favourable' treatment for developing countries in other GATT rules dealing with non-tariff barriers;
- the introduction of preferential trade regimes between developing countries; and
- the special treatment of least developed countries in the context of specific measures for developing countries.

The Enabling Clause provided the legal basis for the operation of the Generalised System of Preferences (GSP), established under the auspices of UNCTAD, and arguably the most tangible form of S & D. The Enabling Clause also codified the principles, practices and procedures regarding the use of trade measures for BoP purposes, and provided developing countries "flexibility" in applying trade measures to meet their "essential development needs". All in all, the Enabling Clause may be regarded as "a great leap forward" in respect of S & D measures for developing countries. In bringing together the key elements of preferential market access, non-reciprocity, and flexibility in the implementation of GATT rules and commitments, the Enabling Clause was a summation of all the efforts made since 1954 within the multilateral trading system. (MICHALO POULOS, 2000)

2.6. It has often been suggested that not benevolence, but narrow self-interest prompted the developed countries to grant non-reciprocal S & D measures to the developing countries. The basic objective of the developed countries seems to have been the progressive integration into the GATT system of developing countries with large markets or substantial trade and

growth levels. Prevalent political climate of the time also played a role in the acceptance of S & D. Some developed countries believed that insistence on reciprocal obligations might push developing countries closer to the Soviet block (KOSTECKI, 1979). A concerted decision by major developing countries not to participate in GATT would not have been in Western interests.

III. S & D Measures in Uruguay Round and WTO

3.1 The establishment of the World Trade Organisation (WTO) on 01 January 1995 "marked the biggest reform of international trade since the Second World War" (WTO, 1998). It also brought into reality the failed attempt to create an International Trade Organisation in 1948. WTO has also been described as the "third leg of the Bretton Woods stool " or the previously "missing link" from international economic institutions (JACKSON, 1997). Establishment of WTO was one of the most tangible outcomes of the Uruguay Round of multilateral trade negotiations.

3.2 The Uruguay Round (UR) was launched in September 1986 at Punta del Este (in Uruguay) and was scheduled to end in Brussels in December 1990. But ultimately it continued for seven and a half years. It was not only the largest trade negotiation ever, but also " probably the largest negotiation of any kind in history". When it concluded, it covered almost all trade, "from toothbrushes to pleasure boats, from banking to telecommunications, from the genes of wild rice to AIDS treatments". It took until 15 December 1993 for every issue to be finally resolved and for negotiations on market access for goods and services to be concluded. On 15 April 1994, the deal was signed by Ministers from 125 countries at a meeting in Marrakesh, Morocco. On 01 January 1995, the World Trade Organisation came into existence.

3.3 In the UR, a major shift occurred in both the strategy and tactics of the developing countries. They actively participated in the MTN and were strongly involved in shaping the WTO Agreements. Unlike previous rounds of MTNs, the UR was agreed to be a "single undertaking" and all Agreements were to apply to all members. This meant that not only the developing countries, but also the LDCs were obliged to engage in reciprocal exchange of concessions. This, however, does not mean that S&D is dead. Ending S & D was not on the UR agenda. In fact, more than 100 of the WTO's 137 members are developing countries. Included in this figure is 29 of the 48 LDCs. So the developing and the least developed countries are going to play an increasingly important role in the WTO.

3.4 The Uruguay Round also saw an evolution of developing country attitudes regarding S&D measures. The UR Agreements continued to be guided by the general S&D principles agreed on previous Negotiating Rounds and extended them in a number of ways. Without formally giving up the principle of non-reciprocity, developing countries eschewed past practices and participated more actively in the exchange of reciprocal liberalisation in goods and services. At the same time, Special and Differential provisions regarding market access through GSP were maintained. Flexibility was also maintained by permitting developing countries certain practices in support of agriculture that were not allowed to developed countries and similarly regarding export subsidies. The UR Agreements introduced new elements of S&D by providing for transitional time frames and technical assistance in the

implementation of the various agreements. The basic reason underlying the extension of S&D treatment through these two new elements was that developing countries did not have the institutional capacity to implement the commitments demanded by them in some of the new areas covered by WTO.

3.5 There are also several conceptual premises underlying the provision of S&D as it has emerged over time and as has reflected in the WTO Agreements. The most important one is that developing countries are intrinsically disadvantaged in their participation in international trade. Therefore, any multilateral agreement involving developing and developed countries must take into account this intrinsic weakness in specifying this rights and responsibilities. A related premise has been that the trade policies that would maximise sustainable development in developing countries are different from those in developed economies and hence policy disciplines applying to the latter should not apply to the former. The final premise is that it is the interest of the developed countries to assist developing countries in their fuller integration and participation in the international trading system (MICHALOPOULOS, 1998).

3.6 The Agreements, Understandings, Legal Instruments, and Ministerial Decisions emanating from the UR contain as many as 97 S & D provisions in respect of the developing and the least developed countries. (WTO, 2000). A comprehensive synoptic table listing the S & D measures concerning the LDCs may be seen at Annex I. In general, the S&D provisions referring to the developing and the least developed countries may be broadly grouped under four headings (GATT, 1994):

- ρ those which recognise the interests of the developing and the least developed countries.
- ρ those which require developing and the least developed countries to meet fewer obligations.
- ρ those that provide a longer time frame for the implementation of certain obligations, and
- ρ those that provide for technical assistance.

It should be noted that provisions relating to developing countries also apply to the LDCs. But provisions specifically aimed at LDCs do not apply to the developing countries.

3.7 The following Agreements/ Decisions/ Agreements/Understandings/ Declarations contain one or more types of S & D measures listed above:

1. Ministerial Decision on Measures in Favour of the Least Developed Countries (*all four*).
2. Agreement Establishing the World Trade Organisation (*only recognition of interests*).
3. General Agreement on Tariffs and Trade, 1994 (*all four*).
4. Agreement on Agriculture (*recognition of interests, and fewer obligations*).
5. Agreement on the Application of Sanitary and Phytosanitary Measures (*recognition of interests, implementation period and technical assistance*).
6. Agreement on Textiles and Clothing (*recognition of interests, and implementation period*).
7. Agreement on Technical Barriers to Trade (*all four*).
8. Agreement on Trade Related Investment Measures (*recognition of interest, fewer obligations and implementation period*).
9. Agreement on Implementation of Articles VI of GATT: Anti Dumping (*only recognition of interests*).

10. Agreement on Implementation of Article VII of GATT: Customs Valuation (*all four*)
11. Agreement on Pre-Shipment Inspection (*recognition of interests and technical assistance*)
12. Agreement on Import Licensing Procedures (*recognition of interests, fewer obligations and implementation period*)
13. Agreement on Subsidies and Countervailing Measures (*recognition of interests, fewer obligations and implementation period*).
14. Agreement on Safeguards (*recognition of interests and fewer obligations*)
15. General Agreement on Trade in Services (*all four*).
16. Agreement on Trade Related Aspects of Intellectual Property Rights (*recognition of interests, implementation period and technical assistance*).
17. Understanding on Rules and Procedures Governing the Settlement of Disputes (*recognition of interests and technical assistance*)
18. Trade Policy Review Mechanism (*fewer obligations and technical assistance*)
19. Ministerial Declaration on the Contributions of the WTO to Achieving Greater Coherence in Global Policy Making (*only-recognition of interests*)
20. Ministerial Decision on Measures Concerning the Possible Negative Effects of the Reform Programme on Least Developed and Net Food Importing Developing Countries (*recognition of interests and technical assistance*).
21. Ministerial Decision on Notification Procedures (*only technical assistance*).

3.8 A few descriptive examples of S&D measures contained in various WTO Agreements are given below:

a) *Recognition of Interests:*

Members of the World Trade Organisation recognise that one of the objectives of the WTO will be to ensure that, the developing country members in general and the least developed country members in particular, secure a share in the growth of international trade that is commensurate with their economic development needs. They also recognise that this objective will require a number of positive efforts from all members. (Agreement Establishing the World Trade Organisation: *Preamble*).

b) *Fewer obligations:*

Least developed countries are not required to undertake reduction commitments in any area of the negotiations (Agreement on Agriculture: *Article 15:2*)

c) *Implementation Period:*

The least developed countries may delay the application of all of the provisions of the Agreement related to their measures affecting imports for a period of five years following the entry into force of the WTO (Agreement on the Application of the Sanitary and Phytosanitary Measures: *Article 14*)

d) *Technical Assistance:*

Technical assistance and advice, especially for developing country members, will be provided by Members upon request on mutually agreed terms and conditions. Priority shall be given to the needs of the least developed countries in providing technical assistance (Agreement on Technical Barriers to Trade: *Article 11*)

IV. A Brief Evaluation of S&D Measures

4.1 As is evident from the foregoing discussion, the S&D measures are not provisions of a specific agreement, say the TRIPS or TRIMS Agreement. Instead, S&D measures are a set of ill-defined, vague and what is most important, unenforceable clauses unlike the other provisions of the WTO Agreements. These have, therefore, been described widely as "honest endeavours" and "pious wishes measures" dependent ultimately on the autonomous wishes of the benefit giving country. Benefits granted under them could be introduced and terminated at will by the benefit giver. Besides their implementation could be made contingent upon fulfilment of conditionalities in diverse areas such as environment, human/animal rights etc among others. However it has been argued that a strong case can be made that provisions for flexibility in implementing obligations arising out of WTO Agreements, unlike the provisions calling for developed country actions, are legally enforceable (KESSIE, 2000).

4.2 While the principle of S&D treatment has been imbedded in many of the WTO Agreements, the practice of S&D continues to suffer from the same shortcomings that were evident at the beginning of the Uruguay Round. Three main problem areas have emerged:

- ❑ the commitments of developed countries regarding preferential market access and other treatment are in practice much less important than they appear to be on paper;
- ❑ there is increasing questioning of one of the fundamental premises of S&D, namely, that less liberal trade policies are optimal for developing countries; and
- ❑ the commitments aimed at addressing developing countries institutional constraints have been made without serious planning of how they will be implemented (MICHALOPOULOS, 2000)

Regarding preferential market access, the preferences provided under the GSP have been eroded as a consequence of the MFN reductions of tariffs under the UR. Another, and perhaps more important development has been the emergence of regional arrangements between developed and developing countries (e.g. NAFTA) providing deeper and more secure preferences. Regarding the matter of flexibility in the implementation of WTO commitments, the 1990's have witnessed a growing body of analytical and empirical work which attacked the very premise on which exceptions from WTO disciplines is based, namely that higher levels of protection and subsidisation of exports are conducive to development. According to this line of thinking, this protection has introduced distortions in domestic resource allocation, encouraged rent seeking and waste and adversely affected growth in productivity and sustainable development. However, it must be noted that the findings linking lower protection to faster development continue to be controversial, especially regarding the direction of causality (RODRIK, 1992, EDWARDS, 1993).

4.3 There is an increasing recognition that institutions in developing countries, including those that are supposed to implement trade policies are weak and need to be strengthened. In addition, supply side constraints create important impediments to participate effectively in international trade. But as with many other elements of S&D, technical assistance provisions seem to have been negotiated without much involvement of developing country's officials familiar with how long it takes to build institutional capacity where it is inadequate or totally lacking. Thus one of the key issues for LDCs in S&D measures is how to ensure concrete and

effective support for trade-related capacity building measures in all areas linked with international trade. At the same time, it is important for LDCs to recognise some of the pitfalls of past developing country experienced with flexibility in the application of WTO rules and disciplines. Existing S&D provisions permit LDCs the most freedom of policy choice possible, in areas such as subsidies that they can least afford.

4.4 The general feeling of the LDCs is that S&D measures were hollow promises in the first place. They feel bitter that they were lulled into a sense of smugness during the UR and failed to realise the consequences of a binding "single undertaking" such as the WTO. By and large, S&D measures have generally been granted under the Generalised System of Preferences (GSP) scheme and other specific arrangements (e.g. Lome) which vary in application from country to country and from commodity to commodity. The recent introduction by the US of the Sub-Saharan African Trade and Development Bill and the revamping of the Caribbean Basin Initiative are stark examples of discriminatory and autonomous trade regimes. The EU is also in two minds regarding renewal of the Lome Convention (McQUEEN *et al*, 1998). This has led one Geneva based LDC diplomat to conclude that "there is not much to be hoped for in practical terms from the S&D facilities under the present multilateral arrangements including in WTO". It is widely held that S&D measures have not yielded many tangible results and had led developing countries to accept a dilution of S&D provisions in return for improved market access to developed country markets. In addition, it is argued that many potential S&D benefits have been outweighed by losses due to protectionist arrangements of developed countries in agriculture and textiles sectors.

4.5 In recent times, there have been some ominous developments centring the S&D measures. An underlying tension has been created between the developing countries and the LDCs on this issue. The OECD countries, being fully aware that granting some concessions to the LDCs would not matter much, given the low trading level of these countries, are willing to extend some facilities to the LDCs in the forthcoming round of MTN. But they would not like to do the same without some cost to the leading developing countries such as India, Brazil, Argentina etc. It may be recalled here that both Part IV of GATT and the Enabling Clause encourage developing countries to extend S&D treatment to imports from LDCs (ITC, 1999). These top echelon developing countries, therefore, have started viewing the LDCs "as a sort of burden" in their negotiating strategy with the developed countries. They suspect that the LDCs may be "bought over" with small concessions, by the rich countries thus breaking the rank of the developing countries in their fight for better terms from the OECD in the ensuing trade round.

4.6 In any new round of MTN, LDCs should be able to continue to hold on to and build further on the concept of S&D. This is the considered opinion of knowledgeable trade diplomats in Geneva. But for this, LDCs must develop an independent position of their own distinct from the highly political and often confrontational stance taken by some developing countries. LDCs must be realistic and acknowledge their true position in world trade. They should seek to derive benefit from the developed countries purely on trading terms. They must not become engrossed in regional and global politics. It is also expected that S&D provisions will be built into the Agreements arising out of the new issues or emerging agenda. But such arrangements are more likely to be limited within LDCs only. The developing countries are likely to oppose such an arrangement. They would like to ride piggy - back on the LDCs and try to reap as much benefit as they can from the new Round. This may turn out to be a "big problem" for the LDCs in the new round. With a view to avoiding

such an outcome LDCs should open dialogue with the developed countries directly and preferably independent of the position of the developing countries.

V. S&D Measures in Future Trade Negotiations¹

5.1 In future negotiations, the challenge facing developing countries would be twofold:

- to maintain existing S&D measures where these are crucial to the success of development programmes; and
- adapt the concept of S&D to the realities of globalisation and liberalisation (GIBBS, 2000)

Although the progress in multilateral tariff liberalisation and the extension of the regional agreements among developed, and between developed and developing countries will continue to erode preferential tariff margins, GSP and other unilateral schemes are needed to maintain access to markets and to reduce marginalisation. All developing countries cannot participate in North-South free trade areas, and thus GSP treatment should be maintained and extended to ensure that the most vulnerable of them are not adversely affected.

5.2 Most S&D treatments in the form of exemptions (from UR Agreements obligations) would be phased out by 2005. This should not make us lose sight of the fact that Article XVIII, Part IV and the Enabling Clause remain as integral parts of GATT 1994. Special and Differential treatment can, therefore, be pursued through seeking extension and revision of the relevant provisions of the WTO Agreements in the context of the "built-in" agenda. Key areas, in this respect, could be identified in the Agreements on inter alia, TRIMs, agriculture, and subsidies (GIBBS, 2000).

5.3 Preserving and adapting S&D in future negotiations would involve recognition that the basic elements of the Enabling Clause are still relevant and could be consolidated by their restatement and adaptation to the current context. In addition, financial assistance should be an important element of S&D in future to enable the developing and the least developed countries to implement the obligations and exercise their rights. Experience has shown that without financial assistance, the possibilities of many LDCs to fully meet their obligations and fully exercise their rights are very limited. Finally, S&D treatment in the context of globalisation should give heavy emphasis on "supply side measures" aimed at developing a competitive capacity at the national level. Support for this can be drawn from the experience of the East Asian countries whose success in increasing their participation in the globalised world economy have been due largely to their successful use of policy instruments to build competitive export supply capacities and to encourage product diversification.

5.4 The approach to S&D in the future will have to take account of the realities of the globalised production and be directed to assist developing and least developed countries' enterprises to derive benefits from and successfully confront the challenges of globalisation. In addition to ensuring improved and more stable access to markets, this would require

¹ This section draws quite substantially upon Murray Gibbs' paper on "Special and Differential Treatment in the Context of Globalisation" presented at G-15 Symposium on Special and Differential Treatment in the WTO Agreements held at New Delhi on 10 December 1998 (Gibbs, 2000).

obtaining access to technology, an objective that is closely related to that of access to information networks and distribution systems. Thus, in the context of globalisation, LDCs should emphasise on building up strong enterprises, which will be able to compete in the world market for both goods and services. This would seem to require less emphasis on "infant industry" tariff protection and more on subsidies and various performance requirements to encourage developing country firms to enter the world market, to underwrite some of the costs and risks of their doing so and to give them the means to compete in terms of technology and access to networks.

- 5.5 In fine, in future trade negotiations, S&D treatment may be pursued through:
- a restatement of the main elements of the Enabling Clause, adapted to current realities; and
 - a "carve out" of essential policy measures aimed at strengthening the competitiveness of developing country enterprises from the disciplines of future multilateral trade agreements (GIBBS, 2000).

VI. A Brief Digression into the Concept of "Non-reciprocity"

6.1 It has been said, "the fundamental dynamic of the GATT was and remains reciprocity" (HOEKMAN and KOSTECKI, 1995). But as the developing countries, and later the LDCs, found themselves disadvantaged in this game of reciprocity, they raised the demand for special and differential measures. As a result Part IV was added to GATT in 1965 (becoming effective in 1966). Part IV (particularly Article XXXVI:8) explicitly stated that developing countries would not be required to make the same concessions on tariffs, or the removal of non-tariff barriers as developed countries. Part IV thus defined non-reciprocity for the developing countries. The Ministerial Meeting that launched the Tokyo Round in 1973 also confirmed that the developed countries should not expect reciprocal concessions from developing economies. The Enabling Clause adopted during the Tokyo Round not only reaffirmed the principle of non-reciprocity, it also provided a legal basis for this principle by authorising the operationalisation of GSP. Thus it may be argued that non-reciprocity has been the cornerstone of the S&D measures for well over three decades. In fact countries such as Taiwan, South Korea, Hong Kong and Singapore could attain the status of "newly industrialised countries" through exploiting fully to their benefit the non-reciprocal benefits offered to them by the developed countries. Countries such as India, China and Indonesia could also benefit substantially from non-reciprocal benefits.

6.2 Apart from the Generalised System of Preference (GSP), other unilaterally determined non-reciprocal preferential trade schemes include:

- ⇒ the Caribbean Basin Recovery Act (CBERA), also known as the Caribbean Basin Initiative (CBI), enacted by the USA in favour of 24 Central American and Caribbean countries and territories washed by the Caribbean Sea;
- ⇒ the Andean Trade Preference Act (ATPA) promulgated by the USA in favour of Bolivia, Colombia, Ecuador and Peru ; and
- ⇒ the Canadian Trade, Investment and Industrial Cooperation programme (CARIBCAN) enacted in favour of 18 Commonwealth Caribbean countries and territories.

Several non-reciprocal preferential schemes were also negotiated and agreed upon jointly by the preference - giving and preference - receiving countries. These include the four successive Lome conventions between the 15 EU countries and 71 countries in the African,

Caribbean and Pacific (ACP) group. Another is the South Pacific Regional Trade and Economic Cooperation Agreement (SPARTECA) between Australia and New Zealand and 13 island country members of the South Pacific forum. The main difference between the unilateral and negotiated non-reciprocal preferential schemes is that the agreed preferences in the latter become contractual obligations that cannot be unilaterally modified by one of the parties (ONGUGLO, 1999).

6.3 Non-reciprocal preferential schemes have proved to be resilient and durable instruments of development cooperation. A number of factors have, however, combined to produce mixed results for the non-reciprocal trade preferential schemes. The non-reciprocal schemes contain too many complications pertaining to restrictive, complex and varying rules of origin, quotas, and designation criteria that need to be simplified and harmonised where appropriate. Other deficiencies include the exclusion of sensitive products which are of export interest to developing countries, mismatch between exports of beneficiaries and coverage of preferences, and non-economic conditionalities. Supply-side constraints have been another source of difficulty with most developing countries export profiles being dominated by a few commodities and minerals. But overall, it could be said that non-reciprocal preferences have created more favourable market access conditions and progressively stimulated trade growth in some preference receiving countries although the extent and dispersion of these benefits has been unequal (ONGUGLO, 1999).

6.4 In recent times, however, some arguments are being put forward for the elimination of this principle of non-reciprocity. It has been suggested that non-reciprocity and its corollary-- free riding-- is not beneficial to developing countries (HINDLEY, 1987). It has even been suggested that issues of major concern to the developing countries such as the trade in textiles and clothing could not be brought under GATT rules because of the principle of non-reciprocity. Moreover, under the non-reciprocity principle, preferences were granted unilaterally, and could be removed unilaterally. This contributed to uncertainty and unpredictability. It has also been suggested that pursuing non-reciprocity had been counter productive and had delayed adjustment process and encouraged the maintenance of policies that favoured narrow interest groups.

6.5 On the other hand, it has been argued, "as a matter of economic policy, reciprocity does not make much sense" (JACKSON, 1997). It is possible for a country to gain welfare advantage even by reducing its tariffs unilaterally (KENEN, 1985). The principle of reciprocity has, in fact, been used as a political tool to persuade other countries to reduce their tariffs and remove the tariff barriers. The reciprocity issue raises problems of measurement and is very difficult to use in negotiating non-tariff measures.

6.6 The greatest challenge facing the WTO today is the fullest integration of the developing and the least developed countries into the multilateral trading system. These countries expect the WTO to help keeping foreign markets open and provide them with opportunities to catch-up with their more advanced trading partners. In order to make international trade a positive-sum game for all, developing countries in general, and the LDCs in particular, would need the continuous support on a non-reciprocal basis.

6.7 As stated earlier, the focussing of non-reciprocal trade benefits on LDCs was sanctioned by the GATT in the Enabling Clause of 1979. The WTO has added new focus with the decision of the First WTO Ministerial Conference in 1996 and the results of the WTO-sponsored High Level Meeting on LDCs Trade Development in 1997. Consequently

recent revisions in several GSP schemes have substantially improved benefits for LDCs. These include in Canada, EU, Japan and the United States, duty-free access for those products that are covered by their respective schemes. In addition, the range of GSP-eligible products from LDCs have been extended in some schemes.

6.8 The utilisation of non-reciprocal trade preferences may decline in the globalising and liberalising economy of the 21st century. Nonetheless, until their commercial value is totally eliminated, non-reciprocal preferences would remain valid options for promoting trade expansion and industrial development in the developing and the least developed countries. Many of these countries have yet to achieve a high level of international competitiveness and maturity in their production and administrative structures, which is necessary to enhance their capacity to participate in reciprocal trade agreements with industrialised countries. Such capacities are difficult to develop in the short run. In such a backdrop, the notion of reciprocity appears premature at present (ONGUGLO, 1999). Non-reciprocal concessions, therefore, continue to be an important aspect of all trade and investment strategies aimed at integrating the developing and the least developed countries into the global trading system. In this context, it must not be forgotten that non-reciprocal preferences originated as an aspect of the wider concept of Special and Differential Treatment for the developing countries. The maintenance and the improvement of non-reciprocal concessions in the new trading environment should be underpinned by this concept rather than being viewed as a unilateral concession.

VII. The Way Forward

7.1 Strengthening capacities in developing countries (including the LDCs) to participate in the institutional structures of the WTO and also to get access into the global market place has now been widely accepted as one of the prerequisites for the success of the global trading system (BHATTACHARYA and RAHMAN, 2000). This could be done in a number of ways some of which are discussed below:

a) Creation of an LDC Division in WTO

At present the Committee on Trade and Development (CTD) is mandated to look after the concerns of LDCs. This Committee is a subsidiary body of the WTO's General Council. It has created a Sub-Committee on LDCs. Neither the CTD nor the Sub-Committee on LDCs has any teeth. So it is proposed that a full-fledged LDC Division may be created at WTO headed by a Deputy Director General. Support for such a systematic annual review, which reviews donor commitments, assistance and other measures taken in favour of developing countries, and LDCs may be found in existing literature on the issue (WHALLEY, 1999). It should be vested with powers to monitor implementation of S&D provisions by developed countries. Any non-compliance should result in automatic authorisation of retaliatory measures (including cross-retaliation) by WTO General Council against the offender. At the same time the LDC Division at UNCTAD should be revived and strengthened so that it could provide useful intellectual inputs for LDCs whether in respect of participating in MTNs, or acceding to WTO, or for any other purpose.

b) Making S&D Measures Mandatory

At present S&D measures incorporated in different WTO Agreements are not legally enforceable. So, the LDCs have to depend on the whims of the developed countries for their implementation. As a result, even in such a non-contentious area as providing technical assistance, not much compliance is visible. Consequently, there is strong demand from the developing and the least developed countries for making the S&D measures mandatory in nature. This would mean that any non-compliance would attract retaliation. As has been suggested in the preceding paragraph, such retaliation should kick in automatically.

c) Duty-free, Quota-free Access of LDC Exportables

Lowering of tariff rates in successive MTNs has resulted in serious erosion of traditional preferential market access mechanisms such as the GSP scheme or the Lome Convention. As a result, to maintain a semblance of preferential market access, duty-free and quota-free access of *all* exports from LDCs to both the developed and developing country markets should be incorporated as a binding commitment in all WTO schedules.

A recent development in this respect has been the announcement of the "Everything but Arms (EBA)" initiative by the European Union in September 2000. Under the EBA initiative, the EU will grant "duty-free access without any quantitative restrictions to products originating in the least developed countries." (EC, 2000). This proposal is now awaiting approval by the Council of Ministers and the European Parliament. The original target date for putting into effect the EBA initiative was 01 January 2001, which could not be adhered to because of reported opposition to the initiative by some member countries of the EU. Bangladesh has mounted a strong campaign so that the EBA initiative is put into effect before the Third UN Conference on the Least Developed Countries in Brussels in May 2001.

An attempt at critical evaluation of the EBA initiative shows that the proposal falls short of the LDC demands and expectations. The LDCs have been demanding *bound* commitments from the developed countries for duty-free and quota-free access for *all* LDC goods. In the EBA initiative, unfortunately, there is no element of binding commitments. The EBA initiative is to be put into effect by amending the existing EU GSP scheme, which is due to expire on 31 December 2001. As has been noted elsewhere in this paper, GSP is a unilateral trade preference granted by the developed countries to the developing countries. Hence, if the EBA initiative is revoked at any future date by EU, the LDCs would have no legal basis to contest the issue before WTO or any other forum. Secondly, the EU is proposing to "put in place stronger safeguard measures" before operationalising EBA initiative. Under these measures, tariff concessions would be suspended "in cases of fraud, failure to adhere to the rules of origin and/or huge increases in imports into the community." Thirdly, the EU would apply the existing stringent GSP Rules of Origin to the EBA initiative. It may be recalled that many beneficiary countries are unable to meet the existing GSP Rules of Origin. The EU refused to develop new (and more relaxed) Rules of Origin for the EBA initiative on the ground that such a move "would go against Community moves of recent years to simplify and harmonise the various rules of origin in force".

Examining the business implications of the EBA initiative, we find that "over 99% of community trade with the LDCs already carried zero import duty, either under the Lome Convention or under the Generalised System of Preferences (GSP)". Thus in 1998, goods worth EUR 8, 113 million was eligible for duty-free entry into the EU countries out of a total

of EUR 8,136 million imported from LDCs. According to calculations by EU "the total import value of the products covered by the Commission proposal is about EUR 77.7 million". The vast majority of the tariff lines proposed for duty-free status are of non-traded products.²

The main significance of the EBA initiative appears to be political rather than economic. The putting into effect of the initiative by EU would put other Quad countries on the spot to adopt similar measures of their own in favour of the LDCs. Moreover, the EBA initiative may have dynamic and long-term effect on spurring trade on new products for the LDCs. Overall it is a welcome move.

d) Improving the Quality of Technical Assistance

Providing technical assistance (TA) is considered to be the least controversial of all S&D measures, as it did not require any trade preference or concessions. Between 1995 and 1999, WTO's TA activities have increased nearly five-fold. However, most of these TA activities have dealt with "soft" issues such as holding traditional national or regional seminars on various WTO Agreements. Another constraining factor has been the fact that 90% or more of all TA provided by WTO are "financed through extra-budgetary contributions" (WTO, 2000). So with a view to enhancing the effectiveness of TA, two main issues need to be addressed:

- ◆ developing a convenient and systematic approach towards TA, and
- ◆ securing a more predictable and sustainable financial base for TA activities.

It has also been suggested that the present "soft" TA needed to be complemented by "hard" modes of assistance, such as trade-related infrastructure support.

It has been said that the main differences between developed and developing countries are not in the trade policies they should pursue, but in the capacities of their institutions to pursue them. This means that S&D provisions related to technical and financial assistance should be followed up. Explicit legally binding commitments regarding technical and financial assistance need to be obtained. Legal obligations developing and least developed countries have assumed in the WTO Agreements need to be balanced by legal commitments of the developed countries to fund the assistance needed to implement them. One way of doing this is through a large expansion of the WTO budget for technical cooperation.

e) Reviving the Integrated Framework

The First Ministerial Conference of WTO held in Singapore in December 1996, adopted the Comprehensive and Integrated WTO Plan of Action for the Least Developed Countries. The Plan of Action sought to improve the overall capacity of the LDCs to respond to the challenges and opportunities offered by the multilateral trading system. It also envisaged closer co-operation between WTO and other multilateral agencies assisting LDCs in the area of trade. Pursuant to this, the WTO High-Level Meeting on Integrated Initiatives for Least Developed Countries' Trade Development was held in Geneva in October 1997. A major outcome of the Meeting was the adoption of the Integrated Framework for Trade-related Technical Assistance. Six core agencies, namely, the IMF, ITC, UNCTAD, UNDP, World

² For a full description of the EBA initiative please see EC (2000): Amendment to Council Regulation No 2820/98 (Everything but Arms).

Bank and WTO, were directly involved in giving a concrete outcome to the IF process. Ten out of the 13 LDCs of the Asia-Pacific region participated in the process (ESCAP, 2000). After a detailed need assessment study made with the cooperation of the sponsoring agencies, a multi-year programme (MYP) of capacity enhancing projects had been prepared by Bangladesh and presented to the donors. The IF seeks to address the shortcomings related to technical and institutional capacity, particularly in the areas of trade policy, human resources, export supply capacity and regulatory regimes. Process in implementing the framework has been slow, for a variety of reasons. According to a recent report (WTO, 2000b), developing countries expect the process to result both in improved delivery of assistance as well as increased amounts of funding, while donors focus on the efficiency gains and synergies resulting from better coordination. Difficulties in coordination both within the recipients and among the agencies have also emerged. The IF was separated from the "best endeavours" language found in S&D provisions of WTO Agreements. In many respects, it was a set of binding commitments. Hence its early operationalisation could yield some positive results for the LDCs. So it is imperative that the IF should be revived, strengthened, and made operational as early as possible.

f) Other Measures

Other measures, which could contribute towards greater integration of the LDCs into the world economy, include:

- ρ reducing tariff peaks and tariff escalation on exports from LDCs.
- ρ expanding commitments by developed and developing countries in respect of movement of natural persons under the GATS.
- ρ restoring the balance between private profit and public good in trade-related aspects of intellectual property rights by bringing down the period of exclusivity of ownership and creating an institutional mechanism to oversee the actual transfer of technology from developed and developing countries to LDCs.
- ρ doing away with the "WTO plus" conditions for accession and automatically extending the S&D provisions to LDCs in the accession process.
- ρ bringing the WTO dispute settlement mechanism within the financial reach of the LDCs by creating a fund for legal assistance for them.
- ρ extending the transition periods of different WTO Agreements for LDCs where they have severe difficulties in meeting deadlines.
- ρ exempting all LDC exports from any safeguard action in the markets of developing and developed countries.

VII. Conclusion

8.1 The multilateral trading system has the potential to play a vital role in maintaining and furthering stable, rules-based trade relations among nations. The LDCs, representing the most disadvantaged segments of world trading system, need and deserve generous assistance from their developed and developing country partners to integrate into the global economy in a manner supportive of their overall development objectives. For achieving this goal, there must be continuous and meaningful improvements in market access for LDCs as a complement to their own efforts to liberalise their economies. Furthermore, there is the need for trade-related technical assistance and capacity-building efforts if the trend towards increasing marginalisation is to be reversed.

8.2 On a broader canvas, it is observed that although the multilateral negotiating agenda has expanded over time, the focus has been on the reduction and abolition of discrimination among products and producers. The approach has been one of negative or shallow integration -- agreement not to do something. This contrasts with positive or deep integration, which involves agreements to pursue common policies (LAWRENCE and LITAN, 1991). Of late, there have been some calls for deeper integration at the multilateral level ranging from coordinated application of national policies to the harmonisation of regulatory regimes. Attempts to translate such calls into concrete actions in some future round of MTN would create further challenges for the LDCs. LDCs must strengthen their institutional capabilities and mobilise resources for sustaining effective trade policy formulation in the face of such systemic challenges.

Synoptic Overview of the S&D Provisions of the WTO Agreements

Recognition of Interests	Fewer Obligations	Implementation Period	Technical Assistance
1	2	3	4
MINISTERIAL DECISION ON MEASURES IN FAVOUR OF LDCs			
It is recognised that the effective participation of LDCs in the world trading system will require improved trade opportunities for products of interest to them. <i>(Preamble)</i> .	LDCs.... will only be required to apply individual commitments, obligations and concessions consistent with their individual development, financial and trade needs, or their administrative and institutional capabilities. <i>(Paragraph : 1)</i>	The LDCs are to be given additional time of one year from the Marrakesh Ministerial Session ... to submit their schedules as required in Article XI of the Agreement Establishing the WTO. <i>(Paragraph :1)</i>	LDCs are to be accorded increased technical assistance in developing, strengthening and diversifying their production and exporting bases including those of services. <i>(Paragraph 2 : v)</i>
Expedition implementation of all S & D measures ... is to be ensured through, <i>inter alia</i> , regular reviews. <i>(Paragraph : 2 -i)</i>			
Uruguay Round concessions on tariffs and non-tariff measures applied on products of export interest to LDCs may be implemented autonomously, in advance and without staging. <i>(Paragraph : 2 - ii)</i>			
Rules and transitional provisions resulting from the Uruguay Round should be applied in a flexible and supportive manner for the LDCs. <i>(Paragraph : 2-iii)</i>			
When applying import relief measures and other measures.... Members are to give special consideration to the export interests of LDCs. <i>(Paragraph : 2 - iv)</i>			
There will a continued review of the LDCs' problems and a continued attempt to adopt positive measures, which facilitate the expansion of their trading opportunities. <i>(Paragraph : 3)</i>			

Recognition of Interests	Fewer Obligations	Implementation Period	Technical Assistance
<u>AGREEMENT ESTABLISHING THE WTO</u>			
<p>It is recognised that one of the objectives of the WTO will be to ensure that developing country Members, and especially the LDCs, secure a share in the growth of international trade that is commensurate with their economic development needs. <i>(Preamble)</i></p> <p>..... The Committee on Trade and Development shall periodically review the special provisions in the Multilateral Trade Agreements in favour of the LDCs and report to the General Council for appropriate action. <i>(Article IV : 7)</i></p>			
<p>To become original members, LDCs. will only be required to undertake commitments and concessions to the extent consistent with their individual development, financial and trade needs, or their administrative and institutional capabilities. <i>(Article XI :2)</i></p>			
<u>GENERAL AGREEMENT ON TARIFFS AND TRADE 1994</u>			
<p>In the case of developing country Members, Secretariat background documentation will include relevant background and analytical material on the external trading environment, as well as on the BOP situation and prospects of the consulting member. <i>(Understanding on BOP Provisions, paragraph 12)</i></p>	<p>Balance-of-payments consultations may be held under simplified procedures in the case of LDCs... <i>(Understanding on BOP Provisions, Paragraph : 8)</i></p>	<p>Schedules of LDC Members may be submitted by 15 April 1995 (instead of 15 December 1993) <i>(Marrakesh Protocol)</i></p>	<p>Technical assistance services of the WTO secretariat shall be available to assist any developing country member in preparing documentation for the BOP consultations. <i>(Understanding on the BOP Provisions, paragraph 12)</i></p>

Recognition of Interests	Fewer Obligations	Implementation Period	Technical Assistance
<u>AGREEMENT ON AGRICULTURE</u>			
<p>Special and Differential treatment to developing country members is an integral element of the negotiation, and shall be applied accordingly (<i>Preamble, and Articles 15 : 1 and 20 -C</i>)</p>	<p>Developing country Members are not required to conform to the provision that in applying an export prohibition or restriction on foodstuffs, due consideration should be given to the effect of such a measure on importing Members' food security.... unless they are net-exporters of the concerned foodstuff (<i>Article - 12:2</i>)</p> <p>LDCs are not required to undertake reduction commitments in market access, domestic support or export subsidies. (<i>Article 15 : 2</i>)</p>		
<p>Account is to be taken of the possible negative effects of the implementation of the reform programme on LDCs and net-food importing developing country Members. (<i>Preamble and Article 16 : 1</i>)</p> <p>Developed Country Members will provide greater market access for agricultural products of particular interest to developing country Members. (<i>Paragraph : 17</i>)</p>			

Recognition of Interests	Fewer Obligations	Implementation Period	Technical Assistance
<u>AGREEMENT ON THE APPLICATION OF SPS MEASURES</u>			
<p>There is a need to assist developing country Members in reacting to the special difficulties encountered in complying with the SPS measures of importing countries....and in formulating and applying SPS measures in their own territories (<i>Preamble</i>).</p> <p>Members are to take into account the special needs of developing country Members, and in particular of the LDCs, in the preparation and application of SPS measures. (<i>Article 10 : 1</i>)</p> <p>Members should accord longer time-frames for compliance with their new SPS measures on products of interest to developing country members (<i>Article 10:2</i>)</p> <p>Except in urgent circumstances, Members are to allow a reasonable interval between the publication and entry into force of a SPS regulation for producers in exporting Members, particularly in developing country Members, to adapt their products and methods of production to these requirements. (<i>Annex B, paragraph 2</i>)</p>		<p>Upon request, the Committee on SPS Measures is enabled to grant to a developing country Member specified, time-limited exceptions in whole or in part, from obligations under this Agreement.... (<i>Article 10 : 3</i>)</p> <p>LDCs may delay, for a period of five years following the entry into force of the WTO, the application of all of the provisions of this Agreement related to their measures affecting imports.... (<i>Article 14</i>)</p>	<p>Technical assistance (in the areas of processing technologies, research and infrastructure and training) will be facilitated to developing country Members, either bilaterally or multilaterally, so as to comply with their trading partners' requirements. (<i>Article 9 : 1</i>)</p> <p>Where substantial investments are required in order for an exporting developing country Member to fulfil the SPS requirements of an importing Member, the latter is to consider providing the necessary technical assistance. (<i>Article 9 : 2</i>)</p> <p>Members should encourage and facilitate the active participation of the developing country Members in international organizations related to SPS regulations (<i>Article 10 : 4</i>)</p> <p>The WTO Secretariat will draw the attention of developing country Members to any notification relating to products of particular interest to them. (<i>Annex B, Paragraph 9</i>)</p>

Recognition of Interests	Fewer Obligations	Implementation Period	Technical Assistance
AGREEMENT ON TEXTILES AND CLOTHING			
<p>LDCS should be accorded special treatment. (<i>Preamble</i>)</p> <p>Exports from LDCS may benefit ... from provisions permitting meaningful increases in access possibilities to small suppliers and allowing new entrants to trade in the sector to develop commercially significant trading opportunities: exporters who are subject to MFA quotas and whose restrictions in volume terms are 1.2 per cent, or less, of total restrictions in an importing Members as of 31 December 1991, move ahead one stage in the growth process (or equivalent benefit by mutual agreement). (<i>Article 1:2, Footnote I, and Article 2: 18</i>).</p>		<p>MFA members without restrictions (including a few LDCs) are required to notify full details of their first integration programme within the 60 days following the entry into force of the Agreement, and non-MFA members (i.e. most LDCs), within the first year of operation (<i>Article 2:7</i>)</p> <p>MFA members without restraints (including a few LDCs) have 60 days after entry into force of the Agreement, and non-MFA members (i.e. most LDCs) have 6 months, to give notice as to whether they wish to have the right to use the special transitional safeguard mechanism. (<i>Article 6:1</i>)</p>	

Recognition of Interests	Fewer Obligations	Implementation Period	Technical Assistance
<u>AGREEMENT ON TECHNICAL BARRIERS TO TRADE</u>			
<p>It is recognised that developing country Members, which may encounter special difficulties in the formulation and application of technical regulations and standards and procedures for the assessment of conformity, may need assistance from members of the Agreement. <i>(Preamble)</i></p> <p>.....Members are to allow a reasonable interval between the publication and entry into force of a technical regulation.... for producers in exporting Members, particularly in developing country Members, to adapt their products or methods of production to these requirements <i>(Article 2:12 and 5:9)</i></p> <p>The special development, financial and trade needs of developing country Members shall be taken into account by all Members in the implementation and operation of the Agreement both nationally and multilaterally ... so as to ensure that they do not create unnecessary obstacles to exports from developing country Members. <i>(Articles 12 : 2 and 12 : 3)</i></p>	<p>Developing country members should not be expected to use international standards which are not appropriate to their situation, as a basis for their technical regulations, standards or test methods. <i>(Article 12 : 4)</i></p>	<p>Upon request, a developing country member may be granted, by the Committee on Technical Barriers to Trade, specified, time-limited exceptions in whole or in part from obligations under this Agreement. The Committee shall, in particular, take into account the special problems of the LDCs.<i>(Article12: 8)</i></p>	<p>The WTO Secretariat will draw the attention of developing country Members to any notification relating to products of particular interest to them. <i>(Article 10 : 6)</i></p> <p>Priority shall be given to the needs of LDCs in providing technical assistance (upon request on mutually agreed terms and conditions). There is full obligation for all Members to provide technical assistance to developing country Members With regard to the preparation of technical regulations ; the establishment of national standardizing bodies and participation in international standardizing bodies; the steps to be taken by developing country producers to have access to systems for conformity assessment within the territory of the Member receiving the request ; and the establishment of the institutions and legal framework necessary to fulfil the obligations of membership or participation in these systems. <i>(Article 11)</i></p>

<p>Members shall take such reasonable measures as may be available to them to ensure that : the organization and operation of international standardizing bodies and international systems...take into account the special problems of developing country Members. <i>(Articles 12 : 5 and 12 : 6)</i></p> <p>The special development, financial and trade needs of developing country Members shall be taken into account by developed country Members ... in formulating and implementing standards, technical regulations and conformity assessment procedures. <i>(Article 12 : 9)</i></p> <p>The Committee on TBT will periodically examine the special and differential treatment granted to developing country Members. <i>(Article 12 : 10)</i></p>			<p>Terms and conditions of technical assistance will be determined in light of the stage of development of the members, particularly in the case of LDCs. (Article 12 : 7).</p>
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Recognition of Interests	Fewer Obligations	Implementation Period	Technical Assistance
<u>AGREEMENT ON TRADE-RELATED INVESTMENT MEASURES</u>			
<p>It is recognised that the expansion and progressive liberalization of trade and investment across international frontiers is to take into account the particular trade, development and financial needs of developing country Members, particularly those of the LDCs. (<i>Preamble</i>)</p>	<p>Particular recognition is given to the right of the developing country members to temporarily apply TRIMS figuring in the Illustrative List in accordance with GATT Article XVIII : C..... and rules on BOP safeguard measures. (<i>Article 4</i>)</p>	<p>LDC members will have a seven-year transitional period to eliminate all GATT inconsistent TRIMS. (<i>Article 5 : 2</i>)</p> <p>A developing country Member which demonstrates particular difficulties in implementing the provisions of the Agreement may have the transitional period extended by a decision by the Council for Trade in Goods. (<i>Article 5 : 3</i>)</p>	
<u>AGREEMENT ON IMPLEMENTATION OF ARTICLE VI OF GATT (ANTI-DUMPING)</u>			
<p>Special regard must be given by developed country Members to the special situation of developing country Members when considering the application of anti-dumping measures. (<i>Article 15</i>)</p> <p>The possibility of finding constructive remedies provided by the Agreement has to be explored before applying anti-dumping duties which affect the essential interests of developing country members. (<i>Article 15</i>)</p>			

Recognition of Interests	Fewer Obligations	Implementation Period	Technical Assistance
<u>AGREEMENT ON IMPLEMENTATION OF ARTICLE VII OF GATT (CUSTOMS VALUATION)</u>			
<p>There is a recognition that the Agreement attempts to secure additional benefits for the trade of developing country Members. <i>(Preamble)</i></p>	<p>Developing country Members may make a reservation permitting them to refuse a request from the importer to reverse the order of the fourth and fifth methods of valuation. <i>(Annex III : 3)</i></p> <p>A developing country Member may reserve the right to value imported goods on the basis of the unit price of post-importation sale if the goods have undergone further processing in the country of importation. In such cases, this method of valuation shall be applied whether or not the importer so requests. <i>(Annex III : 4)</i></p>	<p>Developing country Members which are not signatories of the Tokyo Round... have a grace period of five years before applying the provisions of the Agreement. They have also the possibility of requesting an extension of this period. <i>(Article 20 : 1 and Annex III : 1)</i></p> <p>Developing Country Members... have-- over and above the five years mentioned above -- an additional delay period of three years for the application of the Articles relating to the computed value methodology. <i>(Article 20 : 2)</i></p> <p>Developing country members may make a reservation to retain an otherwise prohibited system of officially established minimum values on a limited and transitional basis under such terms and conditions as may be agreed by the Committee. <i>(Annex II:2 and Text I)</i></p>	<p>Developing country Members have the right to request, and obtain, technical assistance from developed country Members. <i>(Article 20 : 3)</i></p> <p>If a developing country member finds it is encountering a problem regarding the non-inclusion in the customs value of special discounts and commissions obtained by sole agents, sole concessionaires, and sole distributors, it can request that a study be made with a view to finding appropriate solutions. <i>(Annex III : 5)</i></p> <p>The Committee on Customs Valuation urges the Customs Cooperation Council to formulate and conduct studies in areas identified as being of potential concern to developing country Members, including those related to importations by sole agents, sole distributors and sole concessionaires <i>(Text II)</i></p>
<u>AGREEMENT ON PRESHIPMENT INSPECTION</u>			
<p>It is noted that developing country Members have recourse to PSI, and their need to do so for so long and insofar as it is necessary to verify the quality, quantity or price of imported goods is recognised. <i>(Preamble)</i></p>			<p>Exporter Members shall offer to provide to user Members-- i.e. developing country Members -- upon request, technical assistance on mutually agreed terms on a bilateral, plurilateral or multilateral basis. <i>(Article 3 : 3)</i></p>

Recognition of Interests	Fewer Obligations	Implementation Period	Technical Assistance
<u>AGREEMENT ON IMPORT LICENSING PROCEDURES</u>			
<p>Members are to take into account the particular trade, development and financial needs of developing country Members. (<i>Preamble</i>)</p> <p>When ensuring that the administrative procedures implementing import licensing regimes are in conformity with GATT Provisions... Members are to take into account the trade, development and financial needs of developing country Members. (<i>Article 1: 2</i>)</p> <p>In allocating licenses among importers, Members should give special consideration to those importers importing products originating in developing country Members and, in particular, in LDCs. (<i>Article 3: 5</i>)</p>	<p>Members using non-automatic import licensing regimes are to provide all relevant information concerning the administration of restrictions, import licenses granted over a recent period and import statistics of the products concerned. Developing country Members are not expected to undertake additional administrative or financial burdens in fulfilling this latter requirement. (<i>Article 3:5</i>)</p>	<p>A developing country Member which is not currently a signatory of the Tokyo Round Agreement may... delay by a maximum of two years the implementation of the two following obligations : (a) to accept applications for automatic licenses on any working day prior to the customs clearance of the goods, and (b) to grant automatic licenses immediately on receipt... (<i>Article 2: 2</i>)</p>	

Recognition of Interests	Fewer Obligations	Implementation Period	Technical Assistance
<u>AGREEMENT ON SUBSIDIES AND COUNTERVAILING MEASURES</u>			
<p>For the time period when export subsidies and subsidies contingent upon the use of domestic over imported goods granted by developing country Members are permitted, the relevant provision for dispute resolution is that relating to actionable subsidies and not that relating to prohibited subsidies. <i>(Article 27:7)</i></p> <p>While actionable subsidies specified in Article 6:1 are in general presumed to result in serious prejudice, such a presumption will not apply in the case of developing country Members. In these cases, serious prejudice has to be demonstrated on the basis of positive evidence. <i>(Article 27:8)</i></p> <p>Actionable subsidies granted by developing country Members are only actionable if they cause injury to an industry in the complainant's market, or nullify or impair other Members' benefits under GATT 1994 by displacing or impeding imports of like products into the subsidizing developing country Member's market. Serious prejudice ... is not actionable. <i>(Article 27:9)</i></p> <p>Termination of a countervailing investigation is required when the volume of subsidized imports from a developing country member is negligible... <i>(Article 27 : 10)</i></p> <p>During eight years from the date of entry into force of the WTO Agreement, termination of countervailing duty investigations against an LDC is required when the level of subsidization is <i>de minimis</i>... <i>(Article 27 : 10)</i></p> <p>The Subsidies Committee shall.... review the consistency of a Member's countervailing measure with the obligation to provide special and differential treatment for developing country Members. <i>(Article 27 : 15)</i></p> <p>Direct forgiveness of debt and certain other subsidies are not actionable under multilateral rules when such subsidies are granted within, and directly linked to, a privatization programme of a developing country Member. <i>(Article 27 : 13)</i></p>	<p>LDCs are not subject to the prohibition on export subsidies applicable to other WTO Members. <i>(Article 27 :2)</i></p>	<p>The prohibition of the granting of subsidies on the use of domestic over imported goods does not apply to LDC Members for a period of eight years. <i>(Article 27: 3)</i></p> <p>An LDC Member which attains "export competitiveness"..... has to phase out export subsidies on such product within eight years. <i>(Article 27:5)</i></p>	

Recognition of Interests	Fewer Obligations	Implementation Period	Technical Assistance
<u>AGREEMENT ON SAFEGUARDS</u>			
Imports originating in a developing country Member will be exempt from safeguard measures if (a) the share of imports of the product from the developing country Member in the total imports of that product in the importing Member does not exceed 3 per cent; and (b) the developing country Members with less than 3 per cent import share, collectively do not account for more than 9 per cent of the total imports of the product concerned in the importing Member. <i>(Article 9:1)</i>	Developing country Members are permitted to maintain their safeguard measures for two years longer than the maximum allowed for other Members, i.e. for 10 instead of 8 years. <i>(Article 9 : 2)</i>		
<u>GENERAL AGREEMENT ON TRADE IN SERVICES</u>			
<p>Due to the asymmetries existing with respect to the degree of development of services regulations in different Member countries, the particular need of developing country Members to exercise their right to regulate the supply of services in order to meet national policy objectives is recognised. <i>(Preamble)</i></p> <p>It is recognised that the serious difficulty of the LDCs should be taken into account in view of their special economic situation and their development, trade and financial needs. <i>(Preamble)</i></p>	<p>For developing country Members... flexibility is provided for in meeting the conditions... The flexibility allowed for is in accordance with the level of development of the Members concerned, both overall and in individual sectors and sub-sectors. <i>(Article V : 3)</i></p> <p>Appropriate flexibility will be provided for individual developing country Members for opening fewer sectors, liberalizing fewer types of transactions, progressively extending market access in line with their development situation... <i>(Article XIX : 2)</i></p>	<p>Developing country Members are allowed flexibility with respect to the time-limit for establishing enquiry points over and beyond two years allowed for all. <i>(Article III: 4)</i></p>	<p>Technical assistance to developing country Members is to be provided at the multilateral level by the WTO Secretariat and will be decided upon by the Council for Trade in Services. <i>(Article XXVI : 2)</i></p> <p>Members endorse and encourage the participation... of developing country Members.... in the development programmes of international and regional organizations (including the ITU, the UNDP and the World Bank).</p> <p><i>(Annex on Telecommunications, paragraph 6 - a).</i></p>

Recognition of Interests	Fewer Obligations	Implementation Period	Technical Assistance
<p>Priority is to be given to LDCs in the process of the negotiation of specific commitments to facilitate their increasing participation in world trade.... Members are to take particular account of the serious difficulty of the LDCs in accepting negotiated specific commitments in view of their special economic situation and their development, trade and financial needs. <i>(Article IV : 1)</i></p>	<p>Consistent with their levels of development, developing country Members may place reasonable conditions on access to, and use of, public telecommunications transport networks and services. <i>(Annex on Telecommunications, paragraph 5 : 8)</i></p>		<p>Members shall encourage and support telecommunications cooperation among developing country Members at the international, regional and sub-regional level. <i>(Annex on Telecommunications, paragraph 6 -b)</i></p>
<p>Special priority will be given to the LDCs in facilitating the access of their service suppliers to information relating to the respective markets, relative to commercial and technical aspects of the supply of services, registration, recognition and obtaining of professional qualifications, and the availability of services technology. <i>(Article IV:2)</i></p>			<p>Members will make information ... available to developing country members to assist in strengthening their domestic telecommunications services sector in cooperation with relevant international organizations. <i>(Annex on Telecommunications, paragraph 6-c)</i></p>
<p>..... The role of subsidies in relation to the development programmes of developing country members will be recognised and the needs of developing country members will be taken into account, particularly in providing for flexibility in this area. <i>(Article XV : 1)</i></p>			<p>Special consideration will be given to opportunities for the LDCs to encourage foreign suppliers of telecommunications services to assist in the transfer of technology, training and other activities that support the development of their telecommunications infrastructure and expansion of their telecommunications services trade. <i>(Annex on Telecommunications, Paragraph 6 -d).</i></p> <p>The sectoral committees will provide technical assistance to developing country Members..... in respect of matters affecting trade in services in the sectors concerned. <i>(Decision on Institutional Arrangements for the GATS, paragraph 2-e).</i></p>

Recognition of Interests	Fewer Obligations	Implementation Period	Technical Assistance
<u>AGREEMENT ON TRADE-RELATED ASPECTS OF INTELLECTUAL PROPERTY RIGHTS</u>			
<p>The special needs of LDCs in respect of maximum flexibility in the domestic implementation of the laws and regulations so as to enable them to create a sound and viable technological base are recognised. <i>(Preamble)</i></p>		<p>LDCs may delay for eleven years the date of application of the provisions of the Agreement. The Council for TRIPS shall extend their period upon a duly motivated request from a LDC. <i>(Article 66:1)</i></p>	<p>Developed country Members shall provide incentives to enterprises and institutions in their territories for the purpose of promoting and encouraging technology transfer to LDCs, in order to enable them to create a sound and viable technological base. <i>(Article 66:2)</i></p>
			<p>Developed country members are to provide..... technical and financial cooperation in favour of developing and LDC members including assistance in the preparation of domestic legislation on the protection and enforcement of intellectual property rights, as well as on the prevention of their abuse. <i>(Article 67)</i></p>
<u>UNDERSTANDING ON RULES AND PROCEDURES GOVERNING SETTLEMENT OF DISPUTES</u>			
<p>Developing countries are entitled to the good offices of the Director-General and a panel procedure with shorter time limits, as a partial alternative to this understanding. <i>(Article : 3 :12)</i></p>			<p>There shall be a qualified legal expert from the WTO technical cooperation services to provide legal advice and assistance for developing countries. <i>(Article 27:2)</i></p>
<p>If the dispute involves an LDC... Members are to exercise restraint in raising matters under the dispute settlement procedures, asking for compensation, seeking authoriza-tion for retaliation or other obligations pursuant to these procedures. <i>(Article 24:1)</i></p>			

Recognition of Interests	Fewer Obligations	Implementation Period	Technical Assistance
During consultations, Members should give special attention to the particular problems and interests of developing country Members. <i>(Article 4 : 10)</i>			
In the context of consultations involving a measure taken by a developing country Member, the parties may agree to extend the periods established for consultations.... After the relevant period has elapsed.... the Chairman of the DSB shall decide whether to extend the period. <i>(Article 12 :10)</i>			
If consultations involving an LDC fail, it can request the Director General or the DSB Chairman to offer his good offices before a request for a panel is made. <i>(Article 24 : 2)</i>			
When a dispute is between a developing country member and a developed country member, the panel shall, include at least one panelist from a developing country Member. <i>(Article 8:10)</i>			
In examining a complaint against a developing country member, the panel shall accord sufficient time for the developing country member to prepare and present its argumentation. <i>(Article 12:10)</i>			
Where one or more members is a developing country, the panel's report shall explicitly indicate how special and differential provisions raised by the developing country have been taken into account. <i>(Article 12:11)</i>			
When keeping the implementation of adopted recommendations or ruling under surveillance, particular attention should be paid to matters affecting the interests of developing countries. <i>(Article 21:2)</i>			
If the case has been brought by a developing country, the DSB will consider what further action ... might be taken, taking into account not only the trade coverage of measures complained of, but also their impact on the economy of the developing country Member. <i>(Article 21:7 and 21:8)</i>			

Recognition of Interests	Fewer Obligations	Implementation Period	Technical Assistance
<u>TRADE POLICY REVIEW MECHANISM</u>			
	The majority of developing countries are subject to review every six years. Longer intervals may be prescribed for LDCs. <i>(Section C:ii)</i>		The WTO secretariat shall make available technical assistance on request to developing country members, particularly to LDCs, in the compilation of their national reports. <i>(Section - D)</i>
	Some flexibility might be needed by LDCs in compiling their reports... <i>(Section D)</i>		
<u>MINISTERIAL DECLARATION ON THE CONTRIBUTIONS OF THE WTO TO ACHIEVING GREATER COHERENCE IN GLOBAL POLICY - MAKING</u>			
It is recognised that there is a need for an adequate and timely flow of concessional and non-concessional financial and real investment resources to developing country members, and for further efforts to address debt problems, to help ensure economic growth and development. <i>(Paragraph 2)</i>			
There is also a recognition that trade liberalization forms an increasingly important component in the success of the adjustment programmes that many members are undertaking, and that this often involves significant transitional social costs... <i>(Paragraph 2)</i>			

Recognition of Interests	Fewer Obligations	Implementation Period	Technical Assistance
<u>MINISTERIAL DECISION ON MEASURES CONCERNING THE POSSIBLE NEGATIVE EFFECTS OF THE REFORM PROGRAMME ON LEAST-DEVELOPED AND NET FOOD-IMPORTING DEVELOPING COUNTRIES</u>			
A periodical review of the level of food aid established by the Committee on Food Aid under the Food Aid Convention will be held... to meet the legitimate needs of the developing country members during the reform programme. <i>(Paragraph 3-i)</i>			Full consideration will be given in the context of Members' aid programmes to requests for the provision of technical and financial assistance to LDCs and net food importing developing country Members to improve their agricultural productivity and infrastructure. <i>(Paragraph 3-iii)</i>
Guidelines will be adopted that ensure that an increasing proportion of basic foodstuffs is provided to the LDCs and net food-importing developing country members in the form of a grant, or on appropriate concessional terms in line with Article IV of the Food Aid Convention. <i>(Paragraph 3- ii)</i>			
It will be ensured that any agreement relating to agricultural export credits makes appropriate provision for differential treatment in favour of LDCs and net food importing developing country Members. <i>(Paragraph 4)</i>			
Members experiencing difficulties short-term difficulties in financing normal levels of commercial imports may be eligible to draw on the resources of international financial institutions under existing facilities. <i>(Paragraph 5)</i>			
<u>MINISTERIAL DECISION ON NOTIFICATION PROCEDURES</u>			
			The Council for Trade in Goods will undertake a review of notification obligations and procedures. In undertaking the review, the possible need of some developing Members for assistance in meeting their notification obligations will be borne in mind. <i>(Part III)</i>

Source : Derived from GATT Doc. COM.TD/W/510 (2 November 1994), pp. 1 -54

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