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Smoke and Mirrors? Sub-Saharan Africa's Negotiating Position in the Doha Development Agenda through the Prism of Special and Differential Treatment

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Current negotiations over special and differential treatment (SDT) in the World Trade Organisation (WTO) are rather complex, and fraught with all manner of difficulties. A plethora of proposals is currently under consideration in various committees, making it difficult to gain a holistic sense of where this process is heading. Arguably only those involved in these negotiations really understand the state of play; therefore this article does not set out to provide an update. Rather, in an effort to make out the wood from the trees it seeks to place them in the broader context of the trajectory of the Doha Development Agenda (DDA), and draws out their wider implications for sub-Saharan Africa (SSA).

To locate these negotiations properly it is necessary to place them in historical perspective. First, we explain why the WTO's predecessor organisation, the General Agreement on Tariffs and Trade (GATT) was established. Then the broad evolution of SDT in the global trading system is considered. We then outline some reasons why SDT is important for sub-Saharan African countries; and conclude by outlining some possible outcomes of the Cancun ministerial in light of trade-offs potentially linked to SDT, and the implications thereof for sub-Saharan Africa.

The GATT sought to regulate the manner in which national foreign trade policies are conducted to avoid a situation reminiscent of the 1930s where states tried to obtain economic advantage by restricting imports and dumping subsidised goods on other states. That promoted a cycle of retaliation, thereby seriously inhibiting international trade. Multilateral negotiations subsequently became the primary means through which consensus over the 'rules of the game' for governing international trade was obtained, and market access concessions ceded. In this light, the GATT compromise has been described as 'Keynes abroad,

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Smith at home',² whereby developed country governments retained protection over and intervention in significant parts of their economies whilst collectively allowing for greater reciprocal market access in trade in goods.

Through successive GATT rounds average tariff levels in the developed world were substantially reduced and global trade in goods flourished. Subsequently, and arguably consequently, economic power in the trading system became multipolar, with the emergence of the European Union and Japan as major trading entities. As competition between the major trading powers increased, the GATT became more important as the regulating mechanism of global trade and presaged the later formation of the WTO with its binding dispute settlement mechanism.

Whilst it is politically necessary in most states to manage their integration into the global trading system in a mercantilist fashion, it is not necessarily the best economic development strategy. Opinions vary on what constitutes appropriate development strategy and depend fundamentally on where one is located on the ideological spectrum. Our starting point is that the global trading system is a supplement to effective domestic policy formulation and implementation. In other words development begins at home. Within this free trade, managed effectively through appropriate supporting institutions,³ is an important path to promoting economic development and poverty alleviation.

When the GATT was formed in 1947, there was no mention of SDT even though 11 of the founding members were developing countries. This is not surprising because SDT is a deviation from the principle of non discrimination which the original GATT members strictly observed, at least insofar as tariffs were concerned.

SDT was developed between the mid-1960s and mid-1980s in response to pressure from developing countries, which challenged the assumptions that trade liberalisation on an MFN⁴ basis would automatically lead to their growth and development. This view gained political momentum with the independence of developing countries in Asia and Africa. This consensus was framed in terms of the import-substitution-industrialisation (ISI) model, the dominant economic development paradigm of this period. Within this the theory of 'export pessimism' was an important pillar.⁵ This theory and ISI more generally were actively

² We attribute this description to Razeen Sally of the London School of Economics, who brought it to our attention.

³ The importance of institutions in development has justifiably received much attention in recent years. Here we wish to draw attention to the importance of tailoring institutions to specific circumstances, ie we do not subscribe to a 'one size fits all' approach. This necessarily implies that negotiations over regulations need to be tailored to domestic conditions. However, the problem with this approach is that it risks resulting in a WTO-lite in which agreements devolve to the lowest common denominator. The balance between these two positions is at the center of the SDT debate.

⁴ 'Most favoured nation'. This essentially requires that concessions granted to one 'contracting party' have to be extended to all contracting parties. Thus reciprocal liberalisation is built into the system.

⁵ This held that if all developing countries focused on export promotion of, generally, commodities, the result would be global over-supply and price reductions leading to balance of payments problems. ISI in order to protect the balance of payments was a logical development of this thinking. It is most famously associated with Raoul Prebisch, the first Secretary General of UNCTAD. For a succinct overview of the history of SDT and further elaboration on these arguments see Hoekman BM & MM Kostecki, *The Political Economy of the World Trading System: The WTO and Beyond*. Oxford: Oxford University Press, 2001, chapter 12.

promoted by UNCTAD,⁶ itself an outgrowth of the SDT debate. Furthermore, and perhaps crucially for those countries in the western 'camp', the US and its allies were prepared to tolerate the implicit discrimination ISI implied in order to secure allies for the fight against global communism.

SDT found concrete expression and codification in the Tokyo Round. This consisted largely of providing flexibilities and 'policy spaces' to developing countries to pursue their own (ISI) development strategies in line with the prevailing orthodoxy. This built on earlier initiatives such as the provisions contained in Part IV of the GATT and the establishment of the Generalised System of Preferences in 1968. However, it was done largely at the expense of negotiating market access into developed country markets, notably in the key areas of agriculture and clothing and textiles. Furthermore, several key areas of rules formation of interest to developed countries were covered under plurilateral codes in which developing countries could choose to participate or not. However, non-participation carried with it the cost of not being able to contribute to the design of rules which were subsequently incorporated into the Uruguay round agreements.

In the 1980s the ground shifted decisively. Firstly, ISI as the development strategy of choice was discarded in many parts of the developing world in favour of export orientation strategies and unilateral liberalisation. The demonstration effect of successful export-led industrialisation in the newly industrialised economies of east Asia,⁷ and a newly assertive US Administration under Ronald Reagan promoted this shift.⁸ Secondly, it became apparent that SDT provisions in the GATT had not reversed developing countries' marginalisation from the multilateral trading system. Their effectiveness and value became questionable. Consequently, some developing countries came to the view that SDT served only to hinder their development and competitiveness.

So in the Uruguay round the 'Tokyo approach' to SDT gave way to one of limiting policy flexibilities and exemptions from obligations, except for least developed countries (LDCs), whilst allowing for 'asymmetry' in developing country commitments. This found expression in longer time-periods for implementation of agreements, smaller tariff and subsidy reduction commitments, and more favourable treatment in trade remedy cases brought by developed countries. Importantly, agriculture and clothing and textiles were brought into the ambit of WTO disciplines, albeit in a highly unsatisfactory manner. In return, developing countries took on a range of new commitments that were brought into the WTO by the developed countries and made subject to reinvigorated dispute settlement institutions. In this respect the Uruguay round became a transitional phase in fully integrating developing countries into a single rules-based trading system with negotiations guided by the 'single undertaking' principle. To pacify developing countries, a range of SDT provisions were built into the various WTO agreements. However, these were largely hortatory and non-binding, and therefore not subject to dispute settlement.

⁶ United Nations Conference on Trade and Development, established in 1964. UNCTAD also successfully promoted the introduction of the Generalised System of Preferences, adopted in 1968.

⁷ Furthermore, this presaged the emergence of a previously unnoticed phenomenon in global trade: the rise of south-south trade. Consequently the homogeneity of the developing world has increasingly been called into question.

⁸ Cold war allies, particularly Japan but also other east Asian states, had been put on notice by the Nixon administration. The Reagan administration, in tandem with an increasingly protectionist congress, adopted a more assertive trade strategy.

The developing world was mostly disappointed with the outcomes of the Uruguay round. Many countries feel that they were cheated by the developed world in signing up to the Marrakesh agreement marking the birth of the WTO. This dissatisfaction is manifested in current discussions concerning inter alia, the implementation agenda⁹ and SDT, two sides of the same coin. In both cases OECD countries are generally reluctant to re-open existing agreements, an important factor that will mitigate against the prosecution of this area of negotiations. This has prompted some developing countries to take trade negotiations more seriously, although many still lack the capacity to participate effectively.¹⁰

Given disparities in negotiating power and institutional capacity, together with the path-dependence of previously negotiated agreements, it is scarcely surprising that developing countries were not able to secure a better deal from the developed world. However, there are many more developing countries in the WTO now. So now there is at least the prospect of countervailing negotiating power to ensure better market access outcomes. Yet the rise of south-south trade has presaged the emergence of a core of dynamic developing country exporters, notably China, with a strong interest in opening up larger developing country markets to their exports. Furthermore, even if the SDT agenda were the best development option, developed country extension of preferences on a discriminatory basis to selected groups of developing countries will serve to divide the latter. Ultimately this lack of homogeneity in the developing world may be SDT's Achilles heel.

In addition, concerns over SDT need to be balanced with careful consideration of its legacy for developing countries. Specifically, by focusing scarce negotiating capacity on exclusions and preferences, did developing countries forego gains elsewhere? The exclusion of agriculture and clothing and textiles from the Tokyo round suggests that this may well have been the case. Secondly, has this legacy cultivated a 'begging bowl' mentality, as some suggest? Have developing countries, particularly in SSA, become reliant on preferences and hand-outs at the expense of taking charge of their own development? In our view this may well be the case, locking many African economies into long-term dependency on low value-added production for developed country markets.

The most striking feature of SSA's¹¹ overall negotiating position is the lack of an offensive agenda, excepting agriculture.¹² However, agriculture is so problematic in the OECD that it is

⁹ Hoekman BM & MM Kostecki, op. cit., p.398, provide a succinct summary of the implementation agenda: 'Implementation concerns were of three types. One was to ensure that high-income WTO members would deliver on their promises and commitments to developing countries. A second related to the (in)-ability of developing countries to implement the many Uruguay Round agreements before the various transition periods expired. The third was to question whether the substantive disciplines of some of the WTO agreements were compatible with national development priorities'.

¹⁰ For an overview of this issue and the increasing importance accorded to trade negotiations by some developing countries, see S Page (2003), *Developing countries: Victims or Participants*. London: Overseas Development Institute, www.gapresearch.org. For a novel approach to teaching trade negotiations skills, see www.commercialdiplomacy.org. This new field aims to teach government officials how to negotiate international trade agreements, covering research, advocacy, and negotiations skills. It will be interesting to see whether the OECD supports this approach as part of its capacity building efforts.

¹¹ We use this broad aggregate grouping with caution, as economic interests differ between states within it. Clearly South Africa stands out in this regard, and sits somewhat uncomfortably within the Africa group in the

unlikely that far-reaching concessions will be made. Furthermore, the Cairns group, including South Africa, is best placed to take advantage of whatever crumbs fall from that table. This places SSA in an almost entirely defensive position. Seen in this light, SDT takes on a new meaning, so it is scarcely surprising that the Africa group has made the running on this agenda. The real question is whether, in the face of likely inducements (preferences) and pressures (structural adjustment financing) from the OECD and the larger developing countries, the Africa group will be able to stay the course. However, even if it doesn't and trade policy consequently moves in a more liberal direction, in our view this would be to SSA's long-term benefit in any event.

Further complicating matters, the EU and other developed countries will negotiate on agriculture, but will require trade-offs in the form of negotiations over trade and the environment and the Singapore issues.¹³ The former should be resisted pending far greater clarification, owing to the dubious, potentially protectionist purposes to which such an agenda could be put, and the complexity of such negotiations. We address the latter below.

For developing countries, notably in Africa, this means that an expanded negotiating agenda is almost inevitable. From a negotiating viewpoint it makes sense for resource-starved countries to delay this outcome until such time as the developed world demonstrates sufficient good faith by agreeing to remove some of the more egregious imbalances in the system particularly agricultural subsidies. Moreover, if anything is to be learned from the Uruguay round outcomes, it is that developing countries should not bow to pressure to sign an agreement until they fully appreciate its implications for their development and trade promotion goals. Seen in this light, it would not be wise at this stage for African countries to spread their scant negotiating capacity too thin by conceding to the addition of all of the new issues to an already overloaded programme. In this respect African countries are justifiably taking a cautious approach: study and clarification first and negotiations later. Yet at the same time this has to be balanced against the desire of other countries to move forward.

In order to increase the technical and negotiating capacity of developing countries, reallocation of resources within national capitals away from, for example, the UN towards the WTO should also be a top priority. This has to be combined with further investment in implementation capacity. The developed world will have to play a key role here in providing resources for implementation, particularly where new institutions have to be set up. One possible variant of SDT would be to condition establishment of such institutions on receipt of agreed-upon resources in order for dispute settlement to apply. However, this may well set SSA countries up for long-term dependence on resource transfers from the OECD, not a good development strategy. This will therefore have to be balanced with the necessary objective of enabling developing countries to manage their own development in accordance with self-defined development priorities. Partly this should involve building capacity in the respective private sectors of developing countries, as they are often disorganised yet face well-organised lobbies in the OECD.

WTO. Nonetheless the term clearly has some utility, not least because most African leaders aspire to greater unity, even if this is often observed in the breach.

¹² For a strong argument in favour of SSA countries joining the Cairns group, see Perkins F, 'Africa's agricultural trade reforms and development options', *SAIIA Trade Policy Briefing*, 1, 2003.

¹³ Trade and competition, trade and investment, trade facilitation, and government procurement.

The Africa Group has been very vigilant in making critical proposals that have by and large driven the negotiations on SDT. They should, however, not be overly defensive in approach especially if they want to get a better deal, notably with Mode 4 of the GATS,¹⁴ which deals with the temporary movement of 'natural persons' from the territory of one member to that of another to provide a service. Developing countries are keen to have this area substantially liberalised because, generally-speaking, they possess large pools of low-skilled and semi-skilled labour that could be 'exported'.¹⁵ However, in light of the sensitivity of immigration policy in OECD states the political difficulties of obtaining agreement for further liberalisation in this area are immense. Therefore, within the GATS developing countries and SSA in particular should pay serious attention to liberalising key infrastructural services sectors, notably telecommunications, transport, energy and finance. This would promote the investment in growth-enabling infrastructure which so many countries desperately need.

They should also seriously consider which of the four Singapore issues they may negotiate on should developed countries concede to their demands. In our view this should include trade facilitation and transparency in government procurement, these being the least problematic of the Singapore issues and potentially the most beneficial. Competition and investment could be incorporated by way of plurilateral codes if necessary. However, not having a seat at the table may ultimately be self-defeating. However, SDT's contribution to development in each and every such agreement must be evaluated and alternatives explored.

In conclusion, the DDA provides developing countries with the opportunity to ensure the rules negotiated are compatible with development in the first place. Such a chance should not be squandered. Furthermore, development needs should not be dealt with as an 'addendum' after the principal architectural features of the regime have been established. Developed countries should also abstain from using 'development' and SDT merely as a public relations exercise. On the other hand African countries should never assume that disengagement and minimal commitments are the best recipe for supporting the development process through the WTO.

¹⁴ The General Agreement on Trade in Services.

¹⁵ We should note in passing that it is not clear whether SSA really possesses a comparative advantage in cheap labour. It most certainly does not possess an absolute advantage.