



RIS Discussion Paper # 328

Special and Differential Treatment Provisions in the WTO: Evaluating Pathways for Development

Abhijit Das, Paavni Mathur and
Sushil Kumar



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Special and Differential Treatment Provisions in the WTO: Evaluating Pathways for Development

Abhijit Das, Paavni Mathur and Sushil Kumar

Abstract: Recent proposals under the WTO reform agenda have questioned the continued broad application of Special and Differential Treatment (S&DT) and called for a greater alignment of obligations across Members. This paper examines whether economic convergence since the establishment of the WTO supports such claims. Using GDP per capita data in both current US dollars and purchasing power parity (PPP) terms, the analysis evaluates income trends for developing Members relative to developed economy benchmarks. The results indicate that a considerable difference persists between the standards of living in developing countries, on one hand, and the developed countries, on the other. The need to continue with S&DT based on self-determination continues to remain important and relevant.

Keywords: WTO Reforms, Special and Differential Treatment (S&DT), GDP per Capita, Trade and Development, Developing Countries.

1. Introduction

One of the key issues being pushed by the developed countries for discussion and a possible decision at the forthcoming 14th Ministerial Conference (MC 14) of the World Trade Organization (WTO) is the approach of WTO Members to the principle of Special and Differential Treatment (S&DT). Discussions on this issue, especially self-

* Abhijit Das is an International Trade Expert; Paavni Mathur is a Consultant at RIS, New Delhi; and Sushil Kumar is Assistant Professor at RIS, New Delhi. Views are authors' own. Usual disclaimers apply.

determination of development status for the purpose of being eligible for S&DT provisions, has revealed considerable divergence in the positions of many Members. Many developing countries view the principle of S&DT as a “treaty-embedded and non-negotiable right for all developing Members”(WTO, 2022a), “which must not be undermined” (WTO, 2026). While most developing countries have emphasised the need for self-determination to be eligible for S&DT, the developed countries, supported by some developing countries, are seeking to dilute S&DT through negotiations on new approaches. By focusing attention on the differences in the level of development among developing countries, the proponents of ‘graduation’ ignore the vast differences between the developed and developing countries. In the context of the ongoing debate on S&DT, it is relevant to note that while some developing countries have made impressive gains in the economic arena, they continue to face daunting socio-economic challenges. These impose severe handicaps on them in their ability to benefit from the rules of the multilateral trading system. S&DT should, thus, be viewed as a means to compensate developing countries for these handicaps, enabling them to benefit from the system.¹

This study examines the following: historical background of inclusion of the S&DT principle under the GATT regime; categorisation and illustration of S&DT provisions; has the world really changed to justify dilution of S&DT?; different perspectives on S&DT in recent WTO discussions; evaluating the different approaches to S&DT; addressing certain perspectives regarding India’s approach to S&DT; reverse S&DT in some of the existing agreements at the WTO; and conclusions and recommendations for the way forward.

2. Historical Background of the Inclusion of the S&DT Principle under the GATT and WTO 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

Figure 1: Evolution of Special and Differential Treatment



Source: Based on Ministerial Conference Documents and WTO “Special and Differential Treatment Provisions,” https://www.wto.org/english/tratop_e/devel_e/dev_special_differential_provisions_e.htm

made by them in trade negotiations to reduce or remove tariffs and other barriers to the trade of less-developed contracting parties”(GATT, 1994). This provision on less than full reciprocity provides the legal foundation for S&DT provisions in various WTO agreements and in multilateral trade negotiations. 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).

3. Categorisation and Illustration of S&DT Provisions

The S&DT principle gets manifested in specific provisions of the WTO agreements in different ways. First, certain provisions are aimed at increasing the trade opportunities of developing country Members - the Enabling Clause being one of the most important S&DT in this category (Box 1). The Enabling Clause refers to the Decision of the GATT CONTRACTING PARTIES of 28 November 1979 (General Agreement on Tariffs and Trade, 1979). As an exception to the MFN obligation under Article I of GATT 1994, it permits Members to accord differential and more favourable treatment to developing countries without the need to accord such treatment to other Members.

Second, a few S&DT provisions allow developing countries to depart from the generally applicable disciplines under the relevant agreement without any time limitation, provided the measure complies with certain requirements. To illustrate, Article 6.2 of the Agreement on Agriculture allows developing countries to grant unlimited amount of input subsidies, provided these are generally available to low-income or resource-poor producers (WTO, 1994a). This provision is not subject to any transition period.

Third, certain S&DT provisions are available as long as the developing country complies with the negotiated eligibility criterion. A relevant illustration of this category is contained in Article 27.2(a) of the Agreement on Subsidies and Countervailing Measures (ASCM), which allows developing countries to provide export subsidies that are

otherwise prohibited under Article 3.1(a) of the ASCM (WTO, 1994b). However, a developing country can benefit from this provision as long as its per capita Gross National Product does not exceed \$1,000.

Fourth, some S&DT provisions are available for a fixed transition period. A relevant illustration of this category is contained in Article 27.2(b) of the Agreement on Subsidies and Countervailing Measures (ASCM), which allows other developing countries whose per capita Gross National Product exceeded \$1,000 to provide export subsidies for 8 years, which are otherwise prohibited under Article 3.1(a) of the ASCM (WTO, 1994b).

Fifth, certain S&DT provisions allow developing countries to choose the transition period after which the relevant obligation will become applicable to them. This is a recent category of S&DT, which is provided in Article 14.1 (b) of the Agreement on Trade Facilitation. This provision allows a developing country Member or a least-developed country (LDC) Member to designate a date for the implementation of identified obligations after a transitional period following the entry into force of this Agreement (WTO, 2014).

Sixth, certain S&DT provisions allow developing countries to choose the transition period after which the relevant obligation will become applicable to them, and this would be conditional on their acquiring the capacity to implement through the provision of technical and financial assistance by developed country Members. This flexibility is contained in Article 14.1(c) of the Agreement on Trade Facilitation (WTO, 2014a).

Seventh, certain S&DT provisions require the developed country Members to provide, upon request, technical and financial cooperation for facilitating the implementation of the underlying agreement. Article 67 of the TRIPS Agreement is a good illustration of this category (WTO, 1994c).

Box 1: What is S&DT

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

- 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

It is relevant to recall that in paragraph 44 of the Doha Ministerial Declaration, Ministers agreed “that all special and differential treatment provisions shall be reviewed with a view to strengthening them and making them more precise, effective and operational”(WTO, 2001). At the foundation of this sentence were the concerns expressed regarding the operation of S&DT provisions in addressing specific constraints faced by developing countries, particularly LDCs. Further, many S&DT provisions in the existing WTO agreements do not imply clear and binding obligations on the developed countries. Two illustrations are given below to elaborate this point.

Example 1: The first sentence of Article 15 of the Anti-Dumping Agreement states the following: “It is recognized that special regard

must be given by developed country Members to the special situation of developing country Members when considering the application of antidumping measures under this Agreement” (WTO, 1994d). While this provision might appear to be beneficial to the developing countries, it is of no practical utility. It does not bestow any specific obligation on the developed countries.

Example 2: Certain provisions are designed in favour of developing countries, but the text is so ambiguously worded that it remains unclear who bears the burden of implementing the obligation. Consider the following provisions contained in Article IV.1 (a) of the GATS (WTO, 1994e):

- “1. The increasing participation of developing country Members in world trade shall be facilitated through negotiated specific commitments, by different Members pursuant to Parts III and IV of this Agreement, relating to:
 - (a) the strengthening of their domestic services capacity and its efficiency and competitiveness, *inter alia*, through access to technology on a commercial basis;”

The above provisions appear to have been negotiated for promoting the interests of the developing countries. However, they suffer from two crucial shortcomings. First, it is not clear which set of countries – developed or developing or both – are required to take commitments, in order to increase the participation of developing countries in world trade. Second, while the mention of “access to technology” appears beneficial, it is undermined by the clause “on a commercial basis”. Even without this provision, technology would be available on a commercial basis. Thus, the provision confers almost no benefit to the developing countries.

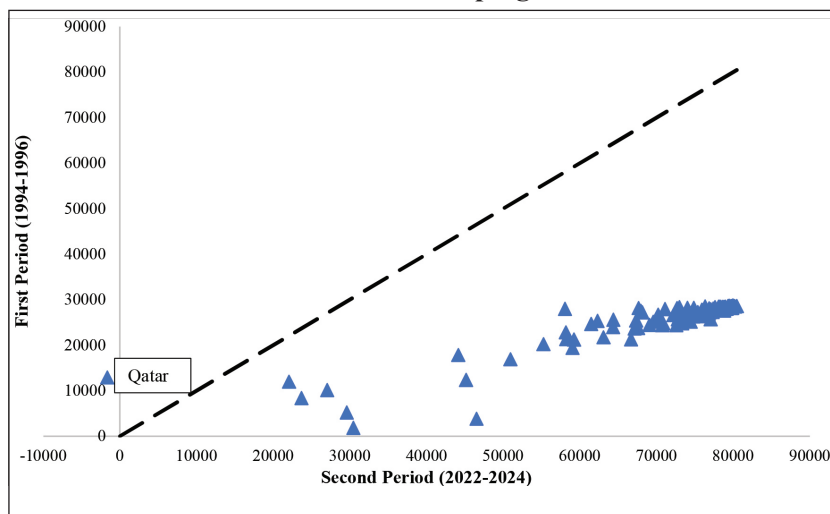
Given the past experience of developing countries regarding the inadequacies in S&DT provisions, the importance of making these provisions “more precise, effective and operational” cannot be over-emphasised. Despite the mandate provided for it in paragraph 44 of the Doha Ministerial Declaration (WTO, 2001), this crucial task remains unfinished.

4. Has the World Really Changed to Justify the Dilution of S&DT?

A narrative is sought to be created that, since most developing countries have made impressive strides in development, the WTO's approach to S&DT must change.² No doubt the developing countries have made significant economic progress over the past few decades. But this narrative ignores that the standards of living in most of these Members fell far behind those in the developed Members. In overall terms, the development divide remains firmly entrenched and has widened over time (WTO, 2019b).

It is relevant to point out that in Article XXXVI: 1(c) of the GATT 1994, the Contracting Parties noted that “there is a *wide gap* between standards of living in less-developed countries and in other countries”

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

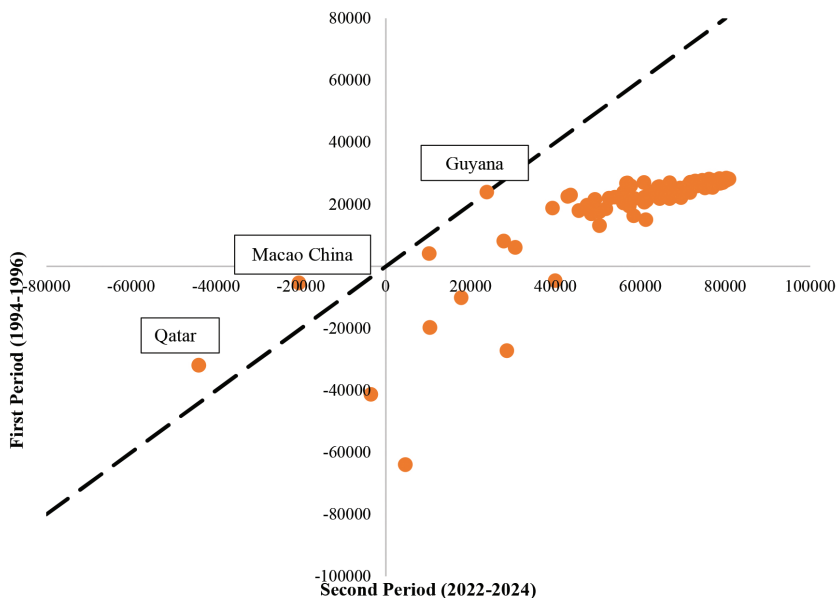


Source: Authors' calculation based on data collected from the World Bank World Development Indicators, per-capita GDP in current US Dollars.

Note: * As data were missing for Afghanistan, Cuba, and Yemen, these countries could not be included in the analysis.

(GATT, 1994). Based on a comparison of the gap between the per capita GDP in current US dollars of the US and 119 developing countries, the gap between 1994-96 and 2022-24 increased for 118 developing countries (see Figure 2). Thus, despite the impressive increase in 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 per cent 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.

Figure 3: Gap in Per Capita PPP compared with the US (Current International Dollar)



Source: Authors' calculation based on data collected from the World Bank World Development Indicators, the per capita GDP (PPP).

Note: If the 166 WTO Members, 122 are developing countries, including LDCs. As data were missing for Afghanistan, Cuba, the Bolivarian Republic of Venezuela, Djibouti, and Yemen, they have been removed from the list.

Even if a similar analysis is undertaken using Portugal as the comparator developed country, instead of the US, the pattern of widening gap in per capita GDP persists. While 106 developing countries experienced a widening per capita income gap with Portugal, the following 12 countries witnessed a reduction in that gap: Uruguay, United Arab Emirates, Saudi Arabia, Qatar, Macao China, Kuwait, Israel, Hong Kong China, Guyana, Grenada, Barbados, and Bahrain.

To complement the analysis based on GDP per capita in current US dollars, GDP per capita measured in purchasing power parity (PPP) terms was also examined. GDP per capita (PPP, international dollars) adjusts for price level differences across countries and reflects income levels in terms of comparable purchasing power. Unlike nominal measures expressed at market exchange rates, PPP-based estimates provide a clearer indication of countries' well-being (World Bank, 2026). When benchmarked against the United States using PPP-adjusted GDP per capita, the overall pattern of convergence between the US and the developing countries remains limited (Figure 3). Out of the 119 developing countries, 116 countries had a gap in per capita GDP (PPP) that widened with respect to the US over the two periods. The gap narrowed for the 3 countries falling above the dotted line – Guyana, Macao, China, and Qatar. Although developing Members have recorded increases in real income levels over the period examined, most of them have not achieved a substantial narrowing of the per capita income gap relative to the United States. The persistence of sizeable per capita income gaps in purchasing power terms indicates that the divergence observed in nominal measures is not solely due to currency movements. Rather, it reflects deeper structural differences in productivity and economic capacity.

5. 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, including LDCs. Further, many Members are of the view that while

Table 1: Submission on WTO Reform Examining S&DT

Sr. No	Submission Year	Document Number	Proposal details
1.	December 2025	WT/GC/W/984	The US submission on WTO reform (S&DT) ● S&DT may be appropriate for LDCs ● Reform in the area of “development” must focus on transitioning all Members to follow the same rules
2.	January 2026	WT/GC/W/986	The EU submission on WTO Reform (S&DT) ● S&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. ● Reform work should be based on factual analysis of the effectiveness of the S&DT provisions in WTO agreements.
3.	February 2026	WT/GC/W/987	Paraguay submission on WTO Reform (S&DT): ● Lack of objective and graduation criteria under the current self-classification system creates inequalities. ● Emphasized that S&DT should be needs-based, precise, effective, and operational addressing Members’ specific challenges while supporting the broader application of WTO rules.
4.	February 2026	WT/GC/W/989	China submission on WTO Reform (S&DT): ● Stressed the importance of S&DT for development and integration into global trade. ● Supported more precise and effective implementation while preserving flexibility for developing Members.

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

countries have diverse 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 to be 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 divergence 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 the 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).

6. Evaluating the Different Approaches to S&DT

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 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.

The discussions on S&DT have elicited a seemingly useful suggestion - introducing “trigger-ready” mechanisms or crisis-related waivers to enhance responsiveness. However, two points are worth noting. First, this suggestion should not result in replacing the existing approach to S&DT. Crisis-related response mechanisms would be triggered in specific situations and cannot be a substitute for addressing persisting development gaps and capacity constraints faced by most developing countries during normal (non-crisis) periods. Second, when humanity faced one of its most severe health challenges – the Covid-19 pandemic – the response of the WTO Members in the form of the Ministerial Decision on TRIPS (WTO, 2022c), was too little and too late. This decision bore almost no resemblance to what a coalition of more than 60 countries had sought and came too late to be of much practical utility in combating the pandemic (Das, 2025). This sad experience, when global cooperation was most needed to address an unprecedented existential crisis, does not inspire confidence that crisis-

related waivers will have sufficient substance to be effective. Overall, “trigger-ready” mechanisms or crisis-related waivers must not divert attention from the continued need of S&DT during normal situations.

In the context of the forthcoming MC 14, it is relevant to note the following perspective of the Facilitator for WTO reform: “Reform should ensure inclusive integration of developing Members and 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” (WTO, 2025a). This perspective does not appear to accurately reflect the importance of S&DT provisions on the basis of self-determination for many developing countries and could be used to provide the basis for new approaches in the post-MC 14 phase. This assessment must, therefore, be challenged by India and other developing countries.

7. Addressing Certain Perspectives Regarding India’s Approach to S&DT

Discussions on S&DT at the WTO have triggered some debate domestically in India. It is therefore relevant to examine some of the perspectives that have been voiced regarding the approach India should adopt on this issue.

As most S&DT provisions are not precise and effective, some believe that India should not expend diplomatic capital on continuing to push for them.

It is true that very few S&DT provisions are precise and effective. Nevertheless, it is relevant to recall at least three specific S&DT provisions that have substantially benefited India. First, the flexibility under Article 6.2 of the Agreement on Agriculture has allowed India to support its farmers through subsidised provision of fertilisers, irrigation and power. Compared to other developing countries, India provides the highest amount of support under this provision. Second, the Bali Peace Clause (WTO, 2013), read in conjunction with the General Council Decision of November 2014 (WTO, 2014b), allows India to continue with its Minimum Support Price (MSP) scheme for rice, despite the

support under it exceeding the 10 per cent product-specific de minimis limit specified under the Agreement on Agriculture. In the absence of this S&DT provision, India would have been required to make substantial changes to its MSP scheme for rice. This would have compromised the country's ability to address issues related to food security. Third, for more than 20 years, India benefited from the S&DT provision, which allowed it to provide the otherwise prohibited export subsidies. Overall, despite most of the S&DT provisions being in the nature of best endeavour and not precise, it would be in India's interest to seek improvements to these provisions, instead of abandoning its efforts on them.

While deciding its approach on S&DT, India should look at the larger context. India's strong stand on this issue could compel the developed countries to make the WTO irrelevant. As such a situation would not be in India's interest, its approach to S&DT must be pragmatic and not doctrinal.

There is no doubt that it is in India's overall interest to keep the WTO relevant. However, the question that needs to be answered is: what concessions should India be prepared to make to keep the WTO relevant? A scenario whereby, for the sake of upholding multilateralism at the WTO, India accepts new obligations and gives up its rights arising from the existing S&DT provisions that would not be a balanced outcome from its perspective. Further, the developed countries, including the US, continue to have a deep interest in the TRIPS Agreement. It is therefore unlikely that they would abandon the WTO, even if India adopts a hard negotiating line on the issue of S&DT. It is also important to appreciate that India's quest for S&DT provisions is motivated from practical considerations of preserving policy space for meeting some of its development needs.

- ***As India will soon become a \$5 trillion economy, it should not seek S&DT in ongoing and future negotiations.***

The impressive growth in India's GDP must not make us oblivious to the multi-dimensional development challenges that it continues to confront. Further, India's per capita GDP is not even one-fifth of that of the US. It would thus not be fair and balanced if India were

to be required to assume the same obligations as those of the US in ongoing and future negotiations. Such an outcome is likely to curtail the policy space available to the government for supporting domestic players in new and emerging sectors. Consequently, it would be in India's interest to preserve the possibility of seeking S&DT provisions in ongoing and future negotiations.

- ***If China can give up access to S&DT in current and future negotiations, what is the problem in India adopting a similar approach?***

It is generally acknowledged that China is now in a position to leverage its economic heft to influence the negotiations in its favour and secure the rules which promote its interests. Consequently, it does not require S&DT to meet its requirements. This was evident in the last version of the text on negotiations on subsidies that contribute to over-capacity and over-fishing(WTO, 2024). In this text, China secured favourable terms for subsidies related to distant water fishing. At its present stage of development, it is unlikely that India has the heft to decisively influence the core rules in its favour. It will, therefore, have to continue to rely on S&DT provisions for preserving at least some meaningful policy space to address its development needs.

- ***As WTO rules must be dynamic and adjust with changing circumstances, India should not oppose new approaches to S&DT.***
Assuming that WTO rules need to keep pace with changing circumstances, as demonstrated in the discussion on per capita GDP, over the past three decades, the standard of living in most of these developing country Members has fallen far behind that in the developed Members. This warrants strengthening of S&DT provisions, instead of their dilution. India would thus be justified in not supporting new approaches that would result in eroding S&DT.
- ***India must go back to the drawing board and assess what specific S&DT it will need in future negotiations, including transition periods.***

It is important to comprehend that future WTO negotiations in new and emerging areas will seek to impose constraints on countries which are not at the technology frontier in the relevant area. Given the lack of a comprehensive ecosystem for promoting innovation in India, it is realistic to expect that the government would need to implement catch-up policies to bridge the gap with those on the technology frontier. This would require the government to preserve some policy space through S&DT provisions in future negotiations in new and emerging areas. Any assessment of the specific S&DT, including appropriate transition periods, which India may require in future negotiations, would depend on the details of the provisions that might be negotiated. It would thus be a speculative exercise to make such an assessment at this stage without having information about the topics and contours of future negotiations.

8. Reverse S&DT in Some of the Existing Agreements at the WTO

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 – certain provisions in WTO agreements which are objective and neutral on the face, but actually benefit mainly the developed countries. To illustrate, it is mainly the OECD countries which can take advantage of the provision on export credits in the Agreement on Subsidies and Countervailing Measures and provide these subsidies, which would otherwise be prohibited (WTO, 1994b).³

The Agreement on Agriculture provides many examples of how the same provision confers substantial rights to the developed countries, while imposing constraints on many developing countries (Das, 2025). This is amply illustrated by the provision related to a category of subsidies called Amber Box subsidies (also referred to as Aggregate Measure of Support (AMS)) whose fundamental underpinning is that higher the level of subsidy provided in the base period of 1986-1988, higher became the entitlement during the WTO era. As the developed countries provided high amounts of these subsidies in the base period, they acquired the

right to continue to provide these subsidies in the future. On the other hand, most developing countries were fiscally prudent or had budgetary constraints and did not provide these subsidies beyond meagre amounts. These countries lost the right to provide Amber Box subsidies beyond a de minimis threshold in the future. In fact, out of the total entitlement for Amber Box subsidies, 95 per cent accrued to the developed countries (see Box 2). In addition, provisions on Special Safeguards and export subsidies for agricultural products are certain other illustrations of reverse S&DT provisions in favour of the developed countries (WTO, 1994a).

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 (WTO, 2019b). This approach continues to remain relevant in current discussions at the WTO.

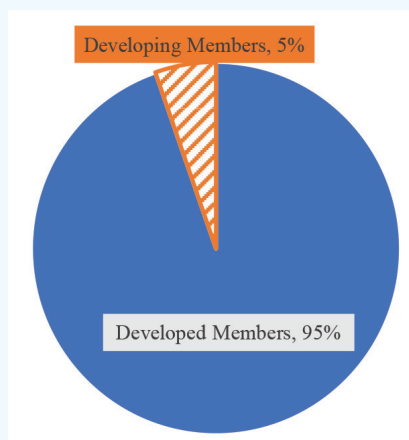
Box 2: Reverse Special and Differential Treatment in Agreement on Agriculture

Countries with AMS entitlements can provide large amounts of farm subsidies without being limited by the strict agriculture rules under the Amber box.

- Permitted to 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: Authors' compilation based on Sharma *et al.* (2025).

Share of AMS Entitlement Between Developed and Developing Members (%)



9. Conclusions and Recommendations for the Way Forward

In the recent debate on S&DT, many developing countries have emphasized that this principle “remains a cornerstone of the WTO’s development mandate and should remain operational and responsive to development needs” (WTO, 2025b). 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, have been about curtailing the flexibility of governments to implement policies to catch-up 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 for some more time 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 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.

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.

Overall, at the 14th WTO Ministerial Conference and in subsequent discussions, India should adopt a multi-pronged approach to the issue of S&DT. First, it must insist that the flexibilities under existing S&DT provisions must be preserved and improved to make them more precise and effective. Second, access to S&DT provisions in the ongoing and future negotiations must continue to be on the basis of self-determination. There must not be an *a priori* exclusion of developing countries from

access to S&DT provisions through new approaches, including a needs-based approach and a criteria-based approach. Such approaches are likely to be divisive, inadequate to meet the development needs and fraught with considerable uncertainty for developing countries. Third, in the ongoing and future negotiations, access to specific S&DT provisions should be determined by the negotiating dynamics, architecture and contents of the generally applicable provisions under negotiations, as is the existing practice. Fourth, confining S&DT provisions to merely transition periods may be inadequate to meet the requirements of a large number of developing countries. Transition periods should be linked to negotiated economic indicators, rather than focusing on a fixed duration. This approach would enhance predictability, transparency, and certainty for developing countries and is in line with existing WTO practice in certain instances, such as those under the Agreement on Subsidies and Countervailing Measures. Fifth, the preferred approach to S&DT should be that, depending on their individual circumstances, developing countries may voluntarily give up their access to S&DT in ongoing and future negotiations, as has been done by China (WTO, 2025c). Any other approach risks creating more hurdles in negotiations at the WTO and further fracturing the organization. Finally, India must insist that any discussion on S&DT should be undertaken only after the developed countries give up their recourse to reverse S&DT provisions.

Endnotes

- ¹ See, for example, (Das, 2003); (Third World Network, n.d); (WTO, 2022b).
- ² See, for example, Submission by the US titled An undifferentiated WTO: Self-declared development status risks institutional irrelevance.
- ³ Item k of Annex I of the Agreement on Subsidies and Countervailing Measures.

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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.



Ms. Paavni Mathur is a Consultant at RIS with expertise in WTO agricultural trade. She holds a Master's degree in Development Economics from the University of Sussex, UK (2019). Her research interests lie at the intersection of international trade, sustainability, and quantitative analysis.



Dr. Sushil Kumar is Assistant Professor at RIS. He obtained his Ph.D in Economics from Department of Economics, Jamia Millia Islamia New Delhi. His work has been published in several academic journals, discussion papers, edited volumes, and research reports. He has actively participated in prestigious academic conferences and high-level policy dialogues both in India and internationally. His research interests include South-South Cooperation, India's Development Cooperation, International Trade and Finance, and Applied Econometrics.

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Core IV-B, Fourth Floor, India Habitat Centre
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Fax: 91-11-24682173-74, Email: dgooffice@ris.org.in
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