



# WTO REFORM AND ISSUES IN SPECIAL AND DIFFERENTIAL TREATMENT OF DEVELOPING COUNTRIES (S&DT)

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## Key Highlights

- For the most part, the S&DT provisions in the WTO Agreement provide only minor to very minor benefits to developing countries and sometimes no benefits at all.
- It is undeniable that developing countries benefited greatly from the S&DT provision on less than full reciprocity in tariff negotiations with developed countries right up to the Uruguay Round that led to the birth of the WTO. But the position has changed in the WTO era. In the Doha Round, the demand for reciprocity from developing countries was steeply escalated by developed countries and the value of this S&DT provision stands greatly diminished.
- The S&DT provisions in the WTO Agreement on Agriculture are undoubtedly important for developing countries but the reality is that a large group of major developed countries has walked away with provisions that give more generous treatment to them. On the whole, the Agreement on Agriculture is tilted in favour of developed countries.
- The basic obligations of the WTO Agreement apply equally to all Members, developing and developed alike, and a few minor benefits given exclusively to developing countries do not make much difference.
- When Part IV was added to GATT 1947, the main concern was the low standard of living that prevailed among developing countries. It follows that any change in the development status of a WTO Member should logically be on the basis of a rise in its standard of living.

## EXECUTIVE SUMMARY

### INTRODUCTION

The multilateral trading system is in turmoil and the world's leading trading nations are currently discussing a number of issues for WTO Reform. One of these issues is Special and Differential Treatment of Developing Countries (S&DT)

Special and differential treatment of developing countries (S&DT) was never an easy issue in international trade diplomacy. With several developing countries registering impressive increases in their share of global merchandise trade in the last two decades, it has become even more difficult, and there is a backlash from the major developed countries. Some of them are asking the question whether it is the case that developing countries have been granted too many exemptions while rigorous trade policy disciplines have been applied to developed countries. In this paper, we focus on issues in S&DT that have been raised in

the context of the current talks on WTO reform. An evaluation of the extent of benefits derived by developing countries from important S&DT provisions in the WTO Agreements is the centrepiece of this paper. It is in light of this evaluation that we put forward suggestions for the way forward.

### ORIGIN AND EVOLUTION OF THE IDEA OF S&DT

Affirmative action in trade rules in favour of developing countries first began in 1955 with the addition of a new Article, Article XVIII, titled Government Assistance to Economic Development, which accorded limited flexibility to developing countries in the use of trade policy instruments deviating from GATT obligations.



The next advance in strengthening S&DT was the addition of Part IV to GATT 1947. In the new Articles under this part, the developed contracting parties made commitments on various measures to bring about diversification in the economies of developing countries, including by providing market access to products of interest to these countries, in their primary as well as their processed forms. However, most of the apparent assurances stop short of guaranteeing action on ameliorative steps for the benefit of developing countries. Part IV also introduced the notion that developed countries would not expect reciprocity from developing countries in negotiations to reduce or eliminate tariffs and other barriers to trade. The concept of non-reciprocity evolved into one of less than full reciprocity and later, became one of the most important pillars of S&DT in the WTO framework.

In the years that followed, the momentum gathered for making further advances in the trade rules in favour of developing countries, and eventually led to an agreement on granting them preferential treatment. In 1971, a number of developed countries established schemes for tariff preference for developing countries under the Generalised System of Preferences (GSP). The mechanism of waiver was used in 1971 to achieve conformity with the MFN clause of GATT 1947.

On November 28, 1979, the decision titled 'Differential and More Favourable Treatment, Reciprocity and Fuller Participation of Developing Countries' was adopted by the

Contracting Parties (the full membership of GATT 1947). This decision, which came to be known as the Enabling Clause, established a permanent basis for preferential tariff treatment of developing countries, and dispensed with the need for waivers. Indeed, the Enabling Clause did more than just consolidate the legal position of preferential tariffs in the rules of GATT 1947. It broadened the application of S&DT in principle to non-tariff measures. Further, it provided developing countries with an alternative route to enter into economic integration arrangements among themselves without conforming to the rigorous conditions of Article XXIV of GATT 1994.

The WTO Agreement not only carried forward all the S&DT provisions from GATT 1947 but also added some more in various multilateral agreements annexed to the Marrakesh Agreement. The negotiation of specific commitments on goods and services that formed part of the multilateral agreements on goods and services was also guided by the principle.

#### SPECIAL AND DIFFERENTIAL TREATMENT IN THE WTO REFORM DEBATE

In the WTO reform debate, no one is suggesting elimination of S&DT. Rather the critical issue for the major developed countries is the undifferentiated treatment of developing countries for the application of S&DT provisions. So far, the practice has been that any WTO Member that declares itself to be a developing country is treated as one. With the remarkable economic

development of more than a dozen developing economies and the phenomenal rise of China in recent decades, developed countries cannot live with the idea of self-declaration any longer. In its assessment of the S&DT provisions in the WTO Agreement, the US takes a somewhat extreme view that in the WTO Agreement, while all the rules apply to developed countries only a few apply to developing countries. It asserts that every negotiation in the WTO has become 'a negotiation about setting high standards for a few, and allowing vast flexibilities or exemptions for the many.'

The US has formally proposed that in future negotiations, four categories of WTO Members must be denied S&DT: members of the OECD or applicants for its membership; members of the G20; high-income countries, as classified by the World Bank; and those that have a share of 0.5 per cent or more in global merchandise trade. The EU has generally supported the US proposal to restrict the scope of S&DT benefits to developing countries other than LDCs. India and China, supported by a number of other developing countries, have put forward the argument that even though many developing country Members of the WTO have made significant economic progress in past decades, the standards of living in most developing country Members are well below those prevailing in developed country Members.

Table 1: Tariff profiles of Selected Developed and Developing Country Members

USA	Bound		Applied MFN	
	Average	Maximum	Average	Maximum
Animal Products	2.4	2.6	2.3	2.6
Dairy Products	17.6	11.8	18.4	11.8
Cereal Preparations	3.5	56	31	44
Oilseeds, Fats and Oils	4.3	164	7.2	164
Sugar & Confectionary	13.3	66	13.8	45
<b>Canada</b>				
Animal Products	23.7	532	24.1	526
Dairy Products	222	314	249	314
Cereal Preparations	20.5	277	199	277
Oilseeds, Fats and Oils	5	218	3.1	218
Sugar & Confectionary	4.2	13	3.5	13

<b>European Union</b>				
Animal Products	15.3	94	15.6	94
Dairy Products	37.2	212	37.1	200
Cereal Preparations	16	52	13.7	52.00
Oilseeds, Fats and Oils	5.3	100	5.3	100
Sugar & Confectionary	24.3	117	24.5	117
<b>Japan</b>				
Animal Products	14	303	11.1	303
Dairy Products	85.6	503	89.3	503
Cereal Preparations	60.2	662	34.6	662
Oilseeds, Fats and Oils	8.3	440	12.9	440
Sugar & Confectionary	36.8	165	22.1	71
<b>Brazil</b>				
Animal Products	37.8	55	8.3	16
Dairy Products	43.8	55	18.3	28
Cereal Preparations	112.9	55	10.7	20
Oilseeds, Fats and Oils	34.4	35	7.9	14
Sugar & Confectionary	34.4	35	16.5	20
<b>China</b>				
Animal Products	14.9	25	13.2	25
Dairy Products	12.2	20	12.3	20
Cereal Preparations	23.7	65	19.5	65
Oilseeds, Fats and Oils	11.1	30	10.9	30
Sugar & Confectionary	27.4	50	28.7	50
<b>India</b>				
Animal Products	104.5	150	30.8	100
Dairy Products	63.8	150	35.7	60
Cereal Preparations	114.1	150	32.9	100
Oilseeds, Fats and Oils	165.1	300	33.9	100
Sugar & Confectionary	126.2	150	50.9	100
<b>Indonesia</b>				
Animal Products	43.1	50	7.1	30
Dairy Products	74.0	210	5.5	10
Cereal Preparations	44.6	160	7.4	150
Oilseeds, Fats and Oils	37.9	60	4.4	10
Sugar & Confectionary	58.3	95	7.5	20
<b>Argentina</b>				
Animal Products	26.5	35	8.3	16
Dairy Products	35.0	35	18.3	28
Cereal Preparations	33.1	35	10.9	31
Oilseeds, Fats and Oils	34.6	35	8.0	36
Sugar & Confectionary	33.3	35	17.5	20

Source: World Tariff Profiles 2020, WTO

## EVALUATION OF THE S&DT PROVISIONS IN THE WTO AGREEMENT

A critical analysis of the existing S&DT provisions leads to the conclusion that the overall trade benefits that they provide are extremely modest.

The S&DT provisions in the agreements on SPS measures, anti-dumping measures and import licensing procedures do not result in any benefit at all. Those in the agreements on technical barriers to trade, customs valuation, subsidies and countervailing measures, and safeguards deliver only minor or very minor benefits. The same observation holds good for the S&DT measures in the DSU. The value of S&DT provisions in Article XVIII: B and Article XVIII: C in GATT 1994 and of the TRIMS Agreement has faded away as the trade policy measures that they address have

fallen into disuse. The only S&DT that provides more than a minor benefit is the exemption from actionability for serious prejudice in the Agreement on Subsidies and Countervailing Measures.

The S&DT provisions in the Agreement on Agriculture are undoubtedly important for developing countries but the reality is that a large group of major developed countries has walked away with provisions that give more generous treatment to them. It is arguable that, on the whole, the Agreement on Agriculture is tilted in favour of developed countries. Nothing demonstrates this better than the tariff profiles of the major developed and developing countries in Table 1.

It must be acknowledged that developing countries benefited greatly from the S&DT provision on less than full reciprocity in tariff negotiations with developed

countries right up to the Uruguay Round. The same can be said about the notion of more favourable treatment for developing countries embedded in Article IV and XIX of GATS. But the position has changed in the WTO era. In the Doha Round, the demand for reciprocity from developing countries was steeply escalated. This experience has demonstrated that the rules on less than full reciprocity provide no assurance that these provisions will be translated into practice in future negotiations. The political will to implement the provisions on less than full reciprocity has vanished.

## CONCLUSIONS AND THE WAY FORWARD

For the most part, the S&DT provisions in the WTO Agreement provide only minor to very minor benefits to developing countries and sometimes no benefits at all. The rule of less than full reciprocity in tariff

negotiations did no doubt provide meaningful benefits in the past. But rules alone are not sufficient and we have seen that the demand for reciprocity was sharply escalated in both tariff and services negotiations in the Doha Round. In agriculture too, although major benefits were provided to developing countries by way of S&DT, these were more than counterbalanced by the advantages provided to developed countries.

The assertion made by the United States that in the WTO Agreement all the rules apply to developed countries and just some of the rules apply to developing countries is far from the truth. It is certainly not the case that developing countries are exempted from obligations and these apply asymmetrically solely to developed

countries. The fact is that all the basic rules apply equally to all Members and a few minor benefits here and there make little difference. The characterisation of S&DT provisions as 'vast flexibilities or exemptions' is sheer hyperbole.

At the same time, we need to recognise the merit of the suggestion for graduating the more advanced developing countries out of the category. When Part IV was added to GATT 1947, the main concern was the low standard of living that prevailed among developing countries. It follows that any change in the development status of a WTO Member should logically be on the basis of a rise in its standard of living. Of the four alternatives proposed by the USA, clearly a rise in the share of world

merchandise trade is not an appropriate measure, as it does not take into account the standard of living. The same argument applies to the membership of the G20, which is a political grouping and not one based on the standard of living. The suggestions to treat Members that have been classified by the World Bank as high-income countries or that have joined the OECD as developed are more logical as both groupings can be associated with a higher development status.

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