

THE UNIVERSITY OF THE WESTERN CAPE

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**THE NOTION OF NON-RECIPROCITY UNDER SPECIAL AND DIFFERENTIAL
TREATMENT: A STAB IN THE BACK FOR DEVELOPING COUNTRIES?**

STUDENT : Esther Katende

STUDENT NO: *****



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SUPERVISOR: Adv. MS Wandrag (University of the Western Cape)

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CHAPTER ONE

AN OVERVIEW OF SPECIAL AND DIFFERENTIAL TREATMENT.

1.1. INTRODUCTION.

Special and Differential Treatment¹ refers to the special rights and privileges that are accorded to developing countries, by virtue of the fact that they are less developed economies, to enhance their participation and thus reduce on their marginalisation, in the multilateral trading system.² In effect, most of these privileges are meant to grant developing countries more favourable access to the markets of the industrial countries while giving them policy discretion with respect to the granting of access to their own domestic markets.³

The notion of Special and Differential Treatment was principally developed between the mid 1960's and 1980's,⁴ when the importance of the application of differential measures in trade between developing and developed countries was first identified.



The General Agreement on Tariffs and Trade, (GATT) as negotiated in October 1947, did not recognise the special situation of developing countries. When the GATT was formed, only 11 of the original 23 Contracting Parties would have been deemed developing countries.⁵ At that time however, there was no formal recognition of such a group, nor were there any special provisions or exceptions in GATT that addressed their rights and obligations. At that time, the fundamental

¹ The correct term is Differential and More Favorable Treatment. See Murray Gibbs, *Special and Differential Treatment in the Context of Globalisation*, 1998, at 74

² Whalley John, *Special and Differential Treatment in the Millennium Round*, 1999, at 5.

³ Oyejide T. Ademola, *Special and Differential Treatment*; in Bernard Hoekman, Aaditya Mattoo and Philip English (eds), *Development, Trade and the WTO; A Handbook*, Washington, DC The World Bank, 2002, at 504.

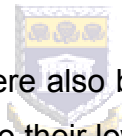
⁴ Ibid, at 504.

⁵ Michalopoulos Constantine, *Trade and Development in the GATT and WTO: The Role of Special and Differential Treatment for Developing Countries*, 2000, at 2.

principle of the Agreement was that rights and obligations should apply uniformly to all Contracting Parties.⁶

As such, during the years 1948 - 1955, developing countries participated in tariff negotiations as equal partners and were subjected to the same rules as their developed counterparts.⁷ They too had to justify the introduction of trade restrictive measures.

However, by the 1947- 48 Havana Conference,⁸ developing countries, mainly Latin American at the time, had already started challenging the requirement for the equal application of trade policies. With time, they were joined by the developing countries of Africa and Asia, on their gaining independence. The developing countries contended that the peculiar structural features of their economies and the distortions arising from historical trading relationships constrained their trade prospects.⁹



In the 1950's, developing countries were also believed to be in a vicious circle of balance of payment problems, owing to their low incomes.¹⁰ This, it was believed, made it impossible for most developing countries to liberalise their economies, as liberalisation would only widen their trade deficits.¹¹ As such, the granting of differential and more favourable treatment became a welcomed idea, so as to enhance developing countries' trade liberalisation.

⁶See the Preamble to the Agreement. See also Constantine Michalopoulos, *Trade and Development in the GATT and the WTO: The Role of Special and Differential Treatment for Developing Countries*, 2000, at Pg 7.

⁷ WTO (1999a), *Developing Countries and the Multilateral Trading System: Past and Present*, background document prepared for the High Level Symposium on Trade and Development, Geneva, 17 - 18 March, 1999, at 13.

⁸ Conference at Havana at which issues relating to economic development were taken up in negotiations, from November 1947 to March 1948 to consider further the draft of the ITO Charter.

⁹ WTO (1999a), loc cit, at 13.

¹⁰ Whalley John, *Special and Differential Treatment in the Millennium Round*, 1999, at 5.

¹¹ Ibid, 1999, at 5

In particular, the efforts of developing countries gave rise to requests for changes in the multilateral trading system in the following areas;¹²

a) Improved market access for developing countries of manufactured goods to developed markets. This would be achieved through the provision of trade preferences, in order to overcome the inherent disadvantages developing countries were facing in breaking into these markets.

b) Non reciprocity or "less than full reciprocity" in trade relations between developing and developed countries, in order to permit developing countries to maintain protection that was deemed necessary to promote development.

c) Flexibility in the application of GATT disciplines by developing country members.

d) Stabilisation of world commodity markets.



Preferential treatment was therefore eventually born, out of the coordinated efforts of the developing countries, to principally correct the perceived inequalities of the post war international trading system.¹³

A provision in the Havana Charter entitled, "**Government Assistance to Economic Development and Reconstruction**" was as such created. It allowed Contracting Parties to obtain the permission of other Contracting Parties to use protective measures, which otherwise would be in conflict with the obligations of the Charter, to promote the establishment, development and reconstruction of particular industries or branches of agriculture.¹⁴

¹² Michalopoulos Constantine, 2000, at 5.

¹³ Murray Gibbs, *Special and Differential Treatment in the Context of Globalisation*, 1998, at 74

This provision was the very first attempt at preferential status treatment or what is today known as Special and Differential Treatment in international trading relations. It was carried over *mutatis mutandis* into the GATT by amendment in 1948, as **Article XVIII**.¹⁵

Requests made by developing countries on the basis of **Article XVIII** for releases from their obligations were examined in working parties to ensure that the requirements of the provisions of **Article XVIII** had been fulfilled.¹⁶ This was especially so between 1948 and 1955.

During the first GATT Review session, between 1954-55, three main provisions were agreed upon, to deal with the concerns of developing countries. Two of them revolved around **Article XVIII**.¹⁷

As a result of the Review Session, **Article XVIII (B)** was revised to include a specific provision that allowed countries "at an early stage of their development" to adopt quantitative restrictions on imports whenever monetary reserves were deemed to be inadequate in relation to the country's long term development strategy.¹⁸

Article XVIII (C) was also revised to accommodate the imposition of trade restrictions, both tariffs and quantitative restrictions, to support infant industries with a view to raising living standards.

¹⁴ WTO (1999a), *Developing Countries and the Multilateral Trading System: Past and Present*, background document prepared for the High Level Symposium on Trade and Development, Geneva, 17 - 18 March, 1999, at 13.

¹⁵ Michalopoulos Constantine, 2000, at 5.

¹⁶ Ibid.

¹⁷ WTO (1999a), *Developing Countries and the Multilateral Trading System: Past and Present*, background document prepared for the High Level Symposium on Trade and Development, Geneva, 17 - 18 March, 1999, at 22.

¹⁸ Ibid.

In 1958, the Habler Report by an expert panel appointed by the 1957 Ministerial Meeting found that there was some merit in the disquiet among primary producing countries that the present rules and conventions on commercial policies were relatively unfavourable to them.¹⁹

The report thus recommended inter alia, the reduction in developed countries' internal taxes on primary products that had been hindering import demand and consumption.²⁰

In 1961, the GATT further adopted a declaration on the "Promotion of Trade of Less Developed Countries" which inter alia, advocated for the grant of preferences in market access for developing countries not covered by preferential tariff systems or preferences in Customs Unions or Free Trade Areas.²¹

In 1964, the GATT, for the very first time, adopted a specific legal framework within which developing countries' concerns could be addressed. **Part IV** was introduced into GATT, which contained the first formal statement in the GATT legal text of the acknowledgment of the special development needs of developing countries.²²

One of the special provisions introduced by **Part IV of GATT** was the introduction of the principle of Non Reciprocity, under **Article XXXVI (8)**, which states that:

“Developed Contracting Parties are not to expect reciprocity for commitments made by them in trade negotiations to reduce or remove tariffs and other barriers to the trade of less developed Contracting Parties.”

¹⁹ Michalopoulos Constantine, *Trade and Development in the GATT and WTO: The Role of Special and Differential Treatment for Developing Countries*, 2000, at 5.

²⁰ Ibid.

²¹ Ibid.

Today, the legal texts of the Agreements embodied in the WTO contain 72 different provisions of Special and Differential Treatment. The core rationale for their continued existence is:

- The fact that developing countries are intrinsically disadvantaged in their participation in international trade and therefore any multilateral agreement involving them and developed countries must take into account this intrinsic weakness in specifying their rights and responsibilities.²³
- Trade policies that would maximise sustainable development in developing countries are different from those in developed economies and hence policy disciplines applying to the developing countries are different from those in developed countries.²⁴

These Special and Differential Treatment provisions can be classified into five major groupings, as seen here below.²⁵



1. Provisions aimed at increasing trade opportunities.

These include provisions that encouraged Contracting Parties to increase trade opportunities in products of export interest to developing countries. They also cover provisions that permitted Contracting Parties to grant trade preferences to developing countries.

An example of these provisions includes **Article XXXVII GATT** which requires developed members to accord high priority to the reduction and elimination of

²² Oyejide T. Ademola, *Special and Differential Treatment*; in Bernard Hoekman, Aaditya Mattoo and Philip English (eds), *Development, Trade and the WTO: A Handbook*, Washington, DC The World Bank, 2002, at 504.

²³ WTO (1999a), *Developing Countries and the Multilateral Trading System: Past and Present*, background document prepared for the High Level Symposium on Trade and Development, Geneva, 17 - 18 March, 1999, at 22.

²⁴ Ibid.

²⁵ Ibid.

barriers to products currently or potentially of particular export interest to developing countries.

2. Provisions that require WTO members to safe guard the interests of developing countries. For example the Agreement on Technical Barriers to Trade provides that in the preparation and application of technical regulations, standards and conformity assessment procedures, members must take account of the special development, financial and trade needs of developing country members.²⁶

Similarly, the Agreement on Subsidies and Countervailing Measures provides for countervailing duty investigations against a product originating in a developing country member to be terminated if the level of subsidisation or the share of imports are less than the prescribed levels.²⁷

3. Transitional time provisions.



Longer time periods for implementation are provided for developing countries in all WTO agreements, with the exception of the Agreement on the Implementation of Article VI (anti dumping) and on Preshipment Inspection. These provisions were aimed at dealing with the shortfalls in institutional capacity of developing members' implementation of GATT.

For example, The Agreement on Trade Related Investment Measures, (TRIMS) which allows developing members 5 years to phase out TRIMS.²⁸

4. Technical Assistance.

The last major form of Special and Differential Treatment extended to developing countries is the grant of trade related technical assistance by developed country members, either on a bilateral basis or through the WTO or other relevant

²⁶ Article 12.2 and 12.3

²⁷ Article 27.10

international organisation. For example in the Agreement on the Application of Sanitary and Phytosanitary Measures,²⁹ where members agreed to facilitate the provision of technical assistance to developing country members in for example the areas of processing technologies, research and infrastructure, including the establishment of national regulatory bodies.

5. Provisions in relation to flexibility of commitments.

Several WTO Agreements provide developing countries flexibility in the implementation of certain rules and commitments. These provisions on the whole, provide for greater latitude for developing members in the application of agreed disciplines. For example provisions on Non Reciprocity in trade negotiations, under **Article XXXVI (8) GATT**.

It is this concept of Non Reciprocity that this paper seeks to analyse; whether in fact, developing countries are benefiting from it.



1.2. STATEMENT OF THE PROBLEM.

Special and Differential Treatment in the form of Non Reciprocity has been accorded to developing countries to enhance their participation in the multilateral trading system, afford them increased market access to developed country markets, and to foster trade and development in their economies, through inter alia, the growth of their infant industries.³⁰

So the question is, are the aforementioned goals being achieved by developing countries? Is the notion of Non Reciprocity achieving the original goals of according Special and Differential Treatment to developing countries? Are

²⁸ Article 5 (2)

²⁹ Article 9

³⁰ Tussie Diana and Lengyel F. Miguel 2002, *Developing Countries: Turning Participation into Influence* in Bernard Hoekman, Aaditya Mattoo and Philip English (eds), *Development, Trade and the WTO; A Handbook*, Washington, DC The World Bank, at 51.

developing countries better off today than they were, prior to the GATT Special and Differential Treatment incorporation or is the notion simply a stab in the back for developing countries?

1.3. HYPOTHESIS.

This study is based on the premise that developing countries are putting in too much effort towards the advocating for preferential treatment so as to enhance their participation in the multilateral trading system.

This paper however is going to advance the thesis that if developing countries concentrated on addressing the intrinsic problems in their economies, rather than relying on preferential treatment, in particular, the notion of Non Reciprocity, developing countries would benefit much more from the multilateral trading system, than they are at present.



1.4. OBJECTIVE OF THE STUDY.

The purpose of this paper is to examine whether indeed developing countries are benefiting from the notion of Non Reciprocity. Whether the original aims and reasons for establishing Special and Differential Treatment for developing countries have been achieved through the concept of Non Reciprocity in the WTO.

The paper therefore intends to throw some light on the concept of Special and Differential Treatment, with particular emphasis on the principal of Non Reciprocity; what it means; how it works, what it is supposed to achieve, and to investigate whether practically, at the end of the day, developing countries are benefiting from the existence of the notion, or whether it is a stab in their back.

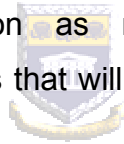
1.5. SIGNIFICANCE OF THE RESEARCH.

Developing countries are struggling with several recurrent problems. According to **Stiglitz**;

*"... A growing divide between the haves and have nots has left increasing numbers in the third world in dire poverty, living on less than a dollar a day. Despite repeated promises of poverty reduction made over the last decade of the twentieth century, the actual number of people living in poverty has actually increased by almost 100 million..."*³¹

In 1990, 2.718 billion people were living on less than 2 dollars a day. In 1998, the number was estimated at 2.801 billion.³² This however occurred at the same time that the total world income actually increased by an average of 2.5% annually.³³

A major challenge confronting developing countries is the use of international trade negotiations and cooperation as mechanisms for adopting and implementing domestic policy reforms that will raise living standards and reduce poverty.



Most of the existing literature on Special and Differential Treatment examines Special and Differential Treatment in general, without any detailed scrutiny into any of the various forms of Special and Differential Treatment, and whether those forms of Special and Differential Treatment are addressing the core issues of concern to developing countries, one of them being poverty.

Poverty reflects low earning power, few assets, poor access to communal resources, poor health and education, powerlessness and vulnerability.³⁴ Today,

³¹ Stiglitz E. Joseph, *Globalisation and its Discontents*, Penguin Books, 2002, at 5.

³² World Bank, *Global Economic Prospects and the Developing Countries*, 2000, Washington DC: WB, 2000 at 29.

³³ Stiglitz, 2002, at 8.

trade policy is at the fore front of the development agenda and it is a critical element of any strategy to fight poverty.

This paper is going to show that whereas developing countries are relying on the notion of Non Reciprocity with the belief that they are substantially benefiting from it, on the whole, the concept is hindering their growth and development and is therefore not substantially contributing to the solving of developing countries' intrinsic problems.

Therefore with the ongoing discussions on the review of all Special and Differential Treatment provisions in WTO Agreements with a view to strengthening them and making them more precise, effective and operational as mandated by the **Doha Work Programme**,³⁵ this paper is going to make a timely contribution to the ongoing review process.

1.6. SCOPE OF THE STUDY.



The Special and Differential provisions introduced in the WTO Agreements fall into two major categories: (a) positive actions by developed country members (b) **exceptions to the overall rules contained in the Agreements**.³⁶ This paper is going to limit its scope to category (b) above, that is, to the exceptions to the Agreement.

The two fundamental ways in which developing countries are exempted from the rules of the WTO Agreements are (i) **freedom to undertake policies which limit other countries' access to their markets, or freedom to provide support to their domestic producers or exporters in ways which are not**

³⁴ Winters A. Alan, *Trade Policies for Poverty Alleviation*, in Bernard Hoekman, Aaditya Mattoo and Philip English (eds), *Development, Trade and the WTO; A Handbook*, Washington, DC The World Bank, at 28.

³⁵ This is a programme or agenda for negotiations that was adopted by Trade Ministers in November 2001, at the fourth WTO Ministerial Conference, in Doha, Qatar.

³⁶ Michalopoulos Constantine, 1998, at 18.

allowed to other members, and (ii) their being provided with more time in meeting their obligations or commitments under the Agreements.³⁷

This paper is going to focus on category (i). The way in which category (i) herein is recognised in the WTO is through the recognition of the principle of Non Reciprocity. This paper is further confined to Non Reciprocity with respect to trade in goods only, with specific emphasis on tariff and non tariff barriers.

1.7. PROPOSED CHAPTER OUTLINE.

Chapter one is an introduction to the research. It defines and gives a brief background to the concept of Special and Differential Treatment, outlines the aims and objectives of the study, advances the hypothesis, gives a synopsis of the literature review, presents the methodology to be used and outlines the lay out of the paper.



Chapter two gives a brief history to the GATT/WTO general framework, as it is pertinent that the framework through which the concept of Special and Differential Treatment is embedded is understood.

Chapter three scrutinises the notion of Non Reciprocity; what it is, how it arose and how it is applied.

Chapter four investigates whether developing countries are benefiting from the notion of Non Reciprocity.

Chapter five will give a conclusion to the study, summarising the issues discussed and the conclusions drawn thereon, and recommendations on the issues at hand.

³⁷ Michalopoulos Constantine, 1998, at 18.

1.8. METHODOLOGY.

In amassing data that will enable the researcher to adequately tackle this study, the researcher will use documentary research in articles, Agreements, papers presented at conferences, dissertations and newspapers. Some of these will be found in various libraries, the Internet, as well as personal collections by individuals.

1.9. KEY TERMS.

Special and Differential Treatment - Developing Countries - Non reciprocity – Market Access - Enabling Clause - Trade and Development - GATT - WTO - Multilateral Trading System.



CHAPTER TWO. THE HISTORY AND DESIGN OF GATT/WTO.

2.1. Background to the Establishment of GATT.

Before delving into the notion of Non Reciprocity, it is important to understand the history and design of the GATT/WTO, the major framework in which this concept of Special and Differential Treatment is embedded.

This can be charted right from the end of the First World War in the 1920's and 1930's, where there was an escalation of protectionist policies in the different countries that had been directly affected by the war. The individual countries sought to revive their economies from the resulting depression, hence the conception of trade restrictive barriers.³⁸

The status quo was exacerbated by United States' enactment of the Smooth - Hawley Tariff Act in 1930. Average United States tariffs were increased from 38% to 52%. This offset a series of retaliatory tariffs from United States' trading partners, which ultimately led to a general increase of tariffs to about 50%.³⁹

As a result, there was great general discomfort with respect to the high tariffs, in the international trade arena. The international community therefore sought to address these growing tariff concerns, through the implementation of cooperative trade policy relationships.⁴⁰ Tariff reductions, it was believed, could be effectively achieved if all concerned parties cooperated in the achieving of the same.

The World Economic Conference of 1927 was held as one of the very first initiatives on cooperative trade policy relationships. It was however unsuccessful,

³⁸ <http://www.georgetown.edu/int/guides/trade/trade_5.html> Accessed on 3rd May, 2005.

³⁹ Ibid.

⁴⁰ <http://www.georgetown.edu/int/guides/trade/trade_5.html> Accessed on 3rd May, 2005.

owing to the absence of an institutional structure that provided a set of rules under which governments could conduct negotiations.⁴¹

That notwithstanding, at this time, Bilateral Agreements had started developing, and it is through these Agreements that trade policy cooperation first sprouted. For example, the United States established the United States Reciprocal Trade Agreement Act of 1934 where the United States offered import tariff reductions in foreign import tariffs.⁴²

The United States also started practicing the principle of non discrimination, whereby when it lowered a tariff in a bilateral negotiation, that tariff cut would extend, without discrimination, to all trading partners of the United States.⁴³

Encouraged by the status quo in the bilateral arena, United States sought to grow the key aspects of the Reciprocal Trade Agreements Act and to establish a multilateral institution.⁴⁴



Following the end of the Second World War in 1946, negotiations began for the creation of an International Trade Organisation (ITO). Under the ITO, negotiations between governments would result in reciprocal and mutually advantageous reductions in tariffs, and the principle of non discrimination would then ensure that the reduced tariffs would be extended to all member countries.⁴⁵

Negotiations on the ITO were concluded successfully in Havana in 1948, but the talks did not lead to the establishment of the ITO because the U.S Congress declined to ratify the ITO.⁴⁶

⁴¹ <http://www.georgetown.edu/int/guides/trade/trade_5.html> Accessed on 3rd May, 2005.

⁴² Ibid.

⁴³ Ibid.

⁴⁴ <http://www.georgetown.edu/int/guides/trade/trade_5.html> Accessed on 3rd May, 2005.

⁴⁵ Ibid.

⁴⁶ Michalopoulos Constantine, 1998, at 8.

In the meantime, an interim Agreement between 23 countries; 12 being developed countries and 11 developing,⁴⁷ known as the General Agreement on Tariffs and Trade (GATT) was concluded.⁴⁸

2.2. Reasons for the Creation of GATT.

The GATT Preamble⁴⁹ shows that the Contracting Parties believed that reciprocal and mutually advantageous arrangements directed to the substantial reduction in tariffs and other barriers to trade and to the elimination of discriminatory treatment in international commerce would improve the world economies.

They thus saw the GATT as a mechanism through which rules and procedures governing the conduct of international trade could be established and upheld. The GATT would be the institutional structure that the Parties had sought after the Second World War, through the attempts at creating the ITO, where a set of rules under which governments could conduct negotiations was provided.⁵⁰

The GATT was also created to address the effects of the post world war era. The Parties wanted to raise the standard of living and ensure full employment and a large and steadily growing volume of real income and effective demand. The Contracting Parties also wanted to develop the full use of the resources of the world and expand the production and exchange of goods.⁵¹

⁴⁷ The founding Parties to the GATT, using the names used at the time were: Australia, Belgium, Brazil, Burma, Canada, Ceylon, Chile, China, Cuba, Czechoslovakia, France, India, Lebanon, Luxembourg, the Netherlands, New Zealand, Norway, Pakistan, Southern Rhodesia, Syria, South Africa, the United Kingdom, and the United States. Subsequently, China, Lebanon and Syria Withdrew. See Michalopoulos Constantine, 1998, at 8

⁴⁸ Hoekman Bernard, *The WTO: Functions and Basic Principles*, in Bernard Hoekman, Aaditya Mattoo and Philip English (eds), *Development, Trade and the WTO; A Handbook*, Washington, DC The World Bank, at 41.

⁴⁹ The Legal Texts: The Results of the Uruguay Round of Multilateral Trade Negotiations, 320 (1999), 1869 U.N.T.S. 299, 33 I.L.M. 1197 (1994)

⁵⁰ <http://www.georgetown.edu/int/guides/trade/trade_5.html> Accessed on 3rd May, 2005.

⁵¹ Refer to the GATT Preamble. The Legal Texts: The Results of the Uruguay Round of Multilateral Trade Negotiations, 320 (1999), 1869 U.N.T.S. 299, 33 I.L.M. 1197 (1994).

2.3. The GATT Trade Rounds and Most Recent Ministerial Conferences.


The GATT's early years were dominated by accession negotiations and by a review session in the mid 1950's that led to modifications of the Agreement.⁵² Starting in the mid 1960's, recurring rounds of Ministerial trade negotiations gradually expanded the scope of GATT to include non tariff policies. There have been eight GATT Rounds and five Ministerial Conferences, as seen hereunder:⁵³

GATT Rounds and Ministerial Meetings.

YEAR	LOCATION	SUBJECT MATTER.
1947	Geneva	Tariffs
1949	Annecy	Tariffs
1951	Torquay	Tariffs
1956	Geneva	Tariffs
1960-61	Geneva (Dillon Round)	Tariffs
1964-67	Geneva (Kennedy)	Tariffs and Anti Dumping measures.
1973-1979	Geneva (Tokyo)	Tariffs, Non Tariff measures, Framework Agreement.
1986	Geneva (Uruguay) at Punta del Este	Tariffs, Non Tariff measures, Services, Intellectual Property, Dispute Settlement, inter alia.

⁵² WTO (1999a), *Developing Countries and the Multilateral Trading System: Past and Present*, background document prepared for the High Level Symposium on Trade and Development, Geneva, 17 - 18 March, 1999, at 22

⁵³ <http://www.wto.org/>. Accessed on 3rd May, 2005.

April 1994	Marrakesh (Morocco)	Ministers sign the Final Act establishing the WTO and embodying the results of the Uruguay Round.
Nov 1999	Seattle, USA	Ministerial Conference frustrated by protests mainly from developing countries. Fail to launch a new Round.
Nov 2001	Doha, Qatar	A new Round of trade talks on Trade and Development issues. Agreement not reached.
Sept 2003	Mexico, Cancun	 Negotiations collapsed in deadlock, as developing countries refused to be pressured into agreement.
Aug 2004	July Package	An attempt to get negotiations back on track, by adding new details to the Doha Agenda.
Dec 2005	Hong Kong	Expected to be the sixth Ministerial Conference. WTO members hope to complete the Doha Round by early 2007.

The primary focus of the earlier Rounds (prior to the Uruguay Round) was mainly the reduction of import tariffs on goods. The Uruguay Round however widened

the scope of issues to include other matters as seen above. It is also during the Uruguay Round that the WTO and its Annexes was formed, through the creation of the Final Act, which was signed in Marrakesh Morocco, on April 15, 1994. It came into force on January 1, 1995.⁵⁴

2.4. The Uruguay Round.

The Uruguay Round was of great importance to developing countries especially because it carried the potential for significant market access improvements in areas of interest to developing countries.⁵⁵

Until the Uruguay Round, no progress had been made on agriculture, and textiles and clothing, the most sensitive products of Europe and USA, the chief exports of developing countries. Owing to the fact that agriculture policy is rooted in the history of food security and a perceived need for self sufficiency, agriculture had been excluded from negotiations before the Uruguay Round. During the Uruguay Round however, market access negotiations covered the above areas.⁵⁶

It is also during the Uruguay Round that there was a clear departure from the traditional approach to Special and Differential Treatment, as it is during this time that all member governments accepted the concept of the single undertaking that required both developed and developing countries to adhere to nearly the same sets or rules and obligations.⁵⁷

The Uruguay Round negotiations in tariffs also resulted in further reductions in tariffs on industrial imports with the average trade weighted tariff rate on imports from developing country members declining by 34%.⁵⁸

⁵⁴ < http://www.georgetown.edu/int/guides/trade/trade_5.html > Accessed on 3rd May, 2005.

⁵⁵ Tussie Diana and Lengyel F. Miguel 2002, at 51.

⁵⁶ Michalopoulos Constantine, 2000, at 13.

⁵⁷ Fukasuku, Kiichiro, 2000, at 7

⁵⁸ Ibid.

⁵⁸ Ibid.

2.5. Basic distinction between the GATT and the WTO.

There are several similarities between the GATT and the WTO. The basic underlying principles remain the same. That is, the WTO continues, (like the GATT) to be a member driven framework that operates by consensus.⁵⁹

The GATT however differs from the WTO in several respects. The GATT was a more flexible arrangement, with bargaining being at the core of the Framework. Parties also had significant opportunities to opt out of specific disciplines, if they chose to do so. As a result, several developing countries did not sign specific Agreements on issues such as Customs Valuation and Subsidies, inter alia.⁶⁰

The WTO on the other hand, is a single undertaking, where all its provisions apply to all members. Save for the Plurilateral Agreements, members can not opt out of commitments or disciplines.⁶¹

In further contrast to the GATT which was a mere arrangement, the WTO is an institution and its rules apply to all members, who are subject to a dispute settlement mechanism, in event of breach of any of the WTO rules.⁶² The GATT on the other hand only had two Articles through which dispute settlement matters were addressed, that is on the basis of **Article XXII** and **Article XXIII GATT 1947**.⁶³

In the WTO, dispute settlement is more automatic with the adoption of a “negative consensus” rule. That is, a report is adopted unless all members oppose the findings by the dispute settlement body.⁶⁴

⁵⁹ < <http://www.wto.org/>>. Accessed on 3rd May, 2005.

⁶⁰ Michalopoulos Constantine, *Differential and More Favourable Treatment of Developing Countries in the WTO: A Conceptual Classification*, WTO, 1998, at 18.

⁶¹ Tussie Diana and Lengyel F. Miguel 2002, *Developing Countries: Turning Participation into Influence* in Bernard Hoekman, Aaditya Mattoo and Philip English (eds), *Development, Trade and the WTO; A Handbook*, Washington, DC The World Bank, at 51.

⁶² *The WTO: A Handbook on the WTO Dispute Settlement System*, 2004, University Press, Cambridge at 10.

⁶³ Ibid at 12.

⁶⁴ Ibid.

2.6. The WTO

The WTO therefore embraces the rules and Agreements made in GATT, but it is also a full fledged international Organisation, with an explicit Organisational Charter and a unified dispute settlement mechanism.⁶⁵ In the creation of the WTO, the Contracting Parties further fulfilled their original goal of creating an international organisation responsible for the conduct of trade negotiations.⁶⁶

The WTO is charged with facilitating the implementation and operation of the multilateral trade agreements, providing a forum for negotiations, administering the dispute settlement mechanism, exercising multilateral surveillance of trade policies and the cooperating with the World Bank and the IMF to achieve greater coherence in global economic policy making.⁶⁷

The current WTO system therefore operates under the Agreements negotiated during the Uruguay Round, (with negotiations continuing on certain topics).⁶⁸ The WTO contains a package of about 60 Agreements, Annexes, Decisions, and Understandings.⁶⁹



It includes the Marrakesh Agreement ("WTO Agreement"), the GATT 1994, the GATS, (the Agreement on Services), and the TRIPS, (the Agreement on Intellectual Property). The GATT 1994 incorporates by reference the GATT 1947 and related Official Instruments as amended up to the effective date of the WTO agreements.⁷⁰

2.7. The General Structure of the WTO.

The WTO is managed by the General Council, at the level of diplomats. The General Council meets close to 12 times a year. On average, about 70% of all

⁶⁵ <http://www.wto.org/>>. Accessed on 3rd May, 2005.

⁶⁶ Ibid.

⁶⁷ Article III GATT.

⁶⁸ <<http://www.law.nyu.edu/library/shortguidewto.html>> Accessed on 3rd May, 2005.

⁶⁹ Ibid.

⁷⁰ Ibid.

WTO members take part in its meetings, at which members are usually represented by delegates based in Geneva.⁷¹

About 40 Councils, Committees, Subcommittee bodies and Standing groups or Work Parties function under the WTO. Such bodies are open to all WTO members, but generally speaking, it is the “more important trading nations”, which contribute to less than half of the membership, owing to the fact that they regularly send representatives to most of their meetings.⁷²

Decision making in the WTO is based on consultation and consensus. This consensus practice is especially of value to developing countries as it enhances their negotiating leverage in the informal consultations and bargaining that precede decision making, especially if they are able to form coalitions.

The main actors in the WTO day to day activities are officials affiliated with the delegations of members. Initiatives to launch multilateral trade negotiations and to settle disputes, the two highest profile activities of the WTO are the sole responsibility of the WTO members themselves, not the WTO Secretariat.⁷³ As a result and owing to the member driven nature of the WTO, the organisation puts a considerable strain on the national delegates of members.⁷⁴

2.8. Basic principles of the WTO.

Membership to WTO carries with it the obligation to abide to particular rules and commitments concluded during the various Ministerial Conferences and trade

⁷¹ <<http://www.law.nyu.edu/library/shortguidewto.html>> Accessed on 3rd May, 2005.

⁷² Hoekman Bernard, *The WTO: Functions and Basic Principles*, in Bernard Hoekman, Aaditya Mattoo and Philip English (eds), *Development, Trade and the WTO; A Handbook*, Washington, DC The World Bank, at 47

⁷³ Ibid.

⁷⁴ Hoekman Bernard, *loc cit*, at 47.

negotiations. The WTO rules are basically divided into three main elements: **Substantive obligations, Exceptions and Dispute Settlement Procedures.**⁷⁵

a). Substantive obligations. There are four basic principles or substantive obligations of particular importance for the understanding of the pre 1994 GATT and the WTO.

- **Non Discrimination.**

The obligation of Non Discrimination is the pillar of the WTO, and is basically of two fold. The Most Favoured Nation (MFN) rule and the National Treatment rule.

Under the **MFN rule**, products made in one member country are to be treated no less favourably than like or very similar products originating in any other member country.⁷⁶

That is, if the best treatment granted by Brazil to any trading partner for Brazil's importation of fish is a 5% tariff, this 5% tariff rate must be applied immediately and unconditionally to imports of fish originating in all WTO members.



Under the **National Treatment rule**,⁷⁷ goods of foreign origin in a member country must be subject to taxes, charges and regulations that are no less favourable than the taxes, charges or regulations applied to the local or domestic goods of the member country.

For example, once goods from Chile coming into Australia have satisfied the border measures applied by Australia, Australia should treat these Chile goods no less favourably in terms of internal taxation or regulations, than like or directly competitive domestically produced goods.

⁷⁵ Hoekman Bernard, *The WTO: Functions and Basic Principles*, in Bernard Hoekman, Aaditya Mattoo and Philip English (eds), *Development, Trade and the WTO; A Handbook*, Washington, DC The World Bank, at 47.

⁷⁶ Article I GATT.

This notion of Non Discrimination is so fundamental, with its only exception being in relation to Custom Unions, Free Trade Areas, and for preferential treatment granted to developing countries under Special and Differential Treatment.

- **Reciprocity.**

Reciprocity is another fundamental obligation of the WTO negotiating process. Under **Article XXVIII bis GATT 1994**, tariff negotiations are to be carried out on a reciprocal and mutually advantageous basis with the aim of achieving substantial reduction of the general level of tariffs and other charges on imports and exports and in particular, the reduction of high tariffs that discourage the importation of even minimum quantities.

Reciprocal negotiations may be directed toward reductions in applied tariffs or the binding of duties. The traditional mechanism during trade agreements has been the reciprocal exchange of commitments to reduce trade barriers.⁷⁸



- **Enforceable Commitments.**

The results of a negotiation are listed in a member's schedule (Lists) of commitments recorded in the WTO's Integrated Data Bank. These schedules establish ceiling bindings where the concerned member cannot raise tariffs above the bound level without negotiating compensation with the members supplying the concerned products.⁷⁹

- **Transparency.**

Transparency is another major pillar of the WTO. Enforcement of commitments requires access to information on trade regimes that are maintained by members. WTO members are therefore required to publish their trade

⁷⁷ Article III GATT.

⁷⁸ Finger Michael and Winters Alan 2002, *Reciprocity in the WTO*, in Bernard Hoekman, Aaditya Mattoo and Philip English (eds), *Development, Trade and the WTO; A Handbook*, Washington, DC The World Bank, at 53.

⁷⁹ Article 11 GATT.

regulations, and to establish and maintain institutions allowing for the review of administrative decisions affecting trade.⁸⁰

b). The Exceptions under WTO are exceptions to the above obligations. Generally speaking, these are meant to appreciate the practical challenges that have to be borne in mind, when implementing the above obligations.

Examples of such exceptions include, inter alia, the General Exceptions under **Article XX**, **Article XIV** on exceptions to the rule of non discrimination, **Article XI (2)** on quantitative restrictions, and **Part IV** that provides for Special and Differential Treatment of developing countries.

c) The WTO Dispute Settlement Mechanism. The WTO rules, obligations and exceptions are generally enforced through the **Dispute Settlement Procedure**. In the dispute procedure, the main question to be addressed is whether the actions by one member nullify or impair the benefits expected under the Agreement by another member. The procedures followed in dealing with a dispute are embedded in the **Dispute Settlement Understanding**, which is **Annex 2 GATT**.

This paper is going to examine only one of the above three elements; the **Exceptions** in the GATT/WTO and in particular, the notion of Non Reciprocity, under the general exception of Special and Differential Treatment for developing countries.

⁸⁰ Article 10 GATT.

CHAPTER THREE

THE NOTION OF NON RECIPROCITY.

3.1. Introduction and Background.

The notion of Non Reciprocity basically means that developing countries do not have to reciprocate, exchange, barter or match in full, trade concessions made to them by developed countries during trade negotiations.⁸¹

It essentially means that if for example during trade negotiations between the European Union (EU) and a developing country like Nigeria, the EU decides to reduce its tariffs on agricultural goods by 10%, Nigeria would not be obligated to act likewise. This is simply because the WTO recognises the principle of Non Reciprocity whereupon Nigeria is not automatically required to reciprocate EU's actions.

The EU on the other hand would not be expected to similarly reduce its tariffs for the United States, for example, on an MFN basis because the notion of Non Reciprocity is an exception to the MFN principle, and it only applies in respect to developing countries.



One of the justifications for developing countries' reliance on Non Reciprocity is because it guards against high tariff reduction, for developing countries. This would in turn reduce government revenue, as customs duties constitute a very significant part of developing countries' total government revenues, as opposed to that of developed countries. For example, tariff revenue for OECD countries is only 1% and yet it is over 15% or 20% of the total revenue of many developing countries.⁸²

⁸¹ Walley John, *Special and Differential Treatment in the Millennium Round*, 1999, at 6.

⁸² TWN Info Service on WTO and Trade Issues. *North South Differences on Many Issues in WTO's NAMA Negotiations on 6-8 Dec 2004. In a paper discussed by the WTO's Group on NAMA*. <http://www.twinside.org.sg/title_2/twininfo174.htm> Accessed on 1st May 2005.

As such, today, practical results of developing countries' negotiating on a Non Reciprocal basis can be seen in the various WTO Agreements. A case in point is the Agreement on Agriculture, which contains a variety of measures which exempt developing countries from disciplines and obligations that apply to developed countries. For example, investment subsidies or input subsidies to low income producers are exempted from the calculation of aggregate measures of support (AMS).⁸³

Similar exemptions are found in the Agreement on Subsidies and Countervailing Measures, where countries with per capita income of less than 1000 dollars are to maintain certain kinds of export subsidies which are otherwise prohibited.⁸⁴ A number of developing countries have invoked these provisions in notifying the WTO that they maintain export subsidy programs.⁸⁵

This concept of Non Reciprocity, which has today evolved into the notion of "Less Than Full Reciprocity", was introduced into the GATT legal text after the Tokyo Round of negotiations in 1964, on the introduction of Part IV.⁸⁶



Today, it is embedded in **Article XXXVI (8) GATT 47** which states that;
"The developed Contracting Parties do not expect reciprocity for commitments made by them in trade negotiations to reduce or remove tariffs and other barriers to the trade of less developed Contracting Parties."

Prior to this however, the general spirit of the GATT and the Marrakesh Agreement, was that Parties were to negotiate on a reciprocal and mutually advantageous basis. This was clearly seen in the preamble to GATT 1948 where Parties undertook that they were;

⁸³ Article 6.2. See also Michalopoulos Constantine, *Differential and More Favourable Treatment of Developing Countries in the WTO: A Conceptual Classification*, WTO, 1998, at 19.

⁸⁴ Article 27.2. See also Michalopoulos Constantine, *supra*.

⁸⁵ Michalopoulos Constantine, *Differential and More Favourable Treatment of Developing Countries in the WTO: A Conceptual Classification*, WTO, 1998, at 19.

*"... entering into reciprocal and mutually advantageous arrangements directed to the substantial reduction of tariffs and other barriers to trade and to the elimination of discriminatory treatment in international trade relations."*⁸⁷

Following the arguments for the granting of Special and Differential Treatment to developing countries however, the above perspectives were changed. For example by 1961, in a "Programme for Expansion of International Trade" which addressed tariff reduction and obstacles to trade in agricultural products, it was recommended that in negotiations for reduction in barriers to exports of developing countries, Contracting Parties should adopt a "sympathetic attitude" on the question of reciprocity.⁸⁸

In a Ministerial Meeting in May 1963, while laying down the principles for what was later to be known as the Kennedy Round of negotiations, it was agreed;

*"That in the trade negotiations every effort shall be made to reduce barriers to exports of less developed countries, but that the developed countries cannot expect to receive reciprocity from the less developed countries"*⁸⁹



Clearly, the notion of Non Reciprocity was gaining ground. During the Kennedy Round of negotiations, this was interpreted as follows:

"... there will, therefore be no balancing of concessions granted on products of interest to developing countries by developed participants on the one hand and the contribution which developing participants would make to the objective of trade liberalisation on the other and which it is agreed should be considered in

⁸⁶ Part IV of GATT contains the special provisions on trade and development of less than developed Contracting Parties which was specifically added to the GATT legal text in 1964.

⁸⁷ The Legal Texts: The Results of the Uruguay Round of Multilateral Trade Negotiations, 320 (1999), 1869 U.N.T.S. 299, 33 I.L.M. 1197 (1994)

⁸⁸ WTO (1999a), *Developing Countries and the Multilateral Trading System: Past and Present*, background document prepared for the High Level Symposium on Trade and Development, Geneva, 17 - 18 March, 1999, at 14.

⁸⁹ Ibid, at 14.

*the light of the development, financial and trade needs of developing countries themselves...*⁹⁰

The basic objective was that developing countries are relieved from the obligation of making reciprocal concessions as a prerequisite for benefiting on a Most Favoured Nation (MFN) basis, for tariff and other concessions made by other GATT Contracting Parties.⁹¹

In reality however, the principle of Non Reciprocity had to some extent instead legitimised the opting out of active negotiation on the part of developing countries,⁹² which consequently marginalised their contribution and participation in the multilateral trading system. That is, as a result of their being exempted from reciprocal obligations, developing countries preferred to absent themselves from active negotiations, as they had nothing to give in return, and yet they were guaranteed benefits from the trading system on an MFN basis.



As such, developing countries did not actively participate in bargaining for concessions, which consequently reduced their overall impact in the trade negotiations and the multilateral trading system.

This however was contrary to the prior intention of the GATT which was primarily to accord developing countries special rights to grow their infant industries and gain preferential access to industrialised country markets.⁹³

⁹⁰ GATT, Com. TD/W/37, P 9.

⁹¹ Hindley Brian, *Differential and More Favourable Treatment and Graduation*, in Bernard Hoekman, Aaditya Mattoo and Philip English (eds), *Development, Trade and the WTO; A Handbook*, Washington, DC The World Bank, at 67

⁹² Fukasaku Kiichiro, 2000, at 1.

⁹³ Ibid.

Developing countries therefore reasoned that if the existing Non Reciprocal form of Special and Differential Treatment had failed to reverse their marginalisation from the multilateral trading system, then it was probably the appropriate time to consider the narrowing of its scope by limiting the application of the principle of Non Reciprocity and giving concessions, where appropriate, to advance their trading interests.⁹⁴

As such, a number of developing countries decided to participate more actively in the Uruguay Round through the exchange of reciprocal tariff concessions, albeit not to the full extent.⁹⁵ Indeed the Uruguay Round marked a clear departure from the traditional approach to Special and Differential Treatment. The concept of Non Reciprocity was now taking on a totally new face, tending to incline towards "Less Than Full Reciprocity."⁹⁶

This can be seen for example in the Uruguay Round Agreement on Agriculture which requires developed countries to reduce their tariffs by 36% over 6 years but developing countries, to reduce by 24% over 10 years.⁹⁷

This notion of "Less than Full Reciprocity" is also seen with respect to trade distorting domestic support measures where developing countries are required to reduce such measures by 13.3% over 10 years, while developed countries are required to reduce theirs by 20% over 10 years.⁹⁸ Clearly developing countries are also being required to reduce trade distorting practices, although not to the full or equal extent of the developed nations.

⁹⁴Kessie Edwini, *Enforceability of the Legal Provisions relating to Special and Differential Treatment Under the WTO Agreements*. A paper prepared for a WTO seminar on Special and Differential Treatment for Developing countries, 7 March, Geneva, 2000, at 6.

⁹⁵ Fukasaku Kiichiro, 2000, at 7.

⁹⁶ Ibid.

⁹⁷ Article 15(2) of the Agreement on Agriculture. See also Stevens Christopher, *The Future of Special and Differential Treatment for Developing Countries in the WTO*, 2002, at 2.

This evolution of Non Reciprocity into "Less Than Full Reciprocity" has been legally recognised in the **Doha Ministerial Declaration, Paragraph 16**, which states that;

" ...The negotiations shall take fully into account the special needs and interests of developing ... country participants, ... through less than full reciprocity in [the] reduction [of] commitments, in accordance with the relevant provisions of Article XXVIII bis of GATT 1994"

Loosely translated, the Doha Declaration requires that negotiations on tariff reductions take into account the special needs of developing countries, through the notion of "Less than Full Reciprocity."

This is because as early as the 1980's, doubt had been arising over the effectiveness of Special and Differential Treatment to promote trade and development.⁹⁹ One such critique was the Leutwiler Report ¹⁰⁰ which stated inter alia that:

*"... Developing countries receive special treatment in the GATT rules. But such special treatment is of limited value. Far greater emphasis should be placed on permitting and encouraging developing countries to take advantage of their competitive strengths and on integrating them more fully into the trading system, with all the appropriate rights and responsibilities..."*¹⁰¹

As a consequence of such critiques, there was a move towards the more effective use of Special and Differential Treatment provisions in ways that would enable developing countries to effectively benefit from them. It is this change in attitude that has gradually evolved into **Paragraph 44 of the Doha Ministerial Declaration** of 2001, which states that,

⁹⁸ Article 15(2) of the Agreement on Agriculture. See also Stevens Christopher, *The Future of Special and Differential Treatment for Developing Countries in the WTO*, 2002, at 2.

⁹⁹ Fukasaku Kiichiro, 2000, at 6.

¹⁰⁰ Leutwiler Report, GATT 1985:44. The Leutwiler Report was a GATT 1985 Report which was commissioned in 1983 to address the 'crisis in the trading system.' The report recommended 15 specific, immediate actions, with the above being just one of the recommendations of the Report.

“... all special and differential treatment provisions shall be reviewed with a view to strengthening them and making them more precise, effective and operational...”

It is these practical changes that have influenced the move from total Non Reciprocity, where developing countries were not in any way required to reciprocate trade concessions given to them so as to benefit from the multilateral trading system, to "Less Than Full Reciprocity," where developing countries are now more inclined towards giving some concessions, no matter how small, in exchange for the concessions received.

As such, as can further be seen in the Agreement on Agriculture, developing countries agreed to bind all their tariffs in the sector, and they also increased their share of bound industrial tariffs from 14% to 59%.¹⁰²

There was thus a growing consensus that more liberal trade policies were more conducive to development and the growing importance of reciprocal liberalisation was a means of attaining greater market access through GATT as an institution, within which developing countries could pursue trade objectives. This was manifested by the decision of a number of developing countries, especially in Latin America to join the GATT.¹⁰³

The question to be addressed by this paper therefore, is whether developing countries are on the whole, benefiting from this form of Special and Differential Treatment, or whether the notion is greatly compromising the economies of developing countries: that is, is it a stab in their back?

¹⁰¹ Ibid.

¹⁰² Walley John, *Special and Differential Treatment in the Millennium Round*, 1999, at 9

3.2. Reciprocity Under GSP Schemes.

It is imperative to distinguish reciprocity during trade negotiations from reciprocity under GSP Schemes. When developing countries were advocating for preferential treatment in the 1950's and 1960's, a Generalised and Non Reciprocal System of Trade Preferences for Developing Countries (GSP) was established as a means of granting preferential treatment to developing countries.¹⁰⁴

Under this GSP concept, Article I GATT or what is known as the MFN principle was basically waived so that any advantage, favour, privilege or immunity granted by any Contracting Party to a product of a developing country was not to be accorded to the products of other Contracting Parties. That is, the GSP concept made it possible for industrial country members to offer trade preferences to developing countries without offending the MFN principle.

The clause in the WTO under which the GSP Schemes are legally recognised is what is known as the “Enabling Clause.” Therefore under the “Enabling Clause,” Contracting Parties can grant privileges, advantages, and favours to developing countries without being mandated to grant the same to all other Contracting Parties. Examples of GSP Schemes include AGOA, the Cotonou Agreement, NAFTA, inter alia.

Whereas developing countries are granted preferential treatment under the “Enabling Clause” through GSP Schemes, developing countries are at the same time required to give reciprocal concessions in return for the benefits obtained from these GSP Schemes.

¹⁰³Hindley Brian, *Differential and More Favourable Treatment and Graduation*, in Bernard Hoekman, Aaditya Mattoo and Philip English (eds), *Development, Trade and the WTO: A Handbook*, Washington, DC The World Bank, at 67

¹⁰⁴Michalopoulos Constantine, *Differential and More Favourable Treatment of Developing Countries in the WTO: A Conceptual Classification*, WTO, 1998, at 5.

This is clearly the case for example in the Cotonou Agreement between the EU and ACP countries, which replaced the Lome Convention in June 2000. The new trade arrangements under the Cotonou Agreement introduced Economic Partnership Agreements (EPAs) aimed at the progressive removal of trade barriers between the EU and the ACP countries concerned.¹⁰⁵

It is intended that each EPA will establish reciprocal free trade between the relevant trading partners with the ACP countries that are not LDCs.¹⁰⁶ It should be noted that these reciprocal trade practices are distinct from reciprocity during trade negotiations, as they are recognised as GSP Schemes and are specific arrangements for the grant of preferences by developed countries to mutual or reciprocal trade preferences from developing countries.

Another example of reciprocal arrangements is in relation to NAFTA where the United States grants reciprocal preferences to members of the Andean Pact and the Caribbean Community and to Mexico.



This paper however is not going to labour into the details of GSP and how they work. It is only pertinent to note that the notion of Non Reciprocity addressed in this chapter is separate and distinct from reciprocity under the GSP schemes.

¹⁰⁵ TWN Info Service on WTO and Trade Issues. *North South Differences on Many Issues in WTO's NAMA Negotiations on 6-8 Dec 2004. In a paper discussed by the WTO's Group on NAMA.* <<http://www.twinside.org.sg/title 2/twininfo174.htm> > Accessed on 1st May 2005.

¹⁰⁶ Ibid.

CHAPTER FOUR

WHETHER DEVELOPING COUNTRIES ARE BENEFITING FROM THE NOTION OF NON RECIPROCITY?

When developing countries decided to participate in the Uruguay Round on a reciprocal but not to the full extent basis, developing countries were putting into question the continued ability of the notion of Non Reciprocity to meet their group and or individual country needs.

It should be noted however that the notion of Non Reciprocity was introduced into the GATT/WTO in good faith, and with good intention of helping developing countries.¹⁰⁷

- a) Have increased market access to the economies of the developed countries.
- b) Enhance their general development and growth.
- c) Get integrated into the multilateral trading system.



To therefore investigate whether developing countries are benefiting from the notion of Non Reciprocity, this paper is going to analyse how far the above goals have been achieved, as a result of the existence of this preferential treatment.

a) The need to have increased market access to the markets of developed countries, while at the same time protecting their domestic markets from international competition.

One of the key goals of the GATT/WTO in granting preferential treatment to developing countries was the need to help developing countries grow their infant industries and for balance of payment purposes.

¹⁰⁷ Tussie Diana and Lengyel F. Miguel 2002, at 51.

According to **GATT ARTICLE XVIII (2)**;

"Contracting Parties agreed that for those economies that could only support low standards of living and that were in their early stages of development, they would enjoy additional facilities to enable them;

a) maintain sufficient flexibility in their tariff structure to be able to grant the tariff protection required for the establishment of a particular industry.

b) to apply quantitative restrictions for balance of payment purposes in a manner which takes into full account of the continued high level of demand for imports likely to be generated by their programmes for economic development."

In other words, developing countries are given the freedom to grant tariff protection required for the establishment of a particular industry and they are allowed to apply quantitative restrictions for balance of payment purposes.

This, it should be noted, is a right granted exclusively to developing countries, and not developed countries, which is also a basic component of the notion of Non Reciprocity.



Developing countries have stood to benefit from this legal domestic industry protection provision because developing countries have been legally protected against the exposition of their local sectors to international competition created by the impact of trade concessions on the sectors of developed countries.¹⁰⁸

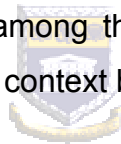
This has in turn eliminated the need for the local sectors to adjust to import competition. As such, the governments of developing countries have been protected from would be conflict and resentment from the local traders, thus fairly stabilising the political and economic conditions in the economies of developing countries.

¹⁰⁸ Tussie Diana and Lengyel F. Miguel 2002, *supra*, at 488.

Therefore with respect to the protection of domestic industries from unhealthy competition, the notion of Non Reciprocity has been of benefit to developing countries.

With regard however to market access to developed country markets, developing countries have not gained much. **Tussie and Lengyel** argue that even with the existence of the notion of Non Reciprocity, market access has not improved as much as expected.¹⁰⁹ This is so because for example, agricultural products, which are the primary exports of most developing countries continue to face high protective tariffs, as do the classic footwear, clothing, textiles and steel sectors.¹¹⁰

More so, tariff peaks, sometimes well over 100%, prevail in textiles and clothing, foot wear and agriculture- the chief areas of export interest to developing countries.¹¹¹ Tariff peaks are defined as duty rates that exceed 15%.¹¹² In fact, according to **Liard**, tariff peaks are among the priority trade policy issues that need to be addressed in a negotiating context by developing countries.¹¹³



For example, in 1999, the average tariff in the Quad economies, that is, Canada, EU, USA and Japan, over all tariff peak products was 28%. The highest average tariff for peak products was 40.3% and is found in the EU.¹¹⁴ In the US and Canada, more than 85% of the tariff peaks were for industrial products, whereas

¹⁰⁹ Ibid.

¹¹⁰ Tussie Diana and Lengyel supra. According to Fukasaku 2000, the tariff peaks exceeding 12% ad valorem are maintained by developed countries in sectors such as textiles and clothing and footwear.

¹¹¹ Tussie Diana and Lengyel supra.

¹¹² Liard Sam, *Market Access Issues and the WTO: An Overview*, in Bernard Hoekman, Aaditya Mattoo and Philip English (eds), *Development, Trade and the WTO; A Handbook*, Washington, DC The World Bank, at 98.

¹¹³ Ibid, at 105.

¹¹⁴ Olarreaga Marcelo and NG Francis, *Tariff Peaks and Preferences*, in Bernard Hoekman, Aaditya Mattoo and Philip English (eds), *Development, Trade and the WTO; A Handbook*, Washington, DC The World Bank, at 108.

in the EU and Japan, most peaks affected agricultural products with 91% in the EU and 77% in Japan.¹¹⁵

Further, in 1999, the value of Quad imports of products subject to tariff peaks was US \$ 92.8 billion. More than 60% (US \$ 55.2 billion) of Quad imports of these products originated from developing countries and faced a potential average tariff of 28%. This represents about 5% of total developing country exports to the Quad.¹¹⁶

According to **Fukasaku**,

*"... the practice of tariff escalation - sharply rising tariffs from low or zero duties on raw materials to higher duties on intermediate products in some cases to peak tariffs on finished products - remains prevalent in such sectors as metals, textiles and clothing and leather, rubber and wood products..."*¹¹⁷

The existence of these high tariffs and tariff peaks has been partly attributed to the fact that developing countries do not give tariff concessions in return during trade negotiations. It has been argued that a country has to give concessions so as to receive concessions, for reciprocity motivates negotiations.¹¹⁸ The word negotiation implies a give and take situation. As such, with the existence of developing countries' election not to reciprocate, developed countries are left with no obligation to reduce tariffs in the sensitive areas of developing countries, as they have nothing to receive in return.

Developed countries' tariff escalation, where tariffs are increased at later stages of processing has also negatively affected industrialisation in developing countries. For example, the table here below is an analysis of escalation in

¹¹⁵ Ibid.

¹¹⁶ Ibid.

¹¹⁷ Fukasaku Kiichiro, 2000, at 11.

¹¹⁸ Finger Michael and Winters Alan 2002, *Reciprocity in the WTO*, in Bernard Hoekman, Aaditya Mattoo and Philip English (eds), *Development, Trade and the WTO; A Handbook*, Washington, DC The World Bank, at 53.

developed countries at the completion of the implementation of the Uruguay Round.¹¹⁹

Tariff escalation on products imported by Developed economies from developing countries.¹²⁰

PRODUCT	POST URUGUAY ROUND BOUND TARIFF
Industrial products excluding Petroleum	4.3%
Raw materials	0.8%
Semi manufactures	2.8%
Finished Products	6.2%
All tropical products	1.9%
Raw materials	0.0%
Semi manufactures	3.5%
Finished products	2.6%
Natural resource based products	2.7%
Raw materials	2.0%
Semi manufactures	2.0%
Finished products	5.9%



From the table, it can be seen that tariffs on products in later stages of production, that is, finished products as opposed to the earlier stages like raw materials, are extremely high. This is in an attempt to discourage developing countries from exporting to developed countries products that are in a finished

¹¹⁹ Liard Sam, *Market Access Issues and the WTO: An Overview*, , in Bernard Hoekman, Aaditya Mattoo and Philip English (eds), *Development, Trade and the WTO; A Handbook*, Washington, DC The World Bank, at 98.

¹²⁰ Source: GATT (1994a).

state, which would create competition for their domestic goods, that are usually in a finished state.

As such, tariff escalation hampers developing countries' access to the developed country markets, as it encourages indirectly exports of products in raw material form.

Developing countries on the other hand have been content with Non Reciprocity, even when the access to developed country markets is prejudiced by their lack of participation on a reciprocal basis, on the grounds that they lack the capacity to reciprocate.¹²¹ It has however been noted that this lack of capacity has been used as an excuse for passivity.

According to **Finger & Winters**, capacity building is by doing. Developing countries cannot wait for that magic moment when they will be fully capacitated so as to be able to compete on an equal footing. Capacity building is a slow and patient undertaking which happens incrementally.¹²²



In this respect therefore, the notion of Non Reciprocity is seen to put developing countries in a situation where they perpetually stand to lose in international trade relations, in the long run.

This is also clearly stated by Michalopoulos when he postulates that the MFN tariff concessions agreed to in the Kennedy and Tokyo Rounds, (where developing countries were relying on the notion of Non Reciprocity,) were on the whole less favourable for products of export interest to developing countries, than

¹²¹ Finger Michael and Winters Alan 2002, *Reciprocity in the WTO*, in Bernard Hoekman, Aaditya Mattoo and Philip English (eds), *Development, Trade and the WTO; A Handbook*, Washington, DC The World Bank, at 53.

¹²² Ibid.

were concessions relating to products of interest to developed countries, which practised reciprocity.¹²³

Indeed an analysis for example of the USA experience in the earlier Rounds, like the Dillon Round,¹²⁴ shows that 96% of U.S tariff cuts were all made on an MFN basis, on imports from countries that made concessions in return.¹²⁵ In the Uruguay Round, the countries that benefited the most are those which through the exchange of reciprocal reduction of barriers, obtained improved market access opportunities.¹²⁶

Prof Robert Lawrence basically summarises the position of reciprocity in relation to market access. He says that:

*"The crucial idea behind WTO Agreements is this concept of reciprocity.... The WTO's framework of reciprocity implies that, when countries come to the current agreements, they gave as much as they got.... Small players will lose out in this system, however, in that the structure of protection in the world remains heavily biased against exports by developing countries. To a significant degree, they have failed to receive favourable concessions pertaining to these sectors because they have not given up equivalent benefits to other trading partners in the system..."*¹²⁷

That is why to date, some of the biggest concerns with the **July Package**, and one of the reasons for the breakdown of talks at **Cancun**, was the issue of agriculture, the main source of employment and livelihood of most of the people in developing countries, and which is one of the most important sectors that

¹²³ Michalopoulos Constantine, 2000, at 12

¹²⁴ 1960 – 1961, that is, just before the Kennedy Round)

¹²⁵ Finger Michael and Winters Alan 2002, *Reciprocity in the WTO*, in Bernard Hoekman, Aaditya Mattoo and Philip English (eds), *Development, Trade and the WTO; A Handbook*, Washington, DC The World Bank, at 53.

¹²⁶ Ibid.

¹²⁷ Professor of International Trade and Investment, Kennedy School of Government. Statement made when presenting a paper on "WTO: Sovereign Contracting or Contracting Sovereignty?" on 17 Oct 2002. <<http://www.lid.harvard.edu/lidtrade/site/Lawrence.html>> Accessed on 1st May 2005.

ought to be addressed so as to eradicate poverty. Rich countries on the other hand have ensured that the proposed rules in the **Doha Agenda** do not foster any cuts on their spending on agriculture through for example subsidies.¹²⁸

In November 2001, WTO members launched a “Development Agenda” in Doha and in doing so, they acknowledged that to make progress in the fight against poverty, developed country markets were to be made more open to the goods of developing countries.¹²⁹

As such, it can be concluded that Non Reciprocity has not fostered developing countries’ access to the markets of developed countries. In the words of **Fukasuku**:

*“... the past approach to special and differential treatment has been stymied by the misconception that granting special privileges or exemptions is a benefit to developing countries. Such misconception has distracted the attention of policy makers from addressing the real issue: to improve effective market access for products of primary interest to developing country exporters and encourage good governance in economic policy making by subjecting domestic policies to multilateral discipline”*¹³⁰

b) Whether Non Reciprocity has enhanced the general development and growth of developing countries.

According to **Michalopoulos**,

“... The 1990's have witnessed a growing body of analytical and empirical work which suggests that the very existence by developing countries of some of their

¹²⁸ Sophia Murphy, *Will the Doha Round Play a Role in Ending Poverty? Focus on Trade and Justice* <<http://www.tradeobservatory.org/library.cfm?refid=72744>> Accessed on 4th May, 2005.

¹²⁹ http://www.wto.org/english/thewto_e/whatis_e/tif_e/org6_e.htm> Accessed on 1st May, 2005.

¹³⁰ Fukasuku, at 2.

*rights under the various provisions that exempt them from WTO disciplines, has had negative effects on their trade and development needs.... "*¹³¹

This has clearly been the case for example with the Latin American and Caribbean countries which held 40% of all developing country merchandise exports in 1948, but had their percentage value of merchandise exports decline to 19% by 1997.¹³² Even the share of merchandise exports accounted for by Asia, excluding China and the NIEs, declined from 16% in 1948 to 5% by 1997.¹³³

Developed countries on the other hand, which are actively involved in negotiations, have jealously guarded their agriculture sector, to the continued detriment of developing countries.¹³⁴ Developed countries are still subsidising domestic production, which has ended up creating a surplus production that is dumped on the world markets, which in turn undercuts developing country producers.¹³⁵ In 2000, agricultural subsidies in OECD countries exceeded US \$ 300 billion, contributing to global price instability and impeding the ability of developing countries to compete on export markets.¹³⁶

Yet a dynamic agricultural sector is crucial for economic growth, poverty alleviation, and food security for developing countries. Although primary agricultural activities are declining over time as a share of the economy in developing countries, they still represent about one-fourth of total economic

¹³¹ Michalopoulos Constantine, 2000, at 27

¹³² WTO (1999a), *Developing Countries and the Multilateral Trading System: Past and Present*, background document prepared for the High Level Symposium on Trade and Development, Geneva, 17 - 18 March, 1999, at 7

¹³³ WTO (1999a), *ibid*, at 9

¹³⁴ Sophia Murphy, *Will the Doha Round Play a Role in Ending Global Poverty?* Focus on Trade and Justice <<http://www.tradeobservatory.org/library.cfm?refid=72744>> Accessed on 3rd May, 2005.

¹³⁵ *Ibid*.

¹³⁶ Sophia Murphy, *Will the Doha Round Play a Role in Ending Global Poverty?* Focus on Trade and Justice <<http://www.tradeobservatory.org/library.cfm?refid=72744>> Accessed on 3rd May, 2005.

activity and 60% of total employment in low-income developing countries.¹³⁷ Primary and processed food products account for about 20% of these countries' merchandise trade. Moreover, of the 1.2 billion people living on less than US\$1 a day, about 75% live and work in rural areas in agriculture related activities in developing countries.¹³⁸

On the other hand, developing countries that increased their integration into the world economy, through reciprocal participation in trade negotiations, over the past two decades, have achieved higher growth in incomes, longer life expectancy, and better schooling.¹³⁹ These countries, home to some 3 billion people, have enjoyed an average growth of 5% growth rate in per capita income in the 1990's.

As such, the developing countries whose trade and development has been enhanced are those that have participated in the multilateral trading system on a reciprocal basis.



The notion of Non Reciprocity has also been deemed to perpetuate trade distortions in developing countries. As a result of the notion, high levels of domestic protection and subsidisation of exports have been tolerated, which has introduced distortions in domestic resource allocation, encouraged waste and adversely affected growth in the productivity and sustainable development of developing countries.¹⁴⁰

¹³⁷ Eugenio Diaz – Bonilla and Ashok Gulati, *Developing Countries and the WTO Negotiations*, 2002 -2003, IFPRI Annual Report Essay.

<http://www.ifpri.org/pubs/books/ar2002/ar2002_essay02.htm> Accessed on 6th May, 2005.

¹³⁸ Eugenio Diaz – Bonilla and Ashok Gulati, *Developing Countries and the WTO Negotiations*, 2002 -2003, IFPRI Annual Report Essay.

<http://www.ifpri.org/pubs/books/ar2002/ar2002_essay02.htm> Accessed on 6th May, 2005.

¹³⁹ Stern Nicholas, the Senior Vice President, Chief Economist, World Bank, in the foreword in the WTO handbook.

¹⁴⁰ Michalopoulos Constantine, 2000, at 28

As a result of the aforesaid, according to **Prof Robert Lawrence**, the WTO has been under fire by the international community because despite its mandate to liberalise international markets, the WTO has encouraged protection,¹⁴¹ which has created distortions in domestic resource allocation in developing countries.

The notion of Non Reciprocity has also been seen to work to the disadvantage of developing countries, with respect to the enforcement of WTO provisions in event of breach, under the Dispute Settlement Mechanism. When members participate in the WTO negotiations, they come to the table with the goal of obtaining mutually advantageous agreements through reciprocal reductions in tariff binding, where by the tariff reduction offered by one member is balanced against an equivalent concession from the other trading partner.¹⁴²

Thus when a member renegotiates or withdraws a previous given concession, WTO rules allow the substantially affected trading partner to retaliate in a reciprocal manner by withdrawing substantially equivalent concessions.¹⁴³ This however cannot be undertaken by developing countries, who did not put anything on the table in the first place.

As such, developing countries' ability to retaliate through the withdraw of concessions under the Dispute Settlement Mechanism is compromised, simply because of developing countries' participation in the multilateral trading system on a Non Reciprocal basis.

Since the 1980s however, developing countries' trade policies have moved away from the notion of Non Reciprocity to "Less Than Full Reciprocity," a more outward looking policy approach. As a result, there has been a slight

¹⁴¹Professor of International Trade and Investment, Kennedy School of Government. Statement made when presenting a paper on "*WTO: Sovereign Contracting or Contracting Sovereignty?*" on 17 Oct 2002. <<http://www.lid.harvard.edu/lidtrade/site/Lawrence.html>> Accessed on 1st May 2005.

¹⁴² Tussie Diana and Lengyel F. Miguel 2002, *supra*, at 488.

¹⁴³ Article 22 (3) Dispute Settlement Understanding.

liberalisation of merchandise trade, which has led to growth hence increasing developing countries' share of world merchandise exports to 29% of the world exports by 1997.¹⁴⁴

c) The need to integrate developing countries into the Multilateral Trading System.

For over 40 years after the Second World War, most developing countries did not perceive the GATT as a fruitful arrangement in which they could achieve their interests.¹⁴⁵ They adopted a passive attitude, refraining from significantly engaging in the exchange of reciprocal concessions, for example in the Tokyo Round on such matters as export subsidies, countervailing, technical barriers to trade and government procurement.¹⁴⁶

Indeed during the Tokyo Round, only 68 of the Contracting Parties were developing countries, a slight improvement from the Kennedy Round where 25 of the Contracting Parties were developing countries.¹⁴⁷



However, after the Tokyo Round, (the period within which the notion of Non Reciprocity was introduced), developing country membership started escalating greatly. By the beginning of the 1990's, developing country membership had escalated to 74%, and their participation in trade negotiations had proliferated.¹⁴⁸ For example during the Uruguay Round, 76 of the members were developing countries.

¹⁴⁴ Michalopoulos Constantine, *Trade and Development in the GATT and WTO: The Role of Special and Differential Treatment for Developing Countries*, 2000, at 28

¹⁴⁵ Ibid.

¹⁴⁶ Michalopoulos Constantine, *Differential and More Favourable Treatment of Developing Countries in the WTO: A Conceptual Classification*, WTO, 1998, at 18.

¹⁴⁷ http://www.wto.org/english/thewto_e/whatis_e/tif_e/org6_e.htm Accessed on 1st May, 2005.

¹⁴⁸ Tussie Diana and Lengyel F. Miguel 2002, at 51.

Today, the overwhelming majority of WTO members are developing countries. About two thirds of the 148 WTO members are developing countries.¹⁴⁹

According to a WTO analysis,

*'In the last fifty years, great progress has been made in integrating developing countries into the multilateral trading system and in their participation in the GATT and subsequently in the WTO....'*¹⁵⁰

Clearly, developing countries' involvement in the multilateral trading system has augmented. As a result of this increased participation, developing countries' influence in the multilateral trade negotiations has heightened especially when developing countries mobilise themselves into a united bloc. With such unison, developing countries have been able to influence agenda setting in the multilateral trading system.

For example, during the pre negotiation phase of the Uruguay Round, (1982-86), developing countries remobilised themselves into the G - 10.¹⁵¹ This coalition embodied the traditional bloc diplomacy of developing countries that had for example found several avenues through the G 77 in UNCTAD. The negotiating position of the G - 10 was clear; that members would block the opening of a new trade round until traditional issues of interest to them were attended to.¹⁵²

This was practically seen in the protests at Seattle in 1999, where developing countries frustrated the progress and hence success of the Round, owing to their deliberate agenda to sabotage the Round, unless matters of great concern to them had been addressed.¹⁵³ In the run up to the meeting, a number of prominent observers and policy makers called for the launch of a Development

¹⁴⁹ < http://www.wto.org/english/thewto_e/whatis_e/tif_e/org6_e.htm > Accessed on 1st May, 2005.

¹⁵⁰ WTO (1999a), *Developing Countries and the Multilateral Trading System: Past and Present*; background document prepared for the High Level Symposium on Trade and Development, Geneva, 17 - 18 March, 1999, at 3

¹⁵¹ It included the big 5 - Argentina, Brazil, Egypt, India and Yugoslavia, plus Nigeria, Cuba, Nicaragua, Peru and Tanzania.

¹⁵² Tussie Diana and Lengyel F. Miguel 2002, at 489.

¹⁵³ http://www.wto.org/english/thewto_e/whatis_e/tif_e/org6_e.htm > Accessed on 1st May, 2005.

Round of negotiations under WTO auspices to address developing country concerns.¹⁵⁴

Similar calls were put forward in the preparations for the 2001 Ministerial Meeting in Doha. The Doha Development Agenda that emerged clearly reflects the increased prominence of developing country concerns in WTO deliberations. In particular, **Paragraph 44** of the **Doha Ministerial Declaration** emphasises the need to review all Special and Differential Treatment provisions with a view to strengthening them and making them more precise, effective and operational, a result of developing countries' influence, stemming from their increased participation in the multilateral trading system.

Developing countries' intensified involvement in the WTO has also been seen in the "Green Room". The Green Room is the name given to the traditional method used in the GATT/WTO to expedite consultations. It involves the Director General and a small group of members, numbering between 25 and 30 and including the major trading countries, both developed and developing as well as several other countries that are deemed to be representative.¹⁵⁵ The composition of the group varies from issue to issue. The aim of the Greenroom is to conduct negotiations with fewer persons, with the rest of the WTO members simply being represented by the Green Room participation.¹⁵⁶

This works very well for developing countries owing to the fact that the majority of individual developing countries are quiet bystanders. Developing countries are thus able to pursue group agendas to the benefit of all developing countries through the Green Room process.

A clear case in point was during the Seattle Ministerial meeting where several developing countries that were excluded from critical Green Room meetings,

¹⁵⁴ Ibid.

¹⁵⁵ Ibid.

where attempts were being made to negotiate compromise texts of a draft agenda for a new multilateral trade negotiation. The developing countries felt that they were not being kept informed of developments and were not being granted the opportunity to defend their views.¹⁵⁷ As a result, they sabotaged the Ministerial Meeting and ended up defeating the creation of a new Round.

As such, to this extent, it can be concluded that there is increased participation of developing countries in the multilateral trading system. As a result of this, developing countries have had greater influence on the agenda setting and subsequent discussions of trade matters in the multilateral trading system, which consequently has reduced their overall marginalisation in the multilateral trading system.

The fact that developing countries have on two occasions frustrated the success of Ministerial meetings at Seattle as already discussed and at Cancun, where the negotiations reached a deadlock owing to the fact that developing countries declined to be pressured into agreement clearly shows an escalation of developing countries' involvement and relative influence in the multilateral trading system.

There is however no empirical evidence to prove that the said increased participation of developing countries is a direct result of the notion of Non Reciprocity, as a form of Special and Differential Treatment. The only existing data is that developing countries' participation in the multilateral trading system has heightened greatly.

It should be noted that it is clear that increased developing country participation has been as a direct result of the preferential status accorded to developing

¹⁵⁶ http://www.wto.org/english/thewto_e/whatise/tif_e/org6_e.htm Accessed on 1st May, 2005.

¹⁵⁷ Ibid.

countries,¹⁵⁸ but there has been no statistical breakdown of which particular forms of Special and Differential Treatment have contributed to this increase. Owing to the absence of observed statistics verifying the same, this paper cannot conclude that Non Reciprocity has directly fostered increased market access.

It can therefore be concluded that developing countries' trade and development needs have not been satisfactorily met by the existence of the notion of Non Reciprocity.

In conclusion therefore, it can be argued that the past approach to Special and Differential Treatment based on the concept of Non Reciprocity has been disappointing. True, the notion might have achieved some positive results, such as the protection of developing countries' infant industries, but on the whole, the notion has not been of benefit to developing countries. As such, there is a serious risk that a large number of developing countries might have been left out of the normal rules and procedures of the WTO,¹⁵⁹ owing to the reliance on the concept of Non Reciprocity.



¹⁵⁸ WTO (1999a), *Developing Countries and the Multilateral Trading System: Past and Present*, background document prepared for the High Level Symposium on Trade and Development, Geneva, 17 - 18 March, 1999, at 3

CHAPTER FIVE

CONCLUSION AND POSSIBLE RECOMMENDATIONS.

This paper set out to examine whether developing countries are benefiting from the notion of Non Reciprocity and whether the original aims and reasons for establishing Special and Differential Treatment for developing countries have been achieved through the notion of Non Reciprocity in the GATT/WTO.

This paper has found that;

1. The preferential status encouraged by the concept of Special and Differential Treatment has increased developing countries' participation in the multilateral trading system and hence their influence in the negotiations and agenda setting. As a result, developing countries' marginalisation in the multilateral trading system has greatly reduced.

However, it is not absolutely certain that the increased participation is a direct result of the notion of Non Reciprocity alone. Owing to the absence of empirical evidence to prove the same, this paper cannot conclude that the increase of developing countries' participation in the multilateral trading system is as a result of the notion of Non Reciprocity.

2. Reliance on the notion of Non Reciprocity by developing countries has sabotaged developing countries in the long run owing to the fact that the countries that participated in the multilateral trade negotiations on the basis of Non Reciprocity did not gain as much from the trading system as the countries that granted reciprocal concessions.

3. The notion of Non Reciprocity has ended up undermining the original goals for the establishment of Special and Differential Treatment owing to the failure to

¹⁵⁹ Fukasaku Kiichiro, *Special and Differential Treatment for Developing Countries: Does it Help Those Who Help Themselves?* 2000, at 19.

increase direct market access to developed countries, as well as foster growth and development.

On the basis of the aforesaid therefore, it can be seen that developing countries have not really benefited from the notion of Non Reciprocity, as they thought they should have. This explains why several developing countries moved away from Non Reciprocity, to the granting of reciprocal concessions, on the basis of the concept of "Less than Full Reciprocity."¹⁶⁰

There are several reasons why developing countries have not been able to fully benefit from the notion of Non Reciprocity, or why they would not have benefited from it in the first place. It is therefore the thesis of this paper that if developing countries had concentrated on addressing the intrinsic problems in their economies, developing countries would have benefited much more from the multilateral trading system, than through the reliance on the notion of Non Reciprocity, which has to a great extent worked to their detriment.

Such problems include for example a lacuna in developing country representation in Geneva. Many developing countries have inadequate or no representation in Geneva which impedes their active engagement in negotiations and in the day to day functioning of the WTO.¹⁶¹

Several developing countries have no more than one or two persons dealing with WTO matters at Geneva, who would be required to attend to all the various issues that are being discussed; say cotton, or subsidies or intellectual property.¹⁶²

¹⁶⁰ Michalopoulos Constantine, 2000, at 28

¹⁶¹ Hoekman Bernard, *The WTO: Functions and Basic Principles*, in Bernard Hoekman, Aaditya Mattoo and Philip English (eds), *Development, Trade and the WTO; A Handbook*, Washington, DC The World Bank, at 41.

¹⁶² Ibid.

This should be compared to USA alone, where the United States Trade Representative senior staff includes about 30 key officials appointed by the U.S. Trade Representative who supervise trade negotiations, monitor trade disputes, enforce laws, and keep a constant flow of communication with the Congress, industry, nongovernmental organizations and the public on U.S. trade policy.¹⁶³

If developing countries therefore focused on ways in which they could increase their representation in Geneva, as opposed to their clinging on to WTO principles that have negative effects on them, many more developing country friendly provisions with respect to effectively effecting growth and development would be achieved, than through insisting on being given preferential status in the form of Non Reciprocity.

This thus explains why developing countries are not fully benefiting from the multilateral trading system, when they too are greatly endowed, with excellent resources. Yet for so long,

"... the west has driven the globalisation agenda, ensuring that it garners a disproportionate share of the benefits, at the expense of the developing world. It was not just that the more advanced industrial countries declined to open up their markets to the goods of developing countries... [or that they] continued to subsidise agriculture, making it difficult for the developing countries to compete.... The result was that some of the poorest countries in the world were actually made worse off..."¹⁶⁴

Options have been identified that would allow poor countries to expand their representation in Geneva at relatively low cost. For example, **Blackhurst**¹⁶⁵ proposes a transfer of national representatives from other UN bodies to Geneva. Developing countries could also put in more effort in the training of their nationals in areas of trade and investment. This would increase the level of technical know

¹⁶³ <http://www.georgetown.edu/int/guides/trade/trade_5.html> Accessed on 3rd May, 2005.

¹⁶⁴ Stiglitz E. Joseph, *Globalisation and its Discontents*, Penguin Books, 2002, at 7.

how, which would fairly elevate developing country participant's understanding of the technical matters of trade, than is at present.

In Africa, initiatives have been started to this end, by the creation of a masters of laws degree program in International Trade and Investment Law in Africa, where young brilliant minds are enlightened about trade and investment principles.¹⁶⁶

The WTO has also embarked on carrying out seminars, conferences and workshops for developing countries, for example in Cape Town in October 2004, where several government and non government officials from developing countries participated in trade moot discussions.¹⁶⁷ These initiatives have gone along way in building capacity for African developing countries.

The other problem that developing countries are facing, that should be addressed, as opposed to relying on the notion of Non Reciprocity, is the cost associated with complying with WTO disciplines. The norms that are embodied in the WTO are often prevailing in OECD countries, implying not only that implementation costs may be significant for poor countries, but also that they are asymmetrically distributed. This does not mean that WTO rules are bad, but that making them work in low income countries may require wholesale reform and strengthening of affected institutions.

For example developing countries were concerned about their ability to promulgate and implement measures to protect and promote public health in light of the obligations imposed under the TRIPS and the Public Health Declaration.¹⁶⁸

¹⁶⁵ Blackhurst, Lyakurwa & Oyejide, 1999.

¹⁶⁶ <http://www.chr.up.ac.za/academic_pro/llm2/students_uwc_jul_04.html> Accessed on 3rd May, 2005.

¹⁶⁷ <www.chr.up.ac.za/academic_pro/llm2/moot.html> Accessed on 3rd May, 2005.

¹⁶⁸ Paper presented by Leo Palma, on *The Review Under Art 27:3 and 71:1 and IPR Negotiations in the New Round*. Advisory Centre on WTO Law. http://www.wto.org/english/thewto_e/whatis_e/tif_e/org6_e.htm> Accessed on 1st May, 2005.

As such, the real issue that ought to be addressed by developing countries is the need is to assist developing countries in implementing WTO commitments, as opposed to encouraging them to sit back during negotiations and or lobby for favourable treatment.

Indeed, **Hoekman, Mattoo and English** believe that financial and technical assistance, channelled through the existing institutions for development cooperation are one of the ways in which developing countries' implementation problems would be addressed.¹⁶⁹

The financial assistance could for example be used to help in the creation of domestic laws that implement WTO Agreements. For example in the establishment of the Patent Act in a developing country, in implementation of the TRIPS Agreement.

Assistance could also be used to help set up and run local offices that implement WTO Agreements in developing countries for a transitional period. Say for five years, till when such offices are able to run on their own. For example the establishment of a procurement office, to help establish and effect the Plurilateral Procurement Agreement, or the establishment of a subsidies office, to monitor the implementation of the Subsidies and Countervailing Agreement.

The USA for example has the US International Trade Administration (ITA) which provides practical information to help businesses select markets and products. The Market Access and Compliance Unit works with foreign governments to make sure the U.S. is getting the benefits due under its trade agreements.¹⁷⁰

¹⁶⁹ Hoekman Bernard, Mattoo Aaditya and English Philip, eds, *The Trading System and Developing Countries*, Development, Trade and the WTO; A Handbook, Washington, DC The World Bank, at 484.

¹⁷⁰ http://www.georgetown.edu/int/guides/trade/trade_5.html Accessed on 3rd May, 2005.

The Trade Compliance Centre takes complaints from U.S. businesses and monitors, investigates and evaluates foreign government compliance with the trade agreements. The Import Administration defends U.S. businesses against foreign dumping and subsidies and administers the Foreign Trade Zones. No wonder USA is greatly benefiting from the multilateral trade system, as opposed to developing countries.¹⁷¹

These offices should be independent bodies from the government so as to avoid unnecessary bureaucracy and ineffectiveness. For example, the U.S International Trade Commission is an independent, non partisan, quasi judicial federal agency that administers U.S. trade remedy laws, provides analysis and information to the President, the United States Trade Representative and the Congress.¹⁷²

Trade promotion organisations in developing countries could also be established and where they already exist, strengthened. These are supposed to be focal point institutions to assist exporters in penetrating foreign or developed country markets. They would largely be state organs that provide commercial intelligence, market research services to foreign buyers, group promotions and advice on shipping, transport and packaging. They could also administer incentive schemes, train exporters, and provide export licences.

At present, several attempts have been made to avail financial assistance to developing countries, for example, through the utilisation of the Integrated Framework for Trade Related Technical Assistance, though only limited to Least Developed Countries. This however should be extended to other developing countries, as it aims at identifying priorities on a country by country basis.

¹⁷¹ Ibid.

¹⁷² http://www.georgetown.edu/int/guides/trade/trade_5.html Accessed on 3rd May, 2005.

Developing countries also now have the opportunity to obtain legal assistance on a more cost effective basis through an International Legal Services Organisation of the Advisory Centre on WTO Law in Geneva, to address the problems of their participation in the dispute settlement mechanism.

Therefore, rather than putting all their eggs in the basket of Non Reciprocity, developing countries should effectively utilise the availed assistance, to enable them effectively implement WTO provisions, in compatibility with their local circumstances, so as to increase the benefits derived from the multilateral trading system.

Another intrinsic problem that is being faced by developing countries, is the failure to draw a clear distinction in the roles of politicians and persons competently trained to deal in matters of trade and investment. Most developing countries assign the responsibility for trade bargaining to the foreign affairs or trade ministries, which are swamped with politicians, persons usually picked almost solely on the basis of their political inclinations, as opposed to trade expertise.¹⁷³



This should be compared to the United States Trade Representatives whose senior officials are lawyers and economists with extensive backgrounds in trade law.

This lack of expertise for developing country representatives has opened the door for the developed countries to take advantage of developing countries during trade negotiations. It has led to the opening of a wider range of targets for lobbying by the more powerful countries. As a result, it has been hard for developing countries to find a common ground and build joint negotiating

¹⁷³ Hoekman Bernard, Mattoo Aaditya and English Philip, eds, *The Trading System and Developing Countries*, Development, Trade and the WTO; A Handbook, Washington, DC The World Bank, at 484.

positions, even where there is agreement that such cooperation could increase their leverage at the bargaining table.

In respect to the above, **Oyejide**¹⁷⁴ therefore suggests that developing countries put in effort to overcome the lack of coordination and the turf wars at the national level that usually plague them. Coordination problems stemming from differences regarding the location of real compared to nominal authority with respect to the articulation and implementation of trade policy and differences in terms of which institution has the responsibility for trade policy and which government agency has the power to negotiate and sign international agreements,¹⁷⁵ should be addressed long before going to the negotiating table.

Thus although the WTO can be useful in helping developing countries address specific bottlenecks and constraints that impede trade, most of the trade policy agenda is domestic. It is therefore important that policy makers have a good understanding of what their national priorities are and what makes for good policy, informed by experiences of other countries, in order to determine what types of multilateral cooperation can help countries benefit from trade integration.

Developing countries should also put in more effort towards increased and more effective regional cooperation. Negotiating for weaker economies is difficult if approached by individual countries on an individual basis. It would be much easier if scarce resources are pooled into regional groupings of countries that share many trade interests, which would allow actions to be jointly designed, organised and managed.

¹⁷⁴ Oyejide T. Ademola, *Special and Differential Treatment*, in Bernard Hoekman, Aaditya Mattoo and Philip English (eds), *Development, Trade and the WTO; A Handbook*, Washington, DC The World Bank, at 505.

¹⁷⁵ Ibid.

A clear example of triumph for developing countries on the basis of cooperation is in respect to the TRIPS and Public Health Declaration, when developing countries raised concerns regarding the implementation of the same. Several developing countries, acting as one, were able to present a proposal on the same, which proposal was the basis for the Doha Ministerial Declaration on the TRIPS and Public Health Declaration.¹⁷⁶

These developing countries did not invoke any specific existing mandate as a basis for the presentation of their proposal, yet within a span of less than a year, concrete results had been achieved.¹⁷⁷ Other groupings which occasionally present unified statements at the WTO are the African Group, which succeeded in advocating for the exclusion of cotton from the general WTO agricultural discussions, to stand as an issue on its own. The results of their efforts can be clearly seen in the **July Package**, where cotton was addressed as a separate issue, from agriculture.¹⁷⁸



A lesser degree of economic integration has also been achieved by WTO members in the **Association of South East Asian Nations (ASEAN)** by Brunei Darussalam, Indonesia, Malaysia, Myanmar, Philippines, Thailand and Singapore. (The three remaining members, Cambodia, Laos and Viet Nam, are applying to join the WTO.) They realised that they have many common trade interests thus decided to coordinate positions and speak with a single voice. The role of spokesman rotates among ASEAN members is shared out according to topic.¹⁷⁹

¹⁷⁶ Paper presented by Leo Palma, on *The Review Under Art 27:3 and 71:1 and IPR Negotiations in the New Round*. Advisory Centre on WTO Law.

http://www.wto.org/english/thewto_e/whatis_e/tif_e/org6_e.htm Accessed on 1st May, 2005.

¹⁷⁷ Ibid.

¹⁷⁸ See Paragraph 1 (b) of the July Package.

¹⁷⁹ Paper presented by Leo Palma, on *The Review Under Art 27:3 and 71:1 and IPR Negotiations in the New Round*. Advisory Centre on WTO Law.

http://www.wto.org/english/thewto_e/whatis_e/tif_e/org6_e.htm Accessed on 1st May, 2005.

This shows that indeed cooperation amongst developing countries is possible and would be a very effective way of advancing their cause in the multilateral trading system

On the question of how the various developing country interests can be effectively advocated for in these regional groupings, developing countries can emulate the example of the European Union.

The EU is a WTO member in its own right as are each of its 25 member states, thereby making 26 WTO members. While the member states coordinate their position in Brussels and Geneva, the European Union alone speaks for the EU at almost all WTO meetings.

However, sometimes references are made to the specific member states, particularly where their laws differ. This is the case in some disputes when an EU member's law or measure is cited, or in notifications of EU member countries' laws, such as in intellectual property (TRIPS). Sometimes individuals' nationalities are identified, such as for WTO committee chairpersons. Developing countries could therefore emulate this example of the EU, in their regional groupings to achieve greater results from the multilateral trading system.

Developing countries could also pool their resources through developing regional WTO centres that can develop WTO expertise in a more cost effective manner. These centres could for example assist in defining trade priorities, as well as coordinate trade negotiating strategies. The existence of TRALAC (The Trade Law Centre for Southern Africa) for example, created in support of the governments of Southern Africa is a good example that can be emulated in other major developing country regions.¹⁸⁰

¹⁸⁰ <<http://www.tralac.org/>>, Accessed on 3rd May, 2005.

Focus should also be put on increased developing Countries' Participation in the dispute settlement process as a means of addressing developing country intrinsic problems. African developing countries for example have been noticeably absent in the dispute process.¹⁸¹ Active participation in the dispute mechanism gives participants an opportunity to shape WTO law through the establishment of decisions, which though not binding, are persuasive for future purposes.

For example, India, Malaysia, Pakistan and Thailand actively participated in the **Shrimp – Turtle case**,¹⁸² against USA. The Appellate Body recognised that under WTO rules, governments have every right to protect human, animal or plant life and health to take measures to conserve exhaustible resources.

In this way, India, Pakistan, Malaysia and Thailand were able to advocate for and protect their trade interests by actively participating in the dispute settlement process, in so doing benefiting from the WTO.

Further, for WTO rules to make sense for all members, stakeholders in developing countries must participate in the domestic trade policy formation process, be able to inform national representatives of their views and hold their representatives accountable for outcomes. For then WTO Agreements would be seen by constituencies in developing countries as being conducive to or consistent with the attainment of development individual countries' objectives.

Conclusion.

In conclusion, there is little analytical and empirical justification for the differential treatment of developing countries regarding trade policy. The main differences between developed and developing countries are not in the trade policies they pursue, but in the way their institutions are pursuing them.

¹⁸¹ Mosoti Victor, *Does Africa need the WTO Dispute Settlement System* (2003) Pg 5

If trade policy reform is to be successful, it must be embedded in and supported by effective institutional structures and it must be complemented by other reforms. A large and complex behind the border agenda has to be addressed if trade reform is to have its intended effect.

It is also important to remember that good policy making requires a solid grounding in fact and analysis - an understanding of the processes that are taking place.

The design of trade policy reform is a complex matter that extends far beyond tariffs and quotas that are applied at the border. It must be complemented by policies designed to ensure that enterprises can compete on world markets. Merely claiming that developing countries are not benefiting from the multilateral trading system is not satisfactory. One needs to see why and ask how institutions can be designed to produce better policy outcomes.



As such, now that the **Doha Work Programme** is embarking on the review of all Special and Differential Treatment provisions in the WTO Agreements with a view of making them more effective, special attention should be paid to the instruments that strengthen developing countries' institutional capacity.

At present, the **July Package** has tried to address, emphasise and encourage Special and Differential Treatment provisions related to technical and financial assistance and longer transitional periods as opposed to the notion of Non Reciprocity, or "Less Than Full Reciprocity" for that matter, as they address the underlying practical problems that are being faced by developing countries today.

It is therefore the conclusion of this paper that the notion of Non Reciprocity has not benefited developing countries as was expected. It has in fact, as discussed,

¹⁸² US- Import Prohibition of Certain Shrimp & Shrimp Products. WTO Case No 58 & 61. Ruling adopted on 6 Nov 1998.

prejudiced and compromised developing countries, to their detriment. Therefore, it is contended that the notion of Non Reciprocity has been a stab in the back of developing countries.



BIBLIOGRAPHY.

BOOKS

Bhagirath Lal Das, *The World Trade Organisation: A Guide to the Framework for International Trade*, Zed Books, 2000.

Cottier Thomas and Mavroidis C. Petros, *Regulatory Barriers and the Principle of Non Discrimination in World Trade Law*, The World Forum, Vol 2, The University of Michigan Press, 2000.

Dalhuisen H. Jan, Dr. Jur and FCL Arb, *Dalhuisen on International Commercial, Financial and Trade Law*, Hart Publishing, 2000.

WTO Secretariat, *Guide to the Uruguay Round Agreements*, Kluwer Law Int., 1999.

ARTICLES.

Blackhurst, Richard, Bill Lyakurwa and Ademola Oyejide, (1999), *Importing African Participation in the WTO*, Paper commissioned by the World Bank for a Conference at the WTO on 20-21 September.

Delich Valentina, *Developing Countries and the WTO Dispute Settlement System*: (2002), in Bernard Hoekman, Aaditya Mattoo and Philip English (eds), *Development, Trade and the WTO; A Handbook*, Washington, DC The World Bank.

Finger J. Micheal and Winters L. Alan, *Reciprocity in the WTO*: (2002), in Bernard Hoekman, Aaditya Mattoo and Philip English (eds), *Development, Trade and the WTO; A Handbook*, Washington, DC The World Bank.

Finger J. Michael and Schuler Philip, *Implementation of WTO commitments*: (2002), in Bernard Hoekman, Aaditya Mattoo and Philip English (eds), *Development, Trade and the WTO; A Handbook*, Washington, DC The World Bank.

Hoekman Bernard, Michalopoulos Constantine and Winters L. Alan, *Special and Differential Treatment for Developing Countries: Towards a New Approach in the WTO*, April 4, 2003, < <http://www.cedla.uva.nl/pdf/sdtsum-april4.pdf>>

Hudec E. Robert, *The Adequacy of WTO Dispute Settlement Remedies: A Developing Country Perspective*: (2002), in Bernard Hoekman, Aaditya Mattoo

and Philip English (eds), Development, Trade and the WTO; A Handbook, Washington, DC The World Bank.

Keck Alexander and Low Patrick, Special and Differential Treatment in the WTO: Why, When and How? 2004, WTO Economic Research and Statistics Division, http://www.wto.org/english/res_e/reser_e/ersd200403_e.htm

Kessie Edwini (2000) Enforceability of the Legal Provisions Relating to Special and Differential Treatment Under the WTO Agreements: Paper presented for WTO Seminar on Special and Differential Treatment for Developing Countries, 7 March, Geneva. *The Journal of World Intellectual Property* 3, 6: 955-976.

Luke F. David, Trade Related Capacity Building for Enhanced African Participation in the Global Economy: (2002), in Bernard Hoekman, Aaditya Mattoo and Philip English (eds), Development, Trade and the WTO; A Handbook, Washington, DC The World Bank.

Michalopoulos Constantine, Trade and Development in the GATT and the WTO: The Role of Special and Differential Treatment for Developing Countries, 2000, Paper prepared for WTO Seminar on Special and Differential Treatment for Developing Countries, 7 March, Geneva.

[http://lnweb18.worldbank.org/ESSD/ardext.nsf/12ByDocName/TradeandDevelopmentintheGATTandWTOTheRoleofSpecialandDifferentialTreatmentforDevelopingCountries/\\$FILE/TradeanddevelopmentintheGATTandWTO.pdf](http://lnweb18.worldbank.org/ESSD/ardext.nsf/12ByDocName/TradeandDevelopmentintheGATTandWTOTheRoleofSpecialandDifferentialTreatmentforDevelopingCountries/$FILE/TradeanddevelopmentintheGATTandWTO.pdf)

Oyejide T. Ademola, Special and Differential Treatment: (2002), in Bernard Hoekman, Aaditya Mattoo and Philip English (eds), Development, Trade and the WTO; A Handbook, Washington, DC The World Bank.

Oyejide T. Ademola, (1998) *Costs and Benefits of Special and Differential Treatment for Developing Countries in GATT/WTO: An African Perspective*, AERC Collaborative Research Project on Africa and the World Trading System, revised draft, February.

Panagariya Arvind, Formula Approaches to Reciprocal Tariff Liberalization: (2002), in Bernard Hoekman, Aaditya Mattoo and Philip English (eds), Development, Trade and the WTO; A Handbook, Washington, DC The World Bank.

Special and Differential Treatment, International Institute for Sustainable Development, Trade and Development Brief, No 2, Spring 2003, http://www.iisd.org/pdf/2003/investment_sdc_may_2003_2.pdf

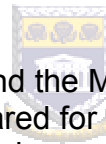
Stevens Christopher, The Future of Special and Differential Treatment for Developing Countries in the WTO, 2002, Institute of Development Studies, Brighton Sussex, England <<http://www.ids.ac.uk/ids/bookshop/wp/wp163.pdf>>

Stevens Christopher, Breaking the WTO Logjam: Towards Enforceable Special and Differential Treatment, Should developing countries be given special and differential treatment?
<<http://www.globalenvision.org/index.php?fuseaction=library.print&printerfriendly=1&category=8&itemid=550>>

Tortora Manuela, Notes on Special and Differential Treatment: UTA/UNITAR, Campus on International Trade, 17-20 June 2002, <http://www.un.int/unitar/trade/campus/trade_s&d.htm>

Tussie Diana and Lengyel F. Miguel F, Developing Countries: Turning participation into influence: Development, Trade and the WTO Handbook, World Bank, 2002.

Winters L. Alan (2000), *Trade Policy as Development Policy: Building on fifty years Experience*, Paper presented for High Level Round Table on Trade and Development: Directions for the Twenty First Century, UNCTAD X, Bangkok, 12 February.



WTO (1999a) Developing Countries and the Multilateral Trading System: Past and Present: Background Paper Prepared for High Level Symposium on Trade and Development, Geneva, 17-18 March.

WTO (1999b), Guide to the Uruguay Round Agreements, Kluwer Law, International, The Hague.

OFFICIAL DOCUMENTS.

The Final Act. The Final Act Embodying the Results of the Uruguay Round of Multilateral Trade Negotiations, Apr. 15, 1994, THE LEGAL TEXTS: THE RESULTS OF THE URUGUAY ROUND OF MULTILATERAL TRADE NEGOTIATIONS 2 (1999), 1867 U.N.T.S. 14, 33 I.L.M. 1143 (1994).

The WTO Agreement. The Marrakesh Agreement Establishing the World Trade Organization, Apr. 15, 1994, THE LEGAL TEXTS: THE RESULTS OF THE URUGUAY ROUND OF MULTILATERAL TRADE NEGOTIATIONS 4 (1999), 1867 U.N.T.S. 154, 33 I.L.M. 1144 (1994)

GATT 1994. General Agreement on Tariffs and Trade 1994, Apr. 15, 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex 1A, THE LEGAL TEXTS: THE RESULTS OF THE URUGUAY ROUND OF

MULTILATERAL TRADE NEGOTIATIONS 17 (1999), 1867 U.N.T.S. 187, 33 I.L.M. 1153 (1994)

AGREEMENT ON AGRICULTURE, Apr. 15, 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex 1A, THE LEGAL TEXTS: THE RESULTS OF THE URUGUAY ROUND OF MULTILATERAL TRADE NEGOTIATIONS 33 (1999), 1867 U.N.T.S. 410. [Not reproduced in I.L.M.]

TRIMS. The Agreement on Trade-Related Investment Measures, Apr. 15, 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex 1A, THE LEGAL TEXTS: THE RESULTS OF THE URUGUAY ROUND OF MULTILATERAL TRADE NEGOTIATIONS 143 (1999), 1868 U.N.T.S. 186

AGREEMENT ON SUBSIDIES AND COUNTERVAILING MEASURES, Apr. 15, 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex 1A, THE LEGAL TEXTS: THE RESULTS OF THE URUGUAY ROUND OF MULTILATERAL TRADE NEGOTIATIONS 275 (1999), 1867 U.N.T.S. 14.

GATS: General Agreement on Trade in Services, Apr. 15, 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex 1B, THE LEGAL TEXTS: THE RESULTS OF THE URUGUAY ROUND OF MULTILATERAL TRADE NEGOTIATIONS 284 (1999), 1869 U.N.T.S. 183, 33 I.L.M. 1167 (1994)

TRIPS: Agreement on Trade-Related Aspects of Intellectual Property Rights, Apr. 15, 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex 1C, THE LEGAL TEXTS: THE RESULTS OF THE URUGUAY ROUND OF MULTILATERAL TRADE NEGOTIATIONS 320 (1999), 1869 U.N.T.S. 299, 33 I.L.M. 1197 (1994)

DSU, Dispute Settlement Rules: Understanding on Rules and Procedures Governing the Settlement of Disputes, Marrakesh Agreement Establishing the World Trade Organization, Annex 2, THE LEGAL TEXTS: THE RESULTS OF THE URUGUAY ROUND OF MULTILATERAL TRADE NEGOTIATIONS 354 (1999), 1869 U.N.T.S. 401, 33 I.L.M. 1226 (1994)

CASES.

European Communities V India, Conditions for the Granting of Tariff Preferences to Developing Countries, AB - 2004 -1

US- Import Prohibition of Certain Shrimp & Shrimp Products. WTO Case No 58 & 61. Ruling adopted on 6 Nov 1998.