

# Development Dimension -The Forgotten Pillar: Special and Differential Treatment Provisions

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## Introduction

One of the key issues being pushed by the developed countries for discussion and a possible decision at the forthcoming 14<sup>th</sup> Ministerial Conference of the World Trade Organization (WTO) is the approach of WTO Members to the principle of Special & Differential Treatment (S&DT). Discussions on this issue, especially self-determination of development status for the purpose of being eligible for S&DT provisions, has revealed considerable divergence in the positions of many Members. In this context, it is relevant to note

the following perspective of the Facilitator for WTO reform: “Reform should ensure inclusive integration of developing Members and Least Developed Countries (LDCs), balancing the need for effective flexibilities aimed at common rules applicable to and adherence to rules. Pragmatic, widely acceptable approaches are required to maintain legitimacy while advancing development objectives.”<sup>1</sup> This policy brief examines the following: historical background of inclusion of S&DT principle under the GATT regime, illustrations of some S&DT provisions, different perspectives on S&DT in the

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<sup>1</sup> WTO Restricted document JOB/GC/483, dated 12 December 2025, WTO Reform, Written Report by Facilitator to the General Council H.E. Mr Petter Ølberg (Norway) – Facilitator on WTO Reform.

<sup>2</sup> Article XXXVI. 8 of GATT 1994.

<sup>3</sup> See, for example Article 6.2 of Agreement on Agriculture.

<sup>4</sup> See, for example Annex VII if the Agreement on Subsidies and Countervailing Measures.

<sup>5</sup> See, for example, Article 66.1 of TRIPS Agreement.

<sup>6</sup> See, for example, Articles 13-20 of the Trade Facilitation Agreement.

recent discussions at the WTO and their likely implications for developing countries. The policy brief provides specific recommendations for India’s position on this issue.

## Historical background of the inclusion of the S&DT principle under the GATT regime

The original text of the GATT was based on reciprocity. It was in the mid 1960s that Part IV was included in this text, which specified that “the developed contracting parties do not expect reciprocity for commitments made by them in trade negotiations to reduce or remove tariffs and other barriers to the trade of less-developed contracting parties”.<sup>2</sup> This provision on less than full reciprocity provides the legal foundation for S&DT provisions in various WTO agreements. It should be noted that WTO Members self-

determine their development status for the purpose of being eligible for S&DT provisions – an issue of considerable contestation by the developed countries in recent years (see Figure 1).

## Illustrations of S&DT provisions

The S&DT principle gets manifested in specific provisions in WTO agreements in the following different ways: first, a few S&DT provisions allow developing countries to depart from generally applicable disciplines under the relevant agreement without any time limitation, provided the measure complies with certain requirements<sup>3</sup>; second, certain S&DT provisions are available as long as the developing country complies with the eligibility criterion<sup>4</sup>; third, some S&DT provisions are available for a fixed transition period<sup>5</sup>; and fourth, certain S&DT provisions allow developing countries to choose the

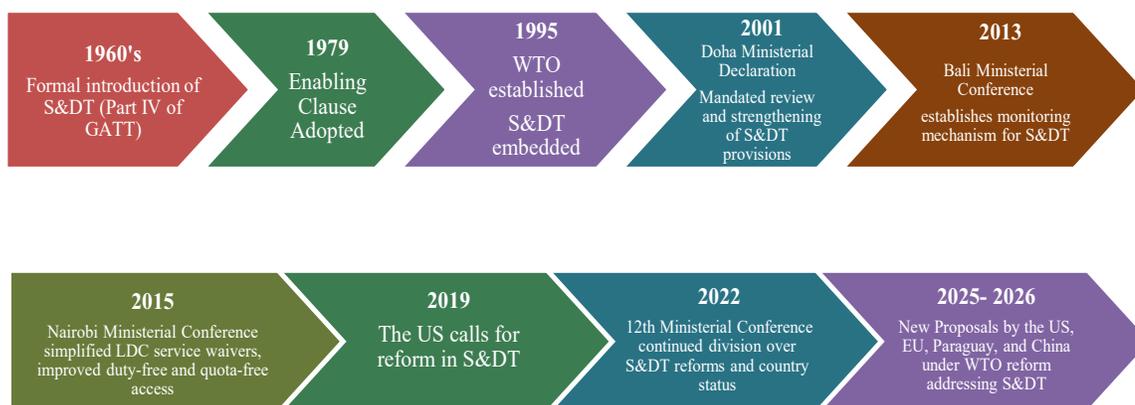
### What is S&DT

Contain special provisions giving developing countries, including LDCs special rights and allowing other members to treat them more favourably. Designed to help these countries integrate into the global trading system while addressing their specific development needs and constraints.

- A few S&DT provisions allow developing countries to depart from generally applicable disciplines,
- Extended Timeframes: longer time periods for implementing WTO agreements and Commitments,
- Market Access: measures to increase trading opportunities for developing countries,
- Safeguard Measure: provisions requiring all WTO members to safeguard the trade interests of developing countries,
- Technical Support: support to build the capacity to carry out WTO work, handle disputes, and implement technical standards, and
- Provisions related to LDC Members.

*Source:* World Trade Organization. Special and differential treatment provisions. Available at: [https://www.wto.org/english/tratop\\_e/devel\\_e/dev\\_special\\_differential\\_provisions\\_e.htm](https://www.wto.org/english/tratop_e/devel_e/dev_special_differential_provisions_e.htm); WTO Agreements

**Figure 1: Evolution of Special and Differential Treatment**



*Source:* World Trade Organization, “Special and Differential Treatment Provisions,” [https://www.wto.org/english/tratop\\_e/devel\\_e/dev\\_special\\_differential\\_provisions\\_e.htm](https://www.wto.org/english/tratop_e/devel_e/dev_special_differential_provisions_e.htm)

transition period after which the relevant obligation will become applicable to them.<sup>6</sup>

### **S&DT: Different perspectives in recent WTO discussions**

In recent discussions at the WTO, there appears to be a recognition among most Members that S&DT remains an important tool for supporting the development objectives and trade integration of developing Members and LDCs. Further, many Members are of the view that while countries have a diversity of development needs, S&DT is not a panacea for all development or integration challenges, which ultimately depend on Members undertaking commitments and adhering to WTO rules. Finally, there appears convergence among WTO Members that LDCs and other more vulnerable Members require particular attention.

While there may be some common ground on a few aspects of S&DT, on

many others there are sharp divergences in the positions of many WTO Members. Some developed countries have raised concerns that the broad application of S&DT and unrestricted self-designation hinder rulemaking and the legitimacy of existing disciplines (see Table 1). Going forward, the suggestions made by these countries include the following: S&DT provisions only for LDCs and that too merely transition periods; moving towards targeted, needs-based flexibilities; considering eligibility based on differentiation criteria and time-bound limitations; and introducing “trigger-ready” mechanisms or crisis-related waivers to enhance responsiveness. However, it is not clear whether these suggestions would be applicable only in respect of ongoing and future negotiations or would be implemented even for existing agreements at the WTO.

Many developing countries are of the view that S&DT is treaty embedded and central to the negotiated balance of rights and obligations. According to

them, each Member should determine its own needs based on national circumstances, rather than be judged externally – thereby retaining the present system of self-declaration of

developing country status. They also seek to make S&DT provisions more precise, effective, and operational (see Table 1).

**Table 1: Recent Proposals on WTO Reform examining S&DT**

 <p><b>December 2025:</b> The US submission on WTO reform (S&amp;DT)</p> <ul style="list-style-type: none"><li>• S&amp;DT may be appropriate for LDCs.</li><li>• Reform in the area of "development" must focus on transitioning all Members to follow the same rules.</li></ul>	 <p><b>January 2026:</b> The EU submission on WTO Reform (S&amp;DT)</p> <ul style="list-style-type: none"><li>• S&amp;DT to be targeted and time-bound, and aim at providing an appropriate path to all Members to be able to ultimately comply with same rules.</li><li>• Reform work should be based on factual analysis of the effectiveness of the S&amp;DT provisions in WTO agreements.</li></ul>
 <p><b>February 2026:</b> Paraguay submission on WTO Reform (S&amp;DT)</p> <ul style="list-style-type: none"><li>• Lack of objective and graduation criteria under the current self-classification system creates inequalities.</li><li>• Emphasized that S&amp;DT should be <b>needs-based, precise, and effective, and operational</b> addressing members' specific challenges while supporting the broader application of WTO rules.</li></ul>	 <p><b>February 2026:</b> China submission on WTO Reform (S&amp;DT)</p> <ul style="list-style-type: none"><li>• Stressed the importance of S&amp;DT for development and integration into global trade.</li><li>• Supported more <b>precise and effective</b> implementation while preserving flexibility for developing Members.</li></ul>

*Source:* Authors' compilation based on WTO documents: WT/GC/W/984; WT/GC/W/986; WT/GC/W/987; and WT/GC/W/989.

## Evaluating the different approaches to S&DT

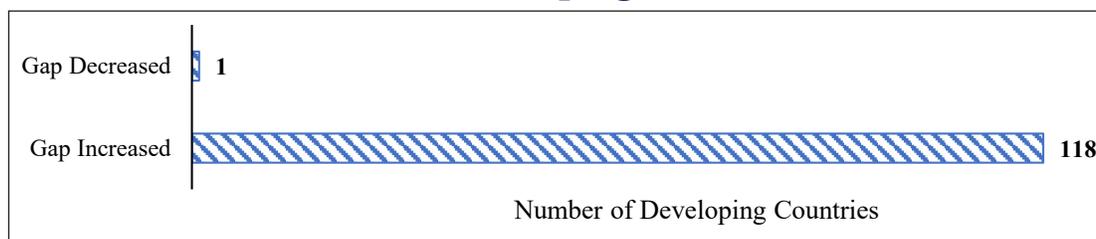
It is relevant to point out that in Article XXXVI: 1(c) of GATT 1994, the Contracting Parties noted that “there is a wide gap between standards of living in less-developed countries and in other countries”.<sup>7</sup> Based on a comparison of the gap between per capita GDP of the US and 119 developing countries, the gap between 1994-96 to 2022-24 increased for 118 developing countries (see Figure 2). Thus, despite the impressive increase in the GDP of many developing countries over the past 30 years, they have actually fallen behind the US in terms of per capita GDP. This highlights the continuing relevance of S&DT for developing countries. Further, in 2022-24, the per capita GDP of 100 developing countries was not even 20% of that of the US. It would, thus, not be fair and

equitable if the same obligations were to apply to the US and the developing countries even after a transition period of a few years.

Certain concerns and questions arise in respect of a needs-based approach to S&DT. First, what would be the basis for determining whether a country has demonstrated that it needs the S&DT? Second, would the need for S&DT be required to be demonstrated during ongoing and future negotiations, or after an agreement starts getting implemented? Third, would smaller developing countries have the technical capacity to demonstrate their needs? Fourth, it is likely to create uncertainty and become a bargaining tool for extracting concessions in other areas. Fifth, it is likely to prevent collective negotiation for S&DT by coalitions of developing countries.

In respect of determining access to S&DT provisions based on certain

**Figure 2: Changes in the Per Capita GDP Gap with the United States for Developing Countries\***



*Source:* Authors' calculation based on data collected from the World Bank World Development Indicators.

*Note:* \* Of the 166 WTO Members, 122 are developing countries, including LDCs. As there were missing data for Afghanistan, Cuba, and Yemen, they have been removed from the list.

criteria, it appears difficult to envisage the criteria that would not only be relevant for a particular agreement, but also appropriately and adequately capture the diversity in socio-economic realities of the vast majority of developing countries. It is also apprehended that a criteria-based approach would be used to divide the developing countries, thereby diminishing the possibility of these countries forming effective coalitions. This appears amply evident in the ongoing negotiations on fisheries subsidies that contribute to over-capacity and over-fishing.

Another approach suggested by some countries relates to graduating countries out from having access to S&DT in sectors where they are competitive. This approach is likely to have a significant adverse impact on countries whose economies are not diversified and are dependent on a handful of products.

## Conclusions and recommendations for the way forward

The starting point of any discussion on S&DT provisions must address the issue of reverse S&DT provisions in favour of the developed countries – provisions

in the Agreement on Agriculture on Aggregate Measure of Support (AMS) (see Box 1), Special Safeguards and Export Subsidies; and provision on export credits under the Agreement on Subsidies and Countervailing Measures being relevant illustrations. It has been the view of some developing countries that developed countries must give up their recourse to the reverse S&DT provisions in their favour, before there can be any discussion on S&DT provisions. This approach continues to remain relevant in current discussions at the WTO.

The approach of developing countries to S&DT provisions in current and future negotiations must be informed by an important reality of WTO negotiations – much of the negotiations at the erstwhile GATT and now the WTO has been about curtailing the flexibility of governments to implement policies to catchup with those at the technology frontier. As most developing countries, including India, are unlikely to be at the technology frontier in new and emerging areas of economic activities, they would need policy space to implement catch-up policies. If ongoing and future negotiations in some of these areas, such as digital trade, do not provide

## Box 1: Reverse Special and Differential Treatment in Agriculture

- Countries with AMS entitlements can provide large amounts of farm subsidies without being limited by the strict agriculture rules under the Amber box.
- Concentrate their subsidies on specific products or on multiple products.
- Most of the AMS entitlement is held by developed countries.
- The European Union, Japan, and the United States together account for a large share.



*Source:* Sharma, S. K., Lahiri, T., & Kamal, T.A. (2025). Multilateral Rules on Trade in Agriculture. Chapter 22 in *The International Law of Economic Integration*, edited by Peter Van den Bossche and Werner Zdouc, Oxford: Oxford University Press. Available at: <https://global.oup.com/academic/product/the-international-law-of-economic-integration-9780192871626?cc=in&lang=en&#>

developing countries with policy flexibility through S&DT provisions to boost their domestic players, they would be unable to create economic gains from emerging areas commensurate with their needs. This underscores the need for developing countries to continue to strive for effective S&DT provisions in ongoing and future negotiations. Further, access to S&DT provisions in the future must continue to be on the basis of self-determination. Any other approach, including needs-based approach and criteria-based approach, is likely to be divisive and fraught with considerable uncertainty. In addition, confining S&DT provisions to merely transition periods may be inadequate to meet the requirements of a large number of developing countries.

Diluting S&DT provisions will have another important consequence for developing countries. It will reduce their negotiating leverage to counter

or balance rules that are negotiated, which are substantially tilted in favour of the developed countries. This crucial aspect relating to negotiation dynamics needs to be factored in by developing countries when deciding their approach to S&DT.

If pushed into a corner at the 14th WTO Ministerial Conference, on S&DT in respect of specific provisions in current and future negotiations, Members may prioritize clearly defined transition periods. Fixed transition periods should be linked to negotiated economic indicators, rather than focusing on duration. This approach would enhance predictability, transparency, and certainty for developing countries and is in line with existing WTO practices, such as those under the Agreement on Subsidies and Countervailing Measures.

Overall, the preferred approach to S&DT should be that depending on their individual circumstances,

<sup>8</sup> WTO document WT/GC/274, dated 24 September 2025, China's position paper regarding Special and Differential Treatment in the WTO.

developing countries voluntarily give up their access to S&DT in ongoing and future negotiations, as has been done by China.<sup>8</sup> Any other approach risks creating more hurdles in negotiations at the WTO and further fracturing the organization.

## About the Authors



**Mr. Abhijit Das** has more than two and a half decades of experience in international trade in various capacities, including five years in trade policy making in the Government of India and twelve years as the Head of the Centre for WTO Studies, New Delhi. He has participated directly in many multilateral and FTA negotiations, including the WTO Doha Round and OECD Steel Subsidies negotiations. His book titled *Strategies in GATT and WTO Negotiations* has been published by Oxford University Press in 2025.



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“Whatever we do, we need to be pragmatic rather than doctrinal, to see where we can go forward with some degree of open-mindedness, but at the same time not giving up the core requirements that we feel are important for India and for the multilateral trading system.”

**Mr. Shashank Priya**  
*Former Special Secretary, GoI*



“Progress has happened in absolute terms, but in relative terms the gap between developed and developing countries has not been bridged.”

**Mr. Sudhanshu Pandey** *Former Additional Secretary, Department of Commerce, GoI.*



“S&DT is a foundational principle of WTO to be respected by all its members. However, the multilateral trade rules should be dynamic in sync with the changing realities. As a large growing economy it's about time India re-calibrated its position on S&DT in its best national interest”

**Mr. Dammu Ravi**  
*Former Secretary (ER), Ministry of External Affairs, GoI*



“We need to retain the policy space because these are hard fought rights.”

**Ms. Ranja Sengupta**  
*Senior Researcher, Third World Network India*



“LDCs to get preference, but also caution that any reform of S&DT should address concerns stemming from data gaps emerging from the transformation (Physical to Digital) in Global Trade flows, creating new forms of inequalities.”

**Dr. Murali Kallummal**  
*Professor & Head Administration (CRIT), Centre for WTO Studies*

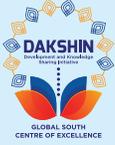


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The word “DAKSHIN” (दक्षिण) is of Sanskrit origin, meaning “South.” The Hon’ble Prime Minister of India, Shri Narendra Modi, inaugurated DAKSHIN – Global South Centre of Excellence in November 2023. The initiative was inspired by the deliberations of Global South leaders during the Voice of the Global South Summits. DAKSHIN stands for Development and Knowledge Sharing Initiative. Hosted at the RIS, DAKSHIN has established linkages with leading think tanks and universities across the Global South and is building a dynamic network of scholars working on Global South issues.



AIC at RIS has been working to strengthen India’s strategic partnership with ASEAN in its realisation of the ASEAN Community. AIC at RIS undertakes research, policy advocacy and regular networking activities with relevant organisations and think-tanks in India and ASEAN countries, with the aim of providing policy inputs, up-to-date information, data resources and sustained interaction, for strengthening ASEAN-India partnership.



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FITM is a joint initiative by the Ministry of Ayush and RIS. It has been established with the objective of undertaking policy research on economy, intellectual property rights (IPRs) trade, sustainability and international cooperation in traditional medicines. FITM provides analytical support to the Ministry of Ayush on policy and strategy responses on emerging national and global developments.



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FIDC, has been engaged in exploring nuances of India’s development cooperation programme, keeping in view the wider perspective of South-South Cooperation in the backdrop of international development cooperation scenario. It is a tripartite initiative of the Development Partnership Administration (DPA) of the Ministry of External Affairs, Government of India, academia and civil society organisations.



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Knowledge generated endogenously among the Southern partners can help in consolidation of stronger common issues at different global policy fora. The purpose of NeST is to provide a global platform for Southern Think-Tanks for collaboratively generating, systematising, consolidating and sharing knowledge on South South Cooperation approaches for international development.



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