

A Preliminary Report on the OECD Global Forum

convened to discuss

SPECIAL AND DIFFERENTIAL TREATMENT: THINKING OUTSIDE THE BOX

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by

Simon J. Evenett¹, Rapportuer.

The purpose of this Global Forum was spelt out in the three sets of opening remarks at the beginning of the Forum, the first of which was given by Dame Billie Antoinette Miller, the Minister for Foreign Trade, Barbados. One objective was to promote a constructive dialogue between member and non-member countries of the Organisation for Economic Co-operation and Development (OECD) on the appropriate role of Special and Differential treatment (SDT) in the multilateral trading system, and it was noted that the sharing of experiences at the regional level might also be helpful in this respect. Dame Miller remarked that the Global Forum provided industrialised economies with an opportunity to learn about the substantial challenges faced by developing countries as they sought to adjust to, and make the most of, globalisation. Small and vulnerable economies, such as those in the Caribbean, were said to be at the “sharp end” of this process and their experiences might hold important lessons for the membership of the World Trade Organization (WTO). Participants were also encouraged to “think outside the box,” to challenge conventional wisdom and approaches and to be creative in devising potential means by which SDT could be made operational, so strengthening the capacity of the multilateral trading system to promote development.

After the opening remarks, the rest of the Global Forum was organised into eight panel sessions.² Over twenty speakers contributed to those panels, either as presenters of papers, discussants, or as members of a roundtable discussion. Their contributions were augmented by numerous contributions from the floor. As a result speakers from every continent and from economies at each stage of development contributed to the deliberations of the Global Forum. Speakers were drawn from civil society, academia, the international development banks and organisations, as well as from national governments. Numerous papers and powerpoint presentations were circulated to participants throughout the Global Forum. These oral and written contributions comprised the rich dialogue on SDT that took place during this two day Global Forum.

¹ Professor of International Trade and Economic Development, Department of Economics, University of St Gallen, Switzerland. Please note that this document is only a preliminary report. The views expressed in this document are my own and need not correspond to those of the OECD secretariat, the participants in this Global Forum, and the governments of the OECD member states. Comments and suggestions are most welcome and can be emailed to me at the following address: simon.evenett@unisg.ch. Other contact information can be found at www.evenett.com.

² This Global Forum was organised with the support of the World Bank, the Government of Barbados, and the University of the West Indies.

An important, and perhaps obvious, factor conditioned the discussions at the Global Forum. This was the fact that, as the Doha Round has yet to reach its conclusion, some participants (in particular some of those representing their governments in multilateral trade negotiations) felt constrained in what matters they might raise, criticise, or endorse. Fortunately, this constraint did not detract much from the ensuing discussion although, from time to time, the value of constructive ambiguity appeared to exceed the payoff to clarity. Even so, in my view, the Global Forum did break new ground in two important respects; first, by clarifying and elaborating on the set of possible goals for Special and Differential Treatment and, secondly, by identifying five potential “recipes” by which various aspects of Special and Differential Treatment could be made operational in WTO agreements and elsewhere. The latter recipes may well be useful as the Doha Round progresses, adding as they do to the set of options available to WTO members. Much of the remainder of this preliminary report is devoted to summarising these two aspects of the Global Forum.

Before doing so, however, one further important preliminary remark is in order. At the Forum there was widespread acceptance of development as a legitimate and central goal of the multilateral trading system. Moreover, it was accepted that WTO members experience a wide variety of circumstances, and that the types of SDT in the world trading system should reflect that diversity. The situations faced by small and vulnerable economies, it was frequently argued, highlighted the above considerations. The plights of the least developed countries and of the economies that benefit markedly from (non-reciprocal) preference schemes was also referred to at numerous points during the Global Forum.

A major contribution of the Global Forum was to clarify and elaborate on the set of possible goals for SDT. Many participants stressed that SDT should not be confined to measures that facilitated the integration of developing countries into the world economy. The point was repeatedly made that SDT should also seek to maximise the benefits for developing countries from the opportunities created by the world trading system and from multilateral trade reforms. An emphasis on bolstering the supply side of economies, fostering entrepreneurship, and promoting firm and economy-wide competitiveness was said to follow from this perspective. Others noted that SDT could be used to facilitate adjustment to multilateral trade reforms. Some of those adjustments could be painful, especially for developing economies that faced major shifts in comparative advantage or the erosion of long-held preferences. The desire to create “policy space” was said to be another goal of SDT. In the aftermath of last year’s Tsunami some participants noted that SDT could seek to promote flexibility in response to the non-trade-shocks that developing countries face. It was argued that, by their very nature, developing countries had limited capacities and resources to respond to unanticipated and adverse shocks, whether natural or otherwise.

Our particularly stimulating presentation by a former trade negotiator from a Central American country identified another goal for SDT in the Central American Free Trade Agreement (CAFTA). It was argued that the SDT provisions in this agreement served two purposes: to maximise the opportunities created by the agreement (a goal of SDT also noted in the previous paragraph) and to make the associated trade reforms and adjustment more politically acceptable in the signatory countries. The latter goal was accomplished by building in greater flexibilities into the CAFTA agreement (specifically as they relate to provisions on rules of origin, the operation of SPS rules, cumulation of textile-related and anti-dumping-related measures, and the terms upon which government procurement markets were opened) and by introducing special

mechanisms to address sensitive products and sectors. This speaker recommended that developing countries should be prepared to defend in a technical manner the merits of clearly articulated and specific objectives when negotiating SDT provisions, recognising that political as well as economic bottlenecks may impede the domestic reform process.

The fact that so many objectives were identified for SDT itself raises questions. For instance, are all of these objectives equally legitimate? Are these objectives consistent with one another and with the long-standing goals of the multilateral trading system? Can these objectives be prioritised or ranked? Some participants at the Global Forum did note that certain types of SDT perpetuated discrimination in the world trading system and that this did not sit well with the ultimate goal of multilateral trade negotiations which, it was argued, is to eliminate all such discrimination. Relatedly, others noted that SDT which slowed down the pace of trade reforms in some developing countries often came at the expense of opportunities to export by other developing countries.

A number of comments were made concerning the criteria for eligibility for SDT. The view was widely held that no one national characteristic could adequately form the basis for determining eligibility for SDT. Instead, in some cases it was argued that a combination of national circumstances should determine eligibility. In this respect, it was noted that many Caribbean states had a number of attributes that made them weak and vulnerable to shocks and, on this view, eligible for SDT. Another approach was advanced whereby nations that found themselves facing certain pre-agreed situations could become eligible for SDT. The pros and cons of this so-called situational approach were discussed and it represents an attempt to explore alternatives to current system of self-election of developing country status in the WTO, with its associated implications for the eligibility for SDT. The matter of graduation from SDT provisions received much less attention in the deliberations of the Global Forum than did eligibility criteria.

The situational approach described above was one of five “recipes” for making operational various aspects of SDT that were discussed at the Global Forum. In the balance of this preliminary report the four other recipes are described. Another recipe concerns the modalities for enforcing new obligations that are undertaken at the conclusion of the Doha Round. It was argued that a WTO member should be able to invoke a defence in dispute settlement proceedings if it violates a “non core” WTO obligation that damages its development prospects and where the violation does not itself generate substantial adverse knock-on effects³ for another WTO member or members. On this view WTO obligations that were not directly related to transparency provisions, MFN provisions, national treatment, the banning of quotas, and the binding of tariffs would fall into the category of “non-core” WTO obligations. The proponents of this approach recognised that a consensus is unlikely at present on what constitutes a core WTO discipline and it was noted that this matter could be settled through negotiation.

One discussant drew on both the situational approach and the distinction between core and non-core obligations to propose a “hybrid approach.” This would involve identifying on an agreement-by-agreement basis core flexibilities and non-core flexibilities, that can be invoked under certain circumstances. The advantages claimed

³ In the discussions at the Global Forum and in the associated documentation these knock-on effects are often referred to as cross-border spillovers or international externalities.

for the hybrid approach were that it would avoid a protracted debate about what are non-core disciplines; and it would provide for a set of (core) flexibilities that are always available to developing countries as well as a set of additional (the non-core) flexibilities that would be applied in specific circumstances. It was noted that additional provisions for vulnerable WTO members could be accommodated within the hybrid approach. Another discussant noted that a “club of clubs” approach which made greater use of plurilateral agreements might allow WTO members to take on differentiated commitments in selected policy areas.

The third recipe presented to the Global Forum was more general in nature and sought to demonstrate that there is a diversity of legal provisions concerning SDT in bilateral and regional trade agreements. Drawing on on-going analyses by the OECD secretariat, the point was made that certain preferential agreements between developing countries—in particular, certain region-wide and sub-regional agreements—contained elaborate legal provisions on SDT including, in some cases, common funds to finance capacity building and technical assistance in less well off signatory countries. Although these provisions went, in some cases, beyond the SDT found in comparable WTO agreements, the former were very often non-binding just like the latter. Care was taken to emphasise that the comparisons made referred only to the legal statement of provisions and not to their application, raising the possibility that the actual difference between multilateral and regional practice on SDT could be narrower than might appear otherwise. Even so, this approach was thought to have enriched the discussions of the multilateral options on SDT that are available to policymakers.

The fourth and fifth recipes link in different ways the availability of assistance to developing countries to any new multilateral obligations that they may take on. In one case, which focused on the potential for new multilateral rules for trade facilitation but which could in fact have implications for other provisions that might be agreed in the Doha Round, a so-called modular approach that linked packages of obligations to access to different pools of financial resources was advanced. It was argued that the provision of such resources, which would be used to finance technical assistance and capacity building, would be “demand driven” in the sense that the recipient would determine, in consultation with others, a plan for managing such assistance. These plans could take into account the administrative and other constraints faced by the recipient as well as the other sources of funding available to it. Implementation of new WTO obligations would, on this approach, be sequenced to take account of the availability of finance and other factors described above.

The fifth recipe contained a broader proposal to finance “aid for trade” with the goals of easing the adjustment burdens that any new multilateral obligations might result in and of facilitating the development of supply side capacities to help developing countries make the most of the opportunities created by the Doha Round. A successful Doha Round, that is, one with a high degree of ambition would, it was argued, generate substantial economic benefits for industrialised economies. Some of those gains would be diverted to a pool that could finance technical assistance and capacity building projects in developing countries, and a number of mechanisms for raising funds for this pool were discussed. The administration of such a pool attracted much comment. While remaining open to other options, proponents suggested that a facility similar in organisation to the Integrated Framework (IF) might be appropriate. Other participants felt that the deficiencies of the IF made it an inappropriate model, and

that donors should do much more to coordinate their activities and to relieve the associated administrative burdens on developing countries.

Closing remarks

Readers are kindly reminded that this report is preliminary and that a more extensive version will be drafted in due course. Nevertheless, it is hoped that this short report indicates the range of matters discussed at this Global Forum on SDT and the two areas where the Forum broke new ground; namely, in the further clarification and elaboration of the set of possible goals for SDT in the multilateral trading system and in the identification of five potential “recipes” or approaches for giving operational meaning to SDT in WTO agreements and elsewhere.