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# **The Least Developed Countries, the World Trade Organisation and the Norm of Special Treatment**

by

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Thesis submitted for the Degree of Doctor of Philosophy

City University

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# Declaration

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# Abstract

This thesis examines the special treatment of the Least Developed Countries (LDCs) in the World Trade Organisation (WTO). The categorisation of the LDCs by the United Nations in 1971 not only created a new classification of countries, but also created an international norm of special treatment for these countries. The norm of special treatment for LDCs has, since then, slowly spread throughout the international system and has been institutionalised in many international organisations, including the WTO. Evidence of the institutionalisation of the norm within the WTO can be found in its founding documents and agreements, as well as in the Doha Development Agenda. This institutionalisation of the norm has meant that LDCs have been provided with special treatment in the trade regime, which is not provided to other categories of member.

This thesis will trace the development and institutionalisation of the international norm of special treatment for LDCs and will focus specifically on its institutionalisation within the GATT/WTO. The thesis uses the concept of the norm lifecycle to demonstrate how the norm of special treatment for LDCs has grown in strength over time and become institutionalised, but has yet to be fully internalised. Through the use of case studies looking at accession, market access and cotton, it argues that the recent agency of the LDCs means that they can be seen as norm entrepreneurs helping to further the norm of special treatment by their appeals to it.

# Abbreviations

ACP	Africa, Caribbean and Pacific
ACWL	Advisory Centre on WTO Law
AGOA	African Growth and Opportunity Act
AMS	Aggregate Measure of Support
AOSIS	Alliance of Small Island States
APQLI	Augmented Physical Quality of Life Index
C-4	Cotton Four
CBI	Caribbean Basin Initiative
CDP	Committee on Development Planning/Committee for Development Policy (from 1999)
CET	Common External Tariff
CTD	Committee on Trade and Development
DDA	Doha Development Agenda
DFQF	Duty-Free, Quota-Free
DG	Director-General
DSB	Dispute Settlement Body
DSU	Dispute Settlement Understanding
DTIS	Diagnostic Trade Integration Study
EBA	Everything But Arms
EC	European Community
ECA	Economic Commission for Africa

ECOSOC	Economic and Social Council
EDI	Economic Diversification Index
EEC	European Economic Community
EFTA	European Free Trade Agreement
EIF	Enhanced Integrated Framework
EPA	Economic Partnership Agreement
ESCAP	Economic and Social Commission for Asia and the Pacific
EU	European Union
EVI	Economic Vulnerability Index
FDI	Foreign Direct Investment
G-20	Group of Twenty (WTO Coalition)
G-77	Group of Seventy-Seven
GATS	General Agreement on Trade in Services
GATT	General Agreement on Tariffs and Trade
GDP	Gross Domestic Product
GNI	Gross National Income
GPT	General Preferential Tariff
GSP	Generalised System of Preferences
GST	Generalised System of Trade Preferences
GSTP	Global System of Trade Preferences among Developing Countries
HAI	Human Assets Index
HIPC	Highly Indebted Poor Countries Initiative

IBRD	International Bank for Reconstruction and Development
ICAC	International Cotton Advisory Committee
IDA	International Development Association
IF	Integrated Framework For Trade-Related Technical Assistance
IFTF	Integrated Framework Trust Fund
IMF	International Monetary Fund
ISA	International Studies Association
ITC	International Trade Centre
ITO	International Trade Organisation
LDC	Least Developed Country
LDC I	First United Nations Conference on Least Developed Countries
LDC II	Second United Nations Conference on Least Developed Countries
LDC III	Third United Nations Conference on Least Developed Countries
LDC IV	Fourth United Nations Conference on Least Developed Countries
LDCT	Least Developed Country Tariff (Canada)
LLDC	Land-Locked Developing Country
LMIC	Low Middle Income Country
MCC	Millennium Challenge Corporation
MDGs	Millennium Development Goals
MFA	Multi-fiber Agreement
NICs	Newly Independent Countries
NGOs	Non-Governmental Organisations

ODA	Official Development Assistance
OECD	Organisation for Economic Co-operation and Development
OLIC	Other Low Income Countries
SAF	Structural Adjustment Facility
SDT	Special and Differential Treatment
SIDS	Small Island Developing Countries
SNPA	Substantial New Programme of Action
TPRB	Trade Policy Review Body
TPRM	Trade Policy Review Mechanism
TRIMS	Trade Related Investment Measures
TRIPS	Trade Related Aspects of Intellectual Property
UMICs	Upper Middle Income Countries
UN	United Nations
UNCTAD	United Nations Conference on Trade and Development
UNDP	United Nations Development Programme
UN-ORHLLS	United Nations Office of the High Representative for the Least Developed Countries, Land-Locked Developing Countries and Small Island Developing States
USTR	Office of the US Trade Representative/US Trade Representative
WACIP	West African Cotton Improvement Programme
WGGM	Working Group on Government Measures
WIPO	World Intellectual Property Organisation
WMO	World Meteorological Organisation

WTO World Trade Organisation

WWII World War Two

# Chapter 1 - Introduction

The World Trade Organisation's (WTO) Cancun Ministerial Meeting in September 2003 marked a turning point for its developing country members. The developing countries refused to agree to a deal while agricultural subsidies were maintained in developed countries, particularly the United States (US) and European Union (EU), who in turn were pressing for the inclusion of the Singapore Issues in the Doha Round. This impasse was nothing new in trade negotiations. What was new was the refusal of the developing countries to cave in to developed country demands and the Cancun negotiations subsequently broke down. Although many saw this breakdown in negotiations as a blow to the multilateral trade system, for the developing countries it represented a victory in that they were not forced to accept an unfavourable deal. As the then Director General of the WTO acknowledged 'In retrospect, one could even view Cancun as an important turning point in the negotiations with the undoubted progress which was made there in several areas and the more assertive role played by developing countries' (Panitchpakdi in Sutherland et al, 2005: 3). Cancun was also notable because a group of four Least Developed Countries (LDCs) – Benin, Burkina Faso, Chad and Mali (also known as the Cotton Four) - raised the issue of cotton subsidies in developed countries, especially the US, which adversely affect the incomes of farmers in the poorest developing countries.<sup>1</sup> For the LDCs the issue was particularly significant as with the re-launch of the Doha Round via the July Framework in 2004, cotton became a separate agenda item in the WTO negotiations, indicating that the LDCs were also playing a more assertive role in the WTO.

When the WTO was created in 1995, many of the WTO's agreements contained references to the need for 'special treatment' for LDCs. The Marrakesh Agreement, which established the WTO, emphasised the organisation's role in assisting LDCs in

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<sup>1</sup> It should be noted that although the cotton issue was raised by four LDCs, it was under the auspices of the Africa Group rather than the LDC Group.

their attempts to increase their role in international trade (WTO, 1999: 4). Other key agreements offering special treatment for LDCs include the Agreement on Trade Related Aspects of Intellectual Property (TRIPS), the Agreement on Agriculture and the General Agreement on Trade in Services (GATS) (see Appendix A for a full list of the WTO agreements and the special treatment for LDCs provided by them). Like the Uruguay Round Agreements, the Doha Development Agenda contains a section on LDCs and committed the WTO members to the objective of achieving ‘duty-free, quota-free market access for products originating from LDCs’, as well as to designing a work programme for LDCs (WTO, 2001).

Despite the inclusion of the special treatment provisions in the WTO agreements and in the Doha Round there has been no significant research focusing specifically on the role of LDCs in the GATT/WTO. The ‘more assertive role’ by played developing countries has been the focus of researchers looking at the WTO (for example see Narlikar and Tussie, 2004; Hurrell and Narlikar, 2006; Maswood, 2007; Lee, 2011), and the Cotton Four (Lee, 2007; Pesche and Nubukpo 2004); yet even amongst these works, LDCs are often ignored or mentioned only briefly. Until recently, few academic writers looked at the LDCs role in the trade organisation, preferring instead to look at developing countries generally, although Smythe (2006), Moon (2008), Kaushik (2009) and Crosby (2009) represent exceptions to this. The lack of attention previously paid to LDCs in the WTO may be because they are not seen as being particularly powerful in economic terms especially when viewed individually. However, as a coalition some authors do note that LDCs have become more prominent in the WTO and cannot be ignored (Jawara and Kwa, 2003: 23; Narlikar, 2003: 85; Deese, 2008: 169). This lack of focus on LDCs within the WTO is surprising as LDCs are a recognised category of membership in the organisation as well as being one of the many negotiating coalitions. The WTO recognises three categories of members - Developed country, Developing country and LDC. However, only the LDCs are fully defined, with the category of LDC based on the UN classification. Developing countries are ‘self-selected’ although their

categorization is open to dispute by other members of the WTO. However, the lack of focus on LDCs in trade is mirrored by a lack of focus on them more generally.

In looking at the WTO from an LDC perspective what becomes apparent is that most of the WTO's agreements offer some form of special treatment to LDCs, who account for only 20% of members. Further, examination of the structure of the organisation reveals that the WTO also has a Sub-Committee which focuses specifically on LDCs and the issues of importance to them, such as accession, market access and cotton. In addition, the LDCs form one of the WTO's many formal negotiating coalitions. These facts prompt the following questions:

- Why does an organisation which is seemingly run by the developed countries for their own benefits have such a focus on a small number of very poor developing countries and the issues of importance to them?
- Why does an organisation founded on the principles of trade liberalisation and non-discrimination advocate positive discrimination for certain countries?

To answer these questions, this thesis argues firstly that continual calls for special treatment for LDCs within the UN and UNCTAD since 1971 created a norm of special treatment for LDCs which has been a feature of the trade regime since 1973. Secondly the thesis argues that because LDCs have been established as a special category of developing country, they cannot be viewed solely through the developing country lens, but need special investigation on their own merits. To look only at the LDCs in combination with the rest of the developing countries ignores the history of this category and its relationship with the trade regime as represented by the GATT and the WTO. In redressing this issue, this thesis asks the following research questions:

- Does a norm of special treatment for LDCs really exist in the GATT/WTO?

- Are the frequent mentions of ‘special treatment’ in the WTO agreements merely rhetoric on the part of the developed countries?

## **The Argument**

In order to answer these questions, this study focuses on the importance of norms and the influence these have on organisations and actors in international trade. In examining the treatment of LDCs within the WTO, this thesis uses a norms-based framework to demonstrate how the existence and development of a broader international norm of special treatment for LDCs has led to a focus on LDCs within the trade organisation and its agreements. The spread of the norm from the international system to the trade regime and its subsequent strengthening, particularly over the past two decades, has enabled LDCs to receive special treatment. This study applies Finnemore and Sikkink’s concept of a norm lifecycle to demonstrate the existence of an international norm of special treatment for LDCs and to trace how the norm has developed and spread over time (Finnemore and Sikkink, 1998). The norm lifecycle model is applied to the norm of special treatment for LDCs on two levels. First the norm lifecycle is applied within the GATT/WTO, to demonstrate how the norm of special treatment has spread from the international level to the organisational level, and appears to be operating within the WTO. Second, the study applies the norm lifecycle model to three specific cases within the WTO – accession, market access and cotton - to analyse whether the model works well on a more specific as well as a general level. The specific cases of accession to the WTO, market access and cotton highlight the increasing engagement of LDCs within the trade regime particularly as seen in their activities as a negotiating coalition since the establishment of the WTO. The thesis finds that the LDCs themselves are now acting as norm entrepreneurs and pushing for further special treatment. This in turn has strengthened the norm of special treatment for LDCs within the trade arena. The importance of the norm is in the assistance which it provides to these countries in order to help them develop.

The rest of this introductory chapter will be split into three sections. The first section will concentrate on familiarising the reader with the concept of an LDC as well as providing a brief overview of why these states require special treatment from a trade point of view and importantly what this special treatment looks like within the WTO. The second section will look at the theoretical framework and research methodology used in this thesis. The third section will explain the structure of the thesis.

## **LDCs and Trade**

The Least Developed Countries are a constructed category of structurally very poor developing countries originally developed by the United Nations in the 1970s in order to help these countries benefit from the UN's Second Development Decade Strategy. In order to become an LDC a country has to meet the classification criteria developed by the UN's Committee on Development Policy (CDP). The current UN definition of an LDC is based on 3 criteria:

1. Income generating capacity – based on a three-year average estimate of Gross National Income (GNI) per capita (under \$905 for inclusion, above \$1,086 for graduation)
2. Human Assets Index (HAI) – reflecting human development based on indicators of: ‘(a) health and nutrition, measured by (i) percentage of the population undernourished and (ii) under-five child mortality rate; and (b) education, measured by: (i) gross secondary school enrolment ratio; and (ii) adult literacy rate.’ (UN, 2009a: 21)
3. Economic Vulnerability Index (EVI) – designed to measure the risk to development posed by exogenous shocks, and is based on an average of the seven following indicators: ‘(a) population size; (b) remoteness; (c) merchandise export concentration; (d) share of agriculture, forestry and fisheries in GDP; (e) homelessness owing to natural disasters; (f)

instability of agricultural production; and (g) instability of exports of goods and services.’ (UN, 2006b: 20, paragraph 13)

Inclusion and graduation levels are set for each of the three criteria, and for a country to be included in the list of LDCs it needs to meet all three inclusion levels.

Countries also have to agree to be included in the list – Ghana, Papua New Guinea and Zimbabwe all meet the criteria for inclusion, but have refused to be added to the list of LDCs (CDP, 2009: 10).<sup>2</sup>

There are currently 49 LDCs, the majority of which – 34 countries – are African states. Of the rest nine are in Asia, six are Pacific Islands and one – Haiti – is classified as Latin America/Caribbean. The categorization of LDCs can be further sub-divided into Land-Locked LDCs (LLDC) and Island LDCs.<sup>3</sup> Currently only 32 LDCs are members of the WTO, but several more are in the process of accession talks<sup>4</sup> (for a full list of LDCs and their WTO membership status see Appendix B). There are three main types of ‘special support measures’ for countries included in the list of LDCs. These come under the categories of Official Development Assistance (ODA), International Trade, and Other forms of support (CDP, 2010a; CDP, 2010b: 6-18). For ODA the special support measures include financial flows and technical assistance from both bilateral and multilateral donors. In trade terms the special support measures come from preferential market access and special treatment regarding WTO obligations. Whilst other forms of support includes caps on LDCs contributions to the UN budget, and funding for LDCs delegations to attend international meetings. This thesis concentrates mainly on the special support measures in the international trade arena, but the other measures are also important.

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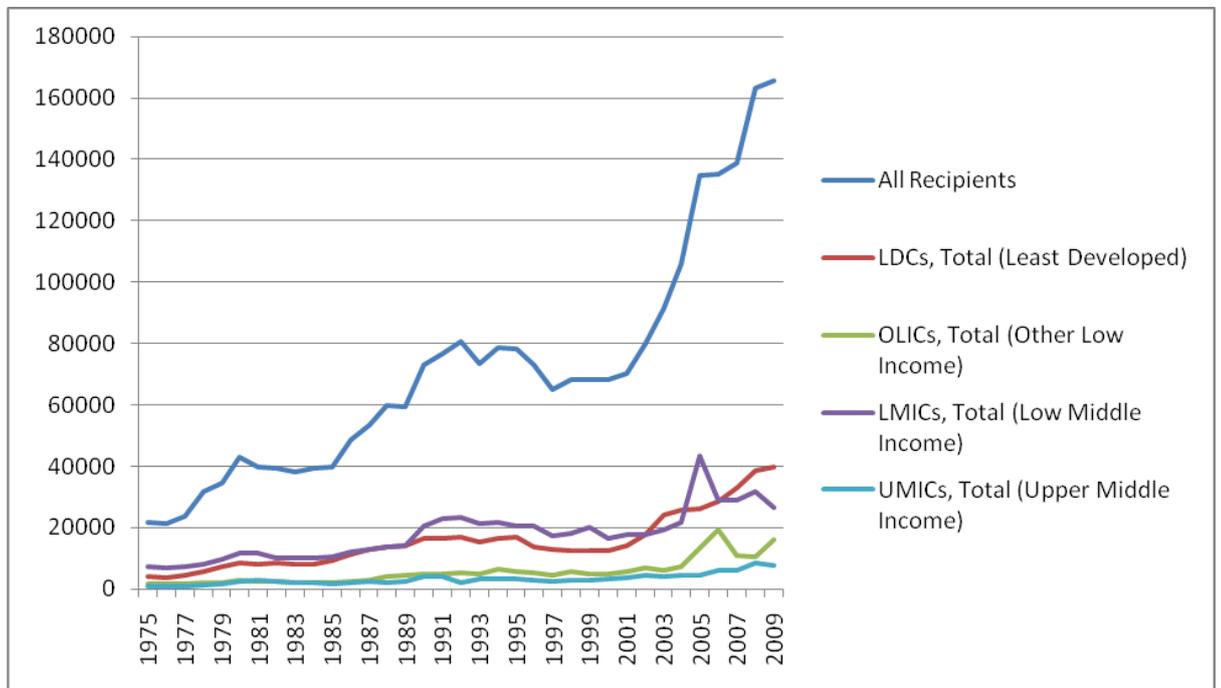
<sup>2</sup> The CDP handbook notes that these countries have either challenged the validity or accuracy of the data used by the CDP to categorise LDCs or have claimed that the socio-economic conditions within the country have improved since the CDP review (CDP, 2009: 10).

<sup>3</sup> Island LDCs also fall under the category of Small Island States (SIDS), but it should be noted that not all SIDS are LDCs.

<sup>4</sup> The LDCs in the process of acceding to the WTO are Afghanistan, Bhutan, Comoros, Equatorial Guinea, Ethiopia, Liberia, People’s Democratic Republic of Lao, Samoa, Sao Tome and Principe, Sudan, Vanuatu and Yemen (WTO, 2006a). For more on the accession of LDCs to the WTO see Chapter Four.

An UNCTAD study published in 2009 showed that out of 31 LDCs surveyed, ‘19 LDCs depended on grants (mainly ODA) to finance more than one fifth of their total government spending in 2008’ (UNCTAD, 2009a).

**Figure 1 – OECD Aid Figures**



Source: OECD Database

The graph in Figure 1 shows the total aid provided to LDCs and other developing countries on a bilateral basis. As can be seen aid to LDCs mirrors the trend of aid disbursements and has been increasing since the late 1990s. The need for ODA was recognised in the Programme of Action for the LDCs for the Decade 2001-2010, in which developed countries ‘committed to increasing ODA specifically targeted for LDCs to 0.2 percent of GNI’ (UNDP, 2007: 4), the recent rise in aid to LDCs corresponds with the introduction of the Programme. Technical cooperation or assistance is also very important to LDCs, and most international organisations that recognise the category also offer some form of technical assistance to these countries.

LDCs face significant problems in trade terms. The 1989 *Least Developed Countries Report*, published by UNCTAD, identified four physical constraints on trade for LDCs – they typically have a small natural resource base which limits their capacity to export; many are geographically disadvantaged, either being landlocked or remote islands;<sup>5</sup> they are often vulnerable to natural disasters such as drought and floods;<sup>6</sup> and there are often physical constraints on the size of their markets which have made diversification difficult and meant that these countries have remained small (UNCTAD, 1990: 77-79). These constraints on trade, the vulnerability and the lack of economic power of LDCs have meant that they are typically not seen as being able to have any real impact on the WTO. However, despite this, LDCs involved in the Doha Round have been able to get one of their issues on the negotiating agenda. Their need for special treatment has been a focus of the Round, particularly since the WTO's Hong Kong announcement on market access for LDCs and the suggestions have been made that the LDCs be given 'a round for free'. Calls for special treatment for LDCs in the Doha Round have recently been reinforced by UNCTAD in its 2010 LDC report which advocates an 'early harvest' of the round for the LDCs (UNCTAD, 2010: XVIII).

Special treatment for LDCs in the WTO typically manifests itself formally in four ways - longer implementation periods for WTO agreements than other WTO members, reduced levels of obligation, preferential market access, and technical assistance. Longer implementation periods specifically for LDCs were included in several of the WTO agreements, including both TRIPS and GATS, typically providing them between five to ten years in which to fully implement the agreements (see Appendix A). LDCs were allowed reduced levels of obligations in the Agreement on Agriculture, the Trade Policy Review process, the Agreement on Subsidies and Countervailing Measures, Balance of Payments and Subsidies. The reduced levels of obligations usually mean that LDCs do not have to make the same

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<sup>5</sup> Fifteen LDCs are land-locked and nine are small island countries.

<sup>6</sup> LDC vulnerability to natural disasters were highlighted by the Maldives in 2004 when the islands were badly affected by the Asian Tsunami, and seen more recently in Samoa following the Tsunami in 2009 and Haiti following the earthquake in 2010.

commitments as other WTO members. The WTO allows members to provide preferential market access to LDCs unilaterally via their Generalised System of Preference (GSP) schemes which are exempt from the 'most favoured nation' clause. While technical assistance is provided for in the Marrakesh Agreement, TRIPS, the Agreement on Agriculture, the Trade Policy Review process, the Agreement on Technical Barriers to Trade, GATS and Balance of Payments, and typically consists of training courses, trainee programmes and internships, with LDCs given priority treatment (WTO, 2009ab).

The WTO agreements all provide evidence of formal special treatment offered to LDCs. Informal special treatment is also noticeable in areas such as arrears payments of annual contributions to the WTO budget and trade policy reviews. Thirteen LDCs have had arrears in their WTO budget contributions for the last five years and three LDCs have never been through the Trade Policy Review Process since it was introduced with the establishment of the WTO. The formal and informal special treatment of LDCs mentioned above is something to be explained. This thesis argues that a norm of special treatment exists for these countries in the WTO and the various initiatives aimed at LDCs begin to show the pattern of the norm of special treatment. However, special treatment for LDCs still requires a degree of negotiation which indicates that it is not fully internalised within the WTO.

### **Why use norms to look at LDCs in the WTO?**

The benefit of a norm-based approach to international politics has been summed up by Finnemore and Sikkink (1998), who believe that

In a wide variety of issue areas, norms researchers have made inroads precisely because they have been able to provide explanations substantiated by evidence for puzzles in international politics that other approaches have been unable to explain satisfactorily (Finnemore and Sikkink, 1998: 890).

The puzzle which this thesis examines is how and why the multilateral trade regime focuses on issues of importance to small, weak states such as the LDCs in its

agreements and negotiations despite their lack of political and economic power. In the case of the norm of special treatment for LDCs it can be seen that most states have conformed to the norm without being legally compelled to do so, thus power considerations in this case, do not appear to be a key factor.<sup>7</sup> Recently LDCs have begun to request special treatment for themselves thus allowing them to be seen as important actors in the norm lifecycle.<sup>8</sup> Their requests have been based on their perception that they are not receiving enough special treatment.

The justification for using a norms-based approach to explain the special treatment of the LDCs in the WTO is that ‘norms and institutions may empower weak ... actors’ (Klotz, 1995: 24).<sup>9</sup> This is because of the ‘moral weight’ that is often linked to norms creating expectations for how states should behave (Shannon, 2000: 294). As will be demonstrated, the norm of special treatment for LDCs has undoubtedly empowered LDCs in the WTO and enabled them to begin to have an impact on the organisation. This is due to the fact that once a norm has been accepted internationally, its impact becomes apparent in institutions and this ‘institutionalization’ of the norm legitimizes it and provides the norm with moral power (Klotz, 1995: 24). Having been accepted as legitimate by states, a norm then becomes hard for states to ignore or violate, as doing so will inevitably attract attention from other actors supporting the norm, such as other states, international organizations and NGOs. By providing a form of moral power to the weaker states, we would expect the norm of special treatment to have helped LDCs within the WTO to have a significantly greater impact on the organization than their economic strength alone would normally confer. This will be tested by the use of three case studies looking at specific areas within the WTO, which analyse the institutionalisation of the norm within the trade regime.

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<sup>7</sup> For example the US Trade Policy Agenda for 2010 includes the objective of fostering partnerships with developing and poor nations, and specifically mentions US actions to assist LDCs in this context (USTR, 2010).

<sup>8</sup> For more on the initial calls for special treatment for LDCs see Winham (1986: 94).

<sup>9</sup> Klotz uses a norms-based approach to demonstrate how anti-apartheid activists used international institutions to circumvent the opposition of the major powers.

In using a norms-based approach, it is also necessary to take an historical approach. This is necessary as ‘norms are socially constructed’ and evolve over time (Finnemore, 1996: 157). Analysis of the changing nature of multilateral trade negotiations and the results of these negotiations over time demonstrate whether there is a norm of special treatment for LDCs within the GATT/WTO and how this has changed. If the analysis shows a consistent pattern of special treatment for LDCs then it can be argued that the norm exists and is not merely rhetoric on the part of the developed countries. Understanding how the norm of special treatment for LDC has evolved and the changing norm entrepreneurs associated with the norm also allows us to understand how and why LDCs are given special treatment.

Most definitions of a norm link the observed behaviour of actors with certain expectations as to how they should behave (for examples see Krasner, 1983; Klotz, 1995; Clark, 2001; and Sandholtz, 2008). This thesis uses the definition of a norm provided by Finnemore and Sikkink (1998), who define a norm as ‘a standard of appropriate behaviour for actors with a given identity’ (Finnemore and Sikkink, 1998: 891). For Clark (2001) however, norms are more than just shared expectation for behaviour. She argues that for shared expectations or understandings to become norms they also need to regularly affect ‘socially established rules’ in either a formal or informal way, that the existence of shared ideas or principles does not (Clark, 2001:10). This thesis argues that the standard of regular behaviour which has developed in the GATT/WTO is for actors defined as ‘developed’ countries to provide special treatment to actors defined as ‘Least Developed’ countries.

The identification of a norm can be problematic due to the indirect nature of the evidence that a norm exists (Finnemore and Sikkink, 1998: 892). However, there are two key factors in identifying norms, first the patterns of behaviour that they create and second by studying the justifications made by actors and their actions. While patterns of behaviour indicate the possible presence of a norm, the justifications are the key to their identification (Finnemore, 1996: 159). This is because when states

try to justify their actions they are trying to link them to ‘standards of appropriate and acceptable behaviour’ (Finnemore, 1996: 159). By examining the action and justifications used by states we can identify ‘internationally held standards of behaviour’ and any changes that occur in these over time (Finnemore, 1996: 159; Klotz and Lynch, 2007: 17-18).

## **Research Design and Methodology**

This section of the chapter will focus on the research design and methodology used in researching this thesis. The first part of any research focusing on a norm is to define what is meant by a norm and how norms can be identified. The identification of a norm is a key part of the research design process. Having identified the norm, the next part of this section will review the use of case studies in this thesis and in researching norms. This will then be followed by a review of the methods of research employed in this thesis.

### ***Defining and Identifying Norms***

The manifestations of the norm of special treatment for LDCs will be examined in this thesis via analyses of various documents from international organisations and the behaviour or practices of states. Documents from the UN and the GATT/WTO during the 1970s, 1980s, 1990s and 2000s, showing increasing references to the LDCs, have been used to construct the argument of this thesis. However, care has to be taken in analysing these documents as the abbreviation ‘LDC’ was initially used during the post-war period to refer to ‘less developed countries’, whilst the abbreviation ‘LLDC’ was used to denote ‘Least Developed Countries’ in the 1970s, 1980s and 1990s. The term ‘less developed countries’ included LDCs as well as other developing countries, such as India and Brazil and is still occasionally used by academics and practitioners today. The norm of the special treatment of LDCs can be seen in speeches about assistance to LDCs, statements issued by the UN and other international organisations, and in the WTO by the focus on a Work Programme for LDCs, the Integrated Framework (IF) and the Aid for Trade resolutions, as well as in

the organization's agreements.<sup>10</sup> Speeches regarding the need for special assistance to LDCs have also been made by several of the WTO Director-Generals (for examples see Ruggiero, 1997a; Ruggiero, 1997b; Ruggiero, 1999; WTO, 1999g; WTO, 1999h; WTO, 2000e; WTO, 2001g; Panitchpakdi, 2002; Panitchpakdi, 2004a; and Panitchpakdi, 2004b). In researching this thesis, continual references to 'special treatment' of LDCs were found in various documents of international organisations especially the UN, UNCTAD and the GATT/WTO. In order to counter the charge that these continual references were mere rhetoric on the part of the developed countries, the research process was then widened to look at what was being done to reinforce these calls for special treatment. Specifically of interest was whether these calls for special treatment had affected the behaviour of other members of the GATT/WTO.

The presence of the norm of special treatment has been established through the analysis of primary source documents, interviews and a review of secondary source documents. The thesis primarily draws on documents from various international organisations, specifically the GATT and the WTO. The type of primary documents used are those relating to the GATT Sub-Committee on the Trade of LDCs, GATT Council of Representative meeting minutes and GATT documents relating to the accession of LDCs. GATT documents were made available online following a 2006 WTO General Council decision to make all official GATT documentation publicly available (WTO, 2006g). The availability of these documents online has meant that it has been possible to track discussions of LDCs within the GATT – a process which has not been consistently carried out previously. GATT official documents were accessed either via the GATT Documents Digital Archive on the WTO website or via Stanford University's GATT Digital Library.<sup>11</sup> Not all GATT Documents are

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<sup>10</sup> It could be argued that this norm is part of the developing norms of humanitarianism and the expansion of humanity, as argued by Finnemore (1996). As Finnemore notes 'mutually reinforcing and logically consistent norms appear to be harder to attack and to have an advantage in the normative contestations that go on in social life. Thus, logic internal to norms shapes their development and consequently social change' (Finnemore, 1996: 174).

<sup>11</sup> GATT Documents are available via the WTO website at [http://www.wto.org/english/docs\\_e/gattdocs\\_e.htm](http://www.wto.org/english/docs_e/gattdocs_e.htm). Stanford University's GATT Digital Library can be accessed via <http://gatt.stanford.edu/page/home>.

currently included in the WTO's GATT archive, about 51,000 out of the 88,000 GATT documents are available (WTO, 2009w), but the search facility means it can be difficult to find documents on a specific subject.<sup>12</sup> The Stanford University GATT Digital Library contains over 59,000 GATT documents and 300 GATT publications. It can be searched more easily than the GATT documents on the WTO website. It also has the advantage that all documents are displayed in searchable PDF format, enabling quick searching of lengthy documents.

Official WTO documents have also been extensively used in this thesis, particularly those relating to the LDC Sub-Committee, WTO General Council Minutes, the WTO Sub-Committee on Cotton and WTO accessions. These have been accessed via the WTO's Document Search Facility (WTO, 2009v).<sup>13</sup> Although there are some restrictions in access to these documents, particularly in the case of sensitive on-going accessions, the majority of WTO documents can be accessed via this method. The WTO's document database contains WTO documentation since 1995 as well as some of the Uruguay Round documents and some GATT documents (WTO, 2009v).<sup>14</sup> Since 2002, all WTO official documents are unrestricted and any documents submitted to the organisation as restricted are usually derestricted after sixty days, while minutes of meetings are usually available forty-five days after their initial circulation (WTO, 2002d). The main exceptions to this rule are documents relating to accessions which are not derestricted until the adoption of the accession working party's report and usually issued once an accession has been finalised.<sup>15</sup>

Interviews were also conducted in researching this thesis with representatives of LDCs, members of the WTO Secretariat, members of the UNCTAD Secretariat and

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<sup>12</sup> The GATT Documents can be browsed by date or by GATT document symbol.

<sup>13</sup> The search facility can be found at [http://docsonline.wto.org/gen\\_home.asp?language=1&\\_=1](http://docsonline.wto.org/gen_home.asp?language=1&_=1). Documents are usually available in all three of the WTO's official languages – English, French and Spanish. For the purposes of this research only the English versions have been used.

<sup>14</sup> The documents online system does not contain documents which are considered to be classified, hence in the case of accessions few records could be found relating to the accession of Vanuatu and in this case secondary sources were used.

<sup>15</sup> The restriction placed on accession documents means that there is often very little transparency in this area.

NGOs. The interviewees were selected on the basis of their importance to LDC issues, and included several members of LDC missions in Geneva. Attempts were made to contact several of the acceding LDCs including the focal point for the LDC Group on accession, but despite indications of interest, no response has so far been received. The interviewees included Jack Stone, the former head of UNCTAD's LDC Division; Ambassador Lumbanga of Tanzania, the co-ordinator of the LDC Group prior to and during the 2009 Geneva Ministerial; Lilian Saili Bwalya of Zambia, the current LDC coordinating country; and Debapriya Bhattacharya, the UNCTAD Special Advisor on LDCs and formerly Ambassador of Bangladesh to the WTO. A full list of interviewees is included in Appendix C. Interviews were conducted in person where possible, while others were conducted as telephone interviews due to financial constraints on travelling to meet interviewees or via email correspondence due to the time constraints of the interviewees. Initial interviews were carried out in 2006 and 2007 to ascertain which issues covered by the WTO negotiations were of most relevance to the LDCs. Subsequent interviews were conducted during 2008 and 2009 to gain more information about how the LDC group operated within the WTO and on issues of particular importance to the LDCs such as accession. The rest of the interviews were then carried out in 2010 to follow up on specific issues and to engage with a wider group of respondents. Most interviews were semi-structured with respondents answering questions which they had not seen before. In a few cases interviews were carried out by email correspondence as the respondents felt that they were too busy to answer the questions in any other way. Whilst this form of questioning may lack spontaneity in allowing the interviewer to respond to comments made by the interviewee, most interviewees were happy to respond to a second batch of emailed questions following up points raised in the initial responses. All interviewees were asked for permission to cite them, and all were happy to be included in the list of interviewees, but some did not wish to be quoted.

The use of primary documentation and interviews has been supplemented with secondary source information where necessary. Both the primary and secondary

sources of documentation have been used to construct the case studies within the WTO examined in this thesis. The secondary sources of information used in this thesis have come from a range of sources. These include books on both the GATT and the WTO, journal articles on the WTO, papers published by NGOs (particularly those with a focus on trade) and information on various websites. The books and journal articles have been particularly useful in identifying individual participants in WTO negotiations and norm entrepreneurs.

### ***Case Studies***

In researching the norm of special treatment for LDCs this thesis uses a case study approach. This is essentially the approach used in much other norms-based research (for examples see Clark, 2001; Finnemore, 1996; Klotz, 1995; Sandholtz, 2008). Where this thesis differs from some other case study approaches is in looking at a single case – that of the LDCs in the GATT/WTO – from several different angles in order to test the theory of the norm lifecycle in more detail. Initially a top-line level of the norm of special treatment for LDCs in the GATT/WTO is reviewed. The norm is then viewed from different angles via the cases of the accession of LDCs to the GATT/WTO, the issue of market access for LDCs and the case of cotton within the Doha Round. These cases demonstrate that the norm lifecycle model is not sufficient to explain what has happened, but needs to be supplemented with other approaches to norm diffusion and internalisation.

All of the cases used in this thesis focus on the norm of special treatment for LDCs and show the existence of the norm and how this has helped the LDCs. There were many cases which could have been chosen for this thesis due to the scope of issues covered within the WTO. However, the three cases which were selected – accession, market access and cotton – were chosen as they represented three of the most important issues for LDCs within the WTO at present. All of these issues have been regularly discussed within the WTO and in the Doha Round and by the LDC coalition. They are also all issues that the developed country members of the WTO are involved in and therefore their actions and justifications for action can be used to

assess whether the norm of special treatment really exists within the WTO. The three issues also span the range of WTO activities: accession is an institutional/structural issue, market access is a long standing issue which has been discussed since GATT days, and cotton, along with market access, is a key issue for LDCs in the Doha Round.

## **Structure of the Thesis**

This thesis is divided into two main sections. The first section contains the theoretical background to the research and builds the argument concerning the institutionalisation of the norm of special treatment for LDCs within the GATT/WTO, while the second section looks at specific cases within the GATT/WTO and examines whether LDCs have indeed benefitted from special treatment in these cases. Chapter Two reviews the existing literature on the GATT and the WTO, identifies the norms operating in the trade system and sets out the theoretical basis of the thesis. Through the review of the existing literature it identifies firstly a gap in the literature with regard to the role of LDCs in the trade system, and secondly identifies the norms on which the GATT and the WTO were founded. It then examines the role of norms-based theory in International Politics in general, before looking in more detail at Finnemore and Sikkink's (1998) idea of a norm lifecycle, and whether this can be applied to the special treatment for LDCs.

Chapter Three applies the norm life cycle model to the special treatment for LDCs in the international trade regime as represented by the GATT/WTO and demonstrates that a norm of special treatment for LDCs exists within the GATT/WTO. It also examines the institutionalisation of the norm at the organisational level. The chapter demonstrates that the trade regime has had a focus on the special treatment for LDCs since the establishment of the category, and that special treatment for LDCs was institutionalised first in the agreements of the GATT and subsequently in the agreements of the WTO. It examines the continued institutionalisation of the norm following the Uruguay Round and in the Doha Round negotiations.

The second section of this thesis contains three case studies all focusing on issues within the GATT/WTO, assessing what special treatment would look like in these areas and whether the norm of special treatment for LDCs can be said to apply to the issue. These chapters demonstrate that the lifecycle of the norm is not always as linear as Finnemore and Sikkink's (1998) work would expect us to believe. The first case study in Chapter Four looks at the accession of LDCs to the GATT/WTO and examines how the norm lifecycle deals with apparent deviations from the norm. The case of LDC accession to the GATT/WTO was chosen to demonstrate that for the norm of special treatment for LDCs to help these countries in the WTO, they must be able to join the organisation. The case demonstrates that special treatment for LDCs appeared to operate in the GATT days, but the establishment of the WTO affected the norm and made it harder for LDCs to join the trade organisation. This case also demonstrates that changes in rules can affect the operation of a norm, and thus it is important to include some theory of norm change into the norm lifecycle. It shows that whilst the norm lifecycle model is a good indication of how norms spread in the international system it needs to be modified to cope with situations where the progress of the norm is not linear and demonstrates how a change in the rules of an organisation, such as the change from GATT to WTO, can affect the progress of the norm.

Chapter Five examines the second case study of market access for LDCs. The issue of access to other countries markets has been a goal of the LDCs since their integration into the world trading system. The case of market access highlights the degree of internalisation of the norm of special treatment by looking at the preferential treatment offered to LDC exports by more developed members of the WTO, particularly since the WTO's 2005 Hong Kong Ministerial decision on Duty-Free, Quota-Free market access for goods from LDCs. The case study demonstrates that whilst the norm of special treatment for LDCs has been internalised to some degree, conflicts with other norms prevents its full internalisation. Importantly, the case study also demonstrates that whilst the norm of special treatment was primarily

affecting the behaviour of the developed countries, it is now also affecting the behaviour of the larger developing countries. The case of market access was chosen as a test case, in order to investigate how much the norm of special treatment has helped LDCs achieve their aim of full market access to developed countries markets. The case focuses on the institutionalisation of the norm and its internalisation in the area of market access. It demonstrates the effect of the norm of special treatment on the behaviour of both developed and larger developing countries.

The final case study analysed in Chapter Six focuses on the issue of cotton within the current Doha Round of negotiations. The case of cotton is an obvious one to include in any research on the role of the LDCs in the WTO as it highlights the growing involvement of the LDCs within the trade organisation and their initially ‘successful’ attempts to influence the negotiating agenda of the organisation. This initial success appears to have been short-lived as the agricultural subsidies in the US, which were the focus of the issue, still exist. The case demonstrates that whilst the norm of special treatment appears to have been working, the splitting of the cotton issue into separate trade and development components cannot be explained by the operation of the norm lifecycle within the WTO alone, and we must also take account of the international nature of the norm, as well as the linkages between international organisations. In addition, the case examines the role of the norm entrepreneurs in furthering and pushing for increased implementation of the norm of special treatment for LDCs. It also demonstrates that when looking at an international norm, it is difficult to look at it in the context of a single international organisation. The international nature of the norm of special treatment for LDCs means that events or decisions made in other international organisations have an impact on what happens in the WTO and vice versa. Thus the operation of the norm in one organisation ‘spills over’ into other organisations and into the international system generally.

The thesis concludes with a review of the findings of the case studies and discusses how these findings help in further developing theories of norms in international

politics. The findings from the case studies are fed back into the norm lifecycle model and a modified model is discussed as are the future prospects for special treatment for LDCs in the WTO. The thesis concludes that a norm of special treatment for LDCs does exist in the WTO, but it is not yet fully internalised. The existence of the norm has helped LDCs to push for further special treatment with the WTO particularly on issues where it was not previously apparent, enabling them to become norm entrepreneurs for the norm in the WTO.

## Chapter 2 – The GATT/WTO, Norms and the Norm Lifecycle

This chapter provides both a review of the literature on the GATT/WTO and an introduction to the theoretical framework employed in this thesis. The review demonstrates that the introduction of the differentiation of developing countries in the GATT/WTO occurred from the inception of the International Trade Organisation (ITO), but despite the differentiation of developing countries from developed countries within the literature, little account was traditionally taken of the differences between developing countries, with few early works looking particularly at LDCs. The review of the theoretical approaches also demonstrates that although few authors look at the importance of norms within the GATT/WTO: most tacitly acknowledge the norms of behaviour on which the trade system is founded such as reciprocity and non-discrimination, but do not take account of the impact of new norms on the system such as the norm of special treatment for LDCs. Finally, the chapter addresses the theoretical approach on which the thesis is based, looking specifically at the role of norms in international politics and the impact these have on actors and organisations. The norm lifecycle model developed by Finnemore and Sikkink is explained and the chapter demonstrates how the special treatment provided to LDCs can be seen to be a norm within the WTO. Failure to take account of this norm has led to tension in the system which has meant that the LDCs have now taken on the role of norm entrepreneurs as a reaction to their perceived lack of special treatment in certain issues.

## **Literature Review**

The existing literature on the GATT/WTO tends to straddle the three disciplines of International Politics, Economics and Law, and encompasses articles by academics and practitioners/WTO negotiators. This diversity means that the existing literature has followed a number of approaches to the trade regime including looking at the progress of various negotiating rounds, the benefits to be gained from tariff reductions in these rounds and the impact that the round was expected to have, or did have on the growing body of trade law. In an attempt to deal with this vast body of literature, this literature review will focus on what is said about the GATT and the WTO in relation to developing countries and especially LDCs, and how development issues generally have been dealt with within the trade regime. The literature review will also look at whether the existing literature provides any evidence of special treatment for LDCs and what it says in relation to this.

### ***GATT and Developing Countries***

This section will review literature specifically written about the GATT and developing countries as well as some of the works which deal with the GATT generally. Writings on the GATT in general and specifically on developing countries help to give us an impression of how developing countries were viewed in the GATT system and how important they were. The overall impression from these works is that although developing countries were part of the GATT from the beginning they were not especially involved in the early tariff negotiations and became more engaged with the GATT from the late 1950s.

Following the end of the Second World War, there was a focus internationally on development and the reconstruction of those countries affected by the war. This was reflected in the Charter for the International Trade Organisation (ITO) which included proposals for differential treatment of 'less developed countries' in the trade

organisation.<sup>16</sup> Wilcox (1949) noted that provisions were included in the ITO for the European countries affected by World War II and which were in the process of rebuilding their economies, and for the development of ‘backwards areas’. Wells (1969) also highlighted the inclusion of articles in the Charter relating to development and in particular ‘the special trade difficulties of primary producers’ (Wells, 1969: 64). The ITO Charter specifically linked the idea of economic development with trade (see Wilcox, 1949: especially C5), although Feis (1948) was particularly critical of this section of the Charter describing it as having a ‘mastodon structure’ with provisions which were not legally binding (Feis, 1948: 48). This resulted from the fact that most countries wanted to have their say in the Charter and that the developing countries were particularly active at the 1947 Havana Conference on Trade and Employment (Feis, 1948). A point which was also reinforced by Wilcox who noted that the some of the revisions requested at the Havana Conference by the developing countries attending it, meant that the ITO Charter covered a vast range of topics and contained many exceptions to its provisions. This led to a complex Charter which was often hard to read and contained concessions which often undermined other sections, as well as failing to clarify what members could and could not do (Feis, 1948: 42-3). Feis is much more critical of the Charter than Wilcox, but despite this Feis acknowledged that the Charter demonstrated an acceptance by states that any actions they took regarding trade also affected other states (Feis, 1949: 51).

Like Feis, Drache (2000) also concentrates on the positive things that have been derived from the ITO, despite the fact that it was never established. In particular he highlights the fact that the ITO introduced the importance of ‘political will’ as opposed to ‘rigid legal codes’ and established the principle that any viable trade regime had to include ‘escape clauses and loopholes’ (Drache, 2000: 7); ideas which are still in important today in the WTO. The ITO charter was also important in that

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<sup>16</sup> The use of the term ‘less developed countries’ to denote developing countries is an important one in terms of international development especially in the post-war period and it is still used periodically today. As noted in the introduction, the term also abbreviated to ‘LDC’. The term ‘Less developed country’ was used frequently in the early days of the GATT, so care needs to be taken when looking at some GATT documents, especially those written prior to 1971.

it recognised the needs of developing countries and provided a way to deal with the challenges presented by development and decolonization, which would not have been possible without the participation of the developing countries in Havana (Drache, 2000:7 and 23). The development provisions in the ITO influenced the UN's Development Decade Framework in the 1960s and the formation of UNCTAD in 1964, largely due to the fact that Raul Prebisch, who was chiefly responsible for drafting these, had attended the ITO preparatory conference in London and the conference in Havana (Drache, 2000: 21).

Despite the ITO Charter's focus on development and the engagement of the developing countries at Havana, the failure of the US to ratify it meant that the GATT became the key 'organisation' dealing with trade from 1949 onwards.<sup>17</sup> The GATT negotiators did not incorporate all of the 'economic development' concessions that were included in the ITO charter, therefore when the GATT came into effect it contained limited legal privileges for the developing countries (Hudec, 1987: 14). This resulted in many developing countries losing faith in the organisation, believing that the GATT signatories initially ignored 'the special problems of developing countries' and focused instead on the reconstruction of countries affected by WWII (Wells, 1969: 64). Only one article of the GATT 1947 provided Contracting Parties with the option of imposing quantitative restrictions on imports to aid economic development – Article XVIII. This Article could only be applied with the consent of the other Contracting Parties and was only used by four developing countries between 1948 and 1954 (Wells, 1969: 65).<sup>18</sup> Article XVIII was revised in 1954, providing developing countries with greater leeway than had previously been the case, and indicating a new awareness within the GATT of the issue of development (Wells, 1969: 67).

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<sup>17</sup> The GATT was essentially a contract between the member governments, known as the Contracting Parties, negotiated as part of the ITO negotiation process. With the failure of the US ratification of the ITO Charter, the GATT was elevated to quasi-organisation status.

<sup>18</sup> The developing countries who invoked Article XVIII during this period were Ceylon, Cuba, Haiti and India (Wells, 1969: 65).

By the end of the 1950s, the GATT started to focus more on developing countries, a theme which was reflected in the publication of the Haberler Report in 1958 and was also apparent in other international organisations at the time. The increasing focus on development was also reflected in the literature on the GATT. Wells (1969) focused specifically on developing countries, GATT and UNCTAD. He noted despite the GATT's new interest, the developing countries turned to UNCTAD for assistance. Of particular interest to this thesis is that both Evans (1968) and Wells, writing in the late 1960s, specifically mention LDCs in the context of trade preferences, even though the creation of the category was in the very early stages. Their discussion reflects the fact that both writers look at UNCTAD as well as the GATT. UNCTAD was the focus for the growing debate as to whether more should be done to assist the poorest developing countries, therefore, it is unsurprising that they have picked up on this term. Importantly, the literature also shows that the idea of providing special treatment to developing countries began with the ITO negotiations and was subsequently incorporated into the GATT, particularly from the 1960s onwards.

The theme of special treatment for developing countries continues in the literature on the GATT's Tokyo Round, and was a significant focus for many writers in the late 1970s and early 1980s. The Tokyo Round was particularly important for LDCs, as it was the first GATT round after the creation of the category, and the fact that the newly created category was specifically mentioned in the Tokyo Declaration at the start of the Round meant they are discussed to some extent in the literature (see Chapter Three for more details). Berger (1979) and Meier (1980) focus explicitly on developing countries and their proposals for special and differential treatment in the Tokyo Round. Meier (1980) assessed the results of the round from the point of view of the developing countries and acknowledged that the issue of whether there should be different trade rules for countries at different stages of development continued to be an issue for the GATT during the Tokyo Round (Meier, 1980: 243). Meier (1980) acknowledged the significance of the Tokyo Round's Framework Agreement for developing countries and mentions LDCs in this context, although there does seem to

be some confusion between 'less' and 'least' developed countries. Berger (1979) also acknowledged the significance of the Tokyo Round for 'less developed countries' but saw the 'enabling clause', which allowed special treatment for developing countries, as a compromise between the developed and the developing countries and was pessimistic about the future of special treatment for developing countries in the GATT (Berger, 1979: 567 and 579).<sup>19</sup>

One of the key works on the Tokyo Round is that by Gilbert Winham (1986) who focuses in-depth on the round and the negotiation of the key issues. Whilst Winham's focus is mainly on the roles of the developed countries in the Tokyo Round, especially the US and EC, he does note that the developing countries were more active in the Tokyo Round than the Kennedy Round, raising several issues and does discuss these to some extent (Winham, 1986: 272 and 274-5). He argues that despite divisions between the developing countries, particularly Latin America and Africa, which affected their cohesion as a group, the developing countries did begin to have an impact on the GATT (Winham 1986, 273). Winham also specifically mentions LDCs and refers to the problems caused by references to them in the Tokyo Declaration but does not elaborate on these in any detail (Winham, 1986: 93-94). The additional special treatment for LDCs called for in the Declaration raised the issue of differentiation between developing countries, which the non-LDCs were against in case this affected their preferential treatment, while the developed countries favoured the distinction as it introduced the idea of 'graduation' for developing countries (Winham, 1986: 94). The inclusion of the 'enabling clause' in the Round was the pay-off for the introduction of the graduation idea. Winham does, however, mention the fact that very few developing countries signed the Tokyo Round accords, reflecting their dissatisfaction with the outcome of the round (also see Meier, 1980). What is significant about works looking at the Tokyo Round is that most of them mention LDCs to some degree due to their inclusion in the Tokyo Declaration. The terminology of LDC also began to appear more often in studies of the GATT and in GATT documents from this point, reinforcing the differentiation

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<sup>19</sup> The 'enabling clause' is officially known as the Decision on Differential and More Favourable Treatment, Reciprocity and Fuller Participation of Developing Countries.

between developing countries and the recognition of the category of LDCs within the GATT.

Hudec (1987) provides one of the key books on developing countries in the GATT, in terms of the legal relationship between developed and developing countries from the establishment of the GATT up to the mid-1980s. Hudec argues that the developing countries in the GATT never accepted the same discipline as developed countries but always sought special treatment. These demands for special treatment were representative of 'the history of the GATT's legal relationship with developing countries' and were aided by the growing awareness of the issue of development in the GATT from the 1960s (Hudec, 1987: 4). This new awareness helped the developing countries to get special treatment onto the GATT agenda and provided them with acknowledgment of the legitimacy of their calls for exemption from the GATT legal discipline (Hudec, 1987: 15). Part of the reasoning behind the exemptions, particularly from the point of view of the US, was related to the fact that legal concessions were easy to give and in order for the US to get the trade system it wanted i.e. one with as wide a membership as possible, it was prepared to compromise on this issue (Hudec, 1987: 18-19). The changing of the US agenda by the developing countries was also due in part to the 'welfare obligation' i.e. the idea that developed countries had an obligation to help poorer countries. The situation that Hudec depicts, is one in which the GATT and its key participants were prepared to provide special treatment to developing countries in order to get them to join and remain in the organisation.

The book is important in that its focus on the legal side highlights the legal norms that were established in the GATT – reciprocity, Most Favoured Nation (MFN) and non-discrimination. Hudec argues that developing countries in the GATT faced a 'no-obligations legal policy' which meant that they did not face the same legal obligations as developed country members. However, he does not necessarily believe that this was beneficial to the developing countries in the long run concluding

that developing countries would have been better served by a return to reciprocity and MFN relationships in the GATT, a view echoed by Hart and Dymond (2003). Hudec characterised changes in developing countries legal engagement with the GATT as going through various stages from reciprocity to non-reciprocity. The first stage, between 1958 and 1963 led to demands for a new legal relationship by developing countries, once this idea was accepted, the second stage took place between 1964 and 1971 with the new relationship being defined in more detail. The final stage took place between 1972 and 1979 with developing countries testing the new relationship (Hudec, 1987: chapter 3-5). The actions of the developing countries ultimately resulted in what Hudec described as a policy of non-reciprocity, particularly for the less advanced developing countries, which then paved the way for the LDCs in terms of the idea that reciprocity was not expected from them.<sup>20</sup> Hudec's focus on non-reciprocity and special treatment for developing countries is important in terms of the case study on market access which will be examined in Chapter Five, as he provides a background information on the issue, particularly in terms of special treatment for tropical products and the positions of the US and EC. Hudec's work is particularly important in terms of this thesis as he indicates that a norm of special treatment for developing countries existed in the GATT, from which the norm of special treatment for LDCs developed. This helps to partially explain the puzzle posed in the introduction of this thesis of why the WTO should focus on issues of importance to the LDCs.

The move towards non-reciprocity in the GATT was enshrined in the concept of special and differential treatment (SDT) for all developing countries. Whalley (1990) argued that there was a change in the concept of SDT between the Tokyo and Uruguay Rounds, with its meaning changing in two ways (Whalley, 1990: 9). Firstly, the interpretation of SDT changed from a negotiating point of view, with developing countries following their national interests rather than the interests of the developing country bloc, as they had done in previous rounds. This meant that the focus was on 'protecting and preserving' SDT rather than pushing for further

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<sup>20</sup> The active involvement of developing countries in the GATT is a view echoed more recently by Drache (2000), Wilkinson and Scott (2008) and Ismail (2008).

improvements to it (Whalley, 1990: 11). Secondly, the Uruguay Round agreements changed the content of SDT, with many of the decisions regarding SDT in the Uruguay Round focused explicitly on LDCs, thus introducing the idea of the tiering of SDT benefits across developing countries, with LDCs receiving the most benefits (Whalley, 1990: 13). In his later work, Whalley (1999) also argues that SDT in the late 60s and early 70s had both market access and a right to protect internal markets components, while by the Uruguay Round it had become more concerned with special adjustment problems, delays on implementation, exemptions and best endeavour (Whalley, 1999). Whalley's work is important as it recognised that LDCs were being provided with additional special treatment to the rest of the developing countries, but he does not necessarily see this as a norm, and focuses more on developing countries generally than LDCs. However, he does recognise that SDT for all developing countries may be difficult to maintain, hinting that a more focused approach may be more achievable (Whalley, 1990).

The Uruguay Round 'refocused' earlier SDT discussion onto adjustment and implementation capacity problems facing developing countries (Whalley, 1990: 14). This new focus echoed the Tokyo Round graduation discussions and corresponded with a move towards more reciprocity from developing countries especially the more advanced ones such as India and Brazil. This subtle 'refocusing' of SDT meant that

Rather than ask what special rights to protect and special access benefits developing countries should have for their growth and development needs, the discussion was about what special treatment developing countries should receive as they integrate into the world economy, either through acceptance of WTO decisions, or through their own development (Whalley, 1990: 18).

Works looking at the GATT and developing countries demonstrate the changing ideas relating to development in the international system, as well as changes in key players in the GATT. The ITO contained a focus on 'economic development' which was wider than simply the reconstruction of European countries. This focus was largely the result of the activities of developing countries in Havana, but with the rejection of the ITO Charter by the US and the elevation of the GATT, much of the

focus on economic development was initially lost. However, developing countries within the GATT continued to push for special treatment which resulted in the introduction of special treatment for developing countries. During the Uruguay Round the special treatment embodied in SDT was changed to introduce the idea that LDCs should receive more special treatment than others. The literature therefore clearly indicates that by the Uruguay Round the LDCs had begun to receive special treatment in the GATT, but there is little focus on it other than an acknowledgement. There is also no discussion of this special treatment in terms of it being recognised as a norm in the trade system.

### ***WTO and Developing Countries***

In the literature on the WTO and developing countries three key themes are apparent. Firstly much of the early literature did not differentiate particularly between developing countries, secondly the increase in the number of negotiating coalitions in the WTO has led to much more of a focus on differentiating developing countries, particularly since the start of the Doha Round; and finally, while more works are beginning to discuss LDCs in more detail, those that do, do not look at them in relation to norms. This indicates that there is a growing acceptance of the category of LDC within the WTO literature. However, there is no recognition that providing special treatment to LDCs has introduced a new norm into the WTO. This section will look briefly at these themes before reviewing the literature regarding the case studies used in this thesis.

Much of the early literature on trade and developing countries in the WTO tends to view these countries as a homogenous group, and does not usually separate out the LDCs from the rest, other than in passing reference. A good example of this is provided by Michael Trebilcock and Robert Howse (2001) in their textbook *The Regulation of International Trade*, which lists LDCs in its index with the note ‘see developing countries’ (Trebilcock and Howse, 2001: 604). Further examples of this are seen in Martin and Winters (1996) and Odell (2006). Martin and Winters do not mention LDCs either in the abbreviations or in the index of their book, although

some references are made to them in the text (Martin and Winters, 1996: 19,24,35,64,71,76,143,145,146,177,246), while in Odell's edited book no mention of LDCs as a group is made in the index, although individual LDCs are referenced in the text (Odell, 2006).<sup>21</sup> These books are representative of a general neglect of LDCs in texts dealing with developing countries and trade.

Like Martin and Winters (1996), Hoekman and Kostecki (2001) also focus largely on developing countries as a whole, although they do acknowledge LDCs especially with regard to the implementation of agreements (Hoekman and Kostecki, 2001: 398-401). However, they do not include the terms 'LDCs' or 'Least Developed Countries' in their index. Hoekman and Kostecki (2001) believe that the participation of developing countries in the WTO has varied between 'reciprocity and disengagement.' (Hoekman and Kostecki, 2001: 385). Like Hudec (1987), they identify three stages:

1. Small scale membership of low-income countries in the GATT based on a formal parity of obligations. (However, they do note that developing countries sought special treatment from the start.)
2. Broadening of developing country membership based on the concept of more favourable and differential treatment.
3. Deepening integration into the GATT/WTO system with a return to reciprocal relationships.

They also identify timescales for these three stages, with stage one occurring between 1947 and 1964, stage two between 1964-1986 and stage three happening post 1986 (Hoekman and Kostecki, 2001: 385). However, in looking specifically at LDCs, the last stage of Hoekman and Kostecki's (2001) engagement of developing countries with the GATT/WTO does not correspond with events. For LDCs, despite the deepening integration into the WTO, there has been a move away from reciprocal relationships to one of non-reciprocity. Key evidence of this was provided by the Hong Kong Ministerial in 2005, which called for those countries in a position to do

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<sup>21</sup> This may be partly due to the focus on the book which is the WTO and NAFTA.

so to provide duty-free and quota-free access to LDCs (WTO, 2005s: 8-9, paragraph 47).<sup>22</sup> A fourth stage could therefore also be identified – this being the introduction of special treatment for LDCs. The fourth stage runs parallel to the second and third stages, beginning as it did in 1973 with the start of the Tokyo Round. The timeline and events of this fourth stage will be discussed in more detail in Chapter Three.

Despite the lack of differentiation of developing countries in the early academic work on the WTO, a recent trend has seen an increase in the acknowledgement of differences between developing countries particularly in relation to the negotiating coalitions for example the G20 (Narlikar and Tussie, 2004; Maswood, 2007) and the Africa Group (Pesche and Nubukpo, 2004; Lee, 2007; Lee, 2011). This trend has been particularly apparent since the collapse of the Cancun Ministerial in 2003 focused increasing attention on the coalitions. For LDCs this tendency is reflected in more recent publications, which often include some discussion about the LDCs Group. Key examples here are Jawara and Kwa's (2003) *Behind the Scenes at the WTO*, Amrita Narlikar's (2003) *Bargaining Coalitions in the WTO*, and David Deese's (2008) *World Trade Politics*. Jawara and Kwa's book focuses particularly on the Doha Ministerial and discusses the role that LDCs (amongst others) played in the negotiations, highlighting the strength and coherence of the LDC group (Jawara and Kwa, 2003: 23). Narlikar's book includes a small section on the LDC coalition and suggests that the references to the LDCs in the Doha Declaration means that they cannot be ignored (Narlikar, 2003: 85). Deese reinforces this view by noting the prominence of the LDC coalition since the Seattle Ministerial (Deese, 2008: 169). The importance of the WTO in assisting the LDCs to improve their economic standing via trade was also recognised by Sutherland et al (2005) who argued that LDCs needed to derived real benefits from their membership of the WTO (Sutherland et al, 2005: 17). More research is also beginning to be done into LDCs and specific areas of the WTO's negotiations. Examples of work focusing specifically on LDCs and trade are Brenton (2003) whose paper looks at the impact of the EU's Everything But Arms (EBA) on LDCs and Smythe's (2006) paper on

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<sup>22</sup> This call was aimed at both developed and developing countries. Previous calls for duty free access for LDCs were aimed largely at developed countries.

LDCs and trade negotiations, although neither of these papers is part of a large research project on LDCs and trade. The approaching Fourth UN Conference on LDCs in May 2011 also means that several discussion papers have been published examining the trade of LDCs, their position in the trade regime and their future prospects (Kaushik, 2009; Bhattacharya, 2010; Cosbey 2010; Collier, 2011).

Similarly, a growing number of papers have been published looking at either individual LDCs or the LDC Group in specific issue areas dealt with by the WTO such as TRIPS and GATS (For example Moon, 2008; Crosby 2009). This is also true in the areas of the case studies which this thesis uses. A growing number of articles and organisations are beginning to focus on the accession of LDCs to the WTO (see UNCTAD, 2004; Grynberg and Joy, 2006; Adhikari and Dahal, 2004; Chea and Sok, 2005; Rajkarnikar, 2005; Gray, 2005; Sauvé, 2005). These articles typically focus on a specific country's WTO accession (Grynberg and Joy, 2006; Chea and Sok, 2005; Gray, 2005; Rajkarnikar, 2005) or a comparison of WTO accession experiences, particularly of Cambodia and Nepal, as they were the first two LDCs to accede to the WTO (UNCTAD, 2004; Adhikari and Dahal, 2004; Sauvé, 2005). Few articles compare the accession experiences of LDCs who joined the trade regime during the GATT days to those that have joined since the WTO was established. Several articles have also been published looking at the issue of cotton, but few of these look at it from the point of view of the LDC group, choosing instead to focus on either the Africa Group or the Cotton Four (Baffes, 2003; Pesche and Nubukpo, 2004; Sumner, 2006; Lee, 2007 and 2011). Sumner (2006) is the exception here, focusing on the LDC Group as well as the Cotton Four. For the market access case study, Williams (1994) and Grossman and Sykes (2007) helped to provide context and background on the Generalised System of Preferences scheme (GSP) which most developed countries offered to developing countries from the 1970s, but neither of these texts are specifically focused on LDCs. The literature on the WTO and developing countries builds on the previous GATT works demonstrating the more active involvement of developing countries in the WTO and show greater acknowledgement of LDCs and the importance of trade to their

development, particularly those written in preparation for the LDC IV Conference. This shows that there has been an increased awareness of the LDCs and their role within the WTO as well as their special treatment. However, where special treatment for LDCs is mentioned in these articles none of them view it as a norm of the WTO, thus failing to acknowledge how this special treatment has become embedded in the organisation and is having an impact on the negotiations. This is what differentiates this thesis from the other approaches, and where it makes its contribution to the literature on the WTO.

### **Norms and the GATT/WTO**

Few studies of trade negotiations in the GATT and the WTO have focused explicitly on the role of norms, with most discussions of norms being largely concerned with the nature of the legal norms created by the agreements rather than looking at the power of international norms to influence outcomes. A review of the literature on the GATT/WTO demonstrates that like Ostry (1997) and Wilkinson (2000) most writers explicitly acknowledge the norms on which the trade system is based i.e. reciprocity and non-discrimination. This is reinforced by Cortell and Davis (2005) who look explicitly at norms in the trade organisation, although not in relation to developing countries (Cortell and Davis, 2005: 10). The norm of non-discrimination was included in the preamble to the GATT. However, for LDCs it is the inclusion of discriminatory or special treatment which has become the norm, as the next chapter will demonstrate. The key norms of reciprocity and non-discrimination shaped behaviour within the trading system. Many writers refer to these as the 'principals' on which the GATT/WTO is based and each has an effect on the behaviour of the members (Curzon and Curzon, 1974: 309; Rhodes, 1993:12, Ostry, 1997: 69; Wilkinson, 2000:3). It is because of this behavioural impact that it can be argued that they are the norms on which the trading system is based. Often seen as being 'legal' norms i.e. backed by some form of international law, they need to be considered when looking at norms and the WTO particularly as they are often contradicted by the norm of special treatment for LDCs.

## ***Reciprocity***

Reciprocity is a key behavioural norm within the WTO, as well as a legal norm for developed country members. Reciprocity is concerned with the idea that by giving trade concessions to other countries, members receive trade concessions in return of roughly the same value. It therefore affects the behaviour of states in negotiations where they assess whether concessions offered match concessions given. Different ways of defining reciprocity and the different perceptions of it by developed and developing countries has meant that this norm has operated differently depending on the type of country involved, thus there is a link between reciprocity and identity. Most writers looking at the GATT and the WTO mention reciprocity to some extent (for examples see Dam, 1970; Curzon and Curzon, 1974; Hudec, 1987; Tussie, 1987; Rhodes, 1993; Wilkinson, 2000). Of particular interest here are Keohane (1986) who looks more widely at reciprocity in international relations, Rhodes (1993) who examines reciprocity in the context of US Trade Policy and the GATT, and Hudec (1987) who looks in particular at the notions of reciprocity and developing countries.

Keohane (1986) defines reciprocity as ‘exchanges of *roughly equivalent* values in which the actions of each party are contingent on the prior actions of the others’ (Keohane, 1986: 8, italics in original).<sup>23</sup> It is the ‘at least rough equivalence’ that he believes is key to understanding reciprocity, although he recognises the difficulty in determining exact equivalence (Keohane, 1986: 6; Rhodes, 1993: 8). The evaluation of equivalence by governments in biased ways can lead to problems in two ways. First, by prioritizing their own interests, countries may demand to be overcompensated leading to conflict, and second, the emphasis on exact equivalence may lead to deadlock in negotiations (Keohane, 1986: 10-11). Equivalence may also cause problems in situations where the countries involved are unable to give ‘exchanges of roughly equivalent values’ as highlighted by Winham (1986: 364) or where they are not required to. This is often the case with developing countries, and

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<sup>23</sup> Although this will not be discussed in depth here, Keohane (1986) does note that the concept of reciprocity also ‘... implies returning ill for ill as well as good for good...’ which can also have an impact on the WTO (Keohane, 1986: 10). The Boeing/Airbus dispute case (Dispute Case DS316) represents a case in point, with the US and EC each raising dispute settlement procedures against the other (WTO, 2005p).

especially LDCs in the WTO. This is because two types of reciprocity can be identified - specific reciprocity and diffuse reciprocity - which means that reciprocity, can also apply to relations between countries at different stages of development (Keohane, 1986: 6). Specific reciprocity occurs where the concessions exchanged are of roughly equivalent value and existing obligations are known by the actors involved (Keohane, 1986: 4). This is the normal meaning of reciprocity in economics and game theory. Diffuse reciprocity occurs in situations where 'the definition of equivalence is less precise' and a country's partners may be a group of countries (such as other WTO members) rather than individual actors, and events tend to take place over a longer timescale (Keohane, 1986: 4). In these situations, obligations are important and thus 'diffuse reciprocity involves conforming to generally accepted standards of behaviour' (Keohane, 1986: 4). This reference to 'generally accepted standards of behaviour' links diffuse reciprocity to the behavioural component of norms and in the case of the WTO, this means most states will conform to the norms of the organisation and provide some form of reciprocity where they are required to.

Multilateral organisations, such as the WTO, create situations where diffuse reciprocity tends to be the norm, with members expecting to receive 'a rough equivalence of benefits' eventually (Ruggie, 1998: 110) and a balance between members of the organisation (Keohane, 1986: 7).<sup>24</sup> In looking at the general norms operating in the WTO, it is diffuse reciprocity, with its emphasis on 'rough equivalence of benefits' for the group as a whole, which is important (Wilkinson, 2000: 3). However, the assessment of equivalence in trade negotiations is a key issue which can significantly affect their outcome. This has been further complicated by changes in the type of reciprocity expected from developing countries, which in turn means that the norm of reciprocity has changed. The problem with reciprocity in the GATT was that its meaning was not defined in the text, but left open to different interpretations between countries despite the fact that it was 'one of the

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<sup>24</sup> Similarly, Ruggie notes that 'Bilateralism, in contrast, is premised on specific reciprocity, the simultaneous balancing of specific quid pro quos by each party with every other at all times' (Ruggie, 1998: 110).

most vital concepts in GATT practice’ (Tussie, 1987: 23; Dam, 1970: 50).<sup>25</sup> The focus by developed countries on reciprocity in trade concessions during the GATT was seen to be harmful to the growth of developing countries and led to the focus on special treatment for developing countries (Tussie, 1987: 24).

The introduction of special and differential treatment (SDT) for developing countries, within the GATT, via the ‘enabling clause’ in 1979 meant that ‘non-reciprocity’ became the norm for developing countries (Rice, Green, Wiggerthale and Reichart, 2003). However, as pointed out by the Sutherland Commission, with the transition from GATT to WTO, it was perceived that some of the larger developing countries should move towards more specific reciprocity (Sutherland et al, 2005: 28, paragraph 91). The renewed emphasis on reciprocity by the developed members of the WTO from the larger developing countries such as Brazil, India and China, and their resistance to this has helped to create the current deadlock in the Doha Round. The focus on reciprocity between developed countries and non-reciprocity for developing countries within the GATT meant that the norm of reciprocity clashed with the norm of non-discrimination. The non-reciprocity allowed for developing countries and LDCs from the 1970s onwards was effectively a form of positive discrimination for these states.<sup>26</sup> The issue of non-reciprocity for LDCs is particularly important in terms of access to other countries markets – this issue will be dealt with in Chapter Five.

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<sup>25</sup> Paragraph 8 of Article XXXVI of the GATT specifically mentions reciprocity. It states that developed countries do not expect reciprocity for commitments made by them in trade negotiations to reduce or remove tariffs and other barriers to the trade of developing countries (see the WTO, 1999b).

<sup>26</sup> Hudec (1987) reflects this situation, noting that ‘after years of debate and of gradual compromising, all the key ideas advanced by developing countries – non-reciprocity, preferences, special and differential treatment – were accepted at the formal level during the 1970s’ (Hudec, 1987: 181).

## ***Non-Discrimination***

Like reciprocity, non-discrimination is one of the ‘founding’ norms of the international trade system.<sup>27</sup> The norm of non-discrimination can be split into two separate parts MFN and national treatment – and is designed to ensure that no member is treated more favourably than any other. The concept of MFN rests on the idea that all countries should be given ‘equal tariff treatment’ despite any lack of competitiveness or bargaining power (Tussie, 1987: 25; Sally, 2004: 1071; Hoekman and Kostecki, 2001: 29-31; Tussie, 1987: 25; also see UN, 1964b: 23).<sup>28</sup> Thus, no country should receive better treatment in terms of trade concessions than any other.<sup>29</sup> The MFN clause can be either conditional or unconditional. If it is unconditional, countries cannot discriminate against anyone with whom they have an agreement. However, with conditional MFN, parties to the agreement need to provide similar concessions to benefit from MFN (Tasca, 1938: 102, as quoted in Keohane 1986: 16). Unconditional MFN treatment links to diffuse reciprocity, as concessions provided to one party are automatically extended to others (Keohane, 1986: 23). The GATT contained a legal obligation to extend MFN treatment to other GATT members, although it was subject to various exceptions for customs unions and free-trade areas (Article 24) and for developing countries (Article 36) (Keohane, 1986: 23; Hoekman and Kostecki, 2001: 30). However, as ‘the benchmark for MFN is the best treatment offered to any country’ non-members of the GATT or WTO may be included (Hoekman and Kostecki, 2001: 30). The exceptions to MFN introduced by regional trade agreements represent a weakening of the norm of non-discrimination.<sup>30</sup> Similarly, the introduction of preferences for developing countries

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<sup>27</sup> The Sutherland Commission report states that it is ‘at the heart of the GATT’ (Sutherland et al, 2005: 19, paragraph 58).

<sup>28</sup> Prebisch stated that ‘The most-favoured nation clause is actually the foundation stone of GATT’ (UN, 1964b: 23).

<sup>29</sup> According to the report on The Future of the WTO commissioned by the previous Director-General, Mr Supachai ‘The MFN clause was regarded as the central organizing rule of the GATT, and the world trading system of rules it constituted. It required that the best tariff and non-tariff conditions extended to any contracting party of the GATT had to be automatically and unconditionally extended to every other contracting party’ (Sutherland et al, 2005: 19).

<sup>30</sup> Sutherland et al believe is due to the number of ‘customs unions, common markets, regional and bilateral free trade areas, preferences and an endless assortment of miscellaneous trade deals...’ (Sutherland et al, 2005: 19). The Warwick Commission report in 2007, echoed the findings of the Sutherland Report noting that the majority of trade is now on a non-MFN basis (Warwick Commission, 2007: 50). For more on the perceived impact of Preferential Trade Agreements on the WTO, see Bhagwati (2008).

and LDCs has effectively meant that discrimination has been introduced into the WTO.

National treatment, as the other component of non-discrimination, is designed to ensure that states do not treat products produced in their own countries more favourably than those from other countries, particularly in terms of local taxation regimes. An imported product should not attract more internal tax than a local product. Similarly, in the case of non-tax policies, a foreign product should receive the same treatment as similar domestically produced products (Hoekman and Kostecki, 2001: 30). National treatment is designed to ensure that commitments to liberalise markets are not compensated for by domestic taxes or similar measures (Hoekman and Kostecki, 2001: 31). This gives exporters greater confidence about the regulatory situation in foreign markets and helps to create stability in the trade system (Hoekman and Kostecki, 2001: 31). National treatment clauses are found in all of the WTO's three main agreements – GATT, GATS and TRIPS. However, the principle is handled slightly differently in each agreement (WTO, 2005b).<sup>31</sup> National treatment is a general obligation in the GATT, but not in the GATS (Hoekman and Kostecki, 2001: 31). National treatment in the GATS is a sector-specific commitment, this means that it only applies to a sector if a member of the WTO has committed to apply it and has not made any limitations or exceptions in their commitments schedule (Hoekman and Kostecki, 2001: 250-253). Under TRIPs, national treatment depends on 'the exceptions already provided in ... the Paris Convention (1967), the Berne Convention (1971), the Rome Convention or the Treaty on Intellectual Property in Respect of Integrated Circuits' (WTO, 2005b). The inconsistency in the application of national treatment, as with the exceptions to the MFN rule, again weakens the norm of non-discrimination. The move away from reciprocity for developing countries in the GATT following the Tokyo Round as well as the inclusion of special and differential treatment (SDT) from 1979 meant that exceptions to the norm of non-discrimination were created and the decision on

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<sup>31</sup> National Treatment is dealt with in Article 3 of the GATT, Article 17 of GATS and Article 3 of TRIPS.

measures in favour of LDCs following the Uruguay Round extended these exceptions to the LDCs.<sup>32</sup>

The literature on key norms, examined in this section, suggests that the WTO's norms derive from the GATT, and are in direct conflict with the norm of special treatment for LDCs. The move away from reciprocity for developing countries and the introduction of discrimination to the trade regime suggests both a weakening of these norms and the introduction of a new norm to the GATT/WTO – that of special treatment for developing countries. With the acceptance of the norm of special treatment for developing countries, it was difficult for GATT/WTO member to reject the idea of special treatment for LDCs, although it is not perceived as a norm of the WTO.

### **Conceptual Approaches to the GATT/WTO**

Having reviewed some of the existing literature in terms of what have been said about special treatment for developing and Least Developed Countries, this section will review some of the main theoretical approaches applied in researching the GATT/WTO and whether these approaches can explain the special treatment LDCs receive. In conceptualising the role of the LDCs, the main theoretical approaches which will be examined here will be reviewed in terms of power, principles and institutions. Each of these approaches will be examined briefly before focusing on whether these can be used to explain the role of LDCs in the trade regime.

In the case of the GATT/WTO, like international politics generally after the Second World War (WWII), the US is seen as the major player in creating and maintaining the system. Wilcox (1949) demonstrated that the American ideal of free trade helped to create the Charter for the ITO and from this the GATT, with many of the ideas in these documents derived from US policies, a view which is echoed by Irwin (2008).

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<sup>32</sup> The Decision on Measures in Favour of LDCs was one of the outcomes of the Uruguay Round (see WTO (1999b: 384-5).

Both Wilcox (1949) and Irwin (2008) highlight the calls for the removal of trade barriers and demand for equal trade terms for all countries in President Woodrow Wilson's Fourteen Points at the end of World War One (WWI) as evidence of the US's leadership role. Irwin argues that Cordell Hull was instrumental in getting the US Congress to pass the Reciprocal Trade Agreements Act (RTAA) in 1934, which delegated authority in trade matters to the executive branch of the US government and paved the way for the US to take the leading role in the world economy (Irwin, 2008: 7; also see Curzon and Curzon, 1974). The dominance of the US in shaping the format of the GATT and trade policy generally is demonstrated by several writers, particularly those who focus on the negotiations for the ITO and the GATT. For example, Johnson's (1967) article is a report of a conference reviewing US economic policy towards developing countries, held in 1965 following the first UNCTAD meeting and is important as it reflects US thinking on development at the time. Of particular interest is the section on the trade in manufactured goods which looks at negotiations in the GATT and the lack of involvement of developing countries. Johnson mentions that the idea of granting preferences to developing countries was not viewed favourably by the US participants of the meeting, although it was thought to be politically necessary due to the European preference system. The issue of preferences was subsequently raised at later UNCTAD Conferences and was eventually backed by the US with its acceptance of the Generalised System of Preferences (GSP).<sup>33</sup> A further example is provided by Evans (1971) who notes that when the US Trade Agreements program was established in 1934, it introduced the negotiation of reductions in individual tariffs in exchange for reciprocal concessions, a practice which continued in the GATT until the Kennedy Round (Evans, 1971: 5). Rhodes (1993) highlights the fact that the bilateral principal supplier method of GATT negotiations was derived from the 1934 US Reciprocal Trade Agreements Act, as was the focus on reciprocity in trade negotiations (Rhodes, 1993: 86). While Drache (2000) notes that many of the escape clauses contained in the ITO were derived from 'US practice and US trade legislation' and these clauses were also included in the GATT (Drache, 2000: 23). The dominance of the US helped to define and shape the GATT particularly in the early days when its dominance was

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<sup>33</sup> GSP is discussed in more detail in Chapter Five on Market Access.

unchallenged. However, this situation changed in 1958 with the creation of the EEC. The changing power relations within the GATT/WTO have the potential to have a major impact on the treatment of LDCs.

In explaining the treatment of LDCs in the GATT/WTO, the implication is that the dominant state has somehow championed this category of country and is the reason for them receiving special treatment. This appears to have been true in the early days of the LDC category with the US pushing for the introduction of the category (Winham, 1986). However, it does not explain why four LDCs would risk raising an issue which was particularly aimed at a practice carried out by the most powerful state i.e. the issue of cotton subsidies. If these states were trying to challenge the dominant position of the US, without the economic power to match, this challenge would clearly be ineffective. However, the challenge by the LDCs in the WTO captured the imagination of NGOs and other developing countries who have since backed the LDCs in their calls for the removal of cotton subsidies. The high profile of the issue and its continued relevance does not equate to the dominant power of the US. This implies that there are other explanations as to why the issue has not been resolved and why LDCs appeared to have successfully challenged the US.

The principles of the trade regime were also influenced by the dominance of the US. The US post-war vision for world trade was one 'of a non-discriminatory, multilateral trading system' (Ikenberry, 1992: 289; also see Ruggie, 1982) and based on negotiation and trade liberalisation (Winham, 1986: 363). Wilcox's (1949) approach to the intended trade system encapsulated by the ITO advocates idealist liberalism. His liberal thinking is illustrated in his book a *Charter for World Trade*, in which he notes that the purpose of the ITO would be

to substitute cooperation for conflict in international commerce, in industrial stabilization, and in economic development, by providing a medium through which nations may regularly consult with one another concerning the international consequences of national policies (Wilcox, 1949: 53).

The idea that free trade would maintain peace was derived from the liberal view that countries that traded with each other would not go to war with each other, thus creating a stable international system (Ruggie, 1982). The US wanted to create a non-discriminatory liberal trade system (Curzon and Curzon, 1974: 299); a view which is also reinforced by Drache (2000) who points out that whilst the ITO began as an ‘American project’ it did not remain one once the developing countries became involved in designing the ITO, as they changed the US agenda (Drache, 2000: 6). A liberal approach to trade policy would entail all countries liberalising their markets and no special preferences for any group of countries such as the LDCs. This is clearly not the case. Liberalism demands a focus on reciprocity between members of the WTO which ‘better facilitates making trade policy between parties that are equal than between those that are unequal’ (Winham, 1986: 364). The special treatment for LDCs in the WTO is clearly at odds with the liberal approach to trade policy, so again this approach is problematic in explaining why LDCs receive special treatment. Winham also argues that the establishment of rules in the trade arena has added an institution building or regime-building process (Winham, 1986: 367). These institutional theories must also be considered in looking at approaches to the WTO.

Institutional approaches to the GATT/WTO focus on the design and structure of the organisation and how this affects the operation of the organisation.<sup>34</sup> The WTO like the UN is on the surface a very structured organisation. Members meet in organized committees and councils to discuss issues of concern. However, beneath this layer of the organization there is a whole sub-layer of informal committees and country groupings which can and do have a significant impact on the organization. Institutional approaches focus either on the formal organisation structure dealing with issues such as ministerial meetings, the role of Councils and Committees and

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<sup>34</sup> For an early example of an institutional approach to the GATT see Curzon and Curzon (1974).

the agreements of the WTO, or the informal side to the organisation.<sup>35</sup> The informal aspects of the WTO are events such as Mini-Ministerials, green room meetings and informal groups or coalitions. Key writers taking an institutional approach to the WTO include Jawara and Kwa (2003), Narlikar (2004), Wilkinson (2001 and 2006) and Wolfe (2004 and 2006b). Wolfe focuses specifically on the growing role of informal negotiations within the trade system particularly mini-ministerials. Wolfe's research has shown that the number of mini-ministerials increased rapidly in the Doha Round, and typically consisted of a core group of the richest countries (Wolfe, 2004: 39-41); adding fuel to claims that the poorest countries are marginalised within the WTO by being excluded from these meetings which are often held to advance the negotiations. Similarly, Lee (2004) found that developing countries and LDCs were rarely consulted during the deliberative process and those that were had little impact on the drafts and final texts of the declarations, indicating that the institution was largely being shaped by the more developed countries (Lee, 2004).

Wolfe's findings were echoed by research into the Green Room meetings by Jawara and Kwa (2003) who also criticised these meetings for excluding developing countries, and for making deals which do not involve the majority of the WTO membership. Jawara and Kwa (2003) focus particularly on the Doha Ministerial and the events surrounding it, balancing formal negotiations with informal negotiations and events following discussions and interviews with those present at the Ministerial. Jawara and Kwa also look at the effects of structural bias such as the constitution of the WTO Secretariat. They note that only a fifth of WTO staff are from developing countries, and believe that most of the developed country nationals in the Secretariat have little or no experience of the reality of developing countries (Jawara and Kwa, 2003: 290). Theoretically, this should not matter as the Secretariat has relatively little power due to the 'member driven' nature of the WTO, although allegations of the Secretariat pressurising members to agree to the launch of a new round in Doha have been made (Jawara and Kwa, 2003: 291).

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<sup>35</sup> It should be noted however, that most writers look at ministerial meetings to some extent due to the importance of these events in WTO decision-making and agenda setting, as well as the politics of these events.

Wilkinson (2000) looks at the structure of the WTO and traces its evolution from the ITO and GATT days, arguing that the WTO has expanded the scope of the international trade regime from the narrow scope of the GATT to include areas such as services and intellectual property rights, as well as bringing agriculture in to the domain of the trade organisation. In doing so it has also increased ‘the regulative impact of a trade body on national legislation’ for all members of the organisation (Wilkinson, 2000: 64). Wilkinson’s focus on the structure of the WTO is also reflected in his later work, which argues that layers of structural asymmetries within the WTO have disadvantaged the developing countries within the organisation and continues to affect them (Wilkinson, 2005). This could indicate that special treatment offered to LDCs is an attempt to make amends for the disadvantages that they face. Wilkinson’s work is also of particular relevance in dealing with the question of whether the special treatment provided to LDCs is merely rhetoric, particularly his discourse analysis of the language of crisis often used in relation to the negotiations in the GATT and the WTO (Wilkinson, 2007). He argues that the use of language has helped to shape the trade organisation and propel forward trade negotiations because of the fears of what would happen if the organisation collapsed. Wilkinson focuses on the role that language plays in international politics and traces how the language of crisis has been used since the GATT. Particularly important is Wilkinson’s claim that ‘language shapes behaviour’ (Wilkinson, 2007: 11).<sup>36</sup> If language can be seen as important in times of crisis, then it could be argued that it can also be seen as important in terms of the LDCs. Further if ‘language shapes behaviour’ it could also be said to have an impact on the norms of the organisation which also shape behaviour. Thus repeated references to special treatment for LDCs will eventually impact on the behaviour of the members as they try to comply with this norm.

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<sup>36</sup> Interestingly in the 2009 version of this paper the phrase has been modified to ‘language can shape behaviour’ (Wilkinson, 2009: 602).

The literature on the GATT/WTO rounds shows the changing dynamics in the developed country leadership of the GATT. Initially leadership changed from the US to US/UK, then US/developed countries to US/EC (for example see Wilcox, 1949; Evans, 1968; Winham, 1986; Wilkinson, 2006). These changing dynamics have continued in the WTO. Particularly significant in the Doha Round has been the move from US/EC or the Quad (US, EC, Japan and Canada) as key players to the inclusion of large developing countries such as India, China and Brazil. This trend is likely to continue in the future following the recent announcement that China has officially become the second largest trading country. The changing leadership dynamics could potentially have an impact on the special treatment which LDCs receive. For example Lanoszka (2003) cites Cancun as a 'paradigm shift' in relations between developed and developing countries in the WTO, with developing countries now attempting to correct the power imbalances in the organisation (Lanoszka, 2003). Drahos (2003) also looks at the issue of power imbalances suggesting that developing countries could address this to some extent by using formal and informal groups or coalitions.

Coalitions of members have become an important part of the WTO decision-making process, especially for developing countries who often lack bargaining power (Narlikar, 2003; Maswood, 2007). In the Doha Round, the G20 coalition has been particularly important in the agricultural negotiations.<sup>37</sup> Narlikar (2003) looks at bargaining coalitions in the GATT and the WTO and how developing countries have used these to have an impact on the negotiations. As noted earlier, Narlikar's book includes a small section on the LDC coalition and suggests that the coalition is one to watch (Narlikar, 2003: 183-5). The book examines the opportunities and constraints faced by developing countries in the formation and maintenance of coalitions. It also examines how experiences of coalitions so far in the GATT/WTO can provide information about when coalitions are likely to form and be successful in influencing bargaining outcomes (Narlikar, 2003: 1). Coalitions are important for two reasons, firstly they can have a critical impact on the stability of the international system and

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<sup>37</sup> For more on the G20 see Maswood (2007), also see next chapter.

secondly because they provide both opportunities and constraints for the countries involved, which can be particularly important for the smaller and weaker countries (Narlikar, 2003). Coalitions provide developing countries with greater bargaining power, as well as the chance to influence the negotiation agenda (Narlikar, 2003: 2). Narlikar concludes that because the LDC coalition consists of countries with similar priorities they can act more coherently (Narlikar, 2003: 204). However, she believes that any successes that they may have in the negotiations are either in areas where concessions are easy to make, such as technical assistance or are due to the LDCs 'appeal to ethics' (Narlikar, 2003: 204). With the exception of Narlikar, most writers taking an institutional approach to the WTO seem to start from the position that because LDCs have little economic power they can have little influence on the organisation. Thus the importance of power is still a focus for institutional approaches.

Despite the importance of power, a growing body of literature has looked specifically at theories relating to small states in international politics in an attempt to counter the traditional view that these states do not influence 'rule making in international political economy' (Lee and Smith, 2010: 1093). This is not a particularly new body of literature, indeed some of it dates from the late 1960s and early 1970s representing a reaction to the growing number of states in international politics following decolonisation (Baehr, 1975: 458-9). Much of the early literature focuses on the viability and stability of these new states (Baehr, 1975: 458), however, as Baehr highlights there is a lack of agreement by writers on the definition of a 'small' state, which he felt made the category too broad to be of use (Baehr, 1975: 459-461 and 466). The lack of an agreed definition for small states is echoed in more recent work which argues that the majority of definitions of small states are 'based upon arbitrarily chosen cut-off values of selected criteria' such as population size, land area and income (Crowards, 2002: 143, 144-149). However, there has been a resurgence in the focus on small states following increased attention on this category by international institutions and the formation of the Alliance of Small Island States (AOSIS) in 1990 (Crowards, 2002: 144). Crowards uses three categories of income,

population size and land area, with cluster analysis to determine a 'small' states list highlighting the importance of including income which is also used in LDC definition. Recent contributions to the small states literature focus specifically on trade and the WTO representing a reaction to the traditional focus on the major powers in trade (Lee and Smith, 2010).

The broad small states approach is one which could be useful in looking at LDCs, but it does not necessarily account for the levels of development of the states being investigated, unless a particular sub-division such as Small Island Developing States (SIDS) is chosen as a definition. The obvious problem here is that not all LDCs will fit such categories. In addition, categories based on population size fail to take account of Bangladesh which is currently classified as an LDC, although the LDC definition does now contain a population limit. An additional factor which is important in relation to small states is the context in which they are being investigated. For example AOSIS is particularly active in the global warming issue area, where the problems of small islands are most prevalent (AOSIS, 2010), whilst the structural category of LDC seems to be more commonly used in terms of the debate on trade, although the Doha Declaration does mention 'small and vulnerable' states as a separate category, albeit not one formally recognised as a membership category of the WTO. The lack of formal definition for small states within the WTO gives the category less 'legal' weight than that of LDCs, thus making it less relevant to the special treatment of LDCs.

### ***Summary***

A review of the existing literature shows a focus on developing countries in both the GATT and the WTO by many writers. Prior to 2000, few academic writers researching the either the GATT or the WTO have looked at the role of LDCs in the trade organisation, although many have made passing references to them. These references usually acknowledge the special treatment that these countries receive, but do not ask why or look at it in terms of norms. The focus instead tends to be on developing countries generally despite their differentiation within the GATT and the

WTO. Writers who mention do LDCs do not consider them to be especially important in the trade arena, which is often evident from their mixing of the terms ‘less developed’ and ‘least developed’. However, with developing countries becoming more important in the WTO, particularly the large developing countries such as India, China and Brazil, a separate focus on each group of developing countries and categories of membership is important in order to fully understand the dynamics of the trade organisation. Legally, LDCs are an important category of membership within the WTO, as demonstrated by the many references to them in the legal texts of the Organisation’s Agreements. The establishment of LDCs as a special category of developing country within the WTO means that they cannot be viewed solely through the developing country lens, but need special investigation on their own merits. Existing approaches to the WTO only partially assist in this investigation as they hint at, but do not fully explain why LDCs received special treatment in the WTO and continue to receive it despite that fact this contradicts the norms on which the organisation is founded. An approach based on norms can help in understanding why LDCs receive special treatment, and will be the focus of the following section.

## **Norms in International Politics**

This section will review the theoretical framework for this thesis. It will specifically examine the concept of norms and the norm lifecycle, how this operates and how it can help to explain the special treatment of LDCs within the WTO. As discussed in the introduction to this thesis, a review of the literature on norms demonstrates that their impact on behaviour is one of the key issues stressed by various writers, along with the idea of social understandings and social rules (Krasner, 1983; Finnemore and Sikkink, 1989; Klotz, 1995; Clark, 2001; Sandholtz, 2008). For example, writing in 1983, Krasner defined norms as ‘standards of behaviour defined in terms of rights and obligations’ (Krasner, 1983: 2).<sup>38</sup> Whilst in 1998, Finnemore and

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<sup>38</sup> Krasner’s definition of a norm is derived from his work on regime theory, which saw norms and principles as the crucial features of a regime, with changes in the norms of a regime leading to changes in the regime itself (Krasner, 1983: 16 and 4). Similarly, Finlayson and Zacher (1986)

Sikkink used the definition that a norm is ‘a standard of appropriate behaviour for actors with a given identity’ (Finnemore and Sikkink, 1998: 891).<sup>39</sup> Both definitions stress the importance of standards of behaviour when looking at norms although Finnemore and Sikkink make a link between behaviour and identity. Klotz (1995) also defines norms in terms of ‘standards for behaviour’ and stresses the importance of these being shared (Klotz, 1995: 13), while Clark (2001) argues that for these shared understandings to become norms they also need to affect ‘socially established rules’ in either a formal or informal way. She argues that norms should be understood as regularly affecting action in a way that the mere existence of shared ideas or principles does not (Clark, 2001: 10). Clark states that the shared understandings of behaviour are only the first step in developing norms. For these to develop into norms, they ‘need some way to inform continuity and change in etiquette, traditions, mores and more deliberately, law’ (Clark, 2001: 29). These shared understandings of behaviour can then shape future behaviour as actors conform to expected behaviour and develop social rules and standards of behaviour. Once social rules have been established they ‘may remain informal or be formally codified in law’, but the expectation is that they will regularly affect actions (Clark, 2001: 29). Norms affect behaviour and shared understandings of what behaviour is appropriate, in a particular situation and determine how an action is viewed. For the LDCs in the WTO, the shared understanding which exists in the organisation is that these countries should be given greater special treatment than other developing countries. This special treatment is provided by the more developed countries, and where the behaviour of these countries is not perceived as complying with the norm, action will be taken to modify the actor’s behaviour.

The idea that shared understandings can become norms which can then be backed by law is important. This idea of norms being backed by law is one to which Sandholtz (2008) and Sandholtz and Stiles (2009) subscribe. Like Onuf, Sandholtz (2008) links

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saw norms are the foundation stones of a regime, providing ‘the general obligations and rights’ that guide the behaviour of regime members (Finlayson and Zacher, 1986: 276).

<sup>39</sup> Finnemore and Sikkink (1998) distinguish between norms, which they see as ‘single standards of behaviour’, and institutions which are ‘a collection of practices and rules’. (In this case they are looking at ideational institutions.)

norms to the idea of 'social rules', arguing that these direct the behaviour of actors who in turn 'constantly reshape the rules' meaning that 'actors and social structures are mutually constitutive' (Sandholtz, 2008: 102, Onuf, 1998). Keohane (2009) argues that the standard definition of a norm in political science is 'shared expectations, on the part of a group, about appropriate behaviour' (Keohane, 2009: 2). He also makes the distinction between 'social norms' and 'legal norms'. In the case of special treatment for LDCs, there is no legal backing for decisions made relating to this category by the UN and therefore the norm could be seen as mere rhetoric. However, within the WTO, the organisation's agreements, which incorporate the provision of special treatment for LDCs, provide legal backing for the norm giving it a more solid foundation in the WTO.

The study of norms is fundamentally about how we expect, people, states, or organisations to act. Our expectations for their actions may derive from either informal rules or formal rules or laws that are based on previous actions. To be able to claim that a norm exists, we need to look for patterns of behaviour which are regularly affected by the norm in question (Clark, 2001: .29), justifications for actions, as well as the perceptions of those involved. However, norms differ from rules in their application (Risse and Sikkink, 1999: 8). Rules are concerned with getting actors to do something for a particular reason, while norms have more of a moral or psychological aspect to them i.e. "Good people do X". Thus actors may comply with norms because they want to be seen in a positive way (Fearon, 1997, as cited in Risse and Sikkink, 1999: 8). The actor's perceptions of themselves are affected by the norms which other relevant actors hold (Risse and Sikkink, 1999: 8). This intersubjective quality of norms means that widely held norms leave broad patterns which are the key to understanding a norm and how it affects behaviour (Finnemore, 1996: 154). To relate this to LDCs and the norm of special treatment, we need to look for patterns of this norm "regularly affecting action" both at the international level, and more specifically at the organisational level, within the GATT/WTO. The key actors in this case who are likely to provide justifications are the states and international organisations, and their justifications, combined with the

patterns of the norm ‘regularly affecting actions’ form the lifecycle of the norm. The lifecycle of the norm of special treatment for LDCs and its affect on actions will be examined in detail in the next chapter. Existence of the norm at an international level affects how states behave in the WTO, while the defence and promotion of the norm within the trade organisation will in turn reinforce the international norm. If the norm of special treatment for LDCs exists we would expect to see states attempting to provide some form of special treatment for these countries both internationally and within the WTO. Where states are not providing some form of special treatment for LDCs we would expect to find some justifications for why the norm is not being adhered to (Frost, 1996: 105 and Sandholtz and Stiles, 2009: 14-15).<sup>40</sup>

Definitions of norms lead to the identification of five characteristics pertinent to understanding them: regulative, constitutive, prescriptive, principled and peremptory. Finnemore and Sikkink (1998) focus on the first three types of norms identified. Regulative norms ‘order and constrain behaviour’ (Finnemore and Sikkink, 1998: 891) and are often linked to laws because of the way they affect behaviour, for example, when using public transport, the norm is to buy a ticket. Constitutive norms ‘create new actors, interests or categories of action’, while prescriptive norms contain an element of ‘oughtness’, i.e. something that we ought to do (Finnemore and Sikkink, 1998: 891).<sup>41</sup> Clark (2001) introduced a fourth type of norm, that of ‘principled norms’. Principled norms are those ‘that are based on beliefs of right and wrong’, for example human rights (Clark, 2001: 11). Principled norms are similar to prescriptive norms in their effects. However, Clark argues that principled norms may be disadvantaged if they are affected by power (Clark, 2001: 21). It should be noted that norms may change over time for example a prescriptive or principled norm may become a regulative norm if it becomes backed by law. Falk (2005) developed the research further by introducing the idea of ‘peremptory norms’. These are legal norms that are ‘not subject to exception or revision’ and are defined in

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<sup>40</sup> It is important to note that as Frost argues, if a norm is not followed this does not prove that it does not exist.

<sup>41</sup> Frost (1996) limits prescriptive norms to ethics.

Article 53 of the Vienna Convention on the Law of Treaties, which states that a peremptory norm is one which is widely ‘accepted and recognised’ and from which deviations are not allowed and can only be modified by a new norm of the same type (Falk, 2005: 86-7 and endnotes p.90).

As will be demonstrated later in this thesis, the norm of special treatment could be described as a regulative, as the behaviour of developed countries towards LDCs is to some extent constrained, with the special treatment enshrined in the WTO Agreements. However, the provision of special treatment to LDCs does not really constrain the behaviour of developing countries in the same way as it does developed (although it is beginning to have an impact, see Chapter Five on Market Access for more details). The provision of special treatment to LDCs can be seen to be a constitutive norm, as the UN’s development of the category has created both a new category of actor and a new category of action, that of helping LDCs.<sup>42</sup> The norm of special treatment for LDCs is also prescriptive as there is a moral and ethical dimension to the norm which encourages developed countries (often for historical reasons) to provide special concessions to LDCs in order to help them develop. If principled norms are based on ideas of right and wrong, then this automatically ascribes a moral element to the norm – good people and good states should do what is right i.e. help others less fortunate than themselves. Of all the norm types identified, the peremptory norm is the most legalistic version. Whilst it can be argued that the norm of special treatment for LDCs is accepted and recognised by ‘the international community of states’, derogation is permitted, as not all states offer LDCs special treatment. Despite this the idea of a norm of special treatment for LDCs does seem to be enshrined regularly in the actions and agreements of most international organisations.<sup>43</sup> This regular inclusion of special treatment for LDCs in

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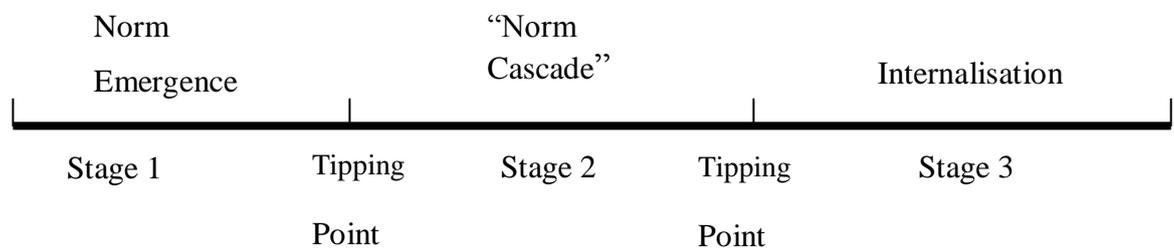
<sup>42</sup> Although the creation of a category of Least Developed Countries was first discussed in UNCTAD, it is the UN which maintains and amends the definition of the LDCs, through the Committee on Development Policy (CDP).

<sup>43</sup> Obvious examples include the UN, UNCTAD and the WTO, but other examples are found in WIPO which has a programme for LDCs (see [http://www.wipo.int/lcds/en/accession/wipo\\_convention.html](http://www.wipo.int/lcds/en/accession/wipo_convention.html)) and in the Global System of Trade Preferences among Developing Countries (GSTP) which also includes special provisions for LDCs (see [http://www.unctadxi.org/templates/Page\\_\\_\\_\\_1692.aspx](http://www.unctadxi.org/templates/Page____1692.aspx)).

international documents thus sets a precedent for the treatment of these countries which in turn strengthens the norm (Sandholtz and Stiles, 2009:13).

### ***The Lifecycle of a Norm***

Finnemore and Sikkink (1998) developed the model of a norm lifecycle to explain how norms have an impact on international politics and how they help to explain change in the international arena, as well as how they spread. They ‘argue that norms evolve in a patterned “lifecycle”’ and that different ‘behavioural logics’ are apparent in the different stages of the life cycle (Finnemore and Sikkink, 1998: 888). The norm lifecycle is ‘a three-stage process’ which Finnemore and Sikkink illustrate as per the diagram below (Finnemore and Sikkink, 1998: 895).



### **Figure 2: Norm Lifecycle**

The lifecycle begins with the emergence of the norm. The norm then spreads and becomes widely accepted during the cascade stage, and is finally internalized and becomes taken for granted. Each stage is separated from the other by a ‘tipping point’ which represents the point ‘at which a critical mass of relevant state actors adopts the norm’ (Finnemore and Sikkink, 1998: 895-6). With international norms, a significant number of states must accept and adopt the new norm before the process can move from the norm emergence stage to the cascade stage.

The norm emergence stage is crucial as it is here that the norm is born and initially shaped. Essential to this process are the 'norm entrepreneurs' who actively build the norm and shape it according to their beliefs 'about appropriate or desirable behaviour' (Finnemore and Sikkink, 1998: 896). The main aim of the norm entrepreneur is to persuade enough states that the emerging norm 'is a legitimate behavioural claim' (Rushton, 2008: 98-9). This is echoed by Keohane (2009) who argued that for norms to be considered important they have to have 'advocates' (Keohane, 2009: 12) and Barnett, who argues that norms 'evolve through a political process' (Barnett, 2006: 252). The political process is important as 'new norms never enter a normative vacuum but instead emerge in a highly contested normative space where they must compete with other norms and perceptions of interest' (Finnemore and Sikkink, 1998: 897). New norms do not necessarily replace old ones, but instead the norms may strengthen each other particularly if they are seen as legitimate, morally related and consistent (Finnemore, 1996: 160-1, Sandholtz and Stiles, 2009:17).

Keohane identified four types of norm entrepreneurs. These are states, non-state organisations (NGOs), international organisations and decentralised networks of organisations and individuals e.g. epistemic communities (Keohane, 2009: 12). The inclusion of international organisations in this list is significant as it provides support for the idea that international organisations act in the same way as states. For norm entrepreneurs to be successful advocates they need some form of 'organisational platform' to operate from (Finnemore and Sikkink, 1998: 899; and Rushton, 2008: 99). These platforms may be specifically constructed to promote the norm, for example the International Baby Foods Action Network a group created by NGOs to campaign on the issue of baby foods (Willets, 1996: 3), or norm entrepreneurs may work from inside international organisations (Finnemore and Sikkink, 1998: 899). It is therefore important to take account of the political environment and the debate that occurred during the norm's emergence, as these shape the resulting norm. Norms often build on previously existing norms, thus 'the accumulated choices of international actors gradually impact how the rules of international life are

interpreted and applied' and build on previously established norms (Clark, 2001: 28 and 134). In the case of the LDCs, the norm of special treatment grew out of the norm of special treatment for all developing countries, which existed in the 1960s and still exists today, as well as out of the focus on development, humanitarianism and concern for human rights for all individuals (Finnemore, 1996).

Clark's work on work on Amnesty International and human rights norms (2001) focuses on the emergence of different human rights norms, and Amnesty's role as the norm entrepreneur. In examining the role of an NGO in the norm emergence process, Clark (2001) identifies the following phases in the process – 'fact-finding, consensus building, norm construction and norm application or mobilization' (Clark, 2001: 131-4). The norm entrepreneurs for the LDCs are derived from all of the four types. Initially the developed countries pushed for the introduction of special treatment for LDCs, but more recently the LDCs themselves have taken on this role. NGOs such as Oxfam have been important in fact-finding and consensus building particularly in issues such as accession, cotton and market access (for examples see Oxfam, 2001, 2002, 2004, 2007a and 2007b). International organisations, particularly the UN and UNCTAD have also been important in constructing and applying the norm - the UN's LDC Conferences have attracted growing attention to the countries, while UNCTAD's research focus and LDC reports have also played a role in fact finding and consensus building. Individuals and epistemic communities have also helped in the norm application and mobilization for LDCs.

The interpretation and clarification of facts is important in the emergence of norms and norms become important as behaviour is compared to a 'common standard' (Clark, 2001: 16). Thus there is an expectation of 'appropriate' behaviour from states and implicit agreement as to what the behaviour should be.<sup>44</sup> The promotion of new norms occurs 'within the standards of "appropriateness" defined by prior norms' and in some cases norm entrepreneurs may need to use "inappropriate" behaviour in

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<sup>44</sup> This is what March and Olsen (1989) refer to as the "logic of appropriateness".

order to draw attention to a particular norm (Finnemore and Sikkink, 1998: 897). This potential need for inappropriate behaviour may make it hard to explain the motivations of the norm entrepreneurs. However, 'ideational commitment' is a key motivating factor for norm entrepreneurs even if the norm does not directly affect them (Finnemore and Sikkink, 1998: 898). For the norm of special treatment for LDCs the ideational commitment of reducing poverty relates to the prescriptive and principled characteristics of the norm.

The norm cascade is the second stage of the norm lifecycle. It is during this stage that the norm becomes more widely accepted or socialised into the behaviour of actors and institutionalised in international organisations. The socialisation process aims to 'induce norm breakers to become norm followers', with new states persuaded to adapt their behaviour to comply with the preferred international norms (Finnemore and Sikkink, 1998: 902, footnote 62). The ultimate goal of the socialisation process is the internalisation of norms so that compliance with the norm becomes automatic (Risse and Sikkink, 1999: 11). Of particular relevance here is the work by Risse and Sikkink (1999) who investigated why variations occur in the implementation of human rights norms, and used domestic case studies in order to pick up these variations (Risse and Sikkink, 1999: 1-2). Risse and Sikkink (1999) identified three types of socialisation processes - instrumental adaptation and strategic bargaining; moral consciousness-raising, "shaming", argumentation, dialogue and persuasion; and institutionalisation and habitualisation (Risse and Sikkink, 1999: 5 and 11). These processes usually occur simultaneously during norm socialisation, as actors gradually adapt their behaviour to match the norm following external pressures (Risse and Sikkink, 1999: 16-17). As noted earlier, norms compete with existing norms and in some cases clashes may occur between norms. These clashes may result in a slowing of the cascade process as actors try to resolve the dissonance between clashing norms.

The institutionalisation of the norm also occurs during the norm cascade, although it may begin in the emergence stage (Finnemore and Sikkink, 1998: 900). During institutionalisation the norm becomes incorporated into specific international rules and acknowledged by organisations (Finnemore and Sikkink, 1998: 900). It is therefore critical to the norm's evolution as it increases and develops the power of the norm (Finnemore, 1996: 161). The WTO agreements provide compelling evidence regarding the institutionalisation of the norm of special treatment for LDCs (Appendix A).

The final stage of Finnemore and Sikkink's norm lifecycle is that of internalisation. It is in this stage that norms become 'taken-for-granted' and cease to be the subject of debate (Finnemore and Sikkink, 1998: 895; also Risse and Sikkink, 1999: 17). Conformance with the norm becomes 'almost automatic' and the norm is 'independent from changes in individual belief systems' (Finnemore and Sikkink, 1998: 904; Risse and Sikkink, 1999: 17). Goodman and Jinks (2008) argue that there are two mechanisms for the internalisation of norms – persuasion and acculturation. In the persuasion mechanism, actors convince others of the intrinsic value of certain norms and that violation should be punished, whilst the acculturation mechanism is 'the general process by which actors adopt the beliefs and behavioural patterns of the surrounding culture' (Goodman and Jinks, 2008: 726).

Cortell and Davis (2005), looking at the domestic internalisation of international norms, argued that the internalisation of international norms is often straightforward where national understandings of appropriate behaviour do not already exist (Cortell and Davis, 2005: 3). Problems arise where norms promoted internationally clash with existing national understandings and cause domestic opposition (Cortell and Davis, 2005: 3; also see Risse and Sikkink, 1999). If a clash occurs it is likely to slow or prevent internalisation of the norm causing variations in the speed and degree at which the norm spreads through the international system (Cortell and Davis, 2005: 3). So the question of how we can tell whether a norm has been internalised, is an

important one. It can be measured by examining the behaviour of the states, international organisations and other actors in international society to see whether they are behaving in accordance with the norm. As norms impose ‘a standard of appropriate behaviour’ on actors, if the norm of special treatment for LDCs exists, we would expect to see them receiving preferential treatment from the majority of other states in international society (Finnemore and Sikkink, 1998: 891). Once internalised, norms can be very powerful, as behaviour which conforms to a norm is not questioned and may also be hard to identify, because there is no need to justify behaviour (Finnemore and Sikkink, 1998: 904). However, it is important to note that ‘completion of the “life-cycle” is not an inevitable process’ (Finnemore and Sikkink, 1998: 895). Thus, despite norms being acknowledged and widely recognised, they may never be fully internalized by all actors, which would appear to be the case with special treatment for LDCs.

### ***Assessing and Applying the Norm Lifecycle***

This section assesses the norm lifecycle in terms of its general application to identifying and tracing norms and deals with the specific application of the norm lifecycle to the norm of special treatment for LDCs. The norm lifecycle provides a simple linear pathway for the evolution of norms from their emergence and subsequent spread through international society. As a simple overview it works well, but detailed application of the lifecycle raises issues which are not adequately addressed by the model. These issues include antecedents to the norm, the role of agency/norm entrepreneurs in the second and third stage of the lifecycle, alternative pathways to the lifecycle, the impact of other norms and the impact of structural change on the norm lifecycle.

By starting at the norm emergence stage, the lifecycle model ignores the antecedents to the norm, which are important in understanding how and why a particular norm emerges. The antecedents to the norm are particularly important if the norm grows out of an existing norm which continues to exist. Related norms operating in parallel to achieve a particular goal form ‘supernorms’ which in turn strengthen the norms

(Fukuda-Parr and Hulme, 2011: 18-19). The continued existence of a norm of special treatment for developing countries strengthens the norm of special treatment for LDCs. Finnemore and Sikkink (1998) only consider norm entrepreneurs as necessary in the norm emergence stage of the lifecycle, although they recognise that other actors play a role in the subsequent stages (see table in Finnemore and Sikkink, 1998: 898). However, this thesis argues that norm entrepreneurs are necessary in all stages of the norm lifecycle and not just in its initial phase. In the norm emergence stage, the norm entrepreneurs highlight or 'create' issues based on motives of altruism, empathy or 'ideational commitment' (Finnemore and Sikkink, 1998: 897). The norm entrepreneurs attempt to persuade other actors that something ought to be done about these issues, via a variety of methods such as the publication of studies, scientific evidence, public advocacy and media campaigns, until the norm is established (Fukuda-Parr and Hulme, 2011: 20). During the cascade of the norm, norm entrepreneurs continue to highlight the existence of the norm and push for both its socialisation and institutionalisation as well as attempting to demonstrate the relevance of the norm (Finnemore and Sikkink, 1998: 887-917; Fukuda-Parr and Hulme, 2011: 20). Fukuda-Parr and Hulme (2011) use the term 'message entrepreneurs' in the cascade stage to differentiate between this role and that of norm entrepreneurs. The aim of the 'message entrepreneurs' is to achieve consensus regarding the norm (Fukuda-Parr and Hulme, 2011: 31). In the internalisation stage, norm entrepreneurs aim to ensure other actors comply with the established norm in a habitual way. During these different stages, the norm entrepreneur may change, or new norm entrepreneurs may join the original one, what is key is the role played by different actors in moving a norm through its lifecycle.

The norm-lifecycle model also raises the question of whether norms always follow the same lifecycle process or if there are alternative pathways. It could be argued that perhaps the process is not quite as linear as the diagram implies. Price and Tannenwald (1996) note 'the often nonlinear, contingent, and contradictory features' in the development of norms, and stress the importance of 'historical contingency' (Price and Tannenwald, 1996: 145). It may be that at the cascade point, there is

another pathway, where norms can achieve significant recognition with most states acknowledging the norm as valid, but then failing to act to implement the norm. So although states institutionalise the norm, and it may even acquire the 'taken for granted' quality, nothing practical is done other than acknowledging it. However, a lack of compliance with a norm does not mean that the norm does not exist merely that it is not producing the expected behavioural outcomes, which is could be due to a clash between norms. A key example of clashes between norms is seen in the WTO. The organisation's key norms of reciprocity and non-discrimination are in contention with the norm of special treatment for LDCs. LDCs are not expected to provide full reciprocity within the WTO and the fact that they are given special treatment means that positive discrimination is being applied in their favour.

As well as being affected by other norms, power can affect norms. This has implications for LDCs in the WTO and whether they are disadvantaged by power struggles in the WTO. A brief glance at the Doha Round would indicate that they are. Having placed cotton on the agenda, LDCs seem to have been side-lined, to some extent by the power struggles between the EU and the US, both of whom seem determined to give as little as they can in the area of agriculture and are determined to create more reciprocal relationship with the advanced developing countries. These on-going disputes between key players in the Round has meant that it is yet to finish, creating potential problems for LDCs in terms of the implementation of duty-free, quota-free market access which is tied to the ending of the Round.

Another weakness of the model is that it does not have explanatory powers in the event of a structural change affecting the norm, such as the change from GATT to WTO. The institutional shift that occurred with the transition from the GATT to WTO substantially expanded the rules governing the multilateral trade regime, resulting in a subsequent transformation of the norm of special treatment for LDCs. To understand the impact of the change from the GATT to the WTO, it is necessary to incorporate the concept of norm change within the norm life cycle. This is

because norms are dynamic rather than static, resulting in international norms changing over time. Tension between norms and behaviour create disagreements, these in turn lead to arguments which potentially restructure the rules and behaviour (Sandholtz, 2008: 101). More importantly, however, changes in rules can affect norms. The succession from GATT to the WTO had a major impact in terms of rule change, particularly with the rules now being considered a 'single undertaking'. Therefore we need to take this into account by incorporating norm change theory into the lifecycle model. Sandholtz (2008) believes that the development of norms is based on a cyclical process (Sandholtz, 2008: 103). Crucially, however, on completing the cycle the norm is likely to have changed to some extent and may have been either strengthened or weakened. A key question here is whether the norm of special treatment for LDCs changed with the succession from GATT to WTO? At first glance, given the focus on LDCs in the WTO, this does not seem to be the case. However, in particular issue areas such as accession, a shift in the norm can be seen, with less special treatment being provided than would be expected, as will be discussed in Chapter Four on accession. This indicates that the impact of a structural change may not be immediately apparent when looking at a broad overview of a norm but may need a specific case in order to be identified.

Bearing these issues in mind, this thesis will apply the lifecycle model to examine whether a norm of special treatment for LDCs exists in the WTO. The thesis will apply the norm lifecycle at two different levels. First the lifecycle will be applied at the organisational level within the GATT/WTO to assess how it emerged, whether there is enough evidence to demonstrate that the norm of special treatment for LDCs exists, the extent to which it has been institutionalised within the GATT/WTO and who the norm entrepreneurs were and currently are. Second, the norm lifecycle model will be applied to three individual cases within the WTO to assess whether the norm of special treatment helps to explain the treatment of LDCs in the WTO in specific issue areas and whether any findings in these cases can be used to improve or adapt the norm lifecycle model. The three cases are accession to the GATT/WTO,

the issue of market access for LDCs and the case of the cotton negotiations within the Doha Round.

At the organisational level, the antecedents to the norm will be identified and briefly discussed as the norm of special treatment for LDCs grew out of the norm of special treatment for developing countries generally. As discussed earlier in this chapter, the three keys to identifying a norm are looking for patterns of action, justifications for action and the behaviour of relevant actors. This thesis focuses on tracing the patterns of action associated with the norm of special treatment for LDCs and demonstrating how they have affected the behaviour of both the more powerful states and the LDCs themselves, as well as identifying justifications for action where possible. By tracing the patterns, behaviour and justifications it is possible to identify the stages of the lifecycle within the GATT/WTO from emergence, through cascade to (semi) internalisation. In tracking the lifecycle of the norm through its various stages important norm entrepreneurs will be identified, as well as the processes of socialisation and institutionalisation. Also of importance in tracking the norm lifecycle is the language used in GATT/WTO documents, which consistently refer to 'special treatment' for LDCs.

## **Conclusion**

This chapter has identified the key norms on which the GATT/WTO are based, as well as highlighted the gaps in the existing literature on the GATT/WTO with regard to LDCs. It has also argued that in order to understand the role played by LDCs within the WTO we need to take account of another norm which operates within the WTO – the norm of special treatment for LDCs. Findings from the literature review show that previously there was little focus on LDCs and their role in the GATT or the WTO. However, since the start of the Doha Round this has begun to change due partly to the increased focus on coalitions of countries operating within the WTO, as well as to the issues affecting LDCs that have been raised in the course of the negotiations, such as cotton. This increasing focus on LDCs is important particularly in light of the fact that they are the only defined category of WTO member.

However, the increasing focus on the LDCs has not provided an explanation as to why these countries have received special treatment in the GATT and the WTO and the impact that this special treatment has made on the organisation, it is simply accepted. This acceptance of the special treatment in the literature partially answers the research question posed by this thesis as to whether this is a norm of the WTO, but does not do so explicitly. The full explanation for why the LDCs receive special treatment is provided by looking at norms and the norm lifecycle.

The chapter has also examined the idea of norms and the norm lifecycle model, which will be applied in this thesis. Norms are important as they provide expectations for behaviour and also help to explain why a particular type of behaviour may occur. For this thesis, the ‘standard of behaviour’ which is implied by the norm of special treatment for LDCs is for actors defined as ‘developed’ countries to provide special treatment to actors defined as ‘Least Developed’ countries. The norm lifecycle provides a way of tracking how norms spread and develop both internationally and within organisations. By tracking how LDCs have been treated in the GATT and the WTO we can identify the different stages in the norm of special treatment from its emergence to cascade, institutionalisation and internalisation. The rest of this thesis will investigate whether there is a ‘shared understanding’ that countries defined as Least Developed receive special treatment from other countries and to what extent this norm has been adopted by the GATT/WTO. The adoption and development of the norm of special treatment in the GATT/WTO is examined in the next chapter.

# Chapter 3 - Special Treatment for LDCs in the GATT/WTO

Special treatment for LDCs by international organisations such as the GATT/WTO provides evidence that a norm of special treatment for LDCs does exist both within the organisation and internationally. By tracing the special treatment provided for LDCs within the GATT/WTO we can construct the lifecycle of this norm and demonstrate how it operates in the organisation. Figure Three (see next page) shows the main events in the norm lifecycle which this chapter deals with, starting with the antecedents and early beginnings of the norm based on the special treatment provided for developing countries. It then examines the establishment of the norm in the 1970s, the cascade in the 1980s and the growing institutionalisation of the norm in the 1990s and 2000s, but falls short of full internalisation, as the special treatment provided is still the subject of debate. The events discussed in the chapter, as shown in Figure Three have been divided into the stages of the norm lifecycle, which correspond roughly with the decades since the 1970s.

In examining the norm of special treatment for the LDCs in the GATT/WTO, the chapter will focus mainly on the key events in the norm lifecycle within the trade organisation. However, relevant external international events will also be discussed where relevant. The external events covered include the initial UNCTAD conferences, the establishment of the LDC category in the United Nations, and the UN Conferences on the Least Developed Countries.<sup>45</sup> These key events in the norm lifecycle enable us to see the patterns of the norm regularly affecting action within the GATT/WTO. Throughout the 1970s and 1980s there was a growing awareness

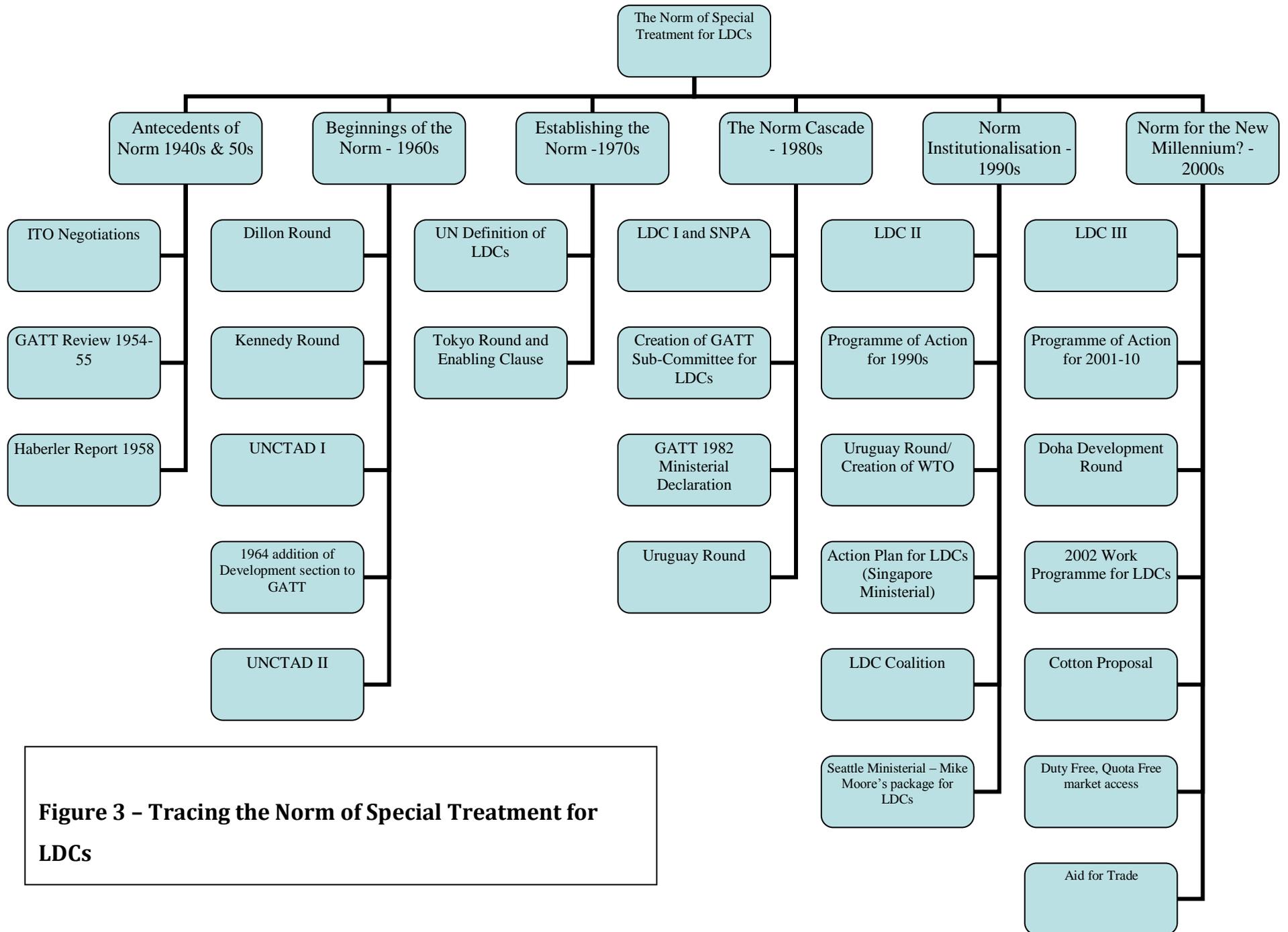
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<sup>45</sup> The UN has so far held three conferences on the Least Developed Countries - the first in Paris in 1981, the second in Paris in 1991 and the third in Brussels in 2001. A fourth Conference is scheduled to be held in Istanbul in May 2011.

of the problems facing LDCs within the trade regime and their need for special treatment but it was not until the establishment of the WTO in 1995 that the category of ‘Least Developed Country’ was formally recognised as an explicit category of membership.<sup>46</sup> Previously, LDCs were considered as a special category of developing country, and the focus in the trading system was largely on developing countries as a whole, with some additional special concessions for LDCs. This focus on developing countries as a whole is reflected in much of the literature on the GATT and the WTO as discussed in the previous chapter. Since the founding of the WTO, and particularly since the United Nations Third Conference on LDCs (LDC III) in Brussels in 2001 and the launch of the Doha Round, there has been a growing focus on LDCs within the WTO. The LDCs themselves have also become more active within the trade organisation, forming one of the coalitions of members within the WTO and actively coordinating their negotiating positions prior to WTO Ministerial Meetings since Seattle in 1999, which in turn has helped strengthen the norm and increase its institutionalisation.

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<sup>46</sup> The WTO has three categories of members – developed country, developing country and LDC. Only the LDC category is officially defined, as per the UN definition. Developed countries are mainly OECD Members, while developing countries are ‘self-selected’, although their categorization is open to dispute by other members of the WTO. Hoekman and Kostecki (2001: 389) note that members of the WTO can decide whether to treat a particular trading partner as a developing country. There is no definitive list of who the developing country members are, which raises issues in terms of the application of the special and differential treatment for developing countries allowed in many of the WTO agreements.



**Figure 3 - Tracing the Norm of Special Treatment for LDCs**

## **Antecedents of the Norm (1947-1959)**

New norms often build on existing norms, and the norm of special treatment for LDCs grew out of the norm of special treatment for developing countries developed in the GATT. The idea that developing countries should receive some form of special treatment was evident at the International Trade Organisation (ITO) negotiations in the late 1940s, where it was felt that special concessions for developing countries should be included in the ITO in order to assist with their development. This resulted in the inclusion of a chapter on Economic Development in the ITO Charter (Wilcox, 1949). However, with the failure of the ITO, the GATT became the primary means of regulating international trade and the GATT did not include a section on economic development, although it did include some provisions which could help developing countries. These provisions included infant-industry exceptions for tariffs and allowed the use of quantitative restrictions on imports (Hudec, 1987: 14; Evans, 1971:113-115).<sup>47</sup> Despite the lack of provisions for developing countries, they did achieve recognition of the premise that their special position justified some leeway in the legal discipline, a principle which was recognised at the beginning of the drafting process for the GATT (Hudec, 1987: 15).

Further recognition that developing countries needed different treatment to developed countries occurred in the GATT in the 1950s. A review of the GATT held in 1954-1955, led to three basic changes being made to the GATT. First, the infant industry exceptions in Article XVIII were re-written; second the requirements that developing countries had to satisfy in order to use quantitative restricts on imports were relaxed; and thirdly, the GATT Contracting Parties 'agreed to a ... vague relaxation of the reciprocity principle' for developing countries (Hudec, 1987: 27). Although the review session only made minor amendments to the GATT, it was particularly important because it endorsed the principle of legal freedom to aid

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<sup>47</sup> These provisions in the GATT were derived from the ITO, Article 13 (Hudec, 1987). The Infant-industry provisions allowed developing countries to introduce measures to help develop new industries under certain conditions, whilst the quantitative restrictions measures provided for imports to be restricted either to protect domestic producers or to help with balance of payments difficulties (Goode, 2003: 179 and 287). See Evans (1971: 118-9) on the use of these provisions by developing countries.

developing countries (Hudec, 1987: 28).<sup>48</sup> The review session was followed by the appointment of four economists in 1957 to look at the problems facing developing countries and the publication of the subsequent Haberler Report in October 1958.<sup>49</sup> The Haberler Report highlighted issues with the stability of commodity prices for non-industrialised countries as well as differential rates of development and ‘the failure of the export trade of the [Less Developed Countries] to expand at a rate commensurate with their import needs’ (GATT, 1958c: 48; Tussie, 1987: 4).<sup>50</sup> The Haberler Report recommended guidelines for the work of the GATT, and following its publication the Contracting Parties established three Committees with the aim of expanding international trade (Wells, 1969: 67 and GATT, 1987d: 2). Committee I was to convene a further tariff negotiating conference; Committee II was to review the agricultural policies of member governments and Committee III was to look specifically at trade related problems facing developing countries, with their demands for greater market access becoming one of the first items on the Committee’s agenda (Wells, 1969: 67; GATT, 1987d: 2; Hudec, 1987: 41).<sup>51</sup> The Haberler Report was ‘a turning-point’ in the GATT’s relations with developing countries (Evans, 1971: 120; Tussie, 1987: 4; WTO (2005i: 5). The report’s emphasis on the need for special treatment for developing countries, led to the creation of a norm of special treatment for developing countries within the GATT, out of which the norm of special treatment for LDCs would be built. Allied with this we see the behaviour impact of the norm on the GATT, with the construction of an institutional structure by the GATT Contracting Parties to help developing countries

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<sup>48</sup> Hudec does not believe that ‘legal freedom’ did help developing countries in the GATT, as he argued that legal concessions were easy for developed countries to make and did not require definitive action on their part.

<sup>49</sup> The Haberler report also known as *Trends in International Trade*, was a report commissioned by the Executive Secretary of the GATT to investigate the problems of trade for developing countries. The four economists who compiled the report were Dr Roberto de Oliveira Campos, Professor Gottfried Haberler, Professor Jan Tinbergen and Professor James Meade. Jan Tinbergen was the Chairman of the UN’s Committee for Development Planning from 1966-71 during which time the category of LDC was defined (see UN, 1971a). Dr Roberto de Oliveira Campos was also one of the authors of the World Bank commissioned *Pearson Report* in 1968.

<sup>50</sup> Tussie (1987) actually uses the abbreviation LDC, but uses this to mean Less developed Countries, as opposed to Least Developed Countries. Although the distinction between these two terms is subtle, there is a distinction. The Less Developed Countries encompassed the Least Developed and also included countries such as India and Brazil.

<sup>51</sup> The Haberler Report used a variety of terms to refer to developing countries, including that of ‘least developed country. These terms were used interchangeably and included less-developed, least developed, under developed, non industrial, primary-producing unindustrialised country, poor underdeveloped countries, under-developed primary-producing countries and poorer countries (GATT, 1958).

expand their export earnings (Evans, 1968: 84-5). The resulting institutional structure included fact finding by the Contracting Parties to establish areas or products where developing countries had a comparative advantage, the coordination of trade and development plans with the help of the Secretariat, the establishment of a Trade Information and Advisory Service and a service to provide technical assistance and education, as well as the reduction of trade barriers on products from developing countries (Evans, 1968: 84-5).

## **Beginnings of the Norm (1960s)**

The 1960s represented the very early beginnings of the norm of special treatment for LDCs, although they were not classified as such until the early 1970s. In the 1960s, a growing awareness that some developing countries were not developing as fast as expected combined with decolonisation which led to an increase in the number of developing countries, resulted in an international focus on development. The growing awareness of the development issue was demonstrated by the UN's adoption of the 1960s as the 'Development Decade' in December 1961 (UN, 1962a; also see UN, 1961)<sup>52</sup> while the issue of disparities between developing countries can be seen in the establishment of the International Development Association (IDA) by the World Bank in 1960 which aimed 'to promote economic development' in less developed countries (World Bank, 1960: Article I).<sup>53</sup> The establishment of the IDA helped to create awareness of the need for special treatment for poorer developing countries and recognised the poorer developing countries as a special class of states.<sup>54</sup> Other examples of international special treatment for developing countries during the 1960s include the implementation of the Yaoundé Convention in 1964 by the EEC to assist its ex-colonies in the African, Caribbean and Pacific regions (ACP)<sup>55</sup>,

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<sup>52</sup>Subsequent decades have also been adopted as 'Development Decades', with the 1990s being declared the UN's Fourth Development Decade.

<sup>53</sup> The establishment of the IDA provided the World Bank with the means to provide 'soft loans', with lower interest rates and longer repayment times for the poorer developing countries (Blough, 1968: 153-4).

<sup>54</sup> It should be noted that although the World Bank does not use the definition of Least Developed Country directly in its work, preferring instead the term 'low income country', many of the countries involved are the same.

<sup>55</sup> The first Yaoundé Convention was signed in 1963 and came into force in June 1964. It established a preferential trading agreement with preferential market access between the EEC and 18 mainly francophone former colonies (EC, 2007b; also Holland, 2002: 27). The convention

the holding of the first two United Nations Conferences on Trade and Development (UNCTAD) in 1964 and 1968 and the establishment of the United Nations Development Programme (UNDP) in 1966. Within the GATT, both the Dillon and Kennedy Rounds looked at the issue of developing countries to some extent and in 1964 a section on development – Part IV - was added to the GATT. These three events will be examined in more detail below, in addition to the first two UNCTAD conferences, as these were particularly important in the acknowledgement of the idea of a ‘least developed country’.

The Dillon Round (1960-61) was the first GATT round after the publication of the Haberler Report, thus raising the hopes that it would tackle the trade problems faced by the developing countries.<sup>56</sup> Developing countries actively pressed for the Round’s negotiation rules to take account of their difficulties in providing reciprocity, but their requests were rejected (Hudec, 1987: 42) and the Round concentrated on tariff negotiations following the establishment of the EEC and the Common External Tariff (CET) (Goode, 2003:101). The Dillon Round was the last to negotiate tariff reductions on an item-by-item basis with concessions then extended to all GATT Contracting Parties on an MFN basis (WTO (2005i: 4; also see GATT, 1975b). Although the Round did not include rules or procedures relating only to developing countries, a GATT Ministerial Meeting in November 1961, agreed that new initiatives should be taken to provide more flexibility regarding the degree of reciprocity expected from developing countries depending on their level of economic development (WTO (2005i: 5; also see GATT, 1975b: 6, especially paragraph 21). This was highly significant because it heralded the beginning of the idea that flexibility in the norm of reciprocity should be adopted towards developing countries as a whole, as well as introducing the idea that specific programmes should be aimed

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was signed with Benin, Burkina Faso, Burundi, Cameroon, Central African Republic, Chad, Congo (Brazzaville), Congo (Kinshasa), Cote d’Ivoire, Gabon, Madagascar, Mali, Mauritania, Niger, Rwanda, Senegal, Somalia and Togo (most of whom are now classified as LDCs). A second Yaoundé Convention was signed with the same countries in 1969 and was subsequently extended to in 1973 to cover Kenya, Tanzania and Uganda, following the accession of the UK to the EEC (EC, 2007a).

<sup>56</sup> The Round, which took place between 1960 and 1961, was named after the US Undersecretary of State, Douglas Dillon. It was the GATT’s fifth negotiating round and involved 26 Contracting Parties, including Australia, Austria, Canada, Chile, Denmark, EEC, Finland, Ghana, India, Japan, New Zealand, Nigeria, Norway, Pakistan, Portugal, Spain, Sweden, Switzerland, Uruguay, UK and United States.

at developing countries and should take account of their level of development. These proposals were reinforced by the then Executive Secretary, Eric Wyndham-White (GATT, 1961b and GATT, 1961c). The flexibility in the norm of reciprocity was subsequently enshrined in the Part IV added to the GATT in 1964.

The addition of Part IV to the GATT essentially meant that the GATT Contracting Parties agreed to provide special treatment for developing countries (Grimwade, 2004: 13). Building on the findings of the Haberler Report and the holding of the preparatory meetings for the first UN Conference on Trade and Development (UNCTAD), Part IV recognised the ‘need for positive efforts designed to ensure that less developed contracting parties secure a growth in international trade commensurate with the needs of their economic development’ (GATT, 1964d: paragraph 3). However, despite being added in 1964, the amendment to the GATT did not come into force until 1966 as it had to be accepted by two-thirds of the GATT contracting parties (GATT, 1966b).<sup>57</sup> The GATT Committee on Trade and Development was established in 1965 in order to supervise the application of Part IV of the GATT, and was also tasked with arranging any consultations required under Part IV, formulating proposals regarding Part IV when required and dealing with any necessary modifications (GATT, 1965b).

With the addition of Part IV, the Contracting Parties explicitly stated that they did not expect reciprocity from developing countries either in terms tariffs or non-tariff barriers (GATT, 1964d; Grimwade, 2004: 13). Annex I to the GATT defined ‘non-reciprocity’ as the expectation that developing countries would only make contributions consistent with their individual development status (GATT, 1964d: Annex I Notes and Supplementary provision). This definition of non-reciprocity, in an official GATT document, is very important. It provides evidence that for the first time the GATT Contracting Parties agreed to over-ride the norm of reciprocity in the

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<sup>57</sup> Part IV was made up of three sections – a section on Principles and Objectives (Article XXVI), a section on Commitments (Article XXXVII) and a section on Joint Action (Article XXXVIII) (GATT, 1964d).

case of developing countries, thus providing them with a form of special treatment, but linking it to their development status.

The over-riding of the norm of reciprocity and the special needs of developing countries was also highlighted in the Kennedy Round (1964-67) which was founded on the principle that the developed countries could not expect reciprocity from developing countries, and that any contributions they made should be based on their trade and development needs (GATT, 1975b: 6, paragraph 23-25). The Kennedy Round introduced a new approach to tariff reduction negotiations with the use of a linear percentage reduction approach rather than the previous 'product-by-product' approach (WTO, 2005v: 5).<sup>58</sup> Along with tariff reductions, the Kennedy Round attempted to deal with non-tariff barriers, agriculture and the trade problems of developing countries, an issue influenced by the convening of the United Nations Conference on Trade and Development (UNCTAD) in 1964.<sup>59</sup> A Sub-Committee on the Participation of the Less-Developed Countries in the round was established by the Contracting Parties in November 1963. The Sub-Committee was charged with considering and submitting recommendations to the Trade Negotiations Committee regarding any special problems concerning the participation of developing countries in the negotiations (GATT, 1963c). It also acted as a focal point to consolidate issues of interest to the developing countries (GATT, 1964c: 2, paragraph 3). In 1965, the Sub-Committee produced a plan for the participation of developing countries in the negotiations, which gave them access to all tariff reduction offers by the developed countries before they presented their own offers. Only once they confirmed that they would submit an offer did they become full participants in the negotiations process (GATT, 1975b: 12-13, paragraphs 56-58). However, despite the establishment of the Sub-Committee and its plan for the inclusion of developing countries, by the end of the Kennedy Round there were still outstanding issues of concern to the developing countries, including the implementation of reductions in

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<sup>58</sup> The idea of a linear percentage reduction approach to tariff reductions was originally suggested by the French prior to the Dillon Round, but unsuccessful at the time as few of the major trading countries felt able to use the method. The linear approach was adopted by the EEC and EFTA when they were established (GATT, 1961c: 2). This approach is still used today in the WTO, and the choice of formula for tariff reductions has been one of the big issues in the agricultural negotiations for the Doha Round.

<sup>59</sup> For a detailed analysis of the issues raised in the Kennedy Round see Evans (1971).

their favour and compensation for the loss of preferences. There was also the feeling among some developing countries that they had not been allowed to participate effectively in the negotiations (GATT, 1967: 1 and 3). The outcome of the Kennedy Round for developing countries was a number of MFN tariff reductions and eliminations as well as bindings of existing rates by developed country participants (WTO, 2005i: 6). In practical terms, the Kennedy Round was critical for developing countries as for the first time in the GATT there was a focus on helping them to participate in the negotiations. The focus on developing countries in the GATT following the implementation of Part IV and the beginning of the Kennedy Round was also seen in the United Nations, with the holding of the first UNCTAD Conference.

UNCTAD I was held in 1964. The decision to hold the Conference came out of an earlier conference – the Economic Development Conference - held in 1962 in Cairo, which recognised that developing countries needed effective measures to be taken in order for them to achieve economic and social development.<sup>60</sup> The Cairo Declaration called for an international conference to be held under the auspices of the UN, dealing with international trade, commodity trade and economic relations between developing and developed countries. The decision to hold UNCTAD I was approved by the UN's Economic and Social Council (ECOSOC) and the General Assembly (GA) in 1962 (UN, 1985a: 10; also UN 1962b). The significance of the conference was that it was established on a 'North-South' basis, instead of an 'East-West' one (Gardner, 1968: 99).<sup>61</sup> UNCTAD I produced two key institutional results. UNCTAD was established as a permanent institution and secondly, the Group of 77 (G77) emerged as a key group of developing countries. Both of these developments were important for the LDCs. The G77 acted as a norm entrepreneur in pushing for special treatment for developing countries as well as the LDCs in particular, (Sauvant, 1981: 129) whilst the institutionalisation of UNCTAD meant that it became a focus for the economic problems of developing countries (Gardner, 1968:

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<sup>60</sup> The Economic Development Conference was held in Cairo between the 9<sup>th</sup> and 18<sup>th</sup> July 1962. The resulting Cairo Declaration of Developing Countries was adopted by the UN General Assembly in December 1962 (Resolution 1820 (XVII)).

<sup>61</sup> Gosovic (1972) argues that this was possible due to a thaw in the Cold War (Gosovic, 1972: 16).

99).<sup>62</sup> For the LDCs, UNCTAD I was important as references were made to the ‘least developed countries’ in the Conference documentation and in the general principles adopted by the Conference (UN, 1964b).<sup>63</sup> General Principle Fifteen introduced the idea that international measure aimed at developing countries should differentiate countries according to their level of development with ‘special attention being paid to the *less developed* among them’ (UN, 1964a, emphasis added). In the Report of the Secretary-General of the Conference, Prebisch called for the adoption of special measures ‘to encourage exports from the least developed countries’, indicating that Prebisch could be considered to be one of the first norm entrepreneurs for the LDCs (UN, 1964b: 39). A view which seems to be backed up by a presentation on the contribution of UNCTAD to LDC IV – see UNCTAD (2009e).

The idea that some developing countries might require more help than others was reinforced at the second UNCTAD Conference held in New Delhi in 1968 (Komlev and Encontre, 2004: 103). The Conference adopted Resolution 24(II) ‘Special Measures to be taken in favour of the least developed among developing countries’ (Komlev and Encontre, 2004: 103). The resolution explicitly recognised that developing countries were not a homogenous group and called on UNCTAD ‘to identify the least developed countries (LDCs), to review their problems and specific needs’ as well as to specify the special measures that should be taken to assist them (Komlev and Encontre, 2004: 103). In 1969, the General Assembly requested the Secretary-General to review the problems of the LDCs and to recommend special measures that might help these countries benefit from the Second United Nations Development Decade which was due to start in the 1970s (UN, 1969).<sup>64</sup> Subsequent

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<sup>62</sup> Documents from the Coordinating Committee of the G77 in preparation for their 1967 Ministerial Meeting in Algiers indicate that one of the items on the agenda was ‘Measures relating to the needs of the Least-Developed Among Developing Countries’. The documents also note that the ‘Developing countries recognise the great importance of according special measures for the least developed among developing countries in order to accelerate their process of industrialization and economic development, and to enable them to benefit equally from a new order of world trade and commercial policy.’ For more in this see Sauvant (1981: 129).

<sup>63</sup> Prebisch, the Secretary-General of the Conference, noted that the precedent for the differentiation of developing countries was set in the Treaty of Montevideo which established the Latin American Free Trade Association (LAFTA). Article 32 of The Treaty of Montevideo includes a section on ‘Measures in favour of countries at a relatively less advanced stage of economic development’. The Treaty is available at <http://treaties.un.org/doc/Publication/UNTS/Volume%201484/volume-1484-I-25392-English.pdf> accessed on 13 December 2009. Also see Sauvant (1981).

<sup>64</sup> The Second United Nations Development Decade began in 1971.

UNCTAD Conferences have also had a focus on LDCs and the UNCTAD Secretariat has been very involved in assisting LDCs and producing the annual LDC reports.<sup>65</sup>

UNCTAD is thus a key institution in researching LDCs.

In relation to norms in the WTO, the first two UNCTAD conferences were important in that they drew attention to the fact that there were ‘Least Developed Countries’ in the developing world, highlighting the fact that not all developing countries were the same, or required the same treatment. This recognition paved the way for the creation of the norm of special treatment for LDCs. The establishment of UNCTAD as a permanent institution and the founding of the IDA by the World Bank indicated the emergence of a new norm of special treatment for the world’s poorest countries, with both organisations recognising the need for special assistance for these countries. The requirement for different treatment, depending on the levels of development, was also acknowledged in the GATT with the introduction of non-reciprocity for developing countries based on their developmental needs.

### **Creating the Category/Establishing the Norm (1970s)**

The 1970s marked a critical decade for LDCs, with the first definition of the category in the UN. The defining of the LDCs created a specific group of countries requiring special treatment to develop. This section will look at the introduction of the norm of special treatment for LDCs in the 1970s, with specific reference to the Tokyo Round (1973-79). Initial evidence for the recognition of LDCs is provided by minutes from the GATT Council Meeting in 1971 and minutes from the Informal Group of Developing Countries meetings but it was not until the Tokyo Declaration of 1973 that LDCs were referred to in officially released GATT documents (see GATT, 1971d: 12-13; GATT, 1970b: 4; also see GATT, 1971e).

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<sup>65</sup> For example, UNCTAD III in 1972 adopted Resolution 62 (III) Special Measures in favour of the least developed among developing countries; and UNCTAD IV in 1976 adopted Resolution 98 (IV) ‘Least developed among developing countries, developing island countries and developing land-locked countries’.

Formal definition of the LDCs was created by the UN Committee for Development Planning (CDP), a subsidiary body of ECOSOC, at its seventh session in spring 1971, following a call for the identification of these countries in the General Assembly in December 1970 (UN, 1971a; UN, 1970). An initial list of 25 countries was approved by the General Assembly in November 1971 (UN, 1971b).<sup>66</sup> Much of the impetus for the creation of the LDC category derived from the UN's decision to implement a Second Development Decade in the 1970s. The International Development Strategy for the decade included a separate section on 'special measures in favour of the least developed' designed to enable them to benefit from the policy measures for the Decade (UN, 1971b). The identification of the LDCs was felt to be essential firstly in order to ensure that 'the political will to implement *special measures* in their favour' was carried out and secondly to ensure that these countries would benefit from the development strategy for the Second UN Development Decade (UN, 1971a:14, paragraph 54; UN, 1971b).

The CDP's initial definition of an LDC was based on three criteria - per capita Gross Domestic Product (GDP) of \$100 or less; manufacturing accounting for 10% or less of GDP; and an adult literacy rate of 20% or less (UN, 1971a: 16, paragraph 60).<sup>67</sup> Any country meeting these three criteria was to be considered an LDC. Regular reviews of low income countries were conducted by the CDP to ensure that countries meeting the criteria were included in the LDC list.<sup>68</sup> The classification of borderline cases was to be determined by examining the average GDP growth of the country in question. If a country showed low GDP growth and met any of the other criteria it would be classified as an LDC (UN, 1971a: 15, paragraph 54). These criteria were provisional and were expected to be refined in the future, particularly once data quality had been improved (UN, 1971a: 15, paragraph 54). The CDP urged other parts of the UN system and intergovernmental organisations to develop their own list of LDCs where appropriate. Refinement of the identification criteria for LDCs eventually became part of the work of the CDP, with the main changes to the

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<sup>66</sup> The Committee for Development Planning was established by ECOSOC in July 1965 and is now known as the Committee for Development Policy.

<sup>67</sup> A ceiling of \$120 per capita was set for the inclusion of countries who met the other two criteria. The adult literacy rate was based on those over 15 (also see UN, 1985a: 209).

<sup>68</sup> For example see UN, 1975: 31.

identification criteria being made in 1991, 2000, 2003 and 2005 (UN, 1973: 31, paragraph 105).

A list of 25 LDCs was approved by the General Assembly in 1971.<sup>69</sup> The creation of the LDC list gave UNCTAD the opportunity to begin more focused analytical work on special measures in favour of LDCs (UN, 1985a: 209). Including the creation of a specialised unit called the Special Program for LDCs (Weiss and Jennings, 1983: 32), missions to LDCs in conjunction with the United Nations Development Programme (UNDP) (UN, 1985a: 209) and the establishment of an Intergovernmental Group on the LDCs in 1975 which elaborated the special measures for LDCs and pushed for a programme of special measures to be adopted (UN, 2007b). Two UNCTAD resolutions were also passed relating to LDCs - Resolution 62 (III) entitled ‘Special Measures in favour of the least developed among developing countries’ at UNCTAD III in 1972, and Resolution 98 (IV) entitled ‘Least developed among developing countries, developing island countries and developing land-locked countries’, was adopted at UNCTAD IV in 1976. In the late 1970s, UNCTAD instigated the first of its programmes for LDCs with the Immediate Action Programme launched in 1979. The Programme’s two main aims were to provide ‘an immediate boost to the economies of LDCs’ and to alleviate ‘their most pressing social needs’ (UN, 1982b: 402). However, the programme was not fully implemented and was replaced by the Substantial New Programme of Action (SNPA) in 1981 (UN, 1982b: 401; see 1980s section for more details on SNPA). UNCTAD’s Director of Research between 1970 and 1977, Jack Stone, is cited as the ‘founding father’ of the LDCs, as Stone was the person who pushed for the formal identification of a definitive list of LDCs (see Weiss and Jennings, 1983: 31; also Weiss, Carayannis, Emmerij and Jolly, 2005: 237-8, particularly the quote by Paul

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<sup>69</sup> The original list of 25 LDCs included the following countries: Afghanistan, Benin, Bhutan, Botswana, Burundi, Chad, Ethiopia, Guinea, Haiti, the Lao People’s Democratic Republic, Lesotho, Malawi, Maldives, Mali, Nepal, Niger, Rwanda, Sikkim, Somalia, Sudan, Uganda, United Republic of Tanzania, Upper Volta (now Burkina Faso), Western Samoa and the Yemen Arab Republic (UN, 1971a; UN, 1971b; also UN, 1985: 209). Agreement that countries could be added to the list of LDCs meant that the original list was expanded twice during the 1970s, firstly in 1975 with the addition of Bangladesh, the Central African Republic, Democratic Yemen and the Gambia, and then again in 1977 with the addition of Cape Verde and Comoros (see UN, 1975: 31, paragraph 130; and UN, 1977: 22, paragraph 83). By the end of the 1970s there was a total of 30 LDCs, as Sikkim ceased to be independent in May 1975 and became part of India.

Berthoud).<sup>70</sup> Prior to this the idea had been each UN agency would focus on the LDCs and develop its own list of LDCs if necessary (Weiss et al, 2005: 238). Thus Stone can be seen as a key norm entrepreneur in the emergence of the norm of special treatment for LDCs. His role as UNCTAD's Director of Research, combined with the initial leadership of Prebisch in UNCTAD, also undoubtedly influenced the organisation itself and its focus on LDCs.

GATT/UNCTAD rivalry, particularly in the early days of UNCTAD ensured that the GATT also paid attention to LDCs (Gosovic, 1972). This became apparent in the Tokyo Round, launched in September 1973, by the Tokyo Declaration. The Round aimed to further liberalise and expand world trade and to assist developing countries to benefit from trade (GATT, 1973a: paragraph 2).<sup>71</sup> The Tokyo Declaration introduced more favourable treatment of developing countries echoing earlier statements made in the Kennedy Round and again stated explicitly that the developed countries did not expect reciprocity from developing countries (GATT, 1973a: paragraph 5). This helped reinforce that the norm of reciprocity within the GATT had been changed to one of non-reciprocity for developing countries, paving the way for the introduction of the Enabling Clause during the Round, providing 'a basis for special and differential treatment in favour of developing countries – particularly the least developed countries' (GATT, 1978).<sup>72</sup> The idea of 'special and differential treatment' (SDT) for developing countries in the GATT was a key part of the norm of special treatment for developing countries within the trade arena.<sup>73</sup> Of most importance to this study, is paragraph six of the Tokyo Declaration, which stated that:

The Ministers recognise that the particular situation and problems of the least developed among the developing countries shall be given *special attention*, and stress the need to ensure that these countries receive *special treatment* in the context of any general or specific measures taken in favour of the developing countries during the negotiations (GATT, 1973a: paragraph 6, emphasis added).

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<sup>70</sup> Jack Stone was also the Director of UNCTAD's Special Program on Least Developed, Land-Locked and Island Developing Countries between 1977 and 1981.

<sup>71</sup> For a detailed history of the Round and its negotiations see Winham (1986).

<sup>72</sup> The Enabling Clause is also known as the Decision on Differential and More Favourable Treatment, Reciprocity and Fuller Participation of Developing Countries.

<sup>73</sup> For more on Special and Differential Treatment and its changing meanings since the 1960s see Whalley (1999).

This official recognition of the LDCs by the GATT is important as it specifically mentions the need to ensure that LDCs receive special treatment, echoing the language used in UNCTAD. The Tokyo Declaration marks the beginning of the lifecycle for the norm of special treatment for LDCs within the GATT/WTO. It is also marks a definite splitting of the developing countries within the GATT, reinforcing the fact some developing countries require more assistance than others.<sup>74</sup>

The inclusion of concerns of developing countries in the Tokyo Round generated increasing interest and participation from the developing countries in the Round (McRae and Thomas, 1983: 77). However, in spite of the large numbers of developing countries taking part in the Round, and the introduction of the Enabling Clause, many felt that they had not gained as much as they had hoped. This was also true for the LDCs as GATT Ministerial documents from 1979 show that it was felt by some that LDCs had not been given 'sufficient consideration' in the rest of the round.<sup>75</sup> Despite this, the Tokyo Round is highly significant to the question of whether there is a norm of special treatment for LDCs in the trade regime. For the first time the terminology of 'LDC' and their need for 'special treatment' entered the GATT documents and began to be considered by the Contracting Parties.<sup>76</sup>

The recognition and definition of LDCs by the UN and the work carried out in UNCTAD was critical in the founding of the norm of special treatment more generally. The recognition of the LDCs was essential to differentiate them from other developing countries. Without this differentiation, the LDCs would not have been accorded any additional special treatment. With the precedent set in the UN for how these countries should be treated, the norm then slowly developed and spread to

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<sup>74</sup> This is echoed by McRae and Thomas (1983) who note that '... the views or approach of the developing countries could not be described as monolithic. The Tokyo Declaration recognised this variation in interest...' (McRae and Thomas, 1983: 59). Also see Koul (1977) who stated that 'The "Tokyo" Declaration divided the developing countries into two classes, depending upon their state of economic progress. One group, mostly African countries, would be called least developed countries' (Koul, 1977: 30-31).

<sup>75</sup> Speech by Mr Jaramillo (Colombia), at the GATT Ministerial in December 1979 (See GATT, 1979c: 19). This view was echoed by the Yugoslavian Delegate, Mr Vrhunec, who stated that 'the specific and serious problems of the developing countries, including the least developed among them, had been decidedly neglected' (GATT, 1979c: 29).

<sup>76</sup> For a detailed outline of the results of the Tokyo Round for LDCs see the GATT submission to LDC I (REF).

other organisations, particularly those closely associated with the UN.<sup>77</sup> UNCTAD played a key role in promoting and constructing the norm of special treatment for LDCs by passing resolutions in their favour, as well as having a research focus on these countries. The early role played by Prebisch in UNCTAD and the focus on LDCs instigated by Jack Stone helped to shape the role played by UNCTAD with regard to LDCs, thus the organisation along with the individuals can be seen as norm entrepreneurs.

## The Norm Cascade (1980s)

The norm cascade represents the period in the lifecycle where the norm spreads, actors become socialised to the norm and the norm becomes institutionalised. For the LDCs this began to happen in the 1980s when the special treatment for LDCs was re-emphasised within the UN through the UN's Third Development Decade's strategy which prioritised assistance to them through the introduction of a programme of action designed to help improve their future prospects (UN, 1982: 405, General Assembly Resolution 35/56) and the holding of the first UN Conference on LDCs (LDC I) which agreed a Substantial New Programme of Action (SNPA) for LDCs. LDC I helped to raise the profile of the LDCs in the international system and highlighted the issues which were of critical importance to them.<sup>78</sup> The Conference also had an impact on the treatment of LDCs in the GATT. The Work Programme for the GATT following the end of the Tokyo Round proposed that the Committee on Trade and Development should pay 'special attention to the special problems of least developed countries' (GATT, 1979a: 3).<sup>79</sup> This led to the creation of a Sub-Committee on the Trade of LDCs which ensured that issues of importance to LDCs were included in the Uruguay Round negotiations. These events helped socialise other states to the needs of LDCs. The 1980s therefore began with a real

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<sup>77</sup> A good example here is that of the Non-Aligned Movement, who specifically referred to the Least Developed Countries in their Economic Declaration which resulted from their Havana Conference in 1979. See Willetts (1981: 164-5). The Non-Aligned Movement was closely linked to the UN (See Willetts, 1981: 5).

<sup>78</sup> Interestingly, the UN Briefing Papers entitled *The World Conference: Developing Priorities for the 21<sup>st</sup> Century*, which was published in 1997 and focuses on the UN's major development related conferences in the 1990s does not deal at all with the LDC conferences (see UN, 1997).

<sup>79</sup> The Work Programme was adopted by the Contracting Parties at their Thirty-Fifth Session (see GATT, 1979d: 77).

focus on LDCs in the UN and in the GATT. This focus was reinforced academically with the publication of Weiss and Jennings (1983) book on the first LDC Conference (Weiss and Jennings, 1983), and the introduction of UNCTAD's annual LDC reports in 1984.

Despite the focus on LDCs at the beginning of the decade, the economic situations of most LDCs deteriorated during the 1980s and the list of LDCs increased dramatically with the addition of twelve countries.<sup>80</sup> These additions to the list meant that the number of LDCs rose from thirty countries at the end of the 1970s to 42 by the end of the 1980s, 30 of which were GATT Contracting Parties. The factors which led to this situation included domestic policy problems, natural disasters, the world economic situation and debt servicing difficulties (UN, 2000).<sup>81</sup> The awareness of these difficulties during the decade also meant that there was an increased focus on the poorer developing countries in organisations such as the World Bank and the IMF, who introduced special programmes of structural adjustment aimed at low income countries in response.<sup>82</sup>

The LDC I was held in Paris in 1981 and represented further international recognition of this group of countries and the problems they faced, with over 130 governments attending the conference.<sup>83</sup> The focus of the Conference was the LDCs 'special problems and ways to alleviate them' (UN, 1982b: 401). This included a

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<sup>80</sup> These additions were Guinea-Bissau in 1981 (UN, 1981a: 27, paragraph 104), Djibouti, Equatorial Guinea, Sao Tome and Principe, Sierra Leone and Togo in 1982 (UN, 1982a: 22, paragraph 103), . In 1985 Vanuatu in 1985, followed by Kiribati, Mauritania and Tuvalu in 1986, then Myanmar and Mozambique in 1987 and 1988 respectively (See UN, 1985b: 24, paragraph 115; UN, 1986: 48, paragraph 189; UN, 1987a: 20, paragraph 64; and UN, 1988: 47, paragraph 140).

<sup>81</sup> Examples of some of the problems facing LDCs during the 1980s included droughts in Botswana, Ethiopia, Niger, Rwanda and Somalia; civil unrest in Burkina Faso and Chad; falling world commodity prices, particularly for coffee and cotton, affected Burkina Faso, Burundi, Central African Republic, Rwanda, Sudan and Uganda; and floods in Bangladesh and Somalia (see UNCTAD, 1989: 129-223). Malawi, Ethiopia, Sierra Leone, Somalia and Sudan were particularly affected by external debt problems (see UNCTAD, 1989: 129-223).

<sup>82</sup> Although the World Bank and IMF use the alternative categorisation of low income countries as opposed to LDC, many of the countries are essentially the same. For more details on how these categories differ see Nielsen (2011). The LDCs debt burden to multilateral financial institutions was referred to in the Final Act of UNCTAD VII in 1987 (UNCTAD, 1989: 113, paragraph 134).

<sup>83</sup> The decision to hold the conference was made in the UN General Assembly in 1979, see UN (1979). For numbers attending the conference see Weiss and Jennings (1983: 90).

review of the internal structural problems of the LDCs and resulted in developed countries agreeing to try to increase financial and technical aid to the LDCs in return for the implementation of domestic policy reforms, thus echoing World Bank views at the time (Weiss, 1986: 111; Weiss and Jennings, 1983: xviii). LDC I also represented the successful culmination of the efforts of the LDCs ‘to differentiate themselves from other developing countries’ and ‘to force the Group of 77 publically to admit that not all of its members were equally affected by global economic problems’ (Weiss, 1986: 109). The conference was responsible for finalising and adopting the SNPA, which replaced the Immediate Programme of Action for the LDCs introduced in 1979. The SNPA was a ten-year Programme, the first aimed specifically at LDCs, which provided ‘for a whole series of measures both at the level of LDCs and of the aid extended by the donor countries and at the international level, in particular in the fields of trade, transfer of technology, transport and communications, etc’ (UN, 1985c: 35).<sup>84</sup> The SNPA dealt with the general situation of LDCs and the measures that were to be taken by LDCs themselves, the international support measures and the implementation, follow-up and monitoring of the programme (UN, 1985c: 35). It has subsequently been followed by other ten-year programmes, and set the tone for how LDCs would be helped by the international community. Its importance was that it signified ‘the gradual acceptance by both North and South of the legitimacy of this category of countries requiring special international measures’ (UN, 1985a: 213). Although LDC I and the SNPA were UN initiatives, the GATT was also involved in the trade side of these, as demonstrated by its submission to the Conference (UN, 1981b).

The GATT created a Sub-Committee on Trade of LDCs in November 1980, under the Committee for Trade and Development (CTD), in response to a proposal from various developing and LDCs (GATT, 1980a: 18, paragraph 40).<sup>85</sup> The Sub-Committee was tasked with paying ‘*special attention*’ to the situation and trade

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<sup>84</sup> Chapter one of this publication is entitled ‘The Third World of the Third World’ highlighting the poor situation of the LDCs.

<sup>85</sup> The proposal to establish a Sub-Committee on the Trade of LDCs received a mixed response from the developed countries with some supporting it and some not, but no indication is given in the minutes as to which countries took which position. The initial proposal to create a Sub-Committee to deal with LDCs came from Bangladesh during the Thirty-fifth Session of the GATT Contracting Parties (see GATT, 1979d: 72).

problems of the LDCs, as highlighted in paragraph six of the Tokyo Declaration, and was initially only supposed to meet until the end of 1981 (GATT, 1980b: 15-16; also see GATT, 1983b:5, emphasis added). The creation of the Sub-Committee, despite initially being a temporary measure, meant that for the first time LDCs had a definite focus on their trade problems within the GATT. This focus was recognised at LDC I, with the final resolution of the Conference suggesting that the GATT should retain the Sub-Committee as it provided a forum for LDC issues and could make a valuable contribution to the SNPA in term of international trade (GATT, 1981b: 13).

Membership of the Sub-Committee was open to all GATT Contracting Parties, but the Sub-Committee's terms of reference noted that all LDCs could also participate in the meetings providing they notified the Director-General (GATT, 1980b: 16). This meant that *all* LDCs could be involved in the meetings of the Sub-Committee, even if they were not Contracting Parties to the GATT. This practice was continued in the WTO. The minutes of the Sub-Committee meetings, held between 1980 and 1994, show that a total of fifteen sessions were held on a roughly annual basis (GATT, 1980d, 1982b, 1983b, 1983d, 1984b, 1985b, 1988c, 1988e, 1989a, 1991a, 1991b, 1994c). However, after the 1982 GATT Ministerial Meeting, the meetings became slightly more frequent until the start of the Uruguay Round, when there were no meetings for approximately two and a half years. The meetings were serviced by the GATT Secretariat, who also prepared most of the documentation, including a review of the special treatment offered to LDCs within the GATT (GATT, 1980c: 10-11, Annex II). The first two meetings were chaired by the Director-General Arthur Dunkel, with the majority of the others being chaired by the Norwegian Ambassadors to the GATT. These chairs and the Sub-Committee itself can be seen as norm entrepreneurs for the norm of special treatment of LDCs within the GATT.<sup>86</sup> Two of the chairs of the Sub-Committee are particularly notable for their involvement in LDC issues – Han Ewerlof of Sweden was the Chairman of the Preparatory Committee for LDC 1 (UN, 1980) whilst Martin Huslid of Norway was a member of the Steering Committee of the International Foundation for

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<sup>86</sup> The Scandinavian countries are typically major donors of aid to developing countries so the chairmanship of the Sub-Committee by the Norwegians is also likely to be significant in the progression of the norm within the GATT. Also, although it could be argued that the norm of special treatment for LDCs was embedded in the name of the Sub-Committee, the subsequent actions of the Sub-Committee do indicate that the body performed as a norm entrepreneur.

Development Alternative (IFDA) prior to his role of chair in the Sub-Committee (IFDA, 1978: 11).<sup>87</sup> Huslid was also President of the UNCTAD Trade and Development Board in 1985 and subsequently chaired Committee IV which looked at LDCs at UNCTAD VII in 1987 and advocated for substantial debt relief for these countries (UNCTAD, 1996: 4; UN Chronicle, 1987).

At the first meeting of the Sub-Committee, it was proposed that developed countries should allow duty-free treatment for exports from LDCs. This is one of the first calls for duty-free treatment for LDC exports which is still part of the trade negotiations today, in the Doha Round and will be dealt with in more detail in Chapter Five (GATT, 1980d: 2). Another recurring theme of discussion at the Sub-Committee meetings was technical assistance for the LDCs (see GATT, 1982b; GATT, 1989a; GATT, 1991a: 6). This was first raised at the third meeting of the Sub-Committee in 1982, which called for the continued expansion of the programme of technical assistance by the secretariat to LDCs (GATT, 1982b: 4).<sup>88</sup> The Chairman of the Sub-Committee in 1982, Ewerlof, also highlighted the work of the SNPA, and called for greater attention to be paid to the follow-up of the results of LDC I (GATT, 1982b: 6). Ewerlof's comments highlight the attempts made to link the norm within the GATT to the norm externally within the UN and UNCTAD, as well as Ewerlof's own interests in the follow-up to LDC I. This linking of the norm to the UN/UNCTAD could also indicate that Ewerlof was a 'message entrepreneur' attempting to promote consensus within the norm (Fukuda-Parr and Hulme, 2011: 31).

The Sub-Committee established a practice of ad hoc consultations between individual LDCs and their trading partners. The first consultation involving discussions between Bangladesh and its trading partners was held in November 1983

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<sup>87</sup> The IDFA was an international non-governmental organisation established in 1976 to look at alternative ideas about development and international cooperation. It published a series of Dossiers between 1978 and 1991. The IDFA had consultative status with UNCTAD and ECOSOC. Jan Pronk was also on the Steering Committee with Huslid, whilst he was Assistant Secretary-General of UNCTAD. Pronk was a research assistant for Jan Tinbergen during the 1960s.

<sup>88</sup> The Minutes do, however, note that finance for technical assistance was an issue.

at the fifth meeting of the Sub-Committee (GATT, 1983c).<sup>89</sup> Subsequent consultations were held with Tanzania in 1984 and Sudan in 1985 (GATT, 1984b; GATT, 1985b). The Sub-Committee also forwarded proposals and texts for consideration at GATT Ministerial Meetings, via the Committee on Trade and Development, perhaps most notably for the 1982 GATT Ministerial, under the chairmanship of Ewerlof. It was hoped that the 1982 Ministerial Meeting would review actions already taken to help LDCs and examine proposals for future action to ensure that LDCs received additional ‘special treatment’ (GATT, 1982b: paragraph 25).<sup>90</sup> Six proposals were put forward by the Sub-Committee for inclusion in the decision of the Ministers resulting from the 1982 Ministerial. These proposals included:

- Provision of duty free access for LDC exports
- Flexibility in rules of origin for LDCs
- Elimination or reduction of non-tariff measures affecting LDCs
- Increased technical assistance
- Increased trade promotion assistance
- Strengthening of the role of the Sub-Committee (GATT, 1982b: 7-8, paragraph 26).

The inclusion of issues relating to LDCs in the decisions of the Ministerial would demonstrate that the GATT had been socialised to the concerns of the LDCs. The final 1982 Ministerial documents contained seven actions for the Contracting Parties to help the trade of LDCs. These included all of the proposals put forward by the Sub-Committee, except the final one of strengthening the role of the Sub-Committee, which was amended to ensuring that there was discussion and review of issues of interest to LDCs (GATT, 1982c: 15; also see GATT, 1982d: 14). Also included was an agreement to help LDCs participate in GATT negotiations (GATT, 1982c: 15; also see GATT, 1982d: 14). These actions, although not binding, indicate a

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<sup>89</sup> Bangladesh was very active in most of the Sub-Committee meetings, often speaking on behalf of the LDCs.

<sup>90</sup> The 1982 GATT Ministerial meeting was the first to be held since the launch of the Tokyo Round in 1973, as unlike the WTO, the GATT did not have regular Ministerials built into its agreements. The Ministerial was supposed ‘to agree an agenda for a new round’, but failed to do so. For more details see Hoekman and Kostecki (2001) and Wilkinson (2006).

conscious attempt by the GATT Contracting Parties to provide special treatment to LDCs, and to help them participate and benefit from the GATT negotiations, as well as to ensure that a focus on LDCs would be maintained in the GATT. The decision was an important statement of intent for the LDCs and calls for the effective implementation of the 1982 Ministerial Decision were frequently made in the Sub-Committee, during the Uruguay Round (see for example GATT, 1988c: 2; and GATT, 1989a: 3).

The Uruguay Round (1986-1994) was the longest of the GATT rounds, lasting over eight years and resulting in the creation of the WTO. The Ministerial Declaration launching the Round contained only one direct reference to LDCs, declaring that ‘special attention’ would be paid to the problems and needs of the LDCs and that implementation of the provisions of the 1982 Ministerial Declaration on LDCs would be given ‘appropriate attention’ (GATT, 1986b: 3).<sup>91</sup> This reinforced the importance of the 1982 decision. At the start of the Uruguay Round in 1986, no Sub-Committee meetings were held for nearly two and a half years although developments of interest to the LDCs were monitored by the Committee on Trade and Development (see dates of meetings in Table Eight above). In 1987, the Committee on Trade and Development agreed to ‘reactivate’ the Sub-Committee largely due to pressure from the LDCs themselves (GATT, 1987e: 7, paragraph 23). The subsequent 1988 Sub-Committee meeting reviewed the Uruguay Round developments of interest to LDCs as one of its agenda items (GATT, 1988c). At the next Sub-Committee meeting, in October 1988, this became the only agenda item (GATT, 1988e). The Sub-Committee regularly reviewed the Uruguay Round negotiations with regard to LDCs and although it was not a direct part of the negotiations, it adopted the role of sensitizing them to the problems of LDCs and highlighted the views and proposals raised by LDCs in the negotiating groups (GATT, 1991b: 1). The role of the Sub-Committee during the Uruguay Round with its continual push for the issues of concern to LDCs to be considered make it a key part of the story of the norm of special treatment for LDCs within the GATT. The ‘reactivation’ of the Sub-Committee in 1988 can also be seen as part of Sandholtz’s argumentation process

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<sup>91</sup> Despite only containing one direct reference to LDCs, several mentions are made of the Less Developed Countries.

which subsequently strengthened the norm of special treatment for LDCs within the GATT (Sandholtz, 2008).

At the end of the Uruguay Round, the GATT Secretariat prepared a document for the Sub-Committee detailing the Round's provisions specifically in favour of LDCs (GATT, 1994d). The introduction to the document notes that some of the provisions grant LDCs 'more favourable treatment' than other developing countries, thus reinforcing the differences between LDCs and other developing countries and separating out the two norms of special treatment (GATT, 1994d: 1). It has been argued that 'the Uruguay Round heralded the end of the road for Special and Differential Treatment', although this does not seem to have been the case for the LDCs (Stevens, 2003). The significance of the Uruguay Round, in terms of LDCs and the norm story, was that as well as creating the WTO, it represented a change in the way all developing countries, including LDCs interacted with the trade regime due to the institutional changes implemented in the round. The impact of this change is highlighted in the case study on accession. For the LDCs themselves, the end of the Uruguay Round also marked the increasing institutionalisation of the norm of special treatment, via the WTO Agreements.

## **Norm Institutionalisation (1990s)**

The 1990s are important to the norm story for two reasons. They represent the continuation of the 'cascade' point in the norm lifecycle for the norm of special treatment for LDCs, with the norm receiving broad acceptance (Finnemore and Sikkink 1998: 895) and they represent a period of increasing institutionalisation of the norm. Evidence of this was initially provided by the UN and UNCTAD maintaining and increasing their focus on LDCs by revising their identification criteria, as well as adding more countries to the list. The revision of the LDC criteria marked a tipping point in the UN system, providing a reinforcement of the norm. In addition, the UN held its second Conference on LDCs (LDC II) in Paris in 1990 and implemented the Programme of Action for the 1990s. The focus on Highly Indebted Poor Countries (HIPC) in the World Bank and IMF and the introduction of

the HIPC Programme again reinforced the idea that special assistance should be provided to poorer countries, the majority of which were LDCs.

The acceptance of the norm was demonstrated by the addition of a further eight countries to the list of LDCs, and the first LDC graduation from the category, so that by the end of the decade there were 47 LDCs.<sup>92</sup> The increase in the number of LDCs and the decline in their situation, particularly in Africa, were documented by the UN in the Global Mid-Term Review for the 1990s which found that despite efforts by the LDCs to implement domestic reforms, the countries were not able to meet many of the objectives of the programme and faced a deterioration in their socio-economic situation (UNCTAD, 1995: 5). This decline was attributed to the impact of domestic factors and the unfavourable international economic environment (UNCTAD, 1995: 5).<sup>93</sup> In addition, the end of the Cold War meant that there was increased competition for aid budgets from former Soviet states and Eastern European countries. The continued decline in the situation of several LDCs during the late 1980s meant that the 1990s again began with a focus on the LDCs.

The 1990s also represented a continuation of the ‘cascade’ and an increase in the norm institutionalisation for LDCs within the trade regime, particularly following the creation of the WTO in 1995. The WTO agreements reflected the increasing institutionalisation by specifically recognising LDCs as a separate category of membership and contained several references to them (see Appendix A for more details). Following the creation of the WTO, the Singapore Ministerial Meeting, in 1996, agreed a Plan of Action for the LDCs. This was followed in 1997, by the introduction of the Integrated Framework (IF) for LDCs in conjunction with five other multilateral agencies. Then in 1999, the LDC group emerged as one of the WTO’s many formal negotiating coalitions, prior to the Seattle Ministerial.<sup>94</sup> The

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<sup>92</sup> The countries added to the list of LDCs in the 1990s were Liberia in 1990, Cambodia, Madagascar, Solomon Islands, Democratic Republic of Congo and Zambia in 1991 and Angola and Eritrea in 1994 (See UN, 1990: 46; UN, 1991a: 62, paragraph 256; and UN, 1994: 65, paragraph 264). As well as these additions, the two Yemens united in May 1990 and Botswana graduated in 1994.

<sup>93</sup> Several LDCs, including Liberia, Rwanda and Somalia, also experienced civil and political instability, which exacerbated the economic problems they were facing.

<sup>94</sup> Although as noted earlier this is evidence of LDCs operating as a coalition prior to 1999.

events of the decade which this section will include are the revision of the LDC criteria, LDC II and the Programme of Action for the 1990s, which resulted from the conference, the creation of the WTO, and the WTO Plan of Action for LDCs and the emergence of the LDC group as an official negotiating coalition.

The decision to convene a second Conference on LDCs (LDC II) was taken by the General Assembly in 1987 (UN, 2007b; also see UN, 1987b).<sup>95</sup> The mandate of the Conference was to review the progress of the LDCs at the country level and review international support measures, as well as to formulate and adopt a Programme of Action for LDCs for the 1990s (UNCTAD, 1989: xiii). The two outcomes of the conference which will be examined here in more detail are the recommendations for the review of the criteria for inclusion in the LDC list by the Committee for Development Planning (CDP) and the adoption of the Programme of Action for the 1990s.<sup>96</sup> The review was carried out in 1991, with the result that the criteria for identifying LDCs were amended (UN, 1991b).<sup>97</sup> Growing dissatisfaction with the criteria for defining LDCs during the 1980s, meant that by 1991 it was felt that the criteria no longer reflected the latest thinking on development, and was no longer useful to aid donors as it failed to take account of the extent of poverty (UN, 1991a: 52, paragraph 217).<sup>98</sup> The amendments to the criteria resulted in a limit placed on population size of 75 million;<sup>99</sup> the introduction of two indices – the Augmented Physical Quality of Life Index (APQLI)<sup>100</sup> and the Economic Diversification Index (EDI)<sup>101</sup> - as well as a per capita income limit.<sup>102</sup> The revised criteria included

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<sup>95</sup> The Resolution was adopted without vote.

<sup>96</sup> The Committee for Development Planning was renamed the Committee for Development Policy in 1998.

<sup>97</sup> See UN General Assembly Resolution 46/206. The Resolution was adopted without a vote (UN, 1991b).

<sup>98</sup> The CDP reports indicate a growing dissatisfaction with the criteria for identifying LDCs particularly during the 1980s for examples see Committee for Development Planning Reports for Sessions Eighteen to Twenty-Six accessible via <http://www.un.org/esa/policy/devplan/reportstoecosoc.htm>.

<sup>99</sup> Countries with a population of more than 75 million were excluded from the LDC category. However, countries classified as LDCs before this change occurred remained in the category e.g. Bangladesh and Ethiopia (UN, 1991a: 55, paragraph 237).

<sup>100</sup> The APQLI was made up of four indicators – life expectancy at birth, per capita calorie supply, combined primary and secondary school enrolment ratio and adult literacy rate (UN, 1991a: 54-55, paragraph 234).

<sup>101</sup> The EDI was based on four indicators - share of manufacturing in GDP, the share of employment in industry, per capita electricity consumption and the export concentration ratio (UN, 1991a: 55, paragraph 235).

provisions for the CDP to review the list of low income countries every three years to identify countries for inclusion or graduation from the LDC list. Countries are only added to the list with their consent and a transition period of three years follows graduation (UN, 1991a). The fact that countries are only added to the list with their consent is important as it adds a political dimension to the list and gives countries an element of choice over inclusion.<sup>103</sup> The revision of the criteria potentially affects other organisations which use it such as the WTO and takes more account of social and economic factors in the LDCs. The introduction of the size factor does however restrict the number of countries that can be classified as LDCs.

The Programme of Action for the 1990s was finalised at LDC II and replaced the SNPA of the 1980s. The Programme's prime objective was to stop further decline in the socio-economic position of the LDCs and encourage growth and development (UN, 1992: 358; also UN, 1991c). Following criticism of the implementation of the SNPA, the General Assembly commissioned a report on the implementation of the Programme. The report, reviewing the progress of the first year, was prepared by UNCTAD and submitted to the General Assembly in 1991. It set out the process for the implementation, follow-up, monitoring and review of the Programme of Action (UN, 1992: 357), including an annual review by the UNCTAD Trade and Development Board. In response to the report, the decision was taken to upgrade the unit of UNCTAD which dealt with LDCs to a division, to allow it to focus in more detail on the LDCs and their needs (UN, 1992: 358). This upgrading of the UNCTAD unit provided concrete evidence of the perceived importance of assisting these countries and the institutionalisation of the norm within UNCTAD. The General Assembly also requested the establishment of 'focal points' for LDCs in all parts of the UN to assist in the implementation of the Programme (UN, 1992: 358).<sup>104</sup> The upgrading of the UNCTAD unit and the General Assembly's request demonstrate that by the 1990s, the UN was beginning to ensure that LDCs and their problems were taken seriously throughout the UN system, thus institutionalising their

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<sup>102</sup> These changes to the identification criteria for LDCs were accepted by the UN General Assembly in its Resolution 46/209 (UN, 1991b). The Resolution was adopted without a vote.

<sup>103</sup> Three countries have been identified as possible candidates for inclusion in the list, but have so far refused to join it. These are Ghana, Papua New Guinea and Zimbabwe (UN, 2008d:10).

<sup>104</sup> The current list of focal points for the LDCs can be found on the UN-OHRLLS website at <http://www.unohrlls.org/UserFiles/File/List%20-%20LDCs%20National%20Focal%20Points.pdf>.

special treatment. In addition, the holding of LDC II and its outcome demonstrated that the first conference was not a one-off event, and that the UN and UNCTAD (the designated focal point for the preparations) were investing renewed energy into the category of LDCs, reinforcing the norm of special treatment for the LDCs.

Although the GATT/WTO is not directly part of the UN system, the trade regime maintained its focus on LDCs with the establishment of the WTO in 1995. The GATT laid the foundations for the WTO and as such is an essential part of the WTO's history as many of the practices and norms created within the GATT continued in the WTO. However, with the creation of the WTO came a greater focus on LDCs and their treatment. The WTO Agreements make several references to LDCs and a list of provisions concerning LDCs was drawn up by the Secretariat (GATT, 1994d; also see Appendix A). The Marrakesh Agreement, which established and outlined the structure of the WTO, contained three references to LDCs (in the preamble, Article IV on the structure and Article XI on membership) and emphasised the role of the WTO in assisting LDCs to increase their role in international trade. It called for positive efforts to help LDCs 'secure a share in the growth in international trade commensurate with the needs of their economic development' and provided for periodic review of provisions in favour of LDCs (WTO, 1999: 4). The WTO documents and legal texts provide evidence of the norm's institutionalisation within the trade organisation. Evidence is also provided in the continuation of the GATT's Sub-Committee on Trade of LDCs, which became known as the Sub-Committee on LDCs. Meetings of the Sub-Committee are now held roughly on a quarterly basis and the Chairmanship of the Committee has been held by various countries including the UK, Netherlands, Iceland and Luxembourg. An LDC Unit was also created in the Development Division of the WTO Secretariat to act as a focus for work relating to LDCs issues and concerns, thus meeting the call of the General Assembly (GATT, 1994c: 1, paragraph 4). The unit maintains close contact with the LDCs and services meetings of the LDC group. The formation of the LDC Unit meant that the issues of the LDCs were being taken seriously by the WTO. In addition the continued meetings of the Sub-Committee on LDCs, confirms the importance of this body.

The importance of integrating LDCs into the WTO was reaffirmed at the WTO's first Ministerial Conference in Singapore in 1996 (WTO, 1996f: 2, paragraph 6).<sup>105</sup> The Ministerial Declaration recognised the 'special treatment' accorded to LDCs, stating 'that the WTO Agreement embodies provisions conferring differential and more favourable treatment for developing countries, including *special* attention to the particular situation of least-developed countries' (WTO, 1996f: 4, paragraph 13, emphasis added). The Ministerial Declaration contained a total of eight separate mentions of LDCs, but the most important part of the Ministerial Declaration for LDCs is paragraph fourteen, which dealt exclusively with them (WTO, 1996f). It called for a Plan of Action for LDCs which could be operationalised and for a meeting of international organisations dealing with LDCs to create 'an integrated approach' in assisting them (WTO, 1996f: 4, paragraph 14).<sup>106</sup> The crucial part of the paragraph is the final part, which paved the way for the introduction of the Integrated Framework (IF) in 1997. Significantly for the LDCs and the norm of special treatment, the first WTO Ministerial maintained the profile of LDCs in the trade organisation and paved the way for some of its subsequent work on their behalf reinforcing the institutionalisation and socialisation of the norm.

The Integrated Framework for Trade-Related Technical Assistance for LDCs (IF) was introduced following a High Level Meeting between six multilateral agencies: the World Bank, IMF, UNCTAD, the International Trade Centre (ITC) and the United Nations Development Programme (UNDP).<sup>107</sup> It attempted to co-ordinate trade-related technical assistance for LDCs as agreed in the Action Plan. The High Level Meeting was attended by 38 LDC Trade Ministers, representatives from the

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<sup>105</sup> The Ministerial discussed proposals concerning labour standards, competition and investment policy, government procurement and trade facilitation. It was decided that labour standards should be dealt with by the ILO, not the WTO, but working groups were subsequently established to look at competition and investment policy and government procurement (Wilkinson, 2006, 108). These issues became known as the "Singapore Issues" and were partly responsible for the breakdown of the Cancun Ministerial in 2003. Government procurement was previously discussed in the GATT during the Tokyo Round.

<sup>106</sup> The draft Plan of Action for LDCs was submitted to the Ministerial by the Committee on Trade and Development (CTD).

<sup>107</sup> The International Trade Centre (ITC) was set up in 1964 with the aim of promoting developing country trade. The ITC was initially established by the GATT and later became a joint GATT/WTO/UNCTAD project.

various international organisations, as well as developed countries (WTO, 1997c: 1). At the meeting, Tanzania's Minister, William F. Shija, noted that 'For the first time, the integrated efforts for the LDCs are focusing not only on trade but against the background of other socio-economic issues' (WTO, 1997c: 1).

The main aim of the IF was to help LDCs to build domestic trade capacity and to integrate trade into their development strategies, as well as to assist with the implementation of the Uruguay Round agreements (Hoekman and Kostecki, 2001: 399). The IF process consists of four phases – awareness building of the importance of trade with domestic stakeholders, a diagnostic phase involving a Diagnostic Trade Integration Study (DTIS), the integration of findings into development strategies and the creation and implementation of a matrix of priority actions (see WTO, 2009a; UN-OHRLLS, 2008). However, the IF was criticised for not addressing the LDCs problems with implementation problems of the Uruguay Round agreements (Hoekman and Kostecki, 2001: 399). This was partly due to funding and partly because it did not address the mismatch between the development priorities of the LDCs and the WTO agreements (Hoekman and Kostecki, 2001: 399). In an attempt to resolve the funding issues with the IF, the Integrated Framework Trust Fund (IFTF) was established in 2001 (WTO, 2001c). Further attempts to resolve the problems with the IF were made with the introduction of the Enhanced Integrated Framework (EIF) in 2006. The EIF aimed to provide greater LDC ownership of the process, increased donor commitments and improvements in the decision-making and management structure to ensure faster delivery of financial resources to the LDCs (WTO, 2009a). In addition an EIF Secretariat was established at the WTO and an IF website was created (WTO, 2009a).<sup>108</sup> Despite problems with the initiative, the attempt to move to a co-ordinated approach provided real recognition of the special treatment required for LDCs both internationally and at an organisational level, within the WTO and for the need to apply the special treatment effectively.

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<sup>108</sup> The IF website can be found at <http://www.integratedframework.org/index.html>.

The benefits of a co-ordinated approach were recognised by the LDCs themselves with the establishment of a formal LDC coalition. The LDC coalition officially came into existence prior to the 1999 Seattle Ministerial, following a workshop for ‘senior advisors to Ministers of Trade in LDCs’ hosted by South Africa, to prepare for the WTO’s third Ministerial Meeting in Seattle and to coordinate negotiating positions (Hoekman and Kosteci, 2001: 397; also see Narlikar, 2003: 184; and WTO, 1999f).<sup>109</sup> The workshop looked specifically at ‘The Challenge of Integrating LDCs into the Multilateral Trading System’. Its results, including the proposal for a ‘Comprehensive New Plan of Action’ were forwarded to the WTO General Council and all delegations by Bangladesh (WTO, 1999f). Following the meeting the results were presented as formal proposals by LDCs into the preparations for the Seattle Conference (WTO, 1999f: 3, paragraph 12). The endorsement by the meeting of ‘the strategy of collective bargaining’ was key to the formation of the LDC coalition (WTO, 1999f: 3, paragraph 12). Since its establishment as a formal negotiating coalition, the LDC group has been very active within the WTO, holding meetings prior all to Ministerials, to agree negotiating positions, as well as taking part in regular WTO meetings in Geneva.<sup>110</sup> The theme that emerges from the LDC Trade Ministers Meetings is their focus on the co-ordination of positions between the LDCs and the search for common ground despite different interests (WTO, 1999f; LDC, 2001; LDC, 2003; LDC, 2004; LDC, 2005; LDC, 2008; LDC, 2009). The meetings have all generated co-ordinated declarations which have then been fed into the WTO negotiations (WTO, 1999f; LDC, 2001; LDC, 2003; LDC, 2004; LDC, 2005; LDC, 2008; LDC, 2009).

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<sup>109</sup> The title of the workshop, which was held in Sun City in June 1999, was ‘Coordinating Workshop for Senior Advisors to Ministers of Trade in LDCs in Preparation for the Third WTO Ministerial Conference’. GATT documents provide evidence of the existence of an informal LDC coalition, with several Uruguay Round documents submitted ‘by Bangladesh on behalf of the Least Developed Countries (for examples see GATT, 1989c; and GATT, 1990). Croome also recognises Bangladesh as the spokesman for the LDCs in his book on the history of the Uruguay Round (see Croome, 1995: 204, 226-7, 265). This view is also reinforced by Jack I Stone in his interview transcript for UN Voices. Stone notes that Bangladesh has played a ‘longstanding and dominant role ... in the politics of special measures for least developed countries’ (see UN Intellectual History Project, 2002). Nicholas Imboden when interviewed for this thesis also noted that the LDC group in the Uruguay Round was not as co-ordinated and organised as it is now (*Int. Imboden*, 14 September 2010).

<sup>110</sup> The practice of holding LDC Trade Ministers Meeting prior to WTO Ministerials was institutionalised in the Zanzibar Declaration in 2001 (Narlikar, 2003: 184; also see LDC, 2001: paragraph 6).

The LDC coalition continues to be active in the WTO negotiations and day-to-day activities, as highlighted by the Ministerial in Dar Es Salaam in 2009 and the General Council minutes (LDC, 2009). The coalition operates under a coordinator country, which changes approximately every six months in theory on an alphabetical basis, and continuity is maintained using a troika system, so that the past, present and future group coordinators work together (*Int. Oshikawa, 7 March 2008*). In addition, member countries act as spokespersons (known as Focal Points) for the LDC group on different negotiating issues within the WTO; this ensures continuity for the group on complex issues and helps to overcome some of the issues relating to the lack of capacity in LDC missions in Geneva (*Int. Oshikawa, 7 March 2008*). Currently the LDC group does not have a secretariat, but now maintains a website recognising the importance of communicating their positions and their presence (*Int. Oshikawa, 7 March 2008*).<sup>111</sup> The focus by the LDC Group on the issues of importance to its members and their co-ordination has strengthened the group and their proactive engagement with the WTO has enabled them to make ‘noteworthy’ gains for the group (Narlikar, 2003: 184-5). The formal creation of the coalition has provided the LDCs with the platform from which to act as norm entrepreneurs for the norm of special treatment within the WTO, particularly the coordinators of the group, who regularly draw attention to the provisions within the WTO Agreements which offer LDCs special treatment and are not being applied by other members. This can particularly be seen in the case of accession to the WTO.

The Seattle Ministerial of November 1999, is perhaps most famous for the riots which occurred outside the conference venue, often referred to as ‘the Battle in Seattle’.<sup>112</sup> The Ministerial was expected to launch a new ‘Millennium’ Round of Trade Negotiations, but no agreement could be reached on this issue due to differences between the developed and developing countries’ views (Wilkinson, 2006: 112-118). Attempts by developed countries, particularly the US and EU, to

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<sup>111</sup> There were plans to establish a secretariat for the LDCs in Geneva, but this has not yet happened.

<sup>112</sup> In 2007 a film titled ‘Battle in Seattle’ was made about the protests at the WTO Ministerial, although the film has only had limited release in the US. For more details see <http://www.battleinseattlemovie.com/>.

introduce labour standards into the WTO, the focus on the Singapore issues and the disagreement regarding the items to be included in the new round contributed to the meetings collapse with developing countries strongly resisting and calling for a focus on implementation of the existing agreements (Wilkinson, 2006: 112-118; Hoekman and Kostecki, 2001: 107). The Seattle Ministerial marked the end of the transition period for developing countries to implement the WTO agreements, but many were struggling with the implementation, and sought to extend their transition periods (Hoekman and Kostecki, 2001: 393 and 162). The differences in the positions of the developed and developing countries, as well as the events outside the conference, meant that the agenda could not be agreed, frustrating both sides (Hoekman and Kostecki, 2001: 113).

The Ministerial did manage to get the major WTO members to agree to the creation of an Advisory Centre on WTO Law (ACWL) which was designed to provide ‘legal assistance to developing country members involved in dispute settlement cases at a significantly reduced cost (Hoekman and Kostecki, 2001: 397).<sup>113</sup> Mike Moore, the then Director-General of the WTO, sought agreement from members on a package for LDCs, which included the elimination of all import barriers for LDCs and enhanced technical assistance (WTO, 1999g). The package for the LDCs was on Moore’s ‘own personal wish list’ for the conference (WTO, 1999h). Moore’s focus on the LDCs began as soon as he started as Director-General of the WTO, and he was responsible for appointing a Coordinator for the WTO’s work on LDCs – Chiedu Osakwe - in September 1999, just prior to Seattle (WTO 1999i).<sup>114</sup> The LDC package built on proposals submitted by Bangladesh following the meeting in Sun City in June 1999 and meant that the WTO maintained its focus on the LDCs (WTO, 1999f). Moore’s backing of the LDCs and the appointment of a Coordinator for LDCs also meant that there was a norm entrepreneur to drive the increased institutionalisation of the norm of special treatment within the WTO.

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<sup>113</sup> The ACWL was involved in assisting Bangladesh’s dispute settlement case in 2004 – Bangladesh is currently the only LDC to have directly used the dispute settlement system. For more information relating to this case see Taslim (2006).

<sup>114</sup> Chiedu Osakwe was subsequently tasked with updating the Sub-Committee on Cotton with activities occurring outside of the WTO relating to the development aspects of cotton, and is now head of the WTO Accession Division.

## Norm for the New Millennium? – 2000s

The growing acceptance of the norm of special treatment for LDCs by the international community at the end of the 1990s was demonstrated by a further range of activities for LDCs in the new millennium. These included the UN's Third LDC Conference (LDC III), the Programme of Action for 2001-10, the EU's Everything But Arms (EBA) Initiative and the establishment of further programmes for LDCs in the UN System such as the Trust Fund for LDCs in the World Meteorological Organisation (WMO). Other international initiatives which were aimed at assisting poorer countries (not just LDCs) included the introduction of the Millennium Development Goals (MDGs) and the G8's Debt Relief announcement in 2005. The UN established the Office of the High Representative for the Least Developed Countries, Landlocked Developing Countries and Small Island Developing States (UN-ORHLLS), in 2001, which reports directly to the UN Secretary General.<sup>115</sup> This meant that the LDCs now had an even more specific focus within the UN for 'coordination, advocacy and reporting' and to monitor the implementation and follow-up of the Programme of Action for 2001-10 (UN, 2003a: 772).

The new millennium saw the continued acknowledgement of the norm of special treatment for LDCs within the WTO, with a further range of initiatives aimed at LDCs. Following the High Level Meeting on LDCs in 1997, the WTO attempted to further co-ordinate its activities with other international organisations providing assistance to the LDCs. The Director-General, Mike Moore, highlighted some of the work that the WTO was doing to help LDCs in a speech at LDC III in Brussels in May 2001 (WTO, 2001g). These included improvements to market access, a re-designed IF, and a commitment to providing technical assistance to LDC members of the WTO and acceding LDCs (for more on accession and market access see chapters four and five). The Director-General's presence at LDC III showed the increased convergence between the application of the norm within the WTO and international practice.

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<sup>115</sup> The establishment of the ORHLLS was included in General Assembly Resolution 56/227 agreed on 24<sup>th</sup> December 2001 without a vote (UN, 2001). The establishment of the ORHLLS moves some of the focus on LDCs from UNCTAD in Geneva to New York due to the fact that all LDCs are represented in New York.

LDC III was attended by more than 120 countries (UNCTAD, 2001c) and the emphasis on the importance of helping the LDCs, was echoed by the participants of the conference.<sup>116</sup> The Conference adopted the Brussels Declaration and a New Programme of Action for LDCs for the Decade 2001-2010 (also known as the Brussels Programme of Action). The main aim of the programme, like that of the Millennium Development Goals (MDGs), was ‘to reduce extreme poverty by half by 2015’ (EC, 2006b). The programme identified seven action areas for both LDCs and their development partners which included building productive capacities to assist LDCs and to enhance the role of trade in development (EC, 2006b). The Programme included several quantifiable ‘time-bound development targets’ as well as ‘13 human development targets’ (UNCTAD, 2002b: 17-21). A crucial issue with these targets is their measurement, as about half of the indicators could not be monitored in the 1990s in a quarter of LDCs, making the monitoring of progress impossible in some cases (UNCTAD, 2002b: 23). The Programme is to be judged by the graduation of LDCs from the list (UNCTAD, 2002b: 29). However, in the 30 years since LDCs were first officially recognised by the UN, only Botswana, Cape Verde and the Maldives have graduated from the LDC list. Samoa was scheduled to graduate in 2010, but has yet to do so (UN, 2008d: 14).<sup>117</sup> There has been a focus on graduation in the CDP since LDC III with work being undertaken to review the procedures for graduation and to ensure that there is a smooth transition for the countries involved.<sup>118</sup> The graduation of LDCs was also the subject of a General Assembly Resolution in 2005 (UN, 2005).<sup>119</sup> Undoubtedly graduation will bring the ex-LDCs a new set of problems to face, as they will lose some of the special treatment they gained as LDCs, despite the three year transition period. However, if the norm of the special treatment for LDCs is to be considered a valid international norm, countries must be able to move both in and out of the category, despite their reluctance.

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<sup>116</sup> For example, the Japanese Head of Delegation noted that the international community should work to minimise the adverse effects of globalisation on LDCs and to help them to enjoy the benefits of it (Ministry of Foreign Affairs of Japan, 2001).

<sup>117</sup> It should be noted that during the 1970s the CDP decided that it would not graduate any LDCs from the category. For more on this see UN (1975: 31).

<sup>118</sup> For discussions on graduation in the CDP since the LDC III conference see UN (2003b); UN (2007c); and UN (2008b).

<sup>119</sup> The Resolution was adopted without a vote.

The implementation of the Programme of Action was reviewed by the UN in 2006 at a two day High Level Meeting in New York. The outcome of the review was the recommitment by the members of the UN to helping the LDCs and with ECOSOC tasked with monitoring the programme's implementation on an annual basis (UN, 2006c). In preparation for the High Level Meeting, regional meetings were held with LDCs, as well as an LDC Ministerial Meeting in Cotonou, Benin in 2006. The Cotonou Declaration called for full implementation of the Programme and linked this to the achievement of the MDGs (LDC, 2006; also see UN, 2006d). The LDC Ministerial and the resulting declaration are another important element of the norm story. They demonstrate that LDCs within the UN are now playing the role of norm entrepreneurs in pushing for further implementation of special treatment, while the link to the MDGs strengthens the norm by promoting the common goal.<sup>120</sup>

The creation of the UN-ORHLLS after LDC III was designed to provide follow-up and monitoring of the Programme of Action for the LDCs for 2001 – 2010 and to provide an advocacy and coordination role for LDCs within the UN system, a role previously played by UNCTAD (UN-OHRLLS, 2009b; *Int. Kirungi*, 17 February 2009). The UN-OHRLLS is staffed by a total of fifteen people, with four working exclusively on LDCs (*Int. Kirungi*, 17 February 2009). The UN-OHRLLS is headed by the High Representative who reports to the UN Secretary-General. The present High Representative is Mr Cheick Sidi Diarra, who was previously the Permanent Representative of Mali to the UN (UN-OHRLLS, 2009c).<sup>121</sup> The UN-ORHLLS is currently charged with co-ordinating arrangements for the Fourth UN Conference on LDCs (LDC IV) to be held in Istanbul in May 2011.<sup>122</sup> The establishment of the UN-OHRLLS indicates further socialisation and institutionalisation of norm with the move from the acknowledgement of the need to provide special treatment to LDCs, to the recognition that as well as providing special treatment the progress of its implementation needs to be monitored. However, its establishment in New York indicates that this could be part of an argumentation cycle which could potentially

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<sup>120</sup> The use of LDC Ministerial Meetings and the resulting declarations from these meetings is a key feature of the approach taken by LDCs in the WTO.

<sup>121</sup> The previous High Representative was Anwarul K Chowdhury of Bangladesh.

<sup>122</sup> All previous LDC Conferences were coordinated by UNCTAD.

cause a weakening of the norm for the LDCs in Geneva.<sup>123</sup> The results of the argumentation cycle are unlikely to be obvious until after LDC IV, but the appointment of a Special Advisor on LDCs by the UNCTAD Secretary General would appear to indicate that UNCTAD is still focussing on LDCs.<sup>124</sup>

The socialisation and institutionalisation of the norm also continued in the WTO with the launch of the Doha Round in October 2001, shortly after LDC III. The Doha Ministerial Declaration re-iterated the commitments undertaken at LDC III and committed the WTO to take into account the trade related elements of the Brussels Declaration and Programme in its work on LDCs (UN, 2003: 772). The Doha Declaration contained several references to LDCs, including a commitment ‘to the objective of duty-free, quota-free market access for products originating from LDCs’ and a work programme for LDCs, to be designed by Sub-Committee for LDCs (WTO (2001e: 9, paragraph 42)). The Work Programme for LDCs, adopted in 2002 included a focus on market access for LDCs following the commitment in the Doha Declaration and a focus on accessions of LDCs to the WTO following the recognition that none had acceded since the WTO was established (WTO, 2002e: 1-2).<sup>125</sup> These issues became ‘standing items on the agenda of the Sub-Committee’ (WTO, 2002e: 5). The introduction of the Work Programme meant that issues of importance to the LDCs were regularly reviewed within the WTO, reinforcing the importance of the Sub-Committee on LDCs to the norm during the Doha Round. The Doha Declaration also instructed the Director-General ‘to provide an interim report to the General Council in December 2002 and a full report to the Fifth Session of the Ministerial Conference on all issues affecting LDCs’, thus ensuring the issues of the LDCs would remain a priority for the WTO at least until the Fifth Ministerial Conference in Cancun (WTO (2001e: 9, paragraph 43)).

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<sup>123</sup> Questions put to LDCs representative at the WTO at the WTO Public Forum in 2009 indicated that at that time they were not aware of the UN-ORHLLS. This was subsequently confirmed by email correspondence with an NGO contact in Geneva.

<sup>124</sup> The Special Advisor on LDCs is Debapriya Bhattacharya, the former Bangladeshi Ambassador to the WTO.

<sup>125</sup> Other important issues in the Work Programme included trade-related technical assistance and capacity building initiatives; the provision of support to agencies assisting with the diversification of LDCs’ production and export base; mainstreaming the trade related elements of the Programme of Action for 2001-2010 into the WTO’s work; the participation of LDCs in the Multilateral Trading System; and following up WTO Ministerial Decisions and Declarations (WTO, 2002e: 1-2).

The Cancun Ministerial, in September 2003, was supposed to mark the mid-point of the Doha Round, but the conference ended acrimoniously with several countries walking out in frustration at the failure to reach an agreement. This was largely due to coalitions of developing countries including the G20, who refused to allow the developed countries to include the Singapore issues in the negotiations, until the issue of agricultural subsidies had been dealt with (Wilkinson, 2006: 128-131).<sup>126</sup> Other coalitions prominent at Cancun included the G33 pushing for food security, the G90 on a range of agricultural and non-agricultural issues and the Cotton Four made up of four African LDCs (Mali, Benin, Burkina Faso and Chad) calling for an end to cotton subsidises, particularly in the US and EU, over a three year period (WTO, 2003i). The collapse of the Cancun meeting led to the withdrawal of three of the Singapore issues from the talks, with only the trade facilitation issue left in. Cancun also marked the accession of the first two LDCs to join the WTO.

Following the breakdown in the negotiations at Cancun, subsequent negotiations were held in Geneva, in an attempt to revitalise the Doha Round. In July 2004, the WTO announced the July Framework for negotiations.<sup>127</sup> This renewed the General Council's commitments to the LDCs and raised two important issues for LDCs – market access and cotton. On market access it noted that 'Developed Members, and developing country Members in a position to do so, should provide duty-free and quota-free market access for products originating from least-developed countries' (WTO, 2004f: 3 and A7).<sup>128</sup> The July Framework also recognised the importance of cotton to the LDCs and included it as a separate agenda item from agriculture (WTO, 2004f: 1). This was important as it meant that the LDCs got an issue of importance

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<sup>126</sup> The G20 is a coalition of developing countries which was formed in 2003 prior to the Cancun Ministerial. It's original members were Argentina, Bolivia, Brazil, Chile, China, Colombia, Costa Rica, Cuba, Ecuador, El Salvador, Guatemala, India, Mexico, Pakistan, Paraguay, Peru, Philippines, South Africa, Thailand and Venezuela. Membership of the group has changed since it was established, and as of June 2008, its website (<http://www.g-20.mre.gov.br/history.asp>) lists the following countries as the current members of the group: Argentina, Bolivia, Brazil, Chile, China, Cuba, Ecuador, Egypt, Guatemala, India, Indonesia, Mexico, Nigeria, Pakistan, Paraguay, Peru, Philippines, South Africa, Tanzania, Thailand, Uruguay, Venezuela and Zimbabwe.

<sup>127</sup> The July Framework (WTO, 2004b) contained 23 mentions of LDCs.

<sup>128</sup> The issue of Duty free, Quota Free Market Access for LDCs was again raised at the WTO's Hong Kong Ministerial in December 2005 and will be discussed in more detail in Chapter Seven.

to them on the WTO's negotiating agenda for the Round. It also indicates the fact that the WTO is now socialised to the needs of the LDCs and the norm.

The WTO's Hong Kong and Geneva Ministerials, in line with the other WTO ministerials, demonstrated the continued institutionalisation of the norm of special treatment for LDCs and the organisation's socialisation to the norm. The Hong Kong Ministerial in December 2005 maintained the focus on special treatment for LDCs with the announcement on Duty Free, Quota Free market access for LDCs and the inclusion of Aid for Trade, which although not part of the Doha Round was aimed at LDCs as well as other developing countries.<sup>129</sup> The 2009 review of Aid for Trade showed that seven of the top twenty recipients of Aid for Trade were LDCs and that LDCs accounted for a total share of 28.9% of Aid for Trade commitments in 2007 (OECD/ WTO, 2009: Annex I, A1-3 and A1-5).<sup>130</sup> This represented the highest allocation to any country grouping. Aid for Trade thus forms an important part of the norm of special treatment for LDCs, although it is not exclusively aimed at these countries (WTO, 2009y). The 2009 Geneva Ministerial included proposals for an early harvest for LDCs in the Doha Round, although this is yet to materialize, indicating that while the norm has reached the cascade stage, it has not yet been fully internalised by the WTO.

## Conclusion

This chapter has demonstrated how the norm of special treatment for LDCs has spread within the GATT/WTO by tracing and elaborating on some of the key landmarks in the norm story; beginning with the norm of special treatment for all developing countries in the GATT, particularly after the addition of Part IV to the

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<sup>129</sup> The Aid for Trade (AFT) initiative was launched in 2005 following a paper by the World Bank and IMF called *Aid for Trade: Competitiveness and Adjustment* (IMF and World Bank, 2005). In the paper both the World Bank and the IMF highlighted their increased 'activities in support of trade' and argued 'for increased assistance, in the form of grants or loans, to cover the gamut of needs in aid for trade' (IMF and World Bank, 2005: 3 and 4). The Aid for Trade initiative was added to the WTO Agenda at the Hong Kong Ministerial Meeting following its endorsement by the G8 at Gleneagles (Warwick Commission, 2007: 41).

<sup>130</sup> The LDCs in the top twenty are Afghanistan, Ethiopia, Bangladesh, Mali, Uganda, Tanzania and Mozambique. These countries accounted for 19.2% of the Aid for Trade commitments in 2007.

GATT. Following the first two UNCTAD Conferences, growing pressure to differentiate between developing countries becomes apparent with the introduction of the idea that some countries are less developed than others and require additional assistance to develop. The 1970s is the decade where the story of the norm of special treatment for LDCs begins, following the emergence of the norm. In this decade, the LDCs were categorised and recognised by the UN and UNCTAD, and some recognition began to occur in other international organisations including the GATT. Within the GATT/WTO, the cascade and institutionalisation of the norm can be seen by increasing references to LDCs in Ministerial documents and agreements all of which consistently use the language of 'special treatment' for LDCs.

The recognition of the LDCs and their need for special treatment increased and gradually spread during the 1980s and 1990s with the holding of LDC I and II. This recognition was often backed by practical action with a number of initiatives in each decade having been established to help the LDCs both internationally, as well as within international organisations. The increase in initiatives to help the LDCs in the 1990s and 2000s has shown the increasing acknowledgement of the international community's desire to assist these countries. The idea that there is an international norm of special treatment for these countries is also regularly reinforced by references to 'special measures' to assist LDCs in documents and statements from international organisations. The latest evidence of the existence of the norm of special treatment for LDCs was provided by the UN's decision to hold a fourth LDC Conference (LDC IV) in 2011.

To return to the research question – is there a norm of special treatment for LDCs in the WTO? By tracing some of the special treatment provisions in the GATT/WTO for developing countries generally, and by looking at the gradual increase in programmes aimed at both recognising and assisting LDCs within the trade regime, we can see that gradual application of a norm of special treatment for these countries. Patterns of the norm regularly affecting actions within the trade regime demonstrate that the norm of special treatment for LDCs operates at the organisational level within the GATT/WTO. The norm began to be incorporated within the trade regime

in the early 1970s, shortly after the identification of the category of LDC, and gradually increased in strength following the Tokyo Declaration and the establishment of the Sub-Committee on Trade of LDCs. Since the GATT Ministerial Declaration of November 1982, LDCs have become very much a part of the trade regime. This is particularly illustrated by the institutionalisation of the norm within the GATT/WTO. The Punta del Este Declaration launching the Uruguay Round contained only one reference to LDCs, but by the end of the Round the LDCs had become a category of membership for the WTO and most of the WTO agreements contained references to the LDCs (GATT, 1986b; also see WTO, 1999b). However, the fact that there is still debate in the WTO regarding special treatment for LDCs would indicate that this norm has not yet been fully internalised and that the norm life-cycle is still at the norm cascade stage. What also becomes apparent is that the norm life-cycle within the GATT/WTO is affected by events in the UN and UNCTAD such as the LDC conferences. These external events have encouraged the trade organisation and its members to act in accordance with the norm and thus offer special treatment to LDCs, indicating that there is a 'spillover' effect influencing the norm in the WTO.

The norm entrepreneurs for the norm of special treatment of LDCs were initially the developed countries and the G77 via UNCTAD and the UN, who promoted the idea of helping the poorest developing countries, albeit for different reasons. Although early resistance to attempts to differentiate between developing countries led to the slow cascade process, and continued resistance has meant that the norm has not yet been fully internalised. Both the UN's Committee on Development Planning (CDP) and UNCTAD also played a key entrepreneurial role, engaging in fact-finding, consensus building, norm construction and norm application in order to create the category of LDC. The UN/UNCTAD can therefore be seen as one of the main international norm entrepreneurs for the norm of special treatment for LDCs. What also becomes apparent from the review of activities within the GATT/WTO is that as the norm of special treatment progressed through its lifecycle, it gained more norm entrepreneurs to push for its further implementation. Within the GATT/WTO the Chairs of the LDC Sub-Committee, have been important in ensuring that the concerns of the LDCs were included in the GATT/WTO negotiations and that special

programmes aimed at helping LDCs were implemented and followed up. The Director-Generals of the GATT/WTO have also been important. Arguably however, it is the fact that the LDC Group became norm entrepreneurs that helped strengthen the norm in the WTO. Since 1999 and the creation of the LDC coalition, the LDCs themselves have become norm entrepreneurs particularly in terms of fact-finding, consensus-building and norm mobilization. Having established the general norm of special treatment for LDCs at an international and organisational level, the next part of this thesis will look at specific case studies of areas within the GATT/WTO remit and attempt to track how the norm has manifested itself in these areas.

# Chapter 4 - Case Study 1 - Acceding to the Norm: LDCs accession to the WTO<sup>131</sup>

The issue of accession and how LDCs came to be members of the WTO is a key factor in assessing whether they are receiving special treatment in the organisation. If the norm of special treatment for LDCs is being applied in the WTO, we would expect LDCs to be able to join the organisation relatively easily compared to other states, as was the case in the GATT. However, despite the fact that all states and separate customs territories are eligible to join the WTO, their individual accession paths vary depending on their size, their level of economic development and crucially, the demands of the existing WTO members. These demands make the accession process a contentious one. There are few rules in the process and special treatment, with the exception of technical assistance, is effectively withheld from developing countries until they have completed the accession process. Countries seeking to join the WTO are frequently asked to go beyond WTO treaty obligations and liberalize their markets more than the existing members.<sup>132</sup> In addition to the liberalization requested of potential members, the time taken to finalize accession packages can be lengthy.<sup>133</sup> Despite these issues with the accession process and the on-going Doha Round, countries continue to accede to the WTO – Cape Verde being the latest to finalise its accession negotiations - demonstrating that states still want to

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<sup>131</sup> A version of this chapter was published in the *Hague Journal of Diplomacy*, see Hawthorne (2009).

<sup>132</sup> This issue was raised in the Doha Round negotiations, by a new negotiating coalition – the Recently Acceded Members (RAMs) - a group of countries who have all joined the WTO since 1995. The RAMs submitted a proposal to the WTO (Document Ref TN/AG/GEN/24) in 2007 calling for their members to be allowed smaller tariff cuts and longer implementation periods than other developing countries for any Doha Round agreements, due to the commitments that they had already made in the accession process. For more details, see WTO, TN/AG/GEN/24, 2007, and ICTSD (2007) *Bridges Weekly Trade News Digest*, Volume 11, No 4, March 2007. The following countries are members of the RAMs group: Albania, Armenia, China, Croatia, Ecuador, Former Yugoslav Republic of Macedonia, Jordan, Kyrgyz Republic, Moldova, Mongolia, Oman, Panama, Saudi Arabia, The Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu (also known as Chinese Taipei), and Viet Nam.

<sup>133</sup> Russia, for example has been in accession negotiations since June 1993, and negotiations are still ongoing.

join the organisation and see it as relevant (WTO, 2008f).<sup>134</sup> Most of the countries currently in the process of accession are either developing countries or LDCs, so the process is of key importance to them. Twelve LDCs are currently on the WTO accession list.

This chapter looks specifically at how LDCs have acceded to the international trade regime as represented by the GATT and the WTO. In particular, it looks at the different paths that LDCs have taken to join the organisation and draws some conclusions from their experiences in terms of the norm of special treatment for LDCs. A review of the accession dates of existing LDC members of the WTO shows that they have been acceding to the organisation since the GATT was founded and are continuing to join. As can be seen in Figure 4, most LDCs joined the trade regime during the GATT days, particularly during the 1960s and 1970s following their independence. The picture for WTO accessions is very different, as only three LDCs have acceded since the WTO was established in 1995 – Cambodia, Nepal and Cape Verde. Vanuatu also went through the accession process and was due to accede in 1999, but pulled out at the last minute due to problems with the accession package. Those LDCs who joined the trade organisation in the GATT days have not had to liberalize their markets as much as those LDCs who have acceded to the WTO. In addition, LDC III and the Doha Round have focused significant attention on LDCs in the WTO and on how those outside the organization could be helped to join, with recommendations that the accession process for LDCs be accelerated (WTO, 2005s:11).<sup>135</sup> The differences between the past and present accession experiences of LDCs are essential in understanding whether LDCs are receiving special treatment in the WTO, and this is where this chapter differs from previous case studies looking at LDCs. This chapter will demonstrate that the GATT accession process for LDCs was much ‘easier’ than the WTO process, as with the establishment of the WTO the accession process for LDCs effectively became the same as for other countries. This indicates that the norm of special treatment for LDCs did not initially appear to be operating in the area of accessions, which

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<sup>134</sup> Ukraine also acceded to the WTO in 2008, (see ICTSD, 2008a).

<sup>135</sup> The Hong Kong Ministerial Declaration also called for the acceleration of the accession process for LDCs.

suggests that if the majority of LDCs had not joined the trade regime during the GATT they would have struggled to join since the WTO was established. Fewer LDCs in the GATT would probably have meant that the WTO would have had less of a focus on LDC issues in the Uruguay Round and possibly fewer special provisions for LDCs in the WTO agreements. However, the fact that most LDCs did join during the GATT, combined with recent developments for LDCs in accession indicate that attempts are being made to incorporate the norm in the accession area.

The chapter is divided into two main sections. The first section looks at the accession of LDCs to the GATT and the issues surrounding this. The second section looks at the process of accession to the WTO, before looking in more detail at the accession of individual LDCs to the WTO. In so doing, the chapter identifies the issues and challenges that have been faced by those LDCs who have recently joined the trade regime and for those who are in the process of joining.

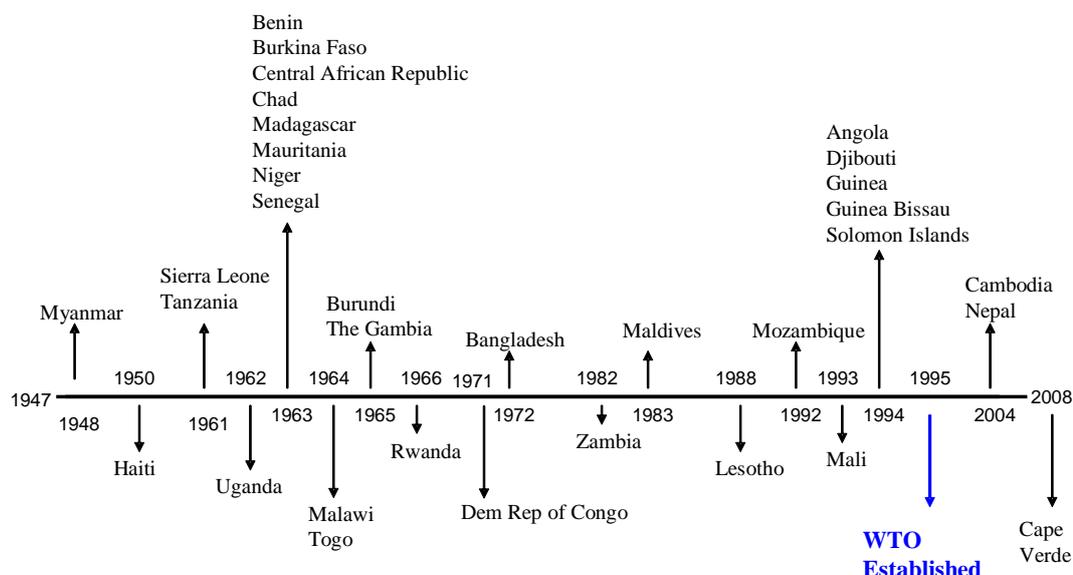
## **GATT Accessions**

As noted above, an examination of the accession dates of LDCs, shown in Figure 4, shows that the majority of LDCs, who are currently members of the WTO, joined the trade regime during the GATT days (also see Appendix B). Those LDCs who joined the GATT during the 1960s joined as developing countries rather than as LDCs, because the category had not yet been defined. Myanmar was the first LDC to join the GATT, in 1948, followed by Haiti in 1950. With the advent of decolonisation, the 1960s can be seen as one of the ‘peak periods’ for LDCs joining the trade regime, with sixteen acceding during the decade. The majority of these sixteen countries were newly independent African states, which joined the GATT within four years of gaining their independence.<sup>136</sup> The two notable exceptions to this rule were Zambia and Lesotho, who did not join the GATT until 1982 and 1988 respectively, despite becoming independent in 1964 and 1966 (see Appendix B for LDC joining dates).

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<sup>136</sup> Most of these states also joined the UN in the same year as becoming independent. Whilst it would appear at first glance that joining these international organisations was a norm of statehood, for the GATT, the accession of ex-colonies to the GATT was initially time bound, with countries encouraged to join within two years of independence.

**Figure 4 - LDCs Joining the GATT/WTO Timeline<sup>137</sup>**



The GATT allowed any government to accede on terms to be agreed between the government and the Contracting Parties (Article XXXIII) although this was not the only article dealing with accession (Dam, 1970: 109). Importantly for LDCs, GATT Contracting Parties could choose to apply the GATT to their country and to ‘other territories’ they were responsible for, for example colonies, under Article XXVI. This clause meant that colonies had the benefits of membership, even though they were not formal members of the agreement. Thus, GATT rules applied to ‘non-member participants’ as well as formal members (Tomz, Goldstein and Rivers, 2004: 3). Three categories of non-member participants were recognised - colonies, *de facto* members, who were usually newly independent states, and provisional members who were countries in the process of negotiating their accession under Article XXXIII. The category of provisional member was not particularly relevant to LDCs as only Bangladesh and the Democratic Republic of Congo acceded in this way (Tomz et al,

<sup>137</sup> For source of joining dates see WTO website [http://www.wto.org/english/thewto\\_e/whatis\\_e/tif\\_e/org6\\_e.htm](http://www.wto.org/english/thewto_e/whatis_e/tif_e/org6_e.htm) and [http://www.wto.org/english/thewto\\_e/gattmem\\_e.htm](http://www.wto.org/english/thewto_e/gattmem_e.htm).

2004: 7).<sup>138</sup> The extension of the GATT to colonies and newly independent states had significant implications for their future accession to the GATT and for LDCs; each will be considered here in turn.

The situation of colonies and the application of the GATT were dealt with by Article XXVI: 5(a) of the GATT, which stated that:

Each government accepting this Agreement does so in respect of its metropolitan territory and of the other territories for which it has international responsibility, except such separate customs territories as it shall notify to the Executive Secretary to the Contracting Parties at the time of its own acceptance (GATT, 1947: Article XXVI).

Some contracting parties including Netherlands, Belgium, Portugal, Spain and the United States applied GATT to all their colonies without exceptions (Tomz et al, 2004: 4). Others, such as the UK and France, applied the GATT to only selected colonies. For example, the UK adopted the GATT for the whole of its empire apart from Jamaica, although the agreement was subsequently adopted for Jamaica prior to its independence (Tomz et al, 2004:5, also GATT, 1962a). France adopted the agreement for all its colonies except Morocco, which was viewed as an extension of the French mainland (Tomz et al, 2004: 5). The adoption of the GATT for these territories meant that when they did get their independence, if they wanted to then formally accede to the GATT, the process was much easier, as the GATT was already being applied.

Once decolonisation was underway, the newly independent countries had three choices regarding the GATT. They could choose to become members, under the GATT clause dealing with them (Article XXVI), apply for accession under Article XXXIII and negotiate new membership terms, or terminate their participation in the GATT (Tomz et al, 2004: 5-6). For the majority of newly independent LDCs, the most important clause in Article XXVI was clause 5(c), which stated that:

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<sup>138</sup> The countries which had provisional GATT membership include Japan, Switzerland, Israel, Tunisia, Yugoslavia, Argentina, Egypt, Iceland, the Philippines and Colombia.

If any of the customs territories, in respect of which a contracting party has accepted this Agreement, possesses or acquires full autonomy in the conduct of its external commercial relations and of the other matters provided for in this Agreement, such territory shall, upon sponsorship through the declaration by the responsible contracting party establishing the above-mentioned fact, be deemed to be a contracting party (GATT, 1947: Article XXVI: 5).

Ex-colonies automatically gained *de facto* membership of the GATT on independence if the colonial powers were GATT Contracting Parties (Adhikari and Dahal, 2004: 3). The category of *de facto* member gave the newly independent states a chance to decide whether they wanted to become full members of the GATT, and meant that the GATT Contracting Parties would treat the state as if it were one as long as it applied the GATT when dealing with them (Tomz et al, 2004: 6). However, the GATT never defined what *de facto* application meant, but evolved certain practices over time (GATT, 1984a: 3). The *de facto* members were expected to apply ‘the substantive provisions’ of the GATT, but did ‘not apply the procedural provisions’, so therefore did not need to notify the organisation of any changes in their application of the GATT (GATT, 1984a: 3-4). They could also attend annual GATT meetings as observers, but did not have the rights of the full members (GATT, 1984a: 3-4; Tomz et al, 2004: 6-7). The length of time that a state could hold *de facto* membership changed during the GATT. Initially, deadlines were imposed, with countries encouraged to join the GATT within two years of gaining their independence, but eventually in 1967 it was decided that *de facto* participation should be maintained without a time limit (GATT, 1962c; GATT, 1984a: 2; also Tomz et al, 2004: 7). This was due to the continual requests for extensions to the time limit and the fact that these requests had always been granted (GATT, 1984a: 2). The GATT membership list of the 1 June 1986 shows 91 full members of the GATT and 31 *de facto* developing country members, of which eleven were LDCs (GATT, 1986a).<sup>139</sup> The practice of *de facto* membership ended with the creation of the WTO – countries were required to join the WTO or lose their *de facto* benefits. Hence the second peak accession period of LDCs occurred in the 1990s as shown in Figure 4.

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<sup>139</sup> The LDCs in the *de facto* member list were Angola, Cape Verde, Equatorial Guinea, Guinea-Bissau, Kiribati, Lesotho, Mali, Mozambique, Sao Tome and Principe, Solomon Islands and Yemen.

For LDCs who had had *de facto* membership of the GATT and then became full members under Article XXVI:5 (c), the process meant that there was no need for the formal negotiations which took place with other countries acceding to the GATT and now take place in WTO accessions.<sup>140</sup> To become full-fledged members of the GATT, countries with *de facto* status had to apply to formally accede to the organisation. In doing so, *de facto* members had to declare that they had been applying the GATT within their country and the declaration was then certified by the Director-General. This made the accession of LDCs to the GATT a fairly straightforward process. The ease with which *de facto* members could join can be seen from the cases of Senegal, Lesotho and Mali.<sup>141</sup>

Senegal gained its independence from France in 1960, and became a contracting party to the GATT in September 1963 following a request from its government to the Executive Secretary (GATT, 1963b).<sup>142</sup> The GATT document confirming that Senegal had become a Contracting Party noted that ‘The Government of Senegal has been applying the General Agreement on a de facto basis’ and ‘since the conditions required by Article XXVI: 5(c) have been met, Senegal has become a Contracting Party’ (GATT, 1963b, underlining in original). Lesotho became the 96<sup>th</sup> member of the GATT in 1988, having been a *de facto* member of the GATT since its independence in 1966 despite gaining its independence much earlier in 1966 (GATT, 1966c; GATT, 1988a; GATT, 1988b).<sup>143</sup> Similarly, Mali also became a Contracting Party in 1993 under the provisions of Article XXVI: 5(c) on the basis of its previous *de facto* status (GATT, 1993)

The ease with which Senegal, Lesotho and Mali acceded to the GATT was replicated in the accessions of the other LDCs and ex-colonies which joined the GATT in the

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<sup>140</sup> Countries acceding to the GATT who had not been *de facto* members did have to take part in formal negotiations in order to join. For example see GATT (1966a).

<sup>141</sup> This is also true for other developing countries who were ex-colonies.

<sup>142</sup> The Executive Secretary was the previous name for the Director-General.

<sup>143</sup> Lesotho had previously acceded to the GATT Agreement on Customs Valuation (GATT Article VII) in 1986 (GATT, 1986c: 2).

1960s including Uganda, Malawi and The Gambia;<sup>144</sup> the 1980s including Zambia and the Maldives;<sup>145</sup> and the 1990s including Mozambique, Angola and Djibouti (GATT, 1962b; GATT, 1964b; GATT, 1965b; GATT, 1982e; GATT, 1983a; GATT, 1992; GATT, 1994e; GATT, 1994f).<sup>146</sup> These countries all joined the GATT by a simple process of certifying that they were applying the GATT. The extended time period over which the *de facto* countries could join the GATT – over 30 years – confirms that these countries were receiving special treatment although this treatment was not extended to all developing countries as can be seen from other accessions at the time. For example, during the 1980s, four countries acceded without *de facto* membership; these were Colombia, Thailand, Mexico and Morocco, who all acceded through negotiations under Article XXXIII.<sup>147</sup> Similarly during the 1990s, eleven countries joined under Article XXXIII without previous *de facto* status.<sup>148</sup> These countries joining the GATT under Article XXXIII all had to negotiate the terms of their accession agreements with the existing GATT Contracting Parties.

Analysis of the GATT documentation available demonstrates that the majority of the LDCs, who became Contracting Parties did so on the basis of *de facto* membership (see GATT, 1988d; GATT, 1963b; GATT, 1962c; GATT, 1986a; GATT, 1982a). However, two LDCs - the Democratic Republic of Congo and Bangladesh - acceded to the GATT under Article XXXIII, with both of these countries acceding in the 1970s (GATT, 1971a; GATT, 1972b). The Democratic Republic of Congo acceded to the GATT in September 1971. Its accession process began in February 1970, following a letter from the Government to the GATT Director-General (GATT, 1970c). The country's Memorandum on Foreign Trade Regime was circulated to the GATT Contracting Parties in April 1970 (GATT, 1970c). The Working Party on the

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<sup>144</sup> For examples of accessions of other developing countries see GATT, 1963d on Jamaica and GATT, 1964a on Kenya.

<sup>145</sup> The other *de facto* members of the GATT who became full Contracting Parties during the 1980s were Antigua and Barbuda, Belize, Botswana and Hong Kong. The four countries joining via negotiations were Colombia, Mexico, Morocco and Thailand.

<sup>146</sup> During the 1990s, thirty-four countries acceded to the GATT, including a total of eight LDCs.

<sup>147</sup> Morocco applied to join the GATT in 1985 and acceded in 1987 (GATT, 1985a; and GATT, 1987a). Colombia applied for provisional membership of the GATT in 1968 and became a full Contracting Party in 1981 (GATT, 1968b; and GATT, 1981a). Morocco's accession process was the fastest, taking only two years, while Colombia's accession took over 13 years.

<sup>148</sup> The eleven countries to accede via the provisions of Article XXXIII were Bolivia, Costa Rica, Czech Republic, El Salvador, Guatemala, Honduras, Paraguay, Slovak Republic, Slovenia, Tunisia and Venezuela.

accession was established in April 1970 and met twice on 7 and 14 June 1971. The Working Party concluded that ‘the Democratic Republic of the Congo should be invited to accede to the General Agreement under the provisions of Article XXXIII’ (GATT, 1971f: 5). The accession was approved by the GATT Contracting Parties on the 11 August 1971 via a postal ballot (GATT, 1971b; GATT, 1971g: 19). Despite acceding under the GATT’s general accession provision, the accession of the Democratic Republic of the Congo appears to have been a fairly fast and straightforward process, completed as it was in just over a year and apparently uncontested by the Contracting Parties as demonstrated by the use of postal votes to approve it.

Similarly, Bangladesh acceded to the GATT in November 1972, also under Article XXXIII. A note prepared by the GATT Secretariat regarding the accession of Bangladesh shows that despite the accession being under Article XXXIII of the GATT, the whole process was also carried out very quickly compared to other GATT accessions and current WTO accessions (GATT, 1972a). The letter from Bangladesh requesting accession to the GATT was sent on 10 October 1972, and the decision of the Contracting Parties to allow the accession was made a month later on the 10 November 1972 (see GATT, 1972c; and GATT, 1972b). However, the application for accession from Bangladesh stated that the Government of Bangladesh accepted ‘the obligations of the GATT’ and had ‘been applying the GATT provisions in its trade relations with the Contracting Parties’, which helped with the speed of the process as most GATT Contracting Parties felt ‘that in these circumstances there should be no need for further negotiations for accession’ (GATT, 1972c; GATT, 1972e: 23).<sup>149</sup> The speed of these two accessions again indicates the provision of some form of special treatment to these countries, particularly when compared to the accession of other countries to the GATT around the same time. For example Romania applied to join the GATT in 1968, but did not accede until 1971, whilst Hungary applied in 1969 and eventually acceded in 1973 (GATT, 1968a; GATT, 1971c; GATT, 1969; GATT, 1973b).

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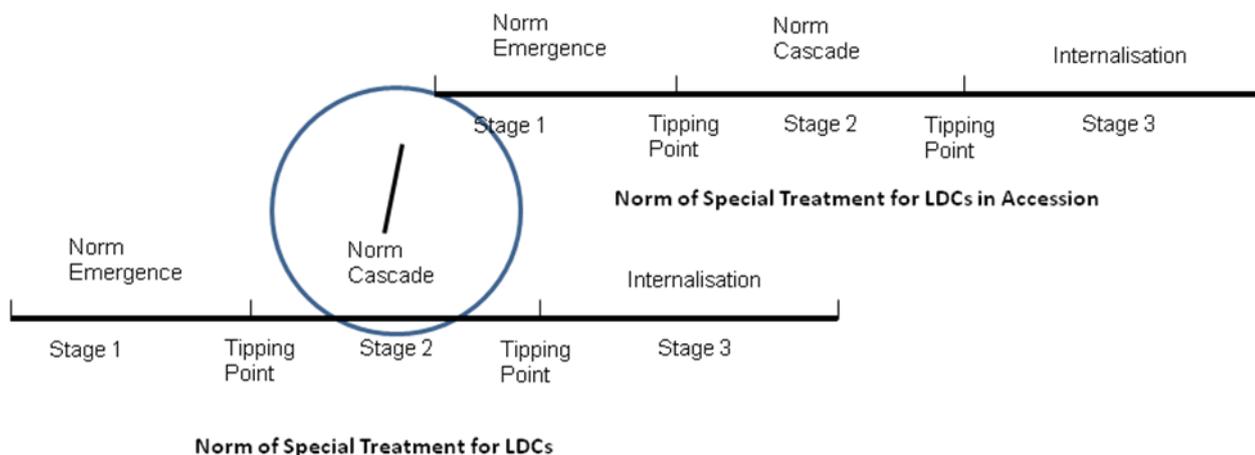
<sup>149</sup> On the accession of Bangladesh, Pakistan invoked Article XXXV of the GATT, indicating its decision not to apply the GATT with respect to Bangladesh (GATT, 1972d). However, this decision was revoked in 1975 (GATT, 1975a).

The special treatment accorded to the *de facto* members of the GATT, many of whom were LDCs certainly is in accord with the norm of special treatment for LDCs, but what is problematic in proving operation of the norm, it that the treatment was not specifically aimed at LDCs. Evidence of this is provided by the fact that none of the accession documents analysed mentioned the LDC status of the countries involved (for examples see GATT, 1983a; GATT, 1988a; GATT, 1992). The *de facto* members were allowed to join the GATT with no difficulty due to its previous application, which meant that there was no need for time consuming or technical negotiations over tariffs which occurred in the case of other countries, such as Morocco and Colombia. In addition, the removal of the *de facto* time limit meant that states did not have to rush into membership of the GATT. Those LDCs who acceded to the GATT under Article XXXIII, were also able to join with relative ease, and despite the requirement for a Protocol of Accession, were treated effectively as *de facto* members. Accession to the GATT for LDCs was therefore a reasonably quick process, especially when compared to the accessions of other countries joining the GATT. Yugoslavia, for example, took over seven years to complete the accession negotiations, and finally became a GATT contracting party in 1966, after applying to join in 1959 (see GATT, 1958a; GATT, 1966b; also Williams, 2001). The ease with which LDCs could join the GATT was a key factor in their joining the organisation, without this it is unlikely that so many would have acceded. The GATT accession process therefore provided LDCs with a form of special treatment, which follows the expected lifecycle of the norm of special treatment. However, as stated the special treatment was not specifically aimed at LDCs, making it difficult to claim that the norm was having an effect. With the creation of the WTO, bearing in mind the provisions for special treatment of LDCs in its agreements, the expectation was that these countries would receive some form of special treatment in the accession process, particularly after the Marrakesh Agreement noted the need for 'positive efforts' to assist LDCs (WTO, 1999; 4). Continued special treatment for LDCs in accession would indicate the linear progression of the norm lifecycle in the transition between the GATT and the WTO, and a degree of internalisation of the norm. However the accession experiences of the first LDCs to join the WTO did not match the expectations generated by the Marrakesh Agreement. Instead, LDCs did

not seem to receive any special treatment in the process and were effectively treated the same as any other acceding country. This did not tie in with the norm of special treatment and was highlighted by at LDC III and by the LDCs themselves. The recognition that no LDCs had acceded to the WTO led to the norm being brought back in to the area of accession.

## **WTO Accession**

Despite the Marrakesh Agreement and the Decision on Measures in Favour of Least-Developed Countries, with the creation of the WTO, accession to the trade regime became more problematic for all countries including LDCs. The Single Undertaking means that countries joining have to comply with all of the WTO's agreements, and the accession negotiations are often a lengthy and complicated process requiring a great deal of input from the acceding country. The accession process has been seen as highly power-based, as acceding countries are often expected to go above and beyond the concessions offered by comparable members of the WTO – this is the 'WTO-plus' situation (Grynberg and Joy, 2006: 694). Analysis of Cambodia's and Nepal's accession packages appeared to confirm the trend of demands of WTO-plus concessions (Sauvé, 2005: 30). In addition to the WTO-plus commitments, acceding countries are often denied the implementation periods provided to existing WTO members – this is the 'WTO-minus' situation. The power-based nature of the accession process, combined with the WTO-plus and minus commitments noted in the WTO accessions indicate the initial disregard of the norm of special treatment for LDCs, which seem to contradict the existence of the norm. However, it can be explained by the change in the rules caused by the transition from GATT to WTO, which effectively removed all special treatment from the area of accessions. A gradual recognition of the fact the LDCs were not receiving special treatment occurred in the WTO following the failed accession of Vanuatu, and the highlighting of this by norm entrepreneurs such as UNCTAD, NGOs and the LDCs themselves has meant that we have begun to see the norm having an effect on the accession process in recent years. The effect of the change in rules on the norm lifecycle diagram was to create a deviation from the linear path of the norm. This is illustrated in Figure 5.



**Figure 5 – Impact of Structure/Rule Change on the Norm Lifecycle**

The circle in Figure 5 represents the argumentation cycle that the norm has gone through which ended with the strengthening of the norm in the area of accession.

To understand the process of accession from the point of view of LDCs, we first need to look at how the WTO accession process works - a procedure which is the same for *all* countries. Accession to the WTO is dealt with by Article XII of the WTO Agreement, which states that ‘any state or customs territory possessing full autonomy in the conduct of its external commercial relations ... may accede to [the WTO] ... on terms agreed between it and the WTO’ (WTO, 1994: Article XII). Article XII makes no specific mention of LDCs, although the Article immediately before it states explicitly that ‘the least-developed countries recognised as such by the United Nations will only be required to undertake commitments and concession to the extent consistent with their individual development, financial and trade needs or their administrative and institutional capabilities’ (WTO, 1994: Article XI). This article, combined with the Uruguay Round Decision on Measures in Favour of Least-Developed Countries provides an indication of how the members were expected to treat the LDCs (WTO, 1999b).

The first stage of the accession process is the formal request for accession submitted to the WTO by the country wishing to join. This is considered by the General Council and, if agreed, it establishes a Working Party, open to all WTO members, which looks in detail at the accession request including an examination of the current trade practices of the would-be member.<sup>150</sup> These are provided by the acceding country in the form of a Memorandum of Foreign Trade Regime. Multilateral negotiations are then held with the acceding country, which are also open to all WTO members. In addition to the multilateral process, bilateral negotiations take place between the acceding country and interested members. Once agreement has been reached on the 'terms of entry' i.e. tariff bindings, quotas, services offers etc., the Working Party produces a report on its the proceedings, the conditions of entry and the draft Protocol of Accession. If the General Council approves the accession package, the country is allowed to join the WTO, providing its accession is approved and ratified by its government (WTO, 2011; Milthorp, 2009: 104-5).

The benefits to an LDC of joining the WTO is a question which arises when looking at LDC accessions. Oxfam (2007) identified five 'perceived benefits', in its Briefing Paper *Getting the Fundamentals right: The early stages of Afghanistan's WTO accession process*. These are

1. Technical assistance for reforms required by the accession process
2. Export boost due to improved access to international markets
3. Increased attraction of Foreign Direct Investment (FDI)
4. Protection offered by the multilateral system against bilateral pressures and unfair trade practices
5. Potential to influence formation of global trade rules (Oxfam, 2007).

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<sup>150</sup> Agreement by the General Council is not automatic and the accession process can be delayed if member object. This happened in the case of Iran whose accession application was blocked several times by the US.

Similarly, Evenett and Primo Braga (2005), divide the reasons countries have for joining the WTO into economic, legal and political reasons. Under economic reasons they cite further integration into the world economy, the attraction of foreign direct investment and the ‘seal of approval’ offered by WTO membership. The legal advantage that Evenett and Primo Braga cite for joining the WTO is the access it provides to the rules based system and the dispute settlement mechanism.<sup>151</sup> Politically, countries may join the WTO to indicate their wish to change to a market-based economy (Evenett and Primo Braga, 2005). Examination of some of the reasons provided by LDCs in the process of accession also indicates that many LDCs believe that the Dispute Settlement system will help their trade situation, despite the fact that only one LDC has ever used the process (see Taslim, 2006). For example, Samoa stated that ‘The WTO Dispute Settlement mechanism gives Samoa a platform to address any discriminatory trade practices that will have a negative impact on our trade’ (Tavita-Levy, 2006). Similarly, the representative from Lao PDR also cited the Dispute Settlement system as being a benefit to Lao of joining the WTO, stating that ‘The WTO dispute resolution mechanism puts a small and poor country like Lao, PDR on equal footing as other members’ (Anon, 2006). Whether acceding LDCs will make more use of the dispute resolution remains to be seen, but currently does not seem that likely, particularly in light of the cotton issue, where LDCs would appear to have a strong case, but are resistant to use the system. Having established the accession process and why countries would want to join the WTO, we now need to look specifically at the accessions of LDCs to the WTO and how these relate to the lifecycle of the norm of special treatment for LDCs.

### ***LDC Accessions to the WTO***

In terms of the norm lifecycle and its application to LDC accessions, as indicated in Figure 4, the norm of special treatment in accessions starts much later than the general norm lifecycle. Beginning with the Marrakesh Agreement, which recognised the need for LDCs to be part of the trade organisation, there has been a focus on LDC accession since the Singapore Ministerial in 1996 and the launch of the Integrated Plan of Action for LDCs (WTO, 1994: Article XII; WTO, 1996f). This

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<sup>151</sup> However, in the case of LDCs the rules based system seems to be a more important factor than the dispute settlement system, as Bangladesh is the only LDC to have directly used the dispute settlement system.

was followed by a statement on the accession of LDCs at the Integrated Framework High Level meeting in 1997 which recommended that LDCs be given technical and financial support in their accessions (WTO, 1997h: 6). The LDC Sub-Committee minutes show that proposals to include assistance to acceding LDCs in the High Level Meeting were made by Nepal who was in the process of acceding at the time (WTO, 1997f: 14). At the South Africa meeting of LDC Trade Ministers in 1999, prior to the Seattle Ministerial, a call was made for ‘a fast track’ accession process for LDCs in the process of joining the WTO (WTO, 1999f: 3, paragraph 11). Problems with the accession of LDCs to the WTO were also recognised at the UN LDC III Conference and in the Brussels Declaration, which resulted from the conference, as well as in the Programme of Action for 2000-2010. The issue was discussed again at the LDC Trade Ministers meeting in Zanzibar in 2001, with the resulting Zanzibar Declaration, stating that the Ministers were ‘*concerned* at the slow pace in the accession process of LDCs’ (LDC, 2001). This was demonstrated by the fact that no single LDC had acceded to the WTO since it was established (LDC, 2001). The Declaration called upon the Fourth WTO Ministerial to agree on

Facilitating the accession of LDCs into the WTO with a more streamlined process of accession under terms consistent with their development, financial and trade needs and commitments not higher than those undertaken by LDC WTO members, including transitional periods mandated by WTO Agreements starting from the date of accession (LDC, 2001).

As a result of the calls by the LDCs for faster accession, the Doha Ministerial Declaration included two references to LDC accessions. Paragraph nine stated the importance that Ministers attached to concluding the accessions of LDCs ‘as quickly as possible’, whilst paragraph 42 emphasised that the accession of LDCs was ‘a priority for the Membership’ and also acknowledged the need ‘to facilitate and accelerate accession negotiations with acceding LDCs’ (WTO, 2001e: 18 paragraph 42). In line with the focus on accession, both within the WTO and internationally, accession has been a frequently discussed topic at the WTO’s LDC Sub-Committee meetings, and was the topic of a chapter of the UNCTAD LDC Report in 2004 (for example see WTO, 2001i; WTO, 2002g; WTO, 2003e; WTO, 2003j; WTO, 2004g; also see UNCTAD, 2004: 49-64). However, critics have viewed repeated statements that the WTO members wish ‘to integrate the least developed countries into the

multilateral trading system' as rhetoric (Grynberg and Joy, 2006: 712). Thus, indicating that perhaps the norm of special treatment for LDCs was not applied in the case of WTO accessions, a view that seems to be borne out by an examination of the first accession attempt by an LDC – Vanuatu. Vanuatu's accession attempt failed while Nepal and Cambodia were the first two LDCs to accede to the WTO following its establishment in 1995. They were then followed by Cape Verde in July 2008 (WTO, 2009m). Each country will be briefly examined before reviewing future LDC accessions and attempting to draw some general conclusions regarding the accession of LDCs to the WTO and the norm of special treatment.

Vanuatu, classified as an LDC in 1985, had *de facto* membership of the GATT, but did not join before this expired, and thus applied to join the WTO in July 1995 (WTO, 2001k; Adhikari and Dahal, 2004: 3). The country's Memorandum of Foreign Trade Regime was completed relatively quickly and was submitted to the WTO in November 1995 (WTO, 2011b; Grynberg and Joy, 2006: 697).<sup>152</sup> The accession was originally to be completed by the Seattle Ministerial in 1999, but negotiations were delayed, partly due to a series of changes within the domestic government between 1996 and 1998 (Grynberg and Joy, 2006: 696). The revised accession date was to have been the Doha Ministerial in 2001, but the government of Vanuatu at the time felt unable to complete the accession process and requested a delay. An important issue to note is the fact that the country had no domestic internal tax system and so relied heavily on trade-based tax to make up government revenue which at the time represented about half of the total revenue (Grynberg and Joy, 2006: 695 and 698). However, the draft protocol of accession shows that as part of the accession process, Vanuatu introduced a Value Added Tax Act (WTO, 2001k: 35).

In their article on the accession of Vanuatu, Grynberg and Joy (2006) argued that the WTO members did not appear to be concerned by the development status of Vanuatu, and that the US in particular was unwilling to allow Vanuatu any

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<sup>152</sup> The quick submission of the Memorandum may have been aided by the fact that the country was going through a Comprehensive Reform Programme at the time with the Asian Development Bank.

concessions in accession terms or transition periods in case these were seen as setting ‘a precedent for extension to other more significant WTO applicants’ (Grynberg and Joy, 2006: 705).<sup>153</sup> This argument was also made in 1997 at the High Level Meeting on LDCs by the Vice-President of Vanuatu (WTO, 1997g: 57). The US was responsible for making the most demands and in the case of Vanuatu, this was despite the fact that the ‘total bilateral trade between Vanuatu and the USA was less than USD 1 million in 1998’ (Grynberg and Joy, 2006: 705, footnotes). The view that the US was ‘particularly difficult’ in the accession process, was also cited in interviews conducted for this thesis, as was the view many countries were reluctant to provide special treatment to LDCs in accession ‘in case this meant that all countries were then given the same treatment’ (*Int. Kaukab*, 26 February 2008; also *Int. Bhattacharya*, 15 September 2010).

Analysis of Vanuatu’s GATT tariff offers on bound ad valorem duty show that Vanuatu made offers similar to those made by other countries in the region, most of which were not LDCs (Grynberg and Joy, 2006: 708). On services, commitments were made in eighteen areas which was much larger than the average for other LDCs (Grynberg and Joy, 2006: 709). Despite these offers, Vanuatu’s accession attempt failed as the country did not feel it could ratify the accession agreement, because of the requests made on it by some of the developed WTO members (Grynberg and Joy, 2006: 709). The attempted accession of Vanuatu, demonstrated that the accession process, did not offer any special treatment to LDCs and therefore, did not comply with the norm. However, it acted as a catalyst for the accession process for LDCs to return to the norm of special treatment, but the special treatment is accessible at a higher level than in GATT days as shown in Figure 5. Finding more evidence to support the claim that Vanuatu’s difficulties acted as a catalyst for reasserting the norm has been very difficult because of the secretive nature of WTO accessions, and particularly this one. Analysis of General Council minutes between 1999 and 2005, carried out in researching this thesis, revealed only one indirect reference, in July

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<sup>153</sup> The ‘other significant WTO applicants’ at the time were China and Russia. Grynberg and Joy also noted that the USA did not agree to Vanuatu’s request for transition periods of two years on the Agreement on Customs Valuations and TRIPs (Grynberg and Joy, 2006: 711). Joy was the negotiator for Vanuatu.

2005, to Vanuatu's accession, despite several discussions on accession. The 'stalled' accession of Vanuatu appears to have been an issue which was not publicly discussed. However, subsequent events, such as the introduction of the 2002 Decision on LDC accessions, strongly indicate that the Vanuatu case did indeed act as a catalyst.

The case of Vanuatu indicates that the norm lifecycle has not followed a linear route, but either incorporates a loop or a shift in the norm. If we incorporate Sandholtz's (2008) norm change theory, and combine this with subsequent events in the WTO, we can understand the accession of Vanuatu as a part of the norm's argumentation process, which has subsequently strengthened the norm of special treatment for LDCs in the WTO accession process (see Figure 5). This strengthening of the norm was seen in the 2002 General Council decision on LDC accessions, which was intended to make the accession of these countries easier in the future (WTO, 2002h). The 2002 decision was made in recognition of the problems faced by LDCs in light of the demands by developed countries in the accession process. This was particularly apparent in the area of market access where members are urged to 'exercise restraint in seeking concessions and commitments on trade in goods and services from acceding LDCs' (WTO, 2002h). The General Council decision also represented an explicit acknowledgement by the WTO that no LDC had acceded since the WTO had been established, despite the sentiments expressed in the Marrakesh Agreement and the Decision on Measures in Favour of LDCs. The decision was also an attempt to accelerate the accession process for LDCs. However, the decision was only a recommendation, and therefore is not binding on WTO members, despite the hope engendered by it and the suggestion that it might make accession easier for LDCs (Kennett et al, 2005: 64). The test for the guidelines and for the norm would be how they subsequently affected the behaviour of the WTO members. Initially, the guidelines appeared to have had a positive effect on LDC accessions, as following the 2002 decision, the first two LDCs acceded to the WTO in 2004 –Nepal and Cambodia.

The accessions of Nepal and Cambodia were both approved at the Cancun Ministerial in 2003 and can thus be seen as a positive achievement for LDCs at the Ministerial. However, both accessions suffered from delays at the start of the process. Nepal's accession process began in May 1989, when it applied to join the GATT and its application was approved at a GATT Council meeting where its status as an LDC was highlighted by the Norwegian Representative, Martin Huslid, who was also Chair of the LDC Sub-Committee at the time (GATT, 1989e: 5). Nepal's accession took over 14 years to complete. In view of the length of time that the Nepalese accession took, it is unsurprising that the representative of Nepal called for a 'time-bound accession package for LDCs', with accession taking place either within three years of the Working Party being established or after no more than three Working Party meetings (WTO, 2003e: 5). Nepal's accession Working Party was established in June 1989, but did not meet and its Memorandum of Foreign Trade Regime which was submitted to the GAT in 1990 highlighted its status as an LDC (GATT, 1990b: 7). However, following the establishment of the WTO, Nepal applied for accession to the WTO in 1997 and the Working Party became a WTO one (WTO, 2003k). It did not meet until May 2000, and its negotiations were completed after three meetings of the Working Party (WTO, 2003f: 21). Nepal's LDC status was also highlighted in the report of the Working Party and references were made to the Doha Declaration on LDC accessions and the Brussels Programme of Action (WTO, 2003k: 2). Nepal benefited from a UNDP project to assist with its accession process and was one of the countries discussed at the High Level Meeting in 1997 (WTO, 1997g: 36).

Cambodia applied to join the WTO in October 1994 and its Working Party was established in December 1994 (WTO, 2003l). It took five years for its Memorandum on Foreign Trade Regime to be submitted to the WTO, which highlighted its status as an LDC and the first meeting of the Working Party was not held until 2001 - six years after the application was first received by the WTO (WTO, 1999k: 1; WTO, 2003l). Overall, the Cambodian accession process took over eight and a half years to complete. Despite Cambodia's membership of the WTO being approved at the Cancun Ministerial in 2003, the final ratification was delayed due to the fact that a

coalition government could not be agreed following the July 2003 elections, which delayed membership by a year (WTO, 2004h; Chea and Sok, 2005).

The accessions of Nepal and Cambodia occurring shortly after the 2002 General Council decision on the accession of LDCs indicate that there was a realisation that LDCs did indeed require special treatment in acceding to the WTO. This view is further reinforced by the accession of Cape Verde. Cape Verde began negotiating its WTO accession in 1999, highlighting its LDC status at its Working Party meetings, and negotiations were concluded in December 2007 (WTO, 2007d). The WTO's General Council approved the Working Party report, and the country became the WTO's 153rd member, on 23rd July 2008 (WTO, 2009m). However, despite applying to join the WTO in 1999, Cape Verde did not submit its Memorandum on Foreign Trade Regime until after 2003 (WTO, 2003e:4). Once the Memorandum had been submitted, the accession was complete within four years. The LDC Sub-Committee minutes highlighted the role played by the US in providing technical assistance to Cape Verde to assist with formulating its Memorandum (WTO, 2003e:4). This contrasts starkly with the actions of the USA in the accession of Vanuatu, but can be partly explained by the fact that the Cape Verde Working Party was chaired by David Shark of the United States, meaning that there was a vested interest in achieving a successful accession. Cape Verde was also the recipient funding via the US Millennium Challenge Corporation (MCC) in 2005, with part of these funds aimed at financial sector reform (MCC, 2005). This suggests that the US changed its behaviour in line with the norm of special treatment follow criticism of its behaviour over Vanuatu. Further evidence of this change of behaviour was also provided recently by the USTR in its *2011 Trade Policy Agenda*, which stated that Cape Verde had 'received technical assistance' in its accession process (USTR,2011c: 105).<sup>154</sup>

Despite the successful accessions of three LDCs, WTO-plus and minus situations are still occurring. For example, Nepal and Cambodia both waived the transition period

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<sup>154</sup> The report lists the countries which have acceded since 1995 and which have received US technical assistance – Nepal is the only other LDC listed. (USTR, 2011c: 105).

allowed for LDCs under the Agreement on Trade-Related Investment Measures (TRIMs) (WTO, 2003k: 36-37; WTO, 2003l: 31-32; also Sauvé, 2005: 38). Cape Verde's accession documents also show that Cape Verde 'would apply the TRIMs Agreement from the date of accession without recourse to any transitional periods' (WTO, 2007e: 39). The same was also true for Vanuatu, whose Working Party report showed that Vanuatu 'would apply the TRIMs Agreement from the date of accession without recourse to any transitional period' (WTO, 2001d: 22). An interview carried out for this thesis also revealed that the US wanted Vanuatu to sign the plurilateral agreement on civil aviation (*Int. Bhattacharya*, 15 September 2010). The case studies show that following the General Council Guidelines the acceding LDCs appeared to have received more special treatment in the area of accession, indicating that the behaviour of the WTO members was to be brought back in line with the norm of special treatment, a situation which seemed to be the case in terms of the US. However, the WTO-plus and minus situations which sometimes occur in the accession negotiations indicate that the norm of special treatment has not been fully internalised in the area of LDC accessions.

### ***Future LDC Accessions***

Currently twelve LDCs are in the process of accession talks with WTO members. These are Afghanistan, Bhutan, Comoros, Equatorial Guinea, Ethiopia, Lao PDR, Liberia, Samoa, Sao Tome and Principe, Sudan, Vanuatu and Yemen. Table 1 below shows the current state of play of these accession talks. The most recent to start negotiations was Equatorial Guinea in February 2008, when the General Council agreed to establish a working party to examine the accession application (WTO, 2008b). The longest LDC accession process is that of Sudan which was started in October 1994, although it is likely that the recent referendum to split Sudan will delay this process further (FT, 2011). This is true whether we take the date that it first applied (1994), or the date from which it submitted its Memorandum on Foreign Trade Regime to the WTO (1999).

Recent activity in LDC accessions provides evidence that the process of accession for LDCs is beginning to move slightly faster than before. Since 2003, as well as the

accession of Cape Verde, five LDCs have applied to join the WTO, five Memorandums of Foreign Trade have been submitted to the WTO and around twenty LDC accession working party meetings have been held. However, many of the questions raised concerning the Memorandums of Foreign Trade Regime are still being generated by the most powerful countries. For example Yemen received a 167 ‘questions and queries’ regarding their trade regime, ‘most of which were from the United States, the European Union, Canada and Australia’ (Yemen, 2008).<sup>155</sup> An interview with an LDC delegate indicated that answering questions generated by the Memorandum was particularly challenging and that the majority of questions were generated by the EU, US, Japan, Canada and China (*Int. LDC representative*). Discussions with British Mission in Geneva indicate that one of the key sticking points for LDCs accession is the bilateral negotiations with existing WTO members and that the Ukraine now seems to be the main country holding up Yemen’s accession (*Int. Azbaha, 27 January 2011*). Problems with the bilateral negotiations were also highlighted in an interview with a member of the WTO accessions division (*Int. Mathur, 26 May 2009*).

One of the most interesting developments in the accession of LDCs which reinforces the idea that the norm of special treatment has empowered these countries is found in the changing composition of the accession Working Parties. The WTO document on members of the Working Party on the Accession of Vanuatu does not list any LDCs as members of the working party (WTO, 1999c).<sup>156</sup> Significantly, Hayashi (2003) believes that a ‘major obstacle’ for Vanuatu was a ‘lack of significant allies that it could turn to in attempting to soften the American demands’ (Hayashi, 2003). For Cambodia’s accession the first Working Party list does not contain any LDCs, but by the sixth revision, the Working Party contains five LDCs – Bangladesh, Djibouti, Guinea, Myanmar, and Tanzania (WTO, 2002b; and WTO, 2003a). Similarly, the final Working Party list of Nepal’s accession contains three LDCs – Bangladesh, Djibouti and Haiti (WTO, 2003b). In the case of Cape Verde’s accession, no LDCs

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<sup>155</sup> NB this information was provided by Yemen itself – in most accession cases, the countries asking questions of the acceding LDC are not identified in the official documentation.

<sup>156</sup> The membership of the Working Party is listed as Australia, Canada, European Communities and member States, India, Indonesia, Japan, Korea, Kyrgyz Republic, Malaysia, New Zealand, Papua New Guinea, Philippines, Singapore, Switzerland and United States.

are initially shown as members of the Working Party (WTO, 2004a). However, by the final meeting, ten LDCs had joined the Working Party (WTO, 2007e).<sup>157</sup> Interviews with LDCs also suggest that this is part of a strategy by the LDC Group, with members being informed of the dates of accession Working Parties and being encouraged to attend and support the acceding LDC (*Int. Balima*, 17 September 2010; *Email Bizumuremyi*, 20 May 2010). This was also highlighted in an interview with a member of the WTO Secretariat (*Int. Mathur*, 26 May 2009). In addition, LDCs applying to accede to the WTO are now highlighting their LDC status from the start of their applications and often calling for the implementation of the 2002 Guidelines. Samoa, Comoros, Equatorial Guinea and Ethiopia all drew attention to their LDC status in either their Memorandums or in the General Council meeting where their accession requests were first discussed (WTO, 2000d: 1; WTO, 2007j: 2; WTO, 2008l: 10; WTO, 2003m: 2). The actions of the LDC members of the WTO in supporting acceding LDCs at their Working Party meetings suggests that the LDCs are actively involved in accession, and are now acting as norm entrepreneurs using consensus building and mobilisation to help the acceding countries.

The LDC Group's active interest in the accession process was demonstrated by the LDC coordinator at a 2007 Sub-Committee meeting calling:

for a special report on LDCs' accessions to the WTO, with a view to examining the difficulties faced by the currently acceding LDCs and to explore ways and means to operationalise the accession guidelines and to facilitate and accelerate LDCs accessions to the WTO (WTO, 2007a: 16).

This view was backed by several other LDCs attending the meeting, including Yemen, Bhutan and Rwanda (WTO, 2007a: 16), and has since led to the introduction of a 'Dialogue on LDC accessions'. Since 2007, the LDCs as a group have maintained their focus on accession, with the acceding LDCs focusing on this issue and appointing a coordinator country to concentrate on the issue. Currently Yemen is taking the lead in terms of acceding LDCs, although the LDC Group coordinator is

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<sup>157</sup> The ten LDC members were Benin, Burkina Faso, Democratic Republic of Congo, Djibouti, Haiti, Mauritania, Mozambique, Rwanda, Senegal and Zambia.

also involved. A meeting of acceding LDCs was held in May 2009 prior to the General Council Meeting, and several Working Party meetings also took place around this time. In addition, a Round Table on the Accession of LDCs was held in Cambodia in September 2009 which was also attended by members of the WTO's Accession Division (WTO, 2009o). Accession also featured in the LDC Trade Minister's declaration submitted to the Geneva Ministerial. The declaration called for the accession of LDCs to be put on the agenda of the Ministerial Meeting and for 'the urgent and effective implementation of the 2002 WTO General Council Decision on the accession of LDCs' (WTO, 2009q: 7, paragraphs 57-60). Discussions with representatives from the British mission in Geneva indicate that three LDC accessions are now close to completion – Vanuatu, Samoa and Yemen (*Int. Azbaha*, 27 January 2011).<sup>158</sup> These countries were chosen by the LDC Group as their priorities for accession and are expected to be completed by the end of 2011. The completion of these accessions would indicate that a degree of special treatment is being provided to the LDCs, although the exact amount of special treatment will not be known until the final accession packages are revealed.

The situations of many of the LDCs in the accession process demonstrates that, while as much as possible should be done to facilitate the accession of these countries to the WTO, putting a definite time limit on the accession of LDCs would not necessarily help these countries, but instead may compound internal problems. In looking at LDC accessions it is important to take into account the domestic situation of these countries, many of which are recovering from protracted periods of civil war and domestic instability. Sudan and Afghanistan are cases in point - the UN Mission in Sudan points out, that 'Sudan has seen civil conflict for all but 11 of the years since it became independent on 1 January 1956' (UN, 2007a); while parts of Afghanistan remain in conflict. In order to further the norm of special treatment for these countries, their LDC status should be recognised as soon as the accession process begins, and more developed WTO members should not be allowed to exert demands for WTO-plus or WTO-minus commitments from the acceding LDCs.

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<sup>158</sup> The USTR also expects the accessions of these countries to be completed in 2011 (USTR, 2011: 108). The WTO noted that an informal accession Working Party was held with Vanuatu on 4 April 2011 and that it was hoped that Vanuatu's accession package would be concluded prior to LDC IV in May, as part of the WTO's contribution to the conference (WTO, 2011d).

**Table 1 – Future LDC Accessions to the WTO<sup>159</sup>**

Country	Applied	WP estab'd	Memo	First WP meeting	Latest WP meeting	No of WP mtgs held	Initial offer on Goods	Latest offer on Goods	Initial offer on Services	Latest Offer on Services	Draft WP report
Afghanistan	Nov 2004	Dec 2004	Apr 2009	Jan 2011		1					
Bhutan	Sep 1999	Oct 1999	Feb 2003	Nov 2004	Jan 2008	4	Aug 2005	Nov 2007	Aug 2005	Nov 2007	Dec 2007
Cape Verde	Nov 1999	Jul 2000	Jul 2003	Mar 2004	Jul 2005	3	Nov 2004	Nov 2005	Nov 2004	Nov 2006	Dec 2007*
Comoros	Feb 2007	Oct 2007									
Equatorial Guinea	Feb 2007	Feb 2008									
Ethiopia	Jan 2003	Feb 2003	Jan 2007	May 2008		1					
Liberia	Jun 2007	Dec 2007									
Lao PDR	Jul 1997	Feb 1998	Mar 2001	Oct 2004	Sep 2010	6	Nov 2006	Jun 2008	Oct 2007	Jun 2008	Jun 2008 (FS)
Samoa	Apr 1998	Jul 1998	Feb 2000	Mar 2002	Feb 2011+	2	Aug 2001		Aug 2001	Feb 2006	Nov 2006
Sao Tome and Principe	Jan 2005	May 2005									
Sudan	Oct 1994	Oct 1994	Jan 1999	Jul 2003	Mar 2004	2	Jul 2004	Oct 2006	Jun 2004	Oct 2006	Sep 2004 (FS)
Vanuatu	Jul 1995	Jul 1995	Nov 1995	Jul 1996	Apr 2011	3	Nov 1997	Nov 1999	Nov 1997	Nov 1999	Oct 2001*
Yemen	Apr 2000	Jul 2000	Nov 2002	Nov 2004	Sep 2010	8	Sep 2005	Aug 2008	Aug 2005	Aug 2008	Dec 2009

FS – Factual Summary.

\*This was the date of an agreed Accession Package. In 2008, Vanuatu requested that the Secretariat update its draft accession package.

+Samoa's work has proceeded on the basis of informal consultations.

<sup>159</sup> Table of LDC accessions taken from WTO website of ongoing accessions, WTO (2009e). This table has also been updated with news reports from the WTO website: WTO (2009k) and WTO (2009r).

## Conclusion

Accession is very much a political issue for the LDCs and is a regular item on the agenda of the LDC sub-committee meetings. The norm lifecycle for the general norm of special treatment for LDCs in the WTO appears to work well, but did not initially apply in the area of LDC accessions. The change in the trade regime from GATT to WTO substantially increased the rules surrounding international trade and the rule changes affected the norm of special treatment for LDCs, particularly in the area of accession as there are no set rules in this process. With the establishment of the WTO, the accession process for LDCs changed and became much more like that of the accession process for other countries, effectively removing their special treatment in this area. Those LDCs who have been through the accession process for the WTO have found it very challenging in terms of the time and knowledge necessary to conduct the negotiations, as well as requiring the introduction of many new domestic laws to ensure that these comply with the WTO agreements. The norm lifecycle does not account for what happens if changes occur, such as the change from GATT to WTO. Accession for LDCs in the GATT days was a relatively straightforward process. Most of the LDCs were ex-colonies, and as such the GATT had been applied in their territories, so accession was merely a process of confirming the application of the GATT and having this certified by the Director-General. Ironically, although the GATT is often characterised as a ‘Rich man’s Club’, it was one which did let in the ‘poor man’ even if it did not always listen to his concerns (Trebilcock and Howse, 2001: 22; Narlikar, 2005: 19). Had it not done so, developing countries would not have had the scope to influence the WTO in the way that they have.

With the creation of the WTO, LDCs which had not yet acceded lost their *de facto* membership and were forced to apply to accede to the organisation in the same way as other countries, and so appear to have lost some of their special treatment, despite the attempts to highlight it as seen in the norm’s audit trail. This would appear to be a deviation away from the norm’s linear path. The lack of progress in LDC

accessions in the first eight years of the WTO led to a re-evaluation of the norm of special treatment, and attempts to re-affirm the norm as seen in the Doha Declaration. The failure of Vanuatu to accede to the organisation provided the shock needed to get the norm of special treatment back on track. Vanuatu's accession highlighted some of the problems inherent in the accession process, and acted as a catalyst to strengthen the norm of special treatment for LDCs in the accessions area. This strengthening resulted in the 2002 General Council decision on LDC accessions. Once this decision was made, we see the rapid accession of two LDCs, Cambodia and Nepal, as well as the recent announcement of Cape Verde's accession. The full impact of the norm will only be seen once more LDCs complete the accession process, but what does appear to be happening is that the LDCs are now becoming more politically active, and are using the norm of special treatment to empower themselves and push for the norm to be further implemented – in effect acting as norm entrepreneurs using tactics of norm mobilisation and 'moral consciousness raising' to highlight the lack of special treatment. From this review of the accession of LDCs, what becomes very apparent is that if most LDCs had not joined the trade regime during the GATT, they would struggle now to join on favourable terms, which would affect their potential to impact the WTO, and therefore the historical accession process is very important. Accession in the GATT offered special treatment to those LDCs which were ex-colonies, so they acceded easily. With the creation of the WTO, no consideration of the need for special treatment for LDCs was initially made, as the accession process was based on the GATT process, which had never really needed to consider LDCs. Following Vanuatu's attempted accession what became clear was despite the WTO's general focus on special treatment for LDCs this was not being applied in accession. The role of the LDCs and the recognition that no LDC had acceded to the WTO led to the incorporation of special treatment for LDCs into the accession process via the introduction of the General Council Guidelines on LDC accessions, thus strengthening the norm. Without the general acceptance of the norm in the WTO, LDCs would have struggled to get special treatment in the area of accession. This general acceptance also has implications for other issue areas of interest to LDCs such as market access and cotton.

# Chapter 5 - Case Study 2 - Benefiting from Trade: Market Access and LDCs

Access to other countries' markets represents an important opportunity for LDCs, as it would provide revenue and foreign currency reserves.<sup>160</sup> For LDCs these are often critical in order to generate revenue to pay for imports. This issue is one which has long been discussed in the GATT and the WTO. The ability of the LDCs to have complete and unrestricted market access to all countries' markets would represent full internalisation of the norm of special treatment for LDCs in trade terms. However, the fact that the norm has not yet been fully internalised is demonstrated by the fact that LDCs still do not have full duty-free and quota-free access to all WTO members markets despite progress in this area. This case study will focus on attempts within the GATT and the WTO to improve market access for LDCs. In examining the GATT, the focus will be on the early GATT days and on the discussions of market access in the GATT's Sub-Committee on Trade of LDCs. Within the WTO, the focus will be on discussions at the LDC Sub-Committee meetings and various ministerial meetings most notably Singapore and Hong Kong. The Hong Kong Ministerial was a key landmark as agreement was reached that 'at least 97 per cent of products originating from LDCs' would be accorded duty-free, quota-free access by the developed country members of the WTO, and those developing countries able to do so (WTO, 2005s: Annex F, page F-1). The decision is important for three reasons, first it set a minimum figure for LDC access to foreign markets, second, it specifically involved other developing countries in assisting LDCs and importantly this treatment has not been provided to any other category of WTO member of negotiating group. The fact that this market access is specifically aimed at LDCs indicates a form of special treatment for these countries. However,

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<sup>160</sup> Market access is one of the basic concepts in international trade (see Goode, 2004: 222). Goode defines market access as 'the extent to which a good or service can compete with locally made products in another market' (Goode, 2004: 222).

the fact that only 97% of products are covered does mean that key products for LDCs could potentially be excluded from developed country markets.<sup>161</sup> The Chapter will also analyse some of the unilateral preferential trading schemes which are offered to LDCs by the main developed and developing countries members of the WTO.<sup>162</sup> The preferential trading schemes of the US, the EC, Japan, Canada, China, India and Brazil will be examined to investigate whether the norm of special treatment has affected the behaviour of these countries, and if so how.<sup>163</sup> The chapter demonstrates that although there has been significant change in market access for LDC exports, particularly since 2000, which represents both institutionalisation and habitualisation of the norm, it has still not been fully internalised (WTO, 2011c).

## **What's at Stake?**

Market access to developed countries markets has been a key aim for LDCs in particular, since their involvement in the GATT. Within the WTO, market access relates to the conditions imposed by governments that affect a products entry to a country (Goode, 2004: 222). The conditions that affect market access include tariff and non-tariff measures for goods and local market regulations for services (Goode, 2004: 222). Non-tariff measures can cause major problems for LDC exports by creating barriers to entry and include technical standards, sanitary and phyto-sanitary measures, product standards and the application of rules of origin requirements (WTO, 2001b: 7). The introductions of sanitary and phyto-sanitary measures are good examples of non-tariff measures which potentially affect LDCs market access.<sup>164</sup> Market access is dealt with in both the GATT and the GATS Agreements

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<sup>161</sup> In its review of the Hong Kong Ministerial, Oxfam noted that 'The offer of duty-free, quota-free market access to the poorest countries contains sufficient loopholes to rob the agreement of almost all value' (for more information see Oxfam, 2005).

<sup>162</sup> Developing countries have become a significant market for LDCs in the last 10 years (WTO, 2011c: 17-19).

<sup>163</sup> These countries have been chosen as they represent the 'Quad' countries and the leading developing countries within the WTO. However, they are not the only countries offering preferential market access to LDCs either in terms of developed or developing countries. For a more complete list of countries see WTO (2011c), especially pages 40-44.

<sup>164</sup> Whilst non-tariff barriers are an important issue for LDCs, it is not the intention that these will be discussed in any great detail in this chapter, rather the focus will be on general market access discussions. Sanitary and phyto-sanitary measures are 'border control measures necessary to protect human health, animal or plant life or health' (Goode, 2004: 302). The WTO's agreement

(WTO, 1999b). The Agreement on Agriculture, for example, deals with market access in Part III: Article 4, while the GATS covers market access in Part III: Article XVI, as well as in Part II: Article IV, which deals with the increasing participation of developing countries and provides for priority to be given to LDC members of the WTO (WTO, 1999b: Annex 1B General Agreement on Trade in Services). Crucially, however, despite the inclusion of market access in the WTO agreements and the focus on ensuring LDCs have special treatment, until the Hong Kong Ministerial there was no quantification of the amount of access that LDCs should be given by WTO Members. The market access issue is also complicated by the fact that developing countries have historically received preferential market access to *some* developed country markets. These preferential agreements are often a result of historical ties between countries for example the EC's Yaoundé, Lome and Cotonou agreements, or as a result of preferences negotiated under the auspices of UNCTAD, such as the Generalised System of Trade Preferences (GST) scheme<sup>165</sup> and the Global System of Trade Preferences among Developing Countries (GSTP).<sup>166</sup> The existence of these preferential trade agreements means that the issue of market access for LDCs is a 'two-pronged' issue – one 'prong' is covered within the WTO agreements and aims at providing market access via trade liberalisation, whilst the other relies on a more unilateral approach by the more developed countries offering preferential market access to the LDCs. However, there are linkages between these 'prongs' which means that each prong influences the other, and both are influenced by the norm of special treatment for LDCs.

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on the Application of Sanitary and Phytosanitary Measures, was one of the results of the Uruguay Round.

<sup>165</sup> Calls for a Generalized System of Trade Preferences (GST) initially arose at the first UNCTAD conference in 1964 and resulted in a resolution being passed at the second UNCTAD conference in 1968. The aim of the scheme was to provide developing countries with preferential access to the markets of the developed countries. The scheme was incorporated into GATT rules via a waiver to MFN in 1971. All of the Quad countries operate GSP schemes. For more detailed information regarding GSP see Grossman and Sykes (2007).

<sup>166</sup> The Global System of Trade Preferences among Developing Countries (GSTP) offers preferences between developing country participants, and came into force in 1989. Both India and Brazil are participants in the GSTP process, but only seven LDCs are currently members of the scheme. For more information regarding GSTP see GSTP (2005).

### ***Market Access within the GATT***

As market access has been a long running issue for both LDCs and developing countries in the GATT/WTO, the norm lifecycle in this area follows the same path as the general norm lifecycle for the norm of special treatment. This includes the antecedents discussed in Chapter Three. Following the Haberler Report in 1958 looking at the trade of developing countries (see Chapter three for more details), a special working group – Committee III – was created in March 1959 to remedy some of the trade-related problems that the developing countries faced (GATT, 1961). The Committee was to look at measures which would help increase the export earning of developing countries and report back to the Contracting Parties (GATT, 1961a: 1). The creation of the Committee meant that more focus was placed on greater market access for developing countries and the elimination of barriers to their trade was top of their agenda (Hudec, 1987: 45).

The 1959 Action Plan included a proposal for unilateral trade liberalisation by developed countries. This was to be done without negotiation and without reciprocity (Hudec, 1987: 42). Following the Dillon Round in 1961 and its failure to address issues affecting developing countries, a GATT Ministerial declaration called for ‘duty-free entry for tropical products’ to be ‘given careful consideration’ (GATT, 1961e: 4).<sup>167</sup> The issue of tropical products, which were mainly from developing countries, became a special area for negotiations in the Kennedy Round with the creation of a Tropical Products Group. The group also played a role in the Tokyo Round which made tropical products a priority sector (ICTSD/FAO, 2008). At the same time, developed country governments indicated their support in principle for ‘the objective of unilateral concessions’ for developing countries (Hudec, 1987: 45). In line with this principle, the 1962 US Trade Act ‘authorised the elimination of duties on tropical products without reciprocity’ from developing countries (Hudec, 1987: 45; Evans, 1971: 142-3 and 251). However, the Act required other developed countries to follow suit; a move which was blocked by the European Community’s

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<sup>167</sup> The issue of duty-free access for tropical products was debated several times in the GATT (for more details regarding this see WTO, 2005i). Its inclusion was suggested by Nigeria (GATT, 1961d).

refusal to remove duties on tropical products, in order to protect the preferences which it gave to its African ex-colonies (Hudec, 1987: 53, endnote no.14).<sup>168</sup> The issue of duty-free access for tropical products was raised in the GATT again in 1963 and resulted in a declaration accepting this objective ‘with no expectation of reciprocity’ (Hudec, 1987: 45; also GATT, 1963a). Although the European Community ministers again refused to accept this declaration, they indicated that they ‘agreed with the non-reciprocity principle’ (Hudec, 1987: 53, endnote no.15). This indicated their acceptance of the norm of special treatment for developing countries.

The issue of tariff preferences was not part of the 1958 Action Plan, but had appeared on the GATT’s agenda by 1963 (Hudec, 1987: 50). With the formation of the European Community, the trade preferences which had existed between individual member states and their colonies and ex-colonies were extended to be offered by all member states of the Community.<sup>169</sup> The EC argued that the preferences were allowed under Article XXIV, which dealt with regional trade agreements and claimed that the preferences created ‘individual free trade areas’ between the EC and the African states (Hudec, 1987: 50). In providing special treatment for developing countries that were not ex-colonies, the EC opted to provide preferential tariffs ‘for selected developing countries’ (Hudec, 1987: 51). The other developing country Contracting Parties were sympathetic to this approach, and preferences became seen as ‘the easiest solution’ to provide market access for developing countries (Hudec, 1987: 51). This therefore became the line that the GATT took, allowing preferential trade agreements for developing countries generally. Following the categorization of the LDCs in 1971, the system of preferential treatment for them also became the norm. The practice of allowing preferential treatment for developing countries and LDCs indicated a degree of institutionalisation of the norm of special treatment and acceptance of the practice meant it became an expected form of behaviour.

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<sup>168</sup> The EC was also just about to sign the Yaoundé Convention with its ex-colonies.

<sup>169</sup> Previously, the preferences between individual states and colonies were authorised by exceptions made to Article I of the GATT (Hudec, 1987: 50).

The discussions of preferences for developing countries were also taken up by UNCTAD and eventually resulted in the Generalised System of Preferences (GSP) and the Global System of Trade Preferences among Developing Countries (GSTP). The idea for a generalised system of preferences rather than ‘the historical patchwork’ was initially suggested at UNCTAD I in 1964 (Grossman and Sykes, 2007: 267 and 255). This was followed by an UNCTAD resolution at its second conference in 1968 calling for ‘the early establishment of a mutually acceptable system of generalised non-reciprocal and non-discriminatory preferences’ and the formation of a special Committee on Preferences to specify how the scheme should operate (UNCTAD, 1968; Williams, 1994: 204). The resulting GSP scheme aimed to increase exports from developing countries through the granting of preferential access to the markets of the developed countries (Williams, 1994: 158). The GSP scheme was incorporated in the GATT in 1971 via a ten-year waiver which allowed Contracting Parties involved in the scheme to override their MFN obligations (Williams, 1994: 158). The MFN waiver was unconditionally extended in 1979 during the Tokyo Round by the Decision on Differential and More Favourable Treatment, Reciprocity and Fuller Participation of Developing Countries, also known as the ‘Enabling Clause’ (GATT, 1979b). This clause was subsequently incorporated into the WTO, and is particularly important in terms of the norm of special treatment for LDCs, as it recognises their need for special treatment (Williams, 1994: 159).<sup>170</sup> There are currently thirteen national GSP schemes in operation, but they all differ in their details as there was no co-ordination between the national schemes (UNCTAD, 2002a; Grossman and Sykes, 2007: 257).<sup>171</sup> All of the Quad countries operate GSP schemes (see later in this chapter), but so far none of the larger developing countries do, although most of the larger developing countries are involved in the Global System of Trade Preferences among Developing Countries (GSTP).

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<sup>170</sup> However, as Williams (1984) points out, the GSP also helped developing countries generally in their attempts to get special treatment in the GATT.

<sup>171</sup> UNCTAD lists the countries granting GSP schemes as Australia, Belarus, Bulgaria, Canada, Estonia, the EC, Japan, New Zealand, Norway, the Russian Federation, Switzerland, Turkey and the USA.

While the GSP schemes contain preferences for developing countries from developed countries, the GSTP offers preferences between developing country participants (GSTP, 2005; Goode, 2003: 162). The GSTP agreement was established in 1988 and came into force in 1989, so it is a comparatively late arrival on the preference scene. Nevertheless, it does indicate the willingness of developing countries to offer preferential treatment to each other (GSTP, 2005). Like the GATT/WTO, the GSTP system operates via negotiation rounds. To date there have been two completed rounds of GSTP negotiations - Brasilia in 1986 and Tehran in 1992 - while the latest round, launched in Sao Paulo in 2004 is still in progress. Currently forty-three countries are parties to the Agreement and a further nine applied to join the GSTP in 2005 (GSTP, 2005).<sup>172</sup> Of note for the purposes of this chapter is that both Brazil and India are participants in the GSTP process. Currently only seven LDCs participate in GSTP, these are Bangladesh, Benin, Guinea, Mozambique, Myanmar, Sudan and Tanzania. However, of the nine additional applications, received in 2005, seven are LDCs – Burkina Faso, Burundi, Haiti, Madagascar, Mauritania, Rwanda and Uganda - and these countries have been permitted to take part in the Sao Paulo Round (GSTP, 2005). Crucially for LDCs and the institutionalisation of the norm of special treatment, the GSTP acknowledges the special needs of LDCs (GSTP, 2005). LDCs are not required to make concessions on a reciprocal basis and Article 17 of the GSTP agreement deals specifically with ‘Special treatment for least-developed countries’ while Annex III of the Agreement provides for ‘special consideration’ of additional measures in favour of LDCs although this only applies to participating LDCs (GSTP, 1988). This means that currently only fourteen LDCs out of the total of 48 are likely to benefit from the GSTP scheme (GSTP, 1988). Despite the fact that the GSTP only provides ‘consideration’ of requests from LDCs, the fact that the agreement specifically mentions them does indicate a degree of institutionalisation of the norm. This view

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<sup>172</sup> GSTP members are listed as: Algeria, Argentina, Bangladesh, Benin, Bolivia, Brazil, Cameroon, Chile, Colombia, Cuba, Democratic People’s Republic of Korea, Ecuador, Egypt, Ghana, Guinea, Guyana, India, Indonesia, Iran, Iraq, Libya, Malaysia, Mexico, Morocco, Mozambique, Myanmar, Nicaragua, Nigeria, Pakistan, Peru, Philippines, Republic of Korea, Romania, Singapore, Sri Lanka, Sudan, Thailand, Trinidad and Tobago, Tunisia, Tanzania, Venezuela, Vietnam and Zimbabwe.

is reinforced by the declaration on the launch of the Sao Paulo Round which stated that members would ‘work towards developing concrete preferential measures’ for LDC Participants (GSTP, 2004). Further, at UNTAD XII in Accra, Ghana in 2008, the GSTP participants held a special ministerial meeting, issuing a joint communiqué, in which they instructed their negotiators to work closely with the LDCs either bilaterally or plurilaterally (GSTP, 2008). Whilst the GSTP clearly has a focus on preferences for LDCs, the fact that it only applies to LDC participants makes it of more limited value to the LDCs. Nevertheless, their inclusion and the special provisions for them do indicate the beginnings of the internalisation of the norm of special treatment for LDCs by developing countries.

The focus on preferential market access for LDCs in the early GSTP negotiations were mirrored in the GATT in the late 1980s, although the GATT was pushing for multilateral liberalisation. A GATT press release concerning LDCs, issued in 1989, highlighted the need for ‘improved access to export markets’ for products from LDCs (GATT, 1989b). The press release quoted the 1988 *International Trade Report*, which argued that the benefits from preferential access were limited and lacked security. This security could be provided by bound reductions in tariffs which would in turn offer commitments to the LDCs that their principal export markets would not be affected by protection (GATT, 1989b). The GATT approach highlighted the basic conflict within the issue of market access between trade liberalisation and trade preferences.<sup>173</sup> The press release was echoed (virtually word-for word) in a speech to a GATT Ministerial in 1989 by the Bangladesh Ambassador to the GATT, Mr Harun-Ur-Rashid. Mr Rashid also called for ‘the participants in the Uruguay Round to agree ... upon sufficient measures in favour of the LDCs to guarantee them market access – free of all tariff and non-tariff barriers’ and applying to all LDC exports (GATT, 1989d). The call by Bangladesh highlighted that duty-free market access was a key aim of the LDCs during the Uruguay Round, as well as

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<sup>173</sup> However, it is important to note the differences between these two methods. Unilateral trade preferences would potentially benefit all LDCs while those agreed to within the GATT would only benefit GATT Contracting Parties.

the role of Bangladesh in raising issues of importance to LDCs.<sup>174</sup> Bangladesh can be seen as one of the norm entrepreneurs for the LDCs, raising issues on behalf of the group and attempting to mobilise support for them (*Int. Bhattacharya* 15 September 2010).

As indicated in Chapter Three, the GATT Sub-Committee on the Trade of LDCs played an important role in market access for LDCs, calling for duty-free treatment for their exports. Although the initial calls for duty-free and quota-free access for LDCs within the GATT were aimed at providing this special treatment via individual GSP schemes. The discussions relating to market access in the GATT Sub-Committee on LDCs, focussed largely on the issue of access via preferences and particularly the improvement of the GSP schemes of developed countries, indicating that LDCs saw the preference schemes as more beneficial to them. Changes in some of the developed countries GSP schemes were reported at in the Sub-Committee in June 1982, under the chairmanship of Hans Ewerlof, with several countries noting that they were now offering special treatment to imports from LDCs (GATT, 1982b: 2, paragraph 6).<sup>175</sup> The timing of these announcements is significant, occurring just after LDC I in 1981. However, this special treatment seemed to consist mainly of duty-free access for manufactured goods from LDCs and the existence of exceptions in textiles and certain agricultural goods did not help the LDCs. The 1982 Sub-Committee meeting was also responsible for suggestions on items to be put forward for inclusion in the November 1982 Ministerial Meeting (GATT, 1982b). These included the call for ‘further improvements in MFN or GSP treatment for exports from least-developed countries’ with the aim of providing duty-free access exports from LDCs (GATT, 1982b: 7, paragraph 26). The Annex to the Ministerial Declaration of 29 November 1982 included an amended version of this statement,

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<sup>174</sup> Croome (1995) cites several instances of Bangladesh raising issues on behalf of the LDCs during the Uruguay Round, as do GATT documents. Interviews with Jack Stone (both by the author and the UN Intellectual History Project) also confirmed that Bangladesh has often played a leading role within the LDCs.

<sup>175</sup> However, these countries are not identified in the minutes of the meeting, which refer simply to ‘a representative from a developed country’. The highlighting of improvements in GSP schemes features in the minutes of several of the Sub-Committee meetings (for example see GATT, 1983d: 4-7, comments by EC, Canada and Japan; also see GATT, 1984b: 6-7, comments by USA and Canada).

which stated that there was a need to ‘further improve GSP or MFN treatment for products of particular export interest to least-developed countries, with the objective of providing fullest possible duty-free access to such products’ (GATT, 1982c: 15-16). The switch in the ordering of the MFN and GSP indicates that unilateral GSP schemes were seen as preferable to a GATT wide agreement on duty-free access for products from LDCs. This view was backed up by the Chairman of the 1984 Sub-Committee meeting, Martin Huslid who called for countries which had not offered special tariffs to LDCs ‘within their GSP schemes do so on a complete duty-free and quota-free basis for all products of export interest to them’ (GATT, 1984b: 19, paragraph 74).

During the Uruguay Round the Sub-Committee’s focus was on ensuring that the needs of the LDCs were included in the negotiating groups for the Round. Two proposals were submitted to the Sub-Committee by Bangladesh on behalf of the LDCs which are of note in the case of market access. The first proposal submitted to the ninth meeting of the Sub-Committee in 1988, stated that ‘the ultimate objective’ was duty-free and quota-free access for all LDC exports (GATT, 1988c: 12, Annex I). The second proposal, submitted by Bangladesh in 1989, was substantially more detailed than the first, including a section on GSP which essentially called for the removal of tariffs on all LDC exports as well as the removal of quotas and ceilings (GATT, 1989d). The proposal also reiterated earlier calls for all LDCs to be included in GSP schemes and add weight to the view that Bangladesh can be seen as one of the norm entrepreneurs for LDCs during the Uruguay Round.

The review of discussions on market access in the GATT Sub-Committee shows that the focus was primarily on access to developed country markets and not developing country markets. This focus continued in the Uruguay Round discussions. For the LDCs involved in the Uruguay Round the priority was for access to the markets of their major trading partners (GATT, 1991b: 2). Only one reference to the GSTP could be found in the minutes of the Sub-Committee meetings which acknowledged the special concessions that the GSTP provided to LDCs without the need for

reciprocity (GATT, 1989a: 3, paragraph 6). The lack of discussion regarding GSTP indicates that developing countries were not seen as being able to help LDCs particularly at the time nor were they considered to be major markets. What is apparent however is the general recognition of the need for special treatment for LDCs and the impact of the norm on the behaviour of the other GATT Contracting Parties. However, this behavioural impact was mainly in terms of unilateral rather than multilateral action on market access, although it does indicate a degree of institutionalisation of the norm in the larger developed countries.

### ***Market Access within the WTO***

This section will focus on the discussions of market access for LDCs within the WTO. Although this is a perennial topic, certain key landmarks in the norm of special treatment in this area can be identified. The key areas to be examined in this section are the discussions in the LDC Sub-Committee, the WTO's Singapore Ministerial and the Hong Kong Ministerial. These events/discussions demonstrate a growing focus on the norm of special treatment for LDCs in terms of market access, culminating in the Duty-Free, Quota-Free (DFQF) decision at the Hong Kong Ministerial. This decision marked the institutionalisation of the market access issue within the WTO by the move to multilateral action. The discussions also indicate that DFQF access was not initially the aim for all LDCs.

Market access was and is a frequently discussed topic at the meetings of the WTO's LDC Sub-Committee. The topic has been raised at nearly every meeting held since the establishment of the WTO (for examples see WTO, 1996b; WTO, 1996c; WTO, 1996d; WTO, 1998d; WTO, 1999j; WTO, 2001h; WTO, 2002f; WTO, 2003j; WTO, 2004g; WTO, 2007a). However, analysis of the minutes of the Sub-Committee appear to indicate that, although market access was discussed, many LDCs were more concerned with obtaining assistance for capacity building and overcoming supply-side constraints rather than improved market access, as was the case in the GATT. A view reinforced by comments from the Zambian representative at the second and third LDC Sub-Committee meetings in 1996 who argued that although

market access might be a problem for Asian countries, for African countries supply-side constraints were the main issue (WTO, 1996b: 5, paragraph 9; WTO, 1996c: 5, paragraph 15). The difference in focus on market access by these countries is explained partly by the fact that most of the African countries benefit from trade preferences from the EC. This difference in the importance of market access for LDCs was also explained by the Canadian representative at the second LDC Sub-Committee meeting who believed that LDCs were more concerned with capacity-building, than market access (WTO, 1996b: 8, paragraph 17). This comment indicates that although market access was a focus for some LDCs, initially within the WTO it was not the main focus for all LDCs. However, the complexity of the WTO compared with that of the GATT may also partly explain why capacity building became a focus.

In the Sub-Committee's preparations for the Singapore Ministerial, a proposed Plan of Action for LDCs was drawn up which included market access as one of its main elements.<sup>176</sup> The inclusion of market access in the plan was influenced in part by the WTO Director-General at the time, Renato Ruggiero. Ruggiero suggested to the G7 meeting in Lyon in June 1996, that all LDC exports should benefit from 'duty-free access' (WTO, 1996d: 2 paragraph 6). He reiterated this view at the Fourth LDC Sub-Committee meeting (also in 1996), stating that his proposal for duty-free, quota-free access for LDCs was important as it would help the international efforts to reverse the marginalisation of these countries (WTO, 1996d: 3 paragraph 10). Ruggiero's call for duty-free, quota-free market access for LDCs represented a re-focusing on the issue of market access, rather than capacity building in the LDC Sub-Committee meetings. This renewed focus on market access continued for most of the subsequent LDC Sub-Committee meetings since the 1990s up to the present time. At the Singapore Ministerial the developed members of the WTO made a commitment 'to improve market access for LDC products' (UNCTAD, 2001a: 19). Ruggiero's earlier call for duty-free, quota-free market access for LDCs was echoed

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<sup>176</sup> Other elements of the Plan included implementation of the Uruguay Round results, improved technical assistance programmes to strengthen the institutional and human capacities of LDCs and the adoption of measures which would improve the domestic macroeconomic framework (see WTO, 1996d: 2, paragraph 5; also WTO, 1996g).

by the LDCs themselves at a meeting of the LDC Ministers prior to the Singapore Ministerial. The LDC Ministers wanted duty-free, quota-free market access to be made a legal right within the WTO (SUNS, 1996). What is interesting about this renewed call for market access by Ruggiero and the LDCs is that the proposal focused on a commitment via the WTO rather than via GSP (SUNS, 1996). This obviously represented a major change from the market access discussions in the GATT and is important as it also demonstrated the active interest of the LDCs in this issue.

As noted in Chapter three, the Singapore Ministerial resulted in WTO Members agreeing a Plan of Action for LDCs which included requirements for the provision of 'predictable' duty-free market access for LDC products (WTO, 1996f: paragraph 14). Despite the inclusion of market access for LDCs within the WTO there was still a view that WTO members would unilaterally provide access for these countries, rather than multilaterally via the trade regime. The Singapore Ministerial was also important, as it authorised the convening of a High Level Meeting on LDCs, which maintained a focus on market access, thus strengthening the norm of special treatment in this area, as the meeting was aimed specifically at helping LDCs.

The High-Level Meeting on Integrated Initiatives for LDCs Trade Development was held in October 1997. Both the WTO Secretariat and UNCTAD reported that at the meeting, several WTO members 'announced new or additional preferential market access measures for LDCs that they had taken, or proposed to take' as well as statements being made 'drawing attention to existing liberal market access for LDCs under GSP or GSTP regimes and other preferential arrangements' (WTO, 2001b: 9; UNCTAD, 1998: 77). The list of countries contains both developed and developing country members of the WTO including the EC, India, Japan, and the US (WTO, 2001b: 9 see footnote 20).<sup>177</sup> Following the High-Level Meeting, the US introduced

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<sup>177</sup> The full list of WTO members proposing measures for LDCs is Australia, Bulgaria, Canada, Chile, Egypt, European Communities, Hungary, India, Indonesia, Japan, Korea, Republic of, Mauritius, Malaysia, Morocco, Norway, Singapore, Switzerland, Thailand, Turkey and the United States (WTO, 2001b: 9 see footnote 20).

its African Growth and Opportunities Act (AGOA) in 2000 and the EU introduced its Everything but Arms (EBA) initiative. The High-Level Meeting represented a renewed emphasis of calls for duty-free, quota-free access for LDCs in the WTO and called for members to actively review their options for improving LDC market access (UNCTAD, 1998: 77). In a follow-up to the High-Level Meeting, the WTO Director-General, Mike Moore, urged members to improve market access for LDCs (WTO, 2000e). This resulted in twenty-eight countries announcing measures that they had either taken or planned to take (WTO, 2001b). However, a survey by the WTO Secretariat in 2001 found that of the twenty-eight countries only twelve had actually notified the WTO of their improvements, implying that the rest had yet to take action (WTO, 2001b). Despite the fact that not all of the twenty-eight countries had notified the WTO, the fact that they felt the need to announce measures that they were taking to assist LDC market access shows that the norm of special treatment was having an impact on their behaviour. Moore's speech also reinforces his role as a norm entrepreneur, following his call for a package for LDCs at Seattle.<sup>178</sup>

The WTO Secretariat's survey of market access conditions for the exports of LDCs, followed a decision authorising them to do so at the LDC Sub-Committee meeting in December 2000 (WTO, 2001b; WTO, 2001i:8). The report, which represented part of the WTO's contribution to LDC III, found that there had been 'significant and concrete improvements in market access opportunities for LDCs' particularly from 'developed and transition economies' since the High Level Meeting in 1997 with about 75% of LDC exports going to developed countries (WTO, 2001b:1). The report analysed 30 markets which accounted for over 95% of LDCs exports – nine markets were developed countries, seventeen developing countries and four transition economies.<sup>179</sup> The study found that approximately 75% of LDCs exports (in value terms) were eligible to enter the markets on a duty-free basis, either via

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<sup>178</sup> Analysis of Mike Moore's speeches listed on the WTO website ([http://www.wto.org/english/news\\_e/spmm\\_e/spmm\\_e.htm](http://www.wto.org/english/news_e/spmm_e/spmm_e.htm)) show that LDCs or the poorest countries were mentioned in 64 out of 87 speeches.

<sup>179</sup> The countries covered in the report were: Argentina, Australia, Brazil, Canada, Chile, China, Chinese Taipei, Czech Republic, Egypt, EC, Hong Kong, Hungary, India, Indonesia, Japan, Republic of Korea, Malaysia, Mexico, Morocco, New Zealand, Norway, Philippines, Poland, Russian Federation, Singapore, South Africa, Switzerland, Thailand, Turkey and the US.

MFN, or under GSP, GSTP or LDC specific preference schemes (WTO, 2001b: 3). The study also highlighted the fact that LDCs exports were concentrated on a small range of products, usually primary products, and found that in most cases over 70% of each LDC's exports were accounted for by three products. The exceptions for this were Bangladesh, Cambodia, Djibouti, Haiti, Laos, Madagascar, Mozambique, Myanmar, Tanzania and Vanuatu which were more diversified in terms of their exports (WTO, 2001b: 5). The report concluded that in order to fulfil the objective of duty-free, quota-free for LDC exports, WTO members could 'consider improvements in access by eliminating all remaining tariffs and quantitative restrictions on all LDC exports, further simplify and liberalise existing preferential schemes with regard to eligibility criteria' (WTO, 2001b: 16). The publication of the report also prompted several countries to announce improvements to their GSP and market access schemes, thus demonstrating that the focus on market access and special treatment for LDCs had an impact on behaviour (for examples see WTO, 2000c; and WTO, 2001j). However, the call was only for members to 'consider' improving market access, not compelling them to, indicating the socialisation of the norm rather than its internalisation as there was a concern to be seen to be doing something but it was not necessarily followed by action.

The timing of the report is again significant, being published in 2001 shortly before LDC III and the Doha Ministerial. As a consequence of the LDC III conference and the linkages made to the Brussels Programme of Action for 2001-2010, the Doha Declaration committed WTO members 'to the objective of duty-free, quota-free market access' for LDC products (WTO, 2001e: 9, paragraph 42). The most notable progress on this objective was at the WTO's Hong Kong Ministerial in 2005 which agreed that those countries able to do so would provide duty-free, quota-free market access to imports from LDCs. The announcement on duty-free, quota-free access for LDCs represented an important step forward for LDCs in terms of their preferential market access as it was aimed at both developed and developing countries and set the goal as being access for all products from LDCs (WTO, 2005s: Annex F). Those members not in a position to provide full market access for LDCs agreed to provide duty-free and quota-free market access for at least 97 per cent of LDCs exports

which would then be progressively increased until 100 per cent of LDCs products were covered.<sup>180</sup> This was to be achieved by 2008 or by the start of the implementation period for the results of the Doha Round (WTO, 2005s: Annex F). However, despite setting a date by which the goal was to be achieved, its linkage to the end of the Doha Round means that the results have not yet been achieved. Some countries, including the EU, have already provided more duty-free, quota-free access for LDCs than was required at Hong Kong and in advance of the conclusion of the Doha Round (*Email Hussain*, 7 September 2010). This demonstrates that their behaviour has been affected by the norm and they are attempting to comply with it, indicating a degree of internalisation in some member of the WTO.

The implementation of schemes adopted under the Hong Kong decision were to be monitored by the WTO's Committee on Trade and Development, which is tasked with annually reporting steps taken by WTO members in line with the Hong Kong commitments (WTO, 2005s: Annex F).<sup>181</sup> The preferential access for LDCs agreed at Hong Kong is important in that it meant that preferential market access for LDCs was to be brought into the WTO rather than relying on GSP and GSTP commitments in the way that the GATT did, thus providing LDCs with special treatment. However, the fact that the decision allowed for 97% rather than 100% of LDC products has attracted criticism from some NGOs involved in trade who believed that the decision did not meet the Doha Mandate of 100% DFQF access, and meant that key products of many LDCs would be excluded (Oxfam, 2005: 15; Focus on the Global South, 2006; and Third World Network, 2005). Nevertheless, the decision still represents special treatment for LDCs, as it is not currently being provided to any other category of WTO membership

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<sup>180</sup> The ceiling of 97% is reported to have been insisted upon by the USA (Oxfam, 2005:15; also see Focus on the Global South, 2005).

<sup>181</sup> This is different from regional trade agreements which are monitored by the WTO's Committee on Regional Trade Agreements although there are overlaps between the two.

## **Internalization of the Norm – Progress since Hong Kong**

This section will look at how the norm of special treatment in the market access issue has been internalised since the Hong Kong Ministerial. In order to assess this, the focus will be on what each of the Quad countries (US, EC, Japan and Canada), plus the leading developing countries (India, China and Brazil) have done since Hong Kong to implement the DFQF decision. If the norm of special treatment is working we would expect to see changes in the behaviour of these countries so that they comply with the norm or find justifications as to why they do not. For the developed countries with typically a long history of preferential schemes, an improvement in terms of LDC market access can be seen from around 2000. These improvements are attributable to preparations for the LDC III in 2001 and to the introduction of the Millennium Development Goals (MDGs), as well as the follow-up to the 1997 High Level Meeting and preparations for the Doha Round. For the other developed countries the catalyst for the improvement of their existing schemes was the WTO's 2005 Hong Kong Ministerial decision (WTO, 2005s, Annex F). With the specific link being made to the Doha Round implementation period in the Hong Kong decision, we might expect developing countries to wait until the Round was completed before feeling the need to implement duty-free and quota-free access for LDCs as there does not seem to be any real incentive for them to implement the agreement sooner. Although faster implementation would provide an indication that the norm of special treatment was working. The inclusion of developing countries is important for two reasons, firstly, because the Hong Kong agreement specifically stated that those developing countries 'in a position to do so' should provide duty-free, quota-free access to LDCs, and secondly, in terms of the internalisation of the norm. The more actors who behave in accordance with the norm the more likely it is that the norm exists (Finnemore and Sikkink, 1998: 892). Including developing countries will enable us to assess the extent of the internalisation of the norm. By looking at the key developing countries as well as the developed countries we can assess the spread of the norm, and also whether its uptake and implementation differs between these groups of countries. The implementation of duty-free, quota-free access for LDCs has become one of the focuses in the trade policy reviews of the big countries with questions frequently being asked about this issue (see trade policy

reviews for China and US, WTO, 2008e; WTO, 2008g). The treatment of LDCs by other countries, especially other developing countries, is an important aspect to consider when assessing the internalisation of the norm. If the norm of special treatment for LDCs has spread, and reached the cascade point, then we would expect to see individual developing countries recognising LDCs and offering them special treatment. The growing importance of South-South trade for LDCs was highlighted in a 2006 UN-OHRLLS press release which cited the fact that more than 40% of developing country exports go to other developing countries (UN-OHRLLS, 2006). This was echoed by the UN High Representative for LDCs who also noted that ‘trade barriers between LDCs and other developing countries are higher than those vis-à-vis industrialized nations and emphasized the need for special South-South opportunities for LDCs’ (UN-OHRLLS, 2006). So, evidence of the internalisation of the norm of special treatment for LDCs would be provided by the extension of duty-free and quota-free access by leading developing countries. This is particularly true in light of the provision in the Hong Kong decision (WTO, 2005s). In 2008, UNCTAD reported that ‘a number of developing countries have provided duty-free market access for LDCs’ although these have mainly been via either GSTP or regional arrangements (UNCTAD, 2008: 2). In the case of the developed countries as we shall see, most already granted preferences to LDCs via their GSP schemes. However, the leading developing countries have all begun to offer special treatment to LDCs. The improvements to market access for LDCs by both developed and developing countries will be examined below. A summary table of the individual preference schemes and the LDCs who benefit from them can be seen in Appendix E.

## **US**

The US is a very influential state in terms of international trade policy. As such, the US treatment of LDCs needs to be examined in any review of norms designed to help LDCs. A strong focus by the US on LDCs is likely to help further the norm of special treatment and increase its internalisation by other countries. The Office of the US Trade Representative (USTR) is ‘responsible for developing and coordinating

US international trade' as well as dealing with commodity and investment issues and trade negotiations (USTR, 2007).<sup>182</sup> The USTR's remit includes bilateral and regional trade agreements, as well as the WTO negotiations, and it also oversees the US Generalised System of Preferences (GSP). The USTR website highlights the fact that the US 'provides preferential treatment to products from ... (LDCs) through various preferential programs' (USTR, 2005b). These include the African Growth and Opportunity Act (AGOA), the Caribbean Basin Initiative (CBI), the Generalized System of Preferences (GSP), and "GSP-plus" for LDCs (USTR, 2005b).<sup>183</sup> The US initiated its GSP program in 1976, and currently provides preferential duty-free entry to approximately '4,800 products from 131 designated countries and territories' (USTR, 2011a). Initially the program was for a period of 10 years, but it has been renewed several times since then and the latest version was authorised until December 2010, but has now expired, although it is anticipated that it will be renewed at some point in the future (USTR, 2011b).<sup>184</sup> Whilst the GSP program was aimed at all developing countries, it had special provisions for LDCs, which were added in 1996, providing them with duty-free treatment for more products than the other developing countries, although, currently only forty-three LDCs benefit from the program (USTR, 2009c).<sup>185</sup> The GSP program places ceilings on the benefits provided via product and country, but these ceilings are waived for LDCs.

One of the other key US schemes for LDCs is the African Growth and Opportunity Act (AGOA) which came into effect in May 2000, as part of The Trade and Development Act. AGOA is open to all GSP eligible African countries, but the majority – 26 out of 38 countries – are LDCs, hence is relevance. AGOA provides access to the US market for countries or regions that the US does not have a Free Trade Agreement with so is essentially a way around negotiating these agreements

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<sup>182</sup> The USTR was established in 1962 under the Trade Expansion Act

<sup>183</sup> The US also provides preferences via the Andean Trade Preference Act. However, as this does not cover any LDCs, it will not be covered in this section.

<sup>184</sup> In 2001 the GSP scheme also expired but was subsequently renewed. The expiry does not affect the other US schemes.

<sup>185</sup> The excluded LDCs are Eritrea, Lao Peoples Democratic Republic, Maldives, Myanmar, Senegal, Solomon Islands and Sudan. However, the US does provide assistance to Senegal in term of cotton via USAID (USAID, 2010b).

(AGOA, 2007). Several amendments of the Act have been signed since it came into existence.<sup>186</sup> These amendments include the expansion of preferential access for imports from sub-Saharan African countries until September 2015. To take advantage of AGOA, countries need to be designated as eligible by the US President according to a list of criteria set out in the Act. Initially nineteen LDCs were listed as AGOA eligible and this number has now risen to twenty-six (see Appendix E for list of AGOA eligible LDCs). However, countries can be removed from the list if they do not meet the criteria and this has happened to several LDCs – the Central African Republic and Eritrea were removed from the eligibility list in January 2004, and Mauritania was removed for the second time in January 2009, although was subsequently re-added to the list in December 2009 (AGOA, 2009; AGOA, 2011).<sup>187</sup> In addition, Guinea, Madagascar and Niger were removed from the list from January 2010 (AGOA, 2011). The fact that countries can be unilaterally removed from the AGOA list was one of the criticisms levelled at the scheme by Oxfam (Oxfam, 2002: 7). The eligibility criterion also ensures that only countries deemed to be liberalising their markets and economies gain the preferential access – the ‘reforming African countries’ (AGOA, 2007). This conditionality aimed at increased liberalisation was noted by Oxfam in its paper on the impact of the US cotton subsidies (Oxfam, 2002: 3). Despite the conditions attached, AGOA has expanded the list of products that the eligible countries can export to the US and it covers more items than the US GSP scheme (AGOA, 2007).

Like AGOA, the Caribbean Basin Initiative (CBI) is a regional initiative which is designed to help the economic development of the Caribbean Basin countries (USTR, 2009a). It was initially launched in 1983, and was expanded in 2000

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<sup>186</sup> Amendments to AGOA occurred in 2002 with AGOA II expanding preferential access for imports from sub-Saharan African countries, AGOA III in 2004, extended this preferential access until September 2015; and AGOA IV in 2006 extended third country fabric provisions until September 2012, as well as providing better access for some textile articles from sub-Saharan African countries. See AGOA website for more details [http://www.agoa.gov/agoa\\_legislation/agoa\\_legislation.html](http://www.agoa.gov/agoa_legislation/agoa_legislation.html).

<sup>187</sup> Mauritania (an LDC) was first removed in January 2006. The criteria for inclusion in the list includes establishment or progress towards establishing market-based economies; the rule of law and political pluralism; elimination of barriers to U.S. trade and investment; protection of intellectual property; efforts to combat corruption; policies to reduce poverty, increasing availability of health care and educational opportunities; protection of human rights and worker rights; and elimination of certain child labour practices.

(USTR, 2009a). Of the countries which is it aimed at, only one – Haiti – is an LDC (USTR, 2009a).<sup>188</sup> Like AGOA, the CBI provides duty-free access to the US for most goods from the eligible countries (USTR, 2009a). The US does not currently have any additional schemes aimed at Asian LDCs. Interviews conducted for this thesis show that this is an issue for the Asian LDCs, particularly Bangladesh (*Int.* Nyamitwe, 17 September 2010; *Int.* Bhattacharya, 15 September 2010; *Email* Hussain, 7 September 2010).

The US schemes show that the US does seem to have institutionalised the norm of special treatment to LDCs via its GSP/GSP plus program and via its AGOA and CBI schemes, although, it has been criticised for failing to achieve the 97% market access target (UNCTAD, 2008: 2).<sup>189</sup> This fact was highlighted by a question from another WTO member in the US Trade Policy Review in 2008 (WTO, 2008g: 173-4). The fact that the US has not met the 97% target for market access and that it does not offer additional special treatment to the Asian LDCs indicates that it has not fully internalised the norm of special treatment. However, compliance with the 97% target ahead of the completion of the Doha Round would indicate that the behaviour of the US was being influenced by the norm.

## The EC

The EC provides trade preferences to LDCs via three mechanisms – its Generalised System of Preferences (GSP), its Everything But Arms initiative (EBA) and its Economic Partnership Agreements (EPA) which are aimed exclusively at the African, Caribbean and Pacific (ACP) countries with which the EC has historic

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<sup>188</sup> The countries that currently benefit from the CBI are: Antigua and Barbuda, Aruba, Bahamas, Barbados, Belize, British Virgin Islands, Costa Rica, Dominica, Grenada, Guyana, Haiti, Jamaica, Montserrat, Netherlands Antilles, Panama, St Kitts and Nevis, St Lucia, St Vincent and the Grenadines and Trinidad and Tobago. For further details see [http://ustr.gov/trade\\_development/preference\\_programs/CBI/section\\_Index.htm](http://ustr.gov/trade_development/preference_programs/CBI/section_Index.htm).

<sup>189</sup> The fact that most developed countries had already met the target perhaps indicates that despite the apparent success of the 2005 agreement in Hong Kong, WTO members were not actually offering anything new to LDCs, just confirming what had already been done by most of them.

ties.<sup>190</sup> Like the WTO, the EC defines LDCs according to the UN definition, and 39 out of the 48 LDCs are ACP countries. The EC's Generalised System of Preferences (GSP) began in the 1970s and has since been regularly renewed (EC, 2005a). The latest scheme was introduced in July 2008 and lasts until December 2011 (EC, 2010a). The EC's GSP contains three different trading arrangements and preferences differ according to the beneficiary countries (EC, 2005a). The three different arrangements are the standard GSP, the special incentive arrangement for sustainable development and good governance known as GSP+, and the special arrangements for LDCs also known as the Everything But Arms (EBA) initiative (EC, 2010a).

The EBA initiative was announced in September 2000, by the then EC Trade Commissioner Pascal Lamy, and came into force in March 2001, just prior to LDC III (UNCTAD, 2001a: 19).<sup>191</sup> The initiative was designed to help all LDCs access the EC market, not just the LDCs from the ACP countries. Under the initiative, full access to the EC market is granted to LDCs for all products except arms. The EBA is an amendment to the EC's existing GSP scheme, which was designed to ensure that the scheme was compatible with the WTO rules. However, unlike the general scheme there is no time limit on the EBA (UNCTAD, 2001a: 20). The EBA was hailed as 'ground breaking' because of the fact it granted full market access to all LDCs (UNCTAD, 2001a: 23). However, the EBA initiative does contain safeguard mechanisms and a phase-in liberalisation process for three key products – bananas, rice and sugar (UNCTAD, 2001a: 21).<sup>192</sup> While complying with the norm of special treatment to an extent, the safeguard provisions in the EBA mean that LDCs may lose some of their preferential treatment (UNCTAD, 2001a: 23).

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<sup>190</sup> The ACP countries are also those which previously benefited from the Yaoundé, Lomé and Cotonou Agreements.

<sup>191</sup> Pascal Lamy is now the Director-General of the WTO.

<sup>192</sup> Duties on bananas were to be eliminated by January 2006, whilst the full liberalisation of rice and sugar were to be phased in by September 2009. A minimum price arrangement has now been set for sugar.

The EC is also in the process of negotiating Economic Partnership Agreements (EPAs) designed to replace the Cotonou Agreement which was signed in 2000 and was to expire at the end of 2007, with the end of the WTO waiver (EC, 2005b; also see ODI, 2007). The EPAs were aimed at all ACP countries, not just LDCs. The EC was attempting to negotiate EPAs with regional blocs from the ACP countries, and the EPAs were designed to come into force in January 2008 (EC, 2005b).<sup>193</sup> However, resistance from the ACP countries meant that delays have occurred in the negotiation process. The EPAs do not come into operation until all countries in the grouping have signed the agreement, and so far only the Caribbean EPA is currently in operation. Only nine of the EPA signatories are LDCs, so while the EPAs may become more important in the future in terms of regional integration, at the moment they are not that especially relevant to the LDCs for preferential trade arrangements, as only one EPA is in operation. Although the EPAs were mentioned by some LDCs as an issue for LDCs, which they feel will introduce an element of WTO-plus treatment for them, requiring them to liberalise their markets ‘more than advanced developing countries’ (*Email Bizumuremyi*, 20 May 2010; also *Int. Nyamitwe*, 17 September 2010). Crucial to this study and the internalisation of the norm of special treatment for LDCs, is the fact that the EC has a separate section dealing specifically with LDCs in its GSP scheme. This allows us to conclude that the norm of special treatment for LDCs is applied in the EC and is thus reasonably internalised. The nature of the historical ties between the EC and many LDCs also means that it is one of their key markets, so access to it is very important. However, the EPA negotiations would appear to be creating an argumentation cycle for the norm of special treatment for LDCs within the EC.

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<sup>193</sup> The regional blocs covered by the EPAs are the East African Community, East and Southern Africa, the Southern African Development Community (SADC), Pacific, West Africa, Central Africa and the Caribbean.

## Japan

Japan offers preferential trade to LDCs via its GSP scheme. The scheme uses the UN's definition of an LDC and now covers all 48 LDCs.<sup>194</sup> Japan's GSP scheme was established in August 1971 and initially granted preferences for a period of ten years. The scheme was renewed in 1981, 1991 and 2001 and currently provides preferential tariff treatment to 141 countries and fourteen territories (UNCTAD, 2001a: 26; Ministry of Foreign Affairs of Japan, 2009). The latest scheme is valid until March 2011 and provides access for various developing countries products, although it does have import ceilings on some products. These import ceilings do not, however, apply to LDCs. In 2001, Japan introduced additional product lines for textiles and clothing for which only LDCs received duty-free and quota-free access to its market (UNCTAD, 2001a: 27; WTO, 2001j). The fact that LDCs are not affected by import ceilings and the inclusion of textiles and clothing for LDCs indicates that they receive special treatment from Japan.

Following the 2005 Hong Kong agreement on duty-free, quota-free access for LDCs, Japan extended its preferential market access to LDCs in April 2007 by extending its product coverage adding an additional 1,101 products 'to meet the 97 percent benchmark' (UNCTAD, 2008: 2). The changes in Japan's GSP coverage following the Hong Kong agreement were highlighted by the Japanese Vice-Minister for Foreign Affairs at UNCTAD XII in Ghana, who emphasised that Japan's expanded duty-free, quota-free scheme for LDCs was 'ahead of the timeframe set out at the WTO Hong Kong Ministerial Conference' (Ministry of Foreign Affairs of Japan, 2008b). Japan's compliance with the Hong Kong agreement ahead of the specified timescale and its extension of the GSP points to a degree of internalisation of the norm of special treatment. This is particularly interesting in light of the fact that Japan has no long-term history of links with developing countries in the way that the EC has. The behaviour altering quality of norms as well as the psychological factors linked to them would appear to be important for Japan, as it has been offering

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<sup>194</sup> Prior to 2001 Japan did not include Zambia, Democratic Republic of Congo, Kiribati, Tuvalu, Comoros and Djibouti in its GSP scheme (UNCTAD, 2001a: 34 endnotes).

additional special treatment for LDCs since LDC III in 2001. This point was highlighted by Gurowitz who noted that ‘an important part of the history of the Japanese state has been extreme sensitivity to what peers in other states think about Japan’ (Gurowitz, 1999: 442). If this is the case, then it indicates that Japan’s compliance with the norm is in order to maintain its reputation in the international system.

## **Canada**

Canada’s General Preferential Tariff system (GPT) was introduced in 1974, for an initial period of 10 years. It was subsequently renewed in 1984 and in 1994, with both renewals resulting in the expansion of products covered (UNCTAD, 2001b: vii). The scheme covers ‘over 180 developing countries and customs territories’ and most products but excludes some agricultural products, refined sugar and most textiles, clothing and footwear (Canada Gazette, 2003). Canada’s Least Developed Country Tariff (LDCT) is part of the GPT scheme. The LDCT provides duty-free, quota-free access for almost all imports from the LDCs on the UN’s list (Government of Canada, 2005). Exceptions to imports exist for dairy, poultry and eggs (Foreign Affairs and International Trade Canada, 2009). The scheme was started in 1983 and was enhanced in 2000, with the addition of extra tariff lines (UNCTAD, 2009c; WTO, 2000c). The scheme was further enhanced in 2003 with the extension of duty-free, quota-free access to the imports of all 48 LDCs including textiles and clothing.<sup>195</sup> The introduction of Canada’s LDCT in January 1983 would appear to indicate that the country was one of the first to introduce preferential tariff treatment for LDCs, and has internalized the norm of special treatment faster than other developed countries. Canada’s link with the Commonwealth countries, some of whom are LDCs may have been a factor in its internalization of the norm.

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<sup>195</sup> Canada excludes Myanmar and Timor Leste, but still includes Cape Verde and Maldives at present.

## India

As a GSTP Participant, India has agreed to recognise the special needs of the LDCs, but recent events would seem to indicate that India is becoming more active in assisting LDCs. In June 2007, *The Financial Times* published an article on India's relationship with Africa which noted that India had a 'minister with special responsibility for Africa' (Financial Times, 2007: 11). The article also noted that trade between India and Africa had increased substantially from \$967m in 1990 to \$9.6bn in 2006 (Financial Times, 2007: 11). Recent WTO figures ranked India as the fourth largest market for LDC exports in 2009 (WTO, 2011c: 18). In 2008, India announced that it would grant preferential market access for exports from all LDCs, 'covering 94 per cent of the total tariff lines of India or 92.5 per cent of global exports of all LDCs' (UNCTAD, 2008: 3; also see ICTSD, 2008b).<sup>196</sup> The Indian Duty-Free Tariff Preference (DFTP) scheme for LDCs came into effect in May 2008 and granted 'duty-free market access for LDCs on 85 per cent of India's tariff lines' which was to be progressively increased over five years (UNCTAD, 2008: 3). Like developed country preference schemes, the Indian scheme depends upon the eligibility of LDCs and LDCs need to 'submit a letter of intent' to the Indian government in order to be considered for the scheme (UNCTAD, 2008: 3). So far twenty-three LDCs have submitted letters of intent to the Government (Ministry of Commerce and Industry, 2010). The effect of the Indian scheme remains to be seen, but its existence does indicate institutionalisation of the norm of special treatment for LDCs by India, especially as the scheme is aimed specifically at LDCs and a move towards its internalisation. India also provides market access preferences to selected, mainly Asian LDCs, via regional trade agreements such as the Asia-Pacific Trade Agreement and via various bilateral agreements (WTO, 2011c: 57).

## China

Since 2009, China has been ranked as the top market for LDC exports (WTO, 2011c: 17-18). China provides preferential treatment to LDCs via a number of routes – via

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<sup>196</sup> This announcement was made at the India-Africa Forum Summit in New Delhi.

regional framework agreements, on a unilateral basis and via the Forum on China-Africa Cooperation. It has provided preferential tariff treatment to its LDC partners – Bangladesh and Lao People’s Democratic Republic – in the Asia-Pacific Trade Agreement since 2006. In addition, China improved its market access to LDC partners in the Framework Agreement on Comprehensive Economic Cooperation with ASEAN in January 2006. The LDC members of ASEAN who benefitted from this are Cambodia, Lao and Myanmar. On a unilateral basis, China also grants duty-free treatment to Cambodia, Lao People’s Democratic Republic, Myanmar and Bangladesh to varying degrees (420, 399, 226 and 87 tariff lines respectively) (UNCTAD, 2008: 3). Since July 2006, China has also provided unilateral market access to ‘286 categories of products exported from five LDCs’ these being Afghanistan, Maldives, Samoa, Vanuatu and Yemen (UNCTAD, 2008: 3).

One of the main activities of China with regard to African countries has been the development of the Forum on China-Africa Cooperation (FOCAC) which was launched in 2000. Four FOCAC ministerial conferences have been held in Beijing, Addis Ababa, Beijing and Egypt, the most recent in Nov 2009. China sees FOCAC as ‘a mechanism for collective dialogue and cooperation’ with Africa which is designed to ‘facilitate common development’ (China, 2006). At the 2006 Beijing Summit, China promised to improve market access conditions for 30 African LDCs (UNCTAD, 2008: 3). Indications that China had acted on this commitment were seen at the WTO’s Committee on Trade and Development in 2008, where China noted that following the Beijing summit, ‘Duty-free and quota-free market access had been provided to 27 LDCs having diplomatic relations with China’ (WTO, 2008h). This number was extended to 30 LDCs in 2008 (Forum on China-Africa Cooperation, 2008).<sup>197</sup> The provision of duty-free market access to African LDCs was highlighted in the document prepared by the Chinese government for its 2008 WTO Trade Policy Review, along with its commitment to help LDCs (WTO, 2008e:

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<sup>197</sup> The WTO secretariat’s review of China for the 2008 Trade Policy Review lists these LDC as Angola, Benin, Burundi, Cape Verde, Central African Republic, Comoros, Democratic Republic of Congo, Djibouti, Equatorial Guinea, Eritrea, Ethiopia, Guinea, Guinea-Bissau, Lesotho, Liberia, Madagascar, Mali, Mauritania, Mozambique, Niger, Rwanda, Senegal, Sierra Leone, Sudan, Tanzania, Togo, Uganda, and Zambia. In 2008, unilateral special preference tariffs were also offered to imports of some goods from Somalia and Chad (WTO, 2008e).

5, 20). This commitment was further reinforced in the document by a statement indicating that ‘the Chinese Government had granted duty-free treatment to 41 least-developed countries having diplomatic relations with China’ (WTO, 2008e: 20). China also announced its intention to provide duty-free, quota-free treatment for 95 per cent of LDC exports, at the Follow-up Conference on Financing for Development in December 2008 (UN, 2008a: 3). Although China is now actively offering preferential market access to LDCs and highlighting this fact at the WTO, it does not apply to all LDCs, only those which have diplomatic relations with China, indicating that the norm of special treatment is not yet fully internalised.

## **Brazil**

Evidence of Brazil’s internalisation of the norm of special treatment for LDCs emerged in news reports at the end of 2006. These indicated that Brazil planned to grant duty-free and quota-free market access to the exports of thirty-two LDCs from the beginning of 2007 (ICTSD, 2006c). ICTSD reported that ‘the move would make Brazil the first developing country to accord unimpeded access to goods’ from the LDC members of the WTO (ICTSD, 2006c). The article also noted that this move would put Brazil ‘ahead of several developed countries, including the US’ (ICTSD, 2006c). This fact may have been part of the impetus for Brazil to act. However, Brazil is not a particularly large market for LDCs ranking nineteenth in the top twenty in 2009 (WTO, 2011c: 18).<sup>198</sup> Despite the 2006 announcement, Brazil has continually delayed the implementation of its duty-free quota-free scheme. Comments made at a WTO LDC Sub-Committee meeting in 2008 indicated that the scheme had still not been fully implemented (WTO, 2008d).<sup>199</sup> This was reinforced by the documents from Brazil’s 2009 Trade Policy Review (WTO, 2009z). In answer to questions from the EC regarding the implementation of duty-free, quota-free access, Brazil stated that it would ‘implement the DFQF mechanism for LDCs’

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<sup>198</sup> The Brazilian Ministry of Foreign Affairs noted that ‘LDCs accounted for a minute fraction of the country’s imports – USD 500 million out of a total of USD 75 billion, of which close to 70% was accounted for by oil imports from Angola alone’ (ICTSD, 2006c).

<sup>199</sup> The Brazilian representative at the meeting stated that ‘his authorities were working towards the implementation of DFQF market access for LDCs in line with the Decision taken at the Hong Kong Ministerial Conference’ (WTO, 2008d).

with the implementation of the Doha Round results (WTO, 2009z: 162). The latest WTO documents indicate that the Brazilian scheme was to be implemented from mid-2010. The continual postponement of the implementation of the Brazilian scheme indicates that Brazil has not fully internalised the norm of special treatment for LDCs. However, the fact Brazil has consistently stated that it will implement the DFQF programme indicates that it feels some pressure to comply with the norm.

## **Conclusion**

From this review of the issue of market access for LDCs we can see that market access has been a constant issue for LDCs since they joined the trading system. The method of increasing market access has however changed over time from a focus on the provision of unilateral preferences via developed countries GSP schemes to the implementation of duty-free, quota-free market access for LDCs within the WTO. The benefits of bringing the preferences into the multilateral trading system are that it provides a more predictable and stable system for the LDCs. However, most GSP schemes apply to all LDCs whether they are members of the WTO or not. With many LDCs still in the process of accession to the WTO and the length of time this often takes, it is important that acceding LDCs also benefit from duty-free, quota-free access.

A review of the preferential trade arrangements provided to LDCs by both the key developed and developing countries seems to indicate an increased internalisation of the norm of special treatment. This is also reinforced by a recent WTO document which lists measures taken by twenty-three countries in favour of exports from LDCs (WTO, 2011c: 55-59). A key point to note is that all countries use the UN's definition of an LDC which shows some degree of coherence in the preference arrangements. However, whilst states are keen to highlight the preferential schemes that they provide to LDCs as evidenced in various quotes by key members of their governments, and in doing so demonstrate their internalisation of the norm of special treatment, they are also equally keen to downplay other aspects of their trade policy

which clash with the norm of special treatment and detrimentally affect LDCs.<sup>200</sup> This includes the introduction of more stringent rules of origin for imports as well as the conditionality applied to their preferential schemes which can be seen in their eligibility criteria. The likelihood for the future is that the preferential schemes for LDCs will continue and some improvements to market access may be seen in the period 2010-2012. These improvements for LDCs are likely to be partly due to a renewal of the existing GSP schemes and partly due to the forthcoming Fourth UN Conference on LDCs (LDC IV) in Turkey in May 2011. UN LDC IV should ensure that LDCs preferences are at least maintained at their current levels as undoubtedly trade and preferences, including a review of the Hong Kong agreement, will be one of the issues on the agenda of the conference (UN, 2008c). Statement offering LDCs fully duty-free, quota-free market access at the Conference would represent full internalisation of the norm.

Importantly, this case study shows that where issues have been around for a long time, such as market access, the special treatment in the issue follows the same lifecycle path as the general norm. Unlike the case of accession, there was no obvious disconnect in the norm caused by the creation of the WTO and the change in the rules maintained the special treatment for LDCs and added it to the new areas brought under the WTO such as the GATS.

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<sup>200</sup> For example see quote by the Japanese Vice-Minister for Foreign Affairs (Ministry of Foreign Affairs of Japan, 2008b). Also see quote by Rob Portman of the USTR in 2006, who stated that ‘The United States played a key role there [in Hong Kong] to be sure that we were able to facilitate something that was meaningful for LDCs’ (USTR, 2006).

## Chapter 6 – Case Study 3 - Cotton and the LDCs: The Litmus Test?<sup>201</sup>

The puzzle which this chapter investigates is how a group of the smallest and weakest states in the international system have managed to influence the negotiating agenda of an international organisation in which economic power is traditionally seen as the deciding factor in negotiating outcomes. The chapter looks at the special treatment that LDCs have had in the Doha Round negotiations via the case study of cotton. The case of cotton is an example of the LDCs having a direct impact on the negotiating agenda of the Round. The chapter argues that the solution to the puzzle is the existence of the norm of special treatment for LDCs and the use of appeals to the norm by the LDCs involved in cotton. The cotton case shows that the LDCs were originally asking for fair treatment in accordance with WTO rules and special treatment in the form of compensation for their loss of earnings until the cotton subsidies were removed. However, the result of the LDC's activism has been special treatment as opposed to fair treatment. The case also demonstrates the inconsistency of the behaviour of developed countries, particularly the US, which undermine their development policies through the use of agricultural subsidies. NGOs and trade bodies have also highlighted this inconsistency with the norm. Oxfam raised the issue in 2002 arguing that the cotton subsidies were undermining the Heavily Indebted Poor Countries (HIPC) Initiative while the World Bank drew further attention to the policy incoherence (Oxfam, 2002: 3; Baffes, 2003). The policy incoherence which these articles raised would appear to undermine the norm of special treatment for LDCs. However, whilst the central problem of developed country subsidies has not yet been resolved, the division of the cotton issue into separate trade and development strands has helped to bring the norm of special treatment back on track by providing it outside the WTO. This means that in looking at the cotton case we need to pay attention to activities both inside and

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<sup>201</sup> The idea that Cotton is the litmus test for fairness in the World Trade Organisation comes from an Oxfam publication (Oxfam, 2004: 25). This view was also reinforced in a speech by Pascal Lamy, the Director-General of the WTO, in 2008 (WTO, 2008j).

outside the WTO due to the international nature of the norm, as well as the international nature of the cotton issue.

The chapter is split into four sections. It begins with a brief examination of agriculture in the GATT and the WTO before looking specifically at the cotton issue and why it is important to the LDCs, in the second section. The third section focuses on the key landmarks in the cotton negotiations so far including an examination of the events that led to the cotton proposal being raised at Cancun and the events that followed Cancun. The final section relates the events in the cotton case to the norm of special treatment and pays particular attention to the role played by norm entrepreneurs, and especially the LDCs in the case.

## **Agriculture in the GATT and the WTO**

Cotton is part of a bigger story, that of the agricultural negotiations within the WTO.<sup>202</sup> The importance of agriculture to the LDCs was highlighted in a 1985 report by UNCTAD looking at the LDCs and the Substantial New Programme of Action (SNPA) which stressed that for the majority of LDCs, agriculture was ‘the crucial problem’ to be solved if development was to occur (UNCTAD, 1985: 11). Twenty years later, agriculture is still of key importance to the LDCs. The 2009 LDC Report noted that agriculture was more important to the economies of LDCs than other developing countries, with an average of 27% of LDCs GDP coming from agriculture and approximately 70% of the population employed in the sector (UNCTAD, 2009b: 92; UNCTAD, 2010: 12).<sup>203</sup> Agriculture has also been ‘one of the most contentious issues’ in international trade relations and has stalled negotiations since the Kennedy Round in the mid-1960s (Winham, 1986: 151; Evan,

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<sup>202</sup> Agriculture has become a key area of negotiations in the Doha Round, and the negotiations here obviously affect the negotiations concerning cotton. However, it is not the intention to provide anything other than an overview of agriculture here. For more detailed information on the agriculture in the WTO and particularly the Doha Round see Clapp (2007) and Grant (2007).

<sup>203</sup> The latest LDC report does show that the importance of agriculture in LDCs GDP has declined slightly since 2000 (UNCTAD, 2010: 12).

1971: 86. For a detail discussion on the issue of agriculture in the pre-war period and the early days of the GATT, see Evans (1971), Chapter Four).

Although agriculture was not specifically excluded from the GATT, which was meant to cover trade in all goods, its politically sensitive nature, particularly when linked to food production, meant that states were reluctant to include agriculture in the early GATT rounds (Balaam, 2004: 165). This led to a situation where agriculture, like textiles and clothing, was treated as a special sector within the GATT (Hoekman and Kostecki, 2001: 208; Winham, 1986: 151; also see Evan, 1971: 73-4). The US requested a waiver from the GATT for its agricultural industry in 1955, and following the creation of the European Economic Community (EEC), and the introduction of the Common Agricultural Policy (CAP) in 1957, the European countries also requested a waiver in this area (Evans, 1971: 83; Hoekman and Kostecki, 2001: 209). GATT documents indicate that, initially at least, regular reviews were made of these waivers (for example see GATT, 1958b; also GATT, 1987c). Attempts to liberalise agriculture in both the Kennedy and Tokyo Rounds achieved little progress due largely to the opposing positions of the US and the EEC (see Winham, 1986: 146-167; also GATT, 1987b). The US wanted greater liberalisation in agricultural trade, whereas the EEC was unwilling to negotiate the CAP (for more information on these negotiations see Evans, 1971: 203-217; Hoekman and Kostecki, 2001: 213; also see Trebilcock and Howse, 1999: 246-51; and Winham, 1986: 94-95 and 148-151).<sup>204</sup> The Tokyo Round was ‘deadlocked’ over these opposing positions which also hampered progress in other areas (Winham, 1986: 137). Eventually following a change of administration in the US, two sectoral agreements were reached. These were the Agreement on Bovine Meat and the International Dairy Agreement, which became two of the WTO’s Plurilateral agreements, but were subsequently dissolved in 1999 (Hoekman and Kostecki, 2001: 213-14).

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<sup>204</sup> Trebilcock and Howse (1999) also note that a number of disputes were raised in the GATT concerning agriculture but that these were largely ignored.

This meant that by the start of the Uruguay Round, the policy of supporting agricultural industries within developed countries had become an ‘accepted’ way of behaving in the GATT (Evans, 1971: 75). With the launch of the Uruguay Round in 1986, there was agreement that agricultural trade liberalisation would be included in the new Round. This was partly due to recognition within the EEC that agricultural subsidies had become a ‘significant burden’ to governments, as well as a result of several disputes over agriculture which included a US-EEC subsidy war during the 1980s, with both sides increasing subsidies in order to keep their goods competitive (Hoekman and Kostecki, 2001: 214; Clapp, 2007: 39). The 1986 Ministerial Declaration, which launched the Uruguay Round, recognised the ‘urgent need to bring more discipline and predictability to world agricultural trade by correcting and preventing restrictions and distortions’ in order to provide stability and certainty in world agricultural markets (GATT, 1986b: 6). The negotiations aimed ‘to achieve greater liberalization of trade in agriculture’ by strengthening the GATT rules dealing with all aspects of agricultural trade (GATT, 1986b: 6). This aim represented a significant change from the way agriculture had been treated in the previous GATT rounds, as there was no mention of it having any ‘special status’ (Hoekman and Kostecki, 2001: 214). In 1989, UNCTAD highlighted the use of agricultural subsidies by developed countries as one of the key issues in agriculture from an LDC point of view (UNCTAD, 1990:79). These subsidies often affected the supply of agricultural products as the subsidies encouraged farmers to grow uneconomic crops, which then reduced world prices, affecting the comparative advantage of LDCs (UNCTAD, 1990:79).

The agricultural negotiations placed the US and EEC, the largest agricultural traders, firmly in opposing camps and were characterised by what was termed ‘transatlantic ping-pong’ (Hoekman and Kostecki, 2001: 214; also see Trebilcock and Howse, 1999: 258-262). The negotiations were also notable for the role played by a coalition of both developed and developing country agricultural exporters, who became known as the Cairns Group.<sup>205</sup> They supported the US aim of ‘the complete

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<sup>205</sup> The Cairns Group, which is still one of the WTO’s negotiating coalitions, was formed in 1986 and included the following countries: Argentina, Australia, Brazil, Canada, Chile, Columbia,

liberalisation of trade in agriculture', whilst the EEC favoured stability and equilibrium over free trade (Hoekman and Kostecki, 2001: 215). The EC was supported by Japan, Korea and some developing countries who despite being prepared to consider some reform of agriculture disagreed on the types of reform (Hathaway and Ingco, 1996: 32-3). These opposing "camps" meant that the agricultural negotiations in the Uruguay Round were often contentious, and caused the talks to breakdown completely on more than one occasion, notably in December 1988 at the Montreal mid-term review and at the December 1990 Ministerial Meeting (Hoekman and Kostecki, 2001: 215-6). Differences over agriculture also meant that the Uruguay Round was not completed in December 1990 as planned, and the disagreements continued throughout 1991 despite the EEC's reform of the CAP. An agreement was eventually reached between the US and EEC, in November 1992, which became known as the Blair House Accord. Continued dissatisfaction over the Blair House Accord and the formation of a new US administration in 1993 led to more negotiations throughout 1993. The negotiations were eventually concluded in December 1993 (Hathaway and Ingco, 1996). At the end of the Uruguay Round in 1994, the Agreement on Agriculture became part of the General Agreement on Tariffs and Trade, and subsequently became part of the WTO. However, despite the US's aim of complete liberalisation in agriculture, the subsidies remained a feature of agricultural trade indicating the entrenched nature of these and the difficulty of removing them. So it would appear that despite the creation of the WTO and the inclusion of the Agreement on Agriculture, the issue of developed country subsidies was still a problem for LDCs.

The Agreement on Agriculture brought agriculture into the WTO with the aim of removing non-tariff measures, export subsidies and domestic support systems and was a key part of the Uruguay Round's results (Wilkinson, 2000: 59-60; Hathaway and Ingco, 1996: 30). However, developed countries have been reluctant to reduce export subsidies and domestic support, despite their commitments in the Uruguay Round. The WTO claims that 'the objective of the Agriculture Agreement is to

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Fiji, Hungary, Indonesia, Malaysia, New Zealand, the Philippines, Thailand and Uruguay. For more on the Cairns Group see <http://www.cairnsgroup.org/>.

reform trade in the sector and to make policies more market-oriented’, thus improving the predictability and security of agricultural trade (WTO, 2005e). The Agreement contains only four references to LDCs, these being in the preamble to the agreement, Article 15 relating to Special and Differential Treatment and Article 16 which relates to Least-Developed and Net Food-Importing Developing Countries. Article 15, which exempts LDCs from tariff reduction commitments, is perhaps the most important part for LDCs as it provides them with a form of special treatment which is not provided for any other category of member (WTO, 1999b: 33; also *Email*, Lumbanga, 28 May 2010).

The Agreement on Agriculture committed members of the WTO ‘to achieving specific binding commitments’ in the areas of market access, domestic support, and export competition and ‘to reaching an agreement on sanitary and phyto-sanitary issues’ (WTO, 1999b: 33). In addition to this, it required all non-tariff barriers to trade to be converted into tariffs which could then be cut during the implementation period (Hathaway and Ingco, 1996: 38).<sup>206</sup> In terms of the cotton case, the issues of domestic support and export competition are the most relevant, so will be the focus of this section. Domestic support is measured by an Aggregate Measure of Support (AMS), which members of the WTO were required to calculate for their tariff schedules. The AMS figure includes spending on both domestic subsidies and market price support policies, and ‘covers all support policies that affect trade’. It applies to all measures affecting agriculture, and is not specific to any particular commodity (Hoekman and Kostecki, 2001: 218). The AMS mechanism sorts trade protection instruments and subsidies into four categories known as boxes. The box in which a particular form of support is placed depends on how trade distorting the measure is considered to be (Balaam, 2004: 170). The boxes are colour coded using a “traffic lights system”. Support measures in the Red Box are prohibited, those in the Amber Box have to be cut and those in the Green Box are allowable support measures which include research funded by governments and direct payments to farmers that are not linked to production or food security (Narlikar, 2005: 69). However, as part of the Blair House deal, ‘the EU compensation payments and US

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<sup>206</sup> The process of converting non tariff barriers to tariffs is known as tariffication.

deficiency payments ... were excluded' and put into a separate 'Blue Box' (Hoekman and Kostecki, 2001: 219). The WTO describes the Blue Box as the 'amber box with conditions' as it essentially contains any support which would normally fall under the amber box but that also limits production (WTO, 2002a). The system of boxes has led to allegations of 'box shifting' of subsidies by some developed countries.

Although the Agreement on Agriculture brought agriculture into the area of WTO rules, the agreement left the major trading countries with scope to continue protectionism, in the form of restrictions and subsidies (Narlikar, 2005: 26; Grimwade, 2004: 21). This means that barriers to trade in agriculture remain higher than those in non-agricultural markets (Hoekman and Kostecki, 2001: 220). The issue of agriculture has continued to play a key role in the WTO, particularly since the start of the Doha Round in 2001. The importance of the issue is underlined by the fact that during the round agreement on other issues are often made conditional on agreement in agriculture (Balaam, 2004: 166). Evidence of this was seen in the 2006 services negotiations where developing countries would not commit themselves to offers on services until there was some movement on the agricultural discussions (ICTSD, 2006a).

There are three pillars to the Doha Round agricultural negotiations mirroring those in the Agreement on Agriculture – Domestic Support, Export Subsidies and Market Access. The Doha Ministerial Declaration, committed members to negotiations aimed at 'substantial improvements in market access; reductions of, with a view to phasing out, all forms of export subsidies; and substantial reductions in trade-distorting domestic support' (WTO, 2001e: paragraph 13). The modalities for the agricultural negotiations were expected to be completed by the end of March 2003 and members were to have completed their draft schedules of concessions by the Cancun Ministerial in September 2003 (WTO, 2001e: paragraph 14).<sup>207</sup> However, disagreements over agriculture were one of the reasons for the collapse of the

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<sup>207</sup> The 'modalities' are the 'ways or forms of organising work in the WTO' (Goode, 2004: 231).

Cancun Ministerial. Initially, the agricultural negotiations were not concerned with specific commodities, but agricultural products in general. However, the submission of the Cotton Initiative at Cancun by the Cotton Four combined with a WTO dispute settlement case on cotton, raised by Brazil, has meant that cotton has become very much part of the Doha negotiations and has to some extent been treated separately. The existence of the norm of special treatment for LDCs should mean that these countries receive some form of special treatment in the area of cotton. The first stage of this can be seen in the July Framework which split out cotton from the rest of agriculture and promised to deal with it ‘ambitiously, expeditiously and specifically’ as well as recognising its importance for LDCs. The importance of cotton will be explored in more detail in the following section.

## **The Importance of Cotton**

In 2007, UNCTAD reported that cotton was grown in over 90 countries worldwide, with the top six cotton producers – China, India, US, Pakistan, Uzbekistan and Brazil – accounting for 83% of world cotton production (UNCTAD, 2009d). Africa accounted for five percent of world production in 2007/08, the majority of which is exported, with thirty-three African countries (out of fifty three) being cotton producers (ICAC, 2009; WTO, 2005n). Of the WTO’s LDC members, twenty-one are involved in cotton production, so the issue is highly important to them (UNCTAD, 2003).<sup>208</sup> Reforms to the African cotton sector were encouraged by the international community, particularly the IMF and World Bank structural adjustment programmes during the 1980s and 1990s. However, these reforms have had little impact on the development of the African countries. At the root of the problems with agriculture and cotton is the issue of agricultural subsidies, particularly in developed countries, and especially in the USA. The practice of support and subsidies in this sector by some WTO members has distorted world cotton prices (WTO, 2005n). The agricultural protection is often the result of ‘the political clout

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<sup>208</sup> The LDCs involved in cotton production are Bangladesh, Benin, Burkina Faso, Burundi, Central African Republic, Chad, Democratic Republic of Congo, Djibouti, Guinea, Guinea-Bissau, Madagascar, Mali, Mozambique, Myanmar, Niger, Senegal, Tanzania, Togo, Uganda, Yemen and Zambia.

of farm groups and other agricultural interests' such as multinational food companies and agribusinesses (Balaam (2004: 165). This holds particularly true in the case of cotton, with the scale of the cotton subsidies in the US reflecting the influence of large and powerful lobbies often in key states (Oxfam, 2002: 2).<sup>209</sup> Whilst the US argues that its farm subsidies 'preserve the farm way of life', Oxfam argues that the farm subsidies 'are designed to reward and encourage large-scale, corporate production' (Oxfam, 2002: 1 and 3; also see Bush 2002). Oxfam notes that 'the largest 10 per cent of cotton farms receive three quarters of total payments' and that 'in 2001, ten farms between them received subsidies equivalent to \$17m' (Oxfam, 2002: 3). The problem created by the subsidies is that they encourage farmers to continue producing cotton even when prices fall, as they will receive compensation. This in turn leads to an increased supply of cotton which depresses world prices hitting those producers in countries that do not receive subsidies the hardest. The provision of cotton subsidies by developed countries was highlighted as early as 1998, by the International Cotton Advisory Committee (ICAC), but they have yet to be removed.

Within the WTO, as previously noted, cotton is dealt with under the Agreement on Agriculture and all the negotiations were initially conducted under agriculture in the Doha Round. However, the issue of subsidies provided to cotton farmers, was raised by four African LDCs – Benin, Burkina Faso, Chad and Mali - at the Cancun Ministerial in 2003. Although the issue was raised under the auspices of the Africa Group, rather than the LDC Group, the four countries were specifically selected because they were all LDCs (*Int. Imboden*, 14 September 2010). These countries claimed that the US subsidies were affecting their trade in cotton and that cotton should be dealt with as a separate issue in the Doha negotiations. At the time, cotton accounted for 40% of export earning in Benin and Burkina Faso, and 30% in Chad and Mali and was therefore very important to their economies (Baffes et al, 2004). The importance of cotton to African countries was also highlighted by the African

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<sup>209</sup> Evidence of the influence was seen recently in the appointment of Senator Blanche Lincoln of Arkansas to chair of the US Senate Committee on Agriculture, Nutrition and Forestry. Arkansas is one of the US's leading cotton producing states (for more information see National Cotton Council of America, 2009, or Cotton Council International, 2009).

Group who stated that ‘...cotton plays a strategic role in the development policies and poverty reduction programmes of a number of African countries’ (WTO, 2005n). While Oxfam described the issue as the ‘litmus test’ for both the WTO and the Doha Round, as it provided an ideal opportunity to demonstrate that the trade system could help poorer, less powerful countries (Oxfam, 2004: 25). Whilst for the LDCs themselves the resolution of the cotton issue would provide a clear indication of the political will ‘to create an international trading system that addresses the legitimate interests of all its Members, including the weakest’ (WTO, 2005k: Annex 2, paragraph 7). Following Cancun, cotton was separated from the rest of the agricultural negotiations and included as a separate item in the July Framework, announced in August 2004.

## **Landmarks in Cotton Subsidies and the WTO Negotiations**

As indicated above, there are various interwoven strands to the cotton issue, which as with the issue of market access, are both internal and external to the WTO. This section will attempt to unravel these strands and to demonstrate how the increasing focus on cotton and cotton subsidies internationally led to the issue being raised within the WTO. This section will focus on some of the key events within the norm of special treatment for cotton which include the actions of the International Cotton Advisory Committee (ICAC), the World Bank and the WTO. The events demonstrate a growing awareness of the problems with cotton subsidies and their impact on the LDCs, as well as the recognition that the subsidies did not comply with the norm of special treatment for LDCs.

The cotton story starts in October 1998 when the member governments of the International Cotton Advisory Committee (ICAC) instructed the ICAC secretariat to produce a study documenting ‘government measures affecting cotton production, ginning and trade’ at their 57th Plenary Meeting (ICAC, 1999a).<sup>210</sup> An initial draft

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<sup>210</sup> The ICAC is an intergovernmental organisation established in 1939 by eight cotton producing countries – Brazil, Egypt, France, India, USSR, Sudan, UK and USA – to observe developments

of the study was presented to the 441st meeting of the ICAC Standing Committee in April 1999 and a subsequent version was presented to the Tenth Australian Cotton Industry meeting in August 2000 (ICAC, 1999a; ICAC, 2000).<sup>211</sup> The study found that eight cotton producing countries, out of a total of 76 had support programs aimed directly at cotton production, these being Brazil, China (Mainland), Egypt, Greece, Mexico, Spain, Turkey, and the USA (ICAC, 1999a). The study also emphasised that the removal of cotton subsidies would result in a shift in world production ‘to non-subsidizing countries in the medium and long terms’ (ICAC, 2000).<sup>212</sup>

The ICAC study was followed in October 2001, by an international declaration from the African cotton producers denouncing the effects of subsidies on cotton prices (Pesche and Nubukpo, 2004). Since the mid-1990s, the cotton market had been experiencing particularly low prices (Oxfam, 2002: 8; Baffes, 2003: 1; Baffes, 2004: v and 5). However, the depressed prices were coupled with an expansion in US cotton production at a time when cotton production in other countries was contracting (Oxfam, 2002: 2; Baffes, 2003: 1).<sup>213</sup> The problems were also compounded by the fact that the US was the top cotton exporter worldwide. The impact of these depressed prices and increased cotton exports was obviously greater in the developing countries which did not subsidise their production to the extent of developed countries, if at all. It resulted in lost export earnings, which in turn had a knock on effect on those countries for which cotton was the key export product. It

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in the world cotton markets, and to advise governments regarding cotton when necessary. Membership was originally limited to cotton producing countries, but was later expanded to other countries interested in cotton production, exporting or importing. The ICAC is based in Washington DC and currently has forty-three members. For more information regarding the ICAC see <http://www.icac.org/>. The Cotton Four – Benin, Burkina Faso, Chad and Mali – are all members of the ICAC joining in 2003, 1997, 1967 and 1996 respectively. The timing of Benin’s joining of the ICAC is pertinent occurring as it did in September 2003 around the time of the Cancun Ministerial.

<sup>211</sup> The study was carried out using information provided by the WTO’s secretariat, although ‘no document was found in which a country notified WTO on a development specifically related to cotton’ (ICAC, 1999a).

<sup>212</sup> The ICAC’s 58<sup>th</sup> Plenary Meeting in Charleston, in 1999, also included a session on ‘Government Subsidies and other Measures affecting Cotton’, where the secretariat’s paper was again presented (see ICAC, 1999b).

<sup>213</sup> Baffes noted that US production had doubled over the last twenty years, despite it being ‘an inefficient high-cost producer by global standards’ (Baffes, 2003: 1).

was the scale of these losses that led Brazil to file the dispute case at the WTO, which will be discussed later in this chapter. To provide an idea of the scale, ‘in 2002, the United States provided its 25,000 cotton producers US\$3 billion in subsidies, an amount greater than the national income of Mali, one of the main African cotton-export countries’ (Maswood, 2007: 47; also see Baffes, 2003: 2). Key research showed that removing cotton subsidies would lead to an increase in the price of cotton (Anderson and Martin, 2007: 83). Although the benefits of this would not be equally spread across all countries it was forecast that ‘cotton exports from sub-Saharan Africa would be a huge 75 percent larger’ by 2015 (Anderson and Martin, 2007: 83). As the cotton subsidies had such a huge potential impact for the LDCs, the removal of subsidies became very important for the norm of special treatment, as an attempt to reduce or remove them would demonstrate that developed countries were complying with the norm. The maintenance of the subsidies would indicate either that the norm was not working in this area or that clashes of interests or norms were affecting the operation of the special treatment.

Following the discussion of ‘government measures affecting cotton’, at the ICAC’s 60<sup>th</sup> Plenary Meeting in Zimbabwe, the ICAC agreed, in 2001, to set up the Working Group on Government Measures (WGGM). The WGGM was tasked with ‘identifying effective strategies to reduce and eventually eliminate the negative effects on trade caused by direct government assistance to cotton production and trade’ (ICAC, 2006a).<sup>214</sup> The WGGM called for its members to identify and crucially document any injury to their cotton sectors and local economy which were caused by low cotton prices and a report was subsequently produced focussing on ten countries (ICAC, 2002d).<sup>215</sup> The WGGM was responsible for developing contacts with the WTO relating to cotton and offered Mike Moore, the WTO Director-General, ‘full cooperation with the WTO on matters related to cotton’ (ICAC, 2002a). At the time, the WTO assigned its Textile Division to be the main point of contact for ICAC Working Group, with information passed to the

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<sup>214</sup> No LDCs were initially members of the WGGM (see ICAC, 2001).

<sup>215</sup> The report focussed on Argentina, Australia, Brazil, Columbia, India, Poland, South Africa, Sudan, Turkey and Uzbekistan.

Agriculture Division of the WTO where necessary (ICAC, 2002a). The WGGM believed that building a relationship with the WTO Secretariat would help the WGGM to support the WTO's attempts to deal with cotton issues (ICAC, 2002a). However, few references to the ICAC could be found in WTO documents prior to 2003, and none in documents relating to the Textiles Division. This indicates that cotton was not considered to be an especially important issue in the WTO prior to 2002.

The ICAC, as an organisation, can be seen as one of the norm entrepreneurs in this case study, as it was initially responsible for investigating the impact of subsidies on the cotton market.<sup>216</sup> The organisation also helped to highlight the issue of cotton subsidies to the WTO. The Chair of the ICAC Standing Committee in 2002 suggested, the issue could be raised in the WTO in two ways, either by proposing 'modalities regarding cotton in the general sessions on government measures', or alternatively by countries seeking 'special treatment for cotton in the WTO negotiations' (ICAC, 2002c, see comments by Mr Alfonso Lievano). It was also suggested that countries affected by the low cotton prices could raise the issue in the WTO via 'the Peace Clause of the Agreement on Agriculture or under the Agreement on Subsidies and Countervailing Measures' (ICAC, 2002c).<sup>217</sup> It should be noted that at this point in the cotton story the issue was not especially focused on how it affected LDCs. However, what is interesting to note, and confirms the view of the ICAC as a norm entrepreneur is two of the suggestions made to members of the ICAC as to how they could raise the issue of cotton in the WTO were subsequently adopted by Brazil and the Cotton Four.

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<sup>216</sup> Identifying an individual norm entrepreneur in the organisation has been difficult as not all meeting records are easily accessible, although the Executive Director, Terry Townsend, has been involved in the issue for a long time.

<sup>217</sup> The Peace Clause was a provision in the Agreement on Agriculture which prevented subsidies declared under the agreement from being challenged under other WTO agreements (Goode, 2004: 271). The peace clause expired in 2003. Although there have since been attempts, particularly by the US, to reintroduce it to the Doha Round as a way of dealing with their existing subsidies (Oxfam, 2006).

The ICAC and the World Bank held a joint Conference on Cotton and Global Trade Negotiation, in July 2002, which represents another important milestone in the cotton story. The purpose of the conference, held seven months after the start of the Doha Round, was to raise awareness of how important cotton was and to emphasise that market distortions were mainly being caused by production subsidies (ICAC, 2002c). It aimed to achieve this by providing an ‘opportunity for industry, governments and international agencies to discuss ... the problems of cotton and the ways and means to increase the visibility of the industry in multilateral negotiations’ (ICAC, 2002b). The sessions covered at the conference included the role of cotton in economic development, the role of government measures in the cotton economy and the impact of low prices on the cotton economy. The conference resulted in several calls for the WTO to take note of the problems of subsidies in the cotton market (ICAC, 2002c: Attachment II, for example see comments by Dr. Magdi Farahat, Minister Plenipotentiary and Official Representative of Egypt to the WTO; Mr Bernard Hoekman, Research Manager for International Trade, DECRG, The World Bank; Mrs Jo Mary Griesgraber, Director of Policy, Oxfam America; Mr Jorge Mareda, President, ABRAPA, Brazil; Mr Terry Townsend, Executive Director, ICAC). These included the suggestion that ‘an alliance, perhaps including Brazil and West and Central African countries, should be formed to make known the problems of the cotton sector in multilateral negotiations’ (ICAC, 2002c: Attachment II, see comments by Mr Alfonso Liévano, Chairman, Standing Committee, ICAC). This suggestion was met with agreement by Mr Baba Dioum, Secretary of the Conference of Ministers of Agriculture of West and Central Africa who emphasised the importance of cotton in development for the African countries (ICAC, 2002c: Attachment II, see comments by Mr Baba Dioum). In the concluding remarks of the conference it was also acknowledged that ‘the negotiation of reductions in government measures’ should take place within the WTO which would help with the progress of agricultural trade liberalisation (ICAC, 2002c: Attachment II, see comments by Mr Terry Townsend, Executive Director of the ICAC). This ensured that the issues would be raised in the WTO. Shortly after the Conference, Brazil lodged a complaint with the WTO Dispute Settlement Body (DSB) in September 2002 regarding US Upland cotton subsidies (WTO Dispute number DS267), and this is where the cotton story takes off in the WTO. Although Brazil is not an LDC, the

case is important as two LDCs - Benin and Chad - joined it as third parties to the dispute, along with several other developing countries, and the outcome of the case was highly relevant to the cotton producing LDCs.<sup>218</sup> Brazil argued that subsidies the US provided to upland cotton were prohibited under the Agreement on Subsidies and Countervailing Measures and had led to depressed prices which increased the US market share and severely affected Brazilian exports (WTO, 2002i; also Oxfam, 2004: 27). The case focused on several different subsidies provided by the US government to its cotton farmers. These included export credit guarantee programs, direct payments, crop insurance subsidies, 'Step 2' program payments and counter-cyclical payments (WTO, 2002i: 1-2; Oxfam, 2004: 28; Sumner, 2006: 278). The WTO dispute panel reported its finding in June 2003 and confirmed that several of the subsidies were prohibited and had been a contributory factor to the falling prices, affecting Brazil's exports while insulating US cotton producers from the low prices (WTO, 2010b; Oxfam, 2004: 28). The Panel ruled that the United States was required to end subsidies to cotton by 1<sup>st</sup> July 2005. The US subsequently appealed the ruling but the initial decision was upheld by the DSB's Appellate Body in March 2005 (WTO, 2005n).<sup>219</sup> Oxfam argued that the US appeal demonstrated 'a lack of political will' to reform its cotton sector which contradicted commitments made by the US at both the G8 and at the July 2004 General Council meeting (Oxfam, 2004: 29). Further evidence of this 'lack of political will' was demonstrated by the passing of the 2006 Farm Bill which did not remove the cotton subsidies. However, the US did hold consultative meetings with some of the African cotton-producing countries, notably Benin, Burkina Faso, Mali, Chad and Senegal, in the run up to the Hong Kong Ministerial (WTO, 2005q: 2, paragraph 9). The US announced new funding for Burkina Faso via its Millennium Challenge Corporation (MCC) in 2005 (USTR,

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<sup>218</sup> Third parties to the dispute were Argentina, Australia, Benin, Canada, Chad, China, Chinese Taipei, European Communities, India, New Zealand, Pakistan, Paraguay, Venezuela, Japan and Thailand. See WTO website, [http://www.wto.org/english/tratop\\_e/dispu\\_e/cases\\_e/ds267\\_e.htm](http://www.wto.org/english/tratop_e/dispu_e/cases_e/ds267_e.htm) accessed on 7/11/2008. Oxfam also noted that Benin and Chad 'submitted evidence about the impact of US cotton subsidies on their own agricultural sectors' (Oxfam, 2004: 28).

<sup>219</sup> The Appellate Body is a permanent group made up of seven members who are not affiliated to any member governments and are all experts in international law and trade. Members of the Appellate Body serve for four year terms, and are supposed to be broadly representative of the WTO membership. For more information concerning the Appellate Body see the WTO website [http://www.wto.org/english/tratop\\_e/dispu\\_e/appellate\\_body\\_e.htm](http://www.wto.org/english/tratop_e/dispu_e/appellate_body_e.htm).

2005a).<sup>220</sup> Agreements for new funding were also made with Benin and Mali in 2006 (MCC, 2006a and b). The US government also announced its funding for the West Africa Cotton Improvement Program (WACIP) in 2006 which was specifically aimed at helping cotton producers in the C4 and Senegal and has been described as ‘the centrepiece of US assistance to the cotton sector in West Africa’ (USAID, 2006:4; USTR, 2011c: 190). In addition, USAID Overseas Development Assistance (ODA) figures for LDCs for 2009 indicate that assistance for agriculture has increased from \$0.3bn to \$1.0bn since 2008 (USAID, 2010). These actions of the US indicate that it was attempting to provide special treatment for these LDCs though not necessarily within the context of the WTO. This helps to strengthen the view that the norm has had a behavioural impact on the US, particularly in the area of cotton, which is reinforced in the US 2011 Trade Policy Agenda which highlights the US development actions on cotton in a positive way with no mention of the problems caused by subsidies (USTR, 2011c: 190).

Despite US attempts to have the Appellate Body’s decision overturned, the DSB again upheld its June 2008 decision that the US subsidies violated the US trade obligations (ICTSD, 2008c). The decision was important as it marked the first successful challenging of a developed country’s agricultural policy at the WTO (ICTSD, 2008c). The ruling also authorized Brazil to retaliate against the US to the tune of around \$1 billion worth of sanctions per year on US imports for its failure to end the subsidies (ICTSD, 2008c).<sup>221</sup> The cotton dispute case is important to the cotton story as the DSB’s decision that the US be required to end cotton subsidies supported the claim by the Cotton Four that the subsidies were harming their farmers and should somehow be redressed (Oxfam, 2004: 28; WTO, 2003i). It is in providing this ‘redress’ that the norm of special treatment within the WTO does not seem to be following the linear path that we would expect from the norm lifecycle

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<sup>220</sup> The fact that Burkina Faso was benefiting from the MCC agreement was noted by Benin in the Cotton Sub-Committee along with their desire to see Chad and the other African cotton producing countries benefitting (WTO, 2005q: 4).

<sup>221</sup> The WTO reported that Brazil planned to retaliate via GATS or TRIPS, although this did not happen as subsequently the US and Brazil agreed a Framework of a Mutually Agreed Solution to the Cotton Dispute (WTO, 2010b; USTR, (2011c: 79). The US notes that this agreement will be in place ‘until the next Farm Bill or a mutually agreed solution to the Cotton dispute is reached’ (USTR, 2011c: 70).

model. Instead of the issue being resolved within the trade regime, the special treatment is being provided outside of the WTO via the development agencies such as the MCC and USAID. This indicates that the special treatment is being provided in the context of the international norm, rather than the WTO specific norm, although it does not detract from the fact that special treatment is being provided to the LDCs.

From its co-hosting of the conference on cotton with the ICAC, as well as reports and research carried out by World Bank staff, particularly John Baffes, the organisation can be seen as one of the early norm entrepreneurs in the cotton case (for examples see Baffes, 2003; Baffes, 2004; Baffes, Badiane and Nash, 2004; and Baffes, 2007). The World Bank also took part in the WTO's African Region Workshop on Cotton in March 2004. In addition, cotton has featured in the World Bank's work with individual countries such as the IDA Cotton Subsector Development Project in Uganda and the Cotton Sector Reform Project. This project, which began in 1994, 'aimed to revive cotton production and exports by increasing competition in cotton processing and marketing and improving supporting services to farmers' and has benefited both Benin and Chad since 2005 (World Bank, 2007a; WTO, 2005q: 20-21). The World Bank has also advocated for the reform of cotton subsidies (WTO, 2005q: 20). However, the World Bank has also been criticised for encouraging privatisation and reforms in cotton markets in Africa which Oxfam believes have exacerbated the problems in the sector (Oxfam, 2007b).

Two of the key NGOs involved with the cotton issue are Oxfam and IDEAS (see Sumner, 2006: 273; also *Int. Balima*, 17 September 2010; *Email*, Bizumuremyi, 20 May 2010).<sup>222</sup> Oxfam was involved in the ICAC/World Bank Conference with the Director of Policy for Oxfam America presenting at the conference (ICAC, 2002c: Attachment II, see comments by Mrs Jo Mary Griesgraber). Subsequently, Oxfam

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<sup>222</sup> IDEAS is a Geneva based organisation which aims to help low-income developing countries, working on trade related issues such as cotton and accession as well as training new members of Geneva missions. It was co-founded by Arthur Dunkel the Director General of the GATT during the Uruguay Round. For more on IDEAS see <http://www.ideascentre.ch/>.

published its first report on cotton subsidies in September 2002, *Cultivating Poverty: The impact of US cotton subsidies on Africa* (Oxfam, 2002). The report criticised the US for advocating ‘free trade and open markets in developing countries’ whilst destroying markets via its subsidies (Oxfam, 2002: 1). This was followed by another report on cotton published in October 2004, *Finding the Moral Fibre*, which advocated commitments made to resolve the issue with cotton subsidies be turned into action (Oxfam, 2004). The publication of these reports as well as Oxfam’s campaigning to end cotton subsidies helped to maintain the high profile of cotton within the wider trade community. The timing of the first report was also particularly important as it was because of the report IDEAS suggested to the West African countries that they should focus on making an impact on one agricultural issue rather than several (*Int. Imboden*, 14 September 2010; also see Blustein (2009: 145). Initially the discussions regarding the cotton proposal were with the several African states mainly from Economic Community of West African States (ECOWAS), but it was decided that in order for the issue to have real impact the countries involved needed to be LDCs which were largely dependent on cotton, hence the choice of Benin, Burkina Faso, Chad and Mali.<sup>223</sup> Having a group of only four countries which were all French speaking made it easier to co-ordinate the proposal (*Int. Imboden*, 14 September 2010). The decision that the cotton countries needed to be LDCs is particularly important as it points strongly to a belief that these countries were likely to be treated differently from non-LDCs, reinforcing the existence of the norm of special treatment.

The events in the WTO in the run up to Cancun and the conference itself highlighted the LDCs use of appeals to the norm of special treatment or ‘shaming’ tactics to resolve the problem with cotton and marked a continuation of the LDCs Group’s role as a norm entrepreneur. In preparation for the Cancun Ministerial in September 2003, the four West African cotton producers submitted a proposal to the WTO entitled *Poverty Reduction: Sectoral Initiative in Favour of Cotton* to be considered at Cancun (WTO, 2003i). The initiative was notable as it was supported by the

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<sup>223</sup> The members of ECOWAS are Benin, Burkina Faso, Cape Verde, Ivory Coast, Gambia, Ghana, Guinea, Guinea Bissau, Liberia, Mali, Niger, Nigeria, Senegal, Sierra Leone and Togo.

highest levels of government within the petitioning countries. This was demonstrated in June 2003, when the Initiative was first presented to the WTO's General Council by the President of Burkina Faso. This was seen as a 'critical point' in the cotton issue (*Int. Imboden*, 14 September 2010). The Initiative proposed the complete elimination of cotton subsidies in the developed countries, and financial compensation until this was complete (WTO, 2003i; Narlikar, 2005: 115). The proposal was presented to the Cancun Ministerial on the first day of the negotiations, providing an indication of its importance and was supported by the then Director-General Supachai Panitchpakdi, who emphasised that the Cotton Four were not asking for special treatment, 'but for a solution based on a fair multilateral trading system' (WTO, 2003g).<sup>224</sup> The fact that the Director General had taken a position on the issue was unusual and is reported to have annoyed the US (*Int. Imboden*, 14 September 2010). The proposal was also supported by Canada, Australia, Argentina, Cameroon, Guinea, South Africa, Bangladesh (for the LDC Group), Senegal and India (WTO, 2003g). However, the US tried to broaden the debate on cotton into a larger one on textiles in general arguing for the need to look at the 'whole production chain, including subsidies, tariff barriers and non-tariff barriers on cotton, synthetic fibres and products made from these' (WTO, 2003g; Narlikar, 2005: 115).<sup>225</sup> Disagreement in Cancun between the developed and the developing countries over such issues such as the inclusion of the Singapore Issues, agriculture and cotton led to the collapse of the conference. However, importantly for the norm story, the African cotton initiative won sympathy and support thanks to the subsidy figures being highlighted which exposed 'the disproportions and blatant inequity involved' (Pesche and Numbukpo, 2004: 46). The issue was also well reported in the press thanks to a seminar held prior to the start of the Cancun Ministerial, when all the journalists had arrived, but nothing else was happening (*Int. Imboden*, 14 September 2010). The perceived legitimacy of the Cotton Four's claim had a profound effect on the Doha Round Negotiations (Pesche and Numbukpo, 2004: 46). This perceived legitimacy combined with the existence of the norm meant the high profile of the

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<sup>224</sup> Mr Supachai was subsequently added to the list of facilitators, dealing with the issue of cotton.

<sup>225</sup> The US also tried this tactic at the first meeting of the Cotton Sub-Committee (see WTO, 2005j).

issue was maintained after Cancun and prompted action to include some form of special treatment for LDCs both from the WTO and from the US.

Following the collapse of the Cancun Ministerial, various workshops and discussions were held on cotton, including at the WTO General Council Meeting in December 2003. The WTO also held a regional workshop on cotton in Cotonou, Benin, in March 2004, which focussed mainly on the development assistance aspects of the cotton initiative (2004i). The role of these events in maintaining the profile of cotton within the trade community resulted in cotton being specifically mentioned in the July Framework. The Framework stated that cotton was to be 'dealt with ambitiously, expeditiously and specifically' within the Doha Round negotiations and split the cotton initiative into two components - trade and development (WTO, 2004b). The trade component was to be dealt with in the WTO. Whilst for the development component, the Framework urged the WTO and its members to work with other multilateral institutions, as well as bilaterally (WTO, 2004b). The 2005 WTO Annual Report described the July Framework cotton components as 'a breakthrough in cotton' particularly for the West African LDCs (WTO, 2005g: 3). The importance of the inclusion of cotton was due to the fact that it was dealt with as a separate issue from the rest of agriculture and was the only commodity for which this was the case (ICAC, 2004). This indicated the success of the cotton-producing LDCs in getting their issue on the WTO agenda and focusing the international community on the importance of cotton to the development of their economies, as well as reinforcing their need for special treatment in this issue. The workshop in Benin and the inclusion of cotton in the July Framework meant that there was a recognition in the WTO that the norm of special treatment was not being applied to the issue of cotton and that the subsidies were having a negative affect the LDCs, which was completely out of line with the norm of special treatment. By attempting to deal with cotton separately from the rest of agriculture the WTO members were attempting to provide some form of special treatment to the LDCs, particularly the Cotton Four. However, although cotton was specifically highlighted, within the trade component it was still to be included as part of the general negotiations on agriculture and thus tied to the Doha Round, so did not represent a complete success

for the Cotton Four (Oxfam, 2004: 30). Oxfam was critical of the July Framework, believing that it was too much of a compromise because it did not set clear objectives or a timeframe for the removal of subsidies. Although they conceded that it did establish a mechanism for the negotiations to continue (Oxfam, 2004: 30). This mechanism was the Cotton Sub-Committee.

The July Framework represented the tipping point between the emergence of the norm and its cascade within this issue, as it highlighted the fact that the members of the WTO realised the situation for cotton was inconsistent with the norm of special treatment for LDCs as well as the norms of the organisation itself. By allowing cotton to appear as a separate agenda item within the Framework, the developed countries acknowledged that the practise did not conform with the norm and highlighted their commitment to attempt to resolve the problem. Importantly, the split between the trade and development aspects of cotton allowed a way to be found around the issue of subsidies and a partial solution to the problem (WTO, 2004b: Annex A). The trade versus development split of the cotton issue is a key factor in the understanding how cotton relates to the norm of special treatment, as it provides the explanation for how developed countries have tried to reconcile the apparent inconsistencies in their trade and development policies. Speaking at a meeting of the ICAC Standing Committee, Chiedu Osakwe noted the progress on the delivery of cotton development assistance stating that it had ‘resulted in pledges from donor countries totalling \$975.64 million to 15 African countries under the DDA, including \$437.4 million to Benin, Burkina Faso, Chad and Mali’ (ICAC, 2006b: Presentation made by Mr Chiedu Osakwe). Among the bilateral donors listed as cotton development assistance providers are the EC, US, Japan and Canada (ICAC, 2006b). Osakwe also highlighted the bilateral instruments being used for cotton development assistance as being the US Millennium Challenge Corporation (MCC), the West African Cotton Improvement Programme (WACIP), the All ACP Capacity Building Programme and the EU-Africa Cotton Partnership (ICAC, 2006b). The action of the developed countries in providing development assistance on cotton demonstrates an attempt to provide special treatment to the LDCs. This suggests that the norm of

special treatment for LDCs has been internalised to some extent as ironically, despite the LDCs calling for fair treatment, they have received special treatment.

The Cotton Sub-Committee was established in November 2004, by the Committee on Agriculture, Special Session (WTO, 2004d). The Sub-Committee was ‘open to all WTO Members and Observer Governments’, as well as international organisations which had observer status with the Committee on Agriculture (WTO, 2004d). The Sub-Committee was chaired by Ambassador Crawford Falconer of New Zealand, who also chaired the agricultural negotiations. The first meeting of the Sub-Committee was held on 16 February 2005, but was suspended after initial discussions so that the Chairman could consult with Members on a work programme. The meeting subsequently reconvened and concluded on 28 February 2005 (WTO, 2005j). After the initial meetings, the Sub-Committee met on an almost monthly basis throughout 2005 and 2006, with meetings being held as closely as possible to the meetings of the Special Session of the Committee on Agriculture.<sup>226</sup> The establishment of the Sub-Committee again indicated the importance of the cotton issue and complies with the norm of special treatment as the issue was raised by LDCs.

The split between the trade and development components of cotton, introduced in the July Framework, meant that the Sub-Committee was tasked with ensuring coherence between these aspects of the cotton negotiations. Updates on the development component of cotton were reported regularly to the Sub-Committee by Chiedu Osakwe, the LDC Coordinator appointed by Mike Moore (see WTO, 2006c; WTO, 2006d; WTO, 2006e). There were several differences of opinion as to what the Sub-Committee should focus on in the early meetings. The priority for the LDCs was ‘to

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<sup>226</sup> Dates of the meetings of the Sub-Committee on Cotton were 16 and 28<sup>th</sup> February 2005, 22<sup>nd</sup> March 2005, 29<sup>th</sup> April 2005, 22<sup>nd</sup> June 2005, 18<sup>th</sup> July 2005, 28<sup>th</sup> September 2005, 28<sup>th</sup> October 2005, 18<sup>th</sup> November 2005, 31<sup>st</sup> January 2006, 2<sup>nd</sup> March 2006, 27<sup>th</sup> March 2006 and 28<sup>th</sup> April 2006. The Special Session of the Committee on Agriculture is the body charged with the Agricultural negotiations for the Doha Round. The agreement to hold meeting of the Sub-Committee on Cotton close to the meeting of the Special Session of the Committee on Agriculture was embodied in the Work Programme of the Sub-Committee (see WTO, 2005m: paragraph 4).

focus on the essentials' i.e. the distortion of the cotton market by subsidies (WTO, 2005k: Annex 2, paragraph 14). The USA, on the other hand, argued for a broad focus on cotton again attempting to link it to textiles and other parts of the Doha negotiations such as non-agricultural market access (NAMA), development and rules (WTO, 2005k: Annex 2, 19, paragraph 1). Unsurprisingly, the US approach was at odds with many of the other members of the Sub-Committee, particularly the African countries, who wanted to keep the focus of the discussions more narrowly based and argued that the Sub-Committee should look at 'concrete solutions' rather than at 'theoretical questions of competence' and linkages between other areas of the negotiations (WTO, 2005k: Annex 2, 10, paragraph 13). Since the end of 2006, there have not been any meetings of the Sub-Committee on Cotton, although the WTO Secretariat continues to report on the development aspects of cotton with the latest report issued in 2010 (WTO, 2010). The fact that no meetings of the Sub-Committee have been held since 2006 could indicate an argumentation cycle within the norm with a resulting weakening of the norm in cotton on the trade component. However, it may also be indicative of the fact that there has been very little progress on the Doha Round since then, effectively blocking any special treatment in the trade component.

The focus on cotton within the WTO was maintained in the run up to the Hong Kong Ministerial in December 2005. Regular meetings of the Sub-Committee on Cotton were held and a consultative meeting was held between the United States and some of the African countries in Ouagadougou in November 2005 (WTO, 2005q: 2, paragraph 9; also see USTR, 2005a).<sup>227</sup> The US released a proposal shortly before the Hong Kong Ministerial which was intended to address the cotton issue (Fadiga, Mohanty, Pan and Welch, 2006). At the Hong Kong Ministerial, the Cotton Four again called for quick and concrete action to resolve the problems facing the cotton producing countries in Africa (WTO, 2005r). Like the July Framework, the Hong Kong Declaration made specific mention of cotton and reaffirmed the split into the trade and development dimensions (WTO, 2005s: paragraphs 11 and 12). Paragraph

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<sup>227</sup> The African countries listed as attending this meeting are Benin, Burkina Faso, Mali, Chad and Senegal.

Eleven of the Hong Kong Declaration stated the WTO member's commitment to 'an explicit decision on cotton' through the agricultural negotiations and the Sub-Committee on Cotton (WTO, 2005s: paragraph 11). It also called for the elimination of all forms of export subsidies by developed countries in 2006, duty free and quota free access for LDC exports of cotton and the reduction of all trade distorting domestic subsidies with faster implementation for this in cotton than in the rest of the agricultural negotiations (WTO, 2005s: paragraph 11). Paragraph Twelve of the Declaration dealt with the development aspects of cotton and urged the development community to 'scale up its cotton-specific assistance', a call which the US seems to have heeded (WTO, 2005s: paragraph 12). Despite these calls at the Hong Kong Ministerial and the outcome of Brazil's dispute settlement case, the issue of cotton subsidies is still on-going. Within the WTO it was again raised by the LDCs at the Geneva Ministerial in 2009, with LDCs calling for an 'early harvest' on cotton (WTO, 2009q). There was also a discussion as to whether the LDCs themselves would raise a dispute settlement case, and although this has been discussed since the beginning of the cotton issue, it seems unlikely at present (*Email*, Lumbanga, 28 May 2010; *Int. Imboden*, 14 September 2010; *Int. Balima*, 17 September 2010). Since the Geneva Ministerial the feeling among LDCs is that cotton has not been dealt with and that discussions about the issue are merely going through the motions rather than providing any concrete solutions or actions (ICTSD, 2010; also *Int. Balima*, 17 September 2010). Although evidence suggests that there is general agreement that the subsidies should be eliminated, but the proposals on how this should be done have yet to be fully agreed (WTO, 2005w: 7; WTO, 2010c: 2). This suggests that the cotton issue is currently in an argumentation cycle. There is general agreement as to the desired outcome which is in line with the norm of special treatment, but because this outcome is linked to the end of the Doha Round, the issue has not yet been resolved. If the Doha Round concludes in 2011 as is currently hoped and includes the reduction of cotton subsidies, as is expected then the result will demonstrate a further strengthening of the norm of special treatment for LDCs.

## **Role of LDCs in Cotton / Appeals to the Norm of Special Treatment for LDCs**

Despite the fact that the LDCs were asking for fair treatment, the cotton initiative raised at Cancun is important as it demonstrated that LDCs were not prepared ‘to remain complacent waiting for help’ but were prepared to take positive action to highlight issues of importance to them, particularly when the issues were at odds with the development policies and international poverty reduction initiatives such as the MDGs (*Email*, Lumbanga, 28 May 2010). Appeals to the norm of special treatment have been made by several groups in the cotton case – the Cotton Four, the African Group, the LDCs/LDC Group and other members of the WTO supporting the Cotton Four. The Cotton Four, who are all LDCs, initially highlighted the problem of developed country cotton subsidies at the Cancun Ministerial and have remained active in this issue. The proposal was backed by the African Group, of which many countries are LDCs and also supported by the LDC negotiating group. One of the reasons that the issue has attracted so much attention is, because it has been supported at the highest levels of the WTO and within the Cotton Four and has received ‘unprecedented global attention’ (Sumner, 2006: 272). By appealing directly to moral arguments regarding the unfairness of the cotton subsidies, LDCs have attracted attention to their cause. They have also continued to argue against the subsidies as witnessed at the Geneva 2009 Ministerial, as the feeling among LDCs is that ‘even with technical assistance packages being provided to African farmers, without the trade distorting subsidies being removed this will not help the African cotton farmers’ (*Email* Lumbanga, 28 May 2010).

The African Group has been very active in the cotton issue, supporting the LDCs who raised the Sectoral initiative in the first place. This is unsurprising as the Cotton Four are all African countries, and ‘thirty-three African countries out of a total of fifty three are producers and net exporters of cotton’ (WTO, 2005n). The African Group have argued that the elimination of subsidies would help to promote cotton production and trade in the African countries, particularly for LDCs and would act as ‘an important catalyst for poverty reduction in the countries concerned’ (WTO,

2005n, Lee, 2007 and 2011). However, the disparities within the African Group would seem to indicate that the LDC Group is likely to be more effective on the issue of cotton, particularly as the African LDCs see themselves as LDCs first and African second in terms of the WTO's negotiating groups, due to the greater 'commonality of interests' (*Int. Kamahungye*, 28 September 2006). This view of the importance of the LDC Group was also reinforced by other interviews conducted for this thesis (*Int. Balima*, 17 September 2010; *Int. Nyamitwe*, 17 September 2010).

Cotton is seen as the litmus test to the norm of special treatment for LDCs within the WTO and for a real development impact from the Doha Round. This is reinforced by the use of appeals to the norm by LDCs as demonstrated by Zambia, at the first meeting of the Sub-Committee on Cotton. Zambia stated that 'If indeed we are to achieve a balanced outcome of the Doha Development Agenda, and to attain the Millennium Development Goals, the developmental aspects of the sectoral initiative on cotton need to be addressed' (WTO, 2005j: Annex 2, 20, paragraph 6). The tactic used by the LDCs has been one of linking the issue of cotton to the norm of special treatment and to other international initiatives designed to aid the LDCs. This linking of the issues has helped highlight the disparity between the positions of developed countries on trade and development and in turn strengthened the norm. The latest example of the role played by the LDCs was seen in their Dar Es Salaam Ministerial Declaration in 2009. This called for an 'early harvest' for cotton in the Doha Round, a move which they also believe would help end the deadlock in the round (WTO, 2009q; *Email Lumbanga*, 28 May 2010).<sup>228</sup> Agreeing an early harvest on cotton has also recently been flagged by the LDC Group (along with progress on accession and market access) as a contribution which the WTO could make to UN LDC IV (WTO, 2011e). Reports from the WTO's Geneva Ministerial also suggest the Cotton Four are considering taking their case to dispute settlement if the US does not end its subsidies (ICTSD, 2009c). However, interviews in Geneva have shown that there has been discussions about the LDCs raising a dispute case since the cotton issue began in 2002, but that they have so far been reluctant to do so (*Int. Imboden*,

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<sup>228</sup> This call echoed a previous one made by LDCs for an 'early harvest' at the Hong Kong Ministerial in 2005 (WTO, 2006i).

14 September 2010; *Int. Balima*, 17 September 2010; and *Email Lumbanga*, 28 May 2010). Although the prospect of the LDCs raising a dispute settlement case over cotton subsidies seems unlikely at present, the linking of the issue to the WTO's contribution to LDC IV in May could result in progress for the LDCs in terms of special treatment. However, in the case of cotton this is likely to depend on the review of progress in the Round to date due to take place at Easter 2011.

## **Conclusion**

The development focus of the Doha Round has also meant that the impact of the cotton case has been substantial and is seen as 'a symbol of commitment to the development outcome of the DDA' (ICAC, 2006b). This view has been echoed by various people, and it is because the Cotton Four were all LDCs that the norm of special treatment has been especially important in this case. The case of cotton highlights the clashes between the trade and development policies of the developed countries, the role of LDCs as norm entrepreneurs and the behavioural impact of the norm of special treatment. With the Doha Round currently on-going, the issue of cotton subsidies in developed countries harming the trade prospects of the LDCs has not yet been resolved despite being raised over seven years ago, although the argument has been greatly strengthened by Brazil's success in the Dispute Settlement case. The issue has helped to highlight the inconsistency of the cotton subsidies with the norm of trade liberalisation and with developed countries assistance policies. The splitting of the issue into its trade and development components has also helped to deal with the inconsistency of the issue with the norm of special treatment, as the development component is aimed specifically at LDCs. It demonstrates that despite the clash of the trade and development policies within the WTO, a way has been found to bring special treatment for LDCs back in to the cotton issue. This has been achieved by a focus on the development aspects of cotton outside of the WTO, which have succeeded in providing LDCs with special treatment and reinforced the norm in this area. However, full internalisation of the norm in cotton will only be achieved once the trade component has resolved the issue of the subsidies.

The case of cotton, like that of accession, highlights the role of ‘norm entrepreneurs’ in furthering the cascade of the norm and in changes within the norm resulting from the behaviour of other states. The four key norm entrepreneurs can be identified - Oxfam, IDEAS, the World Bank and the ICAC – as well as the LDCs themselves.<sup>229</sup> Both the Cotton Four and the LDC Group have been important in the case – the Cotton Four help to highlight the inconsistency by raising the case, while the LDC Group has included cotton as one of its key issues despite the fact that not all LDCs are cotton producers. This can be seen by the fact that the LDC Group has a focal point for cotton as well as agriculture and by the fact that ‘the LDCs have continued to argue against the cotton subsidies’ (*Email Lumbanga*, 28 May 2010). The norm lifecycle model implies that norm entrepreneurs are only needed in the first stage of the norm lifecycle. However, the cotton case demonstrates that norm entrepreneurs are also needed throughout the norm lifecycle to ensure compliance with the norm and to maintain the profile of the norm. The case of cotton seems to be one where there are clearly identifiable norm entrepreneurs at work on the issue, although their easy identification is aided by the proximity of events in the case.

Like the previous cases on market access and accession, the case of cotton also clearly highlights the behavioural impact of the norm of special treatment on the other members of the WTO. The US and EU have both announced development measures to assist the cotton producing LDCs and their reports on the progress of these have specifically highlighted what they have been doing for the Cotton Four countries. This has provided some degree of justification for their lack of action within the WTO. However, the real test of the behavioural impact in the case of cotton, as with market access, is likely to be seen on conclusion of the Doha Round. If cotton subsidies are cut more deeply and faster than other subsidies it will demonstrate real special treatment for the LDCs in this issue area.

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<sup>229</sup> Other norm entrepreneurs could also be identified in the case of cotton. These include Brazil and the WTO Director-General.

There are differences and similarities between all of the cases selected for this thesis. Both market access and agriculture are longstanding issues within the GATT and the WTO. Market access for LDCs has progressed slowly as has agriculture, however, the selection of cotton subsidies as an issue to highlight the inconsistencies in agricultural and development policies of the developed countries has provided the agricultural issue with a catalyst to help improve the special treatment of LDCs more rapidly than would have been the case otherwise. The benefits to the norm of special treatment of having a catalyst were also demonstrated by the case of accession, where Vanuatu's failed accession played the role of increasing the special treatment provided to LDCs in the area and thus assisting in the further internalisation of the norm.

# Chapter 7 – Conclusion

A norm of special treatment for LDCs exists and its institutionalisation in the WTO Agreements has embedded it in the organisation, but it has yet to be fully internalised so that special treatment for LDCs becomes automatic. This explains the puzzle posed in the introduction as to why the WTO focuses on LDCs and their issues and advocates positive discrimination for these countries. By looking at individual issues within the WTO such as accessions, market access and cotton, it is evident that the progress of the norm has not been as smooth as would have been anticipated from a review of the events and agreements in the trade organisation relating to LDCs. The case studies of issue areas important to LDCs reveal that the progress of the norm through its lifecycle has been hindered by clashes with other norms operating in the WTO and helped more recently by the LDCs themselves taking on the role of norm entrepreneurs. Full future internalisation of the norm depends on the actions of the LDCs in advocating for more special treatment and highlighting issues affecting the norm, as well as the political will of the leading members of the WTO and their ability or inclination to resolve clashes between the norms of the organisation.

## **The Norm of Special Treatment and Why it Matters**

Evidence of the existence of the norm of special treatment and its institutionalisation within the WTO is found in the WTO Agreements which contain several exclusions and special clauses aimed specifically at LDCs. Provisions aimed exclusively at LDCs have consistently been made in the trade arena since the days of the GATT's Tokyo Round. The embedding of these clauses and the provisions in the WTO Agreements provide a strong indication of the intention of the members to provide LDCs with special treatment in the trade organisation. The special treatment is provided to LDCs because of an international norm of special treatment for these countries which has been in existence since the categorization and identification of

this group in the early 1970s by UNCTAD. After its creation the norm of special treatment gradually spread during the 1970s and 1980s, with both UNCTAD and the UN working to develop the category of LDC and to encourage the implementation of the norm in other organisations and individual states. During the subsequent decades the norm slowly cascaded internationally helped by the convening of three UN Conferences on LDCs and the introduction of several international programmes of action which aimed to provide the LDCs with special treatment. These conferences and programmes of action have provided a key focus for developed countries to review their policies towards LDCs and to improve the special treatment provided to them and in turn strengthening the norm. The focus of UNCTAD on LDCs and early competition between it and the GATT led to the focus on LDCs within the trade organisation, via the creation of a Sub-Committee on the Trade of LDCs. Measures in favour of the LDCs were included in the Uruguay Round Agreements and with the establishment of the WTO the LDCs became a recognised category of membership. The special treatment of LDCs in the WTO was reinforced by the 1997 Plan of Action for LDCs, the 1999 Decision on Preferential Tariff Treatment for the LDCs, as well as the 2002 Guidelines on LDC Accessions and the Hong Kong agreement on Duty-Free, Quota-Free (DFQF) access for LDCs (WTO, 1999e).

Norms create expectations for behaviour and the norm of special treatment has created expectations for the behaviour of other members of the WTO. To counter the argument that the norm of special treatment for LDCs is just rhetoric means that the actions of the WTO members, particularly the more developed ones need to be examined in order to see whether they comply with the behavioural expectations created by the norm and if they do not what justifications are provided. Actions which reinforce the norm include the suggestions earlier in the Doha Round that LDCs receive 'a round for free' (EC 2005c), although this has yet to materialise as the Doha Round is not yet finalised. However, if the call for 'an early harvest' for LDCs is actioned this will also provide evidence of collective action on the part of the WTO members. In the area of accession, criticisms of the US behaviour in the accession of Vanuatu led to US assistance to Cape Verde in its accession process, demonstrating a change of behaviour. Similarly, Vanuatu's re-application for

accession in 2008 and its successful renegotiations of entry conditions has led the WTO to announce that its impending accession will be seen as part of the WTO's contribution to UN LDC IV in May 2011. The impact of the norm has also been particularly seen in the area of market access where all of the leading WTO members, including developing countries such as Brazil, India and China, have instituted preferential treatment programmes aimed specifically at LDCs ahead of the completion of the Doha Round, despite the improvements being linked to the implementation of the Round. Similarly in the case of cotton, although the issue of the subsidies has not yet been resolved, special treatment is now being provided to the LDCs by the US and the EC on the development side of the issue. This special treatment has been implemented since the issue of cotton was raised in 2003 again demonstrating the behavioural impact of the norm. Recent reports on activity within the trade side of the issue from the US also highlight the special treatment they are now providing in this area.

### **Clashing Norms**

The progress or uptake of the norm of special treatment for LDCs has been affected by clashes with other norms within the WTO, particularly the key norms of the WTO - reciprocity and non-discrimination. These norms are in direct contention with the norm of special treatment for LDCs. The special situation of LDCs is highlighted in both GATT and WTO documents which frequently state that LDCs are not expected to provide full reciprocity for concessions that they receive or are exempt from making commitments on tariff cuts. This contention between the norms means that the path of the norm lifecycle has not always been as expected and has sometimes been slowed, or gone through argumentation cycles. These cycles are caused when the leading countries in the WTO do not behave in the way we would expect them to based on the existence of the norm. A key example here is the behaviour of the US in the case of cotton. The existence of the norm would lead us to expect that the US would attempt to remove subsidies, but the entrenched nature of the subsidies has meant that the US has resorted to providing LDCs with special treatment outside of the WTO such as via its West Africa Cotton Improvement Process (WACIP) and

Millennium Challenge Corporation (MCC) initiatives aimed specifically at the LDCs involved in cotton. In the case of market access, the norms of reciprocity and non-discrimination have been almost completely removed for LDCs in some cases, for example in the EU with the Everything but Arms (EBA) initiative. Positive discrimination is now provided for LDCs within the WTO, thanks to the agreement on Duty-Free, Quota-Free access (DFQF) for LDCs at Hong Kong in 2005 and no reciprocity is expected from LDCs in terms of market access via the WTO – a benefit which is not currently offered to other WTO members or negotiating groups. Despite the progress of the norm in market access, the fact that the DFQF agreement only provided for the access of 97% of LDC goods and that it is tied to the end of the Doha Round mean that full internalisation of the norm has yet to occur in this area. However several announcements have been made by the more developed countries indicating that they are attempting to implement the agreement earlier than necessary, which indicates a degree of internalisation of the norm.

The area of accession is more problematic in terms of the clashes with the existing norms of the WTO. The fact that few previous LDC accessions had followed the typical GATT accession process combined with the lack of rules and transparency in the accession process meant that initially there was no special treatment for LDCs applying to join the WTO, as it had not been considered necessary in this area before. The two-track nature of the accession process with both bilateral and multilateral negotiations means that it is possible for existing members of the WTO to try to get some degree of reciprocity from acceding LDCs in return for their entry into the club, particularly if they are seen as a useful market to have access to. This was particularly seen in the case of the accession of Vanuatu. However, the introduction of the 2002 Accession Guidelines for LDCs has helped to some extent in this regard, with LDCs now receiving more special treatment in this area than they previously were. The existence of the norm of special treatment for LDCs within the WTO thus helped to bring a degree of special treatment into the area of accessions once it became clear that there was a problem, but it is yet to be fully internalised.

## **LDCs as norm entrepreneurs**

Norm entrepreneurs are essential for the uptake and spread of norms. Both the UN and UNCTAD can be identified as the early norm entrepreneurs for LDCs as much of the early work on the category and its need for special treatment was done by these organisations. Key individuals who can be identified are Raul Prebisch and Jack Stone. Prebisch introduced the idea that these countries needed special treatment while Jack Stone and his department in UNCTAD were responsible for a lot of the early work regarding the actual identification of the LDCs. In the GATT, Arthur Dunkel, the Director-General during the 1980s and most of the Uruguay Round, has to be credited for establishing and chairing the initial meetings of the GATT Sub-Committee on the Trade of LDCs. Subsequent chairs of the Sub-Committee were also important in making sure that the special treatment of LDCs was institutionalised in the GATT and subsequently the WTO, including Martin Huslid of Norway and the current Chair Jean Feyder of Luxembourg. The Sub-Committee has also been important in the WTO, as have the Director-Generals, particularly Mike Moore and Supachai Panitchpakdi. What is particularly noticeable in the WTO has been that the LDCs themselves have also become norm entrepreneurs highlighting their need for special treatment and attempting to raise the profile of issues of concern to them, particularly where their treatment does not comply with the expectations set by the norm of special treatment.

The cases of cotton and accession both particularly highlight the role of norm entrepreneurs in furthering the cascade and institutionalisation of the norm and in changes within the norm resulting from the behaviour of other states. The norm lifecycle model implies that norm entrepreneurs are only needed in the first stage of the norm lifecycle. Here their role is to increase the 'buy-in' to the norm to enable it to spread more widely throughout the international system. However, what both cases illustrate is that norm entrepreneurs may be needed in issue areas where the norm is not being applied or was not previously considered. The cotton case demonstrates that norm entrepreneurs are also needed throughout the norm lifecycle to ensure compliance with the norm and to maintain the profile of the norm. In the

case of cotton this was the role played by the Cotton Four and backed by the LDC Group. In accession the impact of the change of rules with the transition from GATT to WTO made it harder for LDCs to accede, and awareness of the problems with LDC accessions following the ‘failed’ accession of Vanuatu has meant that the LDC Group within the WTO have adopted this issue as being of key importance to them. In their role of norm entrepreneurs they have used the tactics of ‘moral consciousness raising’ and ‘shaming’ to try to bring special treatment back into the accession process, which has had some degree of success. The increased activism of the LDCs is also apparent in the case of market access, where they effectively highlighted the case in the run-up to the Hong Kong Ministerial in 2005, citing the agreement made at Doha to provide DFQF access to LDCs.

The actions of the LDCs demonstrate that norm entrepreneurs can be added during the course of the norm lifecycle. The impact of the LDCs as norm entrepreneurs has been particularly strong as they have a vested interest in the issues at stake. The action of the LDCs and the results they have achieved also demonstrate clearly that these countries have agency within the WTO – a role which has not previously been ascribed to them by tradition approaches to the trade organisation. In terms of the puzzle posed in the introduction to this thesis, this now means that part of the reason why LDCs continue to receive special treatment in the WTO is due to their active engagement with the organisation. For the LDCs it also means that where they raise issues which do not appear to follow the expectations created by the norm, they are likely to have some degree of success in achieving special treatment, particularly where their call for special treatment is perceived as legitimate.

### **Special Treatment and Non-linearity: understanding Norms**

Where this thesis makes most of its contribution to the lifecycle theory and to theories dealing with norms is in the case studies examined within the context of the WTO. Importantly, the case studies have demonstrated that the lifecycle of a norm is rarely a linear process in practice. The lifecycle often includes ‘jumps’ caused by

external events, clashes with other norms or argumentation cycles, which either strengthen or weaken the norm. The non-linearity of the lifecycle is not always apparent at the international level or organisational level, but becomes much more obvious when viewed from within particular cases, which effectively demonstrate the argumentation cycles in the path of the lifecycle. The argumentation cycles can occur at any point in the norm lifecycle and may occur on more than one occasion. It is also important to note that the argumentation cycles may occur over several years, as in the case of cotton. Each of the case studies has highlighted different aspects of the norm lifecycle. However, it can also be seen that the norm lifecycle appears to be issue specific. The fact that a norm of special treatment for LDCs exists does not automatically guarantee that LDCs will always receive special treatment on a particular issue, as highlighted by the case study on accession. Where special treatment has not previously been considered in an issue, the role of the norm entrepreneurs in highlighting that the norm is not being applied is critical. The cases demonstrate that each has its own issue-specific norm lifecycle which is linked to the norm's lifecycle within the organisation, and acceptance of the norm at the organisational level means that its acceptance within the issue areas tends to happen fairly quickly, but the outcomes may not be as would be expected by the linearity of the lifecycle diagram. In the case of cotton for example, the special treatment was provided outside of the WTO, this was only possible by splitting the issue into its trade and development components. Ironically this case would appear to demonstrate that the provision of special treatment for LDCs is so embedded in some WTO members that they attempted to provide special treatment for the LDCs via the development strand, as opposed to dealing with the 'fair treatment' that LDCs were calling for, which should have been dealt with via the trade strand with the removal of subsidies. This indicates that the norm has been internalised more than was originally thought which has implications beyond the specific issues raised here and should help LDCs in areas where they are asking for special treatment.

## **The Norm of Special Treatment for LDCs**

The UN's announcement of its intention to hold a Fourth Conference on LDCs (LDC IV), co-ordinated by the UN-ORHLLS, in 2011 indicates that LDCs will remain on the international agenda for some time.<sup>230</sup> The results of the Conference will be interesting to note. Evidence suggests that a new ten year programme of action will be established by the Conference. The programme will also be closely linked to the Millennium Development Goals (MDGs), which are due to be 'completed' in 2015. The 2001 Brussels Programme of Action was to be assessed on the graduation of LDCs, but so far only two – Cape Verde and Maldives – have graduated in the decade. This led to a recent focus on the graduation of LDCs and Samoa is scheduled to graduate within the next two years. The focus on graduation indicates an attempt to get back to the 'hard core' group of LDCs with an intensified assistance programme aimed at these countries. Recent work in UNCTAD also indicates that the programme will introduce a new international architecture specifically aimed at LDCs. The new programme of action will contain inputs from various international organisations including the WTO, which has already produced documents on the accession of LDCs and the issue of market access as part of its contribution to LDC IV. The implementation of the new programme of action will depend on the political will of the international community and on the actions of the LDCs themselves. The LDCs have already applied political pressure to the WTO members to comply with the norm of special treatment, by suggesting that the WTO's contribution to LDC IV could be made in the areas of accession, market access and cotton.

The number of programmes introduced by UN organisations and the establishment of the UN-ORHLLS demonstrate that the UN system has focused its attention on efforts to assist LDCs since LDC III. Evidence again suggests that this will continue following LDC IV. The emphasis on LDCs in the Doha Round also suggests that they will remain a focus within the WTO for the foreseeable future. The inclusion of

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<sup>230</sup> This is the first LDC conference to be co-ordinated by the UN-ORHLLS; previous conferences were co-ordinated by UNCTAD.

the LDCs in the agreements of the WTO means that the norm of special treatment for this group has some degree of legal backing within the trade organisation, which it does not necessarily have within the UN, and thus the WTO has a vested interest in the maintenance and refinement of the category. The focus on special treatment for LDCs and the embedding of this in the WTO agreements demonstrates that the norm of special treatment for LDCs does exist in the WTO and is part of a wider international norm for these countries. It was originally included in the GATT due to concerns about how developing countries could be helped to get the most out of trade for their development and was imported into the WTO via the Uruguay Round Agreements. The existence of the norm gives the LDCs the opportunity to raise issues where the norm does not seem to have been previously applied and to obtain positive results in these areas.

## Appendix A – Provisions Made for LDCs in WTO Agreements

Agreement/Article	Reduced level of obligation	Best Endeavour	Increase in implementation period	Technical Assistance	Comments
Establishing Agreement	-	LDC	LDC	LDC	
TRIMS	Developing Country	Developing Country and LDC	Developing Country and LDC. LDCs given seven years to implement.		Agreement provided for longer implementation periods for LDCs than other WTO members.
TRIPS	-	-	Developing Country and LDC. LDCs given 10 years to implement.	Developing Country and LDC	The TRIPS Agreement contains six mentions of LDCs, including a section on Least-Developed Country Members (Article 66) which encourages developed countries to promote technology transfer to the LDCs (WTO, 1999b). <sup>231</sup> The promotion of technology transfer to the LDCs was further reinforced by a TRIPS Council decision on the Implementation of Article 66.2 which provides for developed countries to submit annual reports detailing the actions they

<sup>231</sup> The mentions of LDCs are in the Preamble to the Agreement, Article 66 dealing with LDCs and Article 67 dealing with Technical Cooperation.

<b>Agreement/Article</b>	<b>Reduced level of obligation</b>	<b>Best Endeavour</b>	<b>Increase in implementation period</b>	<b>Technical Assistance</b>	<b>Comments</b>
					have taken to comply with Article 66.2 (WTO, 2003d). Minutes of the TRIPS Council Meetings show that the implementation of Article 66 is reviewed on an annual basis (for example see WTO, 2009i: 29-34). TRIPS is also important to LDCs because of the declaration on TRIPS and Public Health which allows WTO members to take measures necessary to protect public health and provide access to medicine if necessary (WTO, 2001f).
Agriculture	Developing Country and LDC	Developing Country and LDC	Developing Country	LDC	
DSU	-	Developing Country and LDC	-	Developing Country	The Dispute Settlement Understanding (DSU) provides for special procedures for disputes involving LDCs (Article 24) and urges members to exercise restraint in raising cases against LDCs
Textiles and clothing	-	LDC	LDC	-	The Agreement allowed for the phasing out of the MFA over a 10 year period which ended in January 2005 and provided for special treatment for the LDCs. <sup>232</sup>
Trade Policy	Developing Country and	-	-	Developing Country and	Smaller developing countries to be reviewed every six years, although this period can be

<sup>232</sup> However, despite the end of the MFA in 2005, quotas were put on imports of textiles and clothing from China by the EU and USA.

<b>Agreement/Article</b>	<b>Reduced level of obligation</b>	<b>Best Endeavour</b>	<b>Increase in implementation period</b>	<b>Technical Assistance</b>	<b>Comments</b>
Review	LDC			LDC	extended for LDCs.
Sanitary and Phyto-Sanitary	-	Developing Country and LDC	Developing Country and LDC	Developing Country	Article 10 of the Agreement deals with special and differential treatment and mentions LDCs. The Agreement gave LDCs the opportunity to ‘delay application of the provisions of ... [the] Agreement of a period of 5 years.’
Technical Barriers	Developing Country	Developing Country	Developing Country and LDC	Developing Country and LDC	The Agreement provides for members to give Technical Assistance (Article 11) and SDT (Article 12) to other members of the WTO ‘especially the developing country members’ and states that ‘members shall give priority to the needs of the least-developed county members.’
Import Licensing	Developing Country	Developing Country and LDC	Developing Country	-	The Agreement provides for special consideration for LDCs.
Subsidies and Countervailing Measures	Developing Country and LDC	Developing Country	Developing Country and LDC. LDCs given eight years to implement.		The Agreement provides for special treatment for LDCs under Article 27 which deals with SDT of developing country members.
Safeguards	Developing Country	Developing Country	-	-	Article 9 of the Agreement deals with developing country members, but no

Agreement/Article	Reduced level of obligation	Best Endeavour	Increase in implementation period	Technical Assistance	Comments
					mention is made of LDCs.
Pre-shipment Inspections	-	-	-	Developing Country	
GATS	Developing Country	Developing Country and LDC	Developing Country and LDC	Developing Country and LDC	Article IV of the GATS agreement deals with increasing the participation of developing countries in services negotiation and provides for special treatment for LDCs (WTO, 1999b: Article IV). <sup>233</sup> However, there is currently no mechanism within the GATS Agreement through which this special treatment for LDCs can be provided, as any special treatment offered to LDC would then have to be extended to all WTO members via MFN, which would cancel out the special treatment (WTO, 2006f). Proposals for resolving this issue have been suggested by the LDC group and submitted to the WTO (WTO, 2006f). The GATS mode which is of particular importance to LDCs is Mode 4, or presence of natural persons (LDC Group, 2006). This is because many LDCs rely on remittances sent home from nationals working in other countries. Marchetti (2004) notes that during the Doha Round, LDCs called for the establishment of

<sup>233</sup> This is the only specific mention of LDCs in the GATS Agreement.

<b>Agreement/Article</b>	<b>Reduced level of obligation</b>	<b>Best Endeavour</b>	<b>Increase in implementation period</b>	<b>Technical Assistance</b>	<b>Comments</b>
					a mechanism for Special and Differential Treatment in the GATS negotiations by including quota allocations on the movements of persons and specific commitments to be granted to the LDCs (Marchetti, 2004: 17). However, he notes that ‘this proposal met the opposition of not only developed countries but also of more advanced developing countries’ (Marchetti, 2004: 17).
GATT Articles: Anti-Dumping (Article VI)	-	Developing Country	-	-	Recognises the need for special consideration for developing countries by does not specifically mention LDCs.
Customs Valuation (Article VII)	Developing Country	Developing Country	Developing Country	Developing Country	Agreement provides for special and differential treatment for developing countries (Article 20) but does not specifically mention LDCs.
Balance of Payments (Article XII, also Article XVIII Section 8)	Developing Country and LDC	-	-	LDC	
Subsidies (Article XVI)	Developing Country and LDC	Developing Country	Developing Country and LDC	-	
Part IV (Trade and Development)	Developing Country	-	Developing Country	Developing Country	

## Appendix B – List of LDCs

<b>Country</b>	<b>Year Classed as LDC*</b>	<b>Classification#</b>	<b>WTO Membership Status+</b>
Afghanistan	1971	LLDC	Accession
Angola	1994	LDC	Member
Bangladesh	1975	LDC	Member
Benin	1971	LDC	Member
Bhutan	1971	LLDC	Accession
Burkina Faso	1971	LLDC	Member
Burundi	1971	LLDC	Member
Cambodia	1991	LDC	Member
Central African Republic	1975	LLDC	Member
Chad	1971	LLDC	Member
Comoros	1977	SIDS	Accession
Democratic Republic of Congo	1991	LDC	Member
Djibouti	1982	LDC	Member
Equatorial Guinea	1982	LDC	Observer
Eritrea	1994	LDC	-
Ethiopia	1971	LLDC	Accession
Gambia	1975	LDC	Member
Guinea	1971	LDC	Member
Guinea-Bissau	1981	SIDS	Member

Haiti	1971	SIDS	Member
Kiribati	1986	SIDS	-
Lao People's Democratic Republic	1971	LLDC	Accession
Lesotho	1971	LLDC	Member
Liberia	1990	LDC	Accession
Madagascar	1991	LDC	Member
Malawi	1971	LLDC	Member
Maldives <sup>234</sup>	1971	SIDS	Member
Mali	1971	LLDC	Member
Mauritania	1986	LDC	Member
Mozambique	1988	LDC	Member
Myanmar	1987	LDC	Member
Nepal	1971	LLDC	Member
Niger	1971	LLDC	Member
Rwanda	1971	LLDC	Member
Samoa	1971	SIDS	Accession
Sao Tome and Principe	1982	SIDS	Accession
Senegal	2000	LDC	Member
Sierra Leone	1982	LDC	Member
Solomon Islands	1991	SIDS	Member
Somalia	1971	LDC	-
Sudan	1971	LDC	Accession

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<sup>234</sup> Maldives graduated from the LDC category in January 2011.

Timor-Leste	2003	SIDS	-
Togo	1982	LDC	Member
Tuvalu	1986	SIDS	-
Uganda	1971	LLDC	Member
United Republic of Tanzania	1971	LDC	Member
Vanuatu	1985	SIDS	Accession
Yemen	1971	LDC	Accession
Zambia	1991	LLDC	Member

Source: \*LDCs: Historical Background, <http://www.un.org/events/ldc3/prepcom/history.htm>, accessed 24/08/06. #LDC list UN-OHRLLS website, [www.un.org/special-rep/ohrlls/ldc/list.htm](http://www.un.org/special-rep/ohrlls/ldc/list.htm), accessed on 24/08/06. +WTO Website, [www.wto.org](http://www.wto.org), accessed on 24/08/06.

## Appendix C – Interviews Conducted

<b>Interviewee</b>	<b>Date</b>	<b>Place</b>	<b>Position</b>
Annet Blank	27 <sup>th</sup> September 2006	Geneva	Head of LDC Division, WTO
Elly Kamahungye Kafeero	28 <sup>th</sup> September 2006	Geneva	First Secretary, Permanent Mission of Uganda
Sheila Page	22 <sup>nd</sup> January 2007	London	Senior Research Associate, Overseas Development Institute, London
Rashid Kaukab	26 February 2008	Telephone	Pakistani Mission in Geneva, previously Acting Head of Programme and Research Coordination at the South Centre, and now Director of CUTS, Geneva
	22 January 2010	Email	
Maika Oshikawa	7 March 2008	Telephone	Secretary to the LDC group, in the WTO's LDC Unit
Fred Kirungi	17 February 2009	New York	Advocacy and Outreach Officer, UN-OHRLS
Sajal Mathur	26 May 2009	Telephone	WTO Accessions Department
Sonam P Wangdi	6 June 2009	Berne	Director, Department of Trade, Ministry of Economic Affairs, Bhutan
Jack Stone	3 May 2010	Email	Former Head of UNCTAD LDC Division, cited as 'founding father' of the LDC category
	10 May 2010	London	
Edouard Bizumuremyi	20 May 2010	Email	Commercial Counsellor, Permanent Mission of

			Rwanda
Ambassador Matern Lumbanga	28 May 2010	Email	Ambassador and Permanent Representative of Tanzania Mission in Geneva
Atul Kaushik	15 July 2010	Telephone	Director, CUTS Geneva Resource Centre
Motaher Hussain	7 Sep 2010	Email	Formerly based at the Bangladesh mission to the WTO
Nicholas Imboden	14 Sep 2010	Geneva	Director, IDEAS
Kebur Azbaha	15 Sep 2010	Geneva	Second Secretary (Trade, Development and Climate Change) UK Mission to the International Organisations in Geneva
	27 January 2011	Telephone	
Mr Mostainbillah Balagh	15 Sep 2010	Geneva	Third Secretary, Permanent Mission of Afghanistan
Pierre Encontre	15 Sept 2010	Geneva	Chief, Special Programmes, UNCTAD Division for Africa, Least Developed Countries and Special Programmes
Debapriya Bhattacharya	15 Sep 2010	Geneva	UNCTAD Special Advisor on LDCs, formerly Ambassador of Bangladesh to the WTO
Patrick Low	17 Sep 2010	Geneva	Director, WTO Economic Research and Statistics Division
Ambroise M. Balima	17 Sep 2010	Geneva	Economic Advisor, Embassy of Burkina Faso to the Swiss Confederation
Alain Nyamitwe	17 Sep 2010	Geneva	Deputy Chief of Mission, Permanent Mission of the Republic of Burundi to the United Nations and Other

Lilian Sali Bwalya 17 Sep 2010

Geneva

International Organisations in  
Geneva

First Secretary – Trade,  
Permanent Mission of Zambia

## Appendix D – LDCs Benefitting from Special Market Access Arrangements<sup>235</sup>

Country	WTO Member	GSP Eligible	AGOA \CBI	EBA	ACP	India <sup>236</sup>	China <sup>237</sup>	Brazil <sup>238</sup>
Afghanistan	No	Canada/EU/Japan/USA	-	Yes	-	Yes	Yes	
Angola	Yes	Canada/EU/Japan/USA	Yes	Yes	Yes	Yes	Yes	Yes
Bangladesh	Yes	Canada/EU/Japan/USA	-	Yes	-	Yes	Yes	Yes
Benin	Yes	Canada/EU/Japan/USA	Yes	Yes	Yes	Yes	Yes	Yes
Bhutan	No	Canada/EU/Japan/USA	-	Yes	-	Yes		
Burkina Faso	Yes	Canada/EU/Japan/USA	Yes	Yes	Yes	Yes	?	Yes

<sup>235</sup> UN (2009) List of Least Developed Countries, UN Office of the High Representative for the Least Developed Countries, Landlocked Developing Countries and Small Island Developing States, <http://www.un.org/special-rep/ohrlls/ldc/list.htm> accessed on 19/01/2009. AGOA information from AGOA (2009) Summary of Eligible Countries [www.agoa.gov/eligibility/country\\_eligibility.html](http://www.agoa.gov/eligibility/country_eligibility.html) accessed on 20/01/09. Additional Information from UNCTAD (2006) Generalised System of Preferences: List of Beneficiaries, Document No. UNCTAD/ITCD/TSB/Misc.62/Rev.2.

<sup>236</sup> India scheme is reported to cover all LDCs. UNCTAD (2008), UNCTAD GSP Newsletter, p.3. Also see ICTSD (2008) India to Extend Duty-Free Market Access to LDCs, Bridges Weekly Trade News, Volume 12, No.14, 23<sup>rd</sup> April 2008.

<sup>237</sup> China's scheme is reported to cover 30 African LDCs. Forum on China-Africa Cooperation (2008) Implementation of Follow-up Actions of the Beijing Summit of the Forum of China-Africa Cooperation, accessed via <http://www.focac.org/eng/zxxx/t459449.htm> on 07/02/09. The WTO Secretariat's Trade Policy Review of China contained the list of countries – see WTO (2008) Trade Policy Review Body, Trade Policy Review, China, Report by Secretariat, Document No. WT/TPR/S/199, p.54 (notes to table).

<sup>238</sup> The exact LDCs which will be covered by Brazil are as yet known, but reports indicate that it will at least cover the LDC members of the WTO. ICTSD (2006), Brazil to grant Duty and Quota-free market access to LDC exports, Bridges Weekly Trade Digest, Volume 10, No 41, 6<sup>th</sup> December 2006, accessed via ICTSD website, <http://www.ictsd.org/weekly/06-12-06/story2.htm>, on 25/04/07.

Country	WTO Member	GSP Eligible	AGOA \CBI	EBA	ACP	India <sup>236</sup>	China <sup>237</sup>	Brazil <sup>238</sup>
Burundi	Yes	Canada/EU/Japan/USA	Yes	Yes	Yes	Yes	Yes	Yes
Cambodia	Yes	Canada/EU/Japan/USA	-	Yes	-	Yes	Yes	Yes
Cape Verde <sup>239</sup>	Yes	Canada/EU/Japan/USA	Yes	Yes	Yes	Yes	Yes	Yes
Central African Republic	Yes	Canada/EU/Japan/USA	Removed Jan 04	Yes	Yes	Yes	Yes	Yes
Chad	Yes	Canada/EU/Japan/USA	Yes	Yes	Yes	Yes	Yes	Yes
Comoros	No	Canada/EU/Japan/USA	Yes	Yes	Yes	Yes	Yes	
Democratic Republic of Congo	Yes	Canada/EU/Japan/USA	Yes	Yes	Yes	Yes	Yes	Yes
Djibouti	Yes	Canada/EU/Japan/USA	Yes	Yes	Yes	Yes	Yes	Yes
Equatorial Guinea	No	Canada/EU/Japan/USA	-	Yes	Yes	Yes	Yes	
Eritrea	No	Canada/EU/Japan	Removed Jan 04	Yes	Yes	Yes	Yes	
Ethiopia	No	Canada/EU/Japan/USA	Yes	Yes	Yes	Yes	Yes	
Gambia	Yes	Canada/EU/Japan/USA	Yes	Yes	Yes	Yes		Yes
Guinea	Yes	Canada/EU/Japan/USA	Yes	Yes	Yes	Yes	Yes	Yes
Guinea-Bissau	Yes	Canada/EU/Japan/USA	Removed	Yes	Yes	Yes	Yes	Yes

<sup>239</sup> Japan does not recognise Cape Verde as an LDC, probably due to its graduation from the category.

Country	WTO Member	GSP Eligible	AGOA \CBI	EBA	ACP	India <sup>236</sup>	China <sup>237</sup>	Brazil <sup>238</sup>
			Jan 10					
Haiti	Yes	Canada/EU/Japan/USA	CBI	Yes	Yes	Yes		Yes
Kiribati	No	Canada/EU/Japan/USA	-	Yes	Yes	Yes		
Lao People's Democratic Republic	No	Canada/EU/Japan	-	Yes	-	Yes	Yes	
Lesotho	Yes	Canada/EU/Japan/USA	Yes	Yes	Yes	Yes	Yes	Yes
Liberia	No	Canada/EU/Japan/USA	Yes	Yes	Yes	Yes	Yes	
Madagascar	Yes	Canada/EU/Japan/USA	Removed Jan 10	Yes	Yes	Yes	Yes	Yes
Malawi	Yes	Canada/EU/Japan/USA	Yes	Yes	Yes	Yes		Yes
Maldives	Yes	Canada/EU/Japan	-	Yes	-	Yes	Yes	Yes
Mali	Yes	Canada/EU/Japan/USA	Yes	Yes	Yes	Yes	Yes	Yes
Mauritania	Yes	Canada/EU/Japan/USA	Yes	Yes	Yes	Yes	Yes	Yes
Mozambique	Yes	Canada/EU/Japan/USA	Yes	Yes	Yes	Yes	Yes	Yes
Myanmar	Yes	EU/Japan	-	Yes	-	Yes	Yes	Yes
Nepal	Yes	Canada/EU/Japan/USA	-	Yes	-	Yes		Yes
Niger	Yes	Canada/EU/Japan/USA	Removed Jan 10	Yes	Yes	Yes	Yes	Yes

Country	WTO Member	GSP Eligible	AGOA \CBI	EBA	ACP	India <sup>236</sup>	China <sup>237</sup>	Brazil <sup>238</sup>
Rwanda	Yes	Canada/EU/Japan/USA	Yes	Yes	Yes	Yes	Yes	Yes
Samoa	No	Canada/EU/Japan/USA	-	Yes	Yes	Yes	Yes	
Sao Tome and Principe	No	Canada/EU/Japan/USA	Yes	Yes	Yes	Yes		
Senegal	No	Canada/EU/Japan/USA	Yes	Yes	Yes	Yes	Yes	
Sierra Leone	Yes	Canada/EU/Japan/USA	Yes	Yes	Yes	Yes	Yes	Yes
Solomon Islands	Yes	Canada/EU/Japan/USA	-	Yes	Yes	Yes		Yes
Somalia	No	Canada/EU/Japan/USA	-	Yes	Yes	Yes	Yes	
Sudan	No	Canada/EU/Japan	-	Yes	Yes	Yes	Yes	
Timor-Leste	No	EU/Japan/USA	-	-	-	Yes		
Togo	No	Canada/EU/Japan/USA	Yes	Yes	Yes	Yes	Yes	
Tuvalu	No	Canada/EU/Japan/USA	-	Yes	Yes	Yes		
Uganda	Yes	Canada/EU/Japan/USA	Yes	Yes	Yes	Yes	Yes	Yes
United Republic of Tanzania	Yes	Canada/EU/Japan/USA	Yes	Yes	Yes	Yes	Yes	Yes
Vanuatu	No	Canada/EU/Japan/USA	-	Yes	Yes	Yes	Yes	
Yemen	Yes	Canada/EU/Japan/USA	-	Yes	-	Yes	Yes	Yes
Zambia	Yes	Canada/EU/Japan/USA	Yes	Yes	Yes	Yes	Yes	Yes

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<sup>240</sup> Please note that all GATT and WTO documents unless specified have been accessed via the internet. GATT documents are available either on the WTO website at [http://www.wto.org/english/docs\\_e/gattdocs\\_e.htm](http://www.wto.org/english/docs_e/gattdocs_e.htm) or via the GATT Digital Library on Stanford University's website at <http://gatt.stanford.edu/page/home> and are usually in pdf format. The Stanford University collection has the advantage that the pdf's are searchable. UN General Assembly Resolution have also been accessed via the internet at <http://www.un.org/documents/resga.htm>.

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