



PRINCIPLE OF EQUALITY AND ITS EXCEPTIONS – PRACTICAL APPROACH TO ACHIEVE PARITY

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Abstract: Equality, which is one of the foremost principles of law, entails a wider connotation. This principle forms the bedrock of the World Trading System. The World Trade Organization operates in conformity with the five major principles. The first and foremost of these principles is the principle of non-discrimination. The principle of non-discrimination fails to present a holistic view if it read in isolation. A significant limb of this principle is the Special and Differential Treatment accorded to developing and least developed countries. This research paper endeavors to analyze the underlying reasons for differentiation and the foundational basis for the special and differential treatment accorded to the developing nations. With a view to examining the impugned issue, the researcher undertakes to review the existing literature

Index Terms - Equality, WTO, Non-discrimination, Developing Countries.

I. INTRODUCTION

The principle of non-discrimination is developed on the rudiments of the principle of equality, which primarily hinges on reasonable classification as opposed to the utopian straight-jacket application of parity. The WTO, in the heart of which lie the multilateral agreements, is an institution that was established for liberalization and harmonization of international trade and the rules thereto. The complex structure of these agreements boils down to the most five significant principles of WTO, namely the Principle of Non-discrimination, Freer Trade, Predictability, Promotion of Fair Competition and Encouragement of development and Economic Reform. The Principle of Non-discrimination, which is the first of these principles, stems from the principle of equality. One of the most important factors for evaluation of the principle of Non-discrimination is the principle of Special and Differential Treatment, for it is one of the well-recognized ways to ensure parity. The Researcher attempts to analyse the rudiments and jurisprudential aspects of this principle and furthers to juxtapose it with the categorization of the member states on the basis of their economic status. This juxtaposition presents a structural overview of the issue at hand and may enable the Researcher to advance an argument. In furtherance of the aforementioned objective, the Researcher undertakes to study the existing literature and attempts to present a view considered view on the impugned issue.

II. A NEED OR A KNELL?

In this chapter, the Researcher sets off to examine the rudiments of the principle of equality, which forms the bedrock of the principle of Special and Differential Treatment under WTO framework, evaluate the need for such a principle and identify the issues concerning the basis of differentiation.

The principle of S&DT, which stems from the principle of non-discrimination or equality, is a tool to bring about parity in the light of the differing socio-economic conditions. The principle, primarily intends to enable and encourage the developing countries to comply with the international trading rules with greater flexibility than the developed nations. The underlying reason for such differentiation is to enable a hassle-free expansion of the scale of operations in the international trade. However, the premise for S&DT has deviated from the original position, and it is now centered on helping developing nations overcome obstacles in the implementation of trade agreements. Apart from the preceding observation, there is a common objection and opposition to the S&DT's 'one size fits all' tenet coupled with the widely recognized need for a more nuanced and higher degree of differentiation as opposed to mere categorization.

It may be pertinent at this juncture to assess and examine the S&DT provisions under GATT, 1994. There are 25 special and differential treatment provisions under GATT, 1994. These provisions primarily focus on expanding international trade avenues, ensuring flexibility as regards compliance, action and use of policy and provisions to safeguard the interests of the developing and least developed countries, contained under Articles XVIII, XXXVI, XXXVII and XXXVIII of the GATT 1994.

The WTO's preamble emphasizes that one of its main goals is for developing nations to grow their economies, and it calls on members from wealthy countries to make "positive efforts" to make this goal a reality. The core principles of S&DT and policies to encourage the growth and coalescence of developing nations in the international trading system are also reflected in WTO accords. S&DT provisions are designed expressly to increase trade prospects for developing nations, safeguard their interests, and provide them with flexibility in accepting new trade commitments and utilizing trade policy tools.¹ However, it has been widely discussed that WTO disciplines peculiarly fail at actually furthering the interests of developing nations and seems to be occupied on merely expressing their goals for development.

Besides the foregoing observations, the Researcher further assesses the concept of "developing country". It may be relevant to define and understand the semantic and etymological backdrop of the term "development". The following are a few popular definitions of the term "development" –

*"Development can be defined as expansion, progress, growth, reform, and increase, and development policy can be defined as a policy of economic expansion."*²

*"A process of expanding the real freedoms that people enjoy. Focusing on human freedoms contrasts with narrower views of development, such as identifying development with the growth of gross national product, or with the rise in personal incomes, or with industrialization, or with technological advance, or with social modernization. Growth of GNP or of individual incomes can, of course, be very important as means to expanding the freedoms enjoyed by the members of the society."*³

The definitions cited above are suggestive of a holistic socio-economic concept that entails diverse factors such as social modernity, technological advancement and economic factors such as Gross National Product and individual incomes. However, apart from these definitions, Article XVIII: 1 of the General Agreement on Tariffs and Trade (GATT) refers to developing countries as those "the economies of which can only support low standards of living and [which] are in the early stages of development."

In actuality, a wide range of nations with varying levels of development are included in the current WTO classification of developing nations. The UN's LDC classification, which the WTO adopted in 1971, is the sole official classification that reflects the least developed nations in the developing world.

Another inherent lacuna is with the self-designation mechanism. A country in a different stage of development might implicitly claim the status of a developing country, and once claimed, that country is eligible for SDT regardless of its capacity or stage of development. Such a broad strategy has the drawback of failing to address actual needs for development and, in some situations, even fostering unfair competition for trade opportunities among developing nations.⁴

The letter of the law as regards a developing country suggests that such conditions are certainly not constant i.e., the socio-economic dynamism may cause or contribute to a change of such status. However, a mere ambiguity may not preclude an argument in favour of the need for the Special and Differential Treatment to these categories of countries.

The idea behind special and differential treatment in the WTO is that members from developing countries have distinct demands and challenges from those of Developed countries, and that WTO disciplines should be changed to reflect those differences. In order to fully profit from WTO membership, many developing countries in particular struggle to implement the WTO agreements, deal with the adjustment costs of trade liberalization, and engage in international commerce.

The WTO membership's overall objectives must be attained with the use of special and differential treatment. Although, the WTO is not a development institution, it can facilitate the development by acknowledging the unique needs of poor nations. In some situations, special and differential treatment offers a manner of support for an economic development. The fundamental WTO rules, on the other hand, are similarly well established as being economically sensible for all nations.

Further, it may be necessary to assess the influence of S&DT principle on the international trade. Several scholars have opined that Numerous instances show how relying too heavily on special care and differential treatment can be troublesome and ineffective. The WTO, as previously said, is founded on the generally held belief among economists that trade liberalization makes sound economic sense, with the result that autonomous liberalisation is advantageous to the liberalizing state. If developing country members rely on non-reciprocity or otherwise violate basic WTO rules in accordance with special and differential treatment clauses, they risk losing out on these benefits.⁵

A developing country member that adheres to the principle of non-reciprocity may benefit from agreements reached among other members through the application of the most-favored nation principle, even if taking a mercantilist approach (i.e., assuming that liberalizing involves making concessions or giving something to other members), but they may well obtain more in areas of

¹ Aniekan Ukpe and Sangeeta Khorana, Special and Differential Treatment in the WTO: Framing Differential Treatment to Achieve (Real) Development, Vol. 20 No. 2, 2021, Journal of International Trade Law and Policy, pp. 83-100, 2021.

² Glossaire trilingue A l'usage des traducteurs de l'OMC (October 1997), 136, also refer to - Pallavi Kishore, Special and Differential Treatment in the Multilateral Trading System, 13 Chinese J. INT'L L. 363 (2014).

³ Amartya Sen, Development as Freedom (1999), 3. Also refer to – supra at note 2.

⁴ Supra note 1.

⁵ Andrew D. Mitchell and Tania Voon, Operationalizing Special and Differential Treatment in the World Trade Organization: Game Over? Vol. 15, Global Governance - BRILL and JSTOR.

specific interest by negotiating reciprocal commitments. Members of developing (and developed) countries may also be able to survive internal opposition to market openness from tiny interest groups, such as non-competitive industries, thanks to WTO agreements. It might be more difficult for these members to take part in urgently required reforms if they choose to forego these commitments on the grounds of special and differential treatment.

The foregoing challenges are not an insinuation to abandon the concept or principle of S&DT. Above all, many of them hold true for other WTO-related matters as well: economic logic does not always determine the nature of WTO regulations or how members must abide by them.

III. CONCLUSION:

International trade has overhauled the trading mechanism of the world and a few nations have benefitted heavily during the global industrialization. However, a few countries (mostly, erstwhile colonies) have missed the bus. While the shifting trade patterns have benefited some nations, they have also drawn criticism for limiting the economic independence of emerging nations by preventing them from accessing markets elsewhere in the world to meet a variety of development needs. Few of the landmarks in the discourse on S&DT in the are the United States (US)-Shrimp⁶ and US-Steel Plate⁷, where a practical interpretation of the principle of S&DT and its application were thoroughly deliberated. S&DT was perceived as a solution to the issues faced by developing countries, as indicated by the inclusion of S&DT clauses in the international system. S&DT has not proven particularly helpful because problems in developing countries remain unsolved for more than half a century.⁸ The Researcher desires to concur with a view that is perpetuated by scholars around the world viz., the S&DT should be viewed through the lens of “development of international trade” as opposed to the alleviating the stringency. Further, the degree or stage of a country's development would assist decide the amount and kind of SDT necessary to aid in the achievement of sustainable development in part because of this. In the considered opinion of the Researcher, the principle of S&DT seems like a quintessential to bring practical parity among nations with different socio-economic backdrop. However, it is unwise and inadvisable to turn a blind eye to the lacunae discussed above. Therefore, without gainsaying, it can be asserted that S&DT principle is a need, for it encourages developing and least developed countries to participate in international trade. However, it may present itself as a knell when there is laxity in adoption and lack of objective application.



⁶ US-Import Prohibition of Certain Shrimp and Shrimp Products (US-Shrimp), WTO AB Report, WT/DS58/AB/R (12 October 1998).

⁷ US-Anti-Dumping and Countervailing Measures on Steel Plate from India (US Steel Plate), WTO Panel Report, WT/DS206/R (28 June 2002).

⁸ Supra at Note 2.