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A Brief Analysis of the Treatment of Developing Countries in the Context of WTO Reform and Development

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Abstract: Special and differential treatment (SDT) is of vital importance to developing countries. Through this mechanism, developing countries have gradually gained access to developed markets, enjoyed tariff reductions, and received technical assistance. This has promoted trade liberalization, facilitated their integration into the global trade system, and enhanced their capacity to participate in international affairs. However, the SDT system still has several shortcomings that need to be addressed through appropriate reforms and improvements.

Keywords: Special and Differential Treatment, Developing Countries, WTO Reform

1. Introduction

Special and differential treatment (SDT) for developing countries has long been a contentious issue within the multilateral trading system. Broadly speaking, SDT refers to the fundamental principle upheld by the World Trade Organization (WTO) since its establishment—namely, recognizing the unique economic conditions and developmental needs of developing countries. Within a certain scope and under specific conditions, developing members are allowed to deviate from the general obligations stipulated in WTO agreements and enjoy more favorable treatment [1].

Compared with developed countries, developing countries bear lighter international responsibilities while receiving greater benefits. Within the WTO framework, they can to some extent avoid the constraints of the most-favored-nation (MFN) principle. Fairness can be categorized into absolute and relative types, essentially reflecting the principle of equitable mutual benefit—a deeper concept of equality that enriches the traditional notion of fairness and reciprocity. Given the significant disparities between developed and developing countries in terms of resources and technology, applying uniform standards and responsibilities would result in de facto inequality. SDT is therefore not a concession, compromise, or form of discrimination by developed countries, but rather a rational judgment rooted in the reality of promoting sustainable socio-economic development. It aims to safeguard the right of developing countries to pursue independent economic growth and benefit from it, to reduce development gaps, and to accelerate their integration into the multilateral trading system. It embodies a special and differentiated arrangement in terms of rights and obligations compared to developed countries. Today, however, the WTO and the multilateral trading system are facing significant difficulties and challenges. The SDT mechanism for developing countries also exhibits notable deficiencies that require urgent reform.

This paper, from the perspective of common development, explores the issue of SDT for developing countries within the context of WTO development agendas. By examining the evolution

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and content of the SDT mechanism, the paper aims to identify its current shortcomings and propose potential solutions.

2. Evolution of the treatment of developing countries

2.1. The 1940s–1950s

This period marks the early stage of the General Agreement on Tariffs and Trade (GATT), during which special and differential treatment (SDT) for developing countries was still in its infancy. In its early years, GATT primarily focused on trade liberalization among developed countries, leaving developing countries in a disadvantaged position during negotiations. When GATT came into effect in 1947, it provided no special treatment or preferential measures for its developing country members. In 1954, Article XVIII of GATT was amended to include provisions for "government assistance for economic development." This allowed developing countries, under certain circumstances, to adopt trade-restrictive measures to address balance-of-payments issues. Although the procedures were complex, this marked the first time GATT extended differential treatment to developing countries. A further revision in 1955 slightly lowered the entry threshold for such measures but still required approval, limiting its effectiveness. The 1950s also saw the global rise of decolonization movements, leading some newly independent developing countries to join GATT directly under Article XXVI [2]. However, in practice, these countries often faced trade barriers and other forms of unfair market competition.

2.2. The 1960s

During the 1960s, the principle of non-reciprocity was introduced. To reduce trade barriers, increase export revenues, and adapt the reciprocity principle to the realities of underdeveloped countries, the Declaration on the Promotion of Trade of Less-Developed Countries was adopted in 1961. In 1965, GATT added Part IV (Articles 36–38), titled "Trade and Development," which acknowledged the unique position of developing countries in international trade and, for the first time, formally introduced the principle of non-reciprocity. In 1971, the Generalized System of Preferences (GSP) was established, allowing developed countries to unilaterally grant tariff preferences to developing countries. This system significantly advanced the implementation of SDT.

2.3. The 1970s–1980s

This period witnessed the expansion of SDT.

During the Tokyo Round, GATT adopted the “Enabling Clause” in the Decision on Differential and More Favourable Treatment, Reciprocity and Fuller Participation of Developing Countries. This marked a significant breakthrough by formally allowing developed countries to grant tariff preferences to developing countries without extending the same to all GATT members.

However, to maintain a balance, the clause emphasized its temporariness, stipulating that the preferential treatment should not apply indefinitely as countries developed economically. Although the clause transformed most-favored-nation (MFN) exemptions and inter-developing-country preferences into long-term waivers, it lacked legal enforceability and did not clearly specify which countries were eligible. Ultimately, the decision to grant preferences—and their specific nature—rested with the developed countries, making the implementation of such treatment subject to political discretion and inherently unstable.

During the Uruguay Round, developing countries secured a broader range of SDT provisions. These included specific provisions related to anti-dumping, subsidies, extended transition periods, and increased technical assistance. Following the 1986 Ministerial Meeting, GATT reaffirmed the

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legitimacy of SDT in the Punta del Este Declaration, stating that “the principles of differential and more favorable treatment” were a foundational element of the negotiations.

2.4. 1995 to present

Post-1995 marks the phase of SDT refinement.

From 1995 to 2001, during the early years of the World Trade Organization (WTO), SDT provisions became more systematic and comprehensive, covering six major areas: market access, rules flexibility, transition periods, technical assistance, and more—amounting to a total of 145 provisions. Agreements such as the Agreement on Agriculture and the Agreement on Textiles and Clothing offered developing countries special treatment, such as lower tariff reduction commitments.

Since 2001, during the Doha Round—also known as the "Development Round"—SDT entered a period of stagnation. The Doha Declaration pledged to enhance SDT to make it “more precise, effective, and operational.” It also adopted the Decision on Implementation-Related Issues and Concerns, which emphasized that the treatment offered to developing countries should be universal, non-reciprocal, and non-discriminatory. However, negotiations have since made little progress and remain largely stalled.

3. The justification for the Special and Differential Treatment (SDT) system for developing countries

Over the years, developing countries have actively negotiated to secure their rights, progressively gaining access to developed country markets, benefiting from tariff reductions, and receiving technical assistance. This has advanced trade liberalization and significantly increased their global market share. Consequently, SDT has played a vital role in helping these countries integrate into the global trading system and enhance their capacity to participate in international affairs.

3.1. Safeguarding the rights of developing countries and reducing the burden of obligations

The implementation of international agreements inherently involves a distribution of rights and obligations. The core purpose of SDT is to protect the interests of developing countries while alleviating their implementation burdens, a principle that aligns with the original intent of the WTO. Given the disparity between developed and developing countries in terms of starting points and capacities within international trade, imposing equal obligations would hinder the economic development of less-advanced nations. To ensure the optimal global allocation of resources and sustained economic prosperity, differentiated treatment for developing countries is crucial.

The establishment of transitional periods for developing countries is designed to provide a buffer, allowing them time to adapt and act before assuming full responsibilities. Such transitional periods may be fixed or open-ended, with the latter often expressed as "a longer period of time."

3.2. Technical assistance from developed countries to developing countries

Developing countries typically have limited experience and understanding of WTO agreements, and their capacity to interpret and implement these agreements is often constrained. Technical assistance, therefore, aims to enhance their institutional and operational capabilities. Due to these constraints, developing countries face significant challenges in integrating into the complex global trade system. For instance, Article 25 of the General Agreement on Trade in Services (GATS) highlights the importance of technical assistance for developing countries, especially given their weaker capacity in new areas covered by WTO agreements. In this context, technical assistance becomes a key mechanism for enabling their comprehensive integration into the multilateral trading system.

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Compared to other types of WTO provisions, technical assistance clauses have shown relatively optimistic implementation outcomes [3].

3.3. Expanding trade opportunities for developing countries

SDT provides developing countries with a buffer period during which they can better adapt to the multilateral trading system and accelerate their integration into economic globalization. A central objective is to both broaden access to international markets and facilitate the internationalization of domestic industries. SDT not only eases external trade processes and promotes exports, thereby expanding markets, but also encourages the opening of domestic markets to attract foreign investment—helping alleviate capital shortages. In summary, by promoting industrial modernization and foreign capital inflow, SDT contributes to the rapid economic development of developing countries and accelerates their integration into the global economy.

3.4. Special preferential treatment for Least Developed Countries (LDCs)

While the classification of developing countries has long been debated within the international community, there is broader consensus on the need to support Least Developed Countries (LDCs), which often have little influence in global affairs. Despite this, LDCs play a crucial role in the sustainable and healthy development of the international economy. As such, WTO provisions should be more favorable toward LDCs to support their rapid development and progress.

To encourage greater participation by LDCs in the WTO, international stakeholders have collaborated to gradually adjust policies and provide the necessary institutional and policy support. International development law recognizes several key obligations concerning LDCs: First, LDCs are classified under the broader category of developing countries and thus are eligible for preferential treatment. Second, the international community has a duty to assist LDCs. Third, assistance should focus on empowering LDCs through capacity-building ("teaching them how to fish," rather than simply "giving them fish"). Historically, LDCs were granted the same treatment as other developing countries, with additional preferences for LDCs only briefly mentioned under the "Enabling Clause." It was not until after the Uruguay Round that specific provisions for LDCs were formally introduced—stipulating that LDCs must receive special guarantees and that their implementation obligations should be suitably relaxed. In 2002, based on the Doha Declaration, the WTO adopted a program specifically aimed at promoting trade development for LDCs.

4. Shortcomings of the Special and Differential Treatment (SDT) system for developing countries

4.1. Prevalence of ambiguous language

The GATT framework frequently employs vague expressions such as “should take into account…” or “to the extent possible…” Particularly in areas such as anti-dumping, obligations on developed countries are often framed as “recommended requirements,” underscoring a non-binding, advisory tone. The major drawback of such ambiguous provisions lies in the difficulty of clearly defining standards like “to the maximum extent possible.” As a result, even when developed countries act in violation, it becomes challenging to evaluate or enforce accountability. Moreover, the interpretation of such language is prone to subjective influence, reducing legal certainty and effectiveness.

4.2. Lack of clear criteria for identity recognition

The determination of developing country status currently relies on a combination of self-identification and recognition by other countries. However, due to the absence of clear and consistent criteria, the

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classification process is susceptible to arbitrariness in both decision-making and enforcement, resulting in disputes and adverse outcomes.

Additionally, developed countries often allow political considerations to influence the designation of developing country status. The "graduation clause" grants them significant discretion to revoke or reduce preferential treatment based on perceived improvements in a country's economic development or competitive capabilities. Some relatively strong developing economies have had their preferential treatment challenged merely because of their higher aggregate economic output, regardless of disparities in per capita income or development levels. In recent years, developed countries such as the United States and members of the European Union have increasingly incorporated previously granted preferences into graduation lists, frequently adjusting the thresholds for graduation. This has led to a significant reduction in the scope of benefits previously enjoyed by developing countries [4]. For example, under the European Union's 2014 revision of the Generalized System of Preferences (GSP), benefits were curtailed through the addition of more graduated products and changes in eligibility criteria. As a result, several of China's highly competitive products were reclassified as graduated items and no longer qualified for preferential treatment.

4.3. Complex procedures for application

The procedures for invoking SDT provisions are often overly complicated. In dispute settlement processes, developing countries must prove that the harm they suffered falls within the scope of SDT and must also demonstrate that developed countries committed violations. These complexities stem largely from the vague wording of the provisions themselves, which constrains developing countries' ability to assert their rights effectively in legal proceedings. Moreover, the application of SDT provisions and the allocation of the burden of proof remain contentious. For instance, in the case of Canada — Export Credits and Loan Guarantees for Regional Aircraft (DS222), the WTO panel found that Brazil's invocation of Article 27 of the Agreement on Subsidies and Countervailing Measures (SCM Agreement) did not constitute a legal defense and therefore did not require proof. In contrast, in the India — Measures Affecting the Automotive Sector case, the panel treated India's invocation of Article XVIII of GATT 1994 as a formal defense, thereby imposing the burden of proof on India. These inconsistencies highlight the procedural and interpretive challenges associated with SDT provisions.

5. Improving the Special and Differential Treatment (SDT) system for developing countries

Current WTO reforms should focus on addressing the shortcomings of the SDT framework to make it fairer, clearer, and more effectively implemented.

5.1. Clarifying the language of special treatment for developing countries

The formulation of WTO rules should adopt clearer and more precise language. Objective standards should replace subjective judgments, and binding language should replace discretionary terms—for instance, using "must" instead of "may." Such adjustments would help ensure that SDT provisions are implemented effectively, rather than remaining at the level of mere recommendations.

Moreover, the WTO's consensus-based decision-making principle poses operational challenges to revising SDT provisions. Member states have diverse interests, and even within the group of developing countries, there are internal divisions. Therefore, mutual compromise is necessary, with particular emphasis on enhanced coordination among developing countries themselves. The priority should be to advance substantive reforms of SDT provisions.

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5.2. Improving criteria for identifying developing country members

The classification of developing country status directly impacts the application of SDT provisions and the rules governing "graduation." The current practice whereby developed countries unilaterally revoke preferences requires reform. Among developing countries, there is some divergence on whether to refine and categorize recognition criteria. Economically stronger members worry that further classification may strip them of SDT benefits, while weaker members favor differentiation to reflect disparities in development levels. In the long run, establishing objective and nuanced criteria for defining and classifying developing countries is an inevitable trend. However, given the existing significant disparities between developed and developing countries and the overall weaker development levels among the latter, it is advisable to first adopt a broad definition of “developing countries” and, during specific agreement negotiations, tailor commitments based on actual conditions.

5.3. Optimizing the application of SDT provisions

SDT provisions should be designed with practical implementation in mind, ensuring procedural fairness and avoiding a one-size-fits-all approach. Rules should reflect differentiated needs, simplify procedural complexity, and encourage flexible and innovative mechanisms. The WTO Trade Facilitation Agreement (TFA) offers a useful model. Under this approach, developing and least-developed countries categorize their commitments based on the difficulty of implementation, technical complexity, and financial requirements. This allows each member to assess and fulfill its obligations according to its own national conditions. The TFA represents a shift from merely accommodating development to genuinely addressing the developmental needs of WTO members. It recognizes the importance of capacity building and rule implementation, and provides legally structured support through conditional obligations [5].

5.4. Enhancing cooperation between developing and developed countries

In today’s global context, developing and developed countries are not inherently opposed to one another—they are fully capable of achieving mutually beneficial cooperation. This forms the underlying rationale and advantage of SDT provisions. The focus of WTO reform and development should be on adapting to changes in the international environment, coordinating international relationships, leveraging each country’s comparative strengths, and promoting more equitable and reasonable global cooperation. China’s Belt and Road Initiative exemplifies this principle by enhancing connectivity, fostering regional cooperation, and accelerating economic and political development in participating countries. It also enables more developing nations to better integrate into global economic governance and pursue shared progress. As a key institutional mechanism, the SDT system plays an essential role in linking developing and developed countries. It serves as a driving force behind the continued reform and evolution of the WTO.

6. Conclusion

The issue of special treatment for developing countries holds a pivotal position in the ongoing reform of the WTO, as it is closely tied to the stability of the global economy and the advancement of multilateral trade. The establishment of the Special and Differential Treatment (SDT) system is intended to reduce development disparities among nations, promote common progress between developing and developed countries, enhance the vitality of the World Trade Organization, and work toward achieving substantive fairness. However, the current SDT system still suffers from several significant shortcomings, including the use of vague and ambiguous language, the lack of clear

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criteria for the identification of developing country status, and complex and burdensome application procedures. These issues call for urgent reform. Improvements can be made by clarifying the expression of SDT provisions, establishing more precise and objective criteria for identifying developing country members, emphasizing the practical effectiveness of rule design, and strengthening cooperation between developing and developed countries. In summary, multilateral trade has become the dominant mode of global commerce today. It is imperative that developing and developed countries work together to promote the reform and improvement of the WTO and to jointly contribute to the development and progress of the world economy.

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