

## Tackling Development at MC14: Options for S&DT reform

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The central question posed by the longstanding debate among World Trade Organization (WTO) Members over special and differential treatment (S&DT) is how best to address legitimate demands for differentiation. Should this be done by replacing the self-designation of development status by a set of objective metrics distinguishing different categories of WTO Members? Or should Members alternatively focus their efforts on addressing objectively assessed capacities and needs in a more customized manner and on a case by case and agreement-specific basis?

Rather than focusing on the divisive issue of development status, where prospects for consensus appear non-existent, WTO Members should design S&DT support focusing on objectively assessed negotiating and implementation needs to which targeted Aid for Trade would respond (Low *et al*, 2019; Hoekman, 2005). A forward-looking approach to differentiation within the WTO requires that an altogether different narrative on trade and development take root in the organization, one that ascribes to trade - and to trade policy - a key supportive role in development trajectories. All too often, S&DT demands are formulated as if multilateral rules pose a threat to the development needs and aspirations of the world's poorest nations.

What reform options appear feasible in charting a forward-looking S&DT agenda?

Few observers of contemporary trade governance would dispute the notion that the WTO system of rights and obligations should allow for differentiation among the organization's increasingly diverse membership. In many regards, the multilateral trading system has always operated on a variable geometry basis, as no two Members have – nor have ever been required to have – identical tariff schedules. Similar (indeed even starker) asymmetries characterize the level of market opening and obligations assumed by Members in the areas of services, intellectual property and agricultural trade.

Special and differential treatment (S&DT) provisions pursue distributive justice aims through flexibilities granted to developing countries and least-developed countries (LDCs) with the aim of increasing their trade opportunities, safeguarding developing and LDC interests through temporary (or permanent) exemptions from agreed rules, lower market access commitment thresholds, longer periods for the implementation of WTO agreements and/or scaled-up volumes of Aid for Trade linked to the implementation of agreed disciplines and market opening commitments. The key question is not whether

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S&DT is justified but rather how best to ensure that those most in need of differentiated treatment receive it in a manner leading to sustained gains from trade.

Discussions on S&DT proceed today through negotiations mandated by paragraph 44 of the Doha Ministerial Declaration of 2001. This mandate calls on WTO Members to *‘review all S&DT provisions with a view to strengthening them and making them more precise and operational’* (WTO, 2021a). With the notable exception of novel development-related provisions embedded in the WTO’s Trade Facilitation Agreement (see below), a quarter century of S&DT discussions have yielded little progress. If anything, the last few years has arguably witnessed a hardening of battle lines among Members on whether and how to reform S&DT.

WTO agreements and decisions feature well over 150 S&DT provisions (WTO, 2011). The approach to S&DT shows significant variance across agreements, ranging from different limits for certain types of trade-distorting subsidies to extended transition periods for implementing some of the WTO’s rules, for example on trade-related investment measures or trade facilitation. Some S&DT measures are legally binding in character while others are purely hortatory in nature. Some apply only to LDCs, a status anchored in the United Nations’ (UN) classification of the world’s poorest countries – the only instance in which the WTO operates on the basis of a formal categorized country grouping. Most contentious is the fact that many S&DT measures are extended to any Member that self-designates as a developing country, a category for which no definitional boundary exists but which today encompasses three of every four members of the world trade body.

S&DT measures responding to the implementation challenges that least developed countries face are not controversial. This is so even as one may legitimately question their developmental efficacy (Lee and Kim, 2022). The acuteness of the institutional and resource constraints plaguing the negotiating and implementation capacities of the world’s poorest countries – an issue that was largely ignored in the ‘end of history’ hubris that characterized the Uruguay Round – is today readily acknowledged. Such constraints are ones to which significant levels of trade-related technical assistance and support – Aid for Trade – have been directed over the past two decades. This ranks among the most important recent advances in global trade governance and is almost certainly one of the few tangible legacies of the otherwise failed Doha Development Agenda.

What then are options for moving this debate forward at MC14 and beyond?

Among the many steps required to reinvigorate the multilateral trading system, a new approach to S&DT appears warranted. Such an approach should combine a more targeted focus on how to support integration into the trading system along with greater differentiation between developing countries. However, rather than focusing on metrics of development status, such an approach should concentrate on objectively assessed

needs to which targeted Aid for Trade support would respond. An agreement-centric and country-specific approach offers the best prospects for meaningful progress on S&DT.

A forward-looking approach to differentiation within the WTO requires that an altogether different narrative on trade and development take root in the organization. The starting point of any future-oriented discussion of S&DT should indeed be a shared belief that that development can be significantly advanced by trade and that effective S&DT can play an important role in enabling developing countries to engage effectively in trade and reap the benefits of specialization and deepened integration (Sauvé, 2022). There is no denying that this represents a genuine challenge in an organization afflicted by a marked – and arguably rising - deficit of trust among Members.

Still, the problem remains that current S&DT arrangements and policy proposals are all too often rooted in a belief that global trade rules hinder or unduly constrain the space needed for economic development and that developing countries accordingly need exemptions from such rules. The quest for exemptions – the view that doing less is preferable – limits the commitment of developing countries to the multilateral trading system and their ability to fashion new rules in a development-friendly manner. This may backfire by lessening the degree to which trading partners are willing to pursue policies that support development. A reformed approach to S&DT should instead reflect the reality that a rules-based international trading system with broad participation and targeted flexibilities directed at genuine (and credibly assessed) negotiating and implementation-related needs can be harnessed to secure development aims.

S&DT should support engagement rather than confer exemption– it should enable rather than exonerate and never be considered as an offramp for bad rules. S&DT provisions should not indeed provide safe harbour protection from poorly framed rules that could compromise development objectives. The best way to avoid bad bargains is through the exercise of voice. The interests of developing countries can only be served through greater engagement on core proposals and capacity-building efforts directed to ensuring enhanced negotiating agency.

Reform options worth considering thus include the following:

- (i) encouraging autonomous ‘graduation’ from S&DT across all WTO agreements, old and new, by the most advanced developing country members (either on a per capita income basis or share of world trade);
- (ii) renouncing S&DT privileges on an agreement-specific basis (e.g. China in Phase 1 of the agreement on harmful fisheries subsidies);
- (iii) shunning blanket exemptions for LDCs;

- (iv) replicating the sequencing approach pioneered by the Trade Facilitation Agreement<sup>2</sup> (of particular salience to possible JSI outcomes on investment facilitation and e-commerce);
- (v) increasing recourse to plurilateral negotiations on issue areas of greatest interest to developing and least developed country members (WTO, 2021);
- (vi) scaling up the resources of the Enhanced Integrated Framework (EIF) as it launches its third phase of operations, with scaled up assistance aimed at boosting LDC agency in Geneva deliberations; and
- (vii) leveraging the deliberative function of the WTO to address, through deepened analysis and open policy debate, the development impacts of existing and newly proposed agreements.

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<sup>2</sup> The TFA's strong implementation track record has shown how the combination of *ex ante* needs assessments and the supply of Aid for Trade targeted at specific implementation bottlenecks can make a *significant difference in development outcomes*.

## **References**

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