



International Centre for Trade  
and Sustainable Development

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

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

### ***INTRODUCTION***

The conclusion of the Uruguay Round of negotiations saw S&DT provisions transformed into mechanisms for helping developing countries conform to their new liberalisation obligations. The unintended consequences of provisions of this nature begs the question whether a solution - to both the broader systemic deficiencies and the current negotiating impasse - can be found by simply addressing a list of single, disconnected proposals for specific provisions in the different agreements. Rather, if what the proponents seek from the current mandate on S&DT is to start ‘development’ reforms of the system, they may want to explore an approach aimed at recovering the lost character of S&DT and ensuring that all developing countries can attain the kind of support they may need from S&DT, according to the specificities of their development situation.

One of the most controversial areas in this debate, one being increasingly highlighted as the crux of the current negotiating impasse, is that of ‘eligibility’; should all developing countries be eligible for all kinds of S&DT provision? For the most part, developing countries state that while not all of them require or seek the same kind of benefits from S&DT, nor, arguably, do they all need access to the same kinds of provisions, they all should have the right to use Special and Differential Treatment.

On the other hand, one of the largest concerns raised by most developed countries (and some developing countries) in this debate is the fact that being classified a “developing country” is self-selecting, resulting in an advanced developing country being entitled to the same preferential treatment as a low-income developing country. As a result, the likelihood of finding a negotiated solution on strengthening S&DT would appear quite low if these apprehensions over the generalised eligibility to S&DT are not addressed in some manner.

The reality in the WTO however, is that differentiation among developing countries already exists. One of the main concerns being faced today, in practical terms, is that it has become an obstacle to the access of non-LDC members to certain S&DT provisions. Furthermore, ideas proposed by developed country Members for further differentiation have been strongly opposed by the majority of developing countries, largely in part because they would appear to involve formally depriving some countries of what they consider a legal right for all developing countries.

The sensitive and contested nature of the differentiation and eligibility debate has thus led the negotiations on the Doha mandate on S&DT to deviate from a more “systemic” approach. Many negotiators have been inclined to approach the exercise pragmatically, case by case, leaving aside general principles or even trying to skirt them, in hopes of expeditiously reaching specific solutions to the most immediate issues - an understandable approach for those countries where a real strengthening of S&DT could have very positive short-term poverty impacts.

However, there are risks to such an approach. From a negotiating perspective, the time since Doha has proved this path to be far less than satisfactory. More importantly, taking a more systemic view, the WTO framework is based on the equal treatment and non-discrimination of all its members. The exceptions to this rule - such as the S&DT regime - also have to be non-discriminatory, in the sense that they concern countries that have similar development constraints and trade obstacles, which differ from those of other Members. Consequently, changes to the regime - if any- have to be transparent and unequivocal, and should rely on a strong sustainable development rationale. With this in mind, it is clear that any changes to this regime must, *at a minimum*, continue to give prominence to the notions embodied in Part IV of the GATT - including, *inter alia*, lower standards of living, lack of economic diversification and the need for gradual integration - offering at the same time innovative and effective mechanisms to address these very problems in the context of the current economic landscape and the framework of a rules-based system.

Based on the various S&DT work undertaken by ICTSD, including the consultations carried out with various stakeholders in early-mid 2004, it seems possible that innovative options on how to apply S&DT to different ‘types’ of developing countries (i.e. a “differentiated application” of S&DT) could contribute to creating a way around the current stalemate on S&DT. This statement is strongly predicated however, on the condition that this process is aimed at optimizing S&DT in terms of its relevance and benefits to *all* developing countries. The objective would not be introducing further differentiation among developing countries, but rather optimizing a system of S&DT that can be applied differently to diverse categories of countries. In this way, all developing countries would have access to the kind of S&DT they required, and those countries in greater need would receive enhanced support from the entire MTS.

Continuing in this line, were refinements of eligibility criteria or changes in differentiation considered at all, they would not be the objective of the exercise, nor based solely on looking at the specific cluster of countries concerned in each case. They would have to consider the adequacy of the changes with respect to the general rules that guide S&DT (e.g. Part IV of GATT) and according to the requirements noted above - namely that it optimize S&DT provisions in terms of their relevance and benefit to *all* developing countries.

The ideas presented in this note offer one possible avenue for Members to consider for overcoming the current stalemate in the S&DT negotiations. They emanate from an ongoing work programme on S&DT undertaken by ICTSD<sup>1</sup>, which aims at exploring innovative sustainable development approaches to S&DT and promoting convergence in the current S&DT negotiations at the WTO. This work has also

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<sup>1</sup> These activities include commissioning policy-oriented research and convening multi-stakeholder dialogues on S&DT, as well as diffusing the knowledge created among key actors in the trade and sustainable development knowledge communities.

benefited recently from an active cooperation with the work programme being promoted by the Chair of the WTO's Committee on Trade and Development (CTD) Special Session. Due to their similarity in aims and overlap in actors, the two programmes are now operating essentially as two synergistic lines of work in an initiative aimed at moving the stalled talks forward. The first is a consensus-building exercise (in which key ambassadors and delegates from developed and developing countries are positively engaging); and the second, a process involving various stakeholders aimed at gathering and creating relevant knowledge inputs that are to feed into the first line.

In that regard, this document is a supporting note contributed by ICTSD to the second brainstorming session of experts taking place in Geneva on 26 May 2004. Part one is dedicated to discussing the conceptual framework used by ICTSD to approach S&DT matters in the exercise aimed at facilitating the resumption of the S&DT negotiations. The second part focuses on key players and main issues in the negotiations, presenting the preliminary conclusions from assessments conducted in early 2004. Part three deals with the possible components of a "third way" for promoting convergence in the S&DT negotiations, and the final section, part four, addresses the strategy proposed for supporting the consensus building line of work led by the CTD-SS Chair.

## ***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.

From a negotiations point of view, the framework approaches the current S&DT reality with a system of categories that help characterising the key players and their motivations; the issues in which they differ and the degree of such differences; as well as the extent to which the ideas presently being considered are viable within a rules-based system.

From the perspective of development, the framework helps to capture the reality of S&DT and the value of the proposals being discussed in terms of the development challenges and problems that developing countries face in their incorporation into the MTS.

### ***1.1 Systemic issues and key players in the S&DT stalemate: A negotiations perspective on 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. As expressed above, 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.

For analytical purposes, six categories of countries have been preliminarily defined; three of them being mutually excluding subsets of the developing country group, and two belonging to the industrialised countries.<sup>2</sup>

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	
<b>d-1</b> 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&amp;DT.</u> For the most part, perceive the lack of accessibility to meaningful S&DT as having large negative poverty impacts in their countries.
<b>d-2</b> 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&amp;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.
<b>dma-12</b> 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	
<b>d-3</b> Other developing countries not belonging to previous categories	To be defined	To be defined	To be defined
<b>D-1</b> 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.
<b>D-2</b> 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.

<sup>2</sup> Categories d-1, d-2, and d-3 are mutually exclusive (i.e. they add 100% of all developing countries). Category dma-12 incorporates countries that belong to categories d-1 and d-2.

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 (see section 2.2).

**TABLE No 1.2: POLARIZATION IN FUNDAMENTAL SYSTEMIC ISSUES OF S&DT RELATED TO DEVELOPMENT<sup>3</sup>**

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.<sup>4</sup>

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’.

<sup>3</sup> Information on extreme positions is based on evaluations conducted by the Chair of the CTD-SS and preliminary interviews conducted by ICTSD.

<sup>4</sup> See Appendix I for a more detailed explanation of the three dimensions.

This dimension includes not only policy flexibility in the WTO, but also the coherence of policies within and between relevant multilateral institutions. Therefore, 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 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)<sup>5</sup>, the trade-related development challenges of developing countries broadly reside in these three dimensions. That being said, not all the effective solutions to those challenges may be implemented by making use of instruments within the ambit of the multilateral trading system. Some relevant instruments, including many related to facilitating access to financial resources, must be found elsewhere.

Table No 1.3 below shows - in the three dimensions framework - the main components of S&DT pertaining to the WTO system or having a coordination linkage with it. It also shows how the three dimensions intersect the existing S&DT provisions, organizing the latter according to the typology developed by the WTO Secretariat.<sup>6</sup> Shadowed cells in the table should be interpreted as areas where relevant sets of provisions should exist if S&DT would effectively serve developing countries as an instrument for making trade liberalisation supportive of their sustainable development needs (i.e. accepting that S&DT should have the role of an instrument for development).

The presence of an "X" in a particular shadowed cell would indicate the existence of S&DT provisions intended to address some of the needs of that dimension (irrespective of the provision's effectiveness or of the practical possibility of developing countries' access to its benefits). A letter "d" in a shadowed cell indicates that a provision existed in the past and disappeared.

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<sup>5</sup> 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.

<sup>6</sup> See for example WT/COMTD/W/66.

A first valuable result of using a development-inspired framework for analysis can be illustrated by looking at the empty cells in table 3.1. From the perspective of considering the role of S&DT as an instrument for development, the number of empty or “d” marked shadowed spaces in the table would illustrate the extent to which the present S&DT regime might be considered incomplete.

The application of a development framework for analysis must imply identifying in greater detail existing difficulties for accessing the potential benefits of those provisions shown with an “X”, as they may further limit the availability of useful S&DT mechanisms in WTO. If S&DT is to be recognised as an instrument for development however, this part of the assessment must be framed in the broader perspective of the development relevance of the provisions.

**TABLE No 1.3: THREE DIMENSIONS OF S&DT AND WTO TYPOLOGY**

WTO's SIX-FOLD TYPOLOGY	DIMENSION I: SPACES FOR SUSTAINABLE DEVELOPMENT POLICY				DIMENSION II: MARKET ACCESS & TRADE FAIRNESS FOR EXPORTS		DIMENSION III: TRANSFERS FOR INSTITUTIONAL ADJUSTMENT	
	I A: WTO ENABLING FRAMEWORK FOR POLICIES		I B: OTHER MULTILATERAL MEASURES AND FRAMEWORKS		MARKET ACCESS X	FAIR TRADE X	WTO TECHN. ASSTCE	OTHERS' TECHN ASSTCE
	BORDER MEASRS	BEHIND BORDER MEASRS	POSITIVE INTL MEASRS	COHRCE MULTILT INSTIT.				
Provisions aimed at increasing d/c <sup>7</sup> Members' trade opportunities					X		X	X
Provisions under which Members should safeguard d/c Members' interests					X			
Non-LDCs: Flexibility of commitments and use of policy instruments.								
Transitional time periods	D	D						
Technical assistance					X		X	
Provisions relating to LDCs	X	X	X		X	X		

In summary, the use of a development framework in the assessment outlined above would help defining to what extent the origin of the S&DT crisis resides in difficulties

<sup>7</sup> D/c = developing countries

for making the provisions operational, or in their lack of development relevance. The application of the proposed framework for analysis may help in identifying needs that developing countries may have that can only be satisfied with provisions that do not exist (empty cells), that are only available to LDCs, or that are not accessible in practical terms to their potential beneficiaries.

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.

## ***2. A PRELIMINARY ASSESSMENT OF THE CURRENT SITUATION OF S&DT NEGOTIATIONS***

Using the framework defined above, our work to date has included an identification of the key players and the main issues involved in the current S&DT negotiations. This work confirms the highly polarised situation in the current S&DT negotiations and identifies some positive signs that could be used for mapping strategies in the process of facilitating convergence. The analysis of documents and the results of preliminary interviews, as well as the interaction with experts and the Chair of the CTD-SS also seem to suggest the need for further studying innovative solutions to certain systemic topics, as well as matters related to potential trade-offs that could be considered for the same purpose of facilitating progress in the substantive negotiations.

Developing country interests, as characterized in 81<sup>8</sup> of the 88 proposals presented in the CTD Special Session, refer mainly to policy space and largely “behind the border measures”. Substantive changes to S&DT provisions, and to a lesser extent procedural ones represent the main concerns expressed in these proposals.

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.

### ***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 the S&DT proposals presented by countries; interviews with delegates and the analysis of country documents; frequent discussions with the Chair of the CTD-SS; and a meeting with experts under the patronage of the CTD-SS Chair.

In the latter, participants 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.<sup>9</sup> In addition to touching on the three broad areas listed above (policy flexibility, market access, and capacity building) issues raised included governance of the MTS (and developing country participation therein), commodity concerns and the

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<sup>8</sup> 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).

<sup>9</sup> This meeting took place in Geneva on 19 March, and in addition to the Chair of the CTD-SS, Faizel Ismail (South Africa), the meeting included nine participants from six different institutions: Erfried Adam (Friedrich-Ebert-Stiftung); Rashid Kaukab (South Centre); Bernard Hoekman and Carlos Primo-Braga (World Bank); Mina Mashayekhi and Bonapas Onguglo (UNCTAD); and Ricardo Melendez-Ortiz and David Primack (ICTSD).

need for diversification, technology transfer, dispute settlement, and the additional support required for LDCs and small economies.

The positions of fourteen countries<sup>10</sup> were also analysed through a combination of preliminary interviews with some and an evaluation of documents and interventions related to S&DT in the CTD-SS. This analysis served mainly as a basis for evaluating differences in positions regarding access to S&DT, differentiation and other systemic S&DT issues (see section 2.2).

The analysis of 81 non-DSU S&DT proposals was made using the framework described above (section 1.1). It was a systematic assessment offering material for conclusions related to all non-dispute settlement issue areas (see section 2.3). The majority of the proposals originated from the WTO's Africa Group, as well as the Group of LDCs.<sup>11</sup>

## ***2.2 The positions of key players on systemic issues: opportunities for bridging obstacles.***

Solving the existing polarization on core systemic issues through ways that could offer valuable solutions to the parties is a likely pre-requisite to any progress in the negotiations.

Most developed countries appear concerned with issues of eligibility (including 'graduating' countries out of a flexibility once no longer required), ensuring compliance and integration as a means of promoting development, and maintaining a narrow scope of activity for the WTO. A large number of developing countries, on the other hand, hold that S&DT must be provided on a non-discriminatory basis, that sufficient flexibility in the rules must be maintained in order to deviate from certain disciplines in the name of development, and that the ambit of the WTO must include tackling broader development issues (such as addressing supply-side constraints and infrastructure issues).

In line with these perspectives, most developed countries have held that the broader principles and objectives of S&DT must be discussed first and that before any meaningful strengthening of S&DT occurs, there must be a mechanism to differentiate between developing countries deserve S&DT and those who do not (i.e. Brazil and Honduras should not be allowed the same flexibilities). Developing countries, while diverging somewhat on the issue of differentiating among themselves, have argued nonetheless that the mandate is quite specific in its instructions to review all S&DT provisions and that this must done before moving to any broader discussions.

Table No 2.1 describes the present situation in a synthetic form, offering information on five country categories and six systemic issues, which may serve for mapping convergence strategies. An index has been assigned to the each of the cells where issues (rows) intersect each country category (columns), representing the potential for obstructing progress of negotiations, based on relevance and polarization in the issues.

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<sup>10</sup> The countries considered (to varying degrees) included Barbados, Brazil, Canada, China, Colombia, the EC, Indonesia, Jamaica, Kenya, Norway, Paraguay, South Africa, Switzerland and Venezuela.

<sup>11</sup> 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.

The index is calculated by multiplying the relevance of the issues<sup>12</sup> and the polarization of the country groups.<sup>13</sup>

**TABLE No 2.1: POTENTIAL OF SYSTEMIC ISSUES FOR OBSTRUCTING OR FACILITATING PROGRESS OF NEGOTIATIONS IN S&DT<sup>14</sup>**

FUNDAMENTAL SYSTEMIC ISSUES IN S&DT	EXTREME POSITIONS SHOWN BY THE POLE COUNTRIES (D-1 & d-1)		POTENTIAL FOR OBSTRUCTING PROGRESS OF NEGOTIATIONS, BASED ON RELEVANCE AND POLARIZATION IN THE ISSUES				
	D-1 AMONG DEVELOPED COUNTRIES	d-1 AMONG DEVELOPING COUNTRIES	DEVELOPED		DEVELOPING		
			D 1	D 2	d 1	d 2	d 3
LIBERALISATION RELEVANCE FOR DEVELOPMENT (1)	Trade lib. = main instrument; process almost automatic (1)	Trade lib. = an instrument; process needs supports (1)	1	1	1	1	1
POLICY AMBIT OF THE MTS-WTO REGARDING ADJUSTMENT (1)	Narrow: trade liberalization rules only (2)	Broader: trade liberalization rules & dev't impacts (2)	2	2	1	1	1
TRADE RULES INFLUENCE ON DEVELOPMENT POLICIES (1)	Compliance is best way for integration and development (3)	Rules must be flexible to allow for dev't benefits from trade (3)	3	1	3	1	1
ROLE OF S&DT FOR DEVELOPING COUNTRIES (3)	Instrument for facilitating compliance with rules (2)	Tool for making trade work for development (1)	6	3	3	3	3
ACCESS TO S&DT BY DEVELOPING COUNTRIES (3)	Focus on LDCs; graduation and limitations to policy spaces (3)	Generalized MFN access to all developing countries (3)	9	3	9	3	3
CONDITIONS FOR PROGRESS IN S&DT NEGOTIATION (3)	Differentiation as a rationale for graduation and S&DT access (3)	Improvement of development content of S&DT (3)	9	3	9	3	3

In the latest formal meeting of the CTD-SS, as well as in consultations that the Chair has undertaken with Ambassadors and deputies some positive signals were offered by both developed and developing countries regarding the Chair's effort to promote convergence in S&DT.

<sup>12</sup> The relevance of the systemic issues for eventually obstructing a negotiated way-out have been graded with values between 1 and 3 (1= Low; 3= High).

<sup>13</sup> The degree of polarisation of country positions related to each issue have also been qualified with grades between 1 and 3 according to their relative situation with respect to the extremes of each broad group (i.e., developed and developing countries). 3 = extreme, strong; 1= far from extreme, flexible.

<sup>14</sup> Information on extreme positions is based on evaluations conducted by the Chair of the CTD-SS and preliminary interviews conducted by ICTSD (as in Table No 1.2).

It would seem that key Ambassadors and delegates have expressed their willingness to cooperate with the Chair's efforts, including all major players on this issue (the US, EC, Switzerland, Canada, Norway, India, Kenya, etc). This move was supported in principle by the broader WTO Membership at the 1 April 2004 formal CTD Special Session, as Members agreed to the Chair's request to commence informal consultations aimed at identifying areas of convergence and the best way to proceed with the S&D work programme (which included taking into account both the agreement-specific proposals and the broader cross-cutting issues; e.g. principles & objectives of S&D, differentiation, the monitoring mechanism, etc.).<sup>15</sup>

A preliminary conclusion may be drawn from a simplified strategic analysis of the positions held on the most relevant issues by the poles (country categories D-1 and d-1) and the potential bridges (country categories D-2 and dma-12, d-3). It refers to the focus that an effort in promoting convergence in systemic issues should exhibit:

**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.**

- Two systemic issues hold the highest potential for obstructing progress in the S&DT negotiations: issues related to differentiation and access to S&DT; and the development quality of S&DT provisions. As such, they would appear to deserve a high level of attention in future work to promote convergence;
- A systemic “third way” based on differentiating for optimising access to S&DT could be one possible response to this situation. Engaging the most polarised players (categories D-1 and d-1) in conceptual and strategic analyses supported by the work of reputed scholars and experts may thus help contribute to the convergence;
- An important role can be envisaged for the group of flexible developed countries (D-2) in contributing to build such systemic “third ways”;
- The most influential countries may alter the negotiating landscape and process if they were to change their stance in the negotiations as a result of a benefit offered in another area of the broader Doha negotiations. It would be advisable to undertake work aimed at identifying ways and opportunities for eventual convergence in the S&DT negotiations that may arise from potential trade-offs that these influential countries might consider.
- The unity among developing countries may need to be strengthened to avoid internal breaks that would weaken their negotiating position on S&DT with the industrialised countries. Considering “internal trade-offs” and compensatory concessions among developing countries, which includes studying potentially viable options, may thus deserve special attention.

Regarding the most conservative industrialised countries (D-1) and the bigger developing countries that may not have an interest in benefiting from S&DT (d-2 & dma-12), it would be important to explore what interests they have in other negotiations that could be used for a trade-off (e.g. access to major developing country markets in specific goods or services; concessions regarding agriculture).

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<sup>15</sup> See BRIDGES Weekly, 8 April 2004, <http://www.ictsd.org/weekly/04-04-08/story1.htm>

Concerning opportunities for strengthening developing country unity by means of intra-developing country compensatory measures, several cases have been suggested. They refer to situations in which a particular group of developing countries may have negative expectations regarding the impact a mainstream negotiation being promoted by a majority of the group may hold for the individual country. Several cases have been mentioned in agriculture (e.g. Net Food Importing Countries, Strategic Products and Special Safeguard Measures); preferences (e.g. discrimination, short-term erosion); waivers and anti-dumping.

Section 3.1 below presents some ideas on a possible “third way” based on an innovative approach to differentiation that may ease tensions and build confidence among Members, while optimizing access to the specific S&DT needed by the various categories of developing countries.

### ***2.3 Main conclusions on issue areas resulting from the analysis of 81 proposals.***

The analysis of the 81 proposals was oriented to identifying main development-related issues, using an approach that would provide information and conclusions aimed at facilitating forward movement.

In addition to the development-inspired categories in the described framework, other methodological perspectives were defined for assessing the focus of the 81 proposals studied, in terms of the main beneficiaries of the proposals (all developing countries or LDCs), the obligations affected (developed or developing country obligations), and the character of the changes involved (changes in substance or modifications in procedural matters).

A database was created to extract this information from the 81 proposals and an assessment was conducted resulting in five broad conclusions (conclusions 2 through 6) on the character and relevance of the issues for the proponents, and on the need for further future analysis.

As noted above, the analysis indicates that developing country interests (as represented in the 81 proposals) refers mainly to changes in the substance of S&DT provisions, and to a much lesser extent to procedures. It also draws out that policy spaces, in particular of the “behind the border” variety, represent the main concern expressed in the proposals.

#### **Conclusion No 2: The main issue areas for which attention should be put lie in the “Space for Sustainable Development Policy” dimension.**

- The contents of 73% of all proposals (74% in the case of proposals benefiting exclusively LDCs) refer to policy space, either exclusively or in combination with market access contents.
- Proposals referred exclusively to market access or fair trade concerns amount to 27%, but they rise to 44% when combinations with policy spaces are considered.
- ‘Behind the border measures’ (commonly related to industrial policy or supply-side competitiveness policy) rank first in the realm of “policy space”, with 64% of all proposals falling here. Within that group, 58% request some kind of relaxation of developing country obligations.

**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.**

- 44% of the proposals refer to the market access dimension, for which the majority (alone or in combination with ‘policy space’) deal with traditional market access (i.e. tariffs, non tariff barriers); only 11 of the total 81 proposals (14%) address “fair trade” concerns.
- Technical assistance considerations, when taken in combination with either of the other substantive contents, represent 23% of the 81 proposals. Few proposals focus exclusively on technical assistance.
- In the proposals presented by the LDC group, only 17% have technical assistance contents.

**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.**

- 83% of all proposals request changes in substance; 80% in the case of policy space proposals and 86% in market access and fair trade.
- Proposals containing exclusively requests for adjustments in procedures represent only 14% of the proposals; 5 of the 23 proposals from the LDC group (22%) are exclusively focused on procedure matters.

TABLE No 2.3: DISTRIBUTION OF ALL PROPOSALS, BENEFITING DEVELOPING COUNTRIES AND LDCs, ACCORDING TO DIVERSE CRITERIA (%)

		W MAIN BENEF		X PROBLEMS ADDRESSED BY THE PROPOSALS									Q OBLIGATIONS INVOLVED			TOTAL NUMBER OF PROPOSALS			
		W = 1 All Developing Ctries	W = 2 LDCs	X = 1 Policy Space						X = 2 Mkt Acss & Fair Trade			X = 3 Resource Transfer	Q = 1 Developed countries	Q = 2 Developing Countries		Q = 3 Secretariat		
				X = 1 Policy Space	WTO		Other		Other	(+ Int'l Measures Cohr. Multilateral Institutions)	X = 2 Market Access & Fair Trade	Market Access						Fair Trade	
Y INSTR. PRPSD		17	11	23	21	17	9	1					0	1	14	12	2		9
	Y = 2 Δ Substance	63	20	58	54	37	30	2	0	2	38	35	14	19	42	41	4	83	
R MAIN OBLIGATIONS ADDRESSED	Dvlping Ctry Compliance	R=1 Developing Ctry Compliance	30	12	38	38	23	27	0	0	0	7	7	2	1	5	38	0	42
		Time related	16	5	17	17	14	10	0	0	0	5	5	2	1	5	17	0	21
		Relax Rules	21	10	31	31	17	23	0	0	0	4	4	0	0	1	31	0	31
	R=2 Developed Country Obligation	33	9	19	15	12	4	7	5	4	28	26	12	17	41	2	0	42	
TOTAL NUMBER OF PROPOSALS		72	28	73	68	47	38	15	7	9	44	41	14	23	51	49	5	100	

**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.**

- On proposals referring to policy space, 79% of all proposals are covered (84% of all LDCs proposals) in seven agreements or groups of rules (63% in five agreements or groups of rules). The seven include GATT (Art. XVIII, XXXVII, XXXVIII and waivers); Subsidies (SCM); GATS; TRIPs; TRIMs; the Enabling Clause and the Decision on LDCs.
- In market access and fair trade, six agreements cover 83% of the proposals (86% of all LDCs proposals). These include GATT (Art. XVIII, XXXVII, XXXVIII and waivers); GATS; the Enabling Clause; the Decision on LDCs; Agriculture; and SPS.

TABLE No 2.4: THE MOST CITED AGREEMENTS: ALL PROPOSALS (%)

AGREEMENTS	POLICY SPACES			MARKET ACCESS & FAIR TRADE			TOTAL
	SUBSTANCE	PROCEDURE	TOTAL	SUBSTANCE	PROCEDURE	TOTAL	
Rules: GATT XVIII, XXXVII, XXXVIII, & Waivers	15	13	23	17	4	17	22
Subsidies (SCM)	15	2	17	0	0	0	13
GATS	6	6	10	8	8	13	10
TRIPs	8	6	8	0	0	0	7
TRIMs	8	0	8	0	0	0	7
ENABLING CLAUSE	6	0	6	13	4	13	7
DECISIONS IN FAVOUR OF LDCs	4	2	6	4	0	4	7
AGREEMENT ON AGRICULTURE	6	0	6	8	4	8	8
SPS	4	4	6	25	8	29	13
TBT	4	2	4	8	4	8	3
REGIONAL TRADE AGREEMENTS	4	0	4	8	0	8	3
<b>TOTAL</b>	<b>81</b>	<b>35</b>	<b>100</b>	<b>92</b>	<b>33</b>	<b>100</b>	<b>100</b>

TABLE No 2.5 THE MOST CITED AGREEMENTS: PROPOSALS BENEFITING EXCLUSIVELY LDCs (%)

AGREEMENTS	POLICY SPACES			MARKET ACCESS & FAIR TRADE			TOTAL
	SUBSTANCE	PROCEDURE	TOTAL	SUBSTANCE	PROCEDURE	TOTAL	
Rules: GATT XVIII, XXXVII, XXXVIII, & Waivers	8	15	15	0	0	0	12
Subsidies (SCM)	8	0	8	0	0	0	6
GATS	0	8	8	14	29	43	18
TRIPs	15	15	15	0	0	0	12
TRIMs	8	0	8	0	0	0	6
ENABLING CLAUSE	15	0	15	29	14	29	18
DECISIONS IN FAVOUR OF LDCs	8	8	15	14	0	14	18
AGREEMENT ON AGRICULTURE	8	0	8	0	0	0	6
SPS	0	0	0	0	0	0	0
TBT	0	0	0	0	0	0	0
REGIONAL TRADE AGREEMENTS	8	0	8	14	0	14	6
<b>TOTAL</b>	<b>77</b>	<b>46</b>	<b>100</b>	<b>71</b>	<b>43</b>	<b>100</b>	<b>100</b>

**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.

### **3. INITIAL REFLECTIONS ON THE IDEA OF PROMOTING A SYSTEMIC THIRD WAY FOR CONVERGENCE ON S&DT.**

To start moving away from the current impasse in S&DT, a re-framing of the issues, based on an analysis of the changing realities of the MTS, is required. If a process for facilitating convergence would be undertaken, it must include assessing and devising feasible solutions, as efforts to bridge the differences between developed and developing countries on S&DT implies that something relevant is offered to both parties.

Grounded in the S&DT work undertaken by ICTSD and its team members<sup>16</sup>, and more recently the Centre's work in 2003<sup>17</sup> and the consultations carried out in 2004, some thoughts are offered below on possible options that Members may consider for a systemic "third way" for convergence on the current S&DT negotiations.

#### **3.1 Strategising on an optimised access to S&DT: A preliminary view of possible components for a systemic 'third way' for convergence.**

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.

#### **Conditions for viability**

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. The feasibility of a convergence between developed and developing countries on the matter could only be envisaged if the options add to increasing the benefits that *all* developing countries may draw from the S&DT system, by obtaining enhanced access to the specific provisions that each of them may need according to their particular stage of development;

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<sup>16</sup> See for example, Melendez-Ortiz, Ricardo and Ali Dehlavi, (1998). "Sustainable Development and Environmental Policy Objectives: A Case for Updating Special and Differential Treatment in the WTO", <http://www.ictsd.org/dlogue/1998-sept/RMO&AD.pdf>; Venezuela, Mission to the WTO (1999), "Special and Differential Treatment and Spaces for Policies in the WTO: Two Elements of the Developmental Dimension in the Multilateral Trading System", (WT/GC/W/279), [http://www.wto.org/english/tratop\\_e/devel\\_e/sem01\\_e/w279.doc](http://www.wto.org/english/tratop_e/devel_e/sem01_e/w279.doc).

<sup>17</sup> Corrales, Werner, Mahesh Sugathan and David Primack (2003) "Spaces for Development Policy: Revisiting Special and Differential Treatment", [http://www.ictsd.org/dlogue/2003-05-06/ICTSD\\_SDT\\_draft\\_may03.pdf](http://www.ictsd.org/dlogue/2003-05-06/ICTSD_SDT_draft_may03.pdf); International Dialogue on S&DT, <http://www.ictsd.org/dlogue/2003-05-06/06-05-03-desc.htm>.

- The second is a logical complement to the first; that 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.

Echoing comments from the CTD-SS Chair, there is no case in exploring differentiation approaches aimed at improving the norms for *graduation*, i.e. at enhancing on “more rational grounds” the criteria for segregating countries supposedly “not deserving” access to S&DT from those who “do deserve” it.

### **Technical implications in defining the options**

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.

Developing those options in greater detail imply two movements. The first consists of defining categories of situations within each dimension of S&DT (i.e. policy space, market access/fair trade and technical assistance), based on the development needs that diverse developing countries may have. It would then be possible to link each category to particular trade policy instruments and to derive the appropriate S&DT provisions for filling the gaps.

The second movement would consist of establishing options for eligibility and assessing their benefits and/or difficulties for implementation. For illustrative purposes we refer to two different, but not mutually exclusive, approaches to eligibility:

- The basis for eligibility to S&DT provisions under a particular agreement should respond to a set of criteria and/or indicators that may differ from those applied to other agreements, or that
- Sectors or sub-national regions may be considered eligible for particular clusters of S&DT provisions while others in the same country would not.

In summary, implementing this approach to find a systemic “third way” for convergence would entail making further efforts to characterise the underlying problems that these countries are trying to address with their respective proposals on S&DT; to categorize such problems in terms of aggregate issues according to their relevance to the developmental interests and constraints of the proponents, and to their relationship with WTO rules; and finally establishing the appropriate “links” between the issues and the diverse S&DT provisions.

Table No 3.1 illustrates the direction of the efforts currently undertaken by ICTSD in exploring such “technical options”. It shows a simplified three-category approach to the “policy space” dimension and a preliminary view of the links that each category

could have with four sets of trade policy instruments. The categories have been defined according to the level of development of the productive system(s) under analysis. Certainly more than three categories and four groups of trade policy instruments would be necessary to cover the objectives of the optimisation exercise.

**TABLE No 3.1: ILLUSTRATION OF THE USE OF CATEGORIES IN THE “POLICY SPACE” DIMENSION**

	CATEGORIES ACCORDING TO LEVEL OF DEVELOPMENT OF THE SYSTEM		
	I: LOW	II: MEDIUM	III: HIGH
<b><u>A: CHARACTERISATION OF THE CATEGORY</u></b>			
Degree of diversification in production/ exports	LOW	MEDIUM	HIGH
Average productivity of exporting sectors	LOW-MEDIUM	MEDIUM	MEDIUM-HIGH
Domestic linkages (density of interrelations) within the productive system	VERY LOW	LOW-MEDIUM	MEDIUM-HIGH
Knowledge intensity / content of exports	VERY LOW	LOW	MEDIUM-LOW
Degree of development (and complexity) in the system of innovation	VERY LOW	LOW	MEDIUM-LOW
<b><u>B. UTILITY OF POLICY INSTRUMENTS</u></b>			
<b><u>Preferences in purchases from STE<sup>18</sup> and Govt.</u></b>			
Procurement of traditional goods for developing productive chains and SMEs linkages	HIGH	MEDIUM-LOW	VERY LOW
Procurement of knowledge-intensive services for diversification and clusters' consolidation	LOW	HIGH	MEDIUM
Procurement of knowledge-intensive K goods and services for developing higher technology sectors	VERY LOW	MEDIUM-HIGH	VERY HIGH
<b><u>Subsidies</u></b>			
Incentives for developing SMEs suppliers' chains and consolidating clusters	MEDIUM-HIGH	HIGH	LOW
Incentives to diversification towards Knowledge-intensive production and techno enhancement	LOW	HIGH	MEDIUM
Financing introduction of high technologies and execution of R&D activities	VERY LOW	MEDIUM-HIGH	VERY HIGH
<b><u>Perform. Requirements &amp; Condit. Incentives</u></b>			
For developing SMEs suppliers' chains and consolidating clusters	HIGH	MEDIUM-HIGH	LOW
Promoting diversification towards Knowledge-intensive production and techno enhancement	LOW	HIGH	MEDIUM
Promoting Technology transfer by means of joint ventures between MNCs and domestic firms	LOW	VERY HIGH	MEDIUM
Financing introduction of high technologies and execution of R&D activities	VERY LOW	MEDIUM-HIGH	VERY HIGH

### **Monitoring for sustainability**

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.

### ***4. FURTHER CONTRIBUTIONS***

Moving beyond the current stalemate in the S&DT negotiations will require a variety of complimentary lines of work. This final section outlines the support to these activities envisaged by ICTSD.

As outlined in the introduction, 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.

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.

Table No 3.2 shows how the notes and papers would be used for supporting the brainstorming sessions, workshops and dialogues. Outlines preliminarily defined for the supporting notes and papers are included in Appendix II of this document.

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.

**TABLE No 3.2: INPUTS OF NOTES AND PAPERS TO DIALOGUES AND WORKSHOPS**

NOTES AND PAPERS		BRAINSTORMINGS (June-July)			EVENTS (August-September)			
		SECOND EXPERT BRNSTRM	FIRST PROPNTS d-1	FIRST DEVLPED D-2	THIRD EXPERT BRNSTRM	DEVLPNG CTRIES EXRCISE	INFRMAL WRKSHP	SPECIAL RETREAT
N1	“Systemic third way”: Optimization of S&DT system	X	X	X				
N2	Pre-Cancun harvest of proposals from developing countries	X	X					
N3	Ideas on developed countries trade-offs to help S&DT progress				X			
N4	Strategic map of S&DT negotiations in WTO				X			
N5	Compensatory concessions among developing countries					X		
N6	Ideas on advanced developing countries trade-offs					X		
P1	Evolution of S&DT and development in MTS						X	
P2	S&D differentiated application: System & Agreement specific						X	
P3	Policy paper integrating issues of the initiative							X

## APPENDIX I:

### ILLUSTRATIVE COMMENTS ON THE THREE DIMENSIONS IN THE DEVELOPMENT FRAMEWORK FOR ANALYSIS

#### **The first dimension: The space for sustainable development policies**

Developing countries may be interested in pursuing diversification and competitiveness improvements by means of policy interventions in the supply-side of their economies that may be limited by specific WTO rules, e.g. implementing measures aimed at promoting linkages among enterprises or consolidating clusters of small and medium enterprises (SMEs). The same can be said with respect to using trade instruments to facilitate gradual import liberalisation or for protecting their markets in specific products when it may be essential to their development strategies.

The use of trade policy instruments in these two circumstances, i.e. ‘border measures’ for implementing trade policies and ‘behind the border measures’ for productive development supply-side policies, is governed by WTO rules and belongs to the *Space for Sustainable Development Policies*. They are illustrated in the two columns of sector IA in Table No 1.3 (page 7).<sup>19</sup>

A few examples of policy interventions related to competitiveness and innovation in relation to industrial clusters and SMEs may serve for illustrating situations in which spaces for policy are involved. In some of the situations illustrated developing countries may want to have access to S&DT provisions in the space for sustainable development policies because WTO rules presently limit the application of such policies. In other situations they might be interested in maintaining spaces that exist today but could be at risk in future negotiations: i) using conditioned incentives, non-mandatory performance requirements and other investment-related measures for promoting clustering, enterprise networking and technological upgrading of SME supplier chains; ii) implementing technical standards, and using tariffs and rules of origin for supporting the upgrading of technological standards and environmental practices of domestic sectors; iii) making use of government and public enterprise procurement for promoting R&D activities in clusters and industrial districts, and creating incentives for technology transfer in “learning by doing” joint ventures with the participation of domestic enterprises and foreign firms; iv) promoting transfer of technology by means of policy instruments that involve intellectual property rights disciplines; and v) developing financial instruments of innovation and cluster-consolidation policies: subsidies related to financing R&D, technology transfer and environmental-upgrading, as well as subsidies related to supporting venture capital funds for high-tech SMEs.

This said, clearly not all the needs that developing countries may have for solving supply-side constraints related to their insertion in global trade can be addressed by means available in the WTO. Indeed the ways in which other multilateral institutions could assist and/or impact trade-related policies must also be considered part of the Space for Sustainable Development Policies dimension. Effective access to ODA and to World Bank/IMF financial support within international frameworks coherent with S&DT in the WTO is an example of what is needed to make Special and Differential Treatment more effective. The non-WTO realm of the Space for Sustainable Development Policies is illustrated in the two columns of sector IB in Table No 1.3.

## **The second dimension: Market Access and fair trade for developing country exports**

Historically, one of the overriding concerns for developing countries participating in the multilateral trading system, indeed for most countries, has revolved around market access. In terms of providing differential treatment, the first dimension of S&DT should work to assist developing countries obtain more effective market access and fair trade conditions for their exports. In other words, provisions in this dimension should enable developing countries to secure a 'level-playing field' for their exports.

The first part of this dimension refers to market access in its more traditional sense (e.g. preferential tariff treatment, customs valuation, rules of origin, import licensing procedures, etc.). Benefiting from predictable market access (e.g. certainty of preferences) and from the availability of supply-side incentives in the first dimension of S&DT are two important factors for creating conditions for supply-side development in developing countries.

The second part, and arguably of greater concern in recent times, is attaining 'fair' trade conditions for developing country exports. This refers broadly to the non-abusive implementation of trade policies by importing countries. Areas in this category include the use of market defence mechanisms (e.g. antidumping and countervailing measures), non-tariff barriers (e.g. health and food safety standards), subsidies and domestic rules affecting exports of goods and services from developing countries.

Some examples of developing country trade interests being highly affected by the lack of relevance of S&DT provisions in the second dimension are developing country exports in services (Modes I & IV) and trade in goods from the agriculture-food processing sectors and the cotton-textile-garments chain.

A case based on tariff preferences - an S&DT instrument in this dimension - illustrates the need for a common development framework for monitoring and assessing S&DT effectiveness. The two perspectives on S&DT (i.e. S&DT as an instrument for compliance or as a tool for development) lead to totally different judgments regarding what is the meaning of the degree of effective utilization of tariff preferences. One side argues in favour of eliminating preferences that show a low utilization record, because they have proven no value; the other demands for a friendlier and less costly approach to conditions for eligibility and for actually benefiting from preferences.

## **The third dimension: Resource transfer inflows in the form of assistance for institutional capacity building and adjustment**

Institutional development and reform is widely recognised as being essential for effectively managing trade and competitiveness policies in an environment of trade liberalisation, including for being capable of drawing benefits from S&DT.

Not being able to put in place the appropriate reforms, including timely creating new capacities in the institutions, may prevent developing countries from implementing suitable policies and thus may be elicit higher social impacts of adjustment in the short term. The costs associated to implementing these reforms and creating enhanced institutional capacities are very high and deserve a support from the MTS.

Technical assistance programmes for institutional capacity building and adjustment are the most important mechanisms in the third dimension of S&DT. These programmes may be needed to support compliance with WTO rules, but the most valuable from a development perspective would be those offering tools for implementing trade-related active policies for sustainable development, and these do not exist or are not effective.

A broad space for creating innovative useful S&DT provisions exists in the realm of technical assistance for institutional capacity building and adjustment. A few examples of these opportunities are technical assistance programmes aimed at developing mutually coherent trade and development strategies; increasing export capabilities and improving trade facilitation services; enhancing access to knowledge and technology transfer opportunities, supporting the consolidation of SME clusters, and improving negotiating capabilities in all areas of the MTS.

## APPENDIX II:

### OUTLINES FOR SUPPORTING NOTES AND PAPERS TO BE PRODUCED

#### The supporting notes

In general, the notes will analyse specific proposals from countries as well as behaviours of key players in areas concerning S&DT and how they relate to their actions in other areas of the Doha Round negotiations. Specific attention will be placed on particular proposals tabled, on reactions to existing proposals and on overall attitudes towards S&DT.

The notes will be prepared in three batches. The first batch (notes N1 and N2) will be oriented to serve as inputs to the first brainstorming sessions to be held with the proponents' group (d-1) and the developed country ambassadors (D-2), as well as to the second brainstorming session with experts. The second group of notes (notes N3 and N4) will be used in the third brainstorming session with experts. Finally, the third batch will serve as inputs to small gatherings for discussions with developing country delegates.

- **Note N1:** This note discusses a conceptual approach to promoting movement in the S&DT negotiations; some preliminary conclusions drawn from analysis on the majority of the S&DT proposals made to the CTD-SS; and initial reflections on optimising S&DT, as well as on strategies for intellectually supporting the consensus-building process.<sup>20</sup>
- **Note N2:** This note would have two parts: i) an evaluation of the transformations suffered by the 28 S&DT proposals “pre-negotiated” before Cancun, assessing the development value of this “harvest”; identifying the shifts and assessing the positions and processes that generated the changes, in terms of the concepts and categories defined in the framework; and ii) an analysis of select proposals tabled by developing countries, aimed at illustrating how the process of optimising access to S&DT could work in practice.
- **Note N3<sup>21</sup>:** An evaluation of the particular reasons for concern of the US and the EC [and Korea] in the broader issues of access to S&DT; an identification of major interests of these countries in other negotiations elsewhere in the WTO, and a tactical assessment of eventual trade-offs that each of them might consider between S&DT concessions and their particular trade negotiation priorities;
- **Note N4:** A “map” of the S&DT negotiations, taking into account the main (groups of) actors and their specific interests and agendas in the WTO, which will be used to promote discussions on strategy for promoting convergence within the experts' group. This map would be subject to adjustments as a result of the third brainstorming session with experts.
- **Note N5:** A framework for exploring compensatory measures among developing countries in relevant negotiations, including a short illustrative case. This note would be eventually used in conducting a simulation exercise with a group of developing countries.

- **Note N6<sup>22</sup>**: An evaluation of the main interests of two [three] of the more advanced non-proponent developing countries in S&DT, as well as their priorities in other negotiating areas. A tactical assessment of eventual trade-offs that each of them could consider accepting between S&DT and their particular trade negotiation priorities;

### **The papers**

Two issue papers and a policy paper would be commissioned to reputed scholars and experts. The primary intention is to shed light on aspects of the S&DT and differentiation issues, from a perspective integrating sustainable development, trade liberalisation and legal (WTO) visions.

- **Paper P1**: An issue paper examining several development-related aspects in the framework of the evolution of the MTS, discussing the linkages between i) the evolution of the concept of development and its relation with trade, the commitments to development in GATT/WTO and its relationship with the changing nature of developing country competitiveness and the new composition of WTO Membership; and ii) how S&DT has changed in the history of the MTS.
- **Paper P2**: A second issue paper discussing various alternatives for optimising access to S&DT for all developing countries by way of a differentiated application in the terms established in the framework above. The discussion would take a trade and sustainable development viewpoint, as well as a WTO law perspective and consider the positive or negative impacts eventually resulting on the diverse categories of developing countries and implications on the general principles and systemic issues of the multilateral trade system. For a select group of agreements (e.g. agriculture and GATS), the paper would elaborate on these ideas by focusing on the most important parts of each specific agreement and speculating on how a particular kind of differentiated application could affect the interests of diverse groups of countries<sup>23</sup> and how it could affect various sets of principles.
- **Paper P3**: The policy paper would integrate the discussions of the issue papers and the results of the dialogues and efforts to promote consensus. This paper, with the final versions of the issue papers, would be presented to the special retreat for ambassadors and high officials to be held in mid-September.