

Special and Differential Treatment For Developing Countries

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Abstract

These provisions which were negotiated and entered into about 25 years ago, in view of nations like US and those comprising the EU need an overhaul, a suggestion that has invited an equally sharp retortion from those members that have been the beneficiaries of such provisions. With hardening of position from either sides, we see an increasing threat to the very existence of the already fragile multilateral trade regulatory system, which was otherwise expected to be strengthened over the period of time by way of subsequent negotiations. The countries declare themselves as developing and accrue themselves the benefits of S&DT provision. This paper tries to define a criteria for declaring a country developing.

Keywords; *Special And Differential Treatment, Developing Countries*

I. INTRODUCTION

The preamble of WTO speaks of securing the share of developing countries and more so of the least developed countries in international trade. The drafters were aware that it would be necessary to promote developing countries and to facilitate its economic growth. In the present scenario most of the developing countries are the member of WTO. Latest round for negotiating trade is named as "The Doha Development Round" and was focused on problems concerned with developing nations. A special and differential treatment to the developing nation is still an ongoing debate.

In 1900's we saw colonization there we got to see exploitation of those who were colonized. The questions of free trade and the benefits of trade being enjoyed by all never arose as that period witnessed the colonization of major nations. For ex. Britain ruled India till 1947 but until then it exploited India in various ways by importing precious stones. Minerals, etc. at extremely cheap prices and were produced or sold in UK at very high prices.

Coming into being of independent sovereign and aspirational nations brought to the table the issue of fairness, equality as also positive discrimination when required. Owing to sovereignty, the states started to control their own resources. In order to regulate international trade with fairness and certainty a need was felt to establish a mechanism, which ultimately shape into WTO.

Further these types of differentiation can be found in constitutional jurisprudence. For ex. Art. 14, 15, 16 of the Indian Constitution have such kinds of provisions which is referred as positive discrimination.

II. THE STARTING POINT OF S&DT

The generalized system of preference came in the year 1971 which established nondiscriminatory non-reciprocal privileged tariff conduct in the market of developed nations for products creating.

This enable a waiver of MFN that is ART 1 of the GATT to extend that it facilitated the developed

nation. Ideally GSP wants to stay in effect for 10 year before expiry, enabling clause was adopted which made the GSP permanent. GSP becomes permanent part of GATT 1995. Much of the world lives in poverty. About one billion people in the world live on less than 1\$/day. These poor people aren't divided amongst the member state equally and hence we have poor countries too. The terms "developing" and developed" are often applied to countries in WTO agreements. Though the definition given by WTO and World Bank classifies economies on per capita Income of Gross Nation Income.

WTO promotes trade liberalization as welfare enhancing policy goal, but liberalization may not be easy for developing nation. Developing nations industries may be less competitive. Developing nations may not have the resources/capacity to implement WTO agreements. In one form or another, special and differential treatment (S&D) has been a defining feature of the multilateral trading system for most of the post-war period. The WTO is an international agreement subscribed to by over twelve dozen governments with widely differing priorities, presiding over economies with widely divergent elements.

States may claim the status of developing countries; the other states may contest those claims. Under GATT/WTO some countries are confirmed as developed but the principle of self-declaration applies to decide whether the countries is developing or developed which is an unwritten principle.

III. DEVELOPING V. LEAST DEVELOPED

The categorization of countries as least developed is not a contentious issue such being because of two reasons first that there exists objective criteria's as to which countries would be classified as least developed such being they are designated by the UN. The UN identifies the least developed countries every three year which is accepted by the WTO.

i. Per capita gross national income

ii. Human Assets (nutrition, health, education and adult literacy rate).

iii. Economic vulnerability to external shock. (global depression – fixed source of income

– daily hand to mouth earning)

iv. The population must not exceed 75 million.

Secondly of the approximate 50 least developing countries in world 30 of them are signatory to the WTO, the share of these countries in global trade is miniscule accounting for less than 2%.The problem lies self-designation regarding developing country also further much has changed since the inception of WTO specially concerning countries like Brazil China India they have developed quite a lot but still they designated themselves as developing countries. In order to invoke benefits of S&DT provision it is necessary for a country to be tagged as developing.

The benefits that a country can derive by the S&DT provisions can be broadly listed as:

- Providing increase Market access preferences
- Flexibility of promises
- Transitional time periods
- Provision of technical aid
- Members' duty to safeguard the interests of developing countries.

There are approximately 100 provision in WTO concerning SnDT one of which is antidumping which favours the developing countries against developed countries.

1. Anti-dumping Provision –

"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."

IV. SHOULD S&DT STAY

Yes, there should be the provision for S&DT. The preamble of WTO aims to develop developing countries and LDC's through following standards:

- Substantial reduction of tariffs and other trade barriers
- The elimination of preferences, on a reciprocal and mutually advantageous basis
- Securing a share in the growth in international trade commensurate with the needs of

their economic development

- Further it encompasses on recognizing that their relations in the field of trade should be conducted with a view to raising standards of living, ensuring full employment and a large and steadily growing volume of real income and effective demand,
- expanding the production of and trade in goods and services in accordance with the objective of sustainable development,
- To protect and preserve the environment and to enhance the means for doing so in a manner consistent with their respective needs and concerns at different levels of economic development.

There is no level playing field. And equal treat to unequal's give rise to inequality. The criteria

Self declaration should be abolished. We can else have two objective criteria's:

Positive criteria - which will include the number of undernourished populations, poverty numbers, technologies, size of farm per person, IPR's as compared to developed nations. All these factors would lead to determine whether they can be regarded as developing nations or not Negative – this will include the criteria where if the certain criteria if met will not be able to self-designate as developing:

“A WTO Member that is a Member of the Organization for Economic Cooperation and

Development (OECD), or a WTO Member that has begun the accession process to the OECD;

A WTO Member that is a member of the Group of 20 (G20); A WTO Member that is classified as a "high income" country by the World Bank; or A WTO Member that accounts for no less than 0.5 per cent of global merchandise trade (imports and exports).”

V. CONCLUSION

At last researcher would like to conclude that Yes, there should be the provision for S&DT. The preamble of WTO aims to develop developing countries and LDC's. There is no level playing field. And equal treat to unequal's give rise to inequality. The criteria of Self declaration should be abolished

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