



International Centre for Trade
and Sustainable Development

A SUMMARY OF:
**AN APPROACH TO A SYSTEMIC “THIRD WAY” FOR PROMOTING
CONVERGENCE ON S&DT ISSUES IN WTO**

Supporting Note for the Second Brainstorming Session of Experts,
Geneva, 26 May 2004

This document summarises the supporting note contributed by ICTSD to the second brainstorming session of experts on S&DT taking place in Geneva on May 26.

***1. S&DT ISSUES IN THE WTO RULES-BASED SYSTEM FROM A
DEVELOPMENT PERSPECTIVE: A FRAMEWORK FOR ANALYSIS.***

If the multilateral trading system (MTS) is to readjust itself during this ‘development’ round, the WTO membership may want to explore a more systemic and holistic approach aimed at recovering the lost character of S&DT as an instrument for development - maintaining at the same time the intrinsic value and foundation of a rules-based system.

The framework for analysis has been conceived for facilitating the assessment of the roots of the current stalemate, as well as possible avenues for its resolution. This is based on the application of two mutually complementary perspectives: the first takes the viewpoint of negotiations in a rules-based system and the second corresponds to a development perspective of S&DT.

***1.1 Systemic issues and key players in the S&DT stalemate: A negotiations
perspective in a rules-based system.***

The most relevant systemic issues in the S&DT debate revolve around i) the role that Special and Differential Treatment should play in favour of developing countries; and ii) eligibility. Indeed, the polarity of positions taken by diverse groups of countries on these very issues lie at the heart of the current impasse in the Doha-mandated negotiations. Thus by delving into the motivations and the degree of polarisation of these groups of countries on these issues, we hope to shed some light on possible avenues that could exist for overcoming the present situation.

The key players, as well as an illustrative sample of other Members in each category are listed below in table No 1.1. The table also shows an initial hypothesis for which further work is being conducted regarding the main interests and motivations of the key players.

TABLE No 1.1: COUNTRY CATEGORIES AND KEY PLAYERS IN S&DT NEGOTIATIONS

COUNTRY CATEGORY	ILLUSTRATIVE LIST OF COUNTRIES		MOTIVATION IN S&DT NEGOTIATIONS (HYPOTHESES)
	BROAD SAMPLE	KEY PLAYERS	
d-1 Developing country proponents of S&DT or deeply interested	Cuba, Dominican Republic, Egypt, Honduras, India, Indonesia, Jamaica, Kenya, Malaysia, Mauritius, Pakistan, Sri Lanka, Tanzania, Uganda, Zimbabwe	Kenya, India, Egypt	<u>High engagement in S&DT.</u> For the most part, perceive the lack of accessibility to meaningful S&DT as having large negative poverty impacts in their countries.
d-2 Developing countries not engaged or considering S&DT a bargaining chip	Brazil, Chile, China, Colombia, Korea, Mexico, South Africa, Thailand	Brazil, China, South Africa	<u>No engagement in S&DT.</u> Do not want to be cut off from access to S&DT and/or feel the market access agenda holds greater potential gains and are comfortable to use S&DT to bargain gains there.
dma-12 Most advanced developing countries (may belong as well to d-1 or d-2)	Brazil, China, Hong Kong, India, Korea, Singapore, South Africa	Brazil, India, China, South Africa	
d-3 Other developing countries not belonging to previous categories	To be defined	To be defined	To be defined
D-1 Conservative developed countries, opposing MFN access to S&DT.	EC, Japan, US	EC, US	Want to exclude potential competitors from gaining market advantage via S&DT. Generally approve of S&DT being a tool for adjustment and compliance.
D-2 Flexible developed countries, open to S&DT as a development instrument	Canada, Norway, Switzerland	Switzerland, Norway	While being averse to having competitors gain from S&DT, recognise the importance of S&DT acting as a tool for development.

The current situation in the S&DT negotiations can be described as highly polarised in terms of various “systemic components” related to development in the S&DT agenda. Table No 1.2 shows six systemic issues related to the development aspects of the WTO system. It also describes the polarisation of the current S&DT negotiations regarding those issues in a synthetic form, showing only the extreme positions. Delving into the relevance of each of the issues and the positions of diverse groups of countries may help in finding ways in which more flexible players could act as bridges between the extremes, as well as in mapping strategies in the process of facilitating convergence.

TABLE No 1.2: POLARIZATION IN FUNDAMENTAL SYSTEMIC ISSUES OF S&DT RELATED TO DEVELOPMENT ¹

FUNDAMENTAL DEVELOPMENT-RELATED SYSTEMIC ISSUES IN S&DT	EXTREME POSITIONS (POLES)	
	AMONG DEVELOPED COUNTRIES (D-1)	AMONG DEVELOPING COUNTRIES (d-1)
ROLE OF TRADE LIBERALISATION IN DEVELOPMENT PROCESS	Trade Lib. = engine making process almost automatic	Trade Lib. = an instrument; process needs other supports
POLICY AMBIT OF THE WTO REGARDING ADJUSTMENT	Narrow: limited to trade liberalization rules	Broader: trade liberalization rules & development impacts
INFLUENCE RECOGNISED TO TRADE RULES ON DEVELOPMENT POLICIES	Compliance is best way for integration and development	Rules must be flexible to allow for development benefits
ROLE OF S&DT FOR DEVELOPING COUNTRIES	Instrument for facilitating compliance with trade rules	Tool for making trade work for development
ACCESS TO S&DT BY DEVELOPING COUNTRIES	Focus on LDCs; graduation & limitations to policy spaces	Generalized MFN access to all developing countries
CONDITIONS FOR PROGRESS IN S&DT NEGOTIATIONS	Differentiation: Rationale for graduation & access to S&DT	Improvement in development content of S&DT

1.2 Revisiting the system of S&DT provisions with a development approach in three dimensions.

The development challenges and problems that developing countries face in their incorporation into the MTS, those which could justify the use of S&DT provisions, may be classified according to three broad dimensions in which policy instruments and trade rules affect these problems.

In summary, the use of a development framework in the assessment would help to define to what extent the origin of the S&DT crisis resides in difficulties for making the provisions operational, or in their lack of development relevance. Furthermore, this framework would be applicable to the analysis of concrete proposals oriented to strengthen and operationalise S&DT, aimed at identifying the extent to which they respond to a development approach that a rules-based trading system can support, and to identifying ways for improving their effectiveness from that perspective.

In the *first dimension* developing countries implement actions for improving their competitiveness, enhancing their supply capabilities, diversifying towards the production of higher value-added goods and services and promoting domestic inter-firm linkages that improve the spill-over benefits of trade growth. This dimension may be referred to as the ‘space for sustainable development policies’.

An important factor impacting the access to the instruments needed for relevant interventions is found outside the WTO, in the realm of other multilateral institutions

¹ Information on extreme positions is based on evaluations conducted by the Chair of the CTD-SS and preliminary interviews conducted by ICTSD.

and international agencies (e.g. ODA related to building supply-side capabilities and loan conditionalities).

It must be noted at the outset that using this dimension in the framework is not meant to imply a completely open-ended flexibility of ‘policy space’ in the development approach to S&DT. A balance must clearly be struck between the ‘policy space’ required and the need to maintain the inherent value of a rules-based trading system.

The *second dimension* can be referred to as the dimension of market access and fair trade, in which developing countries seek market access in its traditional form (e.g. preferential tariff treatment, rules of origin, etc) and solutions to the negative impacts that other countries’ trade policies may have on limiting their exports (e.g. anti-dumping and countervailing measures, misuse of technical or sanitary standards).

Mechanisms in the *third dimension* encompass those ensuring effective access for developing countries to net resource inflows (transfers) that contribute towards the costs of institutional adjustments and enhancement of capacities. A main component of the third dimension is technical assistance for reforms and capacity building, some of which must take place to enable actions in the other two dimensions, e.g. enhancing competitiveness (supply side) and improving export promotion (market access dimension).

Outside of those S&DT provisions related to the Dispute Settlement Understanding (DSU)², the trade-related development challenges of developing countries broadly reside in these three dimensions.

2. ASSESSMENTS AND INITIAL REFLECTIONS ON THE IDEA OF PROMOTING A SYTEMIC “THIRD WAY” FOR CONVERGENCE IN S&DT NEGOTIATIONS

It would appear, based on the assessments conducted, that innovations in differentiation approaches could contribute to a “third way” for convergence *only* if the process is aimed at optimizing the relevance and benefits of S&DT provisions for all developing countries. A differentiation of this nature should be oriented to eventually defining classes of *situations* that allow for such optimization of S&DT. The objective should be optimizing a system of S&DT, which may need to be applied differently to diverse categories of countries - with all developing countries having access to the kind of S&DT they need and those countries in greater need receiving enhanced support for that purpose from the whole MTS.

2.1 The sources of information and mechanisms of analysis.

The sources and mechanisms of the information gathering to date have been the systematic analysis of 81³ of the 88 S&DT proposals presented by developing countries⁴; interviews with delegates and the analysis of country documents⁵; frequent

² S&DT provisions related to the DSU require special consideration, as they are institutional instruments responding to a different logic. The main substance of what might be needed by developing countries from dispute settlement in the realm of S&DT must be assessed using a different approach. Examining the contents of such an approach is envisaged for future ICTSD work on S&DT.

³ The figure 81 is derived from subtracting those related to the DSU (10) and splitting three proposals into six (for which a clear distinction in addressing different issues within the respective agreement could be discerned).

⁴ In addition to the Africa & LDC Groups, the proposals came from Cuba, Dominican Republic, Egypt, Honduras, India, Indonesia, Kenya, Mauritius, Pakistan, Sri Lanka, St. Lucia, Tanzania, Thailand and Zimbabwe.

discussions with the Chair of the CTD-SS; and a meeting with experts under the patronage of the CTD-SS Chair⁶.

2.2 The main conclusions resulting from the assessments conducted to date.

Six main conclusions are drawn from the analysis undertaken so far. One refers to the systemic issues and the rest to the issue areas being negotiated.

Conclusion No 1:

The main consensus-building line of work seems to imply promoting convergence between the key players in the S&DT negotiations on a limited number of systemic issues and contributing to identify opportunities for trade-offs that facilitate such convergence.

Conclusion No 2:

The main issue areas for which attention should be put lie in the “Space for Sustainable Development Policy” dimension.

Conclusion No 3:

Concerns in the Market Access & Fair Trade dimension rank second and are concentrated in the market access component. Technical assistance does not appear to be an important issue for the proponents.

Conclusion No 4:

The proponents seem to be requesting changes in substance in a vast majority of the cases; procedural matters appear to rank lower.

Conclusion No 5:

The attention of the facilitation process regarding issue areas could possibly be focused on a limited number of agreements where the proponents’ main interests seem to concentrate.

Conclusion No 6:

Issues related to the DSU must be analysed in order to round out the analysis and conclusions of the first stage. No analysis was undertaken in the first stage of the project regarding the contents of 10 proposals referring to the Dispute Settlement Understanding. Results from this assessment are necessary for acquiring a more complete view of the proponents’ concerns and proposed solutions, and thus to allow for more complete strategic planning of a possible facilitation process

2.3 Strategising on an optimised access to S&DT: A preliminary view of possible components for a systemic ‘third way’ for convergence.

⁵ The countries considered (to varying degrees) included Barbados, Brazil, Canada, China, Colombia, the EC, Indonesia, Jamaica, Kenya, Norway, Paraguay, South Africa, Switzerland and Venezuela.

⁶ This meeting took place in Geneva on 19 March and discussed the underlying challenges for the WTO raised in the 88 S&DT proposals and identified areas of interest where further study should be undertaken. In addition to the Chair of the CTD-SS, Faizel Ismail (South Africa), the meeting included nine participants from six different institutions.

Based on the assessments and consultations conducted, a “third way” for convergence, aimed at optimising S&DT by focussing on a differentiated application could in principle be achievable (and thus possibly successful in unblocking the current impasse), if four conditions were fulfilled by all the options:

- They should contribute to maximising the practical value of S&DT as a tool for development and bolster the benefits that *all* developing countries may draw from the S&DT system, according to their particular stage of development;
- A confirmation must be produced on the assumption that not all developing countries seek the same kind of benefits from S&DT, nor all of them need access to the same kinds of provisions;
- The options must be conducive to meaningful improvements in the S&DT provisions currently available to developing countries, and in particular the LDCs *and* the most marginalised non-LDCs; and
- The substance of the resulting provisions and the conditions for access to them should be based on a transparent set of rules, with enhanced enforceability, predictability of outcomes and a limited space for discretion.

Several “technical options” can be foreseen in the approach outlined above, but they can only be defined in combination with an appropriate identification of the needs that diverse groups of developing countries have from S&DT. In other words, a ‘problem solving approach’ to the process must begin by considering the concrete problems (specific development needs) and then proceed to devise the appropriate solutions.

To make such an approach sustainable over time, it is important to consider that as countries evolve, and according to the stages of development reached, their needs for benefiting from some specific S&DT provisions would diminish, while other S&DT instruments may become more relevant. However, time is neither a good expression of the achievements obtained in that progress nor an appropriate source of information about the changing needs of a country.

As a result of this need to adjust the optimisation, some kind of monitoring process becomes a requisite instrument. To be sufficiently effective, such a monitoring process should be aimed at helping countries to progress by benefiting from the S&DT provisions they may be entitled at each stage of their development, including enhanced flexibility and support for those countries in greater need.

The main purpose of such a monitoring process should be following up the utilisation of the provisions in order to spot the obstacles that countries may face in accessing them, as well as to assess the real benefits that their use have been generating, and to identify ways for improving those benefits. Designed in this way, the system could, for instance, support poor countries in obtaining technical assistance and implementing technical agreements that contribute to the enhancement of such benefits, instead of putting the emphasis in controlling a deadline for effectiveness of the ordinary WTO rules.

3. FURTHER CONTRIBUTIONS

Moving beyond the current stalemate in the S&DT negotiations will require a variety of complimentary lines of work. Two such lines are currently at play - namely the consensus-building exercise being promoted by the Chair of the CTD-SS and the design and production of different knowledge inputs (including the convening of dialogues with trade and sustainable development stakeholders). The former implies promoting convergence between the key players in the S&DT negotiations and contributing to identify opportunities for trade-offs that facilitate such convergence. In this regard, the Chair foresees an important role for players from the two sides showing a flexible position in the polarised context of the negotiation, as they may have greater influence in their own groups. The latter supports the former, inputting with various intellectual contributions and offering opportunities for actors in the consensus-building line to interact with relevant experts in the respective issue area being considered.

This final section outlines the support to these activities planned by ICTSD. Four kinds of activities are envisaged in the near future:

- i) Conducting interviews with delegates, ambassadors and experts for testing hypotheses, confirming or adjusting conclusions previously reached and exploring in depth polarization and opportunities for trade offs and convergence;
- ii) Organizing and facilitating four brainstorming sessions and similar exercises with the participation of players from the diverse country groupings and experts, including the production of supporting notes for the events;
- iii) Co-convening, preparing and facilitating one informal workshop and one high-level special retreat on S&DT; and
- iv) Commissioning papers to reputed scholars and experts that serve as inputs for meetings and other relevant activities.

The notes are conceived as short and focused documents related to specific aspects of the negotiations and/or the consensus-building process (i.e. they are strictly “negotiation-oriented”). Their objective is to provide the operators and relevant actors with an accurate picture of the dynamics of the negotiations, and considerations on strategy concerning the consensus-building course of action. Three papers would be commissioned to reputed scholars and experts. Two of them would be issue papers to be presented to the informal workshop and the third would be a policy paper to be discussed at the final high-level event (envisaged for mid-September 2004). The issue papers would discuss aspects of the S&DT and eligibility issues, from a perspective integrating sustainable development, trade liberalisation and legal (WTO) visions.