

### Special and differential treatment

*Kinda Mohamadieh*  
*10 November 2021*

#### Background

Special and differential treatment (S&DT) for developing countries and least-developed countries (LDCs) is an integral part of the architecture of the multilateral trading system. S&DT is a treaty-embedded and non-negotiable right for all developing Members including LDCs.<sup>1</sup> This is in recognition of the special needs of developing countries and LDCs in view of their lower levels of development. These special needs have been exposed and deepened in light of the current crisis, showing how developing countries and LDCs lack many of the policy tools that are available to developed countries to deploy in response to a severe crisis such as the one caused by the COVID-19 pandemic.

A set of principles are crucial for an effective multilateral system that could deliver something useful for developing countries and LDCs, including:

- developing countries' unconditional rights to the flexibilities under S&DT provisions,
- self-assessment and determination by developing countries of their development status,
- the upholding of existing S&DT provisions, and
- strengthening of S&DT in current and future WTO negotiations.<sup>2</sup>

However, a few developed countries, including the United States, aim to bring about differentiation/graduation among developing countries to limit their ability to avail themselves of S&DT, and situate this proposal as part of WTO reform.

---

<sup>1</sup> WT/GC/202/Rev.1

<sup>2</sup> WT/GC/202/Rev.1

---

**Third World Network (TWN)** is an independent non-profit international research and advocacy organisation involved in bringing about a greater articulation of the needs, aspirations and rights of the peoples in the South and in promoting just, equitable and ecological development.

Published by Third World Network Berhad (198701004592 (163262-P))

**Address:** 131 Jalan Macalister, 10400 Penang, MALAYSIA    **Tel:** 60-4-2266728/2266159    **Fax:** 60-4-2264505

**Email:** [twn@twnetwork.org](mailto:twn@twnetwork.org)    **Website:** [www.twn.my](http://www.twn.my)

The contents of this publication may be republished or reused for free for non-commercial purposes, except where otherwise noted. This publication is licensed under a Creative Commons Attribution-NonCommercial-ShareAlike 4.0 International License.

## **The G90 proposals**

Strengthening of S&DT provisions and addressing implementation issues have been core to reforms in WTO rules that developing countries have called for since 1996 and were incorporated into the Doha Development Agenda in 2001 (see WTO document WT/GC/W/778/Rev.3). The Doha Ministerial Declaration provided a clear mandate (in paragraph 44) to review all S&DT provisions with a view to strengthening them and making them more precise, effective and operational.

The G90 grouping of developing and least-developed countries has repeatedly and consistently sought to fulfil this mandate. This issue has been addressed in multiple WTO ministerial meetings, including the Nairobi Ministerial Conference, and later the G90 presented a communication in this regard before the 11th WTO Ministerial Conference (JOB/GC/160/ – JOB/TNC/65 of 28 November 2017) in the form of a draft Ministerial Decision on 10 specific S&DT proposals. These proposals were further revised through a detailed and consultative process in 2019 and circulated in an Unofficial Room Document for the Special Session of the WTO Committee on Trade and Development Informal Open-Ended Meeting in November 2019 (RD/DEV/182 of 20 November 2019).<sup>3</sup> Despite the length of time since the mandate was established in 2001 under the Doha Ministerial Declaration, no result has been achieved due to the lack of engagement from developed countries.

The G90 proposals address specific challenges faced by LDCs and developing countries in the areas of industrialization and structural transformation (e.g., proposals related to the TRIMs Agreement, GATT Article XVIII A and C, TRIPS Agreement, etc.), promoting their exports including through capacity building (e.g., proposals related to the Enabling Clause, TBT Agreement, SPS Agreement, SCM Agreement, etc.), and meaningful integration of LDCs and developing countries in the multilateral trading system (e.g., proposals related to accession). At the heart of these proposals are the policy and capacity constraints of LDCs and developing countries that prevent them from taking advantage of the opportunities of international trade and the multilateral trading system to enhance their levels of development.<sup>4</sup> They seek to provide stability, predictability and transparency in the implementation of existing S&DT provisions, and thus strengthen the key hallmarks of the multilateral trading system.

### **Regarding the 12th Ministerial Conference (MC12) and beyond**

- In the MC12 ministerial outcome document (i.e., ministerial declaration):
  - it is crucial to reaffirm that special and differential treatment is an integral part of the architecture of the WTO and of existing and future WTO agreements for developing and least-developed countries, and to reaffirm the mandate under paragraph 44 of the Doha Ministerial Declaration;
  - besides providing a clear recommendation for a meaningful outcome based on paragraph 44 of the Doha Ministerial Declaration, it will be important to give more impetus to this issue by strategically requiring that an outcome deemed meaningful by developing countries and LDCs be sought before the next Ministerial Conference, and a sequence be sought whereby such a meaningful outcome would be prioritized and would come first before other items on the WTO negotiation agenda post-MC12;
  - avoid language that refers to “the most vulnerable among WTO Members” rather than “developing countries and LDCs”. The former might embody an attempt to move beyond the traditional categories embedded in WTO law and potentially institute differentiation among developing countries and LDCs.

---

<sup>3</sup> The proposals are also recaptured in JOB/DEV/65 – JOB/TNC/97 of September 2021.

<sup>4</sup> JOB/DEV/60 and JOB/TNC/79

- In regard to the subject of WTO reform: it is important to underline the indivisible relationship between developing-country status and S&DT, and to counter any attempts at differentiation among developing countries or LDCs. Any unilateral action depriving developing Members including LDCs of treaty-embedded rights would be inconsistent with Members' obligations, erode the foundation of the multilateral trading system which functions on the basis of being "rules-based" (WT/GC/W/778/Rev.3), and upset the carefully agreed balance which has been the basis for developing countries' commitments thus far.
- In the context of the WTO response to the pandemic, a number of developing countries have been asking for specific flexibilities for developing countries and LDCs in support of food security and economic resilience (see JOB/GC/278/Rev.1). These are supposed to serve as new tools that would allow developing countries and LDCs the needed space through their trade policies to take immediate measures in relation to pandemics or other crises, in order to shield the livelihoods of the most vulnerable in their populations. This is particularly important given that they cannot utilize the extensive fiscal and monetary tools at the disposal of developed countries. These proposals shall be in addition to and without prejudice to the negotiations and outcomes on other mandated issues of concern to developing countries such as the G90 proposals and the related Doha mandate.

---

*For TWN Briefing Papers on the WTO's 12th Ministerial Conference 2021, click [https://twon.my/title2/briefing\\_papers/briefings\\_MC12.htm](https://twon.my/title2/briefing_papers/briefings_MC12.htm)*

*For regular updates on trade and investment issues through the TWN Information Service, click <https://twon.my/title2/wto.info/wto.new.htm>*