Review I of Special and Differential Treatment Reform in the WTO: The Differentiated Differentiation Approach, by Aniekan Ukpe (Routledge, 2024)

By:

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The book “Special and Differential Treatment Reform in the WTO” offers a comprehensive exploration of the conceptual, legal, and practical dimensions of the Special and Differential Treatment (SDT) within the World Trade Organization (WTO). It provides critical insights into how to reform SDT to reflect an appropriate relationship between levels of development and the commitments of members.

The book begins by examining the evolution and effectiveness of SDT within the WTO framework, exploring historical and theoretical foundations and critiquing current models that may undermine development goals through

minimal obligations. It uses EU-ACP trade relations as a case study, questioning the effectiveness of broad exemptions and non-reciprocal preferences, showing their potential to impede rather than enhance trade interests.

Through a doctrinal analysis of key WTO agreements, the book emphasizes the need for more nuanced SDT applications to accommodate diverse development levels and needs. It provides insights on the following aspects:

Critical Evaluation of Current SDT: The book offers a detailed critique of the current SDT model, highlighting how exemptions and preferences have sometimes hindered rather than helped developing countries. This assessment is crucial for understanding the limitations of existing approaches.

Proposal for Reform: A key contribution of the book is the proposal of "differentiated differentiation", advocating for a more tailored, rules-based approach to SDT. This approach acknowledges the diverse needs of developing countries and suggests differentiating SDT provisions on an agreement-specific basis.

Importance of Needs-Based Approach: The book argues for reforming SDT to better reflect the varying levels of development and specific needs of countries, emphasizing that a "one-size-fits-all" approach is no longer feasible.

Policy Recommendations: Using the WTO Customs Valuation Agreement as an example, the book offers practical recommendations to improve the clarity and relevance of SDT eligibility criteria.

The book's discussions touch upon critical debates surrounding SDT, including:

Effectiveness and Impact of SDT:

There is ongoing debate about the actual effectiveness of SDT provisions in supporting the development goals of beneficiary members. Critics argue that, in some cases, these provisions provide minimal obligations or exemptions that do not adequately advance the trade interests or development prospects of developing countries. Maintaining SDT provisions in existing WTO agreements and ensuring their effectiveness should be prioritized. Meanwhile, SDT provisions should remain integral to future negotiations, as exemplified by the first-phase WTO Fisheries Subsidies Agreement concluded in MC12 and the

ongoing second-phase fisheries subsidies negotiations that pay much attention to the SDT issues. Furthermore, flexibility in future SDT negotiations is crucial, tailoring commitments to the specific agreements and allowing developing members to choose fulfillment methods suited to their development status.

Eligibility Criteria of SDT:

Determining which countries qualify for SDT is a contentious topic, with debates centered on what criteria should be used to decide eligibility. The complexity arises from economic disparities even among developing members, leading to calls for more precise and criteria-based eligibility measures. This book proposes using composite indicators to assess the development levels of WTO members, thereby determining eligibility for SDT. This quantitative approach offers a potential solution to the technical debates over granting SDT. However, technical complexities and political sensitivities are involved in reclassifying countries' development status. One challenge is the rationality of the quantitative indicators, particularly the weighting of different dimensions. The author highlights the importance of these weights, as different weightings could lead to varying evaluation outcomes. In negotiations over specific agreements, the dimensions and focus of assessing members’ development levels may differ; thus, determining SDT eligibility criteria on a case-by-case basis requires the support of technical experts familiar with negotiation dynamics and the compliance capacities of WTO members. Without this expertise, reaching a consensus on acceptable quantitative composite indicators is challenging.

Another challenge is setting these composite indicators requires extensive research and data analysis, posing a heavy negotiation burden. There is a concern that this technical workload could delay negotiations and that some members might leverage it to hinder progress, intertwining economic, technical, and political interests. Furthermore, a graduation mechanism may face resistance from developing members, as it is seen as a denial of the right to development and policy space. How to move SDT away from open-ended blanket exemptions towards a needs-driven and evidence-based approach requires further discussion and political consensus.

One-Size-Fits-All Approach of SDT:

The traditional SDT approach is often criticized as being too broad and not sufficiently tailored to the diverse needs and economic conditions of different developing countries. This generic approach fails to account for varying levels of development and specific vulnerabilities. How to design SDT provisions to better address development needs of WTO members requires further consideration. In the final chapter of the book, it argues that the WTO should move away from the volatile debate on country re-categorization in efforts to enhance the effectiveness of SDT and focus on espousing an issue-based and country-specific approach to SDT. For academics and policy practitioners, the research on SDT must continue, refining academic discussions to achieve substantive WTO reforms. This involves better handling of SDT-related disagreements among members in future negotiations, and improving the implementation of existing and future WTO rules. Other relevant discussions should include:

1. **Reverse SDT:** The issue of "reverse SDT" has arisen, where some developed members benefit from certain trade measures or agreements (such as higher agricultural subsidies under AMS), while developing members do not receive equivalent benefits. This creates imbalances and inequities in the application of WTO rules, which closely relate to the negotiation power and trade dominance of developed members.

2. **Implementation and Compliance:** Ensuring that developing members can effectively benefit from SDT provisions presents a significant challenge. There is a need for more targeted and effective support mechanisms for developing members implement and benefit from SDT provisions. Furthermore, how to strengthen the effectiveness of technical assistance and capacity-building mechanisms to support the implementation of SDT provisions requires further discussion.

3. **Resistance to Reform**: Any changes to SDT provisions are met with resistance from different quarters, particularly when proposed reforms threaten to alter existing benefits or require developed members to extend additional privileges or concessions.

4. **Negotiation Dynamics and Political Economy Considerations**: The dynamics of WTO negotiations themselves pose a barrier, with the interplay of economic, technical, and political factors further complicating negotiations, as

members have varying incentives and strategic interests that influence their positions on SDT. Differing priorities and strategic interests among WTO members contribute to complexities in SDT reform discussions.

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