Book Review Symposium Introduction: Special and Differential Treatment Reform in the WTO: The Differentiated Differentiation Approach

By:

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One of my first learnings as a trade enthusiast was that Special and Differential Treatment (SDT) is the WTO's development tool to help its poor developing members meet their trade treaty obligations and reap the gains of trade liberalisation. The expectation is that SDT will ensure that international trade supports development and helps lift poor countries out of poverty. However, more than 60 years after its introduction, it does not appear that SDT has brought about any real improvement in the trading prospects or economic situation of developing countries, especially the least developed ones. Indeed, under the dispensation of SDT, trade liberalization has had only minimal impact on reducing world poverty, and may actually have increased it – almost

certainly worsened the distribution of income between rich and poor countries. This raises a fundamental question of whether the seeming contradiction of SDT results from its conception or its application. My book, which is a result of my PhD research afforded me ample time to inquire into this. The book finds the concept of SDT as meritorious and relevant still, but faults its current application. The current application sets SDT as a status symbol for [self-designated] developing countries as opposed to it being an interventionist policy tool as conceptualized. The poorest countries are made worse off as the bigger developing countries 'free ride' on the rest of the trading system. A salient message of the book [to the developing members of the WTO, especially, the poorer ones among them], is that if we continue to have the concept of SDT apply in the same way as over the past 60 years, the result would be no different in the next 60 years. We must move away from SDT as an automatic right or status symbol [of an undefined category] and have it applied on a needs-basis. If you don't need it, you don't get it. If you get it, it aborts once the need justifying it is addressed or no longer exists.

It is an honour to present this book symposium on my recent book, Special and Differential Treatment Reform in the WTO: The Differentiated Differentiation Approach, Roultedge, 2024, for which I am indebted to the editors of Afronomicslaw.org. The book is a contribution to the debate and literature on reforming SDT in the WTO, particularly, how to define and delimit access to SDT in the WTO. The book interrogates the problem of access to SDT resulting from the lack of a concrete criteria to identify a developing country at the WTO or more aptly, a country with a justifiable need for SDT. It answers the question of how to accommodate different levels of development among WTO members, while ensuring that the costs of multilateralism are shared equitably. Consistent with the literature, the book projects the case for more differentiation between developing countries as necessary to introduce equity into the WTO's system of rights and obligations to achieve substantial equality among members with heterogeneous needs. The book articulates how this can be achieved in practice, by demonstrating the operationalization of a novel implicit threshold approach – 'differentiated differentiation' – to differentiation using the WTO Customs Valuation Agreement.

The introductory Chapter 1 emphasizes development as a legitimate objective of the WTO to be achieved through trade liberalization. However, it highlights

the shortcomings of trade liberalization in addressing the real development concerns of countries and the broader issues of sustainable development at the WTO and how SDT emerged to remedy the situation. It highlights recent tensions around SDT between the United States (US) and its traditional 'Quad' allies, including the European Union (EU) and Canada, against notable emerging countries like India and China in a highly diverged debate on the reform of SDT, including on the propriety of self-designation of status. The chapter sets the tone for the book's chosen voyage to help identify a feasible SDT reform approach that will not only help resolve the current tension around the issue of access to SDT but will help move the WTO toward an evidence-based, case-by-case approach to SDT.

Chapter two traces the trade-development link in the WTO and underscores poverty alleviation as a major sustainable development goal as far as the WTO is concerned. It engages the stimulating debate on the effect of globalization on growth opportunities in countries, including whether the gains from trade liberalization necessarily translate into reducing inequality among (and within) countries. In a bid to delimit the nebulous concept of development, the chapter reviews various conceptualizations of the concept from three perspectives: theoretical; substantive; and rights based. Drawing from the preamble of the WTO Agreement, it distils the pursuance of economic development in a sustainable manner as a main objective of the WTO. The chapter finally reviews the situation of developing countries vis-à-vis the development provisions of the GATT/WTO system and the sub-optimal ways in which the system sought to further their economic development. It concludes that the system's permission of non-reciprocity as a development strategy rather limited the opportunities for developing countries to reap the gains of trade liberalization.

Chapter three is essentially an inquiry into the purpose and objective of special and differential treatment and how these may be realized. It distils two broad goals of SDT: introducing equity into the trading system and improving market access for developing country products, while also emphasizing that the goals aim to establish a balance between the non-discriminatory rule of the WTO and the need to assist disadvantaged members to be able to enjoy the rights established by the rules. It however argues that the absence of the desired balancing mechanism currently, has allowed the strict application of the rules to occasion certain inequities in the trading system as exemplified in the

pervading inequality among WTO member countries in their levels of engagement in international trade. The chapter makes a case for differential treatment as a remedial measure and in acknowledgement that inequalities among countries influence their capacity to benefit from the application of a given rule.

Chapter four explore options on how to set benchmarks to trigger access to SDT and to limit its availability by drawing lessons from existing WTO provisions that contain eligibility criteria that allow and limit access to SDT. It reinforces the case for setting triggers that would allow and limit access to SDT on a provision-by-provision basis, ensuring that only countries in need of it get it. The chapter identifies the principle of graduation as holding the brightest potential for administering SDT in such way, arguing however that graduation in the WTO must move from just being about the transitioning of countries across categories to being about the progressive application of single and uniform rules to all countries in a manner that takes into account different levels of social and economic development as a matter inherent to the rule. Special and differential treatment (SDT) in the World Trade Organisation (WTO) has failed to integrate developing countries into the international trading system, as contemplated by the WTO Agreement. It has rather been widely used to exempt developing countries from implementing their membership commitments Chapter five interrogates the current application of SDT by WTO members as the possible undermining factor for SDT not delivering on its lofty objective. It finds that the general absence of a legal framework for triggering and administering SDT is the core reason for the abuse and sub-optimal outcome of its application. In proposing reforms to the framework for SDT, it suggests ‘differentiated differentiation’ as a unique approach for differentiating between developing countries for the purpose of SDT. Conceived as an implicit threshold approach to differentiation, differentiated differentiation is amenable to the principle of graduation that identifies which countries should be allowed to derogate from rule obligation at any given time The chapter goes further to introduce an adaptation for selecting a threshold to graduate SDT beneficiary using a statistically based scoring procedure.

Using the WTO Customs Valuation Agreement (CVA), chapter six demonstrates the operationalization of differentiated differentiation – an implicit threshold approach to differentiation in the WTO and one that is amenable to the

principle of graduation. We use this approach to objectively identify which countries (from a pool of fifty developed, developing, and least developed WTO member countries) are entitled to derogate from specific CVA obligations based on special and differential treatment (SDT). Offering an alternative to the current SDT practice, differentiated differentiation requires that countries must justify, based on objective criteria, the need for a waiver from rule obligation for a limited period rather than qualifying for such a waiver by mere categorization as a developing country. The chapter further defines a threshold at which SDT beneficiaries may be graduated out of SDT using a statistically based scoring procedure.

Chapter 7 restates the book's contribution to the debate on recasting the trade and development relationship in the WTO, specifically, reforming SDT to reflect an appropriate relationship between levels of development and the commitments of members. It rehashes the justification for more differentiation between developing countries in achieving such balance and makes some policy recommendations for improving the transparency, predictability and fairness of SDT provisions in WTO agreements as part of the broader agenda for SDT reform at the WTO.

The main contribution of the book to scholarship is its proposal of 'differentiated differentiation' as a unique approach to differentiating between developing countries for the purpose of SDT. Differentiated differentiation is conceived as an implicit threshold approach to differentiation, amenable to the principle of graduation, which identifies which countries should be allowed to derogate from rule obligation at any given time. Implicit here is that the obligation to implement a rule should be linked to the existence of capacity to implement the rule. Temporary waivers from rule obligation may be allowed upon justification, based on objective criteria, rather than by mere categorization as a developing country. The book demonstrates the operationalization of differentiated differentiation using the WTO Customs Valuation Agreement. It identifies and uses a combined set of indicators to categorize constraints that countries face because of rule implementation thereby sufficiently reflecting heterogeneous needs. To further enhance objectivity, the book employs a statistically based score procedure to determine a threshold for graduating countries out of provision-specific SDT. Overall, the book offers important insights into how we may identify and

establish objective and effective criteria that settle and depoliticize the questions of access to SDT, is flexible enough to track developmental needs and moves the WTO toward an evidence-based, case-by-case approach to SDT, with the goal of making it wholly transitional and aimed at full compliance with WTO members' obligations. The book espouses an appropriate and de-politicized balance of rights and obligations among WTO members when it comes to setting the link between levels of development and the depth of policy commitments, hence, presenting a pragmatic approach to settling the longstanding debate among scholars (and WTO members alike) over SDT and how best to address legitimate demands for more differentiation.

I sincerely appreciate the very diverse set of scholars, united by their deep interest in ensuring that global trade governance is more effective and supports development, who have shared unique perspectives in reviewing the book. The first reviewer is **Dr. Li Siqi**, Associate Professor at the China Institute for WTO Studies at the University of International Business and Economics (UIBE) in Beijing, China. Our second reviewer is **Dr Inu Manak**, an expert in international political economy and fellow for trade policy at the Council on Foreign Relations, Washington DC, USA. Her recent book, The Development Dimension: Special and Differential Treatment in Trade (Routledge Focus, 2021) was co-authored with James Bacchus, the first chairman of the World Trade Organization's Appellate Body. The third review is by **Dr. Mbakiso Magwape**, a Postdoctoral Fellow at the International Centre for Tax and Development, International Centre for Tax and Development, Institute of Development Studies, Brighton, United Kingdom. **Dr. Vutha Hing**, trade economist and lecturer at the Institute for International Trade (IIT) at the University of Adelaide, Australia. He was formerly a research fellow at Cambodia's leading development research institute – Cambodia Development Resource Institute (CDRI). Our final contributor is **Clara Weinhardt**, Assistant Professor in International Relations at Maastricht University. Her research interests focus on global trade governance and North-South relations. She recently co-authored the open access book The Unmaking of Special Rights: Differential Treatment of Developing Countries in Times of Global Power Shifts with Edward Elgar (2024) (co-authored with K. Dingwerth, J. Eckl, T. Schöfer, S. Herr).

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