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# Global trade rules for supporting development in the post-2015 era

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## ABSTRACT

Multilateral trade rules have maintained stable and predictable trade flows. Developing countries increased their participation in world markets but marked asymmetries persist; not all countries are benefitting from trade. Successive trade rounds and numerous regional trade and bilateral investment agreements led to significant loss of policy space and fragmentation. Special and differential treatment has not provided necessary flexibility for implementation of development policies while the principle of less than full reciprocity is eroded. Stronger multilateralism, effective overseeing and enforcing role by WTO and greater focus by developing countries in negotiating flexible rules (instead of exceptions to the rules) are suggested.

**JEL Classification:** F13, F15, F55, O24

**Keywords:** multilateralism, free trade agreements, WTO, special and differential treatment, global value chains, trade rules, policy space

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## CONTENTS

I	Introduction .....	3
II	Recent trends in international trade .....	4
	The small print .....	6
	The tectonic plates .....	8
	Moving forward: trade and participation in GVCs as a means .....	10
III	Global rules: free trade at a cost .....	12
	Integrating developing countries: special and differential treatment .....	13
	Beyond WTO: further constraints to policy space .....	13
	Back to the WTO: policy space and differential treatment .....	16
IV	Conclusions .....	19
	References .....	21

### Figures

1	Merchandise import trends in developing and developed economies, 2002-2015 .....	4
2	Share in the world exports by selected groups of countries, 1980-2012 .....	5
3	Indices of real fuel and non-fuel commodity prices, 1960-2013 .....	8
4	World exports and world gross product: average annual rates of growth, 1950-2013 .....	9

### Tables

1	Selected regional shares in global exports by product group (per cent), 1995-2011 .....	5
2	Increasing importance of South-South and regional trade, 1990 and 2010 .....	6

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## I Introduction

Development requires dynamic structural change of economy with continued technological upgrading of productive capacities and economy-wide increased productivity. These have been largely neglected in the MDG agenda but without inclusive economic growth it becomes very difficult to achieve and sustain social progress. Such transformation of the economy also needs to contribute to environmental sustainability and social improvements. In this regard, this paper recognizes the importance of industrialization and the promotion of production linkages and technological upgrading given the limits to productivity growth and technological upgrading provided by natural resources-based activities and services-based development, (Lal, 2004; United Nations 2006; Ocampo, Rada and Taylor, 2009; Panagaryia, 2008; Akyuz, 2013)<sup>1</sup>

International trade provides opportunities for realizing economies of scale, increases the efficiency of production and facilitates the transfer of technology. Integration to the global economy is not an end in itself, rather a strategic component in the path to development. What a country exports and how exports are produced matter for development and the generation of productive employment. Moreover, patterns of insertion in global markets also matter: for trade to support sustained growth and the continuous productive transformation of the economy, countries need to participate in dynamic markets. With production increasingly organized through global value chains (GVC), how much value a country can capture in the chain becomes critical.

The debate about the use of industrial (or sectoral) policies to promote structural transformation is vast and evolving (Harrison and Clare-Rodriguez, 2009; Rodrik, 2008; United Nations, 2006). Successful industrializers (including developed countries) had a series of policy instruments available to promote and protect their nascent industries and agriculture. Liberalization came later for manufactures, while agriculture remains protected. Today's late industrializers have reduced policy space for industrial and sectoral policy; face fierce competition at the low-skill manufactures, the usual "entry point", and have to pay attention to environmental sustainability. Trade disciplines, while helping to make trade flows take place and expand in a predictable and equitable manner, need also to be sufficiently flexible to allow for the implementation of national policies that facilitate productive structural change. As the international development strategy beyond 2015 is being defined, there is need to ensure that the global trade governance supports trade integration that generates benefits and creates real opportunities for sustainable inclusive development for all countries.

The rest of this paper is organized as follows. Section II reviews recent trends in international trade and identifies the main forces behind increased trade flows and the heterogeneous trade and development outcomes among developing countries. It highlights the role trade rules have had in shaping these outcomes, the significance of GVC and the emerging challenge to reconcile pressures for increased standardization of rules with the needs for policy flexibility for promoting structural economic transformation in developing countries. Section III presents a brief overview of the evolution of multilateral trade rules, the approaches to address the difficulties developing countries have experienced to fully benefit

<sup>1</sup> On natural-resource based development strategy see, among others, Perez 2010.

from trade and effective those responses have been. Analyzing recently completed and currently ongoing negotiations at WTO, the section also identifies significant changes in how development is being tackled at that forum. Section IV concludes.

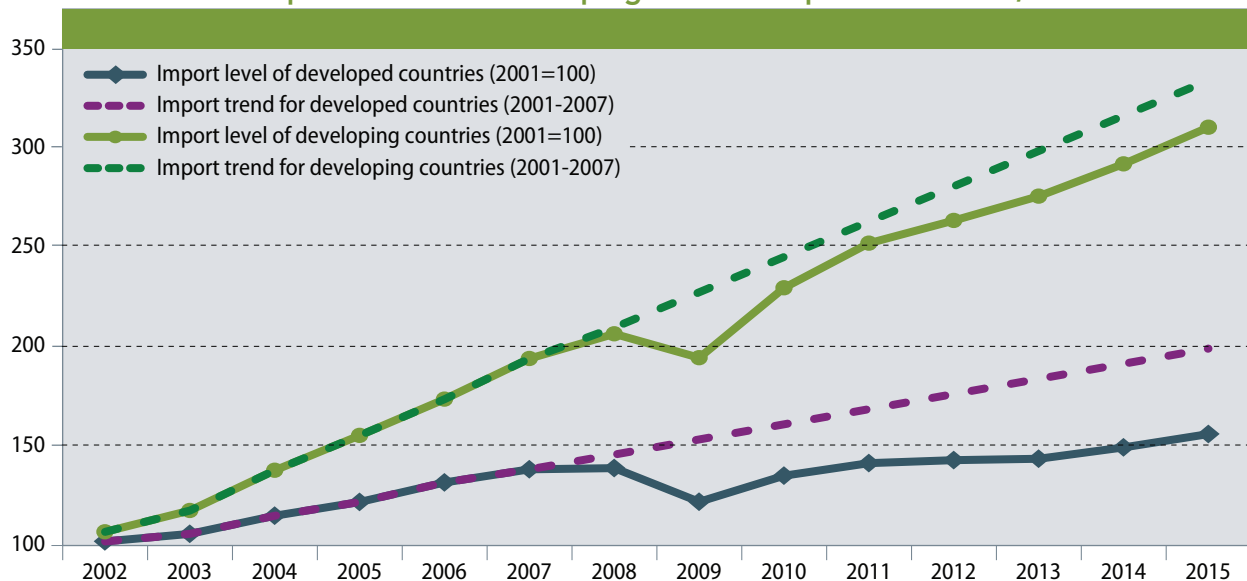
## II Recent trends in international trade

Global exports of merchandise reached over \$18.5 trillion (current values) in 2013, which corresponds roughly to 26 per cent of world gross product up from 17 per cent in 1981. Merchandise trade volume grew particularly fast from the late 1990s into the first years of the 2000s, but has decelerated sharply since the great financial and economic crisis that hit the global economy in 2008. As seen in figure 1, imports remain below their pre-crisis trend level, particularly in the developed economies (some 28 per cent), and it is likely that this gap will persist in the near future (more below).

The expansion of trade is mostly accounted for by growth in non-commodity exports. Growing at an average annual rate of 5.5 per cent during the period 2001-2011, manufacturing remains the largest (70 per cent of world trade in 2010) and the most dynamic sector (particularly high tech products such as computers and electronics) of international trade. Exports of high skill and high tech manufactures recovered quickly from the negative impact of the global crisis and surpassed pre-crisis level in 2010 (nominal terms). Trade in agricultural products, fuels and other mineral commodities grew at more modest rates during the past decade (4 per cent and 2.7 per cent, respectively). Nevertheless certain commodities, helped by favourable prices, exhibited considerable dynamism (gold, iron, precious metals, natural rubber, coal and vegetable fats and oils, closely followed by spices and oilseeds).

The share of developing countries in world exports expanded from 25 per cent in 1990-92 to 43 per cent in 2010-2012. This trend is dominated by China, the Asian emerging industrialized countries and India (table 1 and figure 2). Africa and the least

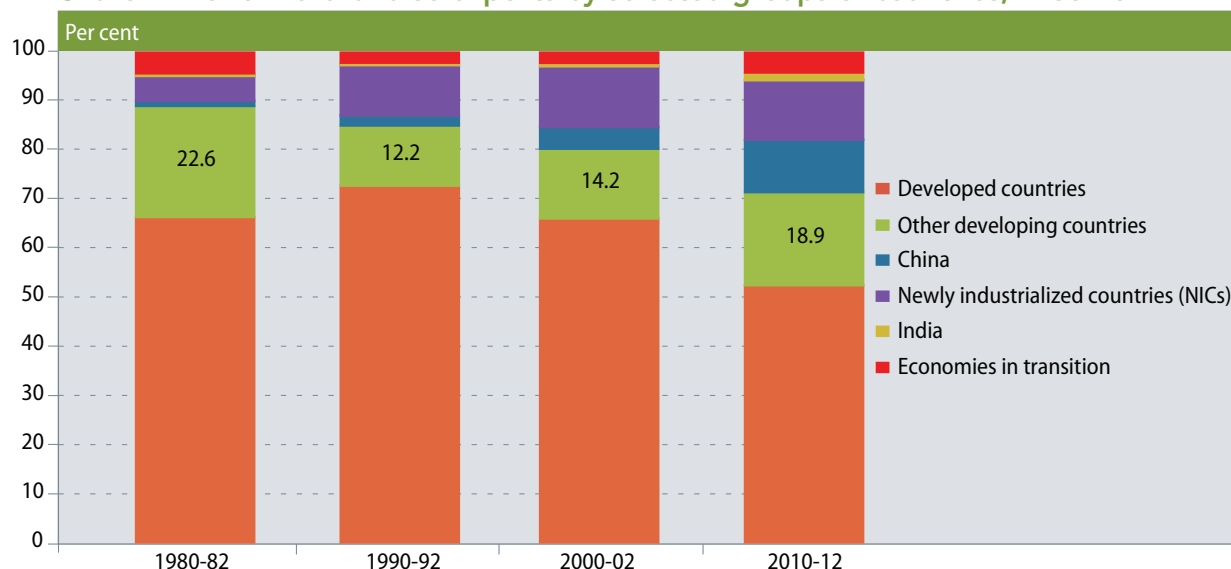
Figure 1  
Merchandise import trends in developing and developed economies, 2002-2015



Source: United Nations, 2014

Note: Figures for 2013 are partially estimated; 2014 and 2015 are forecasts.

Figure 2  
Share in world merchandise exports by selected groups of countries, 1980-2012



Source: UNCTADStat online database.

Note: Shares were calculated on the basis of current U.S. dollar values.

developed countries (LDCs) lag behind. Export composition changed considerably for the group of developing countries. The share of primary commodities in non-fuel exports declined from over 50 per cent around 1980 to less than 30 per cent in the 2000s. Moreover, the group also increased their share in world exports of high tech manufactures, which reached 25 per cent in the 2000s (United Nations, 2010).

The successful Asian industrializers, including China, also increased their share in non-fuel commodity exports, indicating that export success is a comprehensive phenomenon rather than confined

to manufacturing (see table 1). Largely because of these countries, the share of developing countries in global non-fuel commodity trade has grown from 40 per cent in 1995 to 51 per cent in 2011 (UNCTAD, 2013b). The increase in the shares of metals, minerals and fuels has been largely the result of favourable price movements. (UNCTAD, 2012a)

Trade in services has experienced growth comparable to merchandise trade. The ratio of service to merchandise trade remained relatively stable at 25 per cent during the period 1990-2010. Communications, insurance, financial, computer and information are the most dynamic subsectors of services

Table 1

Selected regional shares in global exports by product group (per cent), 1995-2011

Dollar value of region's exports as percentage of global exports										
	Food		Agricultural Raw Materials		Metals Minerals		Fuels		Manufactures	
	1995	2011	1995	2011	1995	2011	1995	2011	1995	2011
East, South and Southeast Asia	13.5	16.6	16.4	26.1	11.0	17.1	14.5	14.8	19.8	34.4
Latin America	12.5	16.6	6.4	8.1	9.9	14.7	8.3	7.8	3.1	4.1
Africa	4.5	3.8	4.3	4.1	6.3	7.0	11.7	11.0	0.8	0.9

Source: UNCTAD 2012a, table 2.2.A.

trade, covering over 53 per cent of global exports of all commercial services in 2011, up from 45 per cent in 2000 (WTO, 2012). Despite strong presence of some developing countries (China, India, Republic of Korea, Singapore, Taiwan Province of China and Turkey), most exports of services are still generated in the developed economies, not only in the more dynamic subsectors but also in traditional sectors such as travel and transportation. Recently, a few other developing economies have increased their importance as exporters of commercial services, notably Mexico (insurance services), Israel and the Philippines (computer and information services).

The increased presence of developing countries in world trade is reflected in two fronts. First, there is a noticeable increase in South-South trade: 56 per cent of the developing country exports were directed to the group in 2010, up from 36 per cent in 1990, as seen in table 2 below. This trend remains valid even without China.<sup>2</sup> Exporting to regional markets is often less demanding than participating in global

supply chains and in some cases can serve as stepping stones to the global markets. China—currently the world’s largest exporter—sends an increasing share of its exports to developed countries (50 per cent in 2010 compared to 36 per cent in 1990), which remain the main sources of external demand. Second, there has been a decline in the relative importance of North-North trade for developed countries’ exports from 77 per cent in 1990 to 69 per cent in 2010 (based on value of exports). Thus, developing countries are not only increasingly important export markets for themselves but also for the advanced economies.

Another important trend is the growing importance of regional merchandise trade. While the share of intra-regional trade flows across the various regional groupings of developed economies have either stabilized or declined over two decades, the share of intra trade flows increased in all developing regions (table 2).

Table 2

### Increasing importance of South-South and regional trade, 1990 and 2010

Intra-regional exports as a share of total merchandise exports		
Regions	1990	2010
Developing countries	35.9	56.3
Latin America and the Caribbean	16.1	20.7
Western Asia	6.7	10.3
Eastern Asia	26.2	30.8
Southern Asia	4.6	7.2
South-eastern Asia	19.2	25.2
North Africa	3.3	4.1
Sub-Saharan Africa	12.5	20.3
<i>Memo items:</i>		
Developing countries excluding China	31.9	45.2
Economies in Transition	19.1	14.2
North-North	77.2	68.8
EU	65.3	65.3
North America (developed economies)	34.2	32.3

Source: UN COMTRADE online database.

<sup>2</sup> Excluding China, the share of South-South trade in developing country exports increases from 32 per cent in 1990 to 45 per cent in 2010.

## The small print

These trends mask a marked diversity among developing countries. As mentioned earlier, there were significant gains in market share by Eastern and Southern Asia, much smaller gains by Latin America but no gains by Africa. Particularly in the case of the LDCs, increased share in world trade is largely due to price effects—associated with the latest commodity boom—rather than greater market penetration.

### *Commodity dependence and price volatility*

In all, 96 developing countries (of which 58 non-fuel exporters) and most LDCs still derive at least 50 per cent of their export revenues from commodities. The share of primary commodities in total non-fuel exports increased slightly in South America and significantly in sub-Saharan Africa from the 1990s to the 2000s, two developing regions where export growth has not been rooted in structural transformation towards manufacturing (United Nations, 2006 and 2010).

Price instability (around the trend) which has always been a problem for commodities increased, except for fuels, over the past 30 years. The traditional causes of fluctuations continue, such as supply failures, response lags, and farm support policies which suppress global prices when they are already low. In agriculture, increasing climatic volatility is an aggravating factor. Prices diverging from fundamentals give wrong signals, causing further fluctuations. Closer links between financial and commodity markets have been also associated with increased fluctuations (FAO, 2006). However, no significant difference in price fluctuations was observed between commodities included and not included in index funds. Recent support in developed countries for bio-fuels as well as export restrictions, imposed by both developed and developing countries, for various reasons including food security, also distort markets and aggravate price volatility.

Excessive price fluctuation is a major concern for commodity markets, but given the lack of political

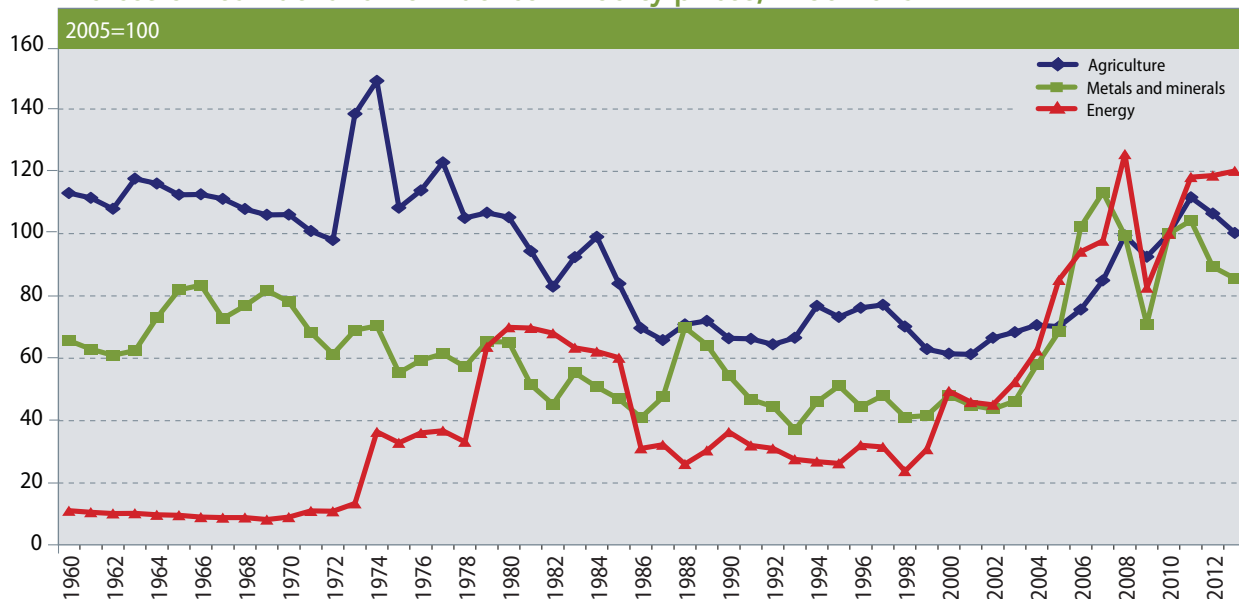
will to implement market intervention schemes, the means to deal with commodity price instability are limited to improved market transparency, risk management instruments, and timely provision of information.

Price trends over the last decade have been favourable for commodity suppliers. Terms of trade improved for major commodity exporters. Yet, the nominal commodity price increases observed in the late 2000s seem to have only restored real prices to levels reached in the late 1960s-early 1970s and interrupted the long term price declines commodity producers have been experiencing (see figure 3). To the extent that “Dutch disease” and rent seeking are avoided higher commodity prices should impact positively on the economies of commodity dependent countries. Yet, relatively high prices are unlikely to be sustained in the long run, unless China and other major emerging economies are able to delink from the prolonged period of slow growth anticipated for the developed countries (Erten and Ocampo, 2012). In April 2014, the IMF indicated that futures markets showed most commodity prices remaining flat or declining over the next 12 months, with the exception of gasoline, natural gas, and some food products (IMF, 2014).

### *Trade in intermediates*

A good chunk of trade dynamism is explained by the fast growth in trade in intermediates, which doubled from 1995 to 2009 to reach \$5.4 trillion - 51 per cent of non-fuel world trade (WTO-EDE-JETRO, 2011). With components entering, leaving and re-entering various countries at different stages of processing trade statistics are inflated owing to double counting. Notwithstanding the wide diversity across industries and patterns of integration to the world economy, in most economies about one third of the imports of intermediary inputs end up in exports, and the share is usually higher the smaller the economy. Even in large developed economies, such as Japan and the United States, the share of intermediates in exports is substantial: 20 and 15 per cent, respectively (Ahmad, 2013). Imported intermediaries can also embody previously generated domestic value-added:

Figure 3  
Indices of real fuel and non-fuel commodity prices, 1960-2013



Source: World Bank (pinkdata), January 2014 update.

Note: Nominal prices were deflated by using a manufacturing unit value index (MUV). The MUV is a composite index of prices for manufactured exports from the fifteen major developed and emerging economies to low- and middle-income economies, valued in U.S. dollars.

5 per cent for the US, close to 7 per cent for China (OECD-WTO, 2013).

There is a noticeably growing dependency of production, particularly exports, on imports which generate higher shares in world exports than would have been the case if trade were calculated in net, value-added terms. How much value-added a country captures and how integrated to the domestic economy these export processes are have significant growth and development implications. The latter also depends on to whom value-added accrues and how it is used. The mineral and fuel exporting countries where the proportion of retained value added is relatively high but development impact has been low provide examples of inefficient and/or inappropriate use of retained value added.

Value-added capture depends on the market structure, the extent of competition and the organization of the value chain. For instance, in the coffee sector, the share of total value of the final product going to major corporations of consuming countries increased

from 50 per cent to 75 per cent, while that retained by primary coffee producers declined from about 20 per cent to 10 per cent since the 1970s (FAO, 2013). Certain commodities, however, such as fruit and vegetables and cut flowers not only generate relatively high value added but also have considerable linkages with the rest of the economy.

### The tectonic plates

The rapid expansion of world trade and increased participation of developing countries in the international trade system has been underlined by five major trends. First, increased liberalization of trade and investment flows over the past decades. Trade liberalization has been facilitated by the successive GATT rounds. These efforts aimed at greater discipline on trade flows and the consolidation of a rules-based trade regime anchored on principle of non-discrimination and national treatment. They have led to an overall decline in tariffs both in developed and developing countries. Non-tariff measures, however, remain an important deterrent to trade.



Beyond the rounds, trade liberalization has been particularly noticeable in developing countries since the 1980s not only autonomously but also in the context of the structural adjustment programmes. The liberalization of foreign direct investment regimes and the mushrooming of bilateral trade and investment agreements are also important factors underlying these trends. Developed countries have on average very low tariffs but overall, cuts in tariffs have been lower on products of export interest to developing countries (low-skill manufactures, agriculture); tariff peaks (sensitive products) and tariff escalation still remain high (ITC, 2010). Liberalization has been impressive in services (particularly in financial and insurance services), though Mode 4 of service exports (presence of natural persons) remains pretty much closed.

Second, developments and improvements in transport infrastructure plus technological progress, not only in transport sector (e.g., containerization) but also in telecommunications, have been important trade drivers. Ocean shipping costs have declined after peaking in the mid-1980s; technological changes in air shipping and declining costs of rapid transportation have been critical to support trade growth. Transport costs, however, remain high for many

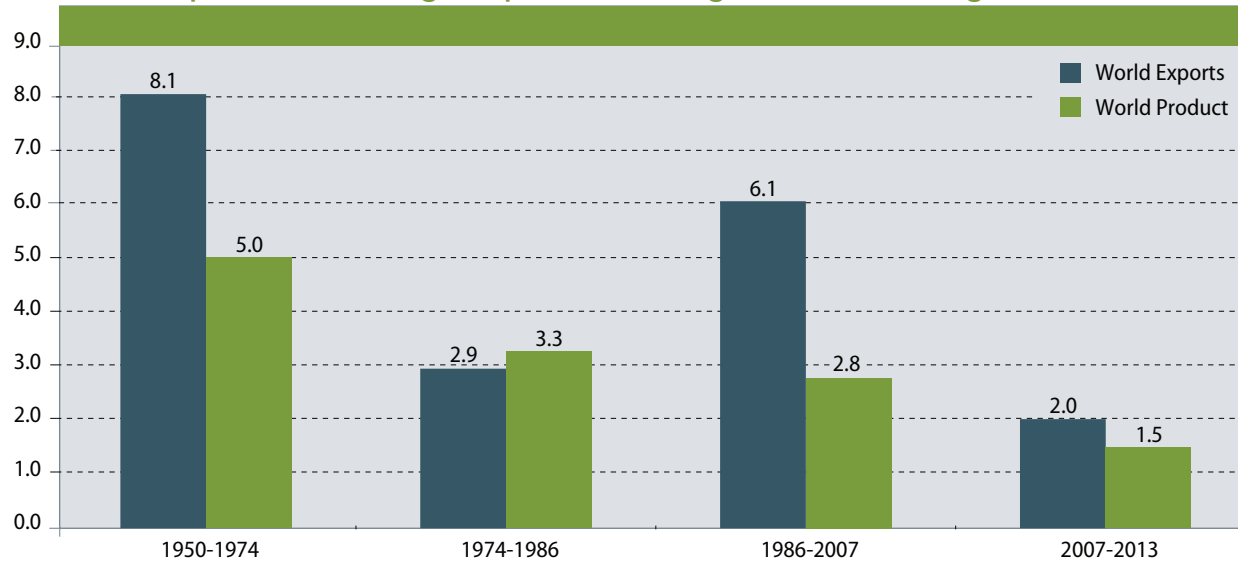
landlocked countries, particularly in Africa, not only because of inadequate “hard” transport infrastructure but owing to organizational, institutional and governance related barriers. For landlocked LDCs the cost of transport can be more than twice as high as that for other developing countries (Lamy, 2013).

Third, owing to innovations which allowed increased fragmentation and specialization and the fast spread of information and communication technologies new ways of doing business emerged. It became increasingly economical to separate manufacturing stages geographically (Baldwin, 2011). This led to the consolidation of global value chains (GVC) or the slicing up of the supply chain internationally through formal or informal networks of firms. In 1990s and 2000s production activities organized in GVCs grew tremendously involving finished products, components and subassemblies, not only in manufacturing but also in food production, energy and services (Gereffi and Lee, 2012).

Fourth, the industrialization and urbanization of India and China implied fast growing demand for commodities further supporting trade growth. Increasing incomes in other important emerging markets such

Figure 4

**World exports and world gross product: average annual rates of growth, 1950-2013**



Source: WTO, International Trade Statistics 2013 and United Nations, World Economic Situation and Prospects 2014.

as Brazil, Indonesia, Republic of Korea, Turkey and Mexico, also provided an important boost for trade.

Fifth, in the period 2007-2013 GDP growth and export/GDP elasticity have been smaller than before (see figure 4). The deviation from previous growth trend is stronger in the case of developed countries, but also noticeable for developing countries. While expenditure and demand for final goods remain constrained, it is difficult for trade to grow fast.<sup>3</sup> Additionally, there is evidence of re-shoring or on-shoring of some activities by some GVCs, especially in the United States. Reasons for re-shoring vary across countries and include improved cost competitiveness (energy in the case of the U.S), higher labour force skills, concerns about supply disruptions and increased transport costs (Financial Times, 3 March 2014).

### **Moving forward: trade and participation in GVCs as a means**

The emergence of the GVC model brings important implications for industrialization, technological upgrading and development. Most early industrializers created relatively well developed and complete supply chains at home. Nascent industry was often sheltered from external competition and promoted with macroeconomic and sectoral policies. Policy tools of the past have been drastically reduced by the liberalization wave. Nowadays, it is argued that industrialization often starts by joining a GVC (Gereffi, 2013) and the path followed by early industrializers is no longer relevant as guidance for countries at the early stages of industrialization.

Joining GVCs may lead to a “shallow” industrialization in some cases, with countries—particularly low-income and LDCs—unable to forge the necessary production linkages with the rest of the economy. With undeveloped or incipient production and technological structures, countries remain stuck in unprocessed low value commodities or simple assembling activities in the supply chain (where

competition is intense and returns are low). They remain incapable of expanding their own domestic markets and developing technological capabilities for upgrading and attaining a more productive economic structure. A minimum domestic manufacturing base or an efficient agriculture is required (beyond infrastructure and a disciplined labour force) if the country wants to be more than a supplier of cheap labour in the GVC. It is unlikely that this required minimum base will be developed by the foreign investors as the existence of that base is one of the reasons why FDI goes to that country in the first place (United Nations, 2006). Other factors also play a role in GVC location such access to foreign markets and to strategic knowledge assets (skilled labour, research centers, etc.).

Another important consideration for developing countries is the transient nature of some GVCs. As decisions to fragment production internationally are largely dependent on the trade-off between production and transaction costs, production supply links may be severed when such trade-off is not advantageous. This is particularly true in the unskilled labour segments, but not confined to them. Orders move from country to country as labour costs rise. Technology transfer in the GVC works more as “technology lending” as it is firm specific and often protected by strict IPR provisions. While performing a specific task is learned, the possibilities for understanding the entire process of how a product or component is designed and constructed are minimal. Thus, the level of technological sophistication embodied in products exported may not necessarily correspond or reflect the level of domestic technological capabilities (Baldwin, 2011). Managerial and technological spillovers tend to be positive and greater when there is interest in establishing a presence in the domestic market or when the input is not easily available elsewhere.

### ***The importance of patterns of insertion and association***

The literature on GVCs and their impacts on development is vast and growing, but a review is beyond the objectives of this paper. Potential negative

<sup>3</sup> Bens, Johnson and Yi (2012) argue that the collapse in aggregate expenditure, particularly in final durable goods, as the main driver of the trade collapse in 2009.

implications of joining a GVC that need to be avoided could be grouped under “fatal attraction” type of impacts where the presence of the chain is due to the existence of cheap labour and raw materials, generates little positive spillover effects for the rest of the economy (United Nations 2006, UNCTAD 2013), and may lead to a “race to the bottom” or “self-defeating competition” in terms of labor and environmental regulations and a significant erosion of policy space well beyond what is agreed multilaterally (United Nations, 2010; Blanchard, 2013). Potential positive impacts would fall under a “happily ever after” type of effects where technological upgrading, increased productivity and domestic linkages are created, while “raising the bar” in terms of social and environmental standards (UNCTAD, 2013). Private standards imposed in some GVCs can act as trade barriers, but also as promoters of upgrading and a means of market entry. These are certainly crude characterizations and most outcomes lie somewhere in between these two extremes.

Patterns of GCV insertion matter. The capture of value added within the chain, including product development, design, branding and marketing, depends on strategies that promote the creation of domestic capabilities, support innovation and technological upgrading (Lee and Matthews, 2013). Product differentiation through various means of certification (such as “organic” or “fair trade”), performing tasks associated with the retail end of the chain (such as packaging and bar coding) and quality assurance by trusted entities also augment retained value added. Export bans for unprocessed commodities, such as timber, have also helped in increasing processing and value added. Such bans may generate, however, the risk of some producers quitting the country. The possibility of facing WTO disputes and trade barriers also arises.

Diversification is fraught with difficulties. Provision of information to businesses is crucial but it also necessitates support in the form of financial incentives. This is particularly important for inciting the initial entrepreneurs to undertake the necessary risks of developing and producing a new product, entering (or creating) new markets and embarking upon a

discovery process. Therefore, temporary incentives and support practices, including financial ones, all amply used in the past, may be necessary (Rodrik, 2005). Moving forward, the question for developing countries, as far GVCs are concerned, is how to integrate in the supply chain in a way that allows for the absorption of a growing labour force at increasing levels of productivity and incomes. For the successful emerging economies, joining a GVC or attracting multinational companies and FDI have not been ends in itself but part of a clearly drafted strategy.

### ***Trade rules: what role?***

Global trade rules must be assessed in terms of their efficiency in maintaining stable and predictable trade flows and in providing a transparent regulatory framework to the advantage of all. Multilateral, regional and bilateral trade disciplines have evolved largely reflecting the needs and interests of the production sectors and big business in dominant economies, covering new areas and providing deeper disciplines as business models changed, new practices emerged and the organization of production became increasingly complex and internationally fragmented. Initially, multilateral disciplines were essentially about market access in industrial goods although some of them (textiles and garments) were initially excluded. With the Uruguay Round (UR) trade rules moved into services (GATS), investment (TRIMS) and intellectual property rights (TRIPS). Numerous bilateral and regional agreements have been signed introducing stricter discipline to trade and investment flows, moving the liberalization frontier forward but leading to a disjuncture between what is agreed multilaterally and what is agreed bilaterally (Girvan and Cortez, 2013).

While lower tariffs are important components of this process (particularly on intermediates), the current business model also requires well-functioning and efficient communications and transportation services and infrastructure, protection of foreign investment—not only tangible but also and, perhaps more importantly, intangible capital—open financial system, and regimes supporting the flow of skilled

labour. With big firms operating in multiple countries, transaction costs can be reduced when laws and regulations are standardized and reflect those of the headquarter economy. However, it is unclear whether increased standardization of laws and disciplines among countries that are (still) quite unequal in terms of economic power and capabilities are in the best interest of all. As a minimum, these trends raise serious equity concerns.

At the UR developed countries were able to retain important policy tools used to protect their agriculture while settling the “base-line protection” –upon which reduction commitments were to be made—at very high levels. For many developing countries, competing with subsidized agricultural products is a fundamental problem. Albeit slowly declining, price distorting support still continues. Among products of export interest to developing countries, rice, sugar, and cotton are the major beneficiaries of support (Elliott, 2013). Cotton subsidies reach almost 90 per cent of the market price in Spain and 50 per cent in Greece. China, the biggest cotton producer, has the largest support programme in value terms, followed by the US, the largest cotton exporter (ICAC, 2013). Discussions on reducing support to agriculture are generally prompted by budgetary concerns.

As the international community advances to define the international development strategy beyond 2015, there is need to assess how global governance of trade can ensure that increased trade integration generates benefits and creates real opportunities for sustainable inclusive development in all countries. Addressing the current tension between multilateral disciplines and those included in free trade agreements (which are becoming increasingly inter-regional), is important in this context so as to avoid further fragmentation of trade rules and world trade. Some 35 per cent of world merchandise trade is conducted under FTA arrangements (WTO, 2011). That share can become significantly larger if mega FTAs such as the Trans-Atlantic Trade and Investment Partnership (TTIP), the Regional Comprehensive Trade Partnership (RCEP) and the Trans-Pacific Partnership (TPP) come into force. It will leave the WTO

to manage residual flows and exclude a great number of countries which, even if admitted to the schemes, would have had no voice in shaping the disciplines contained in those arrangements.

Another important tension relates to the role of trade rules and how they can be formulated to promote development. WTO Members established that trade relations are to be conducted with a view to raising living standards in a manner consistent with countries’ respective needs and concerns. In this regard, (i) should trade rules further advance globalization and integration as embodied in GVCs (emphasizing the reduction of transaction costs, standardization of rules and regulations)? Alternatively, (ii) should rules allow for greater policy flexibility and the use of instruments for the promotion of structural transformation and upgrading of productive capacities?<sup>4</sup> As currently approached, these objectives seem to be in conflict and the challenge is how best to reconcile them. This reconciliation is even more demanding if one takes into account the principle of non-discrimination (most favoured nation and national treatment) that underline trade rules under GATT/WTO and the large number of WTO members with diversified capabilities and development needs.

### III Global rules: free trade at a cost

The initial five trade liberalization rounds were essentially tariff reduction rounds, but as tariffs were lowered, behind the border protection became important and the rounds started to cover other areas beyond tariff liberalization. The rounds were largely dominated by developed countries and reflected the interests as well as the disciplines prevailing in these economies. Areas where developing countries had a trading interest were often excluded (for example, agriculture, clothing and textiles—often “sensitive sectors” in developed economies) as an implicit quid pro

<sup>4</sup> Keane (2012) argues that countries which most governed trade in terms of specific rules for the private sector were the ones that suffered least severe impacts from the current crises.

quo for their less than full reciprocity in trade concessions (Das, 2007). Yet, it is far from clear whether developed countries would accept rules that would take developing countries' needs into account in the absence of the principle of "less than full reciprocity". An important point to keep in mind is that 60 years ago developing countries were not relevant trade powers, many were at the early stages of industrialization, and it is likely that their negotiating capabilities were equally incipient. The Uruguay Round confronted a different reality: developing countries were no longer a homogenous block of commodity exporters and a few among them had become formidable competitors to developed countries. Yet, their approach to negotiations had not changed. This would take place slowly and more visibly—albeit centered in few countries—in the Doha Round.

### **Integrating developing countries: special and differential treatment**

Differential treatment for developing countries was first introduced in the 1950s to address balance-of-payment difficulties and to protect infant industries of developing economies. In 1964 (Kennedy round) the need for more favourable market access was recognized and developed countries agreed not to expect reciprocity for their commitments. The General System of Preference (GSP) was established in 1968. Selected products originating in developing countries would be granted tariffs lower than those under the Most-Favoured-Nation (MFN) treatment, on a voluntary basis. In 1979, the adoption of the Enabling Clause provided a legal basis for deviations from the principle of non-discrimination and for special treatment for the LDCs. It was not supposed to last forever. The Clause also indicated that developing countries were expected to "participate more fully in the framework of rights and obligations" under the GATT as they develop and their trade situation improved (art. 7).

The principle of non-reciprocity of commitments by developing countries was maintained in the UR. But with the "single undertaking" developing countries could no longer opt out specific agreements.

In addition to several of the Tokyo's plurilateral agreements becoming integral part of the round, the UR also included disciplines on services, intellectual property rights, investment, textiles, agriculture, dispute settlements, sanitary and phyto-sanitary measures, technical barriers to trade, and rules of origin. The UR also introduced major changes in the thrust and objectives of special and differential treatment (SDT). With most of the regulations reflecting the rules and legislation prevailing in the developed countries, adjustment and implementation costs fell largely on the developing countries. These new commitments by developing countries implied need for flexibilities in the implementation of the new trade rules (longer transition periods, simpler or less frequent reporting requirements) and increased technical assistance for building institutional capacities. Most of the UR (and post UR) SDTs aim at guaranteeing participation by developing countries (and LDCs) in the multilateral trade regime and facilitating the implementation of the new disciplines.

While preferential market access on a non-reciprocal basis was maintained, the special rights of developing countries shrunk, and became subject to more stringent discipline. For instance, approaches used in the past such as compulsory licensing, reverse engineering and copying are restricted or forbidden. Performance-related requirements on foreign investors such as local content or trade-balancing requirements are no longer allowed. Subsidies and incentives related to the use of domestic product or to expected level of export earnings are forbidden. Subsidies supporting a sector can be contested if another signatory proves them harmful to its economy. Meanwhile, tariff binding coverage increased thus tying countries to a given level of protection although bound tariffs remained much higher than applied tariffs (United Nations 2006, Akyuz 2009, Khor and Ocampo 2011), particularly in developing countries.

### **Beyond WTO: further constraints to policy space**

UR disciplines are only part of the story of reduced policy space in developing countries. In fact, bilateral

and regional free trade agreements (RTAs) contain provisions which are more stringent than those adopted at WTO, often including areas not under WTO jurisdiction (such as labour and environmental legislation, competition policy, movement of capital, etc.), and which place considerable restrictions on national governments. By their very nature, RTAs do not include any sort of special and differential treatment (except in some regional agreements where LDCs are signatory parties) while they create the so called “spaghetti bowl effect” compromising the efficiency and coherence of the multilateral trade regime.

RTAs have evolved over time. “Old generation” RTAs focused on tariffs and rules of origin. But as tariffs fell and business models evolved, a “new generation” of RTAs emerged. The new RTAs are not necessarily concerned with market access but rather with the removal of impediments and the reduction of costs and risks associated with the operations of international production networks. These concerns fall more under services (particularly mode 3, commercial presence) and behind the border regulations than under goods and at the border barriers. Baldwin (2014) argues that the new RTAs could be understood as “factories for reform” type of deals and as such they reflect a bilateral rather than a multilateral contract. Baldwin also reasons that the new RTAs are less distortionary, in terms of creating a tangle of preferences, than RTAs centered on goods as “rules of origin” are leakier for services (mode 3) than they are for goods (Baldwin, 2014: p.30). Corporate activity regardless of nationality is subject to the same rules when operating within the borders of a given country (but with a caveat: the so called “regulatory takings” discussed further down). Non-party MFN provisions also contribute to multilateralise preferential market access to a certain extent. Yet, new RTAs may create a problem for coherence of global governance of trade and undermine the centrality of WTO in setting rules (particularly in view of the imminence mega RTAs). They also restrict policy space beyond what might be necessary for managing spillover effects coming from national actions effectively, lead to competitive liberalization by developing countries

and to the premature adoption of policies not necessarily compatible with their development needs.

Besides RTAs, further policy constraints originate in bilateral investment treaties (BITs), which regulate bilateral investment flows and go well beyond the obligation of providing prompt, effective and adequate compensation in case of expropriation. BITs also include provisions on dispute settlement, repatriation of profits, national treatment and MFN requirements. The model US BIT, for instance, prohibits performance requirements; it defines investment not only as physical investment but also intellectual property, financial assets and, most importantly, legal and contractual rights. The latter implies that changes in national laws (say for social or environmental reasons) that may impose unanticipated costs or additional obligations on foreign investors are considered as breach of contract and “expropriation” of the foreign investor’s contractual rights (regulatory takings) and require compensation (Cotula, 2007). This locks host countries in a given legal framework which may not be ideal for achieving certain development goals at a later date. These provisions are considered typical of BITs worldwide. In any case, it seems contradictory that developing countries may resist the imposition of limits to their policy space at multilateral fora to relinquish that space at bilateral or regional levels. A possible explanation is that by resisting constraints at the multilateral level (as a group) but relinquishing policy space or granting concessions at the bilateral level, a country may boost its relative attractiveness for FDI. But then, it is not clear whether benefits derived from FDI going to the country will be greater than costs incurring in attracting that investment (Guzman, 1998).

No two developed countries have BIT with one another (excluding with the former economies in transition that joined the EU). In this regard, BITs can be considered to indicate partners with unequal bargaining power. With the increasing economic importance of developing countries (also as foreign investors in developed countries), developments in international law and the pressing global environmental and social challenges, a new generation of BITs is emerging (UNCTAD, 2012). They introduce

some flexibility to pursue policy objectives, including the fulfillment of human rights and environmental treaty obligations. Concerns that foreign investors could challenge measures adopted to confront the financial and economic crisis of 2007-2008 also contributed to the search for a better balance between investment protection and the need to maintain regulatory discretion in host countries (Spears, 2010).

Strengthening multilateralism offers the best option for developing countries to address the issue of reduced policy space and exercise their collective bargaining power to their benefit. Yet, not all disciplines are best placed under global governance and “one-size-fits-all” rules and harmonization are not ideal in all circumstances, particularly when countries’ preferences, needs and contexts vary. The EU experience may provide some direction on what needs to be multilateralised. The principles of subsidiarity (issues are addressed at the lowest level capable of addressing them) proportionality (the supra national level is involved to the least extent necessary) guide the Union’s governance while the Union imposes disciplines to control negative spillover effects from individual country actions, including beggar-thy-neighbor policies among members (Baldwin, 2014:33).

From the above, action in two possible fronts may be suggested. One possibility is a revision of GATT article XXIV,<sup>5</sup> beyond what is being envisaged by the Doha Round,<sup>6</sup> so as to reflect the evolving nature of RTAs (going beyond tariff liberalization) and provide “rules of conduct” or principles to be followed during

the negotiation of such agreements, with stronger and effective overseeing responsibility for WTO. Similar observations are applicable to GATS Article V, which disciplines economic integration in the area of trade in services. In fact, reforming article XXIV has already been suggested to ensure the supremacy of WTO rules over RTA rules so as to improve coherence and consistency in the world trade regime (e.g., Picker, 2005; Davey, 2011) or to protect policy space in developing countries (Lang, 2006). Countries, however, may perceive this route as leading to a potential change to the implicit “balance of rights and duties” existing in the current WTO legal package.

Another option to be considered is a stand alone agreement on basic investment rules or a code of conduct for foreign investors and host countries. Either way, these options may offer a policy anchor to limit “unilateral investment incentives and bilateral concessions over behind the border policies” (Blanchard, 2013: 17), increase coherence and compatibility with WTO rules and offset negative consequences of existing power asymmetries in negotiating such agreements. Existing agreements would then need to be modified or adjusted to be compatible with the rules or code of a conduct agreed multilaterally. Initiatives such as UNCTAD’s Investment Policy Framework for Sustainable Development (IPFSD) with its set of core principles for investment policy make are steps in this direction.<sup>7</sup>

### ***The governance of large investments in natural resources***

Large scale, natural resource based activities such as mining, forestry and fisheries, generally oriented

<sup>5</sup> Article XXIV: Territorial Application — Frontier Traffic — Customs Unions and Free-trade Areas. Available from [http://www.wto.org/english/docs\\_e/legal\\_e/gatt47\\_02\\_e.htm#articleXXIV](http://www.wto.org/english/docs_e/legal_e/gatt47_02_e.htm#articleXXIV)

<sup>6</sup> Article 29 of the Doha Declaration states: “We also agree to negotiations aimed at clarifying and improving disciplines and procedures under the existing WTO provisions applying to regional trade agreements. The negotiations shall take into account the developmental aspects of regional trade agreements.” Thus far the only concrete outcome has been the Transparency Mechanism created in 2006 which however has produced limited results. See WTO 2014. Overview of Developments in the International Trading Environment Annual Report by The Director-General. Trade Policy Review Body. 31 January.

<sup>7</sup> Information on the IPFSD is available from <http://investmentpolicyhub.unctad.org/Views/Public/IndexIPFSD.aspx>. For past attempts at multilateral investment agreements and code of conduct on transnational corporations see OECD <http://www.oecd.org/investment/international-investmentagreements/multilateralagreementoninvestment.htm>; the UN Intellectual History Project, The UN and Transnational corporations. Briefing Note No. 17. July 2009 available from <http://www.unhistory.org/briefing/17TNCs.pdf>; and UNCTAD <http://unctad.org/sections/dite/iaa/docs/Compendium/en/13%20volume%201.pdf>.

towards exports, are often undertaken with the involvement of large foreign firms. The retention of resource rents in the country and their conversion into productive investments depend crucially on concessions and foreign investment agreements. Owing to the large size of these rents, transparency and good governance, starting from negotiating the agreement to its implementation and oversight, are extremely important. National governance structures are of primary importance but Extractive Industries Transparency Initiative (<http://eiti.org/>) has become a significant instrument of international governance. While the use of resource rents is the prerogative of the government, international governance through EITI helps improve transparency, preventing (at least, reducing) abuses, and increasing the availability of resources for public benefit.

Recent high prices of agricultural products and production of raw material for bio-fuels have prompted a new interest in agriculture. Land prices have increased, especially in countries where land is in short supply. This has pushed private firms and states to lease or purchase land in land-abundant countries, particularly in Africa. From a purely trade point of view this FDI in agriculture (“land grab” for some), is positive because land which was previously idle or inefficiently exploited is brought into more efficient production and may improve export earnings. This is why the World Bank and IFC support such investments. However, these operations are exclusively export oriented. They not only neglect local needs, such as the production of foodstuffs, but also have negative impacts on the livelihood of local populations, at times necessitating their displacement. This has led to the adoption by UN Committee on World Food Security, of Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security.

### Back to the WTO: policy space and differential treatment

Development concerns in GATT/WTO legal texts are addressed through SDTs. There are a total of 139 SDT provisions in the agreements adopted at

the conclusion of the Uruguay Round (WTO, June 2013).<sup>8</sup> Many more followed. But, in general, there is a great deal of dissatisfaction with the SDTs, and the measures have failed to deliver as anticipated. There are problems in the design of these measures: i) they require a certain level of institutional and productive capacity so as to extract benefits, ii) some carry “add-on” requirements that are difficult to comply with, iii) they conflict with policy directives implemented elsewhere (e.g., adjustment programmes by IFIs) which mitigate (and may even completely offset) the potential contribution that some of these measures can bring (Cortez, 2011). The value of a standard GSP scheme, for instance, has been compromised by exemptions, exclusions, complex rules of origin, competing (and deeper) preferential schemes, and preference erosion as MFN tariffs decline.

Except in few instances, where longer implementation periods are granted or exemptions are clearly defined, SDTs are largely indications of “best endeavors”, signaling general intentions but lacking legal weight and certainly not offering a legal basis for dispute adjudication in case of non-compliance. Access and effective use of SDTs are complicated by inadequate knowledge of legal texts, particularly by LDCs and low-income countries. Technical cooperation, while forthcoming, has not closed the vast capacity gaps. These shortcomings were noticed already in 2001 when the Doha Ministerial Conference adopted the Decision on Implementation-Related Issues and Concerns which instructs the Committee on Trade and Development to consider the legal implications of converting SDTs into mandatory provisions—a mandate difficult to fulfill in view of the nature of such provisions— as well as the ways in which SDTs can be made more effective, precise and operational. This remains as one of the contentious issues of the Doha round with limited or no progress achieved.<sup>9</sup>

<sup>8</sup> This excludes SDTs available in the Agreement on Clothing and Textiles which already expired.

<sup>9</sup> For a background and current state of negotiations (pre-Bali) see South Centre, History and Assessment of the Cancun Annex C: 28 Special and Differential Treatment Proposals, (SC/TDP/AN/S &D), April 2013.



### ***Increased differentiation and graduation: the way forward?***

It has been argued that SDTs can be made more effective if they are better targeted or linked to individual country needs and not to the group of extremely diverse developing countries whose “members” are self-denominated (Keck and Low, 2004; Hoekman et al, 2003). This approach could avoid the challenges associated with the creation and management of additional groups or categories which entail political difficulties and lock countries in endless negotiations to get advantages that they may not need and will not make use. Better SDT targeting could also address concerns by the more advanced countries about agreeing to a blanket of exemptions and preferences covering an increasingly heterogeneous group of countries, some of which are formidable trade competitors. Moreover, it would imply that the treatment would no longer be available when needs cease to exist, with potential to operationalize the concept of gradual graduation (beyond the group of LDCs) as envisaged by the Enabling Clause.

Others have argued that the SDT approach should be rejected altogether as lack of full reciprocity in concessions has not allowed developing countries to fully benefit from the multilateral trade regime and its various liberalization rounds (Hart and Dymond, 2003; Hoekman, 2004; Christie, 2009). Their focus of attention, however, is largely on tariff liberalization and not on other aspects related to trade such as IPRs or TRIMs. Moreover, there is some nuance in the recommendation: reciprocity is suggested for those markets where developing countries are large and competitive participants, which is another way of tackling heterogeneity. Yet, given the current level of tariffs in developed countries, it may be difficult to identify a substantial set of mutually beneficial and reciprocal tariff concessions for developed and developing countries (Bagwell and Staiger, 2012). Additionally, there are equity concerns about a complete policy package, often originated in a few relatively homogenous countries, which are to be applied equally to a wider constituency of highly divergent countries. As discussed below, a new generation of

SDTs is emerging to address some of these challenges. But the new approaches do not eliminate all difficulties. Depending on how they are implemented, these approaches may pose serious risks to the principle of less than full reciprocity, which underlies special and differential treatment—the chosen instrument to tackle development issues in WTO—and leave no alternative tools in place.

### ***The new generation of SDTs***

Increasing differentiation has been already taking place in WTO differential treatment for developing countries beyond the LDC group. The UR introduced SDTs for net food importing developing countries,<sup>10</sup> and countries listed in Annex VII of the Agreement on Subsidies and Countervailing Measures (SCM): LDCs plus developing countries whose GNI per capita is less than \$1,000. Subsequently, other groups of countries were added: countries with insufficient or no manufacturing capacities in the pharmaceutical sector (implementation of paragraph 6 of the Doha Declaration within the context of TRIPS); small, vulnerable economies (special work programme, extension transition period under SCM Agreement).

Trading partners have been differentiating (targeting preferences to needs) and graduating countries from their GSP programmes<sup>11</sup>. The recent changes in the Canadian and the EU GSP schemes are cases in point. The EU scheme will exclude upper-middle and high-income developing countries (World Bank classification) starting in 2014 while preferences to the remaining beneficiaries are offered relative to countries’ needs, with the LDCs receiving most advantageous terms. As beneficiaries improve their income status, they will be phased out from the programme. Moreover, preferences will no longer be

<sup>10</sup> For the definition of the group see WTO/Committee on Agriculture, document A/AG/3 of 15 November 1995.

<sup>11</sup> They have also granted differentiated, deeper preferences on the basis of requirements such as compliance with specific internationally agreed conventions as well as excluding countries from their standard schemes on the basis of discretionary conditionalities.

granted to competitive sectors of low and middle-low income countries (EC, 2012). Canada will exclude 72 higher income and trade competitive countries starting in 2015 and review remaining beneficiaries biannually to assess whether they remain eligible based on objective economic criteria. The need to adjust to the changing global landscape was one of the main factors underlining the changes in the Canadian scheme.<sup>12</sup>

Already in 2005 the Decision of the Council on TRIPs on extending the transition period for LDCs to implement TRIPs (article 66.1) included provisions for enhanced cooperation targeted to specific country needs. These required LDCs to submit detailed information on their individual priority needs for technical and financial cooperation necessary to implement TRIPs and developed country Members to provide the assistance requested. While well intentioned, the provisions were difficult to implement. LDCs lacked capacity to identify and prioritize needs. For example, among 18 LDCs surveyed by UNDESA/CDP only 5 submitted the priority need report by 2010, 4 of which relied on external assistance for the preparation of the report (UNDESA/CDP, 2011). In June 2013, The TRIPs Council dropped the provisions on enhanced technical cooperation when deciding on a further extension of the transition period for implementation of the TRIPs Agreement.

Another approach is taken in the recently renegotiated Agreement on Government Procurement (GPA). Article V states that in negotiations on accession to and implementation of the Agreement, Parties shall pay special consideration to the needs of developing countries, recognizing that these may *differ significantly* from country to country (emphasis added). Special and differential treatment is to be accorded where and to the extent that this meets development needs. Nonetheless, specific modalities of SDTs—allowed during a transition period and in accordance with a schedule—are envisaged under the GPA plus the possibility of delaying any specific obligation in

the agreement (except for article IV.1a on national treatment) for a specified period no longer than 3 years for developing countries. GPA SDTs do not embody the principle of less than full reciprocity. Market access opportunities available to acceding developing countries are “subject to any terms negotiated between the Party and the developing country in order to maintain an appropriate balance of opportunities under this Agreement.” Deviations from the rules are only allowed while the country implements the agreement; SDTs are not permanent exemptions under the GPA. The GPA is one of the WTO plurilateral agreements; its signatories are mostly the developed economies. Accession is optional, which may justify the different nature of SDT provided. Non participation however has costs, an important one being losing the possibility of influencing the way rules are designed.

The Draft Consolidated Negotiating Text on Trade Facilitation (29 July 2013 version), which is part of the Doha single undertaking, contemplated a novel way to approach SDTs. Commitments and their implementation were to be related to implementation capacities of developing countries and LDCs, including their ability to undertake investments in the required trade facilitation infrastructure. There is no exemption *ex-ante*; implementation is related to capacity; where capacity lacks, assistance is to be provided.<sup>13</sup> Three categories of commitments were envisaged: A) provisions to be implemented upon entry into force of the agreement; B) provisions to be implemented after a transitional period to allow the country to introduce the required changes; and C) provisions to be implemented at a later date after the transitional period and which require implementation capacity not available in the country. Countries should notify WTO about their schedule of implementation and also provide information on their specific needs and the technical and financial assistance required within a given period of time,

<sup>12</sup> See Canada’s General Preferential Tariff Regime. Available from <http://actionplan.gc.ca/en/initiative/canadas-general-preferential-tariff-regime>, accessed on 14 August 2013.

<sup>13</sup> “Developed country Members shall ensure to provide support and assistance to developing and least developed country Members in a comprehensive manner”(article 1.4 draft text dated 29 July 2013).

still to be determined. Extensions were envisaged but need to be notified, justified and approved.

Linking implementation to the provision of assistance where needed might have addressed developing countries' concerns about adjustment costs and lack of capacity to adopt rules and procedures that are norm elsewhere, provided the adoption of these rules are to their benefit. But in the end, the provision of receiving technical and financial assistance as a precondition to implementing the agreement (para 8.1 of the text dated 29 July 2013) was stripped from the final document. The Bali text still stipulates that "donor Members agree to facilitate the provision of assistance and support", but this is a much weaker version of the commitment contained in previous version of the text. Most of the SDTs adopted do not go much beyond the extension of longer periods for presenting the numerous notifications required regarding the classification of commitments, the implementation schedule and requests for additional extensions. As in the case of GPA, full reciprocity is expected. No deviations from rules are foreseen and all countries are expected to implement the entire agreement, eventually.

## IV Conclusions

The adequacy of global trade rules has to be assessed in terms of their efficiency in maintaining stable and predictable trade flows and providing a transparent regulatory framework to the advantage of all participants. The framework has succeeded in keeping trade open and predictable, and flows have grown steadily, with occasional "hiccups", as seen in the increase of trade remedy measures in the aftermath of the 2008 economic and financial crisis. As a group, developing countries have increased their participation in world trade, a trend that is most noticeable in manufactures. However, at the individual country level trade performance has been rather diversified and not all countries are benefitting from trade as anticipated. Successful experiences have been associated with strategic participation in international trade and tactical association with foreign investors with a

view to promoting domestic backward and forward linkages and a structural transformation of the economy shifting from low to higher productivity sectors. These experiences often rested on the adoption of a wide range of policy instruments and innovative institutional arrangements, some of which are no longer allowed by the current regulatory framework.

Commodity exports continue to be the mainstay of the economies of many developing countries. Strengthening the potential of the commodity sector to generate the resources necessary for development is also crucial. International and national policies for improving the conditions of GVC participation need to cover commodity sectors as well. However, certain characteristics of commodity trade set it apart from manufactures. Excessive price fluctuations harm both producers and consumers. Under the current political and economic realities, increasing market transparency and reducing risks and market distorting policies that prevent the functioning of markets are the only acceptable means of reducing fluctuations. Diversification is difficult because of strong path dependency for commodity producers and significant search costs. Extension of the policy space to assist diversification is defensible as a public good. The large rents generated from minerals trade can easily be diverted to socially suboptimal activities. Increased transparency in this respect would generate public pressure to improve governance. Recent examples of large land purchases, often for increasing the exports of a particular product may have strong adverse effects, particularly, on the rural poor. They deserve to be brought under global governance of trade related investments, probably in a stronger manner than through voluntary guidelines.

As liberalization proceeds and trade rules move from tariffs into a wide range of areas covering "trade-related aspects", the policy space developing countries had to support the dynamic transformation of their economies has been reduced. There has been a noticeable trend towards the standardization of rules and disciplines, which often correspond to those prevailing in the more advanced economies. The rules may be sound, but they may not be the most

adequate disciplines for countries at the lower end of the development ladder. Standardization pressures have accompanied the fragmentation of production and distribution worldwide and the emergence of the global value chains as a main business model.

Both WTO and its predecessor GATT recognize that countries are at different stages of development and therefore have different financial and trade needs, but the pre-WTO regime included flexibilities or provisions that could be used to support structural change, while the WTO regime is increasingly moving towards flexibilities that support the implementation of its rules. Moreover, while some flexibilities in terms of “allowed policy tools” are still available for developing countries, those currently enjoyed by developed economies (those in agriculture being the most notorious example) are off-limits, which introduces an important element of inequity in the system. Beyond WTO, RTAs and BITs have been reducing policy space in developing countries besides creating problems of fragmentation, consistency and coherence in the global trade regime. While multilateralization of some provisions contained in RTAs may be possible, and is worth exploring, there is urgent need to introduce disciplines so as RTAs and BITs preserve policy space and prevent “negative competitive liberalization” by developing countries. In other words, there is need to curb policy space to preserve policy space. Binding “rules of conduct” or principles to anchor action by negotiating parties, which should also rely on stronger overseeing and enforcement responsibilities by WTO, could provide a possible way forward.

The analysis above indicated that trade rules are moving away from differential treatment for developing countries as a group to preferential treatment based on specific, individual needs. While this may be a practical solution in view of greater diversity among developing countries, the new approach has not yet been tested and it is not clear how it will actually be implemented and how well it will work in practice. A number of other problems will likely emerge, including difficulties related to country classification based on needs, the selection of needs eligible for assistance, monitoring and the extent and modalities of resources

committed, including their additionally. Without prejudging which direction trade negotiations will take, there is a risk that while new disciplines will be binding, the provision of technical assistance they require will not. Another source of concern is the enhanced reciprocity that the new trend entails, particularly if rules are not flexible enough to accommodate different country needs. These emerging trends seem to suggest that the principle of less than full reciprocity, which has been one of the pillars of the multilateral trade regime, is being eroded.

The above notwithstanding, there seems to be an implicit contradiction in the way that the system operates: GATT/WTO rules aim at improving welfare of all but, deviations from the rules are necessary. And as WTO continues to move the liberalization frontier from “at the border” to “behind the border”, further exemptions may be needed. If deviations are needed, then some of the rules may not necessarily be in synchrony with developing countries’ interests. Increasing participation by developing countries and LDCs in the multilateral trading system may then strengthen the system itself but not necessarily promote the development of these countries. In this regard, the question whether the policy package implicit in WTO agreements is in fact appropriate for economies at an early stage of development becomes increasingly relevant.

The solution to the issue of diversity among WTO members has been the introduction of SDTs. However, the current SDT architecture is not ideal and has not been delivering as anticipated. SDTs are in fact second best solution to the quest of development. Thus, moving forward the issue seems not so much to have SDTs which are deviations from the rules, but to negotiate trade rules that are flexible and supportive of development and do not need to be deviated from. To achieve that, however, many developing countries, LDCs in particular, will need to enhance their negotiating capacity, including strengthening their presence in Geneva, where negotiations are conducted. To this end, enlightened and innovative development cooperation is necessary not only from developed countries but also from developing countries with proven trade negotiating skills.

## References

- African Economic Outlook (2013), <http://www.african-economicoutlook.org/en/in-depth/structural-transformation-and-natural-resources/> (Consulted on 15 September 2013)
- Ahmad, Nadim (2013). Estimating trade in value added: why and how? In Deborah K. Elms and Patrick Low (eds.), *Global Value Chains in a Changing World*. Geneva, WTO.
- Aksoy, M. Ataman and Bernard Hoekman (eds) (2010), *Food Prices and Rural Poverty*, World Bank, Washington, D.C.
- Akyuz, Yilmaz (2009). *Multilateral Disciplines and the Question of Policy Space*, TWN Trade and Development Series No. 38.
- Akyuz, Yilmaz (2013). *Post-2015 Development agenda and sustainable development*. South Bulletin (73). Geneva. South Centre.
- Anderson, Robert D. (2012). *Reflections on Bagwell and Staiger in light of the revised WTO Agreement on Government Procurement*. Available from <http://papers.nber.org/books/feen11-1>
- Bagwell, Kyle and Robert Staiger (2012). *Can the Doha Round be a development round? Setting a place at the table*. October 15. Available from <http://papers.nber.org/books/feen11-1>
- Baldwin, Richard (2011a). *Trade and industrialization after globalisation's 2nd unbundling: How building and joining a supply chains are different and why it matters*. Graduate Institute, Geneva, November.
- Baldwin, Richard (2011b). *21st Century Regionalism: Filling the gap between 21st century trade and 20th century trade rules*. CTEI Working Paper. Geneva, CTEI. CTEI-2010-31. April.
- Baldwin, Richard (2012). *Global Supply Chains: Why They Emerged, Why They Matter, And Where They Are Going*. CTEI Working Paper. Geneva, CTEI. CTEI-2012-13. 7 July.
- Baldwin, Richard (2014). *Multilateralising 21st Contry Regionalism*. Global Forum on Trade. Reconciling Regionalism and Multilateralism in a Post-Bali World. OECD Conference Centre, Paris, 11-12 February 2014.
- Bens, Rudolfs, Robert C. Johnson and Kei-Mei Yi (2012). *The great trade collapse*. NBER Working Paper No. 18632 (December). Available from: <http://www.nber.org/papers/w18632.pdf>.
- Blanchard, Emily J. (2013). *Revisiting Trade and Development Nexus. What Global Fragmentation Measn to WTO*. Article XXIV, *Behind-the-Border Concessions, and A New Case for WTO Limits on Investment Incentives*. WTO Working Paper ERSD-2014-03 (December).
- Bloomberg News, (2013) "Ghana Cocoa Premium Said to Drop on Better Ivory Coast Quality", January 18, 2013, <http://www.businessweek.com/news/2013-01-18/ghana-cocoa-premium-said-to-drop-on-better-ivory-coast-quality> (consulted 10 September 2013)
- Cheong, David, Marion Jansen, and Ralf Peters, (2013) "Shared Harvests: Agriculture, Trade and Employment, an overview" in *Shared Harvests: Agriculture, Trade and Employment International Labour Office and United Nations Conference on Trade Development - Geneva: ILO and UNCTAD, 2013* [http://unctad.org/en/PublicationsLibrary/ditctncd2013d2\\_en.pdf](http://unctad.org/en/PublicationsLibrary/ditctncd2013d2_en.pdf).
- Christie, Andrew (2009). *Special and Duifferential treatment in the GATT: A Pyrrhic Victory for Developing Countries*. The Estey Centre Journal of International Law and Trade Policy, vol. 10, Number 2, pp 64-84.
- Cortez, Ana Luiza (2011). *Beyond market access: trade-related measures for the least developed countries. What strategy?* DESA Working Paper Series No. 109. (ST/ESA/2011/DWP/109), December.
- Cotula, Lorenzo (2007a). *Investment treaties*. International Institute for Environment and Development. Briefing 2. August.
- Cotula, Lorenzo (2007b). *The regulatory taking doctrine*. International Institute for Environment and Development. Briefing 3. August.
- Das, Dilip K. (2007). *The Evolving Global Trade Architecture*. Edward Elgar Publishing, Cheltenham, UK Northampton, MA, USA
- Davey, William J. (2011). *A model article XXIV: are there realistic possibilities to improve it?* In Kyle W. Bagwell and Petro C. Mavroidis (eds.). *Preferential Trade Agreements: A Law and Economics Analysis*. Cambridge eBooks.
- Driffeld, Nigel and James H. Love (2005). *Intra-industry foreign direct investment, uneven development and globalization: the legacy of Stephan Hymer*. *Contributions to Political Economy*, vol. No. 24, pp.55-78.
- Elliott, Kimberley (2013) "Subsidizing Farmers and Biofuels in Rich Countries an Incoherent Agenda for Food Security", CGD Policy Paper 032 September 2013, [http://www.cgdev.org/sites/default/files/subsidizing-farmers-biofuels-rich-countries-an-incoherent-agenda-food-security\\_final.pdf](http://www.cgdev.org/sites/default/files/subsidizing-farmers-biofuels-rich-countries-an-incoherent-agenda-food-security_final.pdf).
- Erten, Bilge and José Antonio Ocampo (2013). *Super-cycles of commodity prices since the mid-nineteenth century*. *World Development*, Vol. 44, pp. 14-30, 2013.
- European Commission (2012). *The EU's New Generalised Scheme of Preferences (GSP)*. December.

- FAO (2012), Price volatility from a global perspective, Technical background document for the high-level event on: "Food price volatility and the role of speculation" FAO headquarters, Rome, 6 July 2012.
- FAO (2013), Statistical Yearbook 2013, (consulted on line, 18 September 2013) <http://www.fao.org/docrep/018/i3107e/i3107e03.pdf>.
- FAO, et.al. (2011). FAO, IFAD, IMF, OECD, UNCTAD, WFP, the World Bank, the WTO, IFPRI and the UN HLTF, Price Volatility in Food and Agricultural Markets: Policy Responses, 2 June 2011. [http://www.fao.org/fileadmin/templates/est/Volatility/Interagency\\_Report\\_to\\_the\\_G20\\_on\\_Food\\_Price\\_Volatility.pdf](http://www.fao.org/fileadmin/templates/est/Volatility/Interagency_Report_to_the_G20_on_Food_Price_Volatility.pdf).
- Gereffi, Gary (2013). Global value chains in a post-Washington Consensus world. Review of International Political Economy, March.
- Gereffi, Gary and Joonkoo Lee (2012). Why the world suddenly cares about global supply chains. Journal of Supply Chain Management, Volume 48, Number 3, July.
- Girvan, Norman and Ana Luiza Cortez (2013). The enabling international environment in Alonso, Jose Antonio et al (eds.), Alternative Development Strategies for the Post-2015 Era, Bloomsbury Academic in association with the United Nations.
- Guzman, Andrew T. (1998). Why LDCs Sing Treaties That Hurt Them: Explaining the Popularity of Bilateral Investment Treaties. Berkeley Law. January.
- Hanson, Gordon (2012). The Rise of Middle Kingdoms: Emerging Economies in Global Trade. Gordon H. Hanson. NBER Working Paper No. 17961. March.
- Hart, Michael and Bill Dymond. 2003. "Special and Differential Treatment and the Doha "Development" Round," Journal of World Trade, 37(2) 395-415.
- Hoekman, Bernard, Cosntantine Michalopoulos, L. A Winters (2003). More favourable and differential treatment of developing countries. Toward a new approach in the World Trade Organization. Policy Research Working Paper No. 3107, Washington, DC., World Bank, August.
- Hoekman, Bernard (2004). Operationalizing the Concept of Policy Space in the WTO: Beyond Special and Differential Treatment. July 13, available from: <http://www.ycsg.yale.edu>.
- International Cocoa Organization (ICCO) (2012), Study on the costs, advantages and disadvantages of cocoa certification, October 2012, undertaken by KPMG Advisory N.V.
- International Cotton Advisory Committee (ICAC), (2013) Production and Trade Policies Affecting the Cotton Industry, September, [https://www.icac.org/getattachment/mtgs/Plenary/72nd-Plenary/Documents/e\\_government-measures.pdf](https://www.icac.org/getattachment/mtgs/Plenary/72nd-Plenary/Documents/e_government-measures.pdf).
- International Monetary Fund (IMF) (2014). "Commodity Price Outlook and Risks", January 15, 2004, [www.imf.org](http://www.imf.org).
- International Trade Centre (2010). Market Access, Transparency and Fairness in Global Trade. Export Impact for Good 2010. Geneva, ITC.
- Keane, Jodie-Anne (2012). The Governance of Global Value Chains and the Effects of the Global Financial Crisis Transmitted to Producers in Africa and Asia, Journal of Development Studies, volume 48, number 6, pp. 783-797.
- Keck, Alexander and Patrick Low (2004). Special And Differential Treatment In The Wto: Why, When And How? WTO Staff Working Paper ERSD-2004-03. May.
- Khor, Martin, and Jose Antonio Ocampo (2011). The Unsettled Global Trade Architecture. Queries, Magazine of the Foundation for European Progressive Studies (FEPS), vol. 1, No. 4, pp. 68-88.
- Lang, Remi (2006). Renegotiating GATT Article XXIV – a priority for African countries engaged in North-South trade agreements. ATPC Work in Progress No. 33, Economic Commission for Africa/African Trade Policy Centre, February.
- Lamy, P (2013) "Aid for Trade aims to connect the least connected, WTO News, July 2013.
- Lee, Keun and John Matthews (2013). Science, Technology and Innovation for Sustainable Development. CDP Background Paper Series No. 16. Available from [http://www.un.org/en/development/desa/policy/cdp/cdp\\_background\\_papers/bp2013\\_16.pdf](http://www.un.org/en/development/desa/policy/cdp/cdp_background_papers/bp2013_16.pdf).
- Magraw, Daniel B. (1990). Legal treatment of developing countries: differential, contextual and absolute norms. Colorado Journal of International Environmental Law & Policy (69).
- Mayer, Frederick and William Milberg (2013) "Aid for Trade in a world of global value chains: chain power, the distribution of rents and implications for the form of aid", Capturing the Gains, Working Paper 13, Manchester, June. <http://www.capturingthegains.org/pdf/ctg-wp-2013-34.pdf>.
- New York Times, (2013) China Finds Resistance to Oil Deals in Africa, 17 September.
- Nicita, Alessadro et al (2011). Global supply chains: trade and economic policies for developing countries. UNCTAD Policy Issues in International Trade and Commodities. UNCTAD/ITCD/TAB/56.
- OECD (2013). Interconnected Economies: Benefitting from Global Value Chains. Synthesis Report. Paris. OECD.

- OECD-KDI (2013). Global value chains, development and competitiveness. Sharing policy practices. Discussion Paper. Paris, OECD, 19 March.
- OECD-WTO (2012). Trade in value-added: concepts, methodologies and challenges (Joint OECD-WTO note).
- Panel on Defining the Future of Trade (2013). The Future of Trade: The Challenges of Convergence. Geneva, WTO, 24 April.
- Pauwelyn, Joost (2013). The end of differential treatment for developing countries? Lessons from the trade and climate regimes, *Review of European Community & International Environmental Law (RECIEL)*, Vol. 22, No. 1, 2013.
- Picker, Colin B. (2005). Regional Trade Agreements V. the WTO: a Proposal for Reform of Article XXIV to Counter this Institutional Threat. *University of Pennsylvania Journal of Economic Law*, vol. 26, pp. 267-319.
- Rodrik, Dani, (2005) "Policies for Economic Diversification" *CEPAL Review*, 87, December.
- Rodrik, Dani (2008). Industrial policy: don't ask why, ask how, *Middle East Development Journal*, Demo Issue, pp.1-29.
- Roepstorff, Torben M., Steve Wiggins and Anthony M. Hawkins (2011), "The profile of agribusiness in Africa" in Yumkella, Kandeh K., Patrick M. Kormawa, Torben M. Roepstorff, Anthony M. Hawkins (eds), *Agribusiness for Africa's Prosperity*, UNIDOID/440, 2011.
- South Centre (2013). History And Assessment Of The Cancun Annex C 28 Special And Differential Treatment Proposals, (SC/TDP/AN/S &D), April .
- Spears, Susanne (2010). The Quest for Policy Space in a New Generation of International Investment Agreements. *Journal of International Economic Law* 13(4), 1037-1075. Oxford University Press.
- Srinivasan, T.N. (2005). Non discrimination in GATT/ WTO: was there anything to begin with and is there anything left? *World Trade Review*, Volume 4, Number 1, 69–95. March.
- UNECA (Economic Commission for Africa) (2013) Economic Report on Africa, 2013, Making the Most of Africa's Commodities: Industrializing for Growth, Jobs and Economic Transformation, [http://www.uneca.org/sites/default/files/publications/unera\\_report\\_eng\\_final\\_web.pdf](http://www.uneca.org/sites/default/files/publications/unera_report_eng_final_web.pdf).
- UNCTAD (2012). The World Investment Report 2012. Towards a New Generation of Investment Policies, UN publication Sales No. E.12.II.D.5.
- UNCTAD (2012a). Handbook of Statistics, 2012, UN Publication Sales No. B.12.II.D.1.
- UNCTAD (2013). The World Investment Report 2013. Global Value Chains: Investment and Trade for Development, UN publication Sales No. E.13.II.D.5.
- UNCTAD (2013a) Trade and Development Report, 2013, UN publication Sales No. E.13.II.D.3.
- UNCTAD (2013b) Facts and Figures on Commodities and Commodities Trade 19 March 2013, Geneva [unctad/press/in/2013/2](http://unctad.org/press/in/2013/2), [http://unctad.org/meetings/en/sessionaldocuments/gcf2013\\_facts\\_en.pdf](http://unctad.org/meetings/en/sessionaldocuments/gcf2013_facts_en.pdf).
- UNCTAD (2013c). Non-tariff Measures to Trade: Economic and Policy Issues for Developing Countries UNCTAD/DITC/TAB/2012/1 Geneva. [http://unctad.org/en/publicationslibrary/ditctab20121\\_en.pdf](http://unctad.org/en/publicationslibrary/ditctab20121_en.pdf).
- UNCTAD (2013d), Commodities and Development Report: Perennial problems, new challenges and evolving perspectives, New York and Geneva 2013 UNCTAD/SUC/2011/9.
- UNDESA/CDP (2011). Survey on the International Support Measures related to WTO Provisions and Preferential Market Access for LDC. Responses by Least Developed Countries. Summary and Analysis. Available from <http://esango.un.org/ldcportal/documents/10179/15001/Summary%20%26%20Analysis%20LDCs.pdf>.
- United Nations (2006). World Economic and Social Survey 2006. Diverging Growth and Development. United Nations publication, sales No. E.06.II.C.1.
- United Nations (2010). World Economic and Social Survey 2010. Retooling Global Development. United Nations publication, sales No. E.10.II.C.1.
- United Nations (2014). World Economic Situation and Prospects 2014. United Nations publication, sales No. E.14.II.C.2.
- World Trade Organization (2014). Overview of Developments in the International Trading Environment Annual Report by The Director-General. Trade Policy Review Body. 31 January.
- World Trade Organization (2013a). Committee on Trade and Development .Special and differential treatment provisions in WTO Agreements and Decisions. Note by the Secretariat. WT/COMTD/W/196, 14 June.
- WTO (2013b). World Trade Report 2013.Factors Shaping the Future of World Trade. Geneva. WTO.
- WTO (2012). International Trade Statistics 2012. Geneva. WTO.
- WTO (2011). World Trade Report 2011. The WTO and Preferential Trade Agreements: From Co-existence to Coherence. Geneva. WTO.
- WTO-IDE-JETRO (2011). Trade Patterns and Global value Chains in East Asia: From Trade in Goods to Trade in Tasks. Geneva. WTO.