

Rethinking SDT in the WTO

- Pradeep S Mehta*, CUTS International

I will present some thoughts on the debates on Special & Differential Treatment (SDT) at the WTO, and what “rethinking” SDT may look like going forward.

I recall how, in the early years of the WTO, the discussion was about the *effectiveness* of SDT provisions.

Historically, many SDT provisions for the developing Members have remained couched in unenforceable, best endeavour language, while developed Members have often been unintended beneficiaries of “reverse SDT” – enjoying enforceable, sectoral flexibilities not available to developing countries. If China’s industrial subsidies are condemned as trade-distortive today, are they really much different from what the advanced WTO members earlier pursued in terms of their agricultural subsidy programmes? Nobody is above board, and a better-designed system is required – one which Members cannot bend as per their own liking.

Even when it comes to sustainable development, it is important for us to recognise that for the developing world, sustainable development goes much beyond only environmental concerns - socio-economic factors, employment generation are the key sustainable development priorities. SDT which realistically facilitates the achievement of these goals is therefore an imperative.

While the effectiveness debates rage on, there is today greater discussion on the *eligibility* of WTO members for availing SDT.

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What is the state of play in terms of SDT debates involving developing countries at the WTO?

As we all are well aware, the WTO has been following a practice of self-certification of developing country status, wherein a country can self-declare itself a developing country under the WTO framework.

Since 2019, there have been concerted efforts to highlight the need for more objective criteria for certification of development status, instead of blanket self-certification. Proposals by the U.S., among others, seek to use parameters such as the membership of certain groupings (G20, OECD) and global trade participation levels, to “objectively” determine a WTO Member’s development status.

Counter-proposals contest any such efforts to differentiate between developing countries, and emphasise that SDT is a treaty-embedded right, which should be preserved and only strengthened.

The picture is certainly a lot more complicated.

First, we must recognise that for developing countries, SDT is seen as a vital component of the grand bargain, and a negotiated outcome of the Uruguay Round. SDT has always been rooted in political economy concerns, and the “developing country” tag is too politically fraught to give up entirely. On the other hand, for developed members, SDT is seen only as a transient tool. For them, developing countries’ graduation from availing SDT benefits is only a question of *when*, not *if*.

Empirical data, such as that of HDI, GNI per capita, poverty levels, etc. can shed some light on the extent to which the development divide has been bridged over the past 27 years of the WTO's existence. For example, trade may have played an important role in Bangladesh's transition into a developing country from its erstwhile least-developed status (Bangladesh has been recently rivalling India in terms of its per capita GDP). However, what such data cannot do is quantify the political and institutional value of the "developing nation" tag.

There is no real way to measure whether or not a level-playing field now exists, either between the developed and developing countries, or within the group of developing countries. Further, macro-level objective criteria cannot fully appreciate the different levels of constraints in different sectors.

Overall, it will be very difficult to arrive at a consensus in the WTO on *which* objective criteria will best capture levels of development and integration into the trading system.

The Trade Facilitation Agreement is often suggested as a model for how SDT can be tailor-made for different agreements and situations. Yet, it must be kept in mind that even the TFA allows Members a degree of self-designation – in terms of the extent and category of obligations they wish to undertake.

Since 2019, South Korea and Brazil have voluntarily given up their self-declared developing country status, and the associated SDT flexibilities. Interestingly, China has said that it will "remain" a developing country at the WTO, but begin to forego many of the SDT benefits.

What is the way forward?

In recent sectoral negotiations, a clear trend towards greater differentiation *between* developing countries, based on objective parameters and economic data, is evident. For example, in the fisheries subsidies negotiations, some options that have been considered for SDT involve looking at percentage shares of Members' marine catch.

If we look at the draft of the TRIPS waiver solution agreed two weeks ago, it also differentiates between eligible developing countries. It provides that only those developing WTO Members that exported less than 10% of world exports of COVID-19 vaccine doses in 2021, will be eligible Members for the purposes of the TRIPS waiver solution. Again, we see a differentiation based on quantitative parameters. Interestingly, India is a part of the Quad countries among whom this outcome was first finalised. It remains to be seen if this indicates a change in India's overall stance towards SDT, in terms of its so far strident opposition to any dilution of blanket SDT.

These trends are much in line with the EU's proposal of having case-by-case, sector-specific, negotiated SDT.

Now, the question is - Is it possible to retain both the political symbolism of self-declaration of development status, as well as make SDT more targeted? Arguably, yes.

An overall solution can look something like this – don't alter the existing practice of self-declaration of *overall* development status in the WTO, primarily for political reasons. However, for *operational* SDT flexibilities in new negotiations, look for tailor-made, sector specific parameters.

Thus, it could be the case that a self-declared developing country (in the overall WTO sense), could be eligible for availing SDT in, say, agriculture negotiations, but ineligible for availing SDT in fisheries negotiations. A combination of qualitative and quantitative indicators for availing SDT, under an overall politically acceptable solution to all Members, may be the most viable option going forward.

Such a model can also potentially be extended to the negotiations under the JSI tracks, such as electronic commerce and investment facilitation.

This would adequately address both concerns - of varying levels of development and technical capacity among developing members, as well as retaining the political symbolism in the form of self-declaration.

For LDCs, the concerns are entirely different. For LDCs, the question is not about designation, but about implementation capacity and technical expertise. They need significant capacity building to be able to effectively utilise WTO flexibilities and better integrate into the world trading system. No matter how much of an advantage you gave me in a boxing bout, would I ever have been able to take on Muhammad Ali in the ring?

We also need to ask ourselves – is SDT reform the most important priority before the WTO today? While it is a cross-cutting issue, SDT is only one of the many challenges facing the WTO – including existential crises in the form a stalled rule-making function and the prolonged Appellate Body stalemate. It will be sensible to address SDT only as a part of larger negotiations, not independently.

Any discussions on SDT by itself are unlikely to get any negotiation traction, especially if the focus is on replacing self-declaration with the establishment of objective criteria. Similarly, there can be no one-size-fits-all criteria for graduation. Imaginative thinking is required, and any rethinking of SDT must reinforce that development concerns remain at the core of the WTO.

Ultimately, developing countries need to be convinced that better-targeted SDT measures, including technical capacity, instead of blanket SDT, will only help them to better achieve their own trade and developmental goals.