STUDY

Debate on Special and Differential Treatment in the Multilateral Trading System

Past, Present and Future

CUTS International

Debate on Special and Differential Treatment in the Multilateral Trading System: Past, Present and Future

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Abbreviations

ASCM	Agreement on Subsidies and Countervailing Measures
CTD	Committee on Trade and Development
CTD-SS	Committee on Trade and Development in Special Session
G90	Group of 90 developing countries comprising African Group, ACP Countries and LDCs
GATS	General Agreement on Trada in Services
GATT	General Agreement on Tariffs and Trade
GC	General Council
GPA	Government Procurement Agreement
GSP	Generalised System of Preferences
ITO	International Trade Organisation
LDCs	Least Developed Countries
MC	Ministerial Conference
MNCs	Multinational Companies
SDT	Special and Differential Treatment
SPS	Sanitary and Phytosanitary Measures
TBT	Technical Barriers to Trade
TFA	Trade Facilitation Agreement
TRIMs	Trade Related Investment Measures
TRIPS	Trade Related Intellectual Property Rights
UNCTAD	United Nations Conference on Trade and Development
WTO	World Trade Organisation

Abstract

Special and Differential Treatment for developing countries has evolved through the history of the WTO and GATT. Various provisions have entered the legal texts at different stages marking key moments in the political economy of global trade and the negotiating history of the WTO.

The most crucial aspect of this evolution has been the debate between calls for trade liberalisation led mostly by developed countries on the one hand, and developing countries' insistence on the need for policy space to make development friendly policies which could be at odds with some provisions of the WTO. The debate has intensified throughout the Doha Round negotiations.

More recently, there have been calls for a reform of the concept by some developed members to create categories for differentiation among developing members; or to adopt a case-by-case approach. Developing countries have resisted these approaches citing reasons why SDT remains an embedded right for development.

This paper tracks the historical evolution leading up to the present debate and presents an analytical discussion on the current ideas being discussed. It is argued that forcing arbitrary criteria for development or adopting selective approaches to SDT could be futile and unyielding in terms of the future of negotiations. A more pragmatic approach with a voluntary opt-out option for countries could provide a possible solution.

SECTION 1

History of Developmental Concerns in Trade Matters

The history of GATT/ WTO essentially follows changing patterns of the global economic order after the Second World War. This story begins where the international and domestic political dynamics of the US as the rising global superpower, are intertwined with a post Second World War reconstruction of Europe and a post-colonial view of the world. Over subsequent decades, the multilateral system for governing international trade has largely evolved with the predominant aim of creating rules for trade liberalization and a framework for implementing those rules. This aim was in sync with those of other Bretton Woods institutions created around the same time to manage other global economic arrangements in the New World Order.[1]

Similarly, the development discourse has followed its own trajectory. As countries gained independence from colonial powers, building their economies to catch up with the rest of the world was the foremost priority and a huge challenge. Naturally, with no experience of doing so, the recourse for such countries would have been to follow what the relatively advanced countries had done successfully before them, i.e. achieve a structural transformation of their economies through trade and industrial policies.[2]

The two strains of discourse began to intertwine in history where on the one hand developing countries were attempting to catch up with the advanced countries through economic development, and on the other trying to integrate themselves into newer and evolving multilateral rules on international trade. This confrontation gave rise to the strand of discussion which is the primary subject of this paper, i.e. Special and Differential Treatment (SDT) for developing countries.

1 Along with the changing guard for establishment of a new global hegemon, unilateral raising of tariffs by the United States in June 1930 (through the Smoot-Hawley Tariff Act), and reactionary economic measures of various countries are thought to be the triggers for these liberalisation moves. However, this should not be implied to mean that international trade was generally free before the events in the 1930s. To be certain, most of the developing countries of today were at the time, colonies of European countries and had largely no say in their external trade policies. Their trade with the colonial masters was carried out through so-called 'unequal treaties'. At the same time, advanced countries themselves practiced considerable protection in their conduct of international trade for various purposes including industrial development. A detailed account of the trade regimes of advanced countries especially during the first half of the 20th century is given in Chang (2002).

2 In the classical development paradigm, structural transformation is a necessary and the most vital step in the economic development of countries (Pasinetti, 1981; Rodrik, 2007; Lin, 2012). This entails a heightened emphasis on industrial activities with a consequent enhancement of productive capacities and technological capabilities for innovation and industrial upgrading (Lall, 1992; Lin and Chang, 2009). Therefore, according to this paradigm, active industrial and technology policies ought to be the prime emphases of any development pursuits.

Issues of Policy Space for Development

It has been argued in development debates and generally recognised that policy space is a crucial ingredient for developing countries when they attempt to formulate development policies. Richard Cooper (1968) in his book, "The Economics of Interdependence: Economic Policy in the Atlantic Community", raised the question of Policy Space arguing that countries faced a dilemma in "*how to keep the manifold benefits of extensive international intercourse free of crippling restrictions while at the same time preserving a maximum degree of freedom for each nation to pursue its legitimate economic objectives*" (p.15). At the time, Cooper was referring to the then recently established international economic framework, with the IMF and GATT being primary drivers of financial and trade flows between countries, respectively. Moreover, his analysis was restricted to countries in the Atlantic Community – those that had achieved a significant level of industrialisation and economic development.

Since then, the global economy has moved significantly in the opposite direction to Cooper's proposition. Firstly, the international economic order has brought almost the entire world into its domain, including the poorest of countries, and it no longer applies only to the post-war western world. Secondly, the nature of commitments undertaken by countries in this new order is such that it extends much further into their policymaking domains. Therefore, while it might look similar, in the present context, developing countries face a much tougher situation vis-a-vis policy choices for development and their international commitments, compared to those that were the intended beneficiaries of the Atlantic Charter.

It is argued that policy space is crucial for development as developing countries need to have a variety of policy tools available to them when dealing with the multifaceted development problems in their countries. This view stems from the belief that government intervention is essential for development, given numerous market failures, technological asymmetries, and elusive gains from trade liberalisation (Kumar and Gallagher, 2007).

On the other hand, the laws and regulations of the multilateral trading system are generally built around a predominant global narrative of free trade, built over decades, and strengthened after the Washington Consensus in 1989, implying that more trade is always good, and that removing barriers to trade in all cases helps all countries in the global economy. Therefore, any discipline of GATT or WTO has been or will be built on the understanding and objective of liberalisation to drive more trade across borders and possibly under all circumstances.

While countries at lower levels of development find themselves obliged to integrate into the system of world trade and at the same time confronted with various policy choices in developmental pursuits, the concept of policy space creeps in. In this backdrop, development economists argued that international rules of engagement for developing countries should be revisited to allow them enough space to choose their own set of policies which they consider best for their country's development (Wade, 2005; Rodrik, 2004). This area of research has further expanded into calls for reform of international organisations including the WTO and a completely new outlook on development aid for developing countries (Stiglitz and Charlton, 2005; Deere-Birkbeck, 2011, 2009; Nolan, 2007; Woods, 2008).

Within this debate, arises the issue of Special and Differential treatment for developing countries, which is premised on the recognition, at the time of its conception, that developing countries need differential treatment and should not be forced to follow the same obligations as developed countries.[3] In the following sections, the paper will present a brief historical evolution of SDT principles in multilateral trade and lead them up to the developments in the Doha Round in the subsequent section. It will then discuss the most recent concepts being presented in the WTO on reform and transformation of the principle and how differentiation could be addressed. Finally, it will present some preliminary conclusions.

3 Chang (2006) has argued that, it is problematic, in a developmental context, to refer to this treatment as "Special", as it conveys the idea that it is an unfair advantage for the person receiving the treatment. Just as it is wrong to call, for instance, braille writing for the blind as special treatment, it is incorrect to refer to different tariffs and subsidies for developing countries as some special favour. It is only "differential" treatment for countries with different capabilities and goals.

SECTION 2

Evolution of SDT in the Multilateral Trading System

This section will present a brief history of the evolution of the concept of SDT through the various rounds of the GATT and WTO till the modern times.

2.1 Post-War Developments

From 1946 to 1948, negotiations on the Charter for an International Trade Organisation (ITO) were conducted within the framework of the U.N. Economic and Social Council. This culminated in the Havana Charter, as it was known after being signed in 1948 which covered a vast range of issues, including employment, development, reconstruction, commercial policy, restrictive business practices and commodity agreements. The Charter was eventually shelved because the US did not ratify the agreement. According to Diebold (1952), neither the protectionist nor the liberal lobby in the US seemed happy with the ITO. For the former it was a means to expose their economy's weaknesses to sterner competition; for the latter, it was too protectionist and allowed too many exceptions to countries to continue their interventionist policies.

In 1947, the Chapter of the ITO Charter on commercial policy was transformed into the General Agreement on Tariffs and Trade (GATT). The GATT did not enter into force at the time but was, instead applied on the basis of the Protocol of Provisional Application of 1947 and the protocols of accession to the GATT. It is also important to understand the relationship between the ITO and the GATT at the time. The ITO was the intended outcome of post-war negotiators as a tool for liberalising and regulating international trade. The GATT was merely a forum for exchanging tariff concessions in the interim which was to be later made part of the larger ITO.

2.2 Initial Days – ITO charter

The idea that developing countries could not compete or bargain with developed ones on the basis of reciprocity was perceived as early as the negotiations for the ITO. At the time, developing countries such as Brazil had argued that the concept of MFN would only be appropriate for countries that were at more advanced stages of development (Ismail, 2020). However, despite attempts by developing countries, an initial amendment seeking recognition of their special situation was blocked by the US (Wilkinson and Scott, 2008). The Havana Charter did, however, recognise the use of specific government intervention for industrial development and other purposes in economies that were relatively undeveloped and for the reconstruction of those that had been devastated by war (Irfan, 2015).

2.3 GATT Review 1954-55

The concepts of MFN and reciprocity which formed the core of GATT disciplines, were continuously challenged during the early GATT rounds by developing countries in an attempt to qualify the concepts and to ensure the special needs of developing countries are taken into account

The 1954-1955 GATT review was a successful point for such efforts, as it enabled the first differential rule for developing countries. An amended Article XVIII of GATT made it easier to deal with the specific circumstances of developing countries by allowing their governments to take actions (otherwise inconsistent with GATT principles) to protect infant industries and deal with balance of payments problems.

2.4 Kennedy Round and Adoption of PART IV (1964-67)

Discussions on the specific plight of developing countries in international trade continued through the 1960s, and proved significant. The Haberler Report (1958) highlighted the absence of market access opportunities for developing countries, vindicating developing country concerns. It further concluded that, export earnings of developing countries were insufficient for their economic development and recommended that developed countries should open their markets to exports from developing countries (Low et al., 2018).

At the same time, the writings of Raul Prebisch and Hans Singer had gained significant attention in matters of development and trade. They argued that development required the diversification of developing county exports away from primary production towards manufacturing to better the terms of trade. [4] This process of diversification, as explained in the Prebisch-Singer thesis, would require development of local manufacturing on the back of domestic demand (Margulis, 2017).

In 1961, a Declaration in the GATT Annex, on Promotion of Trade of Less-Developed Countries highlighted the need for non-reciprocity in trade relations between developed and developing countries (Keck and Low 2004; Meyer and Lunenborg, 2012).

In this context, under significant and building pressure, some provisions (Articles XXXVI to XXXVIII) were added in the GATT during the Kennedy Round constituting Part-IV of GATT as it is known today. Part IV committed developed countries to give high priority to the reduction and elimination of barriers for goods of export interest to developing countries. Part IV clarified the specific predicament of developing countries in the GATT system and stated that developing countries would not be required to make the same concessions on tariffs, or the removal of non-tariff barriers, as developed countries (GATT Article XXXVI:8).

Low et al. (2018) have argued that even though the Haberler and Prebisch-Singer theses were differently focused on different

4 Ibid 2.

aspects of development for developing countries, they ended up creating a situation for a “minimalist bargain” between developed and developing countries with very limited market access commitments from rich countries on products that mattered most to developing countries in exchange for limited commitments from many poorer countries.

Nevertheless, even in today’s context of the debate, it is important to recognise that these developments were negotiated outcomes involving significant debate and compromises, as explained later.

2.5 Generalized System of Preferences (1971)

Part IV of the GATT also formed the basis for the introduction of the Generalized System of Preferences (GSP) schemes in favour of developing countries. These were unilateral preferences granted by developed countries on certain products to developing countries.

During the 1960’s, with the formation of the UNCTAD and the Group of 77, developing countries seemed to be enhancing their bargaining power to some extent. The Soviet Union had also been pushing for a more global UN based organisation to look at trade issues as opposed to the western dominated GATT (Hudec, 1987). The concept of unilateral liberalisation was, thus agreed to. Since it was a derogation from the GATT principle of MFN, it was legalised in 1971 pursuant to waiver granted under Article XXV:5 where developed countries were authorized to grant, for a period of ten years, preferential treatment to developing countries. These schemes would later be formalised in the Enabling Clause. and permanently integrated into GATT under the ‘Enabling Clause’ in 1979 (Grossman and Sykes, 2005).

2.6 Enabling Clause and Tokyo Round Decisions (1979)

Three decisions concerning differential treatment for developing countries came about as a result of the Tokyo Round of GATT. Firstly, the decision on ‘Differential and More Favourable Treatment, Reciprocity and Fuller Participation of Developing Countries’, known otherwise as the "Enabling Clause", was incorporated into the system. The Enabling Clause allowed an extension to the waiver legalising the General System of Preferences in 1971 and according to Hudec (1987), gave permanent legal authorisation for the GSP preferences. In addition, the Enabling Clause also allowed developing countries to grant special treatment to other developing countries and least developed countries.

The other two 1979 Decisions dealt with trade measures developing countries could take for Balance-of Payments purposes, expanding the provisions in Article XVIII; and the provision to have at least one member on a dispute settlement panel from developing countries, if the dispute involved a developing and a developed country (Meyer and Lunenbourg, 2012).

As explained earlier, this was again, a negotiated outcome where developing countries refused to sign any of the agreements or “codes” developed in the Tokyo Round until developed countries would agree on special and differential treatment provisions. The US and the other developed countries, therefore agreed along with a non-binding assurance of technical assistance for developing countries to help them implement new provisions.

Ismail (2020) has argued that developed countries had failed to address the key interests of developing countries due to a concomitant rise in protectionism in their own markets on products of specific interest to developing countries, such as Agriculture and Textiles. Therefore, Part IV of GATT (1965) and the Enabling Clause (1979) were a direct response to that failure.

2.7 The Uruguay Round

By the time the Uruguay Round was launched, the special needs and status of developing countries was well recognised, albeit limited to preferential market access on the basis of non-reciprocity. During the Uruguay Round the SDT provisions acquired a new structure, i.e. to assist developing countries in implementing the WTO disciplines and allowing more time for that to implement the provisions (Whalley, 1999). Thus, developing countries were given extra transitional periods, technical assistance, and capacity building opportunities, to allow them to integrate into the new disciplines (Singh, 2003).

The adoption of the principle of Single Undertaking during the WTO allowed or arguably even necessitated SDT provisions to be shaped in this way. This concept meant that nothing could be agreed unless everything was agreed implying that countries could not pick and choose which agreement or provision to undertake. In other words, if they wished to sign the agreement on Agriculture, they would have to take the full package with the GATS, TRIPS, TRIMS agreements etc. To allow developing countries to palate all these obligations, the transitional periods and technical assistance concepts were introduced. Thus, references to developing countries' rights have been systematised under the post Uruguay Round agreements in a few basic ways: preambular provisions that refer to or recall the need to offer special consideration to developing countries; agreements containing different rights allowing developing countries a transitional period to implement the obligations; and others containing different thresholds for developing countries while implementing certain obligations as compared to developed countries.

According to the latest compilation by the WTO Secretariat in document WT/COMTD/W/239 dated 12 October 2018[5], it distinguishes six (6) types of SDT provisions listed below:

1. Provisions aimed at increasing the trade opportunities of developing country Members;

2. Provisions under which WTO Members should safeguard the interests of developing country Members;

3. Flexibility of commitments, of action, and use of policy instruments;

4. Transitional time periods;

5. Technical assistance;

6. Provisions relating to LDC Members.[6]

5 The compilation was done by the Secretariat following a decision in the Committee on Trade and Development. It was agreed that the document would be updated every 2 years and the last revision was due in 2020. This fact was highlighted by the Chair in the meeting of the CTD on 18 December 2020 (WT/COMTD/M/113).

6 The WTO secretariat has classified LDC provisions as a separate category. However, LDC-specific provisions can also be classified in any of the other 5 categories.

Based on this classification, there are 155 SDT provisions across various agreements, which are listed in Table 1. It may be noted that these figures are latest as of 2018 and not entirely reflective of the provisions at the time of the Uruguay Round. According to WTO (2000), there were 145 such provisions in 2000 of which 107 had been agreed at the end of the Uruguay Round (Singh, 2003). Since 10 provisions have been added under the TFA, which was concluded in 2015, it would be safe to assume that not many amendments have come about by way of these provisions since the launch of the Doha Round. It may also be noted that the provisions contain SDT provisions possibly mentioned in certain Ministerial, or General Council decisions. The actual number of SDT provisions can vary according to the method of counting. For example, if preambular language is excluded and also considering that some provisions could be spread out over various paragraphs, the number could be lesser and closer to 100. Moreover, as pointed out by Kessie (2000), quite a few of the provisions are of the "best endeavour" type or expressed in imprecise and hortatory language making them unenforceable. It can be said that the compilation is at best calculative and does not make any value judgements, providing nevertheless, a gross assessment of the situation.

TABLE 1: SPECIAL AND DIFFERENTIAL TREATMENT PROVISIONS BY TYPE AND AGREEMENT

Agreement	Provisions aimed at increasing the trade opportunities of developing country Members	Provisions that require WTO Members to safeguard the interests of developing country Members	Flexibility of commitments, of action, and use of policy instruments	Transitional time-periods	Technical assistance	Provisions relating to Least developed country Members	Total by Agreement[7]
General Agreement on Tariffs and Trade 1994	**8**	**13**	**4**				**25/25**
Understanding on Balance of Payments of GATT 1994			**1**		**1**		**2/2**
Agreement on Agriculture	**1**		**9**	**1**		**3**	**14/13**
Agreement on the Application of Sanitary and Phytosanitary (SPS) Measures		**2**		**2**	**2**		**6/6**
Agreement on Technical Barriers to Trade	**3**	**10**	**2**	**1**	**9**	**3**	**28/25**
Agreement on Trade-Related Investment Measures (TRIMs)			**1**	**2**		**1**	**4/3**
Agreement on Implementation of Article VI of GATT 1994		**1**					**1/1**
Agreement on Implementation of Article VII of GATT 1994		**1**	**2**	**4**	**1**		**8/8**

7 The first figure reported in this column is the sum over all categories of the listed number of S&D provisions in each Agreement. This figure is obtained by counting each appearance of a provision, including when a provision is classified in more than one category. There are 21 provisions across the WTO Agreements which are classified in more than one category: one provision in the Agreement on Agriculture, three in the TBT Agreement, one in the TRIMs Agreement, three in the SCM Agreement, two in the GATS, two in the GPA and nine in the TFA (the details can be found in the relevant sections). The second figure in this column, on the other hand, reports the number of provisions in each Agreement when each provision is counted only once. The total of 155 over all the Agreements counts the provisions once, while the total of 183 is the total of all listed provisions.

Agreement	Provisions aimed at increasing the trade opportunities of developing country Members	Provisions that require WTO Members to safeguard the interests of developing country Members	Flexibility of commitments, of action, and use of policy instruments	Transitional time-periods	Technical assistance	Provisions relating to Least developed country Members	Total by Agreement[7]
Agreement on Import Licensing Procedures		3		1			4/4
Agreement on Subsidies and Countervailing Measures (SCM)		2	10	7			19/16
Agreement on Safeguards		1	1				2/2
General Agreement on Trade in Services (GATS)	3	4	4		2	2	15/13
Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS)				2	1	3	6/6
Understanding on Rules and Procedures Governing the Settlement of Disputes.		7	1		1	2	11/11
Agreement on Government Procurement (GPA)		3	6		1	2	12/10
Agreement on Trade Facilitation (TFA)			3	7	7	9	26/10
TOTAL	**15**	**47**	**44**	**27**	**25**	**25**	**183/155**

Source: WTO Secretariat document WT/COMTD/W/239 (12 October 2018)

2.8 Doha Round Negotiations

By the end of the Uruguay round the principle of SDT had been well and truly established as one of the fundamental pillars of the multilateral trading system. In view of various analysts, the Uruguay Round had struck a grand bargain between developed and developing countries. In a single undertaking, developing countries had taken on commitments under detailed agreements on Services and Intellectual Property Rights, besides expansion in existing rules in various aspects of Trade in Goods. These were huge commitments with challenging obligations in areas that many developing countries had not encountered before in terms of their domestic legislations or international agreements. In return, developed countries had promised SDT provisions in terms of transition periods, technical assistance, and a promise to phase out quantitative restrictions (quotas) on Textiles and Clothing.[8]

However, it was also felt that most SDT provisions were still 'best endeavour' clauses, not legally enforceable and not conferring tangible benefits to developing countries. By the year 2000, most of the transition periods for developing countries were also coming to an end and they had to start implementing several provisions they were earlier temporarily exempted from. By the time of the first Ministerial Conference (in Singapore in 1996), developing countries had already started raising 'implementation issues' or other rules from the Uruguay Round where they felt they had been treated inequitably.

In this backdrop, developing countries felt that they needed to find ways to overcome their challenges. Improvements in SDT along with the implementation issues became the core 'development' pillar of the Doha Development Round. Developing countries mainly relied on Paragraph 44 of the 2001 Doha Ministerial Declaration mandating 'strengthening' of Special and Differential Treatment provisions in the WTO Agreement, in order to make them 'more precise, effective and operational'[9].

Two periods of activity can be identified in this negotiation process, which has unfortunately not been resolved to date. From 2001 to 2005, as with the rest of the Doha Round, engagement and negotiation in this pillar saw intense activity. In 2002 and early 2003, developing countries submitted 'Agreement-specific proposals' in the Committee on Trade in Development in Special Session (CTD-SS), with the African Group proposing most provisions alongside the LDC group. A few other formal proposals were also tabled between the Cancun Ministerial in 2003 and Nairobi Ministerial Conference in 2015. Some headway was arguably achieved when Annex F of the Hong Kong Ministerial Declaration

8 Critics have argued that the ATC (Agreement on Textiles and Clothing) was also end loaded with most of the implementation coming in 2005, making it unprofitable for potential beneficiaries for most of its duration.

9 The full text of Paragraph 44 reads: "We reaffirm that provisions for special and differential treatment are an integral part of the WTO Agreements. We note the concerns expressed regarding their operation in addressing specific constraints faced by developing countries, particularly least-developed countries. In that connection, we also note that some members have proposed a Framework Agreement on Special and Differential Treatment (WT/GC/W/442). We therefore agree that all special and differential treatment provisions shall be reviewed with a view to strengthening them and making them more precise, effective, and operational. In this connection, we endorse the work programme on special and differential treatment set out in the Decision on Implementation-Related Issues and Concerns".

(2005) was adopted allowing a few LDC specific proposals to be accepted. However, Ministers recognized that substantial work still remained in the pillar and committed themselves to addressing the development interests and concerns of developing countries.[10]

Between 2006 and 2010 there was little movement on this pillar. After the 2013 Bali Ministerial Conference, developing countries reinitiated a process, primarily coordinated by the African group, identifying most relevant SDT provisions. This resulted in the so-called G-90[11] package of 25 proposals tabled in the CTD-SS with a view to achieving the mandate of Para-44 of the Doha Declaration.

G-90 Proposals

The G-90 package was submitted in July 2015, considerably watered down from the 88 original proposals presented in the context of Doha Para 44.[12] The 25 proposals are briefly introduced in Table 2.[13]

TABLE 2: SUMMARY OF THE 25 PROPOSALS BY G90 ON SDT IN 2015

Proposals 1 to 3	Article XVIII GATT (Governmental Assistance to Economic Development)	make more usable by easing onerous requirements; broaden definition of infant industries; suspension of the right to retaliate against countries using the Article.
Proposal 4	Article XXVIII (Modification of Schedules)	to benefit smaller countries which could not find a way to negotiate when larger countries opted for modification or withdrawal of commitments under the article.
Proposal 5	Article 15.1, Agreement on Agriculture	developed country Members are to bind all their LDC preferences for agricultural products, with a goal of 100% DFQF in agriculture
Proposals 6 and 7	Article 10 of the SPS Agreement	Developed countries to notify all proposed SPS measures, not only a subset of SPS measures to help developing countries track and understand implications.
Proposals 8, 9 and 17	Trade-Related Investment Measures (TRIMs)	to enable developing countries to introduce new TRIMs in order to promote domestic manufacturing capabilities, stimulate transfer of technology, promote domestic competition and correct restrictive business practices
Proposals 10 and 11	TRIPS Agreement	LDCs be exempted from the TRIPS Agreement until they cease to be LDCs.
Proposals 12 and 13	GATS	boost LDC services exports, including removing limitations on movement of natural persons and national treatment barriers, currently not covered well by LDC Waiver. Also, adopt concrete domestic measures to facilitate transfer of technology.
Proposal 13	Article V.3 (Economic Integration) of GATS	services agreements should not necessarily need to have to cover substantially all services sectors when developing countries are a party to such agreements

10 Paragraph 36 of the Hong Kong Ministerial Declaration https://www.wto.org/english/thewto_e/minist_e/min05_e/final_text_e.htm

11 Africa Group; Least Developed Countries; and the ACP - African, Caribbean, and Pacific countries.

12 WTO documents JOB/DEV/29; JOB/TNC/51 dated 10 November 2015.

13 South Centre (2017) has compiled a detailed summary of these G-90 proposals by article and agreement.

Proposal 14 and 16	Article 27 of the ASCM	Members exercise restraint with respect to challenging subsidies of developing countries, and allow use of subsidies based on local content.
Proposal 15	Article 12.3 TBT	similar to Article 10.2 SPS
Proposal 18	Customs Valuation Agreement	allow LDCs to use minimum or reference values in cases of insufficient or inadequate assistance, lack of customs cooperation or access to international pricing data.
Proposal 19	Safeguards	a safeguard measure shall not be applied to an LDC whose import share into that country is 10 per cent or less.
Proposal 20	Paragraph 6 of Article XXXVI (Trade and Development – Principles and Objectives)	WTO Members coordinate their work to ensure that LDCs are not subjected to conditionalities on loans, grants and ODA that are inconsistent with their rights under WTO.
Proposal 21	Preference Erosion	certain general solutions to this problem, mainly by requesting developed countries to provide compensatory and adjustment support.
Proposal 22	Enabling Clause	developed countries to consult with LDCs to ensure meaningful market access is obtained under the (GSP)
Proposal 23	Articles XXXVI and XXXVI.2b	clarifies type of collaboration needed to achieve food security.
Proposal 24	GATT Article XVII (STEs)	allow STEs to play a role in preventing consumer prices from exceeding certain limits
Proposal 25	Paragraph 10 of Article 4 of the Dispute Settlement Understanding	attention to the particular problems and interests of developing countries and LDCs before establishment of a panel as well as during panel proceedings.

Source: Author's compilation from South Centre (2017) and WTO document JOB/DEV/29; JOB/TNC/51 of 10 November 2015

Despite immense efforts by the G90, no outcome was achieved in Nairobi. However, through continued discussions, the proposals were reduced from 25 to 10 by the developing countries (G-90). Developed countries had continued to argue that the proposals were too broad-based, and detailed and demanded more specificity in the requests. The G90 engaged in extensive consultations at the bilateral and multilateral levels and prepared, what could be called a document with the bare minimum of proposals which would appear as the most important at the time. The ten proposals were initially tabled on the eve of MC11 [14] and carried to the Ministerial Conference in Buenos Aires as a draft Ministerial Decision [15]. These proposals in certain instances resembled the ones in the earlier version of 25. In other areas, the earlier proposal was slightly amended to make it more specific, concise, and more practicable. In some places, a proposal was deleted or two ideas were presented together under one general theme. A brief tabular description of the ten proposals is presented in Table 3.

14 WTO document number JOB/GC/160 and JOB/TNC/65 dated 28 November 2017

15 Contained in document number WT/MIN(17)/23/Rev.1 dated 10 December 2017

TABLE 3: SUMMARY OF THE 10 PROPOSALS BY G90 ON SDT IN 2017

Proposal 1	Trade-Related Investment Measures (TRIMs)	to allow developing countries to introduce new measures in order to promote domestic manufacturing capabilities, stimulate indigenous development of technologies, promote domestic competition and correct restrictive business practices, etc. for up to 15 years.
Proposals 2	GATT Article XVIII Sections A and C	make more usable by easing onerous requirements; suspension of the right to retaliate against countries using the Article.
Proposal 3	GATT Article XVIII Sections B	make easier to implement and remove excessive conditions on developing countries.
Proposals 4	SPS Agreement	Developed countries to consult at an early stage with developing members while proposing a measure. More time to be allowed for developing countries to adjust to the proposed measure, and if applied urgently, compensation be provided.
Proposal 5	TBT Agreement	Similar to proposal 4 on SPS
Proposal 6	ASCM	subsidies granted with a view to achieving development goals, technology research and development funding, production diversification and development of environmentally sound production to be treated as non-actionable for 10 years for LDCs, and 8 years for other developing countries. Criteria for members benefiting from this also defined.
Proposal 7	Customs Valuation Agreement	instruct members to conclude Customs Mutual Assistance Agreements to exchange information about values, with particular LDCs and developing countries that have lack of access to price data.
Proposal 8	Enabling Clause	developed countries to consult with LDCs to ensure meaningful market access is obtained under the (GSP)
Proposals 9	Transfer of Technology TRIPS Agreement	specific measures to fulfil SDGs 17.6 – 8. Incentives mandated by Article 66.2 of TRIPS shall allow effective access, on fair, reasonable, and non-discriminatory terms, to technologies owned or controlled by enterprises and institutions in developed countries especially those developed through public funding, by LDCs. The working group on Transfer of Technology to monitor and report restrictive practices of MNCs
Proposal 10	Accession of LDCs	members to refrain from seeking concessions beyond their level of development and regulatory capacity of LDCs and implement a "fast-track" accession procedure for LDC's accessions.

Source: Author's compilation from WTO document WT/MIN(17)/23/Rev.1 dated 10 December 2017.

At MC11, once again, there was no consensus achieved on the proposals. Developed countries continued to show reservations on the content of the proposals. Since then, the proposals have remained on the table, and are followed in the CTD Special Session in its meetings. Certain further revisions were made by the proponents in 2019 in order to take into account the various comments and suggestions of various

members, including the developed countries.[16]

Since then, the stalemate has continued, with developing countries maintaining that all proposals are equal in terms of importance.

Developed members, however, have expressed concerns with the scope of the proposals, both in terms of coverage as well as the nature of flexibilities, and the lack of meaningful differentiation. They also believe that the proposed flexibilities could negatively impact on the integration of beneficiaries into the multilateral trading system.

2.9 Reverse SDT for Developed Countries

It has been argued throughout the negotiations under the Doha Round and more recently in various discussions on WTO reform and other specific committees that, developed countries have been receiving special benefits in the form of more favourable treatment through provisions established during the Uruguay Round and before (Singh, 2003; Meyer and Lunenbourg, 2012). These special benefits can only be termed as reverse SDT for developed countries.

Textile quotas until 2005, and agricultural support schemes are glaring examples of additional policy space and flexibilities in important areas negotiated by developed countries for themselves. These two sectors were typically highly protected in developed countries and were virtually excluded from any liberalisation commitments until the Uruguay Round. Even after the Uruguay Round, it has been argued that, developed countries did not undertake any real liberalisation in agriculture [17], while the Agreement on Textiles and Clothing remained strongly end-loaded to delay its implementation to the maximum extent possible (Scott and Wilkinson, 2010).

Within Agriculture, Aggregate Measure of Support (AMS) entitlements allowing for enormous amounts of product-specific subsidies including for products which are exported; Special Safeguard Provision (SSG) available to developed Members but not to most developing Members; tariff peaks and escalations; are some examples. The Nairobi Decision on Export Competition also provided flexibilities to developed countries where export subsidies had to be eliminated with immediate effect.[18]

Similarly, certain types of subsidies under the ASCM were allowed as 'non-actionable' until 2000 which were more favourable for developed countries, such as those for regional development, environmentally friendly production and for Research and Development (R&D) (Irfan, 2015).

In the GATS, commitments in the Uruguay Round were more in Mode 3 (commercial presence) than in Mode 4 (movement of natural persons); and sectoral rules e.g. on telecommunications where developed countries had major interests

16 WTO document number JOB/DEV/60 and JOB/TNC/79 dated 9 March 2020

17 Panagirya (2020) has noted that the effective level of protection in agriculture increased by an estimated 61 percent in the EU and 44 percent in the US when converting non-tariff barriers into tariffs, what he refers to as 'dirty tariffication'.

18 Footnote 4, WT/MIN(15)/45, 19 Dec 2015

According to some views, these reverse SDT provisions have proven more operational and impactful than the SDT for developing countries (South Centre, 2017; Ismail, 2020). At the same time, some others while acknowledging that these differences exist in favour of developed countries, argue that these provisions were a result of the domestic requirements of the developed countries at the time of negotiations (Bacchus and Manak, 2020; Page 2003). Hoekman, et al (2003) argue that reciprocity in such areas could have brought sizable advantages to developing countries.

SECTION 3

Recent Developments and the Differentiation Debate

The development pillar has recently become a serious bone of contention between developed and developing countries. Developed countries seeking reform wish to transform the SDT pillar into something completely different from what was agreed in the Uruguay Round, which would be a significantly watered-down version of SDT in the eyes of many developing countries. Meanwhile, developing countries are still arguing that the SDT pillar needs to be strengthened and not diluted and the pending agenda of Doha Development Round must be completed.

Within this stalemate, negotiations have continued and other developments have taken place, as discussed below.

3.1 US Proposal on Differentiation and SDT

While the G90 proposals remain on the table, United States has refused to negotiate improvements in the ten agreement specific provisions. At the same time, the US has tabled a paper in the General Council calling for an overhaul of the SDT pillar and principles of differentiation in the WTO.

In the 45-page document, titled "An undifferentiated WTO: self-declared development status risks institutional irrelevance" [19] , the US argues that differentiation on the present basis of self-declaration as developing countries is problematic for the WTO and excludes those developing countries from receiving SDT that most need it. At the same time, according to this paper, large developing countries continue to hide their economic progress behind their developing country status and enjoy preferences. Moreover, this makes negotiation impossible with these large developing countries and this has been the cause of no headway in any negotiations at the WTO.[20]

According to the paper, the US has conducted an analysis of countries based on various criteria such as UNDP's Human Development Index; economic production, per capita income, agricultural value-added and employment, and urbanization, shares of global exports of goods and services, export value and volume indices, exports of high- and medium-technology products, IP royalties, foreign direct investment, corporate size, and technological, space, and defence power.[21]

19 WTO document WT/GC/W/757/Rev.1

20 Refer to the statement by the United States in the General Council of 28 Feb – 1 March 2019.

21 Ibid 19.

Based on these variables, it is argued that tremendous progress has been made by many developing countries since 1995, signalling that they do not require the flexibilities and special and differential treatment reserved for needy developing countries. Therefore, the paper argues that the WTO should establish certain criteria for graduation of developing countries from their status, and remove the self-declaration principle which is followed only in the WTO.

In a simultaneously tabled proposal by the US, as a draft General Council decision[22], it proposes that four categories of Members, based on their level of development, will not avail themselves of special and differential treatment in current and future WTO negotiations. These categories are:

- A WTO Member that is a Member of the OECD, or a WTO Member that has begun the accession process to the OECD;
- A WTO Member that is a member of the Group of 20 (G20);
- A WTO Member that is designated as a "high income" country by the World Bank; or
- A WTO Member that accounts for no less than 0.5 percent of global merchandise trade.

In addition, the proposal states that, "Nothing in this Decision precludes reaching agreement that in sector-specific negotiations other Members are also ineligible for special and differential treatment". This caveat has become worrisome for many developing countries.

This proposal has thrown light significantly and controversially on the issue of differentiation. The issue is by no means a new one and has been present throughout the discussions during the early days of the Doha Round. In fact, the US had started voicing concerns on graduation from developing country status as early as 1971 in the wake of the competition from Japan, South Korea, and other rapidly growing developing countries (Hart and Dymond, 2003). Interestingly this is the same time that the GSP preferences were gaining legitimacy.

Nevertheless, the timing of this US paper also coincided with several other trade policy related actions and measures taken by the US under the Trump administration, most significantly against China. It has also coincided with the paralysis of the Appellate Body, and various discussions on reform of the WTO with calls for a new and responsive organisation. This puts the initiative in a different light.

According to Bacchus and Manak (2020), the US is correct that WTO needs categorical distinctions, and putting countries that need real help in the same category as those that do not, risks hurting the less-developed countries. Moreover, this would mean that countries make fewer trade commitments and assume less responsibility for meeting WTO obligations. Bacchus and Manak (2020) further argue that SDT is in principle not a desirable provision, since seeking flexibilities from liberalising commitments would be harmful and trade openness is the only way for developing countries to develop.

The US has found support in this imitative from Brazil. The country became the first cosponsor of the paper along with the US and

22 WTO document WT/GC/W/764/Rev.1

has shown its support by voluntarily withdrawing from claims of special and differential treatment in current and future negotiations. This essentially means Brazil will stop asking for certain types of treatment, such as different agricultural subsidy limits, or extra transition time to implement new disciplines, that can potentially be accorded to developing countries when negotiating new trade rules (Baliño, 2019). During the negotiations on Fisheries subsidies, Agriculture and some of the Joint Statement Initiatives, Brazil has now categorically started adopting this line.

3.2 Counter-papers by Developing Countries

On the other side of the spectrum, there have arisen numerous concerns on this proposed idea by the US. In a counter paper cosponsored by China, India, South Africa, Venezuela, Laos, Bolivia, Kenya, Cuba, Central African Republic, and Pakistan, titled "The Continued Relevance of Special and Differential Treatment in Favour of Developing Members to Promote Development and Ensure Inclusiveness [23], it is pointed out through the use of a broad range of indicators that, the development divide (economic and in human development terms) still persists between developed and developing countries.

The paper further argues that developing Members continue to confront many formidable challenges in their development paths, which underscore the continued relevance of SDT provisions in their favour. The cosponsors add that unless the WTO is willing to address the real and practical demands and specific difficulties of developing Members as well as the reversed SDT for developed Members, developing countries cannot be encouraged to make due contributions and sacrifices in future negotiations.

Another point made by the counter paper is that SDT is an integral constituent of WTO rules providing developing countries the time and flexibility to adjust to trade rules at their pace and in accordance with their level of development. Many developing countries became WTO Members because SDT was available in the architecture of the WTO agreements and without which they may never have agreed to taking on the obligations.

It is also argued that with the last caveat in the US proposal, the whole concept of SDT would be effectively destroyed and would eliminate the right for all developing countries, even LDCs as SDT could be denied even if a country were efficient in one sector alone.

Several developing countries in their statements while addressing the issue of SDT and the specific proposal of the US have reiterated and strengthened some of the points made by the counter paper above. In another submission titled "Statement on Special and Differential Treatment to Promote Development", cosponsored by the African Group, Bolivia, Cambodia, China, Cuba, India, Laos, Oman, Pakistan, and Venezuela[24] it has been noted that SDT has provided developing countries the space to calibrate trade integration and formulate domestic policies to help them reduce

23 WTO document WT/GC/W/765 Rev.2 dated 4 March 2019.

24 WT/GC/202/Rev.1 dated 14 October 2019

poverty, generate employment, and integrate meaningfully into the global trading system. However, development challenges have deepened in many areas. It is underscored that unilateral action to deprive developing Members of treaty-embedded rights 'erode the foundation of the multilateral trading system' causing systemic damage to it. The paper reaffirms four basic tenets on SDT for developing countries, i.e. unconditional rights to SDT for developing countries in WTO rules and negotiations; developing countries to be allowed to make their own assessments regarding their developing country status; existing SDT provisions to be upheld; and SDT to be provided in current and future negotiations.

Similarly, in a recent submission titled "Strengthening the WTO to Promote Development and Inclusivity by the African Group, Cuba, and India[25], the proponents have discussed various suggestions on how the WTO could promote development and inclusiveness while undertaking reforms of the organisation which are being generally proposed. The paper contains a specific section on why the architecture of SDT must be preserved. It has been highlighted that the development gap between developed and developing countries continues to be very wide. Most of the world's poor live in non-LDC developing countries (61.8%) constituting the new 'bottom billion", which means that SDT is not only an LDC issue but is equally important for other developing countries.

Within these submissions, and in general submissions, developing members have argued that SDT is a treaty embedded, inalienable right of developing countries and any attempt to dilute it would be in conflict with the fundamental premise of equity and fairness within the WTO. Some countries have gone further to suggest that the stalemate in the negotiation function is not a result of the SDT claims of developing countries and self-declared differentiation. Rather, it is due to the inability of the developed countries to accept the rightful demands of developing countries and to conclude the pending agenda of the Doha Round.

3.3 Differentiation and Case by Case Approaches

Along the spectrum of the differentiation debate, there are views on SDT that are less drastic than those proposed by the US but still daunting enough for developing countries to feel wary of them. Developed countries other than the US, such as the EU, Switzerland, Norway, Canada, and Australia have been proposing various means to provide SDT, but in a newer way that would cater to the US calls for a more differentiated membership.

In substance, they agree with the US that many developing countries have progressed to a stage where they should not require SDT. This means that any member wishing to avail of any SDT should first make a case to the membership[26] about why, how much, till when and where it needs[27] SDT in a particular sector. This would allow the membership to judge whether a certain country requires SDT

25 WT/GC/W/778/Rev.3, dated 4 December 2020

26 The case by case approach has been forwarded by the EU in a 'Concept Paper: WTO Modernisation – Introduction to Future EU Proposals', September 2018. EU continues to advocate this approach in various negotiating meetings supported by Switzerland, Norway etc. http://trade.ec.europa.eu/doclib/docs/2018/september/tradoc_157331.pdf

27 Canada refers to a needs-based approach, in its paper 'Strengthening and Modernizing the WTO: Discussion Paper', JOB/GC/201, 24 September 2018. This is similar in manifestation to the EU idea.

in a particular sector or a particular provision and for how long.

This idea seems to have gathered some appeal among certain circles. As referred to above, Low, et al. (2018) have argued that SDT was the result of a 'minimalist bargain' between developing and developed countries, and that it has found limited success in actual development of developing countries. That is because development entails much more than mere trade policy.

They elaborate that while attempts have been made to establish criteria for defining developing country status in earlier times but mostly without success. The United Nations had, however, created the sub-category of least-developed developing countries (LDCs) among developing countries. based on an agreed set of criteria. Implicit in the approach is the idea that eventually no LDCs will remain and all LDCs would become developing countries.

In a nuanced compromise, Low et al, (2018) argue that attempting to work out agreed criteria and national development status "would be a forlorn, result-free effort". But a solution to the impasse would lie in moving to a country-specific and sector/activity-based approach to differentiation.

For instance, the authors propose that, in agriculture, full negotiations could resume by creating a balance between the two competing types of SDT: that for the developed and that for the developing countries. This would mean that developed countries should prepare to offer meaningful reductions in high tariff levels and subsidies and developing countries should be prepared to take on commitments commensurate with their growing trade significance.

Low et al, (2018) also give the example of TFA as a novel solution to SDT provisions that could serve as a model. The TFA model has been argued by many to be a desirable aim in an attempt to resolve this issue. Under the TFA developing countries were allowed to choose for themselves which obligations they wished to undertake and in how much time. Members requiring technical assistance were also required to indicate which commitment they could fulfil only with technical assistance.

3.4 Discussion on Various Approaches to Differentiation and SDT

As mentioned before, SDT is not a new issue and has been under discussion from various perspectives for a long time. The question of differentiation has also been around since at least the beginning of the Doha Round where some suggestions focused on creating categories and criteria for classification of developing countries.

The issue stems generally from the wide differences in the levels of development and the promises of the WTO to bridge this gap and help developing countries catch up with advanced countries. Safadi and Laird (1996), for instance, had reported global gains from the Uruguay Round between $212 billion to US$ 510 billion. These data were also used to supplement claims that developing countries would gain substantially from the then proposed trade liberalisation, not in a way dissimilar to the claims made at the beginning of the Doha Round. While launching the Uruguay Round at Punta del Este in 1986, the contracting parties had vowed to "*ensure that developing countries,*

and especially the least developed among them, [would] secure a share in the growth in international trade commensurate with the needs of their economic development" (WTO, 1994).

However, some years after the Uruguay Round, it was felt that the predictions were not coming true. Gallagher (2005) has reported that of the actual estimated gains, 70% went to developed countries and the rest to only a few developing countries. In fact, by the year 2000, 48 LDCs had been estimated to be worse off by US$ 600 million annually. As a whole, sub-Saharan African countries were worse off by US$1.2 billion (Stiglitz and Charlton, 2004).

Nevertheless, according to the WTO, development remained at the heart of the Doha Round, and the work programme for the negotiations was commensurately termed as the 'Doha Development Agenda'. Indeed, the former Director General of the WTO, Pascal Lamy reiterated on several occasions that "Development is the raison d'être of the Doha Round" (WTO, 2005).

Again, several studies were conducted in an attempt to convince the developing world of the potential gains from concluding the Doha Round. For instance, Brown, Deardorff and Stern (2002) estimated that a 33 percent reduction in trade barriers could increase global welfare by US$574 billion. According to Hertel and Keeney (2005), global welfare gains from the Doha Round could go up to US$ 287 billion. However, Scott and Wilkinson (2010) have shown that the predictions have again fallen short and the likely gains from the Doha Round for developing countries are "both small and deeply problematic". They argue that the overall size of the Doha pie has been smaller than initially envisaged.

This inability of the WTO agreements or negotiations to deliver on their promised gains on the one hand, and the persistence, and at times growing global inequality between developed and developing countries has led most developing countries to continue their demands for Special and Differential Treatment as well as for self-recognition and declaration of their development status.

From the preceding discussions, especially propounded by Low et al.'s paper, two separate ideas appear to flow. Firstly, there is an understanding that it is futile to attempt a differentiation among developing countries within the WTO based on predefined criteria, as has been discussed and supported by many before. For instance, Page and Kleen (2004) argued many years ago that it would not be realistic to suggest that any classification can be defined on *"objectively quantifiable indicators of a country's level of development and ability to undertake commitments"* (p. ix). Moreover, they presciently asserted that any discussion of changing the present boundaries could be divisive. Also, that formal definitions for which countries are eligible for SDT, and a procedure for graduating them from that status would cause more controversy.

Secondly, while there seems little doubt that attempting differentiation based on arbitrary criteria and graduation triggers can be a complex, controversial and in the end a fruitless exercise, it is also recognised that the need for Special and Differential Treatment for developing countries is genuine. Without SDT, there may be little chance for both, the WTO to progress in its work, and for developing countries to fulfil their larger aims for development. The question then becomes, 'who' would decide 'which' developing countries have 'what' needs for which they need 'how much' SDT? The EU, Canada and other developed countries seem to suggest

that this would be in the hand of the rest of the membership when a particular, member makes an individual case every time it needs SDT for a particular aspect of a WTO agreement.

This is not only problematic at a political level but also in principle. Individual countries would find bargaining extremely difficult, at each step and every aspect of an agreement or provision, especially when any one member could block a proposal in a committee.

Secondly, many members have argued that only they, themselves are able to understand their specific development needs at a given time, which can continue to change. While SDT may be required at one moment in a particular area, it may be required in other areas at another time or concomitantly. Waiting to negotiate every time a specific flexibility is required would indefinitely delay any national policy objectives.

Moreover, from a negotiation perspective, SDT is an established, hard-fought right which has been negotiated through difficult bargains. At this juncture, developing countries would not be willing to let other members, particularly developed ones dictate to them whether they need SDT for a specific purpose or not. This is the reason the case by case and needs based proposals of EU, Canada and others have been viewed by developing members with much scepticism. In this regard, the Low et al (2018) ideas, while conciliatory, may also encounter difficulties in actual negotiations

SECTION 4

Conclusion

This paper has attempted a brief description of the various types of SDT in the WTO and GATT and how they evolved. It has then presented the deadlock which still exists from the Doha Round commitments of members to find tangible solutions for developing countries. The fundamental point of controversy arises from the developed countries' assertion that developing countries use SDT as a means to escape disciplines which would integrate them into the multilateral system. This assertion is based on the argument that integration into the system and undertaking liberalisation obligations will lead to development and prosperity for all countries. This view is taken from the lens of trade liberalisation as a primary objective, the pursuit of which is an end in itself.

The other end of the debate sees trade and trade liberalisation as means to the greater end of development. To achieve that end, developing countries wish to liberalise and take on liberalising commitments at their own pace and in their own time. In doing so, they wish to delay the implementation of certain commitments, or even eschew the obligation for however long as necessary to achieve their aims.

The deadlock has intensified in recent times when certain larger developing countries have presumably grown big enough in the trade arena, and in the view of some, should not qualify for any SDT or in view of some others, not even be called developing countries. Various solutions have been presented as discussed above in the form of laying down criteria for development status, or following a case-by-case approach. None of the novel approaches has garnered support from developing countries.

In the end, it can be argued that the decision about a country's development levels and status should remain with that country alone since no other criteria can fully capture the various nuances required in the trade arena. At the same time, a voluntary opt-out by developing countries who feel they have advanced in some areas to a level where they can undertake commitments more than other developing countries could ease many concerns. For instance, China had made commitments under the TFA which are similar to many developed countries. Similarly, Brazil has decided to opt out of current and future SDT in the WTO. At the same time, developed countries would also do well to understand that SDT for developing countries is not a special favour but only differential treatment for countries with different requirements.

Regardless, SDT remains one of, if not the most crucial pillar in the WTO for the meaningful participation of developing countries in the multilateral trading system and the efforts, therefore, should focus on pragmatic solutions rather than a binary approach.

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