

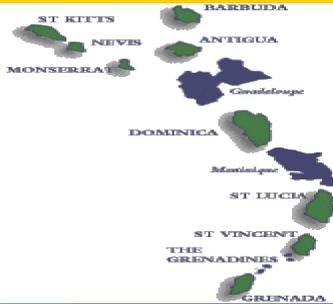
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# OECS



## SECRETARIAT



Vol. 1, no. 1 (i), December 2000

ORGANIZATION OF EASTERN CARIBBEAN STATES

# TRADE POLICY BRIEF

...A bi-monthly policy brief on multilateral trading issues of currency for OECS Member States' Trade Policy-makers and the RNM College of Negotiators...

### SPECIAL AND DIFFERENTIAL TREATMENT: Policy Advice for OECS Member States and the RNM

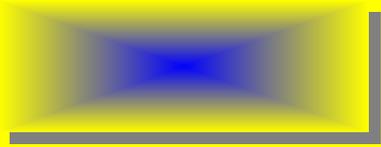
#### A Conceptual Review of S&DT

Historically, special and differential treatment (S&DT) has been and continues to be a center piece of developing countries' multilateral trade relations; the member countries of the Organization of Eastern Caribbean States (OECS) are no exception in this regard.<sup>1</sup> S&DT as a concept in and instrument of international trade relations between the industrialized and developing countries emerged out of an *a priori* understanding that given the fact that developing countries, by virtue of being under-developed, were not equal partners in trade relations should be extended certain exemptions and enjoy certain privileges/preferences in the exercise of those relations between nations. S&DT has enabled a truncated period of preferential treatment for developing countries in international trade relations, however, it is not a *prima facie* permanent provision in the international trading framework.

By definition, S&DT is targeted at striking a delicate balance between the need for developing countries to develop but within and in respect of a family of nations that are trading nations committed to free trade.<sup>2</sup> As a result, S&DT (more so pre-Uruguay Round S&DT) is very much a *derivative* of – although it later assumed a role all on to its own – the discredited import substitution industrialization school.<sup>3</sup> To this effect S&DT, which compensates for asymmetries and disparities in national development in

the multilateral trading system, is an effort to harmonize the *right* of nations to develop with the requisite *need* for nations to trade internationally.<sup>4</sup> This is achieved through a system of preferences and differential treatment as well as enhanced access to industrialized markets extended to developing countries to compensate for the innateness of their underdevelopment.

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## The Rationale for S&DT

The framework for international trade that is the General Agreement on Tariffs and Trade (GATT) first attempted to address the underdevelopment of certain trading nations, through the employ of the S&DT modality, in the 1950s through Article 18. The use of this Article, provided appropriate compensation was accorded to trading partners, enabled developing nations to protect and facilitate the growth of infant industries – through their re-negotiation of tariff bindings - while remaining partners in a GATT framework that aimed at rooting out the historically pervasive propensity to exercise protectionism which was particularly evident in the 1930s. The Article also enabled the use of balance-of-payments (BOP) justified measures by developing countries in respect of 'special rights to protect' provisions. In this regard, the Tokyo Round (1973-79) was instrumental in reinforcing 'special rights to protect' provisions in that it further advanced the recognition of preferential treatment accorded to developing countries under a liberalizing international trade environment; and further still formally put in place a S&DT framework, the centrepiece of which was the *Enabling Clause*.<sup>5</sup>

However, it was the watershed Generalized System of Preferences (GSP), developed at the United Nations Conference on Trade and Development (UNCTAD), that truly championed the concept of *special rights to protect*.<sup>6</sup> However, the GSP is not without its shortcomings; relevant here is the fact that in cases where developing countries *do* command a comparative advantage (e.g. textiles in the case of Asia) GSP typically does not extend preferences. Furthermore, preferences under GSP are often constrained quantitatively or by rules of origin provisions which have traditionally been a favoured instrument for protectionist activity. Also applicable as relates to GSP shortcomings is that GSP preferences have consistently become less valuable as tariffs precipitously declined through successive rounds of multilateral trade negotiations over the years.

While historically post-World War II international trade was not regulated *per se* (which would have been a derogation of accepted principles of trade in GATT) under the S&DT certain privileges were extended to developing countries which developed countries would not enjoy under a system of *free trade*.<sup>7</sup> In this respect protection, in the least liberal use of the term, was afforded in a discriminatory fashion to developing country trading partners. So S&DT in respect of taking into account the paucity of development in under-developed countries reflected an effort to protect infant industries and respond to historically endemic BOP bottlenecks in developing countries within an international trading system committed to liberalization under regular multilateral negotiations on tariff reductions. Notwithstanding this, preferential trade arrangements (PTAs) have historically not been uncommon in the international trading system. On a global scale, some studies have maintained, PTAs (as a share of world trade calculated through the use of import-weighted and non-weighted averages) represented around 40% of world trade between 1988-92 and rose incrementally from 1993-97, especially in countries of the West, Eastern Europe and Africa (Grether & Olarreaga, 1998). Notable PTAs that have traditionally benefited Caribbean nations are, *inter alia*, the Lome Convention – in place between the European Union and the African, Caribbean and Pacific Economic Recovery Act which provides US market access to Caribbean countries; CARIBCAN an arrangement between Canada and the Caribbean. Despite these developments, the GATT/World Trade Organization (WTO) framework explicitly forbids preferential trade, however loopholes clearly exist and traditionally have been taken advantage of under the Lome arrangements, for example the European Union – particularly France and the United Kingdom in respect of their former colonies - committed itself to supporting traditional ACP banana suppliers.

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## S&DT and the OECS Sub-Region: The Need to Re-Calibrate Classification Schemes

Precedent exists under key elements of S&DT as they are reflected in the GATT framework, as early as the 1970s, in respect of 'special rights to protect' provisions. Specifically, GATT (1994) Article 28 recognizes the needs of developing countries to be taken into account in tariff negotiations. Part IV of GATT takes into account the special development needs of developing countries and underscores the principle of non-reciprocity by developing countries in multilateral trade negotiations. In some cases S&DT provisions enable developing countries to be exempted from certain multilateral trade disciplines and in other cases enables the exercise of flexibility in the use of various trade and trade-related measures. To this end S&DT provisions also enable developing countries to take greater advantage of special market access preferences. However, at the dawn of the 21st Century special rights and access concepts, especially under the post-Uruguay Round S&DT provisions, have been somewhat distorted relative to those engineered in the 1970s. It is because of this state of affairs that OECS Member States need to continue to press the WTO – in its work programme for the fuller integration of small economies into the global economy – to modify the existing criteria for its taxonomy in respect of WTO Member Countries to embrace a separate category that accounts for 'smallness' which Caribbean SIDS, especially, epitomize. There are a plethora of concepts to describe small states, such as small island states, small island developing states, small states, small and vulnerable states and small economies. The current WTO Agreements only provide for three categories of countries, **developed**, **developing** and **least developed**. Haiti is the only Caribbean country which falls within the category of least developed countries (LDCs).

A sub-classification or tier system is needed to respond to the special circumstances of certain WTO Member Country *smallness* (i.e. geographic, demographic wise and in respect of trade competitiveness and vulnerabilities – weather-related and otherwise). The inherent heterogeneity of developing countries – which conventional S&DT provisions did not take into account – must be taken into account, if developing countries are to truly be given *separate* and *distinct* consideration in the multilateral-based trading system S&DT methodology. Further to this, it is critical that OECS Member States' international trade negotiating representatives work to more vigorously advance this very warranted S&DT modality. This highly heterogeneous classification system even in respect of the *smallness* tier, however, would need *transparent, unambiguous, measurable indicators and explicit eligibility criteria*. Considerable input, therefore, from and consultation with SIDS such as OECS Member States would be needed to ascertain these criteria. This notwithstanding, if OECS Member States are not proactive in engaging in this process their interests in future multilateral Rounds of trade negotiations will be considerably marginalized as will efforts to achieve long-term and formalized recognition that takes into account *smallness*. The fact is CARICOM Member States - at large - are among the smallest and most vulnerable in the world. They possess a number of characteristics which pose special development challenges in this new global environment; some of these characteristics have been outlined in a recent Report of the Commonwealth Secretariat/World Bank Joint Study. Particularly notable is how the Study demonstrates that the extreme openness of these economies and the resultant high volatility in export earnings make it extremely difficult for CARICOM countries to meet the challenges and exploit the much heralded opportunities resulting from the liberalisation of the global economy.

## The OECS Sub-Region and the Future of S&DT Prerogatives

It is vital that a revised classification scheme vis-à-vis S&DT be engineered to account for *smallness* especially since there appears to be a climate of weakened commitment to S&DT in the multilateral trading system; which is only further compounded by the erosion of historically favorable ACP PTAs and of direct relevance to the Windward

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Islands delays in disbursements of Stabex funds due to the increasing conditionality linked to them under the successor of ACP-EU Lome Conventions, i.e. the Partnership or Cotonou Agreement.

As part of OECS Member States' efforts to be more proactive in contributing to defining the agenda of future and successive work programmes of the WTO, affecting change in the S&DT modality and associated frameworks must remain a centre piece of those efforts. This would have implications for overly robust liberalization in market access areas which would be of special interest to developing countries. Furthermore, because the post-Uruguay Round propensity to shift away from S&DT provisions in favour, instead, of a conventional *special rights to protect* and *special access* a modality that champions the concept of *what liberalizing global economy* the need to engineer to the special circumstances of *smallness*, urgency. Without such a *tiered* classification *special rights to protect* will no longer adequately to accommodate the international trading system as opposed to vis-versa as was conventionally conceived of under the initial seminal provisions of S&DT.



## END NOTES

- 1 The nine OECS Member States are Antigua and Barbuda, Commonwealth of Dominica, Grenada, Montserrat, St. Kitts and Nevis, St. Lucia and St. Vincent and the Grenadines; Anguilla and British Virgin Islands are Associate Members of OECS.
- 2 Refer to Part IV of the GATT which sets out concessions in respect of the special development needs of developing countries. The most poignant provision in respect of this is the principle of non-reciprocity by developing nations in trade negotiations.
- 3 See two seminal works by Baldwin (1969) and Balassa (1981) for arguments that discredited national industrialization policies of Governments that attempted to micro-manage their economies and Sachs and Warner (1995) for more recent notable work championing the merits of outward-oriented growth strategies.
- 4 For this argument see Part IV, specifically Article 36, of GATT.
- 5 The Enabling Clause facilitates the provision of permanent legal grounding for GSP schemes; however, GSP concessions are not bound in GATT.
- 6 Special rights of access provisions and related preferential tariff schemes under GSP were enabled by a 10 year waiver in the early 1970s from GATT Article 1 MFN obligations; however, only a modicum of benefits emerged from this arrangement for developing countries.
- 7 This is the case in theory, in practice industrialized countries have historically benefited from *reverse* S&DT; particularly relevant here is the Multifibre Agreement where Asian countries have been subject to quota restrictions.

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