

**Third CEPPI – IDB Conference**

**The New Regionalism: Progress, Setbacks and Challenges**

**Washington D.C., February 9-10 2006**

“The Treatment of Asymmetries in Regional Trade Agreements”

Ken Heydon and Hyung-Jong Lee (OECD Secretariat<sup>1</sup>)

---

<sup>1</sup> The views in this paper are those of the authors and are not necessarily shared by the Members of the OECD.

## TABLE OF CONTENTS

EXECUTIVE SUMMARY .....	3
1. Introduction.....	5
Methodology and scope .....	5
2. General approaches to SDT within the RTAs under study .....	7
2.1 Regional Trade Agreements in the Americas (Table 1).....	7
2.2 Regional Trade Agreements in Asia and the Pacific (Table 2) .....	9
2.3 Regional Trade Agreements in Africa (Table 3) .....	12
3. Flexibilities or advantages for lesser developed members.....	13
3.1 Flexibilities of commitments, of action, and the use of policy instruments .....	13
3.2 Transitional time periods .....	16
4. Strengthened obligations for developed members .....	18
4.1 Providing trade opportunities .....	18
4.2 Safeguarding the interests of lesser developed members .....	19
5. Direct assistant measures .....	20
5.1 Financial support mechanism .....	20
5.2 Capacity building and technical assistance .....	22
6. Concluding remarks.....	24
REFERENCES.....	27
Agreements & Treaties .....	28
ANNEX: MEMBERSHIP AND SDT-RELATED PROVISIONS IN SELECTED RTAS.....	29

## EXECUTIVE SUMMARY

Plurilateral regional trade agreements among developing countries widely contain asymmetric obligations in favour of less developed members, including through the provision of slower or more limited liberalisation commitments. In particular, many South-South plurilateral agreements contain innovative provisions for the flexible application of rules of origin. South-South agreements also commonly provide for financial and technical assistance to foster capacity building in less developed members.

The story is more nuanced for North-South agreements. While such agreements often contain provisions for financial assistance and capacity building, explicit SDT in the form of greater flexibility for less developed partners appears to be relatively uncommon, particularly in bilateral agreements. Indeed, in some North-South bilateral RTAs the asymmetric obligations could be interpreted as favouring the developed partner. A significant exception to the apparent paucity of asymmetric obligations favouring less developed parties in North-South agreements is found in DR-CAFTA.

The extent of SDT provisions in RTAs appears to be a function of the degree of ambition towards deep integration and, consistent with this, seems to be more common among countries that are geographically contiguous. Related to this observation, much more experimentation with SDT provisions has taken place in RTAs than in existing multilateral accords (OECD 2005, 1). Interestingly, a number of RTAs, such as CARICOM, employ non-economic criteria in determining eligibility for asymmetric obligations, consistent with a “situational” approach to SDT. It might also be argued that the financing provisions found in many RTAs stand in contrast with comparable WTO agreements where there is little recognition that trade reform creates losers as well as winners. And the provision of SDT in RTAs tends to cover a broader span of trade-related areas ( such as the environment) than is the case in the WTO,

These tentative findings prompt a number of observations, and questions, that warrant further study.

- To what extent can DR-CAFTA, as a very recent agreement, be regarded as a precursor of how North-South agreements might evolve, in providing explicitly for asymmetric obligations among participating countries?
- How useful is it analyse RTA provisions without also seeking to establish what is actually *implemented*. It seems, for example, that notwithstanding extensive provisions for financial assistance within South-South agreements, only limited funding has actually been forthcoming.
- How far will effective regional integration among developing countries require outside assistance whether from regional banks or the donor community more broadly?
- To what extent are asymmetric obligations in the form of slower or more limited liberalisation commitments actually in the interests of the “beneficiary”? This relates to the broader question underlying the SDT debate. There is compelling evidence, for example, that much of the benefit which developing countries stand to gain from the Doha Development Agenda will come from their own liberalisation. On the other hand, it can be argued that regional initiatives that encourage developing countries to open their markets, if only gradually, may encourage them to take on multilateral commitments earlier than might otherwise be the case. The key is perhaps to design

flexibilities in such a way that they make the domestic reform process politically acceptable without creating room for vested interests to frustrate that process.

- Even where there may not be formal SDT provisions within an agreement the institutional framework created may help foster the development of the less developed members. For example, the NAFTA framework helped foster cooperation between US and Mexican regulatory authorities in the promotion of Mexican avocado exports to the United States (OECD 2005, 2).
- Notwithstanding the potential benefits which developing countries might derive from regional initiatives, does the proliferation of FTAs – and with it the complexity of rules of origin – create both a commercial and institutional burden on such countries which SDT provisions are unlikely to offset?

## 1. Introduction

1. This paper builds on earlier fact-finding analysis undertaken by the Trade Committee on different aspects of regional trading agreements (RTAs) as well as on special and differential treatment (SDT) for developing countries.<sup>2</sup> The paper examines SDT provisions embedded in selected RTAs, in particular by investigating how RTAs address asymmetries existing across their membership and what SDT provisions they employ to narrow gaps between them. It aims to achieve a better understanding on SDT mechanisms used in RTAs.

2. Within the GATT/WTO, the notion of SDT has gradually evolved over the last half a century. To assist the integration of developing countries within the multilateral trading system, current WTO rules employ over 150 SDT provisions which either: provide developing countries with more flexibility; require developed country members to assume more obligations; or call for cooperative approaches for technical assistance and capacity building. Many RTAs apply approaches to SDT paralleling those in the GATT/WTO. Cognisant of economic and trade-related asymmetries existing between their members, most RTAs contain SDT provisions in varying degrees of simplicity or sophistication. Depending on the specific regional contexts and historical backgrounds in which RTAs are concluded, a variety of distinct approaches to SDT can be found. Some RTAs apply explicit or conspicuous instruments when tackling asymmetries, while others take more subtle or implicit ones. In actuality, SDT provisions are the result of the negotiating process between the parties concerned, but may eventually play a critical role in the successful implementation of RTAs between members, reflecting asymmetric conditions of development.

3. Since the GATT came into being, GATT members and non-members have concluded trade arrangements to facilitate trade and development at the regional level. As of January 2005, 312 RTAs have been notified to the GATT/WTO (of these, 170 are currently in force) and a further 65 are estimated to be operational, although not yet notified (Crawford *et al*, 2005). The apparent success of the EU has encouraged other regions and countries to actively engage in regionalism. The last decade in particular has witnessed a mushrooming of RTAs around the globe.<sup>3</sup>

4. At the outset, section 2 describes the characteristics of memberships within selected RTAs, and analyzes the general considerations of these RTAs towards the principle of SDT (drawing in particular on preambles and articles relating to principles and objectives). Section 3 addresses findings under the subject of flexibilities, exceptions, favours or advantages granted to lesser developed members.<sup>4</sup> Section 4 explains findings under strengthened obligations for more developed members. Section 5 discusses measures taken towards capacity building and technical assistance including financial support mechanisms and special programs. Section 6 concludes this paper with a discussion of the major findings.

### *Methodology and scope*

5. This paper focuses principally on an analytical overview of SDT provisions in 14 selected RTAs, covering the major geographical regions of the world except for Europe. The selection of RTAs has been mainly limited to plurilateral agreements and to agreements that have been negotiated and signed – even if

---

<sup>2</sup> See TD/TC(2002)8/FINAL, COM/TD/AGR/WP(2004)9/FINAL, TD/TC(2005)8.

<sup>3</sup> Since 1 January 1995, 196 RTAs have been notified to the WTO.

<sup>4</sup> In this paper, the term “lesser developed members” is used generally to designate beneficiaries of SDT in the RTA contexts. However, if an RTA introduces specific designation(s) to describe SDT-receiving countries, *e.g.* less developed countries and small island countries, those designations will be used in describing relevant RTAs.

in a number of cases there is so far only limited or no experience with implementation of the agreement. Nevertheless, the RTAs we look at are viable and engaged in meaningful economic activities within their region. In addition, limited reference is made to some North-South bilateral agreements as a point of comparison.

6. The analysis in this study draws directly on RTA texts as well as subsequent implementing documents, *e.g.*, protocols and resolutions, where available and relevant. Nevertheless, SDT provisions and instruments illustrated in this paper are not exhaustive, partly because it is difficult to obtain and interpret all the implementing arrangements, instruments, *etc.*

7. It is useful to bear in mind the distinction between explicit and implicit SDT. The former consists of provisions (normally legal in nature) that specify *ex ante* special treatment for particular beneficiaries among the member countries, while the latter is less clear or less direct. For example, some measures can be considered implicit SDT if they are available for all members but are expected to provide benefits mainly to lesser developed members. For a number of RTAs, funding for technical assistance and capacity building activities are often made available for all members but normally benefit mainly lesser developed members. This paper concentrates on explicit SDT while making reference – when relevant – to implicit SDT, particularly in the case of funding mechanisms and technical assistance and capacity building.

8. To facilitate the understanding of SDT provisions in GATT/WTO rules, the WTO Secretariat has proposed a six-fold classification:

- (i) provisions aimed at increasing the trade opportunities of developing country Members;
- (ii) provisions under which WTO members should safeguard the interests of developing country Members;
- (iii) flexibility of commitments, of action, and use of policy instruments;
- (iv) transitional time periods;
- (v) technical assistance; and
- (vi) provisions relating to least-developed country members (WTO, 2001).

9. In analyzing SDT in RTAs, we will take advantage of this typology with slight modifications. We re-group these six categories, leaving aside category (vi), into three larger categories: (a) flexibilities or advantages for lesser developed members; (b) strengthened obligations for more developed members; and finally (c) direct assistance measures.<sup>5</sup> Under the heading of flexibilities and advantages for lesser developed members, this paper looks into flexibilities of commitments or action, and transitional time periods. Strengthened obligations for more developed members include the categories (i) and (ii) above. Finally, direct assistance measures are discussed by two sub-headings, financial support mechanisms, and capacity building and technical assistance.

---

<sup>5</sup> According to their intended contents, SDT provisions under the category of “provisions related to least-developed countries” may be classified into one of five previous categories.

## 2. General approaches to SDT within the RTAs under study<sup>6</sup>

10. When compared with the multilateral trading regime, South-South RTAs are normally more explicit on the issue of development. Many plurilateral South-South RTAs make explicit reference to development and often designate a category of members eligible for special treatments. Some RTAs, particularly those pursuing a common market or an economic union, include a special regime for lesser developed members which provides a general framework for development cooperation.

11. This section presents a summary of RTAs under study, their membership (including grouping of the members), and general considerations relating to SDT, including any special regime or system favouring lesser developed members.

### 2.1 Regional Trade Agreements in the Americas (Table 1)

#### *Latin American Integration Association (ALADI)*

12. The Latin American Integration Association (ALADI) was established by the 1980 Treaty of *Montevideo* and comprises 11 Latin American countries. The *Montevideo* Treaty and its subsequent Resolutions include pro-active measures and mechanisms to ensure special treatment for countries at a relatively less advanced stage of economic development. ALADI emphasizes flexibility and differential treatment as a guiding principle in the implementation of the Treaty. SDT in ALADI is structured on the basis of three categories of countries (Resolution 4): countries at a relatively less advanced stage of economic development, intermediate developed countries, and other members. In addition, Uruguay is granted exceptional treatment more favourable than that accorded to the other intermediate developed countries.

13. Chapter III of the *Montevideo* Treaty creates a system favouring countries at a relatively less advanced stage of economic development. This chapter provides that designated countries are to be provided conditions to support their participation in the integration process based on the principles of non-reciprocity and community cooperation. Actions favouring countries at a relatively less advanced stage are also implemented through so-called “regional scope” and “partial scope” agreements.<sup>7</sup> In addition, Resolution 4 of ALADI mandates that the contracting parties shall negotiate special cooperation programmes for each of countries at a relatively less advanced stage and establish an Economic Promotion Unit within the Secretariat providing them with support for participation in the integration process.

#### *Southern Common Market (MERCOSUR)*

14. Brazil, Argentina, Paraguay and Uruguay signed the Treaty of *Asunción* in 1991 in order to establish a common market by 31 December 1994. MERCOSUR did not acknowledge any formal role for SDT as it stated that the common market would be based on reciprocity of rights and obligations between the parties. The lack of explicit SDT in MERCOSUR may be attributed to the fact that the architecture of the agreement was the by-product of a bilateral deal between Argentina and Brazil (Bouzas *et al*, 2003). However, subsequent implementing programs and bilateral deals specifically address asymmetric economic capacities and development levels across the members in order to achieve a common market.

---

<sup>6</sup> See the ANNEX which presents a summary of SDT provisions together with economic asymmetries revealed by *per capita* GDP in the year when the RTAs concerned were signed or revised.

<sup>7</sup> These concern, respectively, all members of ALADI, or only some members. There are seven regional scope agreements, which include market-opening lists on behalf of Bolivia, Ecuador and Paraguay (Agreements No. 1, 2 and 3, respectively) and the Regional Tariff Preference Agreement (No. 4).

### *Caribbean Community and Common Market (CARICOM)*

15. In July 1973, Barbados, Jamaica, Guyana and Trinidad & Tobago signed the Treaty establishing the Caribbean Community (CARICOM). The Treaty was further revised in 2001 to transform the common market into a single market and economy, and its membership has grown from 12 countries in 1973 to 15 in 2005. In terms of *per capita* GDP in 2001, CARICOM economies range from USD457 (Haiti) to USD14,119 (The Bahamas). The Caribbean Community has traditionally maintained a two-part classification of member states according to the levels of development: members of the Organisation of Eastern Caribbean States, Belize and Haiti are known as less developed countries (LDCs), whereas the other members form the category of more developed countries (MDCs).<sup>8</sup>

16. Since its outset, the concept of SDT has been firmly embedded in the Caribbean Community. The 1973 Treaty provided a framework of “special measures for less developed countries.” These measures were elaborated in the special regime for less developed countries of the original Treaty and modified in 1999 by “Protocol VII on Disadvantaged Countries, Regions and Sectors.” To create the Caribbean Single Market and Economy (CSME), special measures assisting less developed members are again at the centrepiece of the CARICOM integration movement. The revised regime takes into account not only differing levels of development in member countries, but also differing degrees of vulnerability to natural disasters and indebtedness.<sup>9</sup> The SDT framework in CARICOM is very broad in scope and covers goods as well as investment and services. It mandates special measures for investment promotion in disadvantaged countries and provides special temporary reservations for disadvantaged countries in the services liberalization.

### *Andean Community (AC)*

17. The Andean Community (AC), established by the *Cartagena* Agreement in 1969 and amended by its subsequent Decisions, creates a system for economic and social cooperation towards integration which aims, *inter alia*, to reduce existing differences in the levels of development among member states. The AC explicitly refers to SDT by providing in Article 3 that Bolivia and Ecuador will receive preferential treatment. It also declares the need to find solutions to the problems associated with Bolivia’s condition as a landlocked county.

18. Chapter XV of the Agreement contains the Special Regime for Bolivia and Ecuador, which sets out a system to bolster the immediate and effective participation of these countries in the benefits of regional industrialization and trade liberalization. The special regime comprises five headings: the Harmonization of economic policies and the coordination of development plans, Industrial policy, Trade policy, Common external tariff, and Financial cooperation and technical assistance.

### *North American Free Trade Area (NAFTA)*

19. In January 1994, the North American Free Trade Area (NAFTA) entered into force among Canada, Mexico and the United States. The NAFTA negotiations between the United States and Mexico were the culmination of a decade-long process in which the two countries reordered the terms of their relationship. During the negotiations, Mexican negotiators sought “asymmetrical” treatment due to Mexico’s developing country status. Their proposals ranged from elongated periods to remove tariffs to

---

<sup>8</sup> The Organisation of Eastern Caribbean States includes Antigua and Barbuda, Dominica, Grenada, St. Kitts and Nevis, St. Lucia, and St. Vincent and the Grenadines.

<sup>9</sup> In its definition, disadvantages countries include not only less developed countries but also member states that may require special support by reason of impairment of resources resulting from natural disasters and being a High-Indebted Poor Country (Art. 1).

less onerous reviews of sanitary and phytosanitary regulations. US negotiators made concessions to these positions but did not agree to accord Mexico special rights based on its developing country status. As a result, NAFTA contains only limited provisions (see para. 55) extending SDT to the lesser developed partner.

*Dominican Republic - Central American Free Trade Agreement (DR-CAFTA)*

20. The US and five Central American countries announced their intention to negotiate a free trade agreement in January 2003. Agreement with El Salvador, Guatemala, Honduras and Nicaragua was reached on 17 December 2003, and with Costa Rica on 26 January 2004. Negotiations to include the Dominican Republic within CAFTA began in January 2004. The US, the Dominican Republic and five Central American countries signed the US – Dominican Republic – Central American Free Trade Agreement (DR-CAFTA) on 5 August 2004.

21. The large asymmetries between the United States and the Central American countries resulted in a strong demand for SDT within this free trade area. As a result, DR-CAFTA included provisions recognising the differing levels of development and size of economies, and contemplated some form of special and differential treatment for each of the Central American members. In fact, DR-CAFTA SDT is characterized by country-by-country, sector-by-sector, and product-by-product approaches which derived from bilateral negotiations between the US and its Central American partners. DR-CAFTA incorporates a variety of SDT provisions ranging from longer timeframes for phasing out tariffs to less stringent rules of origin, as well as more favourable treatment and/or assistance for capacity building in sectors such as investment, services, labour and the environment.

**Table 1. Regional Trade Agreements in the Americas**

RTAs	Member countries and groupings (as designated by relevant agreements or treaties)	Date of Signature
ALADI	1) Relatively less developed countries: Bolivia, Paraguay and Ecuador 2) Intermediate developed countries: Chile, Colombia, Peru, Uruguay and Venezuela 3) Other members: Argentina, Brazil and Mexico	12 August 1980
MERCOSUR	Argentina, Brazil, Paraguay, and Uruguay	26 March 1991
CARICOM	1) Less developed countries: Antigua and Barbuda, Belize, Dominica, Grenada, Haiti, Montserrat, St. Kitts and Nevis, St. Lucia, and St. Vincent & the Grenadines 2) More developed countries: The Bahamas, Barbados, Guyana, Jamaica, Suriname, and Trinidad and Tobago	4 July 1973 (revised in 2001)
AC	Bolivia, Colombia, Ecuador, Peru and Venezuela	26 May 1969
NAFTA	Canada, Mexico and United States	17 December 1992
DR-CAFTA	Costa Rica, Dominican Republic, El Salvador, Honduras, Guatemala, Nicaragua and United States	5 August 2004

**2.2 Regional Trade Agreements in Asia and the Pacific (Table 2)**

*ASEAN Free Trade Area (AFTA)*

22. In 1992, six ASEAN countries signed the Agreement on the Common Effective Preferential Tariff Scheme (AFTA-CEPT) which aimed to establish a free trade area in ASEAN by the year 2008. This target year was later accelerated to 2003 by the conclusion of an amended Protocol in 1995 where tariffs for all manufactured products were to be reduced to 0-5 per cent by 2003. Although the initial AFTA-

CEPT did not include express SDT provisions, the programme of tariff reduction under the CEPT scheme allowed members to have recourse to flexibilities in reducing tariffs.

23. The enlargement of ASEAN made it necessary to consider the low levels of economic development of the new members and develop SDT measures for them.<sup>10</sup> The 1999 Protocol on the Special Arrangement for Sensitive and Highly Sensitive Products introduced different time frames under which the members incorporate sensitive products into the CEPT scheme. In addition, ASEAN members expressly provided SDT provisions within the amended ASEAN-CEPT in 2003. Nonetheless, explicit SDT appears to have been given only marginal significance within the AFTA integration process. Only transitional type of SDT was made available for the new members with regard to tariff reductions and eliminations.

#### *South Asian Free Trade Area (SAFTA)*

24. In South Asia, the South Asian Association for Regional Cooperation (SAARC) has provided a platform for economic and social cooperation since its inception in 1985. SAARC members established the South Asian Preferential Trade Arrangement (SAPTA) in 1993 which aims to promote intra-regional trade through the exchange of concession. SAPTA recognized the different levels of economic and industrial development between members and accepted the notion of least developed countries as defined by the United Nations. Of the SAPTA contracting states, Bangladesh, Bhutan, Maldives, Nepal and Sri Lanka are LDCs, while India and Pakistan are considered non-LDC developing countries. Article 10 of SAPTA provides special treatment for the least developed contracting states in areas such as duty free access, removal of NTBs, application of safeguards and re-introduction of quantitative restrictions.

25. SAPTA was envisaged primarily as a transitional step towards the South Asian Free Trade Area (SAFTA) that would subsequently move towards a customs union, common market and economic union (SAARC homepage). SAARC members signed the South Asian Free Trade Agreement (SAFTA) in January 2004 which takes effect in January 2006. Following the tradition of SAPTA, SAFTA also addresses the different levels of economic development in its members and includes various types of SDT provisions to accommodate their asymmetries. Its preamble articulates that least developed countries in the region need to be accorded special and differential treatment commensurate with their development needs.

#### *Pacific Agreement on Closer Economic Relations (PACER) & Pacific Island Countries Trade Agreement (PICTA)*

26. In 1971, Pacific island countries together with Australia and New Zealand formed the Pacific Island Forum to provide a framework for cooperation in areas of political and economic concern. In 2001, the Forum Island Countries signed the Pacific Agreement on Closer Economic Relations (PACER) which provides guidelines on trade arrangements, trade facilitation and financial and technical assistance. The Pacific Island Countries Trade Agreement (PICTA) was signed by 14 Forum Island countries in August 2001, not including Australia and New Zealand.

27. PICTA makes it clear that they should address the differing economic potentials and special development problems of some parties. To enable the provision of SDT, the Agreement establishes two special categories of parties including least developed country and small island state. Negotiations for the agreement came to an understanding that least developed countries and small island states may be integrated under differing conditions and transition periods than other parties. Yet, PICTA does not include a special chapter favouring SDT recipients.

---

<sup>10</sup> Vietnam acceded ASEAN on 28 July 1995, Lao PDR and Myanmar on 23 July 1997 and Cambodia on 30 April 1999.

*Asia-Pacific Economic Cooperation (APEC)*

28. The Asia-Pacific Economic Cooperation (APEC) forum which began as an informal ministerial dialogue in 1989 brings together countries at varying levels of economic development. Measured in terms of *per capita* GDP, the richest APEC country (the United States) is more than 16 times wealthier than the poorest APEC country (Vietnam). Six members of the group have incomes above USD20,000 *per capita*, but seven countries below USD5000. The latter subset accounts for 71.2 per cent of the total population within the APEC area. The NAFTA countries and the three Chinese economies account for about two-thirds of the APEC population and economy, but the population is more concentrated in the Chinese area and the GDP is more heavily weighted in the NAFTA countries. The remaining third of APEC is composed of such diverse countries as OECD members Japan, Korea, Australia, and New Zealand, and low-income countries such as Papua New Guinea and the Philippines.

29. APEC takes a somewhat ambiguous approach to SDT. At the broadest level of abstraction, the Osaka Declaration of 1995 acknowledges the general principle. It reaffirmed “the long-term goal of free and open trade and investment no later than the year 2010 in the case of industrialized economies and the year 2020 in the case of developing economies,” and this differing schedule provides the clearest example of SDT in the APEC regime. The declaration also called for flexibility in dealing with “the different levels of economic development among the APEC economies and the diverse circumstances in each economy.”<sup>11</sup> The more specific of the APEC declarations make reference to SDT, however, normally within the limited contexts of capacity building and technical assistance. While SDT principles are not otherwise explicitly provided for in the substantive work of APEC, the lower-income countries in the region have greater flexibility in matters such as the preparation and execution of their individual action programmes.

**Table 2. Regional Trade Agreements in Asia and the Pacific**

RTAs	Member countries and groupings (as designated by relevant agreements or treaties)	Date of Signature
AFTA	1) ASEAN-6: Brunei, Indonesia, Malaysia, the Philippines, Singapore and Thailand 2) New members: Cambodia, Lao PDR, Myanmar and Vietnam	28 January 1992
SAFTA	1) Least developed contracting states: Bangladesh, Bhutan, Maldives, Nepal and Sri Lank 2) Non-Least developed contracting states: India and Pakistan	6 January 2004
PICTA	1) Least developed countries: Kiribati, Samoa, Solomon Islands, Tuvalu and Vanuatu 2) Small island countries: Cook Islands, Kiribati, Nauru, Niue, Marshall Islands and Tuvalu 3) Other members: Federated States of Micronesia, Fiji, Palau, Papua New Guinea and Tonga	18 August 2001
APEC	Australia, Brunei, Canada, Chile, China, Hong Kong, China, Indonesia, Japan, Korea, Malaysia, Mexico, New Zealand, Papua New Guinea, Peru, the Philippines, Russia, Singapore, Chinese Taipei, Thailand, United States and Vietnam	Established in November 1989

<sup>11</sup> For the text of these declarations and other official APEC documents see the secretariat’s website at <http://www.apecsec.org.sg/>.

### **2.3 Regional Trade Agreements in Africa (Table 3)**

#### *Southern African Customs Union (SACU)*

30. The Southern African Customs Union (SACU) is a customs union comprising Botswana, Lesotho, Namibia, South Africa and Swaziland. A newly-negotiated SACU Agreement was signed on 21 October 2002 and entered into force on 15 July 2004.<sup>12</sup> The 2002 Agreement recognizes the different levels of economic development of the Member States and contains SDT provisions. However, SACU does not create a specific group of countries which benefit from its SDT provisions. As the dominant economy in the region, South Africa is generally regarded as the provider of SDT to the other four other members.<sup>13</sup>

#### *Southern African Development Community (SADC)*

31. The Southern African Development Community (SADC) was created in August 1992 to replace its forerunner the Southern African Development Coordination Conference (SADCC). It comprises 14 Southern African countries ranging from least developed countries, small island and land-locked states to countries with vast land masses and resources. The main objective of SADC is to achieve development and economic growth, alleviate poverty, enhance the standard and quality of life for the Southern African peoples and support the socially disadvantaged through regional integration. The SADC Protocol on Trade spells out the objectives and scope of co-operation and integration in the field of trade. Although the Protocol states its concerns about the different levels of economic development in the preamble, the SDT principles play only a marginal role in the Agreement.

#### *Common Market for Eastern and Southern Africa (COMESA)*

32. The Common Market for Eastern and Southern Africa (COMESA) Treaty entered into effect on 8 December 1994. COMESA pursues an evolutionary approach to the economic integration of its member states beginning with a preferential trade area (1982-2000), following with a free trade area (2000-2004), continuing with the establishment of a customs union (2004-2014), a common market (2014-2025) and finally an economic union (2025- ). (Pearson, 2004) The current membership includes 20 African countries which are remarkably heterogeneous in terms of the levels of economic development and their geographical locations.

33. The Treaty contains Chapter Twenty-Two which creates a cooperative mechanism for least developed countries and economically depressed areas. Under this mechanism, the main areas for cooperation include development of infrastructure, industry, agriculture and services. To implement SDT, COMESA envisages the group of countries categorized in least developed country. However, it does not enumerate which Members are to be treated as least developed countries; rather they are to be designated by the Council. To date, no member state has been designated as a least developed country.

#### *Economic Community of Central African States (ECCAS)*

34. The Economic Community of Central African States (ECCAS) was established on 18 October 1983. The ECCAS Treaty provides for the creation of an FTA and then the progressive establishment of a customs union. ECCAS membership represents one of the poorest regions in the world. To implement SDT provision, however, the Protocol on the Situation of Landlocked, Semi-Landlocked, Island, Part-Island

---

<sup>12</sup> The SACU is the oldest customs union which was originally established in 1910.

<sup>13</sup> South African GDP accounts for more than 90% of the total SACU GDP.

and/or Least Advanced Countries creates four groups of membership; less advanced countries, island and partial island countries, landlocked countries and semi-landlocked countries.

35. The Treaty contains explicit reference to SDT, calling on Member States to grant special treatment in respect of the application of some provisions of the Treaty to “less advanced countries” and “landlocked, semi-landlocked, island and part-island countries”. The main form of SDT for “landlocked”, “semi-landlocked” and “partial island” countries is a general obligation on member states to aid the efforts of such countries so as to improve and promote the establishment of an integrated transport and communications infrastructure. For “less advanced countries”, SDT is particularly general. Member States are to take measures that will facilitate the economic and social development of less advanced countries.

**Table 3. Regional Trade Agreements in Africa**

RTAs	Member countries and groupings (as designated by relevant agreements or treaties)	Date of Signature
SACU	Botswana, Lesotho, Namibia, South Africa and Swaziland	11 December 1969 (revised in 2002)
SADC	Angola, Botswana, DR Congo, Lesotho, Malawi, Mauritius, Mozambique, Namibia, South Africa, Swaziland, Tanzania, Zambia and Zimbabwe	7 August 1992
COMESA	Angola, Burundi, Comoros, Djibouti, DR Congo, Egypt, Eritrea, Ethiopia, Kenya, Libya, Madagascar, Malawi, Mauritius, Rwanda, Seychelles, Sudan, Swaziland, Uganda, Zambia and Zimbabwe	5 November 1993
ECCAS	1) Less advanced countries: Burundi, Central African Republic, Chad, Equatorial Guinea, Rwanda and São Tomé & Príncipe 2) Island and partial island countries: Equatorial Guinea and São Tomé & Príncipe 3) Landlocked countries: Burundi, Central African Republic, Chad and Rwanda 4) Semi-landlocked: Congo, DR Congo * Other members: Angola, Cameroon, Gabon	18 October 1983

### 3. Flexibilities or advantages for lesser developed members

#### 3.1 Flexibilities of commitments, of action, and the use of policy instruments

36. One of the most frequent forms of SDT allows developing and least-developed countries to depart from the application of rules and regulations that they otherwise would be obliged to apply.<sup>14</sup> These flexibilities are established *ex-ante* and relate to: exemptions which allow developing countries to depart from disciplines applying to the membership in general; exemptions from commitments applying to individual members; or a reduced level of commitments that developing countries may choose to undertake in comparison to the general membership (WTO, 2001). These flexibilities are frequently found in RTAs.

#### *Product coverage in tariff schedules*

37. The fundamental purpose of RTAs is to liberalize trade in goods by reducing and eliminating tariffs imposed in intra-regional trade. In addressing trade-related asymmetries, all the RTAs which are the principal focus of this study take a gradual approach to establishing a free trade area, in two dimensions: progressive inclusion of products and differentiated time schedules.<sup>15</sup> Although product coverage is

<sup>14</sup> In this form of SDT, its availability is often time-bound. Such SDT can be considered in the category of “transitional time periods.”

<sup>15</sup> Differentiated time schedules are discussed under the category of “transitional time periods.”

inevitably derived from a request-and-offer process, most RTAs allow flexibility explicitly and implicitly in including or excluding products from tariff reduction schedules.

38. Explicit flexibility is provided in several RTAs by permitting some products to be exempt from tariff reduction commitments. The MERCOSUR Trade Liberalisation Programme allows for varying levels of exemptions from liberalisation commitments (Argentina: 394 items, Brazil: 324, Paraguay: 439 and Uruguay: 960). (Ann.1/Art.6) Similarly, ALADI also permits more extensive exception lists for relatively less developed countries, when compared to those for intermediate developed countries, which are themselves beneficiaries of broader exemptions when compared to other members. (Resolution 5/First) Under SAFTA, the contracting states are to mutually agree upon a ceiling for the number of products on the Sensitive Lists; within this context least developed country members are to be accorded increased flexibility when requesting derogations.<sup>16</sup> (Art.7.3)

39. However, exemptions from product coverage are not explicitly identified as SDT in many RTAs. Rather, asymmetric liberalisation commitments can be considered implicit SDT in such RTAs. NAFTA requires that all three Member countries undertake equivalent level of obligations, yet permits members to negotiate specific national exceptions. As indicated in Annex 301.3 of the NAFTA text, these can be considered implicit SDT provisions. For example, all three countries negotiated exemptions applying to the automotive industry: the US-Canada AutoPact, the Mexican Auto Decree and its implementing regulations and the US Corporate Average Fuel Economy Act standards. Similarly, the three countries maintain tariff-rate quotas for sensitive agricultural products. Mexico has special provisions enabling it to restrict foreign participation in the energy and basic petrochemical sector. In addition, AFTA, CAFTA, PICTA, and SADC all take a similar approach whereby products subject to the liberalization scheme result from negotiations based on product-by-product approach.

#### *Protection of infant industries*

40. Another type of flexibility arises with respect to provisions reflecting GATT Article XVIII, which permits members to derogate in order to protect infant industries. CARICOM contains provisions allowing for less developed countries to temporarily suspend community origin treatment in order to promote industrial development (Art.164) Under PICTA, a party may raise tariffs under certain conditions to protect developing industries. Notably, small island states and LDC members are allowed to apply this derogation for a period of up to 15 years while others are subject to a 10 year maximum. (Art.14.3) SACU provides that Botswana, Lesotho, Namibia and Swaziland (but not South Africa), may levy additional duties on goods imported into their areas to protect infant industries for a period of up to eight years. (Art.26)

41. Some North-South bilateral RTAs also provide protection for infant industries as an SDT instrument. Both the EC-South Africa and EU-Tunisia agreements include an SDT provision in relation to trade in agriculture identified as “transitional safeguard measures” which may be applied only by the developing members. Significantly, the measures may be applied for the express purpose of assisting “infant industries or sectors facing serious difficulties” caused by increased imports from the EC. Duties applied under this provision may not exceed the lower of 20 per cent ad valorem or the MFN duty rate of the product and must maintain an element of preference for imports from the EC.

42. In some cases, protection of infant industries does not constitute explicit SDT because all members may invoke such derogation. For instance, SADC contains mechanisms allowing for the protection of infant industries by all members. The SADC Committee of Trade Ministers (CMT) is enabled

---

<sup>16</sup> As of October 2005, bilateral and multilateral negotiations were being undertaken to finalise the sensitive list.

to authorize for all members temporary measures including the suspension of certain obligations relating to goods imported from other Member States in order to promote an infant industry. (Art.21)

#### *Flexibility in rules of origin*

43. This study finds several cases where flexibility in lowering the threshold for local value added requirement to qualify for originating status can be viewed as a form of SDT. MERCOSUR provides Paraguay with more flexible rules of origin. (50 instead of the normal 60 per cent of regional value added requirement). The AC also provides that in adopting and establishing the special provisions or specific requirements of origin, the Commission and the General Secretariat will seek to ensure that they do not hinder Bolivia and Ecuador from deriving the benefits of the Agreement. (Art.102) In this connection, AC Decision 416 approved on 30 July 1997 provides that for manufactured goods to be considered originating, the CIF value of non-native materials should not exceed 50 per cent of the value of the final product in the cases of Colombia, Venezuela and Peru, but this threshold is increased to 60 per cent in the cases of Bolivia and Ecuador. (Decision 416)

44. The general rule for qualifying products for originating status within CARICOM is that the value of materials from outside the community cannot exceed 65 per cent of the cost of repair, renovation or improvement in cases where goods have undergone processing in more developed countries. Lesser developed CARICOM members benefit from a lifting of the corresponding figure to 80 per cent. (Art.84.2) SAFTA provides that the threshold for determining originating status is raised by 10 per cent for products from LDC member states both in the case of rules concerning the determination of origin as well as the rules governing cumulation. (Ann. III, 10) ALADI and SADC also provide for flexibility in rules of origin.

#### *Institutional and administrative advantages*

45. There are cases under WTO rules where developing countries enjoy special treatment in terms of more favourable representation in WTO institutions and less onerous procedural obligations. For instance, the Understanding on WTO Dispute Settlement indicates that panels convened in disputes between a developing and a developed country will include at least one panel member from a developing country on the request of the developing country member. Very few RTAs provide institutional or administrative advantages to lesser developed members. Such SDT is only found in CARICOM and PICTA.

46. The PICTA rules of origin committee consists of five representatives, including at least one from a least developed country or small island state. (Art.5.3) In CARICOM decisions over whether to grant an authorization allowing for the pursuit of industrial development call for supportive votes of all the less developed countries and at least two of the more developed countries. (Art.164.3)

#### *Other flexibilities*

47. CARICOM incorporates several SDT measures in this category. Member states with *per capita* GNP of less than USD 1000 may maintain subsidies contingent upon export performance, whereas other members may not. (Art.104.1.a). In addition, member states with a *per capita* GNP of less than USD 1000 were allowed to maintain subsidies contingent upon the use of domestic over imported inputs until 2003. (Art.104.1.b) CARICOM also allows disadvantaged countries to apply safeguard measures limiting imports of goods from other members for 3 years, and to suspend community treatment for the protection of sensitive industries, subject to authorization by the Council for Trade and Economic Development. (Art. 150 & 151) In addition, public undertakings of the less developed or disadvantaged CARICOM members are not expected to comply with obligations requiring the elimination of measures affording protection to domestic production. (Art. 152 & 165)

48. CAFTA also incorporates SDT provisions in this class in investment rules. For example, the rescheduling of public debt owed to the US by Central American parties and Dominican Republic are not subject to rules governing investment other than national and MFN treatment. (Ann.10-A) Guatemala is exempt from arbitration procedures relating to compensation caused by civil strife. (Ann.10-D) In addition, Nicaragua and Honduras may maintain waiver of customs duties as long as they qualify as Annex VII countries under the WTO SCM agreement. (Art. 3.4)

49. Some flexibilities contained in North-South bilateral RTAs are asymmetric but cannot be considered as SDT as they appear to favour the developed country member. Such cases are found in the field of investment. For the EC-Jordan RTA, the EC grants pre-establishment MFN access to Jordanian non-services investment while Jordan grants EC investors MFN *and national treatment* of pre-establishment access in non-services sector. In the Papua New Guinea and Australia agreement (PATCRA), MFN treatment is provided only with respect to Australian investment although there is “soft” language stating that Papua New Guinea and Australia will consult on the most appropriate ways in which future Australian direct investment can contribute to the social and economic development of Papua New Guinea.

### **3.2 Transitional time periods**

50. Flexibilities, exceptions, advantages or favours accorded to lesser developed members are often applied within time-limits. In the GATT/WTO, transitional time periods were an innovation of the Uruguay Round. This category of SDT is based on the concept that implementing new trade rules incurs transitional costs. These costs can be considered in two forms including: those resulting from the significant levels of human and institutional capacity and resources required for the implementation of certain WTO agreements; and those resulting from the adjustments themselves *e.g.* transitional shifts in output and employment in specific sectors resulting from the phasing out of protection. (WTO, 2001) Transitional type SDT is widely and mostly employed in many of the RTAs under study in order to address difficulties in the process of reducing and eliminating tariffs to reach a free trade area or a customs union.

#### *Transitional time periods in tariff reduction and elimination*

51. RTAs achieve a free trade area or a customs union through commitments to eliminate or reduce tariffs. Customs unions entail not only cutting tariffs between themselves, but the establishment of a common external tariff (CET). Transitional flexibilities can take several forms when reducing tariffs. Some RTAs provide completed tariff reduction schedules upon signature, while others leave detailed schedules for subsequent negotiations after the RTAs have come into force. In both cases, tariff schedules result from heavy negotiations usually based on a request-and-offer process.<sup>17</sup>

52. The MERCOSUR trade liberalisation program allows Paraguay and Uruguay to have one additional year to complete the trade liberalisation program (31 December 1995) (Ann.A.1) In addition, Paraguay and Uruguay enjoy a slower schedule in reducing the number of goods on their exceptions list. (Ann.A.7) MERCOSUR reflects a further transitional style SDT under the *Régimen de Adecuación*. Paraguay and Uruguay were given one additional year to enforce 100 percent preference over MFN tariff rates (December 1999, as opposed to December 1998 for Argentina and Brazil). Transitional flexibility was also provided when implementing the CET. Bolivia and Uruguay were given exemptions for 399 items from the CET schedule until 2006 (instead of 2001) In addition, longer transition periods for convergence with the CET were allowed in the area of capital goods (900 tariff items) for Paraguay (2006 instead of 2001), and in computer as well as telecommunication products (220 tariff items) for Paraguay and Uruguay (2006 instead of 2001) (Bouzas, 2003).

---

<sup>17</sup> As a result, some may wish to assess them from the perspective of “balance of interests” rather than SDT.

53. The Andean Community applies a gradual trade liberalization program providing for differing rates of implementation by country and by product. (Art.61) Bolivia, Colombia and Venezuela completed their trade liberalisations *vis-à-vis* RTA members on September 30, 1992, while Ecuador completed the liberalization on 31 January 1993. In 1997, Peru reached an agreement with other members for incorporation within the free trade area, and the Commission, through Decision 414, approved a tariff reduction schedule for Peru that foresaw completion of tariff liberalisation by 2005. Concerning the CET, the AC Treaty provides flexibilities suggesting that Bolivia and Ecuador should have transition schedules differing from those undertaken by Colombia, Peru and Venezuela. (Art.82 & A106) Peru was not required to apply the common external tariff until the Commission decided on the timeframes and mechanisms for incorporating Peru. (Chapter XX) Thus, AC members excluding Peru approved the CET by adopting Decision 370 on 26 November 1994.

54. Under CAFTA, tariffs are to be phased-out according to specific schedules negotiated on a product and country specific basis. According to Annex 3.3, tariffs will be reduced within one of the following time frames: immediate, 5 years, 10 years, 15 years and 20 years. While tariffs will be reduced in equal annual instalments over the phase-out period, tariff reductions for specific products are back-loaded, with smaller cuts in the initial years and larger cuts in later years of the transition period. Central American producers received longer time periods for tariff phase outs as well as a greater share of the back-loaded phase out periods than US producers. (World Bank, 2005)

55. The only aspect of NAFTA that can be portrayed as an unambiguous example of SDT is the special consideration given to Mexican products in the tariff phase-out schedules of the United States and Canada. Article 302 provides for the phased elimination of US, Mexican and Canadian tariffs on goods traded between the parties that qualify under the rules of origin set out in chapter four. All tariffs on originating goods traded between Mexico and Canada will be eliminated over ten years with two exceptions. Certain agricultural goods in the dairy, poultry, egg and sugar sectors are exempt from the tariff-elimination provisions of the Agreement. The Mexican tariff on corn and dried lentils is being phased out over fifteen years. For remaining goods, existing customs duties will be eliminated immediately or phased out at some point over the ten-year period. Tariffs between the United States and Mexico will generally be eliminated immediately or over a five or ten-year period.

56. SDT provisions in AFTA are largely limited to the category of transitional time periods. The original CEPT did not adopt SDT provisions including transitional arrangements; yet transitional flexibility was made available when AFTA implemented tariff reduction by introducing two track programmes (the fast track programme and the normal track programme) in 1994. With the enlargement of membership, AFTA needed more fine-tuned transitional SDT to ensure that the new members integrate into the ASEAN free trade area. In the process of incorporating unprocessed agricultural products within the liberalization program, transitional flexibility was granted for the new members. For the original members, all such products are scheduled to be phased in by 1 January 2010. However, the new members are allowed flexibilities to complete the parallel phase-in process by dates ranging from 2013 to 2017.<sup>18</sup> (Protocol on Sensitive Products) The AFTA-CEPT amended in 2003 contains different deadlines for eliminating import duties imposed on the inclusion lists: Brunei, Indonesia, Malaysia, Philippines, Singapore and Thailand are to eliminate import duties not later than 1 January 2010, while the new members by not later than 1 January 2015, with flexibility however allowed for import duties on some sensitive products to be eliminated not later than 1 January 2018. (Art.4.C.)

---

<sup>18</sup> Viet Nam will phase sensitive products within the CEPT Scheme beginning on 1 January 2004 but no later than 1 January 2006 and will complete the process by 1 January 2013, Lao PDR and Myanmar beginning on 1 January 2006 but no later than 1 January 2008 and ending by 1 January 2015, and Cambodia beginning on 1 January 2008 but no later than 1 January 2010 and by 1 January 2017.

57. Under SAFTA, non-LDC members and LDC members are provided with differing transition periods. During the first phase indicated as 2006-2008, non-LDCs are to reduce existing tariff rates to 20 percent and LDCs to 30 per cent. (Art.7.1.a & b) The subsequent phase of reducing tariffs to 0-5 per cent will be implemented over a 5 year period by non-LDCs and a longer 8 year period by LDCs. (Art.7.1.c & d) Sri Lanka is given one additional year, totalling 6 years, to complete the subsequent phase. (Art.7.1.c)

58. PICTA provides that small island states and least developed countries will cut *ad valorem* tariffs on originating goods to zero by 2012 (other countries by 2010). (Ann.II.1 & 2) In reducing and eliminating specific tariffs or fixed tariffs on originating goods, small island states and least developed countries begin implementation two years later (1 January 2004) and complete two years later (1 January 2012) than do the other members. (Ann.II.3 & 4) For tariffs on excepted imports, both groups of members face the same deadline (1 January 2016), but small islands and LDCs enjoy more gradual rates of reduction. (Ann.IV)

59. The SADC Trade Protocol requires phased reductions and eventual elimination of import duties. (Art.4) The principle of applying asymmetric tariff reduction schedules was agreed within subsequent negotiations. Its tariff phase-down schedule groups member states into three categories including developed countries (South Africa), developing countries (Zimbabwe, Mauritius) and LDCs (the remaining members), and provides differentiated completion dates ranging from 2005 for developed countries, 2007-8 for developing countries to 2008-12 for LDCs.

#### *Transitional flexibilities in areas other than tariff reduction*

60. Except for tariff reduction or elimination, RTAs have rarely adopted transitional time periods. In this regard, CAFTA must be an exception. CAFTA provides several transitional flexibilities for lesser developed members. Costa Rica, the Dominican Republic, El Salvador and Guatemala are allowed to maintain waivers for customs duties until 31 December 2009, while Nicaragua and Honduras may do so as long as they are an Annex VII country under the WTO ASCM. (Art.3.4) Central American parties and the Dominican Republic may delay the implementation of customs related obligations including the publication of customs information, risk management systems and express shipments. (Art.5.11) Transitional flexibility is also available both in the liberalization of services and in implementing IPR protection. (Art.12.4 & 14.12)

61. Under RTAs, the scarcity of transitional type SDT (other than in the application of tariff liberalisation schedules) may be explained by several reasons. First, transitional type SDT is only a recent phenomenon made available after the Uruguay Round, while many of the RTAs under investigation here were concluded before 1995. Secondly, it may be the case that parties to RTAs do not attach much value to a type of SDT that will inevitably be diluted over time. Finally, compared with other areas, transitional SDT can be more easily applied to tariff reductions and eliminations. Nevertheless, it is worth noting that transitional SDT may be a useful instrument for helping developing countries to pursue trade policy reforms in new areas where they undertake international commitments earlier than would otherwise be the case.

## **4. Strengthened obligations for developed members**

### **4.1 *Providing trade opportunities***

62. Implementing this category of SDT entails actions by developed members to ensure wider and deeper market access for goods exported by developing countries. In the WTO, these provisions are frequently couched in “best endeavour” language and hence criticised for their lack of enforceability. Although this type of SDT in RTAs is less frequently qualified by “best endeavour” wording, difficulties

remain in practice as such provisions rarely specify precise mechanisms to conduct implementation. Yet, this type of SDT is not frequent in RTAs.

63. Article 18 in ALADI requires that negotiations take place with each less developed member to develop lists of industrial products that will benefit from the total elimination of customs duties and other restrictions by all other member countries. (Art. 18) Similarly, CARICOM provides for the development of marketing arrangements for oils and fats with an objective of promoting the development of agricultural markets in less developed members. (Art.59.4)

64. SAFTA also contains straight-forward provisions to widen trade opportunities for least developed members. Non-LDCs members of SAFTA are required to reduce their tariffs applying to the products of LDCs to 0-5 per cent within three years from the date when the agreement enters into force. (Art.7.6) Potential benefits to LDCs resulting from this measure are strengthened by the provision that this treatment should be provided exclusively to the LDC members. (Art.9) The provisions also seek that member countries take “direct” trade measures to enhance sustainable exports from the LDC members, such as long and medium-term contracts containing import and supply commitments in respect of specific products, buy-back arrangements, state trading operations and government and public procurement. (Art.11.c)

#### **4.2 Safeguarding the interests of lesser developed members**

65. The largest number of SDT provisions within WTO rules fall under this category, with about 50 out of roughly 150 SDT provisions in total. SDT provisions in this class can be considered in two forms including actions to be taken by developed members and actions to be avoided by them. More than half of these are mandatory as they apply the term “shall” rather than “should” (best endeavour). However, their enforceability is often questioned as implementation depends entirely on actions or non-actions of developed parties. A special regime for lesser developed members in RTAs often includes this type of SDT provision. With respect to implementation of this category of SDT, RTAs also appear to confront difficulties similar to those experienced within the multilateral trading system.

66. ALADI contains a plethora of such SDT provisions. Article 15 of ALDADI requires member countries to establish conditions favouring the participation of countries at a relatively less advanced stage of economic development within the economic integration process. These conditions are to be based on the principles of non-reciprocity and community cooperation. (Art.15) This phrase is reiterated in Resolution 3. ALADI also states that members *shall endeavour to* set up effective compensation mechanisms to take care of negative effects which might influence intra-regional trade of the relatively less developed land-locked countries. (Resolution 3) The ALADI Conference has the power to periodically review the implementation of differential treatment granted to less developed members. (Art.33) Additionally, Resolution 1 envisages that renegotiation of national lists shall be based on criteria including applying differential treatments according to the three categories of countries.

67. In CARICOM, this category of SDT is enshrined in relatively weak language. It states that in removing restrictions on trade in services, the needs and circumstances of less developed countries shall be *taken into account*. (Art.49) It additionally indicates that when adopting measures for the achievement of community industrial policy, the needs and circumstances of less developed countries shall be *taken into account* (Art.77) Finally, the CARICOM Council of Trade and Development (COTED) *may* adopt effective measures to address adverse effects resulting from the dislocation of economic activity through the granting of incentives. (Art. 146)

68. In the case of the AC, the Commission and the General Secretariat are designated with responsibility for safeguarding the interests of less developed members. In fulfilling its mandate, the

Commission is required to give special consideration to the situation of Bolivia and Ecuador in terms of the objectives of the agreement. (Art.22) The role of the General Secretariat is to be responsible for conducting studies and proposing necessary measures to provide special treatment to Bolivia and Ecuador. (Art.30.d) In giving priority to Bolivia and Ecuador, the General Secretariat is enabled to carry out or promote cooperative efforts, including those aimed at industrial streamlining and the modernization of the affected sectors. (Art.69) The Commission and the General Secretariat are also required to adopt measures to support the agricultural and agro-industrial development of Bolivia and Ecuador as well as their participation in the enlarged market. (Art.89) Additionally, restrictive measures against agricultural imports from Bolivia and Ecuador shall be applied only in duly qualified cases and antidumping and safeguard measures extended to imports from Bolivia and Ecuador are subject to monitoring and confirmation by the General Secretariat. (Art.91 & Art.114)

69. Article 11 of SAFTA provides that in applying anti-dumping and/or countervailing measures members are required to consider the situation of the least developed contracting states, *e.g.* by providing enhanced opportunities for consultations, consideration for accepting price undertakings and for making constructive remedies available. (Art.11.a) SAFTA takes an approach similar to that under Article 9 of the WTO Agreement on Safeguards which prevents safeguard against products originating from a developing country whose exports of like products fall below *de minimis* thresholds. SAFTA protects exports by a least developed member from safeguard actions where its share of imports is below 5 per cent of total imports. This treatment is conditional on a situation where least developed countries with less than 5 per cent import share collectively account for less than 15 per cent of total imports of the product concerned. (Art.16.8)

70. There is a doubt whether African RTAs under study provide this type of SDT for lesser developed members. SACU and SADC do not envisage concrete mechanism to safeguard the interests of lesser developed members. At least, however, COMESA members in coastal areas are required to assist those that are land-locked in the maritime transport sector in order to facilitate the latter's trade.<sup>19</sup> (Art.88) Although ECCAS similarly requires that members grant landlocked, semi-landlocked, island and part-island members special treatment when applying some provisions of the treaty, this article can be interpreted only as a general mandate about the principle of SDT. (Art.71)

## **5. Direct assistant measures**

### **5.1 *Financial support mechanism***

71. In contrast to the case in the GATT/WTO many RTAs establish a funding mechanism.<sup>20</sup> This is particularly true of RTAs which seek to establish a single market or an economic union beyond simple trade liberalisation. In such cases, regional funds are established to compensate for the loss of revenue or to finance projects, or both. Some funds support not only trade-related projects but also wider development cooperation including industrial development, education, health, *etc.* However, it is sometimes ambiguous whether or not a fund constitutes an SDT instrument because all members of the RTA are supposed to be contributors and at the same time beneficiaries of the fund. In this case, the net benefits transferred to lesser developed members may qualify as a funding system for an SDT instrument.

72. The AC includes the Latin American reserve fund as one of its main bodies. (Art.6) The Fund is the financial institution of the Andean system and its main purpose is to promote the integration process in the Andean region. (Art.45) Resources for those projects are to be allocated in accordance with the objective of reducing existing asymmetries among the members through favourable policies towards

---

<sup>19</sup> This provision may be interpreted as a capacity building as well.

<sup>20</sup> It needs to be noted that financial supports and technical assistance are often closely inter-twined.

Bolivia and Ecuador. (Art.118) The Fund has provided short-term financing aimed at crisis prevention and management. Its financing played an important countercyclical role during the recent period of high volatility in the international environment. Its loans peaked in 1996 and 1999 and facilitated the rapid recovery of GDP growth in the Andean countries following two severe external shocks in those years (Machinea *et al*, 2004). The Andean Development Corporation also constitutes the financial institutions of the Andean Community (Art. 45)

73. The revised 2001 CARICOM Treaty establishes a development fund for the purpose of providing financial or technical assistance to disadvantaged countries, regions and sectors. (Art. 158) This funding mechanism has yet to be realised. In May 2005, the CARICOM Council for Finance and Planning discussed a draft feasibility study and recommendations outlining modalities for setting up and operating the fund.

74. The North American Development Bank (NADBank) is a special facility conceived after NAFTA was negotiated. Its stated purpose is to provide financing for environmental infrastructure development along the US-Mexican border region. NADBank was created with USD 450 million in total paid-in capital and USD2.25 billion in callable capital, to be subscribed equally by Mexico and the United States. Ninety per cent of NADBank's total capital is dedicated to financing environmental projects in the border region, with the remaining 10 per cent allocated to domestic programs related to the displacement of workers (NADBank homepage). From an SDT perspective, it is notable that this facility is funded equally by the US and Mexican governments and is used to finance projects on both sides of the border.

75. SAFTA members are encouraged to consider the application of direct measures to enhance sustainable exports from LDC members. SAFTA also supports the establishment of an appropriate mechanism to compensate LDCs for their loss of customs revenue. In particular, this compensating mechanism and its rules and regulations will be established prior to the entry into force of the trade liberalisation programme. (Art.11.e) Currently SAFTA members are negotiating modalities for the operation of the compensating mechanism and the fund.

76. APEC provides for a limited form of financial SDT. The Trade and Investment Liberalisation and Facilitation (TILF) Special Account provides funding for projects that support the attainment of APEC trade and investment liberalization objectives. TILF is primarily project-related.

77. The 2002 SACU Agreement reforms the previous Revenue Sharing Formula (RSF) and refurbishes the Common Revenue Pool financed by customs, excise and additional duties collected in the common customs area.<sup>21</sup> Part seven and its Annex I provide a revenue sharing formula in which funds from the Pool are distributed among member states. The share accruing to each member state will be calculated from three distinct components: the customs, the excise and the development components. While the customs and excise components will be shared in accordance with a formula based on the value of intra-SACU imports collected and GDP respectively, the development component operates in the form of development assistance. At the initial stage, 85% of excise revenue will be distributed on the basis of the relative GDP of the five members, and 15% will be distributed in such a way as to narrow the relative difference of GDP *per capita* among members. (Art 32, Protocol)

---

<sup>21</sup> The previous RSF amended in 1975 provides Botswana, Lesotho, Namibia and Swaziland (BLNS) with at least 17 per cent of the value of c.i.f. imports and excisable production in the SACU. With the removal of import surcharges, the reduction of tariffs and the abolition of quantitative restrictions, this floor rate has increased BLNS share to around 50 percent of the total pool in the late 1990s and put in doubt the long-term sustainability of the formula. (Kirk *et al*, 2003)

78. COMESA establishes a special fund to tackle the problems of under-developed areas and other disadvantages resulting from the integration process. (Art.150) This fund includes elements of compensation designed to assist members suffering from revenue shocks due to introduction of the CET and of financing development projects. The Seventh COMESA Summit adopted the Protocol for the establishment of the Fund for Cooperation, Compensation and Development in May 2002, but its ratification has yet to be completed.

79. ECCAS establishes two separate funding systems; the Fund for Compensation for Loss of Revenue and the Community Cooperation and Development Fund. The former aims to compensate for revenue loss resulting from implementing intra-Community trade (Art.39) while the latter provides financial and technical assistance in support of economic and social development. (Art.75 & Art.76) In 2002, the Conference of heads of ECCAS states and governments adopted an autonomous financing mechanism which foresees that both funds will be financed by the establishment of a tax or a levy on member states (Decision No.5, 2002) Although ECCAS heads of states agreed in 2003 that they would transfer 0.4% of import-duty revenue to the fund by January 2004, the funding system is not operating yet due to the lack of administrative procedures.

80. SADC foresees the establishment of a special fund to be known as the Regional Development Fund which would consist of contributions from members and receipts from regional and non-regional sources. (Art.26) Operational details for the SADC Regional Development Fund remain to be finalized.

81. Despite the fact that a number of RTAs incorporate a mandate to establish a funding system, their achievements have not been readily obvious. Some are still struggling to finalize operating modalities. For the European Union, the financial support mechanism has been effective because advanced richer countries in the grouping are able to provide financial resources for the lesser advanced countries. However, South-South RTAs by definition do not include advanced members capable of significant contributions to a fund. In addition, preference erosion caused by generalised tariff cuts as well as tariff liberalization among themselves may further erode resources that would otherwise be made available for lesser developed members.

## **5.2 Capacity building and technical assistance**

82. It is generally recognized that deficiencies in supply-side capacity have prevented developing countries from taking full advantage of international trade for development. In this connection, current WTO rules contain provisions seeking to ensure that developed countries provide assistance to developing countries by engaging in trade-related capacity building and technical assistance, or aid for trade. However, developing countries have expressed concerns that technical assistance measures under new WTO rules have not been sufficiently implemented because they are only hortatory and lack enforceability. RTAs pursuing a single market or an economic union usually contain more extensive provisions that the members should make efforts to develop industrial, agricultural and services capacities. Quite often, RTAs contain strong commitments towards capacity building and technical assistance with or without referring to SDT principles.

83. Article 21 of ALADI supports the establishment of cooperation programs and actions in the fields of investment, financing and technology that are supportive of LDCs as a means of facilitating tariff cuts. To put these commitments into practice, Resolution 4 requires that the members negotiate special cooperation programs with each relatively less advanced member. Such programs cover the following activities: market studies, project pre-feasibility and feasibility studies; promotion of multinational Latin American enterprises; technological and management cooperation; and joint actions concerning projects of common interest. Resolution 4 also provides that an Economic Promotion Unit for relatively less developed countries shall be established within the secretariat to provide support required for full

participation within the integration process. In addition, member countries are encouraged to provide land-locked countries with facilities to establish free zones, warehouses or ports and other administrative international transit facilities within their territories. (Art.23)

84. AC contains SDT in this class going far beyond trade-related activities. To achieve physical integration, industrial programs and projects are required to include measures for cooperation to adequately cover essential infrastructure (for Ecuador and Bolivia). (Art.106) The industrial development programs give special consideration to the situations of Bolivia and Ecuador, so that they may develop production facilities in their territories. This approach is apparent within their modes of industrial integration. (Art.111) In addition, AC members have committed themselves to acting jointly to secure technical assistance and financing for the development needs of Bolivia and Ecuador, particularly for integration-related projects. (Art.118)

85. Article 157 of CARICOM provides that disadvantaged countries, regions and sectors should be given technical and financial assistance. Such assistance includes grants or access to low-cost financing, preparation of project proposals, accessing technology, factory design and others. In addition, technical assistance may take the form of aid to establish national standards bodies, assistance to advance diversification programmes, legal expertise for fair competition and expert assistance in preparation for dispute resolution. (Art.157) Operationally, the Council for Trade and Economic Development examines and evaluates the adequacy of such measures as well as appropriate phase out schedules for them. The revised Treaty provides for technical assistance in areas including micro- and small-scale economic enterprises, standards and technical regulations and negotiation for the conclusion of (trade) agreements. (Art. 53, 67 & 230)

86. Capacity building and technical assistance constitute a core element of CAFTA. CAFTA identifies administration and trade facilitation, technical barriers to trade as well as labour and environment as areas for capacity building. (Art.5.12, 7.8, 16.5 & 17.9). In particular, the CAFTA Agreement establishes the Committee on Capacity Building under which Central American countries outline their national capacity building strategies. (Art.19.4) As part of the CAFTA negotiations, national action plans have been designed for Costa Rica, El Salvador, Guatemala, Honduras and Nicaragua each to identify their trade capacity building needs. Action plans serve as a tool for mobilizing and managing trade capacity building assistance (CAFTA homepage).

87. The SAFTA text requires that special consideration be given to requests from least developed members for technical assistance and cooperation arrangements. Such assistance and cooperation agreements are seen as a means of assisting the expansion of their trade with other contracting states and capacity to benefit from SAFTA. A list of possible areas for such technical assistance will be negotiated by the members and incorporated in this Agreement as an integral part. (Art.11.d)

88. Chapter 22 of COMESA indicates a wide range of cooperation and assistance measures for least developed countries and economically depressed areas including infrastructure, industry, agriculture and services. Realization of this mandate hinges on members encouraging new investments, introducing new technologies, promoting special programs and projects and strengthening chambers of commerce and other relevant bodies. (Art. 144) Transport and communications are identified for special emphasis under efforts for infrastructure development. (Art.145)

89. As previously mentioned, capacity building and technical assistance is made available without referring explicitly to SDT in some RTAs. PICTA requires its secretariat to provide technical support in the implementation of obligations as well as administrative or technical support as determined by parties in matters relating to trade facilitation. (Art.30) The legal texts of AFTA, SACU, SADC and ECCAS hardly

mention capacity building and technical assistance. Nevertheless, their organs and secretariats have supported capacity building and technical assistance activities among their members to varying degrees.

90. The cooperation and technical assistance dimension of SDT is a common feature of North-South RTAs. In addition to DR-CAFTA, mentioned above, we have a large number of cases where the developed party to a bilateral RTA commits to providing technical assistance and capacity building for the developing partner. This is the case for RTAs with a focus on *investment* promotion and cooperation, including PATCRA, EC-Tunisia, EFTA-Mexico and US-Jordan.

91. The Canada-Costa Rica, EC-Chile, EC-South-Africa, EC-Mexico, Japan-Mexico and Japan-Singapore agreements contain *competition*-specific provisions on technical assistance which might be seen as an attempt to foster a stronger competition culture in developing partners.

92. In the case of the *environment*, it is found that environmental cooperation is prevalent in RTAs between countries with different levels of development. This may be seen as recognition by contracting parties of the existence of asymmetries and correspondingly of (1) the need to mitigate or address potential negative environmental impacts arising from trade provisions which are often greater in developing countries, and (2) the importance of building on economic cooperation through social and environmental collaboration. Such provisions are seen, for example, in the US-Chile, US-CAFTA-DR, EC-Chile, US-Morocco and Canada-Costa Rica agreements.

93. In the area of *SPS*, some RTAs between developed and developing members reflect SDT, ranging from technical cooperation to provisions for assistance to establish capacity for conducting conformity assessment. The NAFTA text contains an SDT provision indicating that technical cooperation “may include credits, donations and grants”. The Canada-Costa Rica agreement establishes a Committee on Sanitary and Phytosanitary Measures, but does not detail a mandate for it. EC-South Africa and EU-Tunisia both devote attention to SDT as both provide for technical cooperation to assist the developing member to harmonise SPS measures towards those of the EU, modernise agricultural practices, diversify output and achieve cooperation in plant health and growing techniques. The EC-Tunisia agreement additionally foresees economic cooperation to update Tunisian laboratories, leading eventually to the conclusion of mutual recognition agreements (MRAs) for conformity assessment.

## **6. Concluding remarks**

94. SDT provisions or instruments in RTAs do not differ to a large extent from those employed within the GATT/WTO. The extent of divergences illustrated above stems mainly from the differing objectives among RTAs and vis-à-vis the multilateral system. The GATT/WTO focuses on promoting multilateral, non-discriminatory trade liberalization in goods and services. In addition, the GATT/WTO legal *acquis* ranging across hundreds of articles have within them embedded more than 150 SDT provisions, which far outnumber those appearing in the RTAs examined within this paper.

95. Against this backdrop, this paper summarizes the landscape of SDT provisions appearing in selected RTAs. Compared with the provisions in the GATT/WTO, the following points emerge:

96. First, all RTAs without exception contain SDT measures designed to narrow asymmetries between their members – though to varying degrees. South-South plurilateral RTAs contain extensive provisions allowing for asymmetric obligations (for example via exclusions and longer transition periods) while also providing for technical assistance for lesser developed members. The story is more nuanced with North-South agreements. While they too commonly contain provisions for technical assistance, asymmetric obligations seem to be relatively rare, with the significant exception of DR-CAFTA. Some RTAs establish a clear framework for conferring SDT by identifying specific subsets of members (often

termed “less developed” members) to benefit from such treatment. In addition to addressing difficulties related to low levels of economic development, several RTAs also take into account special situations faced by SDT receiving countries, for instance, geographical handicaps (landlocked or island), vulnerability to natural disaster and indebtedness.

97. Second, although the types of SDT provided in RTAs do not differ to a large extent from those employed within the GATT/WTO, some RTAs do offer SDT that envisages a comprehensive development package. The scope of SDT contained within an RTA is often related to the level of integration that the RTA seeks to achieve, *i.e.*, a free trade area, a single market or an economic union. RTAs aspiring to a high level of integration going beyond a simple free trade area often provide a wide range of development programs and cooperative initiatives in the fields of agriculture, industry, investment and social areas, and thus adopt SDT mechanisms consonant with objectives in these areas. For instance, AC, CARICOM and SACU include industrial development programs and policies as a major cooperation mechanism.

98. Third, SDT provided by RTAs in determining rules of origin is peculiar to RTAs and does not have parallels under WTO rules.<sup>22</sup> Of the five American RTAs analyzed in this study, four RTAs, namely ALADI, MERCOSUR, AC and CARICOM provide lesser developed members with advantageous rules within the context of rules of origin. These RTAs provide lower local content thresholds for determining the originating status for goods thus allowing lesser developed members to receive regional treatment for a greater proportion of exports to other RTA members. Significantly, such preferential treatment under RTA rules of origin regimes could lead to increases in inward foreign direct investment to beneficiary countries from investors seeking to supply to all RTA member economies.

99. Fourth, the establishment of financial support mechanisms is a common characteristic of SDT embedded in RTAs. It is notable that all four African RTAs under study mandate the establishment of some form of financial support mechanisms. Financial support mechanisms aim either to compensate for economic costs associated with trade liberalisation or to provide financial resources for development projects benefiting lesser developed members, or both. Some financial support mechanisms envisage benefits from resources not only provided by member governments but by the private sector, civil society organizations and aid from other countries and regions. Despite the fact that some RTAs mandate financial support mechanisms, the actual operation of such mechanisms is often another matter. In fact, this study finds that in many cases it routinely takes years after an RTA has come into force for members to agree on operational modalities governing financial support mechanisms.

100. Fifth, capacity building and technical assistance are also conspicuous and broad in most RTAs. Indeed, it appears that the dominant form of SDT in RTAs is technical assistance and capacity building, as opposed to provisions to safeguard the interests of developing countries which are the most prevalent form of SDT in the GATT/WTO. In recent RTA negotiations, technical assistance and capacity building have been at the forefront of deliberations (OAS, 2002). Indeed, they are no longer accessories to help implement agreed RTAs but have become preconditions that are developed and implemented independently of RTAs concerned.

101. The texts of RTAs include clear references to technical assistance, capacity building and their implementation mechanisms. Due to lack of reliable data, however, it is difficult to evaluate how such SDT instruments have been implemented in practice. Overall, it is likely that resource deficiencies have posed significant obstacles to the efficacy of SDT provisions. In this connection, one possible option is to seek linkages with developed partners that are able to provide resources. This approach is exemplified by the case of DR-CAFTA where US government assistance has increased from approximately USD 66 million in 2003 to over \$80 million in 2004 and the Inter-American Development Bank has approved over USD

---

<sup>22</sup> The WTO Agreement on Rules of Origin includes no SDT provision.

500 million in CAFTA-related operations since the launch of negotiations (CAFTA home page). In the case of the Andean Community, the executive body of the Community responsible for managing the integration process has already signed co-operation agreements with several institutions and third *countries* to finance activities that support integration through studies, the training of officials and the organization of technical meetings and events (FTAA, 2003). Currently, the Andean Community has agreements with the European Commission, the United States Agency for International Development, the Inter-American Development Bank and the Andean Development Corporation. In addition, it is noteworthy that SACU is seeking formal arrangements with the US and the EU.

102. In light of the important role foreseen for technical assistance and capacity building in RTAs, it may be asked whether activities in these fields could be strengthened through co-operation in this area between RTAs and the WTO, possibly enabling more effective delivery of assistance. Such an approach may help not only to overcome capacity constraints faced by RTAs, but may have the additional benefit of reducing duplication across myriad trade capacity building programmes. Cooperative approaches to capacity building between RTAs and the WTO may also provide more institutionally receptive frameworks for enhancing the demand-driven component of such assistance. Finally, international donor communities may consider the possibility of SDT mechanisms existing within RTAs as potential conduits for flows of assistance seeking to improve trade capacity within developing countries.

103. Sixth, compared with the GATT/WTO, SDT provisions in RTAs are less frequently couched in “best endeavour” wording. However, this does not mean that RTAs have adequately addressed the difficulties of implementation. Although a good number of provisions are apparently mandatory, they often appear to be non-binding in practice because they are not precise and lack pre-formulated implementation mechanisms. In these cases, implementation is highly dependent on the resolve of more advanced RTA members.

104. Finally, it should be noted that the texts of RTAs have followed an evolutionary path that has seen RTAs based on a dozen simple articles grow into encyclopaedic tomes which sometimes replicate the spectrum of WTO rules and at other times apply complex frameworks of rules that have no parallel even within the WTO agreements. Notably, the current trend towards concluding bilateral or plurilateral FTAs rather than customs unions has led to an ever-increasing number of criss-crossing and overlapping FTAs, each with its own tariff liberalization schedules and distinct rules of origin regime (Crawford *et al*, 2005). The sector-by-sector and product-by-product approaches applied within these RTAs have created increasingly heavy demands on the already insufficient institutional capacities of lesser developed country administrations when negotiating SDT, notwithstanding the fact that completed tariff liberalisation schedules and exclusion lists may be asymmetrically structured. This is a new challenge facing lesser developed countries, particularly those with poor institutional trade capacity to effectively negotiate as well as implement RTAs including their SDT provisions.

## REFERENCES

- Bouzas (2003), "Mechanisms for Compensating the Asymmetrical Effects of regional Integration and Globalization: Lessons from Latin America and the Caribbean," presented at the seminar "Confronting the Challenges of Regional Development in Latin America and the Caribbean" March 22, 2003, Milan
- Crawford, Jo-Ahn and Fiorentino, Rovert V. (2005), "The Changing Landscape of Regional Trade Agreements," WTO Discussion Paper No.8, Geneva
- FTAA (2003), "Subregional Strategy for Strengthening the Trade-related Capacities of FTAA Countries," 9 October 2003.
- Kirk, Robert and Stern, Matthew (2003), "The New Southern African Customs Union Agreement," Africa region working paper No.57, World bank, June 2003
- Machinea, Jose Luis and Rozenwurcel, Guillermo (2004), "Macroeconomic Coordination in Latin America: Does It Have a Future?" presented at "Seminar on Regional Financial Arrangements" New York, 14–15 July 2004
- OAS (2002), "The OAS Contribution to Trade-related Capacity Building in the Americas," 27 February 2002.
- OECD (2002), *Regional Trade Agreements and the Multilateral Trading System*,
- OECD (2004), "Regional Trading Arrangements and Multilateral Trading System: Agriculture," TC/TC/AGR/WP(2004)9.
- OECD (2005)1, "Special and Differential Treatment: Thinking outside the box", TD/TC/RD(2005)5
- OECD (2005)2, *Trade and Structural Adjustment: Embracing Globalisation*, Paris
- Pearson, Mark (2004), "Capacity Building – Regional Trade Policy and Trade Facilitation: Experiences of COMESA," presented OECD-DAC/WTO Meeting on Trade Capacity Building, 2-3 March 2004, Paris
- World Bank (2005), *DR-CAFTA: Challenges and Opportunities for Central America*, Washington
- WTO (2001), "Implementation of Special and Differential treatment Provisions in WTO Agreements and Decisions," WT/COMTD/W/77/Rev.1

## Agreements & Treaties

Agreement on South Asian Free Trade Area (SAFTA) (Available at <http://www.saarc-sec.org/main.php?id=12&t=7.1>)

Agreement on the Common Effective Preferential Tariff Scheme for the ASEAN Free Trade Area (available at: <http://www.aseansec.org/12375.htm>)

Andean Subregional Integration Agreement (CARTAGENA AGREEMENT) (available at [http://www.comunidadandina.org/ingles/treaties/trea/ande\\_trie1.htm](http://www.comunidadandina.org/ingles/treaties/trea/ande_trie1.htm))

COMESA Treaty (available at: [http://www.comesa.int/comesa%20treaty/comesa%20treaty/Multi-language\\_content.2005-07-01.3414/en](http://www.comesa.int/comesa%20treaty/comesa%20treaty/Multi-language_content.2005-07-01.3414/en))

Dominican Republic – Central America and United States Free Trade Agreement (available at: [http://ustr.gov/assets/Trade\\_Agreements/Bilateral/CAFTA/CAFTA-DR\\_Final\\_Texts/asset\\_upload\\_file148\\_3916.pdf](http://ustr.gov/assets/Trade_Agreements/Bilateral/CAFTA/CAFTA-DR_Final_Texts/asset_upload_file148_3916.pdf))

Montevideo Treaty: Instrument Establishing the Latin American Integration Association (ALADI) (available at <http://www.aladi.org/nsfaladi/textacos.nsf/>)

North American Free Trade Agreement (available at: [http://www.nafta-sec-alena.org/DefaultSite/index\\_e.aspx?DetailID=78](http://www.nafta-sec-alena.org/DefaultSite/index_e.aspx?DetailID=78))

Pacific Island Countries Trade Agreement (PICTA) (available at: <http://www.forumsec.org.fj/>)

Revised Treaty of *Chaguaramas* Establishing the Caribbean Community including CARICOM Single Market and Economy (available at: [http://www.caricom.org/jsp/community/revised\\_treaty-text.pdf](http://www.caricom.org/jsp/community/revised_treaty-text.pdf))

Southern African Customs Union (SACU) Agreement (available at: <http://www.tralac.org/scripts/content.php?id=961>)

Southern Common Market (MERCOSUR) Agreement (Treaty of Asunción) (available at: <http://www.itcilo.it/english/actrav/telearn/global/ilo/blokit/mercoa.htm>)

Treaty Establish the Economic Community of Central African Countries (available at: [http://www.iss.co.za/AF/RegOrg/unity\\_to\\_union/pdfs/eccas/eccastreaty.pdf](http://www.iss.co.za/AF/RegOrg/unity_to_union/pdfs/eccas/eccastreaty.pdf))

Treaty of South Africa Development Community (available at: [http://www.sadc.int/index.php?action=a1001&page\\_id=declaration\\_and\\_treaty\\_of\\_sadc](http://www.sadc.int/index.php?action=a1001&page_id=declaration_and_treaty_of_sadc))

**ANNEX: MEMBERSHIP AND SDT-RELATED PROVISIONS IN SELECTED RTAS**

<b>Regional Trade Arrangements</b>	<b>Members (per capita GDP)</b>	<b>SDT-related provisions</b>
ALADI	Argentina (USD 2,678) Bolivia (USD 743) Brazil (USD 2,022) Chile (USD 2,638) Colombia (USD 1,392) Ecuador (USD 1,474) Mexico (USD 3,052) Paraguay (USD 1,429) Peru (USD 966) Uruguay (USD 3,307) Venezuela (USD 4,743) (Year: 1980)	<ul style="list-style-type: none"> <li>▪ Need for special treatment benefiting a relatively less advanced countries (Preamble)</li> <li>▪ Categories of countries (Resolution 6)                             <ul style="list-style-type: none"> <li>– Countries at a relatively less advanced stage of economic development: Bolivia, Ecuador and Paraguay</li> <li>– Intermediate developed countries: Colombia, Peru, Uruguay and Venezuela</li> <li>– Other countries: Argentina, Brazil and Mexico</li> </ul> </li> <li>▪ Market opening in favour of relatively less members (Resolution 3)</li> <li>▪ Origin: 60% of non-originating materials as opposed to 50% (Resolution 252)</li> <li>▪ System in favour of countries at a relatively less advanced stage of development (Ch. III)                             <ul style="list-style-type: none"> <li>– Establishing conditions favouring relatively less advanced countries (Art. 15)</li> <li>– Approve lists of industrial products, for which total elimination of customs duties and other restrictions are accorded without reciprocity (Art. 18)</li> <li>– Endeavour to set up compensation mechanisms (Art. 18)</li> <li>– Negotiate special cooperation programs (Art. 20)</li> <li>– Set up cooperation programs and actions in pre-investment, financing and technology (Art. 21)</li> <li>– Compensate the disadvantageous situation faced by Bolivia and Paraguay (Art. 22)</li> <li>– Endeavour to grant land-locked countries facilities to establish free zones, <i>etc.</i> (A. 23)</li> </ul> </li> <li>▪ Periodical review on the implementation of differential treatment by the Conference (Art. 33)</li> <li>▪ Special Cooperation and Economic Promotion Unit (Resolution 4)</li> </ul>
MERCOSUR	Argentina (USD 5,742) Brazil (USD 2,685) Paraguay (USD 1,439) Uruguay (USD 3,213) (Year: 1991)	<ul style="list-style-type: none"> <li>▪ Differentiated transition periods for Paraguay and Uruguay (Art 6)</li> <li>▪ Differentiated trade liberalization programme                             <ul style="list-style-type: none"> <li>– Longer periods for tariff elimination and increased number of exceptions requested by Paraguay and Uruguay (31.12.1995 as opposed to 31.12.1994) (Ann. I and Art. 1)</li> <li>– Larger number of products for exceptions and their slower inclusion schedule (Argentina: 394, Brazil: 324, Paraguay: 439, Uruguay: 960) (Ann. I, Art. 6 &amp; 7)</li> <li>– More exceptions to the CET for Paraguay. Convergence to the 15% tariff for capital goods is required to be in place by 2006 for Paraguay and Uruguay, and 2001 for Argentina and Brazil.</li> </ul> </li> </ul>

Regional Trade Arrangements	Members ( <i>per capita</i> GDP)	SDT-related provisions
		<ul style="list-style-type: none"> <li>▪ Rules of Origin: More flexible rules of origin for Paraguay (50% instead of 60% of regional value added)</li> </ul>
CARICOM	Antigua and Barbuda (USD 7,910) Bahamas (USD 14,119) Barbados (USD 9,544) Belize (USD 3,188) Dominican Republic (USD 3,383) Grenada (USD 3,314) Guyana (USD 955) Haiti (USD 457) Jamaica (USD 3,119) Montserrat (USD 9,962) St. Kitts and Nevis (USD 8,444) St. Lucia (USD 4,202) St. Vincent & the Grenadines (USD 2,965) Suriname (USD 1,507) Trinidad and Tobago (USD 6,846) (Year: 2001)	<ul style="list-style-type: none"> <li>▪ Addressing differences in resource endowments and in levels of economic development within the membership (Preamble)</li> <li>▪ Establishment of a two-tier membership classification (Art. 4)             <ul style="list-style-type: none"> <li>– More developed: Bahamas, Barbados, Guyana, Jamaica and Suriname</li> <li>– Less developed: the remaining members</li> </ul> </li> <li>▪ Flexibility in removing restrictions on the exercise of the rights in services (Art. 49)</li> <li>▪ Advantages conferred in the marketing of oils and fats in order to promote agriculture (Art. 59.4)</li> <li>▪ Take into account special needs and circumstances when adopting the Community Industrial Policy (Art. 77)</li> <li>▪ Rules of origin: Community treatment may be conferred on products for which up to 65% of the cost of repair, renovation or improvement occurs outside the membership. For less developed members the corresponding threshold is raised to 80% (Art. 84.2)</li> <li>▪ Subsidies (Art. 104)             <ul style="list-style-type: none"> <li>– Members with GNP <i>per capita</i> of less than USD 1 000 are allowed to maintain subsidies contingent upon export performance while other member until 1.1.2003</li> <li>– Members with GNP <i>per capita</i> of less than USD 1 000 are allowed to maintain subsidies contingent upon the use of domestic over imported inputs</li> </ul> </li> <li>▪ Regimes for disadvantaged countries, regions and sectors (Ch.7, part 1&amp;2)             <ul style="list-style-type: none"> <li>– Interventions to be taken: Technical and financial assistance, special measures to attract investment and industries, assistance for structural diversification and infrastructural development, <i>etc.</i> (Art. 143)</li> <li>– Promotion of investment (Art. 147)</li> <li>– Promotion of services, but allowing for an exception list for services by disadvantaged members (Art 148 &amp; 149)</li> <li>– Safeguard: Disadvantaged members may limit imports on goods from members for 3 years or longer under the authorisation of COTED. No safeguard measures against goods originating from the disadvantaged members if such products do not exceed 20% market share in the importing member (Art. 150)</li> <li>– Support for sensitive industries: The disadvantaged may suspend community treatment (Art.</li> </ul> </li> </ul>

Regional Trade Arrangements	Members (per capita GDP)	SDT-related provisions
		<p>151)</p> <ul style="list-style-type: none"> <li>- Public undertakings: The disadvantaged may maintain restrictions in order to support domestic production in respect of public undertakings (Art. 152)</li> <li>- Provision of access to technological and research facilities (Art. 153)</li> <li>- Promotion of development (Art. 154)</li> <li>- Special regime for Guyana (Art. 155)</li> <li>- Technical and financial assistance (Art. 157)</li> <li>- Establishment of a development fund to provide financial or technical assistance (Art. 158)</li> <li>▪ Special regime for less developed countries (Ch.7, part 3) <ul style="list-style-type: none"> <li>- Ability to impose import duties when suffering loss of revenue (Art. 160)</li> <li>- Accounting for special needs during the implementation of the CET (Art. 163)</li> <li>- Suspension of community treatment to promote industrial development (Art. 164)</li> <li>- Flexibility for public undertakings (Art. 165)</li> <li>- Use of technological and research facilities (Art. 166)</li> <li>- Special provision for Belize: Allowing for the imposition of import duties or quantitative restrictions on beer and cigarettes until 31.12.2000 (Art. 167)</li> </ul> </li> </ul>
Andean Community	<p>Bolivia (USD 320) Colombia (USD 379) Ecuador (USD 280) Peru (USD 444) Venezuela (USD 1,318)</p> <p>(Year: 1970)</p>	<ul style="list-style-type: none"> <li>▪ Reduce differences in levels of development (Art. 1) <ul style="list-style-type: none"> <li>- Beneficiaries: Bolivia and Ecuador (Art. 3, 22 &amp; 30)</li> </ul> </li> <li>▪ Non-reciprocal preferences, different liberalization schedules for Bolivia and Ecuador (Art. 62 &amp; schedule) <ul style="list-style-type: none"> <li>- Longer phase-outs of exceptions and restrictions</li> </ul> </li> <li>▪ Special consideration in establishing CET including exceptions (Art. 82, 116 &amp; 117)</li> <li>▪ Agriculture (Ch. IX) <ul style="list-style-type: none"> <li>- Take measures to step up agricultural and agro-industrial development of Bolivia and Ecuador (Art. 89)</li> <li>- Flexibility in resorting to protective measures (Art. 91)</li> </ul> </li> <li>▪ Rules of Origin: Bolivia and Ecuador have a higher value test threshold for non-originating inputs (60%, 50% for the rest)</li> <li>▪ Special regime for Bolivia and Ecuador (Ch. XV) <ul style="list-style-type: none"> <li>- Differential treatment and sufficient incentives to compensate for structural weakness and to</li> </ul> </li> </ul>

Regional Trade Arrangements	Members (per capita GDP)	SDT-related provisions
		<p>ensure the allocation of essential resources (Art. 110)</p> <ul style="list-style-type: none"> <li>- Implementation of a program for the comprehensive industrialization of natural resources (Art. 111)</li> <li>- Industrial development program to provide exclusive benefits and effective preferential treatment (Art. 112)</li> <li>- Restricted use of corrective measures against imports from Bolivia and Ecuador (Art. 114)</li> <li>- Special attention to the industries whose products are excluded from liberalization programmes (Art. 115)</li> <li>- Provision of technical assistance and financing (Art. 118)</li> <li>- Periodic evaluations and annual reports by the General Secretariat (Art. 119)</li> </ul>
DR-CAFTA	<p>Costa Rica (USD 4 325)  Dominican Republic (USD 2,706)  El Salvador (USD 2,301)  Guatemala (USD 2,157)  Honduras (USD 1,046)  Nicaragua (USD 820)  United States (USD 39, 650)</p> <p>(Year: 2004)</p>	<ul style="list-style-type: none"> <li>▪ Recognize different levels of development (Preamble)</li> <li>▪ Longer and back loaded tariff phase-outs for the Dominican Republic and Central American (CA) countries (Schedules)</li> <li>▪ Waiver of customs duties maintained by Dominican Republic and CA (Art. 3.4)</li> <li>▪ Agriculture: longer list of products which are subject to agricultural safeguards by Dominican Republic and CA (Ann. 3.15)</li> <li>▪ Textile and apparel <ul style="list-style-type: none"> <li>- Elimination of existing quantitative restrictions (Art. 3.22 &amp; Ann. 3.22)</li> <li>- Preferential tariff treatment for wool apparel goods assembled in Costa Rica (Art. 3.27 &amp; Ann. 3.27)</li> <li>- Preferential tariff treatment for non-originating apparel goods from Nicaragua (Art. 3.28 &amp; Ann. 3.28)</li> </ul> </li> <li>▪ Customs administration <ul style="list-style-type: none"> <li>- Longer timeframes for the implementation of publication on internet, express shipments, designation of enquiry points, automation, etc. (Art. 5.11)</li> <li>- Cooperation in customs (Art. 5.5)</li> <li>- Capacity building (Art. 5.12)</li> </ul> </li> <li>▪ Antidumping and countervailing duties: benefiting from 19 U.S.C. §§ 1677 (7) (G) &amp; (H) (Art. 8.8)</li> <li>▪ Government procurement:</li> </ul>

Regional Trade Arrangements	Members (per capita GDP)	SDT-related provisions
		<ul style="list-style-type: none"> <li>- Higher thresholds for government procurement by Dominican Republic and CA (Ann. 9.1.2. (b) (i) Art.1)</li> <li>- Transition mechanism (Ann. 9.1.2. (b) (i) Section I)</li> <li>▪ Investment <ul style="list-style-type: none"> <li>- The rescheduling of public debt by Dominican Republic and CA is not subject to certain investment provisions other than national and MFN treatments (Ann. 10-A)</li> <li>- Guatemala is exempt from arbitration under the investor-state dispute settlement with regard to breaches of Article 10.6.2 (Treatment in case of strife) (Ann. 10-D)</li> <li>- Dominican Republic and CA are exempt from arbitration under the investor-state dispute settlement with regard to an obligation under some investment provisions (Ann. 10-E)</li> </ul> </li> <li>▪ Services <ul style="list-style-type: none"> <li>- Commitments on investment advice and portfolio management services subject to longer implementation timeframes for Dominican Republic and El Salvador (Ann. 12.9.2, Section B &amp; C)</li> <li>- Gradual market opening in insurance services by Costa Rica (Ann. 12.9.2 Section H)</li> <li>- Two year period (or 1.1.2007) to ensure cost-oriented interconnection fees in telecom services (Ann.13.4.5)</li> <li>- Gradual and selective opening in telecom by Costa Rica (Ann. 13)</li> </ul> </li> <li>▪ Intellectual property rights <ul style="list-style-type: none"> <li>- Longer timeframes for implementation (Art. 15.12.2)</li> </ul> </li> <li>▪ Cooperation and capacity building in labour and environment</li> </ul>
AFTA	Brunei (USD 13,226) Cambodia (USD 306) Indonesia (USD 958) Lao PDR (USD 369) Malaysia (USD 4,245) Myanmar (USD 192) Philippines (USD 990) Singapore (USD 21 889) Thailand (USD 2,266) Vietnam (USD 476)	<ul style="list-style-type: none"> <li>▪ Country classification <ul style="list-style-type: none"> <li>- ASEAN-6: Brunei, Indonesia, Malaysia, Philippines, Singapore and Thailand</li> <li>- New members: Cambodia, Laos, Myanmar and Vietnam</li> </ul> </li> <li>▪ Fast Track Programme and Normal Track Programme (approved in 1993) <ul style="list-style-type: none"> <li>- Fast track: tariffs above 20% will be reduced to 0-5% within 10 years, while tariffs at 20% or below within 10 years</li> <li>- Normal Track: tariffs above 20% will be reduced to 0-5% within 12-15 years, while tariffs at 20% or below within 7 years</li> <li>- Brunei has not committed to the programme.</li> </ul> </li> <li>▪ Different tariff reduction timeframes to reach 0-5% for new members</li> </ul>

Regional Trade Arrangements	Members (per capita GDP)	SDT-related provisions
	(Year: 2003)	<ul style="list-style-type: none"> <li>- 2006 for Vietnam, 2008 for Laos &amp; Myanmar, 2010 for Cambodia as opposed to 2002/3 for ASEAN-6</li> <li>▪ Arrangements to phase-in sensitive and highly sensitive products (1999 Protocol) <ul style="list-style-type: none"> <li>- ASEAN-6: complete by 1.1.2010</li> <li>- Vietnam by 2013, Lao PDR &amp; Myanmar by 2015 and Cambodia by 2017</li> </ul> </li> <li>▪ Differentiated timeframes for the elimination of import duties on products in the inclusion lists (2003 AFTA-CEPT, Art. 4.C) <ul style="list-style-type: none"> <li>- ASEAN-6: 1.1.2010</li> <li>- New members: 1.1.2015 exception for some sensitive products</li> </ul> </li> </ul>
SAFTA	Bangladesh (USD 443) Bhutan (USD 368) India (USD 626) Maldives (USD 2,345) Nepal (USD 245) Pakistan (USD 605) Sri Lanka (USD 935)  (Year: 2004)	<ul style="list-style-type: none"> <li>▪ Recognize the need for providing SDT (Art. 3)</li> <li>▪ Differentiated trade liberalisation programme (Art. 7) <ul style="list-style-type: none"> <li>- Longer timeframes to reach 0-5% (11 years instead of 8 years)</li> <li>- Larger number of items allowed on sensitive lists</li> <li>- Reducing tariffs applied by the developed members to products from least developed to 0-5% members within 3 years (1.1.2009)</li> </ul> </li> <li>▪ Greater flexibility in the continued application of quantitative and other restrictions (Art. 11.b)</li> <li>▪ Adoption of direct trade measures for exports from the least developed members, <i>i.e.</i>, buy-back arrangements, state trading operations and government procurement (Art. 11.c)</li> <li>▪ Special consideration in the application of anti-dumping and countervailing measures (Art. 11.a)</li> <li>▪ No safeguards allowed against products not exceeding 5% market share, provided least developed members constitute less than 5% import share collectively and account not more than 15% of total imports of the product concerned (Art. 16)</li> <li>▪ Technical assistance and cooperation (Art. 11.d)</li> <li>▪ Establishment of a mechanism to compensate for losses of revenue (Art. 11.e)</li> </ul>
PICTA	Cook Islands (USD 4,591) Fiji (USD 2,059) Kiribati (USD 516) Marshall Islands (USD 1,855) Micronesia (USD 2,053) Nauru (USD 2,518)	<ul style="list-style-type: none"> <li>▪ Accounting for differing economic potentials and special development problems (Preamble)</li> <li>▪ Three-tier country classification (Art. 1) <ul style="list-style-type: none"> <li>- Least developed countries: Kiribati, Samoa, Solomon Islands, Tuvalu and Vanuatu</li> <li>- Small island countries: Cook Islands, Kiribati, Nauru, Niue, Marshall Islands and Tuvalu</li> <li>- Other members: Federated States of Micronesia, Fiji, Palau, Papua and New Guinea</li> </ul> </li> <li>▪ Tariff reductions <ul style="list-style-type: none"> <li>- More gradual and longer timeframes to reduce and eliminate tariffs ending by 1.1.20012 as</li> </ul> </li> </ul>

Regional Trade Arrangements	Members (per capita GDP)	SDT-related provisions
	Niue (n.a.) Palau (USD 6,194) Papua New Guinea (USD 640) Samoa (USD 1,339) Solomon Islands (USD 733) Tuvalu (USD 1,253) Tonga (USD 1,281) Vanuatu (USD 1,095) (Year: 2001)	opposed to 1.1.2010 (Ann. II) <ul style="list-style-type: none"> <li>– Back loaded tariff eliminations schedules for excepted imports (Ann. IV)</li> <li>▪ At least one representative to a rules of origin Committee from LDCs or small islands (Art. 5)</li> <li>▪ Protection of developing industries: Allowed to raise tariffs to protect developing industries for 10 years extendable up to 15 years by LDC and Small island members as opposed 5 years up to 10 years for the rest (Art. 14)</li> </ul>
SACU	Botswana (USD 2,849) Lesotho (USD 389) Namibia (USD 1,502) South Africa (USD 2,374) Swaziland (USD 1,155) (Year: 2002)	<ul style="list-style-type: none"> <li>▪ Mindfulness of the different levels of economic development (Preamble)</li> <li>▪ Protection of infant industries by Botswana, Lesotho, Namibia or Swaziland for 8 years (Art. 26)</li> <li>▪ Common revenue pool (Art. 33)               <ul style="list-style-type: none"> <li>– Development component is weighted in favour of the less developed members</li> </ul> </li> </ul>
SADC	Angola (USD 1,247) Botswana (USD 2,637) DR Congo (USD 239) Lesotho (USD 503) Malawi (USD 185) Mauritius (USD 2,984) Mozambique (USD 141) Namibia (USD 1,878) South Africa (USD 3,361) Swaziland (USD 1,082) Tanzania (USD 139) Zambia (USD 373) Zimbabwe (USD 606) (Year: 1992)	<ul style="list-style-type: none"> <li>▪ Mindfulness of different levels of economic development (Trade protocol, Preamble)</li> <li>▪ Tariff reduction (Trade protocol, Art. 3)               <ul style="list-style-type: none"> <li>– More developed members have shorter reduction schedules</li> <li>– Non-SACU members made two offers: basic offer to South Africa and differentiated offer to the rest membership.</li> </ul> </li> <li>▪ Rules of Origin: Advantages granted to textiles and clothing exported to SACU by Malawi, Mozambique, Tanzania and Zambia (Annex I)</li> <li>▪ Regional development fund (Art. 26 &amp; 26A)</li> </ul>

Regional Trade Arrangements	Members (per capita GDP)	SDT-related provisions
COMESA	Angola (USD 875) Burundi (USD 163) Comoros (USD 460) Congo DR (USD 253) Djibouti (USD 816) Egypt (USD 885) Eritrea (USD 157) Ethiopia (USD 95) Kenya (USD 214) Libya (USD 6,637) Madagascar (USD 256) Malawi (USD 4,202) Mauritius (USD 2,979) Rwanda (USD 328) Seychelles (USD 6,328) Sudan (USD 318) Swaziland (USD 1,113) Uganda (USD 167) Zambia (USD 360) Zimbabwe (USD 576) (Year: 1993)	<ul style="list-style-type: none"> <li>▪ Promotion of the development of the least developed countries through special programmes and projects (Art. 4.6)</li> <li>▪ Designation of the least developed countries (Art. 9) (not yet designated)</li> <li>▪ FTA achieved only among 11 members</li> <li>▪ Development cooperation               <ul style="list-style-type: none"> <li>– Strengthen capacity of least developed countries through new investments, new technology and special program (Art. 144)</li> <li>– Development of adequate and reliable infrastructure including transport and communications (Art. 145)</li> <li>– Development of industry and energy sectors (Art. 146)</li> <li>– Agriculture and agro-industrial development (Art. 147)</li> <li>– Services (Art. 148)</li> </ul> </li> <li>▪ Provision of remedy for loss of revenue (Art. 60)</li> <li>▪ Establishment of a special fund for co-operation, compensation and development (Art. 150)</li> </ul>
ECCAS	Angola (USD 603) Burundi (USD 243) Cameroon (USD 1,003) Central Africa (USD 233) Chad (USD 149) Congo (USD 1,058) Congo DR(USD 360) Equatorial Guinea (USD 250) Gabon (USD 4,443) Rwanda (USD 288) São Tomé &	<ul style="list-style-type: none"> <li>▪ Consciousness of different levels of development (Preamble)</li> <li>▪ Four-tier classification (Protocol, Art. 1)               <ul style="list-style-type: none"> <li>– Island and partial island countries: São Tomé &amp; Príncipe and Equatorial Guinea</li> <li>– Less advanced countries: Burundi, Central African Republic, Chad, Equatorial Guinea, Rwanda and São Tomé &amp; Príncipe and</li> <li>– Landlocked countries: Burundi, Central African Republic, Rwanda and Chad</li> <li>– Semi-landlocked: Congo</li> </ul> </li> <li>▪ Special measures (Protocol, Art 3)               <ul style="list-style-type: none"> <li>– Promotion of economic and social development</li> <li>– Development of infrastructure including transportation and communications</li> </ul> </li> <li>▪ Creation of a Specialized Technical Committee on landlocked, island and partial island, semi-landlocked and/or less advanced countries (Protocol, Art. 5)</li> </ul>

Regional Trade Arrangements	Members ( <i>per capita</i> GDP)	SDT-related provisions
	Príncipe (USD 523) (Year: 1983)	<ul style="list-style-type: none"> <li>▪ Establishment of the community cooperation and development fund (Art. 75)</li> </ul>

Source: OECD (per capita GDP from UN database)