



The Estey Centre Journal of **International Law and Trade Policy**

Special and Differential Treatment in the GATT: A Pyrrhic Victory for Developing Countries

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Preferential measures for developing countries implemented within the General Agreement on Tariffs and Trade failed to achieve their purported goal of facilitating economic development; this failure was due to their weak theoretical underpinnings and poor policy design. Not only were the demands developing countries made for discriminatory preferences largely ineffectual, their demands for preferential treatment, together with their forgoing full participation in the multilateral trading system, fundamentally reduced the obligation of developed countries to consider the interests of developing countries in future negotiation rounds. Thus the winning of preferences was rendered a pyrrhic victory for developing countries.

Keywords: Economic development, trade liberalization, GATT, special and differential treatment

1. Historical Context and Rationale

1.1 *The Analytical Foundation and Purpose of the GATT*

The purpose of the General Agreement on Tariffs and Trade (GATT) was to raise the living standards of its members through the continuous reduction of trade barriers and the dismantling of discriminatory trade policies. The conceptual underpinning was the idea of a Ricardian competitive market equilibrium referred to as a Pareto optimal state, which aims to maximize welfare through economic specialization and through the exploitation of comparative advantage. At this equilibrium, “any deviation ... if it raises welfare of someone somewhere, would do so only at the expense of someone else” (Srinivasan, 2005, 76). Tariffs and other restrictive barriers “prevent global market integration [and], ipso facto, prevent the equilibrium in such segmented markets from being Pareto optimal” (Srinivasan, 2005, 76).

This theoretical framework was operationalized through the two pillars of non-discrimination and reciprocity, as evidenced by the most favoured nation (MFN) principle in the GATT, which ensured that all contracting members were afforded the best tariff rates offered (i.e., the rates offered to the most favoured nation). Reciprocity guaranteed export market access in return for import liberalization, a key counterweight in overcoming challenges of a political economy nature to international trade liberalization. Such challenges typically see minority production interests lobbying for protection at the cost of consumers, who stand to benefit from liberalization but suffer from collective action problems. The permanency and reliability of the GATT sent signals to market actors of predictability and transparency, both of which are crucial in creating a ripe investment climate, as they serve to reduce risk concerns among investors (Crook, 1990). The GATT’s structure tried to create a mechanism that would be universally beneficial in improving living standards through increased international trade.

1.2 *Rationale for Derivations toward Special and Differential Treatment*

Friedrich List, a 19th century political economist, argued that an economically liberal environment (such as the GATT promotes) is not universally beneficial since it only serves the interests of already industrialized countries (List, 1966). He favoured tariff protection and manufacturing support in poorer countries, to allow time for industrialization. The emphasis on the gap between rich and poor countries lies at the heart of the theoretical framework underpinning special and differential treatment (S&DT) in the GATT. List’s arguments set the theoretical framework for S&DT

insofar as they support the claim that developing countries (DCs) merit separate treatment on the basis that they are different from developed countries. The logic of List's argument is taken up by contemporary economists such as Bairoch (1993) and Chang (2002), who use past findings to explain 19th century patterns of economic growth. They both argue that countries such as Britain grew relatively slowly as a result of low tariffs, whereas countries such as the United States, Canada and Argentina grew relatively quickly as a result of protecting infant industries through high tariffs.

Specifically, the GATT framework for S&DT was supported by the claim that, relative to developed countries, DCs faced *inter alia* six principal challenges that prevented economic development: relatively unfavourable terms of trade; small share of world trade; low capital stock; minimal technology base; infrastructure weaknesses; and supply-side constraints as well as weak institutional and administrative capacity (Bartel, 2005; Myrdal, 1968). Since DCs mainly exported raw materials and other low-value added goods and imported higher technology manufactures from developed countries, their terms of trade were disadvantageous and would continue to be so, as the price of commodities historically was shown to fall relative to manufactures (Prebisch, 1950; Singer, 1950).

As a result of these obstacles, the benefits of regular GATT membership, such as reciprocal tariff concessions, were purported not to enhance the welfare of DCs insofar as competition between DCs and developed countries was not realistic due to the head start the latter possessed with respect to industrialization. These structural restraints would thwart DC efforts to overcome supply-side constraints and to capture the economies of scale necessary to foster internationally competitive industries. DCs required structural transformation of their economies, not simply growth. This transformation was to be facilitated through S&DT in congruence with domestic economic programs of import substitution industrialization (ISI) to jumpstart economic development and conserve scarce foreign exchange needed to pursue economic development.

Since inward-focused industrialization schemes would result in higher short-term prices for domestically produced manufactures, S&DT was required to create a temporary advantage until DCs were able to produce competitive exports. Given these pessimistic assumptions for exports, foreign exchange was assumed to be permanently in short supply. Given the GATT's core competency in international trade, policy makers identified the GATT as being able to assist DCs in trade-related capacities to facilitate economic development, along with loans from other international organizations and direct international aid. To this end, the GATT was identified as

being able to best assist DCs by allowing import restrictions and granting preferential market access.

2. Reconsidering the Rationale for Preferential Measures

Similar to the way in which further analysis demonstrates that Chang's (2002) and Bairoch's (1993) arguments misinterpret historical precedent, a deeper consideration of the rationale for preferential policies reveals weaknesses and ill-considered assumptions.

2.1 Market Failures in DCs: Justifying Preferences?

S&DT justifications claimed that since DCs repeatedly demonstrated market failure tendencies, the causal link between trade and economic development was faulty. While those who argued for S&DT accurately identified challenges faced by DCs, their arguments related to how trade liberalization may hamper economic development were overblown and misconceived. The measures encompassed by S&DT were poorly suited to overcome the identified problems, as they often did not deal directly with the sources of market failures. As will be demonstrated below, an important element of S&DT, the use of trade restrictions, proceeded from a weak theoretical base.

2.2 Protection through Import Restrictions

Balance of payments (BOP) problems were argued to be a major underlying cause of the symptoms facing DCs (GATT, 1958). DCs lacked knowledge and experience regarding the important role of exchange rates needed to maintain necessary conditions for trade. Furthermore, within the ISI production framework pursued by many DCs, foreign currency was assumed to be scarce. BOP fluctuations could therefore be acutely problematic for infant industries in DCs that relied on foreign-made inputs.

S&DT attempted to protect infant industries by means of temporary import restrictions during BOP crises through Article XVIII (B).² Specifically, this article allowed for trade restrictions to reduce short-term outflows of foreign exchange, while providing a DC with time to perform macroeconomic adjustments and facilitate development (Eglin, 1987). In a broader context, Article XVIII (B) was a concrete response to the perceived challenges articulated by Bartel (2005) and Myrdal (1968) and faced uniquely by DCs, as outlined above in section 1. Developed countries, it was argued, possessed none of these challenges and as a result were structurally favoured by the existing economic order. Upon further analysis, however, the

economic logic underlying restrictions is weak, and such measures are ill suited to achieve the intended goal of a stabilized BOP framework.

Fundamentally, restrictions do not deal with the “disequilibrium between national output and expenditure ... (as) they switch expenditure from one group of imports to another, ... to domestically-produced import substitutes ... (and) to goods that would otherwise have been exported” (Eglin, 1987, 2). In other words, restrictions do not reduce expenditure unless would-be purchasers are convinced to not spend on alternative products, an outcome that is especially implausible for DCs, which often rely on imported intermediary products and capital goods (Wolf, 1987). Since DCs are reliant on imported goods, reducing the scarcity of a good through restrictions brings about a rise in price. That is to say that restrictions implicitly tax exports, thereby harming export competitiveness while ignoring the true cause of the imbalance: the difference between national output and expenditure (Lerner, 1936).

Restrictions fail to alter the original imbalance or even to reverse deterioration of the BOP (Eglin, 1987, 3). Ideally, the costs are minimized due to a temporary reduction in imports, as illustrated occasionally by European developed countries in the 1950s during post-war reconstruction. Unlike those countries, DCs have possessed neither the other required macroeconomic fundamentals nor the capacity to make macroeconomic adjustments. As a result, DCs have been more likely to face a permanent drop in output, productivity and ultimately welfare, hindering economic development efforts while leaving them still in a weak position in terms of BOP. Overall, trade restrictions fail to address the main problem of disequilibrium in the BOP, and they create a perverse incentive system, making them a weak tool to promote development.

3. Poorly Designed Preferential Policies

3.1 Problematic Protection

In addition to the weak underlying rationale for the use of Article XVIII (B), its specific policy design also harmed development opportunities in two ways: first, through insufficient oversight and second, by creating opportunities for corruption.

3.1 (a) No effective oversight mechanism to prevent abuse

First, a significant weakness in policy design is demonstrated in the ineffectiveness of the GATT committee that was created to prevent abuses of Article XVIII (B) and to assist DCs in making complex macroeconomic decisions. Although the article stated DCs were to meet with the committee to justify impositions under Article XVIII, in reality it was only occasionally consulted (Eglin, 1987). Moreover, under the pretence that the committee could be seen as infringing on sovereignty, DCs were able to

reduce the frequency with which they met with it. In the face of flagrant abuses in the form of repeated, unjustified impositions, the committee possessed no sanction ability, rarely concluded the misuse of Article XVIII to be illegitimate, and never assigned punitive actions (Eglin, 1987). Thus, poor policy design permitted systemic misuse.

3.1 (b) Creating opportunities for corruption

A second weakness of Article XVIII (B) was that it created incentives for corruption, as demonstrated through two related elements: a) DCs were allowed full discretion to select which products would be subject to restrictions, and b) import and export licenses were granted on a discretionary basis. Opportunities were thus provided to narrow interest groups who sought to increase the economic rents made available to them by bribing program administrators and officials (Elliott, 1997). Given that preferences create a strong incentive for interest groups to capture preferential policies, they also undermine DC governments, as governments lose the “ability ... to stand up to their own domestic protectionist pressures” (Sutherland et al., 2004, 25). Insofar as restrictions had the effect “of fostering thoroughly corrupt and corrupting trade regimes,” their usefulness in facilitating development was weakened (Hart & Dymond, 2003, 397).

Although safeguards were built in through consultation and monitoring with GATT officials, in reality consultation and monitoring of Article XVIII (B) was both irregular and lacking in consistency due to poor policy design. Consultations were relatively expensive, increasing the transaction costs borne by the applying DC and thereby reducing the incentive to take part in such a process. More importantly, preferential policies gave rise to moral hazard concerns through the creation of principal-agent problems: given that the consultation process was designed to occur after DCs’ BOP had attained problematic levels, a perverse incentive existed for DCs to maintain foreign exchange balances at levels lower than those that would cause currency crises. As Furtan argues, if economic agents know that trade restrictions can be placed on imports if foreign reserves fall, then the government may hold a lower than equilibrium level of foreign exchange. If the level of foreign exchange is lowered through government action due to the availability of Article XVIII (B), then the possibility of moral hazard exists (1990, 9).

Overall, the policies for restrictions provide corruption incentives and open the door to moral hazard decisions, undermining development efforts.

3.2 Policy Oversights in the Generalized System of Preferences

Poor program design meant that the GSP programs were only superficially geared toward facilitating development. In an era of reductions to budget allocations for aid programs, GSP schemes were considered a cheaper alternative than providing direct funds, which allowed them to become influenced by the politics of aid, that is to say to become tightly controlled and defined to suit developed-country agendas (Bhagwati, Krueger and Snape, 1987). As Bhagwati argues, GSP programs are a poisoned chalice in that “product eligibility is limited, the preferences terminate when exports are successful, and reverse preferences for the rich countries are almost always built into these schemes” (2005, 27).

3.2 (a) GSP policy design flaws – unilateral and non-binding

Fundamentally, unlike MFN commitments in the GATT, GSP programs are unilaterally offered, non-binding and revocable depending solely on the political inclination of granting countries. GSP schemes also have clauses that terminate their application when quotas are filled (Ozden and Reinhardt, 2005). Being unilateral, GSPs are not offered on economic-based criteria, a situation that has allowed developed countries complete control to decide the eligibility of beneficiaries. These design flaws have also allowed developed countries to cunningly use the threat of GSP non-renewal as a bargaining chip to pressure beneficiaries to alter their policies in exchange for remaining eligible for preferences (Hart and Dymond, 2003). In being forced to accept conditions, DCs are “burdened with obligations unrelated to trade. ... Thus it can be argued, preferences are no longer unreciprocated” (Sutherland et al., 2004, 24). To illustrate, DCs have been denied beneficiary status for “communism, terrorism, violations of human or workers’ rights or membership in the Organization of Petroleum Exporting Countries” as well as for domestic environmental policies (MacPhee and Ogueldo, 1991, 19).

Developed countries also select which products to include, excluding the most important products to DCs: agriculture, textiles and low-technology goods. Cline’s (2004) data showed that the largest tariff-preference margins were applied to products that were previously subject to low tariffs, averaging 6 percent. Furthermore, tariff-peak products were subject to considerably lower preferential margins, ranging from 16 percent in the United States to 20 percent in the EEC and 23 percent in Japan. This evidence confirms that such schemes are weakened by eligible products. The literature identifies the forgone tariff revenue compared to the import base as a key indicator of the power of a GSP program. In this instance, the incentives provided by the GSP programs are marginal: 0.57 for the EEC and 0.2 for Japan and the United States

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(Cline 2004, 74). This means that actual price advantages averaged under half a percent, thereby failing to induce sizeable incentives for increased investment.

Sutherland et al. (2004, 25) demonstrate that the EEC's GSP regime is indicative of grantor interests influencing the program so as to substantially reduce any benefits that may accrue to DCs. "Some tariff quotas were so tight that they were filled within the first three days of each year. Others, for jet aircraft for example, were not taken up at all" (Sutherland et al., 2004, 25). When such programs are announced, the inclusion of such unreasonable products skews the apparent size of benefits available to DCs. As a result and contrary to the intended goal of GSP schemes to attract foreign capital, a stable investment climate is not facilitated (Jackson, 1990). The Caribbean Basin Initiative (CBI), permitted under S&DT policies, is an apt example. A decade after the debut of the program, economic growth was still anaemic in beneficiary countries, and the growth of imported goods eligible under the CBI in absolute terms was smaller than that of non-eligible goods, suggesting that product eligibility limitations weakened its effects (Dypski, 2002). On balance, the unilateral and non-binding nature of GSP schemes detracts from the economic development goals S&DT is purported to support.

3.2 (b) GSP policy design flaws – developed-country lobbies

The non-trade related agenda conditions that GSP beneficiaries must subscribe to "introduce clout for advancing what are principally developed-country lobbying agendas" (Sutherland et al., 2004, 25). These agendas aim to reduce the economic competitiveness of international producers by increasing production costs and reducing investment flows, masking their protectionist interests behind labour rights causes. For example, the GSP labour rights amendment was passed in 1984, allowing organizations to petition the U.S. government to review if a beneficiary country is not respecting labour rights. The thin protectionist veil is revealed in the process and resulting data. First, the key measurement used by the law is whether beneficiaries are "taking steps" rather than full compliance with relevant standards, providing significant discretion for protectionist causes (Hepple, 2005). From the time of its implementation until 1995, over 80 reviews occurred, with the most active petitioners being the AFL-CIO and other large unions. In a comprehensive study spanning fifteen years of GSP schemes under the GATT, Compa and Vogt conclude that "the merits of a petition have little bearing on a case. Geopolitics and foreign policy are the chief considerations ... not the merits of a country's compliance or non-compliance (of perceived violations)" (2001, 236).

The United States' withdrawal of Chile from its GSP program in 1987 under the pretence of violations of workers' rights is indicative of this trend, as in reality U.S.

labour interests had exerted pressure to advance their protectionist interests through the mechanism described above (Sutherland et al., 2004). Concerning the CBI, even in those areas of comparative advantage, most notably sugar and related products, the minority protectionist interests of sugar producers in the United States were able to subvert these preferences, minimizing sugar imports to the extent that that sugar quotas were actually reduced during the duration of the program (Dypski, 2002). The United States also revoked a GSP scheme on \$60 million worth of Indian pharmaceutical products that were prepared for export in 1992. The rationale employed was that India had insufficient protection for intellectual property, an issue on which there was no agreement at the time. More importantly, the U.S. pharmaceutical industry lobbied the U.S. government to send a signal to DCs who were wavering on intellectual property issues in the Uruguay Round negotiations (Sutherland et al., 2004, 25). These standards related to labour and intellectual property comprise the very nature of the comparative advantage DCs possess in the global trading system; mechanisms to reduce this advantage therefore work against their economic development interests.

3.3 Administrative Costs

GSP schemes are often based on rules-of-origin requirements, which comprise the criteria upon which the source of a product is determined, an important consideration for DCs attempting to facilitate domestic exporting to developed countries. While substantial transformation of a product into another product is almost universally recognized, a specific provision was never agreed upon in the GATT. For instance, minimum value-added percentages are often required to have taken place in the beneficiary country.

Implementation of these regimes has proved costly; economic resources are spent satisfying the requirements to ensure and demonstrate that production occurs in beneficiary countries and is not deflected from a non-beneficiary country to avoid duties, effectively reducing the ability of DCs to use preferences. These rule structures are often complex, with extremely detailed legal texts, and compliance with them demands substantial administrative resources (FAO, 2001).

There are two additional flaws that harm DC interests (Lahoud, 1982, 37-38). First, indirect domestic value-added components, such as management costs, overhead and profit, are not included in the calculation of valuation within the rules-of-origin requirement, meaning that despite the sizeable degree of transformation outside the industrial realm, GSP schemes risk denying the eligibility of these goods. Second, indirect production costs not counted within the minimum value-added requirement

mean that even if a product is entirely made in an eligible beneficiary country, and thus satisfies the intended goal of the GSP, it may still be ineligible.

These problems work against the goals of GSP programs to diversify exports and provide incentives for export expansion and ultimately facilitate economic development. Often, “depending on the size of the preference margin, the costs of implementing the rules of origin may actually be larger than the value of the preference” (FAO, 2001). The result is indicative of the failure of preferences to promote development; preferential regimes are simply ignored because rules of origin have become onerous. Francois, Hoekman and Manchin (2006) estimate that administrative burdens from rules-of-origin requirements are equivalent to 4 percent of the overall value of traded goods. This has resulted in preferences being significantly underused. These practical considerations substantially reduce the utility of these regimes for economic development purposes.

4. Preferences as a “Faustian Bargain” (World Bank 1987, 167)

The underlying assumption that DCs have doubly benefited by not having to implement tariff concessions to the same extent as developed countries while at the same time attaining rights to preferences beyond those of other GATT members is a misconception and undermines the interests of DCs. This assumption overlooks the hidden costs commensurate with securing S&DT arrangements as reflected in the economic concept of opportunity cost, where an equally desirable choice is given up to attain a certain desirable outcome (Eatwell, Milgate and Newman, 1987, 718-720). DCs faced a choice between two desirable, yet mutually exclusive, outcomes: pursuing preferential regimes or participating as full GATT members and thereby assuming the responsibilities to make reciprocal tariff concessions.

As Hoekman, Michalopoulos and Winters argue, “reciprocity is the engine of the WTO; it is not engaging in reciprocal exchange of market access concessions that has helped create the ... structure of protection confronting developing countries” (2003, 8). The hidden cost of pursuing preferential agreements was the forgone negotiating capital that would advance DCs’ interests in an MFN context. The relentless pursuit of preferences relegated DCs to a secondary division of lesser actors within the GATT. DCs also became easy targets for discriminatory policies, cynically referred to as reverse discrimination because these policies effectively favoured developed countries (Hart and Dymond, 2003). Developed countries recognized that DCs had used their negotiating capital to push for S&DT and thus forced extra-GATT agreements onto them. Securing non-reciprocity and other forms of S&DT in multilateral negotiations “actually placed (DCs) in a weaker position to combat GATT-inconsistent barriers in *Estey Centre Journal of International Law and Trade Policy*

developed countries against their exports” (Srinivasan, 1998, 24). The pursuit of S&DT at the cost of discriminatory regimes reflects the Faustian bargain DCs made.

4.1 Evidence Supporting the Presence of a Faustian Bargain

Evidence corroborates the above argument insofar as DC interests for the liberalization of exports within their respective comparative advantages were ignored. Finger (1979) demonstrates this empirically by analyzing tariff liberalization through concessions made in the Kennedy Round. He reveals that the lower the degree of participation in GATT negotiations, the lower is the commensurate share of benefits for that group’s exports to the United States. For instance, whereas the DCs active in negotiations and generally not pursuing preferences often received concessions on up to 33 percent of their exports, those DCs that offered few reciprocal concessions received concessions on a paltry 5 percent of their exports. These data are especially stark in comparison to data for major U.S. trading partners, which received import tariff reductions on 70 percent of their goods (Finger, 1979). As Srinivasan argues, the trade-off DCs faced in securing preferences was to allow developed countries to retain “higher than average MFN tariffs on goods of export interest to developing countries” (1998, 26).

Following the 1954-1955 GATT Review Session, which created the initial S&DT measures, developed countries began to protect their domestic industries due to concerns about market disruption. Indeed, the GATT had envisioned such scenarios in creating Article XIX, which allowed countries to take safeguard action in the event of a flood of imports while allowing other GATT members to retaliate by rescinding prior market access concessions. Since DCs were being granted non-MFN based preferences, developed countries created agreements outside of the GATT in areas of particular export interest to DCs. For instance, DCs were forced to accept export quotas, and the type and quality of textiles that were eligible for export were limited through the 1961 Short Term Agreement and the 1962 Long Term Agreement (LTA). Both were in direct violation of GATT principles.

As the scope for S&DT expanded in the 1960s following the Kennedy Round and the subsequent creation of the United Nations Conference on Trade and Development (UNCTAD), the LTA was continually renewed. In 1974, in a period when the DCs were benefiting from non-reciprocal market access through the Generalized System of Preferences (GSPs) and using import restrictions based on BOP justifications, the Multifibre Arrangement (MFA) was created to expand the number of textile and clothing products considered GATT ineligible. In total, three separate agreements were created along with nine extensions, all of them favourable to developed countries. Further data show these agreements to be particularly galling in that textiles

represented less than 2 percent of total employment in the United States, whereas protection for it accounted for 83 percent of the overall cost to the United States among all import restrictions (Krueger, 1996). Underscoring the effects of these restrictions on DCs, Cline (1990) found that by 1986 quotas represented tariffs of 28 percent on textiles and 53 percent on apparel. By comparison, tariffs on goods that were negotiated in the GATT-led MFN context had dropped to less than 8 percent (Irwin, 1995). Developed countries shrewdly allowed DCs the rights to administer the distribution of quotas to ensure that narrow political interests in DCs would not voice any opposition in earnest. As participants in negotiations, industrialized rich countries were able to virtually dictate the terms surrounding products of substantial market interest for DCs. While the textile industry was protected through voluntary export restraints (VERs), other low-technology goods were similarly protected by expanding GATT exemptions and orderly marketing agreements (OMAs). This is supported empirically, as overall tariffs on low technology, labour intensive and agricultural goods are on average ten to twenty times larger than entry tariffs on products not excluded from GATT negotiations (Krueger, 1996). In sum, preferential measures failed DCs, given the significant costs encountered in return, evidenced by relinquished market access for their exports. DCs chose to forgo the benefits of the GATT, warts and all, at their peril.

4.2 MFN Compared to S&DT

Implicitly, the critiques above assume that the forgone option – participation in the MFN negotiations – would have yielded better outcomes. Empirical analysis strongly suggests that, over the period since the creation of GSP programs in the European Economic Community (EEC) and Japan in 1971 and in the United States in 1975, DCs have stood to gain more from benefits derived through MFN concessions than from benefits created by GSP schemes. The data in table 1 show estimated increases in trade flows from GSP schemes and MFN cuts as well as the estimated costs of preference erosion. Although results vary, the trend clearly shows that estimated benefits associated with MFN are considerably higher than those associated with GSP and that the cost of GSP erosion is marginal.

Table 1 Global Trade Benefits of GSP Schemes Compared to Trade Benefits from MFN Cuts
(\$ millions)

Study	GSP	MFN*	Cost of Erosion
Baldwin and Murray (1977)	479	848	32
Iqbal (1975)	380	NA	NA
Cline et al. (1978)	NA	2640	NA
UNCTAD (1979)	NA	1700	2100
Birnberg (1979)	NA	1446	93
Ginman, Pugel and Walter (1979)	NA	900	1800
Deardorff and Stern (1983)	NA	173	NA
Sapir (1981)	2139	NA	NA

Source: Ahmad, 1985, 1078

* These studies estimated MFN cuts to be roughly equivalent to Kennedy Round cuts of 50 percent.

An additional element that weakens GSP schemes is the fact that, as was discussed in section three above, MFN cuts are bound whereas GSP schemes are revocable; thus, GSP results tend to be reduced over time (Ahmad, 1985). It should also be reiterated that benefits of the GSP regimes are largely concentrated among a small number of DCs, again signalling that the vast majority of DCs do not benefit from preferential schemes, contrary to the case with MFN cuts that are applied to all DCs.

5. Conclusion

While GATT legal scholar John Jackson characterized preferential measures toward DCs as “aspirational” in attempting to facilitate development (1989, 275), this article exposes their weak theoretical underpinnings and policy design flaws and concludes that such efforts have provided few benefits for DCs. Arguments by critical scholars that the economic structure would perpetually favour developed countries became fashionable in policy circles and were translated into demands for discriminatory preferences. As a result, developed countries assumed obligations while DCs were granted a separate set of rights as demonstrated by the unique availability of Article XVIII (B). Preferences spread with viral efficacy within the GATT, as indicated by “[l]ax enforcement, pro forma consultations, and indifferent notification ...” (Hart and Dymond, 2003, 415).

Conceptually, however, the demands on the part of DCs for discriminatory measures gave license to developed countries to participate in extremely harmful discrimination despite direct contradiction of GATT rules. “By insisting they had rights but no obligations, developing countries surrendered their capacity to pursue

those rights with any significant results” (Hart and Dymond, 2003, 415). Empirical analysis reinforces that MFN obligations, while politically unpalatable, may have been a more potent strategy for pursuing economic growth. In addition, S&DT policies themselves were often poorly designed, giving rise to rent-seeking behaviour, moral hazard concerns and cumbersome administrative costs.

In short, DCs secured a pyrrhic victory not only because they obtained preferential schemes that were poorly designed, but also, and more fundamentally, because the existence of these schemes gave license to developed countries to ignore DCs’ negotiation demands in multilateral settings concerning their key levers of economic growth – tariff and subsidy reductions in their areas of comparative advantage.

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Endnotes

1. Andrew Christie holds an MSc from the London School of Economics and Political Science as well as an undergraduate degree from Carleton University. The author would like to thank Professor D. Smith, P. Ryan, J. Dubois and his family for their guidance and support.
2. See the technical annex for the article's relevant text.

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