

Reforming the Special and Differential Treatment Provisions of the WTO: Constructing a More Equitable and Effective Global Trade System

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Abstract:

This article focuses on the reform of the Special and Differential Treatment (SDT) provisions within the World Trade Organization (WTO), aiming to explore pathways for establishing a more equitable and efficient global trading system. As is widely acknowledged, when addressing issues, the initial step is to identify the essence of the problem. Subsequently, an in-depth exploration of its causes is undertaken, ultimately leading to the pursuit of solutions. Based on this fundamental logic, the research topic is dissected into three distinct sections for comprehensive analysis, thereby facilitating a clearer and more structured investigation. Firstly, the background of the topic is examined, elucidating why the SDT provisions of the WTO were selected as the subject of study, which is intrinsically linked to the significance of the topic and is reflected in the article through relevant legal knowledge in the field. Secondly, the aspects requiring improvement, namely the current shortcomings, are addressed. Finally, the methodology for improvement is outlined, wherein case studies are analyzed to derive insights and summarize strategies for constructing a more equitable and effective global trading system. In conclusion, the SDT provisions and the WTO framework face multiple challenges that must be addressed to build a more efficient global trading system.

Keywords: WTO; Special and Differential Treatment (SDT); Non-Differentiated; More equitable and efficient

1. Introduction

To examine the legal foundations pertinent to this

subject matter. Article XVIII of GATT 1947 permits developing countries to adopt tariffs or quantitative restrictions for the protection of infant industries. The

Preamble of the Marrakesh Agreement explicitly states the “need for positive efforts to ensure that developing countries secure a share in the growth of international trade.” There are some specific Provisions: Scattered across various agreements, including the Agreement on Agriculture (Article 6.2) TRIPS (Article 66 Transition Period), and TBT/SPS Agreements (Technical Assistance). The subsequent focus is on the core objective of special and differential treatment within the World Trade Organization. The discussion is conducted from three perspectives: the Policy Flexibility perspective, the Technical Assistance perspective, and the non-reciprocity principles perspective. Policy Flexibility: Allows developing countries to temporarily defer certain obligations (e.g., slower tariff reduction rates). Technical Assistance requires developed countries to assist developing nations in enhancing their trade capacities. In Non-Reciprocity Principle: Enables developing countries to enjoy preferential treatment without fully reciprocating market access. In conclusion, with regard to Eligibility criteria, the most crucial aspect to highlight is about Self-Declaration System: Member states may declare themselves as “developing countries” (no unified standard). Another academic knowledge is LDCs (Least Developed Countries): Designated by the United Nations based on three indicators—income, human capital, and economic vulnerability (currently 46 countries). Therefore, this article will be structured into three sections: problem identification, problem analysis and problem resolution. This article also puts forward suggestions for establishing a more equitable and efficient global trading system.

2. Drawbacks

2.1 Ambiguity in Qualification Criteria

This defect was identified from the perspective of “Legal and Regulatory Design Deficiencies”. Member states may self-declare their status as “developing countries” in the absence of objective standards (e.g., controversies surrounding China and India), leading to systemic abuse. “A Non-Differentiated WTO: Self-Declared Development Status Threatens Institutional Relevance” (WT/GC/W/757): On January 17, 2019, the United States submitted this analytical document to the WTO, presenting data demonstrating significant growth among developing countries. The document “*An Undifferentiated WTO: Self-declared Development Status Risks Institutional Relevance*” challenges the developing country status of nations such as China and calls for the revocation of special and differential treatment rights for a substantial number of developing countries[1]. This case illustrates the prevalent issue

of identity non-recognition faced by numerous major developing countries.

2.2 Severe misallocation of resources

This defect was identified from the perspective of “Economic Efficiency and Distributional Imbalance”. Eighty-six percent of the Special and Differential Treatment (SDT) benefits were acquired by middle- and high-income developing countries, with India accounting for 32% of the total agricultural subsidies, while the Least Developed Countries (LDCs) received only 14% of the technical assistance [1]. Preamble to the Marrakesh Agreement Establishing the World Trade Organization: The preamble of this Agreement explicitly acknowledges the necessity for proactive endeavors to ensure that developing countries, particularly the least developed countries, secure a share in the growth of international trade commensurate with the needs of their economic development. This implies the potential existence of circumstances in practice where the least developed countries may not have obtained their due share, indicating issues in resource allocation, which constitutes a significant foundation for relevant discussions. Moreover, within the framework of the Doha Round negotiations, which encompass various aspects such as agriculture and non-agricultural market access, developing members have expressed concerns regarding the perceived “imbalance” in the negotiation draft. Specifically, developing countries argue that the draft fails to adequately address the sensitive products of developed members while providing insufficient special and differential treatment for developing members. The least developed members have further demanded more explicit provisions in the draft regarding duty-free and quota-free market access for their products. This reflects the expectations of least developed countries for enhanced attention to special and differential treatment, while also highlighting potential issues of inequitable resource allocation, wherein the benefits of special and differential treatment have not been sufficiently extended to the least developed countries.

2.3 The level of transparency is critically insufficient

This defect was identified from the perspective of “Institutional Implementation and Oversight Failure”. Member states are not required to provide detailed disclosures on the effectiveness of SDT measures. “Decision on Measures Concerning the Possible Negative Effects of the Reform Program on Least-Developed and Net Food-Importing Developing Countries”: At the inception of the WTO, recognizing the potential adverse impacts of agricultural trade liberalization reforms on least-developed countries

and net food-importing developing nations, member states adopted this decision in April 1994 [2,3]. The decision mandates that food aid donors establish sufficiently high assistance levels, providing essential foodstuffs to affected countries either as full grants or under appropriately concessional terms, accompanied by technical and financial support. However, the absence of explicit and stringent provisions regarding aid transparency has laid the groundwork for subsequent transparency-related challenges. "Promoting Agricultural Production and Trade in Food-Net-Importing Developing and Least Developed Members": The draft ministerial resolution (WT/GC/W/918) submitted by Nigeria on behalf of the African Group and circulated by the WTO General Council in 2024 mentions the need to enhance the transparency of food aid programs and export credit, guarantee and insurance initiatives, indicating that the lack of transparency in food aid has affected the access of developing and least developed members to aid and related resources[4].

3. Measures

3.1 Improving the criteria for identifying developing countries

To address disputes arising from ambiguity in qualification criteria, clarifying the criteria for identifying developing countries would resolve many disputes[5,6]. Firstly, some larger developing countries have indeed achieved strong economic growth and should not enjoy certain special and differential treatments. Secondly, other countries may take advantage of the lack of a well-defined criterion for developing countries and claim to be developing countries at will to enjoy benefits that do not rightfully belong to them. Therefore, clearly defining the identity of developing countries is an extremely meaningful improvement. To be more specific, dynamic regulatory measures should be adopted, such as increasing the stringency of entry thresholds and improving the exit mechanism for countries transitioning from developing to developed status.

3.2 Enhance the binding force and operability

To address the issue of severe misallocation of resources, enhancing the binding force and operability is an inevitable choice. One of the major problems we are facing now is that a large part of the special and differential treatment is enjoyed by the larger developing countries, while the least developed countries that truly need help only receive a very small portion of it. Enhancing the binding force and feasibility can rationally allocate the proportion of resource distribution, which is conducive to elevating the

development level of countries in need of assistance and promoting more balanced development among all countries. To solve this problem, specific resource allocation mechanisms would be effective. Designers should clarify the proportion of resource allocation, and provide specific measures for implementing the constraints.

3.3 Establish a comprehensive oversight mechanism

To address the issue of severe lack of transparency, improving the supervision mechanism can resolve disputes in this regard. First, it can ensure the effective implementation of the provisions, and urge developed members to fulfill their relevant obligations, ensuring that special and differential treatment provisions, such as the "tariff-free and quota-free" treatment for the least developed countries and the service exemption mechanism, are effectively implemented. This can prevent developed members from delaying or resisting under various pretexts, and avoid these provisions becoming mere empty words. Secondly, it can maintain a fair trade environment, help prevent the abuse and misuse of trade remedy measures, supervise members' subsidy, anti-dumping and countervailing investigations and other behaviors to ensure they comply with WTO rules, eliminate discriminatory rules and practices, safeguard the interests of developing members, small and medium-sized enterprises and the public, and create a fair trade environment for developing members.

4. Conclusion

In conclusion, this article conducts a comprehensive study on the special and differential treatment provisions of the World Trade Organization reform. It employs a progressive approach to analyze the subject from three perspectives: the associated legal knowledge framework, identified deficiencies, and corresponding countermeasures. At last, the article resolves existing unresolved issues and disputes within the current Special and Differential Treatment (SDT) provisions of the WTO system caused by the issue of unequal national development of countries and to establish a more robust global trade legal framework.

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