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# 主　論　文　の　要　旨

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| 論文題目 | S&D under the WTO Agreements in the Era of Diversification among Developing Countries |
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## 論　文　内　容　の　要　旨

Since the establishment of the World Trade Organization (WTO) in 1995, most of the sovereign states of the world have been integrated into the multilateral trading system (MTS). For eighteen years, many member countries have benefited from global trade governed by international regulation and achieved economic growth. However, some developing countries, especially the least-developed countries (LDCs) and other weaker and smaller developing countries, have been marginalized and not been able to effectively integrate into the MTS. Those developing countries face not only endogenous constraints, such as financial, institutional, human resource and knowledge shortcomings, but also exogenous constraints, including international trade rules and regulations under regional and bilateral agreements, among others. While those rules regulate all states in the same manner, such exogenous constraints impose enormous burdens on countries with lower levels of economic development in the utilization of policy measures to foster growth. As Ha-Joon Chang pointed out, the use of trade and industrial policy measures which developed or newly-industrialized countries employed at the stage of early development have been mostly prohibited under the current WTO law. He described this phenomenon as “kicking away the ladder.”[1] On the other hand, the WTO provides “special and differential treatment (S&D)” for developing countries, recognizing their disadvantages and the importance of economic development through international trade. There are about 145 S&D provisions across the current WTO Agreements which can be classified into three categories: preferential market access, policy flexibility, and technical assistance. This study focuses only on market access S&D and policy flexibility that relate to industrial policies, specifically preferential market access, modality on non-agriculture market access (NAMA), GATT Article XVIII, the Agreement on Trade-Related Investment Measures (TRIMs), the Agreement on Subsidies and Countervailing

[1] Ha-Joon Chang, *Kicking away the Ladder: Development Strategy in Historical Perspective* (London: Anthem Press, 2002).

Measures (SCM), and the Agreement on Trade-Related Intellectual Properties (TRIPS). In Chapter II, the study introduces in detail the negotiation history of S&D in the GATT era up to the Uruguay Round and the classification and functions of S&D under the WTO Agreements, as well as the negotiations and proposals on S&D in the current negotiation round, the Doha Development Agenda (DDA). Many scholars have pointed out the various dimensions of insufficiency and ineffectiveness of S&D. For specific instances, preferential market access is not sufficient because it is not mandatory and mostly depends on the discretion of providers. In many cases, the priority export products of developing countries, such as agricultural and textile goods, are not covered by the preferential tariff scheme. In addition, it is not effective because some developing countries cannot utilize preferential market access if they have no or few export industries whose products can compete in the destination market. The series of longer transitional periods accorded to developing countries upon the establishment of the WTO are not sufficient in length because they were uniformly provided without consideration of individual situations and development needs, and not effective because most of them have already expired. As for the exemption from obligation to eliminate export subsidies permitted for LDCs and some other small-sized or low-income developing countries, while currently ineffect, eligible countries cannot fully utilize this S&D due to their financial constraints. In this sense, this S&D is not effective. Through looking back to the original argument justifying S&D under international law of development, infant industry protection, and historical evidence of trade and industrial policies, this study attempts to answer whether the existing S&D provisions have actually lost effectiveness and why S&D was provided in the first place. By applying and integrating these justifications under the concept of policy space, a unique feature of this research, it also proposes a desired direction to improve S&D so that it can be "more precise, effective and operational."[2]

Most current S&D is only available for LDCs, and almost all transitional periods have expired. However, S&D for LDCs have been enlarged and strengthened by extending transitional periods and new exemptions. Although in the current round the group of small economies has submitted proposals to request specific S&D, they have failed to obtain support not only from developed country members but also from other developing countries. Compared with the flexibility in expanding S&D shown to LDCs so far, this is a quite contrast. It would not be difficult to anticipate opposition from developed countries concerning further exceptions, including policy flexibility and expansion of their burden to provide preferential market access. However, there exists "hidden" pushback from other developing country members. This pushback is derived from the threat that other developing countries feel in losing market and development opportunities because of the more favorable S&D accorded to certain eligible countries, because they are not eligible for such S&D but may still share similar economic size or structure and trade interests. Such conflict between developing countries occurs because they are engaged in negotiation based on the fixed-pie concept. In order to avoid more severe confrontation among developing countries, it would be meaningful to recognize that granting S&D is not necessarily a zero-sum game, because members' interests and concerns vary. In addition, the magnitude of adverse impacts on other countries between market access S&D and policy

[2] Paragraph 44 of the Doha Ministerial Declaration (WT/MIN(01)/DEC/1, 20 November 2001).

flexibility S&D is considerably different. Moreover, policy flexibility S&D, such as import restriction or export subsidies, could be permitted if the negative impact of the measures is very limited because the economy of the applying country is very small. Thus, the standard of "*de minimis*" which guarantees the negligible adverse effect of the measure should be clarified for each S&D to be granted, and the policy measures or country which meet this standard, should be permitted. This argument demonstrates the critical need to provide S&D with differentiation between developing countries or groups under each agreement. Also, in providing more differentiated S&D, the criteria to measure adverse effects should be taken in to account. Considering that such mechanisms exist under the current agreements, the proposal on differentiation is reasonable and feasible.

The study then revisits the justifications for S&D based on historical and theoretical perspectives. It attempts to find the way of improving S&D by reexamining its real significance and role (Chapter IV). First, the origin and fundamental concepts of international law of development are reviewed and applied to the justifications for current S&D. International law of development recognized that inequality among states resulted from different capacity and the level of economic and social development, and justified differentiated treatment, such as compensatory inequality, in order to achieve substantive equality. The attainment of formal equality under traditional international law could not ensure substantive equality among unequal actors. Also, by paying the attention to the fact that international law of development recognized the difference in capacity and level of development, even differentiation among developing countries in the present context can be justified. "Common but differentiated responsibility" under international environmental law is one concrete application of differentiated treatment justified under international law of development, and can serve as an analogy with S&D under international trade law.

Second, the infant industry protection argument and the economic argument over industrial policies are introduced and reassessed, as well as the historical experiences of trade and industrial policies. This reassessment demonstrates that S&D policies can be justified. Additionally, in the past, developing countries and newly-industrialized countries utilized trade and industrial policies when they were at similar stages of development as the current developing countries. Depending on the type and nature of such policy measures, the economic level of the country which applied those measures was found differ. Such historical evidence illustrates that necessary and suitable trade and industrial policy measures should be different according to the level or stage of economic development, and that to permit utilization of such policy measures as S&D is justified and of great importance.

The concept of policy space is the unique and valuable method for integrating the above justifications for both differentiated treatment and differentiation, in order to demonstrate not only the justification to provide S&D under the WTO Agreements, but also the reason for the ineffectiveness of S&D and how to improve it (Chapter V). The concept of policy space is based on the one defined by Robert Hamwey, in which the determinants are endogenous constraints, including financial, institutional, human resources and so on, and exogenous constraints, such as international and regional regulations and arrangements.[3] The effective

[3] Robert M. Hamwey, "Expanding National Policy Space for Development: Why the Multilateral Trading System Must Change", *Trade-Related*

policy space of developing countries with larger constraints is narrower than that of developed countries. Moreover, each developing country possesses a different magnitude of effective policy space, depending on the level of economic development. The illustration of policy space developed by this study, by taking into account the applicability of the current S&D under the WTO Agreements, visualizes where each S&D is located, and identifies why they are not effective at present. In short, most current S&D which are granted to LDCs and some other small-sized or low-income developing countries lie beyond their endogenous policy space, and this means they are not practically applicable. In order to make S&D genuinely and practically available, it is necessary to redesign S&D within the range of countries' endogenous policy space. Those S&D should also permit eligible developing countries to utilize necessary and suitable trade and industrial policy measures in accordance with their level of economic development.

Finally, following logically from all the arguments presented, the study proposes a new direction to make S&D more effective through differentiation of developing countries (Chapter VI). Specifically, differentiation should be based not only on economic indicators, such as GNI per capita, but also those that measure adverse effects of S&D under each agreement and area of negotiation. With this proposal, the study brings the solution to what kind of S&D should be permitted to which developing countries, as well as how S&D can be appropriately controlled and balanced in the MTS.