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Special and Differential Treatments in World Trade Rules

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This article aims to present an integral vision of the Special and Differential Treatment provisions, which form the cornerstone of the development dimension at WTO and constitute one of the main areas of debate being discussed at the Doha Round. With this purpose, the article analyzes the legal status of the Special and Differential Treatment provisions as they relate to world trade rules; it also examines their possible evolution following the debates in this round of multilateral negotiations.

Keywords: developing countries, Doha Round, Special and Differential Treatment

Introduction

The main objective of the rules of the World Trade Organization is the liberalization of international exchanges. These rules are based on the non-discrimination principle, which has two manifestations: Most Favored Nation (MFN) Treatment, and National Treatment. The first of these is the cornerstone of the WTO system; however, its application to relationships between states with different degrees of development has been much criticized.[1]

Almost three-quarters of the members of the WTO are developing countries. This fact is taken into account by both the organization itself and its members; consequently, from the very beginning of the multilateral trade system differences in degree of development have had a significant impact on WTO rules. The aim of this work is to analyze the current situation and the possible evolution of the Special and Differential Treatment provisions in WTO rules.

II. Special and Differential Treatment

An important component of the development dimension of the WTO has been the concept of Special and Differential Treatment, but the concept is a result of the Uruguay Round and is thus quite young. Previous to the Uruguay Round, exceptional treatment provided to developing countries was called Differential and More Favourable Treatment, and its content was different in nature to that of Special and Differential Treatment. Thus, while Differential and More Favourable Treatment in GATT 1947 was a development tool, in the WTO development is a secondary aim: it is understood that the first step toward development is the *adjustment* to WTO rules, and Special and Differential Treatment is one of the main tools of this adjustment. The reasons for this change can be found in the modification of the rules' *objective:* the goal of GATT 1947 was development, while for the WTO the first aspiration is adjustment to multilateral system law.

a. Differential and More Favourable Treatment

Obviously, Differential and More Favourable Treatment implies a *beneficial* treatment,[2] the aim of which is to improve the economic situation of developing countries. This treatment is considered a *development tool*[3] whose objective is to assist developing countries in order to provide them with the chance to overcome their economic and social vulnerability.

The most important expression of *More Favourable Treatment* is *Preferential Treatment* and, more specifically, the Generalized System of Preferences (GSP). Thus, *More Favourable Treatment* consists in granting specific rights in order to protect

markets and to facilitate access to the markets of other country members.[4] In other words, *More Favourable Treatment* has two manifestations:

Ad intra manifestation: developing countries are allowed to restrict access to their markets in the case of balance-of-payments problems that affect their industry, as well as to manage their tariffs with more flexibility.

Ad extra manifestation: developing countries' products enjoy easier access to markets of both developed countries (GSP) and other developing countries (South-South preferences).

b. Special and Differential Treatment

The replacement of the term *More Favourable* with the term *Special* is significant, and it is important to define what Special and Differential Treatment is. The WTO does not define *Special;* nor does it define *Differential*, nor *More Favourable.*[5] According to the evolution of these provisions at the WTO, *Special and Differential Treatment* can be defined as the legal verification of the economic differences between developed-country and developing-country members.

Special and Differential Treatment can be distinguished from Differential and More Favourable Treatment in that the former does not provide developing countries with any kind of specific protection; rather, it merely regulates the adjustment of developing countries to WTO rules. As Tortora notes, Special and Differential Treatment is an adjustment tool for developing countries, the aim of which is to develop the capacity of their domestic legal frameworks to accommodate global trade rules. From the point of view of Uruguay Round negotiators, this adjustment "will automatically be beneficial for their development. In other words, more than aiming at developing a local productive capacity, the existing WTO [Special and Differential Treatment] measures aim at developing legal and institutional frameworks that suit the agreed trade obligations."[6]

The reason developing countries accepted this normative change is that they "entered the Uruguay Round negotiations advocating less emphasis on non-reciprocity with the negotiating objective of accepting a dilution of [Special and Differential Treatment] in exchange for better market access and strengthened rules. Notably, they did not seek exemption from the multilateral trade agreements, accepting the 'single undertaking' approach of the Round."[7] Indeed, "developing countries were convinced that they could gain more benefits from the multilateral trading system, if developed countries abolished barriers to their trade, especially in the agricultural and textiles and clothing sectors. The perceived benefits of the [Special and Differential Treatment] provisions in the GATT pale into insignificance when compared to the potential benefits that could be gained from improved access for products of export

interest to them, especially agricultural and textile and clothing products. Furthermore, developing countries became convinced that liberalization at the multilateral level under the auspices of the GATT was much more secure than the unilateral preferences that they were accustomed to receiving from developed countries."[8]

Unfortunately, the Uruguay Round Agreements did not give the necessary impulse towards development. Instead, as Singh remarks, "it will be difficult to maintain that … several … elements of the Agreements normally have … a positive impact on economic development …."[9] In other words, WTO rules clearly changed the way this treatment had been understood before the Uruguay Round; therefore, the reorientation embodied in the formulation of Special and Differential Treatment after the Uruguay Round, and the results of the multilateral negotiations, do not meet the developing countries' expectations.[10]

In the WTO legal framework,[11] all Special and Differential Treatment provisions have two characteristics in common: distinction between developing and developed countries, and exception to another rule. Beyond these two commonalities, the provisions are quite heterogeneous; nevertheless, it is possible to classify them into several categories:

- transitional periods,[12]
- positive obligations to developed-country members,[13]
- positive obligations to developing countries,[14]
- safeguards of the interests of developing-country members,[15]
- technical assistance,[16] and
- provisions relating to least-developed-country members (LDCs).[17]

A great portion of the rules are difficult to implement due to the *soft law* character of most Special and Differential Treatment provisions. As Olivares notes, it "is paradoxical that while the entire GATT legal regime of 'soft law' rules has been upgraded to 'hard law' status, by virtue of the creation of a legally enforceable mechanism, … the set of GATT soft legal provisions granting benefits to developing countries and LDCs has not been upgraded."[18] Most Special and Differential Treatment provisions are *best endeavour* clauses that do not specify *rights and obligations* clearly. This situation creates important difficulties in putting into practice Special and Differential Treatment provisions and in bringing claims forward for dispute settlement.[19] Furthermore, Special and Differential Treatment provisions are frequently not adapted to the needs of developing countries and LDCs. For instance, the transitional periods establish timeframes for developing-country members to adapt their domestic legal frameworks to WTO rules, but it is unlikely that a developing-

country member will have been able to overcome its development problems by the time a transitional period ends.[20]

In spite of the flexibility and the more permissive treatment that Special and Differential Treatment provisions give to LDCs – see The Decision on Measures in Favour of Least Developed Countries and Article XI.2 of the Agreement Establishing the World Trade Organization[21] – their needs are not adequately reflected in WTO rules. LDCs are marginalized in world trade, and WTO rules do not provide the legal framework required to improve their participation and to enjoy its benefits. Certainly, "there is an urgent need for positive actions in the areas of both market access and technical assistance in the context of the next trade round. Without such actions [Special and Differential Treatment] would be hardly relevant for the trade development of LDCs."[22]

Finally, the influence of Differential and More Favourable Treatment instruments in the WTO has decreased significantly[23] due to the erosion of preferential tariff margins under non-reciprocal preferences; this erosion is the result of two observable facts:

- the tariff reductions were extended by the application of the MFN clause, and
- regional trade agreements, which offer a deeper integration, have proliferated.[24]

Fundamental to the Doha Round is the need to address these deficiencies of both Differential and More Favourable Treatment and the Special and Differential Treatment provisions.[25]

III. Special and Differential Treatment in the Doha Round

One of the main objectives of the Doha Round, also known as the *Development Round*, is to promote the development of developing and LDC members. One of the most problematic issues of its mandate is the negotiations on Special and Differential Treatment.

As the *Doha Ministerial Declaration* and the *Implementation-related Issues and Concerns Decision* say, Special and Differential Treatment is an "inherent key aspect of the GATT/WTO framework",[26] but these provisions have many deficiencies to be addressed in the multilateral negotiations. To serve Doha's mandate – review Special and Differential Treatment provisions *with a view to strengthening them and making them more precise, effective and operational* – the Ministerial Conference established three stages:

1. identify mandatory and non-mandatory Special and Differential Treatment provisions;

2. examine the use of the provisions;

3. incorporate the provisions into the WTO legal system.

The first two stages were accomplished easily;[27] unfortunately, however, the third stage is more complicated because of the divergent positions of developing-country and developed-country members.

The debate about incorporation of the Special and Differential Treatment provisions into the WTO legal system will be analyzed in two steps: the three basic elements of the Special and Differential Treatment negotiations are introduced in the next subsection; following that, the 88 agreement-specific proposals that have been tabled by developing-country members are briefly categorized.

a. The Basic Elements of the Special and Differential Treatment Negotiations

The Special and Differential Treatment negotiations have three basic elements:

1. reinforcement of the Special and Differential Treatment provisions (Paragraph 44 of the Doha Ministerial Declaration);

2. the monitoring mechanism; and

3. the definition and classification of developing-country members and the graduation of Special and Differential Treatment.

1. Reinforcing the Special and Differential Treatment provisions is probably one of the most problematic obstacles of the negotiations. From a legal perspective, there are two ways to implement this mandate: the *amendment* and the *authoritative interpretation*.

The *amendment* procedure (article X of the WTO Agreement) could convert non-mandatory Special and Differential Treatment provisions to mandatory ones. As the Secretariat says, "amendment of the relevant provisions would involve replacing the term 'should' with the term 'shall', while leaving the rest of the provisions unchanged."[28] Unfortunately, developed-country members do not support this proposal.[29]

The *authoritative interpretation* (article IX.2 of WTO Agreement) cannot modify the text of the agreements, as its aim is not to substitute for the objective of the amendment procedure. But, as the Secretariat has noted, the Appellate Body suggested in the case *Canada – Measures Affecting the Export of Civilian Aircraft* that "in some instances and depending on the context, a provision that used the word 'should' could imply a 'duty' rather than a mere 'exhortation'.[30] It should be noted that the Appellate Body stated to this effect when interpreting a provision of a procedural nature.[31] If it

were felt that one or other of the non-mandatory Special and Differential Treatment provisions which use the term 'should' implied a duty rather than exhortation, an authoritative interpretation could be used to confirm that the relevant provisions are, in fact, meant to be mandatory in nature."[32]

Developed countries do not support either procedure for reinforcing the provisions. They argue that the "failure to use [Special and Differential Treatment] provisions does not necessarily mean there is a problem with their wording or that they are irrelevant. …. We should not be too hasty in assuming that they would be better served by changing them. To make efficient use of our resources in considering proposals to make provisions more effective, we might first assess if countries can make better use of existing provisions."[33]

2. The monitoring mechanism is not as controversial as reinforcement of the Special and Differential Treatment provisions. Members agree on this proposal, but they differ in its *modus operandi*. For developed-country members, the monitoring mechanism should have three main functions:

"(a) Enhancing integration and exchange among WTO bodies and committees, in effect, serving as a focal point for interaction and dissemination of information (for example, in the areas of technical assistance, training, and WTO programming).

(b) Assessing implementation and utilization of Special and Differential Treatment provisions for purposes of furthering integration of Members into the WTO system by tracking the effective use of transitions and using bench-marks to tailor implementation plans to development needs and provide accountability.

(c) Ensuring more effective and supportive relations with other international institutions, particularly the UNCTAD/WTO International Trade Centre and the international financial institutions."[34]

However, from the point of view of developing-country members, the Special and Differential Treatment monitoring mechanism should have other kinds of competencies. As the African Group remarks, "the mechanism is to be established to undertake functions in relation to [Special and Differential] Treatment provisions that have undergone suitable changes after the exercise mandated by the Ministers, or new [Special and Differential] Treatment provisions that will be negotiated. In this regard, it is our firm understanding that the mandate to the Special Session of the [Committee on Trade and Development] cannot be passed down or taken over by the negotiating bodies. These bodies should negotiate new [Special and Differential] Treatment provisions in accordance with the ministerial instructions relating to the negotiations, while the [Committee on Trade and Development] completes the exercise of reviewing and strengthening the existing [Special and Differential] Treatment

provisions, including an appropriate framework for including [Special and Differential] Treatment in the architecture of WTO Rules."

The three main functions of the monitoring mechanism, from the point of view of the African Group, should be

"(a) a requirement that all WTO Committees keep [Special and Differential] Treatment as a standing agenda item for all their meetings, and that they produce regular reports on [Special and Differential] Treatment;

(b) the establishment of a sub-committee on [Special and Differential] Treatment as a subsidiary organ working under and reporting to the [Committee on Trade and Development]; and

(c) the holding of special annual sessions of the General Council and scheduling dedicated agenda items at the biennial sessions of the Ministerial Conference."[35]

Currently, there is not a wide consensus about the functions and competencies of this new organ. If a monitoring mechanism is to be established, it is absolutely necessary to define clearly its *modus operandi*. Otherwise, this organ could reproduce the same functions and competencies in technical assistance that the Committee on Trade and Development or the WTO Secretariat have. Unfortunately, finding a consensus on this issue does not seem to be an easy task.

3. The definition and classification of developing-country members and the graduation of Special and Differential Treatment are the main questions in the debate about the future of Special and Differential Treatment. There is no definition of *developing country* in WTO rules. Instead, the method used to classify WTO members as developing or developed countries is self-election. This method does not take into account the tremendous economic heterogeneity among developing-country members; the Doha Round's mandate seems to be a good opportunity to define what a developing country is, as well as which developing countries *should benefit from* the new Special and Differential Treatment understanding.

Switzerland based this proposal on the non-discrimination principle and on the ideological basis of Special and Differential Treatment, i.e., a different treatment should be provided to countries with different development levels: "The multilateral trading system is based upon the principle of non-discrimination. Yet, if common rules affect Members in substantially different ways, it might be necessary to modify the application of a rule or create a special rule in order not to discriminate against certain Members. Equal treatment of Members with fundamental differences of starting positions is not conducive to creating a competitive edge for and to fostering the trade interests of those – the poorest – who need it most. This is why developing countries, as a group, have been recognized in some GATT and WTO Agreements and

Decisions. … For this reason, participants should reconsider and simplify the various existing and requested categories and agree on a transparent differentiation among developing countries based upon per capita income and trade participation."[36]

Thus, developed countries want the graduation of Special and Differential Treatment rules, since they resist providing the same treatment to advanced developing countries that they provide to poor developing countries and LDCs. This is due to the fact that they have a competitive relationship with advanced developing countries, as well as to the possibility that giving more beneficial treatment to them could cause an economic disadvantage to developed countries.

Developing-country members do not accept the graduation of Special and Differential Treatment rules because it would mean that advanced developing countries would lose the full economic benefits of Special and Differential Treatment. Furthermore, for these countries, becoming developed members and losing the treatment that developing countries receive would mean serious damage to their economic relationships with developed-country members. In fact, advanced-developing-country members hold a very important position in trade relationships, and are thus competitors for developed members. As a consequence, developed members demand equal treatment with emergent economic powers.

On the other hand, poor developing countries and LDCs need, in some cases, the political influence of advanced developing countries, such as Brazil or India. With graduated treatment, advanced developing countries would lose their ability to be grouped with other developing economies in Doha´s negotiations.[37]

At any rate, from a pragmatic and realistic point of view, if developing-country members want to see the Special and Differential Treatment provisions reinforced, they should accept the definition and classification of the term *developing country* and consent to a graduation in Special and Differential Treatment implementation. In this way, India or Mexico would not be treated in the same way as Nicaragua or Cameroon, since they have different development needs.

In other words, the survival of Special and Differential Treatment in the WTO's future requires accepting a new Special and Differential Treatment understanding: a special and *double* differential treatment that could distinguish among developing-country members, not only between the general category of developing countries and the subcategory of LDCs, but also within the general category of developing-country members according to their different levels of development.

b. The Agreement–specific Proposals

The lack of a tentative consensus about the three fundamental elements outlined above meant that Special and Differential Treatment negotiations were focused on the 88 agreement-specific proposals tabled by developing-country members.

The WTO General Council has classified these proposals into three categories:

Category I – proposals on which it seems that it is likely that an agreement will be reached;

Category II – proposals that are under negotiation in other WTO organs; and

Category III – proposals on which it seems that it is not likely that an agreement will be reached.

Since the Hong Kong Ministerial Conference, the Trade and Development Committee has focused its attention on 16 proposals – 8 that fall into Category I and 8 that fall into Category III. What happened to other the 72 proposals? As the committee notes, "of the 88 Agreement-specific proposals that had been tabled in the Special Session, … the Category II proposals had been referred to other negotiating and WTO bodies. That had left 50 Category I and III proposals under consideration in the Special Session. Before Hong Kong, Members had reached an in-principle agreement on 28 proposals …. This left 23 proposals, of which Members had, at Hong Kong, adopted five LDC proposals. This left 18 proposals pending for consideration in the Special Session, of which two related to the Agreement on Textiles and Clothing which had since expired."[38] Thus, 16 proposals remained, 8 in Category I and another 8 in Category III.

Thus, the main advances have been realized in the Category I proposals and, to a lesser extent, in the Category III proposals.[39] Because of the frequent marginalization of the other WTO organs to which they were referred, the Category II proposals have received little attention.[40]

IV. Final Remarks

The Doha Round's mandate has not been accomplished yet, and it is necessary to urge members to conclude the negotiations. The Special and Differential Treatment mandate is one of the most controversial topics in the round, but, in order to overcome the underdevelopment issue, the WTO members should act as soon as possible to make Special and Differential Treatment provisions "more precise, effective and operational" as Paragraph 44 of the Doha Declaration mandates.

Endnotes

1. See Ana Manero-Salvador, *OMC y desarrollo*, Tirant lo Blanch, Valencia, 2006. p. 48.
2. Michalopoulos establishes five characteristics of this treatment: "(a) they had ample flexibility under the existing GATT rules in providing protection on infant industry or balance of payments grounds; (b) they did not have to liberalise their trade on a reciprocal basis in the context of multilateral trade negotiations; (c) they could support their export through subsidies – although subject to the risk of countervailing duties; (d) they had preferential access to developed country markets under the GSP; and (e) they had a new Fund to support commodity stabilization schemes." Constantine Michalopoulos, *The Role of Special and Differential Treatment For Developing Countries In GATT and The WTO*, Paper prepared for WTO Seminar on Special and Differential Treatment for Developing Countries, 2000. http://econ.worldbank.org/docs/1143.pdf p. 9.
3. As Tortora says, "until the Uruguay Round, when the trade agenda was confined to trade in goods, [Special and Differential Treatment] was conceived as a development tool in particular by allowing flexibility in the use of tariffs and quotas in case of balance of payments crises affecting the local industries (art. XVIII of the GATT 1947, article XXVIII bis), and by helping developing countries' exports to compensate their difficulties in acceding to international markets (non-reciprocity in the tariff reductions and generalised systems of preferences as provided by the GATT Part IV of 1964 and the Enabling Clause of 1979). Both instruments were closely linked to the nature of the multilateral trade agenda until the 80's, i.e. 'border measures' applied to market access of goods, and 'policy spaces' allowed for the utilisation of tariffs applied to imports of goods." Manuela Tortora, *Special and Differential Treatment and Development issues in the multilateral trade negotiations: the skeleton in the closet*, WEB/CDP/BKGD/16, 2003. http://www.atdforum.org/IMG/doc/S_Dmt-Feb03.doc p. 5.
4. John Whalley, *Special and Differential Treatment in the Millenium Round*, CSGR Working Paper, University of Warwick, CSGR and ESCR, 1999, Vol. l, No. 30/99. p. 2.
5. Mari Pangestu, *Special and Differential Treatment in the Millenium: Special for Whom and How Different?*, The World Economy, 2000, Vol. 23, No. 9. p. 1296 and 1297.
6. Manuela Tortora, *Special and Differential Treatment and Development issues in the multilateral trade negotiations: the skeleton in the closet*, cit. p. 5.
7. Hunter Nottage, *Trade and Competition in the WTO: pondering the applicability of special and differential treatment*, Journal of International Economic Law, 2003. p. 28.
8. Edwini Kessie, *Enforceability of the legal provisions relating to special and differential treatment under the WTO agreements*, Paper prepared for WTO Seminar on Special and Differential Treatment for Developing Countries, 7 March 2000. p. 6.

9. Ajit Singh, *Elements for a New Paradigm on Special and Differential Treatment: Special and Differential Treatment, The Multilateral Trading System and Economic Development in the 21st Century*, International Dialogue: Making Special & Differential Treatment More Effective and Responsive to Development Needs, 2003. p. 7.
10. Kiichiro Fukasaku, *Special and Differential Treatment for Developing Countries: Does it help those who help themselves?*, Working Papers No. 197, UNU/WIDER, September 2000. p. 8.
11. See the technical annex.
12. See article 15.2 of the Agreement on Agriculture.
13. See article IV of GATS.
14. See article 27.4 of the Agreement on Subsidies and Countervailing Measures.
15. See article 10.1 of the Agreement on Subsidies and Countervailing Measures.
16. See article XXV.2 of GATS.
17. See article 12.8 of the Agreement on Technical Barriers to Trade.
18. Gustavo Olivares, *The Case of Giving Effectiveness to GATT/WTO Rules on Developing Countries and LDCs*, Journal of World Trade, 2001, Vol. 35, No. 3. p. 550.
19. See documents WT/COMTD/W/77/Rev.1/Add.1, WT/COMTD/W/77/Rev.1/Add.1/Corr.1 WT/COMTD/W/77/Rev.1/Add.2, WT/COMTD/W/77/Rev.1/Add.3 and WT/COMTD/W/77/Rev.1/Add.4.
20. See document WT/GC/W/442.
21. "The least-developed countries recognized as such by the United Nations will only be required to undertake commitments and concessions to the extent consistent with their individual development, financial and trade needs or their administrative and institutional capabilities."
22. Fukasaku says: "More specifically, the following three points are worth noting:

    - Granting duty- and quota-free access to all products from LDCs remains a top priority for international policy action, as the benefit of non-reciprocal trade preferences is very limited for them.

    - The implementation of the WTO Agreements needs to be re-assessed country by country, taking into account LDCs' development needs and the administrative and financial constraints.

    - Binding technical assistance commitments are necessary to make [Special and Differential Treatment] provisions more responsive to the specific needs of LDCs." Kiichiro Fukasaku, Special and Differential Treatment for Developing Countries: Does it help those who help themselves?, cit. p. 20
23. Bonapas F. Onguglo, *Developing countries and unilateral trade preferences in the new International Trading System*, Trade Rules in the Making: Challenges in Regional and Multilateral Negotiations, Washington, D.C. The Brookings Institution Press/Organization of American States, 1999. p. 6.
24. Michalopoulos states the two main deficiencies of Special and Differential Treatment before the Uruguay Round: "first, access conditions for developing countries in developed country markets were far worse than one might suspect

given the existence of GSP and extensive reductions in tariffs on manufactures negotiated in previous GATT Rounds; second, just as the developing countries appeared to have attained success in establishing a set of trade rules that would be beneficial to their development, the intellectual underpinnings for these rules started to be extensively questioned." Constantine Michalopoulos, *The Role of Special and Differential Treatment For Developing Countries In GATT and The WTO*, cit. p. 9.

25. As Corrales, Sugathan and Primack note, "the brief history of [Special and Differential Treatment] demonstrated that the present system is not designed to address the current development concerns of developing countries. The outcry leading up to the Doha Ministerial Conference in late-2001, and the subsequent mandate to review the provisions and the system of [Special and Differential Treatment], also serves as a gauge of the increasing number of voices dissatisfied with the status quo on [Special and Differential Treatment], and development at the WTO more broadly." Werner Corrales-Leal, Mahesh Sugathan, and David Primack, *Spaces for Development Policy. Revisiting Special and Differential Treatment*, International Dialogue: Making Special & Differential Treatment More Effective and Responsive to Development Needs, 2003. p. 31.
26. Kofi Oteng Kufuor, *From GATT to the WTO. The Developing Countries and the Reform of the Procedures for the Settlement of International Trade Disputes*, Journal of World Trade, 1997, Vol. 31, No. 5. p. 145.
27. See documents WT/COMTD/W/77 of the WTO Secretariat.
28. WT/COMTD/W/77/Rev.1/Add.3. pp. 3 and 4.
29. See Remarks of the United States Delegation in the Committee on Trade and Development Special Session on Special and Differential Treatment, 14 June 2002. TN/CTD/W/9. Paragraph 26.
30. Appellate Body Report, *Canada – Measures Affecting the Export of Civilian Aircraft*, WT/DS70/AB/R, Paragraph 187.
31. The Appellate Body established: "We note that Article 13.1 of the DSU provides that 'A Member *should* respond promptly and fully to any request by a panel for such information as the panel considers necessary and appropriate.' Although the word 'should' is often used colloquially to imply an exhortation, or to state a preference, it is not always used in those ways. It can also be used 'to express a duty [or] obligation'. The word 'should' has, for instance, previously been interpreted by us as expressing a 'duty' of panels in the context of Article 11 of the DSU. Similarly, we are of the view that the word 'should' in the third sentence of Article 13.1 is, in the context of the whole of Article 13, used in a normative, rather than a merely exhortative, sense. Members are, in other words, under a duty and an obligation to 'respond promptly and fully' to requests made by panels for information under Article 13.1 of the DSU." WT/DS70/AB/R, Paragraph 187.
32. WT/COMTD/W/77/Rev.1/Add.3. pp. 3 and 4.
33. Realizing Trade and Development Objectives through Special and Differential Treatment. Submission by Canada. TN/CTD/W/21. Paragraph 17.

    The United States maintains the same opinion: "Simply put, when looking at this complex contract, we all recognize that this cannot be a situation where one group

of WTO Members has only rights but is without obligations to the system. Full access to opportunities of the multilateral trading system can only be achieved through full participation in the multilateral trading system, which is a matter of rights as well as obligations." Remarks of the United States Delegation in the Committee on Trade and Development Special Session on Special and Differential Treatment, 14 June 2002. TN/CTD/W/9. Paragraph 3.

34. See Communication from the United States of America. Special and differential treatment provisions monitoring mechanism. TN/CTD/W/19. Paragraph 4.

    See also, Communication from the European Communities. The WTO work programme on special and differential treatment; some EU ideas for the way ahead. TN/CTD/W/20. Paragraph 15.e), and Communication from Switzerland to the CTD in Special Session. Special session on special and differential treatment. TN/CTD/W/14. Paragraphs 12 to 15.

35. Joint Communication from the African Group in the WTO. Monitoring mechanism for special and differential (S&D) treatment provisions. TN/CTD/W/23. Paragraphs 2 and 3.

36. Communication from Switzerland to the CTD in Special Session. Special Session on Special and Differential Treatment. TN/CTD/W/14. Paragraph 6.

    See also Communication from the European Communities. Submission for the Committee on Trade and Development – Special Session on Special and Differential Treatment. TN/CTD/W/13, Paragraph 5, and Communication from the European Communities, The WTO Work Programme on Special and Differential Treatment, TN/CTD/W/26, Paragraph 6(a).

37. See Note on the Meetings of 7 and 18 October 2002. Committee on Trade and Development. Seventh Special Session. TN/CTD/M/7, Paragraph 78, and Communication from Paraguay, Organization of Work, TN/CTD/W/15, Paragraphs 10 and 11.

38. See Note on the Meeting of 6 March 2006. TN/CTD/M/23. Paragraph 7.

39. The negotiations dealing with Category III proposals began in June 2006. See Note on the Meetings of 1 June 2006. Committee on Trade and Development. TN/CDT/M/25. Paragraph 4. Currently there is not any hope of reaching a consensus. The chairman states: "Members were clearly far from finding a middle ground on Category III proposals." (Paragraph 41).

40. See the lack of attention given to Ccategory II proposals in Note on the Meeting of 7 April 2006. TN/CTD/M/24. Paragraph 2.

The technical annex to this paper, pages 117-123 is available as a separate document.