

ISSN: 2583-8725

Lex Scripta Journal

Quarterly Online and Print Edition

Law & Policy

“Join the League of
National & International Scholars”



EDITORIAL TEAM

DR. AJAY BHUPENDRA JAISWAL

Professor & Former Head
Department of Law
V.S.S.D. College, Nawabganj,
(C.S.J.M. University, Kanpur)

DR. MEGHA OJHA

Associate Professor | Legal Consultant
| Author | KLEF College of Law

PROF. DR. DEEVANSHU SHRIVASTAVA

Founding Dean and Professor,
GL Bajaj Institute of Law,
Greater Noida

DR. GAURAV GUPTA

Assistant Professor,
Faculty of Law, Lucknow

MR. TUHIN MUKHARJEE

Leadership Strategist | Business Coach
| Author | Speaker

MR. PRAKARSH PANDEY

Author and
Advocate, Allahabad High Court

MR. AMARESH PATEL

Assistant Professor
at Law School,
Amity University, Patna



**LEX SCRIPTA MAGAZINE OF
LAW AND POLICY (VOL-4, ISSUE-1)**

Copyright © 2025, LexScripta

ISSN-2583-8725

Vol - IV, Issue - I

Published by INTEGRITY EDUCATION INDIA

New Delhi

First Floor, 4598/12-B, 1st Floor,
Padam Chand Marg, Daryaganj,
New Delhi, Delhi 110002

Phone: +91 98 11 66 62 16 (M)

Phone: +91 70 11 60 56 18 (M)

Bengaluru

Jallahalli East

Bengaluru, Karnataka. India.

Phone: +91 98 11 66 62 16 (M)

Email: publisher.integrity@gmail.com

USA

New Jersey

14 Grandview Ave, Upper Saddle River,
NJ-07458, USA

Phone: +14805226504 (M)

London

37 Degree Media

64, Hodder Drive, Perivale, London UB68LL.
United Kingdom.

Phone: +44 7950 78 18 17 (M)

Website: integrityeducation.co.in

© Lex Scripta Magazine Of Law And Policy, 2025

Disclaimer

All Copyrights are reserved with the Authors. But, however, the Authors have granted to the Journal (Lex Scripta Magazine of Law and Policy), an irrevocable, non-exclusive, royalty-free and transferable license to publish, reproduce, store, transmit, display and distribute it in the Journal or books or in any form and all other media, retrieval systems and other formats now or hereafter known. No part of this publication may be reproduced, stored, distributed, or transmitted in any form or by any means, including photocopying, recording, or other electronic or mechanical methods, without the prior permission of the publisher, except in the case of brief quotations embodied in critical reviews and certain other non-commercial uses permitted by copyright law.

The Editorial Team of Lex Scripta Magazine of Law and Policy Issues holds the copyright to all articles contributed to this publication. The views expressed in this publication are purely personal opinions of the authors and do not necessarily reflect the views of the Editorial Team of Lex Scripta Magazine of Law and Policy.

[© Lex Scripta Magazine of Law and Policy. Any unauthorized use, circulation or reproduction shall attract suitable action under application law.]

For any Query / Feedback
Phone: +91 98 11 66 62 16 (Vineet Sharma)

Printed in India @ New Delhi

ISSN: 2583-8725

Lex Scripta Journal

Quarterly Online and Print Edition

Law & Policy

"Join the League of National
and International Scholars"



Lex Scripta Journal

Special and Differential Treatment at the World Trade Organization: Analysis

Author
Prachi Gautam



Special and Differential Treatment at the World Trade Organization: Analysis

Prachi Gautam
Amity Law School, Noida
Amity University

Abstract

Special and Differential Treatment (S&DT) constitutes a central yet contested feature of the World Trade Organization (WTO) framework, designed to address structural inequalities between developed and developing countries. Despite its normative significance, the legal character and enforceability of S&DT provisions remain ambiguous. This paper critically examines the legal nature of S&DT within WTO law, questioning whether these provisions create binding obligations or merely reflect “best-endeavour” commitments.

Through an analysis of WTO agreements and dispute settlement practice, the study demonstrates that the majority of S&DT provisions are drafted in non-mandatory language, limiting their enforceability. WTO panels and the Appellate Body have shown reluctance in treating S&DT as conferring enforceable rights, thereby reinforcing its weak legal status. The paper further explores the ongoing debate between developed and developing countries regarding the continued relevance and scope of S&DT, highlighting the tension between formal equality and substantive equity in the multilateral trading system.

It is argued that S&DT operates less as a binding legal entitlement and more as a political compromise embedded within WTO law. The paper concludes by emphasizing the need for clearer legal articulation and stronger institutional mechanisms to enhance the effectiveness of S&DT in achieving its developmental objectives.

Keywords: *Special and Differential Treatment (S&DT), World Trade Organization (WTO), Developing Countries, Legal Enforceability, WTO Dispute Settlement*

Introduction

In the context of the World Trade Organization (WTO), the status and treatment of developing countries remain a subject of continuing debate. A significant proportion of WTO Members identify as developing countries, and the framework of Special and Differential Treatment (S&DT) has been central to accommodating their developmental needs within the multilateral trading system. However, recent proposals to restrict access to S&DT and to introduce stricter criteria for developing country status have intensified discussions regarding its scope, legitimacy, and legal character.

The existing framework of S&DT, rooted in the GATT system and subsequently incorporated into WTO agreements, seeks to address structural inequalities by providing flexibility, longer implementation periods, and technical assistance to developing and least-developed countries. At the same time, the increasing economic divergence among developing countries has led certain developed Members to question the continued relevance of self-declared status and the breadth of S&DT entitlements.

Against this background, the present study examines the legal nature and operational effectiveness of S&DT within WTO law. The central research question guiding this paper is whether S&DT provisions create binding legal obligations or merely reflect “best-endeavour” commitments lacking enforceability. The paper further explores how WTO dispute settlement bodies have interpreted and applied S&DT provisions in practice.

This study adopts a doctrinal research methodology, relying on an analysis of WTO agreements, relevant provisions, and dispute settlement jurisprudence, supplemented by academic commentary. It is argued that, despite its normative importance, S&DT largely operates as a political compromise embedded within WTO law rather than as a source of enforceable legal rights. The prevalence of non-mandatory language and the cautious approach of WTO adjudicatory bodies have contributed to its limited legal effect.

Accordingly, this paper proceeds to analyse the legal character of S&DT provisions, their treatment in WTO dispute settlement, and the broader debate concerning their binding or non-binding nature within the multilateral trading system.

I.1 Research Question

This research is guided by the following questions:

- i. Do S&DT provisions under the WTO create legally binding obligations or merely a "best endeavor" concept?
- ii. How have the dispute settlement bodies under the WTO analyzed and applied the S&DT provisions?
- iii. Can S&DT act as an "efficient mechanism" to deal with the systemic imbalances of the multilateral trading system?

I.2 Research Methodology

This paper follows a doctrinal method of legal research. The research involves the study of WTO Agreements such as; General Agreement on Tariffs and Trade, Enabling Clause, and Trade Facilitation Agreement, together with related dispute settlement reports and various literature works. The paper is of an analytical and interpretive nature.

I.3 Literature Review

Discussions regarding S&DT in the WTO manifest an ongoing split between its normative ambitions and its actual legal effects. Extensive academic commentary has discussed whether S&DT provisions are truly legally enforceable or whether they constitute 'best endeavors' commitments within the multilateral trading framework.

Vineet Hegde and Jan Wouters describe their examination of provisions contained in S&DT as indicating that only a small percentage of them may be described as 'legally binding'. The majority of provisions are written in language such as 'should' and 'endeavor to'.¹ Their research shows that when categorized in terms of their legal obligatoriness less than a quarter of provisions create real legal obligations on developed member. The lack of clarity also support the conclusion that S&DT does not constitute legally effective principles and has failed to establish a 'solid, specific, enforceable legal regime'.

Similarly, Robert Howse argues that, with the development of provisions based on development in WTO, S&DT is a compromise not a legal concept.² "Its uncertainty may also reflect the balance developed countries desire to retain freedom of maneuver and give developing countries limited concessions in return."

Previously, earlier work by David Palmeter and Petros C. Mavroidis points out a formal defect in the design of WTO dispute settlement, that development considerations may not fit within the architecture of the dispute settlement system, thus limit the practical relevance of the S&DT provisions.³

Also Bernard Hoekman and Constantine Michalopoulos argue that S&DT is more a policy instrument than a right, its inconsistent application is because of its unclear standards, thus cannot stand to the credibility.⁴

It seems to suggest that, even though S&DT is dominant in the literature discussing trade and development, it is a concept which lacks legal force and real effects. Starting from this literature, the following analysis scrutinizes the effectiveness of S&DT as enforceable rights in WTO law, considering the light of the dispute settlement practice and present reforms.

I.4 The Current debate at the WTO

The principal goal of the MDGs was to halve acute poverty and hunger.⁵ These objectives were authorized by the United Nations in 2000. It was predicted that half of the global population would subsist on less than \$1.25 per day between 1990 and 2015. Nearly half of the global population, who lived in developing countries, experienced destitution in 1990.⁶

¹ Vineet Hegde and Jan Wouters, "Special and Differential Treatment in the WTO: A Legal Typology" 24 *J. of Int'l Econ. L.* 551, at 553-557 (2021).

² Robert Howse, "From Politics to Technocracy and Back Again: The Fate of the Multilateral Trading Regime" 96(1) *Am. J. Int'l L.* 94, at 102-105 (2002).

³ David Palmeter and Petros C. Mavroidis, *Dispute Settlement in the World Trade Organization: Practice and Procedure* at 7-15 (Kluwer Law International, The Hague, 2nd edn., 2004).

⁴ Bernard Hoekman and Constantine Michalopoulos, "Special and Differential Treatment of Developing Countries in the WTO: Moving Forward After Cancun" 26 *World Econ.* 1, at 4-6 (2003).

⁵ United Nations, *Millennium Development Goals and Beyond 2015-Goal 1: Eradicate Extreme Poverty and Hunger*, available at: <https://www.un.org/millenniumgoals/poverty.shtml> (last visited on 7 April, 2026).

⁶ United Nations, *The Millennium Development Goals Report 2015* (2015), available at: [https://www.un.org/millenniumgoals/2015_MDG_Report/pdf/MDG%202015%20rev%20\(July%201\).pdf](https://www.un.org/millenniumgoals/2015_MDG_Report/pdf/MDG%202015%20rev%20(July%201).pdf) (last visited on 7 April, 2026).

The objective was accomplished in 2010, five years before the deadline.⁷ While the number of individuals in this category decreased from 1.9 billion in 1990 to 836 million in 2015 approx. The SDGs were established by the United Nations in 2015 with the primary and most ambitious goal of eliminating extreme poverty in all its forms on a global scale by 2030.⁸ For the first time in a generation, the rate of extreme poverty increased in 2020, as indicated by the Secretary General's April 2021 report.⁹ By 2030, approx 600 million individuals will be living in extreme poverty as a consequence of the COVID-19 pandemic, environmental devastation, and war, according to reports.¹⁰ Despite the fact that this figure represents an improvement over 2015, it is consistent with previous predictions. The Secretary General's report indicates that progress toward the SDGs has ceased, and the target date of 2030 has not yet passed. This was precise until the commencement of 2020.

The US has proposed that four groupings of WTO members, namely the OECD, the G20, the World Bank's "high income" category, and the nations that account for at least 0.5% of global goods trade, declare their classification as developing countries in all future discussions. This proposal was submitted in 2019.¹¹ These recommendations were endorsed by the US, which argued that the WTO's current classification of developing nations does not take into account the development of specific countries in terms of GDP, GDP per capita, and other economic prosperity indicators.

The US argues that the Doha Development Round negotiations were impeded by affluent nations that perceived themselves as developing, despite their apparent advantage, as a result of their failure to make sufficient concessions. A coalition of nations, including China, India, and South Africa, responded by asserting that the developed-developing divide persists in a variety of industries and metrics at the WTO, the developing world was apprised of the limitations on its production capacity. Numerous countries have underscored the importance of a multilateral rules-based system and the detrimental effects of subsidies on developing nations. Ecuador, Cuba, and Bolivia comprise these nations. Several nations, including Canada and Norway, have expressed their belief that the negotiation of a set of criteria for developing nation designation is unlikely to result in any practical or beneficial outcomes. Their argument was that the agreement could prescribe the presence of a variety of development flexibility. They cited the TFA as an example of a framework in which developing states may make commitments that are contingent upon technical assistance from other WTO members and whose implementation may be accomplished in staged.

After an examination of the requirements for developing nation classification, this analysis transitions to the related subject of revising S&DT, which has been raised by

⁷ World Health Organization, *Health in 2015: From MDGs to SDGs* (2015), available at: <https://www.who.int/docs/default-source/gho-documents/health-in-2015-mdgs-to-sdgs/report-by-chapter/mdgs-sdgs2015-chapter2.pdf> (last visited on April 7, 2026).

⁸ United Nations, *Transforming Our World: The 2030 Agenda for Sustainable Development* (2015), available at: <https://sdgs.un.org/2030agenda> (last visited on April 7, 2026).

⁹ United Nations, *The Sustainable Development Goals Report 2021* (2021), available at: <https://unstats.un.org/sdgs/report/2021/> (last visited on April 7, 2026).

¹⁰ World Bank, *Poverty and Shared Prosperity 2020: Reversals of Fortune* (2020), available at: <https://www.worldbank.org/en/publication/poverty-and-shared-prosperity> (last visited on April 7, 2026).

¹¹ United States, *An Undifferentiated WTO: Self-Declared Development Status Risks Institutional Irrelevance*, WTO Doc. WT/GC/W/757 (2019)

a number of commentators. We begin with a brief history of S&DT in the context of the GATT and WTO laws. The objective of developing countries is to engage in international markets. To ensure they receive an equitable proportion of the increased international trade is essential to take proactive measures. This is recognized in the Preamble of the Marrakesh Agreement Establishing the WTO.

I.5 Developing country status

For an extended period, the GATT and the WTO identified developing states through self-declaration. The World Bank categorizes nations as low-income, lower middle-income, higher middle-income, or high-income based on their gross national product per capita.¹² Various metrics, such as a country's health, educational attainment, and GDP per capita, are used to calculate the Human Development Index of the UN.¹³ GDP per capita is taken into account by numerous initiatives, including the Poverty Reduction and Growth Facility of the IMF.¹⁴ In 2022, the World Bank has established a GDP per capita threshold of \$13,205 as the threshold for a high-income country.¹⁵ The US (\$76,400), Canada (\$52,700), and Norway (\$106,000) are the top three countries in terms of income. Between \$4,256 and \$13,205.00, the average middle-class individual in a country such as China (\$12,700), Cuba (\$8,630), South Africa (\$6,800), or Ecuador (\$6,300) earns. Bolivia (\$3,700) and India (\$2,400) are among the nations that fall within the lower middle-income category, with incomes that range from \$1,086 to \$4,255.¹⁶

When considering a developing nation status, it is imperative to consider the objectives delineated in the Enabling Clause and GATT Article XXXVI, which are now included in the WTO Preamble.

I.6 Reform of Special and Differential Treatment

The WTO has been the site of discussions regarding the function of S&DT, economic development, and other reform proposals. Each nation that intends to employ the flexibility room must demonstrate how it will facilitate complete conformity.

The EC-Preferences ruling did not eliminate conditionality; however, it did provide a pathway for future WTO disputes to challenge unilateral discretionary provisions. This was made explicit in the decision of the Appellate Body in *European Communities - Conditions for the Granting of Tariff Preferences to Developing Countries*. In this dispute, the Appellate Body was tasked to determine whether the differential tariff preferences granted by the European Communities under the Generalized System of Preferences are in conformity with Most-Favoured-Nation. The Appellate Body found that although preferential treatment to developing countries are allowed under the Enabling Clause, such discrimination have to be grounded on an objective and transparent criterion which has been made available to all similarly placed beneficiaries. While this established that the S&DT provisions does not confer the developed countries with unbridled powers, it did not grant the

¹² Surendra Bhandari, *World Trade Organization (WTO) and Developing Countries* (Deep and Deep Publications, 2007).

¹³ United Nations Development Programme (UNDP), *Human Development Report 2022* (UNDP, 2022).

¹⁴ International Monetary Fund (IMF), *Poverty Reduction and Growth Facility (PRGF)* (IMF).

¹⁵ World Bank, *World Bank Country and Lending Groups* (2022).

¹⁶ World Bank, *World Development Indicators* (2022).

developing countries with enforceable rights under S&DT. This indicates the bounded and conditional legal nature of S&DT in WTO¹⁷

It is crucial to acknowledge that GATT Article XVIII¹⁸ already contains a comparable mechanism for goods commerce, which has been implemented on numerous occasions.¹⁹ Before imposing development-related tariffs, quantitative limits, or subsidies, developing States are required to consult with affected Members and are subject to general WTO supervision, as per Article XVIII. By combining Article 28bis with a liberal interpretation of Article XVIII, the government may be able to institute tariffs in order to generate revenue.²⁰

Article XVIII was inadequate during the operation of GATT. These included the integration of the Enabling Clause and specific S&DT provisions into the WTO Agreements, as well as the addition of Part IV to GATT. Coalitions of impoverished nations considerably influence the deliberations of the WTO, as evidenced by this dispute. Their approval is mandatory for any proposals that would significantly alter S&DT or WTO policy.

In its 2021 report on S&DT, the WTO Secretariat has categorized S&DT regulations into six groups:²¹

- i. those aimed at increasing trade opportunities of developing countries,
- ii. those under which WTO Members should safeguard the interests of developing countries,
- iii. flexibilities of commitment of action and use of policy instruments,
- iv. transitional time periods,
- v. technical assistance, and,
- vi. provisions relating to least-developed countries.

Only 44 of the 183 measures that were categorized permitted developing nations to exercise any degree of flexibility.²² The Secretariat addressed the subject of S&DT regulations that were declared mandatory in 2001 as a result of the addition of the word "shall" instead of "should".²³ Two categories of provisions were identified as mandatory: those that required action and those that required an outcome. Members are required to increase their export opportunities.²⁴

Hegde and Wouters' concluded that only 47 articles, or 21% of the 227 provisions, should be enforced, and that affluent nations should provide impoverished nations

¹⁷ Appellate Body Report, *European Communities-Conditions for the Granting of Tariff Preferences to Developing Countries*, WT/DS246/AB/R (2004).

¹⁸ World Trade Organization, *General Agreement on Tariffs and Trade 1947*, art. XVIII: *Governmental Assistance to Economic Development*, available at: https://www.wto.org/english/docs_e/legal_e/gatt47_e.htm#art15 (last visited on 5 April, 2026)

¹⁹ Gregory Shaffer, "Developing Country Use of the WTO Dispute Settlement System: Why it Matters, the Barriers Posed", *Legal Studies Research Paper Series*, Research Paper No. 08-50.

²⁰ World Trade Organization, *General Agreement on Tariffs and Trade 1947*, arts. XVIII and XXVIII bis, available at: https://www.wto.org/english/docs_e/legal_e/gatt47_e.htm (last visited on 6 April, 2026).

²¹ World Trade Organization, *Implementation of Special and Differential Treatment Provisions in WTO Agreements and Decisions*, WT/COMTD/W/77/Rev.1 (21 September 2001), available at: <https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=Q:/WT/COMTD/W77R1.pdf&Open=True> (last visited on 6 April, 2026).

²² Ibid.

²³ World Trade Organization, *Understanding the WTO: Overview-Developing Countries*, available at https://www.wto.org/english/thewto_e/whatis_e/tif_e/dev1_e.htm (last visited on 6 April, 2026).

²⁴ World Trade Organization, *Ministerial Decision on Implementation-Related Issues and Concerns*, WT/MIN(01)/17 (14 November 2001).

with preferential treatment.²⁵ S&DT provides technical assistance, capacity development, and transition times. Hegde and Wouters proposed that technical assistance could be a significant asset in aiding nations in their preparation to fulfil their specific WTO obligations.²⁶

The resolution that ultimately evolved into the GSP was enacted at the 1968 UNCTAD General Summit.²⁷ In 1971, developing nations that were capable of providing "generalized, non-reciprocal, and non-discriminatory" tariff favors were granted a ten-year waiver of MFN rights.²⁸ The 1979 Enabling Clause rendered the provisional waiver permanent.

The EC-Preferences discrimination investigation was limited to nations that had previously selected recipients. However, the Appellate Body's demands and similar rationale make it difficult to understand how a GSP system could be "generalized, non-reciprocal, and non-discriminatory" if it differentiates in such a way. Mason posits that developing nations may be able to support specific US GSP tariff conditionalities if the objective norm chosen is one that they can tolerate in another context, such as workers' rights.²⁹ A significant number of individuals are enraged by the WTO due to the potential correlation between trade and labourers' rights. For example, the Enabling Clause may be implemented, that a nation is no longer regarded as having a high income, as determined by the World Bank. The GSP tariff allows donor countries to selectively assist developing countries, as participation is entirely voluntary.

The EC-Preferences ruling did not eliminate conditionality; however, it did provide a pathway for future WTO disputes to challenge unilateral discretionary provisions. Poor nations are compelled to adhere to regulations that they did not negotiate, as Ansong noted, due to their lack of control over donor discretion. Even developing nations would be obligated to comply with the "extra-normal" GSP conditions in addition to the "normal" regulations.

The TFA functions for numerous proposed modifications to S&DT. Developing countries have the option to postpone their obligations or incorporate the provision of adequate technical assistance and capacity building into their Agreement.³⁰ The Agreement recognizes the inherent sovereignty of each nation and takes into account the unique circumstances of each developing nation. The provisions of the TFA could be used as a foundation for the WTO's decision to prioritize the provision of services concerning dispute resolution, technical support, and capacity-building supervision.

The TFA does not provide assistance in a wholly unilateral manner, as donor countries have the discretion to exercise their own judgment. The Committee on Trade Facilitation is a regulatory body in which all member nations participate. Reports detailing the recipient and donor governments' endeavours to implement the assistance and capacity support that have been provided are submitted to the

²⁵ World Trade Organization, *Development Definition: Who are the Developing Countries in the WTO*, available at: <https://www.wto.org/> (last visited on 6 April 2026).

²⁶ *Supra* note 1.

²⁷ United Nations Conference on Trade and Development (UNCTAD), *Proceedings of the Second UNCTAD Conference* (1968).

²⁸ General Agreement on Tariffs and Trade (GATT), *Decision on the Generalized System of Preferences*, 1971 (Waiver), available at: https://www.wto.org/gatt_docs/English/SULPDF/90840088.pdf (last visited on 6 April, 2026).

²⁹ World Health Organization, *Millennium Development Goals (MDGs)*.

³⁰ United Nations, *Sustainable Development Goals: Goal 1-End Poverty in All Its Forms Everywhere*, available at: <https://www.un.org/sustainabledevelopment/poverty> (last visited on 6 April, 2026).

Committee annually. The Committee holds a minimum of one annual meeting to evaluate its progress and may request data from relevant international organizations, such as the UNCTAD, the World Bank, and the IMF.

The TFA's Settlement of Disputes aims to simplify the process of fulfilling obligations. In times of crisis, the objective should be compliance rather than trade penalties. In the event that developing nations are apprehensive about potentially missing an implementation date, Article 17 of the TFA establishes an early warning system that they may employ.³¹ Requests for extensions of time are automatically granted under Article 17. If a nation anticipates that it will be unable to fulfill an extended deadline, it will inform the Committee. The Committee will subsequently convene an Expert Group to provide their perspectives on the matter. The WTO Dispute Settlement process safeguards developing countries from litigation, as stipulated in Article 18(5). As explicitly stated in Article 13(2), the ability to fulfill a duty is a prerequisite for doing so.

Developed countries may assist poor countries in implementing TFA through funding and technical support. All bilateral agreements should be subject to supervision and reporting such as the World Bank, in order to attain the objectives of a development strategy.

Poverty can't be eliminated only through adherence to the WTO's regulations. Although the UN's SDGs certify trade as a development mechanism, true advancement will demand major reform of the WTO to reflect the developing countries' interests in a bigger picture. Excluding countries from the developing stage or decreasing S&DT privileges for poor countries is not a solution. Nations involved in the multilateral trade system will continue to negotiate terms that are advantageous to them. It is imperative that an individual devise a solution that is beneficial to all parties.³²

A practical response to the ongoing debate can be achieved by initially examining the current regulations and the history of S&DT in GATT and WTO.³³ The February 2019 U.S. statement focused on the ongoing designation of developing nations.³⁴ The question then arises as to how a developing nation can become a developed nation, a process that has been established in WTO law in the 1979 Enabling Clause. Paragraph 7 of the Enabling Clause asserts that developing nations aspire to "participate more fully" in GATT as their economies continue to expand and their trade conditions strengthen. Members may "make contributions, negotiate concessions, or take other mutually agreed-upon action" in accordance with their obligations and rights under the GATT. Each Member is responsible for verifying their claim that the other has transitioned from the status of a developing nation. The necessity for dispute resolution arises in the event that either member declines to provide the requisite S&DT or that another Member chooses not to claim developing country status³⁵.

³¹ United Nations, *Progress towards the Sustainable Development Goals: Report of the Secretary-General*, UN Doc. E/2021/58 (30 April, 2021), para 13.

³² World Trade Organization, *An Undifferentiated WTO: Self-Declared Development Status Risks Institutional Irrelevance*, WT/GC/W/757/Rev.1 (14 February, 2019), para 1.7.

³³ World Trade Organization, *General Council Communication from the United States: An Undifferentiated WTO: Self-Declared Development Status Risks Institutional Irrelevance*, WT/GC/W/757 (11 February, 2019).

³⁴ Office of the United States Trade Representative, *Statement by the United States on Reforming the WTO's Approach to Developing Country Status* (February, 2019).

³⁵ World Trade Organization, *The Continued Relevance of Special and Differential Treatment*, WT/GC/W/765/Rev.1, available at:

Member self-declaration continues to dominate. One prospective paradigm for S&DT reform is the TFA. This agreement allows developing countries to adjust their obligations to their unique circumstances, while affluent countries offer technical assistance to improve their capabilities. Capacity building and the WTO are currently involved in a substantial quantity of activity.³⁶ This includes the provision of assistance to academic institutions in developing and least developed nations, as well as the training of government officials and the general public.

If targeted S&DT is necessary, developing nations may request flexibility for specific products or industries under the current regulations of GATT Article XVIII. The commitments made are legally binding and serve as the groundwork for the upcoming discussions. Food shortages in other countries may be the consequence of the ongoing crisis in Ukraine and other disruptions to supply systems.³⁷ This aligns with the Marrakesh Agreement, which recognized that "developing countries, and particularly the least developed among them, secure a share in the growth in international trade commensurate with the needs of their economic development".³⁸

Recent geopolitical developments beyond the Ukraine war have worsened the multilateral trading system's structural vulnerabilities. Ongoing conflicts in key trade corridors, particularly in the Middle East, have interrupted global shipping routes and raised transportation costs, disproportionately harming developing and least developed countries that rely largely on imports. These interruptions, combined with post-pandemic supply chain instability, have highlighted the inadequacies of existing WTO systems for dealing with rapid external shocks. In this setting, S&DT takes on new significance, as developing countries require more flexibility, policy space, and institutional support to maintain economic stability. The continuation of such crises emphasizes the critical need for a more adaptable and development-oriented WTO framework capable of adapting to changing global circumstances.³⁹

I.7 Conclusion and Recommendations

In conclusion, the conflict between formal equality and substantive equity in international trade law is reflected in the WTO's S&DT. Although current regulations offer a framework for addressing developmental needs, political will and appropriate implementation are necessary for them to be effective. Recent crises and persistent global inequality show that consistent trade regulations cannot guarantee fair results. Therefore, rather than restricting S&DT, efforts should concentrate on enhancing its adaptability and usefulness in order to support a multilateral trading system that is inclusive and development-oriented.

S&DT functions more as a flexible approach to, or option in, diplomatic strategy than as a legally binding entitlement. The current WTO system still represents structural imbalances to developed countries, on the basis of non-tariff barriers and lack of

https://ielp.worldtradelaw.net/content/files/dol2fe/Pages/FE_Search/DDFDocuments/251793/q/WT/GC/W765R1.pdf (last visited on 6 April, 2026).

³⁶ World Trade Organization, *Strengthening the WTO to Promote Development and Inclusivity*, WT/GC/W/778 (11 July, 2019).

³⁷ Food and Agriculture Organization (FAO), *The Importance of Ukraine and the Russian Federation for Global Agricultural Markets and the Risks Associated with the Current Conflict* (2022), available at: <https://openknowledge.fao.org/server/api/core/bitstreams/bd0267ca-75a6-44d6-a387-7eb150630d/content> (last visited on 7 April, 2026).

³⁸ Marrakesh Agreement Establishing the World Trade Organization, 1867 U.N.T.S. 154, preamble.

³⁹ World Trade Organization, *World Trade Report 2023: Re-globalization for a Secure, Inclusive and Sustainable Future* (WTO, 2023).

symmetry on institutional capacity. Developing countries, and India in particular, had a propensity to use S&DT provisions tactically by formation of alliances and strategic pick and choose to their benefit. The WTO framework has helped in achieving liberalization of trade while creating structural limitations for developing countries like policy independence, asymmetric access to market and technology.

In this scenario, greater legal certainty and enforceability of S&DT provisions alongside a more tailored, needs-based determination of eligibility are needed. However, it is also critical to boost developing countries' institutional and bargaining power, continue to build alliances between states of the Global South, and at the same time undertake the necessary domestic reforms to enhance competitiveness and tackle structural weaknesses.

Based on the analysis above, it is essential to implement some reforms in order to improve the efficiency of S&DT in the WTO framework. First, the crucial S&DT provisions must be transformed from 'best-endeavour' to clear and legally binding commitments. Second, needs-based and differentiated approach, rather than general self-declaration, should be encouraged to ensure efficient allocation of benefits. Third, the institutional and bargaining capacities of developing countries need to be strengthened to make full use of available flexibilities. Last but not the least, technical and capacity-building assistance, as well as an inclusive decision-making process, are urgently needed to ensure a balanced and development-oriented multilateral trading system.

EDITORIAL TEAM

PROF. (DR.) BANSHI DHAR SINGH

Professor,
Ex. Dean & Head,
Faculty of Law,
University of Lucknow

DR. KALPESHKUMAR L GUPTA

Founder ProBono India, Legal Start-ups,
Law Teachers India

DR. SUDHANSHU CHANDRA

Assistant Professor, Manuu Law
School, Maulana Azad National Urdu
University (Central University),
Hyderabad

PROF. (DR.) SANJAY SINGH

Director
of IIMT College of Law

INTERNATIONAL EDITORIAL TEAM

PROF. DR. MARC OLIVER OPRESNIK

President and CEO
Opresnik Management Consulting
and Opresnik Business School

*PROF. DR . COMRADE AMB.
CHUKWUNONSO C
HARLES OFODUM ESQ*

Chancellor, ALSA University.
Legal Director for Nigeria, World
Association for Humanitarian Doctors

ABOUT LEX SCRIPTA JOURNAL

Lex Scripta Magazine is a premier peer-reviewed online and print journal dedicated to advancing scholarly research in law, policy, and social sciences. With the vision of promoting academic excellence and fostering a culture of intellectual exchange, the magazine provides a distinguished platform for academicians, researchers, legal professionals, and students to publish their original work and contribute to contemporary legal discourse.

Each submission undergoes a rigorous double-blind review process conducted by a panel of eminent national and international professors, ensuring the highest standards of quality and academic integrity. Lex Scripta not only encourages original and innovative research but also strives to bridge the gap between theoretical insights and real-world applications in the legal domain.

Contributors and editorial members receive global recognition through certificates and publication opportunities, while readers gain access to insightful, authoritative, and thought-provoking content across diverse areas of law and policy.

Now managed by Integrity Education India, Lex Scripta Magazine is committed to expanding its academic footprint through enhanced digital presence, global collaborations, and university partnerships. Upholding its ISSN identity, Lex Scripta continues to evolve as one of India's most trusted and respected journals in the field of legal research and education.

KEY FEATURES

- | **Scholarly Insights** – Access in-depth, peer-reviewed research articles written by distinguished academicians and legal experts.
- | **Global Perspectives** – Explore diverse viewpoints on law, policy, and governance from national and international scholars.
- | **Authentic Content** – Read verified and academically sound articles that uphold the highest standards of research quality.
- | **Knowledge Enhancement** – Stay updated with emerging trends, case studies, and policy developments across multiple legal domains.
- | **Easy Accessibility** – Enjoy seamless access to online editions and exclusive hardcover issues for academic and professional use.



CONNECT WITH US **9811 666 216**
7011 605 618

