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CHASING THE WINDMILL: WHAT IS WRONG WITH THE US APPROACH ON DEVELOPING COUNTRY STATUS

Executive Summary

The polarized positions in the WTO, particularly between the US and China, on developing country status and ‘special and differential treatment’ (S&D), makes it not only difficult to find a solution on this issue, but also impossible to foresee solutions on other issues demanding WTO reform. The approach of the US Trump administration to deprive certain members of their developing country status under certain criteria has been fiercely opposed by most developing countries. In the WTO, there is no clear criteria for the definition of developing country, instead members can self-designate themselves as developing countries, a status which currently constitutes the majority of the WTO, including big economies like China and India and smaller ones like Singapore and Antigua and Barbuda. However, developing country status doesn’t automatically lead to S&D privileges, as these are subject to various negotiations in the WTO. Members reacted differently to US pressure, with some choosing to give up their right to S&D while keeping their developing country status, and some others insisting on keeping their developing country status while showing willingness not to use S&D unless they have to. The US approach to developing a graduation criteria for leaving ‘developing country’ status misses the real target, namely, the need to rebalance the rights and obligations of emerging countries. Members should work together on a pragmatic solution-oriented approach by adapting S&D to the particular situations of various developing members and adapting to specific negotiations issues, following already existing good examples of Trade Facilitation Agreement and Information Technology Agreement.

Background

A fracas in Geneva over developing country status

At the World Trade Organization (WTO) General Council meeting of 13 October 2020, the United States of America (US) and China, the two biggest players of the organization, clashed over the issue of ‘special and differential treatment’ (S&D). At the General Council meeting of 16 December 2020, they repeated their stances. These were merely twice among the nine times of such rebuttals since the US tabled its position on this issue on 14 February 2019, also at the General Council, in which the US proposed to deprive China and some other developing members of their developing country status in the WTO, and their ensuing entitlement for S&D.¹

Essentially the US argued that some ‘significant players’ were using S&D to avoid undertaking meaningful obligations in the WTO, and cited this as one of the ‘root causes’ of the paralysis in the organization’s negotiating function. The US further insisted that the approach to S&D must evolve but refused to endorse the ‘case-by-case’ approach as proposed by some other members and already used in the Trade Facilitation Agreement (TFA).² The US used China as the example why it is necessary to differentiate these ‘most advanced, wealthy, or influential Members’ from vulnerable ones such as the least developed countries (LDCs). The US also used figures such as merchandise exports, economic capacity, and per capita income to illustrate the huge difference between China and LDCs or other less advanced developing countries.

China countered that it is ‘meaningless’ and ‘a systematic and directional mistake’ to debate criteria for differentiating developing members, and that focus should rather be on how to translate the concept of development into practice, which is ‘the key objective of the WTO’. China further elaborated that members should focus



on effectively enforcing the existing S&D provisions and devising meaningful S&D in new negotiations, such as those on fisheries subsidies.³ For China, WTO reform should ‘address the difficulties developing members encounter in their integration into economic globalization’, by providing them ‘flexibility and policy space needed for their economic development’.⁴ China went further to emphasize that it is ‘crucial for the WTO to safeguard the rights of developing members to S&D and make S&D provisions more precise, effective and operational’ and requested to, inter alia, ‘accord adequate and effective S&D treatment to developing members in future negotiations on trade and investment rules’.⁵

As one can see, the US and China are operating at different wavelengths on the S&D issue, or, as Chinese people say, conducting a ‘chicken and duck talk’ (鸡同鸭讲) — neither meaningful nor fruitful. This polemic posturing reflects their polarized positions on S&D. Their dichotomous positions make it very difficult to find a solution to this issue, without which it is almost impossible to foresee solutions on most of other issues emerging in the organization.

This is not an issue only between the US and China. After the Uruguay Round (1986-1994), many developing countries complained that most of the S&D provisions emerging from the Round, altogether 155⁶, ‘do not go beyond a best endeavour promise’, were ‘not legally enforceable’, and did not have mechanisms to ensure their effective implementation. Therefore, for them the focus should be ‘the establishment of a concrete and binding S&D regime’ to respond to developing countries’ development needs, including enhancing their market access opportunities and providing policy options to unlock their growth and development potential.⁷ The Doha Round, launched shortly after the Uruguay Round concluded, called for the review of all S&D provisions with a view to strengthening and making them ‘more precise, effective and operational’.⁸

Based on the criteria that the US is trying to establish in the WTO⁹, over 30 developing members of the WTO would be deprived of their developing country status, and hence their entitlement for S&D.¹⁰

This was strongly opposed by many developing countries.

On 18 February 2019, China, India, South Africa and Venezuela tabled a communication in the WTO which insisted that S&D is ‘an integral part of the multilateral trading system’, and self-declaration of developing country status ‘a fundamental rule’ and ‘the most appropriate classification approach’ for the WTO.¹¹ On 4 December 2020, African Group Members (43 in total), Cuba and India tabled another communication passing the same message that S&D is ‘a treaty-embedded and non-negotiable right for all developing Members’, and the wide development gap between developed and developing countries ‘necessitates the preservation and strengthening of the S&D provisions in both current and future WTO agreements’¹².

Developing country status does not lead automatically to privileged treatment.

There are two layers to the S&D issue. The first is developing countries status. In the WTO, members are categorized as ‘developed’ and ‘developing’. However, there is no criteria to define which members are developing countries, except for LDCs.¹³ The WTO and its predecessor, the General Agreement on Tariffs and Trade (GATT), has followed the practice of ‘self-designation’ wherein members self-identify as developing countries. Under this practice, ‘more than two-thirds of WTO members’¹⁴ have declared themselves as developing countries, including big ones like China and India, and small ones like Singapore and Antigua and Barbuda. One can say that they have made such a self-declaration with different but arguably good reasons, including low per capita GDP for China and India, lower economic performance for Antigua and Barbuda, or, for Singapore, no natural resources as well as political considerations as a member of ASEAN, which self-declares as a developing country bloc.¹⁵

The second layer concerns the flexibilities or privileges that only developing members can enjoy, which may help them take less obligations than developed members in WTO negotiations. This can manifest in many formats, such as less tariff duty cuts, longer implementation periods, more leeway to use agricultural domestic support, or capacity building assistance by developed members. For example, under the de minimis provision of the WTO’s Agreement on Agriculture (AoA), developing members can be exempted from reducing trade-distorting domestic support in any year in which the aggregate value of their product-specific support does not exceed 10 percent of the total value of production of the agricultural product in question, as compared to 5 percent for developed countries.¹⁶

However, there is no automaticity between these two layers: developing country status does not automatically enable S&D or the same level of S&D. The content and the level of S&D flexibilities are country-specific and subject to negotiations, including accession and other forms of negotiations within the organization. For example, regarding the agriculture domestic support de minimis as discussed previously, China, which insisted on joining the organization as a developing country, was granted 8.5 percent as a result of its accession negotiations mainly with US and the European Union (EU)¹⁷, instead of the 10 percent applicable to other developing countries. Another example is that China committed to immediately eliminate all export subsidies for its agricultural products after its accession, while 25 other members including the US, the EU, and Australia were entitled to such export subsidies on 428 agricultural products¹⁸ until 2015.¹⁹ Overall, China has not benefitted much from its developing country status in terms of S&D flexibilities.²⁰

Developing countries reacted differently towards the US position.

Facing US pressure, some developing countries indicated that they would not seek any S&D in future WTO negotiations, specifically Singapore, Brazil, Republic of Korea, Costa Rica, and Chinese Taipei. Interestingly, none of them showed any indication that they would give up their developing country status. It's hard, at this moment, to explain why they insist on keeping this status when they have already let go their rights for S&D, but this could go beyond economic or trade considerations. For example, some say that Singapore will not give up its developing country entitlement simply because this will ensure that it can continue to play a leadership role in ASEAN.

For China, developing country status is more political than economic. While highlighting S&D's economic characteristics that confirming developing country status such as low per capita GDP, low ranking in the Human Development Index, or in terms of science, technology and education²¹, China views its status as 'underdeveloped' as an important political category.

For example, at the most recent top Communist Party Congress the Party stated that it is 'still and will long remain in the primary stage of socialism', which is a 'fundamental dimension' and 'most important reality' of its national context.²² For those that understand the Chinese system, this is China's political judgement emanating from the highest level, of its development stage. This means it would be 'mission impossible' to change that political judgement through external influence, certainly prior to 2049 when the China currently believes it will become 'a great modern socialist country' — the second of its Two Centenary Goals.²³

Another important aspect is that WTO members, developed or developing, always find ways to protect their sensitive interests. Even if the US succeeded in persuading these 30-odd WTO members to give up their developing country status, it does not mean that they would give up their rights to seek flexibilities or policy space to shield their sensitivities in negotiations, especially if national politics gets involved. If not under S&D, they would simply resort to other flexibilities that are commonly eligible to all. For example, in the Doha Round negotiations on agriculture members are entitled to designate so-called 'sensitive products', which provide less market opening commitments than normal agricultural products and are applicable to all members.²⁴ Developed countries have been using all kinds of flexibilities to protect their sensitive sectors, for example billions of US dollars of agriculture domestic support to subsidize their farmers, which are ridiculed as 'reversed S&D'.²⁵

A pragmatic approach is needed to focus on the real issue: rebalancing rights and obligations.

Therefore, one may say that the US approach to reforming developing country status misses the real target: How to achieve an appropriate balance, or rebalancing, of rights and obligations among a highly diverse membership with different needs, priorities and aspirations in trade relations.²⁶ This is pertinent given the rise of major developing countries like China and India that have reshaped the global economic and trade landscape and who should make more commitments in WTO negotiations. However, entangling this with the issue of development status and related qualification criteria will not work, but only result in polarized positions that complicate the search for an appropriate negotiated balance of rights and obligations amongst WTO members. To break the impasse, members should work together on a pragmatic solution-oriented approach by adapting S&D to the particular situations of various developing members and adjusting it with the evolution of such situations.²⁷

There already are some good examples. One is the Trade Facilitation Agreement (TFA) concluded at the Bali Ministerial Conference in December 2013, in which China and some other participating developing members sought no or little flexibilities and ended up with the same level of obligations as developed members.²⁸ Another example is the expansion of the Information Technology Agreement (ITA) concluded at the Nairobi Ministerial Conference in December 2015, where no S&D is provided and China has assumed 'substantial responsibilities' as the only developing member that participated.²⁹

And we also see an inclination from the major developing countries that they are ready to make more contributions. The Chinese government has underlined that they 'always show constraint' in invoking S&D provisions, do not ask for the same S&D as other less advanced developing countries, and 'recognize the responsibility' they should bear and will continue to make contributions within their capacity in the future.³⁰ China also proposed in its WTO reform documents that there could be a differentiation of contribution amongst developing countries, but in a subtle manner that developing members are encouraged 'to actively assume obligations commensurate with their level of development and economic capability'³¹. India, South Africa and other self-declared developing countries also recognize that while it is their right to use S&D, they should 'always make their contribution as much as they can'.³²

Of course, at this moment there is no straight answer to the question how different developing countries can make different contributions, hence how to rebalance rights and obligations among the WTO's 164 members — especially among the major players. The only way to do that is by bringing members back to the negotiation table and starting with some concrete issues, such as fisheries subsidies. Then, negotiations need to be innovative enough to adapt to specific circumstances around that issue and develop meaningfully balanced new rules, as they have done for TFA and ITA.



Photo by WTO/Jay Louvion

The Trump administration, very much obsessed with unilateralism, did not show any appetite to engage in the WTO for that purpose. Consequently, its focus on developing country status and the self-declaration approach was like Don Quixote launching a war against the windmill. We all know what happened to Don Quixote and may chuckle about his failure, but how about his poor horse Rocinante, who ended up in a sorry situation with its shoulder dislocated by that failure. In this case the WTO is a metaphorical Rocinante.

With the multilateral-minded Biden administration coming to office on 20 January 2021, there may be some hope that a renewed US leadership may bolster the multilateral trading system, including finding a new path forward on how to rebalance rights and obligations among members. But we will have to wait and see.

The views expressed here are the author's, and may not represent the views of the Institute for International Trade.

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