



Research Article

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Special and Differential Treatment in the WTO Agreement on Agriculture and the Benefits for Developing Countries

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Abstract

This paper aims to analyze how developing countries can take full advantage of international trade arrangements and apply the principles and rules of special and differential treatment in the WTO rules of international trade in the context of agricultural sector. This research applied normative legal research as a method that refers to legal norms to understand the application of legal norms to present facts, changing circumstances. This method is also purposively to offer potential solutions to resolve concrete societal issues in order to understand the application of legal norms. The purpose includes to analyze the WTO agricultural agreement by showing the importance of special and different treatment in the context of international trade. This study revealed that there have been a number of special and differential treatment arrangements under Agreement on Agriculture set out in a number of articles. The existence of arrangements concerning special and differential treatment in Agreement on Agriculture (AoA) is expected to provide benefits between all participating countries. The provision provides the obligation for developed countries to pay full attention to the special needs and different conditions of developing countries. This rule includes the recognition of the existing differentiation among WTO members and treatment for all developing member countries. The AoA is implemented by giving more emphasis on agricultural sector, and giving rural development priorities as a main basis for agriculture.

Keywords: *Special and Differential Treatment, Agreement on Agriculture, WTO, developing country, agricultural sector*

1. Introduction

International trade has been very instrumental since the enactment of the General Agreement on Tariff and Trade began in 1947 (then referred as GATT 1947) (Bhala, 2008). The existence of the World Trade Organization (WTO), as an international organization, has an important role in international trade traffic, especially in promoting economic development and poverty reduction (Kelsey, 2004). More specifically, the existence of this organization should ensure the fulfillment of all the needs and advantages of the increased welfare opportunities within the context of the multilateral trading system particularly for developing countries. This is supported by the fact that most of the WTO member countries fall into this category. WTO members declared in Doha Ministerial Declaration recognizing the major role of international trade in the promotion of economic development and the alleviation of poverty.

It is related to the main task of the WTO today as a world trade organization, having an aim to increase the world trade through the reduction of both tariff and non-tariff barriers. In addition, the presence of this organization is expected to organize an effective and efficient world trading system for the world economic actors. On the other hand, this organization is expected to become a

negotiation forum for each member country for their economic interests (Petersman. 1997). The interests and needs of developing countries, especially the underdeveloped countries, have become an enormous need beyond what WTO has done and concerned since 2001 after the ministerial meeting at the Doha Round. At the Doha meeting, WTO members have adopted Decisions on Implementation Related Issues and Concerns, in relation to the problems faced by developing countries in implementing the WTO Agreement which is the result of the Uruguay Round negotiations.

This situation then underlies the development of one of the most important principles in the whole international trade negotiations incorporated by the WTO forum, that is, special and differential treatment. It is hoped that the principle of special and differential treatment was presented in order to ensure that the developing countries, in particular the underdeveloped countries, can continue to join the multilateral trading system and can also enhance their role in international trade. WTO has provided a wide range of special treatment tailored to the needs and their interest in international trade. WTO Agreement has facilitated the provision of special and differential treatment in some treaties in the WTO Agreement (Ierley. 2002).

It is known that most WTO members are of developing countries. At least two thirds of all WTO member countries are classified as developing countries. If we look at the current conditions, developing countries have become part of WTO membership and have played a very important role in the WTO organization itself. In addition to the category of developing countries, the WTO membership also includes the least developed countries. There are at least 34 underdeveloped countries that have become part of WTO membership.

This paper aims to analyze how developing countries can take full advantage of international trade arrangements and apply the principles and rules of special and differential treatment in the various rules of international trade in the context of economic development, especially the agricultural sector. This is worthy noted because the agricultural potential of the developing countries is expected to be a motor of economic progress for the member countries. On the other hand, the developing countries as WTO member states are expected to get benefits from the existence of special and different treatment principles in Agreement on Agriculture

2. Method

This research applied normative legal research as a method that refers to legal norms to understand the application of legal norms to the presented facts. The method is also to offer potential solutions to resolve any concrete societal issues. The study selected this method in order to understand the application of legal norms included in the WTO agreement by first revealing the background of the importance of special and different treatment in the context of international trade in particular.

This research also applies statute approach which is to see the whole rule of international trade law under WTO law especially related to the provision of special and different treatment for developing country in Agreement on Agriculture. Then, in particular, the study will conduct an in-depth analysis of the usefulness of special and different treatment for developing countries in the agricultural industry.

As a normative legal research, this study refers to the analysis of legal norms. Thus, the object analyzed is the legal norm contained in the secondary data collected by conducting literature study, by examining the agreements summarized in the WTO Agreement, in particular the arrangements contained in Agreement on Agriculture (AoA).

3. Special and Differential Treatment: A Brief Overview

The hope from the international trade and its arrangements is that every country will benefit from the existence of international trade. Supachai Panitchpakdi, Director General of the WTO in the period of 2002-2005, as quoted by Peter van den Bossche (2005), stated that the existence of international trade increases the trade among developing countries in particular, and the world trade in general. Understandably, the trade existence of a country with its own economic interests is

required to enhance the inter-country interaction. The purpose of this interaction process in general is that each country has an equal opportunity to meet domestic needs. It is because that teaches country has different abilities in terms of their economy and technology (Trebilcock & Howse, 1995). Globalization henceforth is needed and it will affect the development of interdependence of world economic actors.

Differences in economic and technological capabilities among the countries result in classification of countries. In general, the existence of countries in the world can be grouped into several classifications. The common classification is the developed countries, developing countries and Least Economic Development Country (LEDC) or commonly known as the underdeveloped countries (Nafziger, 1990). The classification of countries is simply based on the economic capacity of each country. Usually, the assessment of a country economic development and the classification of the state are differentiated from rich and poor countries (Mitchell, 2013).

The economic weakness of developing countries and underdeveloped countries requires the cooperation and economic capability improvement through trade each other (Kwakwa, 2012). One way is to actively engage in international trade activities, particularly through active involvement in the WTO's multilateral trading system (Qasim, 2008). However, the problem that arises is by having weaker economic capability, the developing countries is often in no bargaining position on existing trade liberalization policies compared to the developed countries (Juwana, 2001). Liberalization itself closely related to a view that assumes that to achieve economic progress, the states refrain from interference in economic life. To enhance the capability in trade, the developing countries have requested a system that can provide different treatment. Therefore, the country members having weaker economic capability are able to cover the ability differences. This is because the developing countries are always faced with perceptions of the inability to carry out the burden and obligations arising from trade policies (Kartadjoemena, 1996).

This special and differential treatment is a continuous positive effort to integrate the developing and underdeveloped countries in the world trade system (Sutrisno, 2010). The core of this special and differential treatment is that the developing country is faced with the difference in the ability to carry out obligations arising from the agreements contained in the WTO. The difference in ability is due to the differences in economic capacity possessed between developed, developing and underdeveloped countries (Van Den Bosche, 2005).

Furthermore, Osakwe (2011) explained that this special and different treatment can be divided into six categories as follows:

1. Provisions aimed to increase trade opportunities for members of developing countries
2. Provisions requiring other member states to protect the interests of developing countries members
3. Conditions that permit flexibility of commitments, for actions and the use of policy instruments
4. Period of transition time
5. Technical Assistance
6. Provisions related to members of underdeveloped countries.

The principle of this particular and differential treatment provision is that the needs of developing countries are substantially different from those of developed countries. Thus, the existence of this particular and distinct treatment on certain matters would permit the discriminatory side which the system would inevitably avoid multilateral trade under the WTO (Van Den Bosche, 2005). Furthermore, this special and differential treatment does recognize a gap in economic development between developed and developing countries (as well as underdeveloped countries) that require a special condition.

However, the existence of this arrangement will give benefits to the developing countries, if the developing country utilizes this special and differential treatment. Developing countries believe that the effectiveness of the implementation and enforcement of this treatment will encourage the growth of developing country economies and can integrate them into the multilateral trading system. Nevertheless, the application and enforcement of this treatment is deemed to be ineffective (Ewart, 2007). The WTO agreement itself has facilitated at least 145 provisions on special and differential treatment spread throughout the existing treaties.

The WTO Agreement has facilitated the existence of special and differential treatment spread in various existing agreements, such as Agreement on Textile, Agreements on Trade in Goods, the General Agreement on Trade in Services, the Agreement on Trade-Related Aspects of Intellectual Property, the Understanding on Rules and Procedures Governing the Settlement of Disputes and Agreement on Agriculture. At least, there are 19 articles governing the regulation of special and differential treatment specifically discussed in chapters 15-16 entitled special and differential treatment.

4. Agreement on Agriculture: Most Important Treatment for Developing Countries

One of the important agreements resulting in WTO negotiations is the agriculture or AoA (Agreement on Agriculture). The existence of this agreement is important considering that most of the WTO member countries are developing countries that still emphasize the livelihoods of their people from the agricultural sector. Moreover, in world trade, the agricultural industry has increased sharply, marked with the volume of world agricultural exports over the last few decades. However, this is not the case with the growth rates of the lagging agricultural sector. In 1998, agricultural trade was counted for 10.5% of total goods trade. Nevertheless, considering that agricultural trade is still ahead of other product sectors such as mining, automotive products, chemicals and textiles as well as clothing or iron and steel, since the 1980s, trading in processed agricultural and other products have grown much faster than basic primary product trading. Trade in the agricultural sector in many countries is an important part of overall economic activity and continues to play a major role in domestic agricultural production, including employment. Therefore, it is important to maintain the trade of the global agricultural sector in meeting the needs of the world market.

The focus in agricultural negotiations is on domestic agricultural policy and agricultural export subsidies, sanitary and phytosanitary, the use of food security protectionism, animal and plant health stages. In its development, this negotiation in agriculture is not an easy thing, including talking about political sensitivities (www.wto.org). In the end, the agreement on agriculture has been successfully passed in a unified result of the Uruguay negotiations, including the Decisions and Measures Concerning the Possible Negative Effects of the Reform Program on Least Developed and Net-Food-Importing Developing Countries.

This agreement on agriculture acknowledges the agreed long-term objective of establishing a fair and market-oriented trade in agriculture. The existing reform program consists of specific commitments to reduce support and protection in the areas of domestic assistance, export subsidies and market access, and through the establishment of more operational and effective GATT rules and disciplines. This agreement also takes into account other matters instead of the trade, including food security and the need to protect the environment. It also provides special and differential treatment to developing countries, including increased opportunities and access to agricultural products in the member states of this treaty.

This agreement also affirms the interconnection with other agreements, such as the agreement on IPR that is also applied to this agricultural agreement by maintaining the general principles of applicable law. Furthermore, the agreement covers agriculture products not only basic agricultural products such as wheat, milk and animals, but also derived products, such as bread, butter and meat, as well as all processed products such as chocolate and sausage, wine, liquor and products tobacco, fibers such as cotton, wool and silk, and raw animal skin. However, fish and fish products and forestry products are not included (www.wto.org).

The Agreement on Agriculture establishes a number of generally accepted rules connected to agricultural measures related to trade, particularly in the areas of market access, domestic support and export competition. These rules are related to the country's specific commitments to improve market access and reduce distorting subsidies included in the country's individual schedules of WTO Members as an integral part of GATT. The period of implementation of the country's special commitment is a six-year period beginning in 1995. However, developing countries have the flexibility to implement their reductions and other special commitments over a period of up to 10 years. Members have the option of applying their concessions and commitments on a calendar, marketing or fiscal year basis. For the purpose of the peace clause, the implementation period is a

nine-year period beginning in 1995. There is an Agricultural Committee tasked with overseeing the implementation of the Agreement on Agriculture and provides members with consultation opportunities on any matters related to the implementation of commitments, including rule-based commitments. For this purpose, the Committee usually meets four times per year.

Under this agreement, there has been a fundamental shift in the design of investment, production and trade in agriculture by (i) making the agricultural market access conditions more transparent, predictable and competitive, (ii) establishing or strengthening links between national and international agricultural markets, and thus (iii) the use of scarce resources in the most productive use of both the agricultural and economic sectors. The Uruguay Round Negotiation aims to remove obstacles to tariffs. Therefore, it has been agreed upon regarding a tariff system generated from a certain calculation process. Furthermore, every WTO member has a schedule of tariff concessions covering all agricultural products. This tariff reduction scheduling is included in the tariff system. Members of developed countries have agreed to reduce, during the six-year period beginning in 1995. Their tariffs are 36 percent on average of all agricultural products, with a minimum discount of 15 percent for any product. For developing countries, the tariff cuts of 24 and 10 percent, respectively, will be implemented over ten years.

Conceptually, there are two categories of domestic support: "Green Box Measures" and "Amber Box". All members shall notify the Agriculture Committee of their level of domestic support actions. Special formats have been developed by the Agriculture Committee in order to facilitate the fulfillment of notice obligations. In addition to the annual notice obligations, all members must notify modifications of existing ones or the introduction of new steps in the excluded category. This notice is also checked by the Agriculture Committee on a regular basis.

One of the important rules that become an integral part of this AoA is the Decisions and Measures Concerning the Possible Negative Effects of the Reform Program on Least-Developed and Net-Food-Importing Developing Countries. This decision was adopted as a part of the outcome of the Uruguay Round negotiations on agriculture. The decision recognizes that when the progressive implementation of the overall Uruguay Round outcome will result in increasing opportunities for trade expansion and economic growth for the benefit of all members, as long as the reform program is implemented, the least developed and developing countries net food importers may experience negative effects in terms of adequate supply availability of basic food items from external sources on reasonable terms and conditions, including short-term difficulties in financing the normal rate of commercial imports of staple food.

Under this regulation, there are a number of mechanisms to ensure that the implementation of the Uruguay Round results does not affect the availability of food aid at a sufficient level to continue providing assistance in meeting the food needs of developing countries. This mechanism includes a review of the level of food aid established periodically by the Food Aid Convention and the initiation of negotiations. This review is to establish adequate levels of food aid commitment to meet the legitimate needs of developing countries during the reform program, and adoption of guidelines to ensure that an increase in the proportion of basic foodstuffs is provided in a fully giving form. Moreover, developed member states should give full consideration in the context of their assistance programs for the demand for the provisions of technical and financial assistance to at least developing and net food importers of developing countries to improve agricultural productivity and infrastructure. It also ensures that any agreements related to agricultural export credits make the right provisions for differential treatment in favor of clean food importing countries and underdeveloped member countries. The decision recognizes that in the case of short-term difficulties in financing the normal rate of commercial imports, developing countries as net food importers may be eligible to attract resources from international financial institutions under existing facilities, or facilities as may be established, in the context of an adjustment program in order to overcome the difficulties of such financing. Essentially, the agreement emphasizes the commitment of all WTO members in terms of market access, tariff and import restrictions, domestic support for existing procedures, and export competitions such as export subsidies.

5. Special and Differential Treatment Arrangements in AoA

With the special and differential treatment arrangements in AoA, it is hoped that there are benefits that can be experienced by the developing countries.

First, the provisions require that participating countries should continue to pay attention to the equality of all participating countries. Treaties of special and differential treatment become an integral part of each existing charge and is devoted to exclude the negative consequences that will arise in the application of specific program reforms for underdeveloped countries as well as developing countries in general.

Furthermore, the opening section of AoA explains that there should be provisions aimed at increasing trade opportunities. This provision allows the establishment of further regulation in order to increase trade opportunities, especially in agriculture for developing countries. In this provision, the article in the part of the AoA substance must explicitly affirm the existence of the regulation of special and different treatment for developing countries. This has been affirmed in AoA.

In AoA, there has been a special regulatory section on this special and different treatment arrangement contained in section IX article 15 entitled "special and differential treatment" and section X of article 16. It has also been contained in other articles on this rule. In the development phase, the regulation on special and differential treatment was also formulated in the WTO Ministerial Conference which took place in Bali in 2013 and resulted in the Bali Package. One of the agreements in this Package is to produce special and differential treatment arrangements in agriculture.

Second, the provisions provide the obligation for developed countries to pay full attention to the special needs and different conditions of developing countries. This provision provides full obligation to developed countries for the agricultural interests of developing ones.

Third, the recognition of the differentiation existing among WTO members and better treatment for all developing member countries is to be integrated over any existing negotiations. In addition, special and differential forms of treatment shall be affirmed in other relevant provisions under this agreement and embodied in the timetable of the existing concessions and commitments. It further affirms that recognition of the existence of differentiation existing among WTO members and better treatment for all developing member countries is to be integrated over any existing negotiations. In addition, special and differential forms of treatment shall be affirmed in other relevant provisions under this agreement and embodied in the timetable of the existing concessions and commitments.

Implementations of this rule are as follows:

- a. There are other relevant further regulatory rules under this agreement contained in various advanced rules of AoA, such as NFIDC.
- b. There is a Committee on Agriculture that specifically monitors the implementation of these special and differential treatment arrangements (discussed in particular in Article 17 AoA).
- c. There is an arrangement whereby the obligation of WTO member states to report to the Committee on Agriculture related to the timetable of concessions and commitments.
- d. There have been a number of other rules as a continuation of negotiations as endorsed in the Bali Package and 2015 Nairobi Package.

Fourth, provisions affirm that developing countries have the flexibility to implement a tariff reduction commitment up to 10 years, where this rule is not required for the underdeveloped country.

Fifth, provisions regarding the permissibility of domestic support. This is in accordance with the Mid-Term Review Agreement that acts of government assistance, directly or indirectly, to promote agricultural and rural development as an integral part of development programs of developing countries. Investment subsidies generally are available to agriculture in developing country members and subsidized inputs agriculture are generally available to low-income or resource-poor producers in developing country members. The exempt from support of other domestic abatement commitments would apply to such measures, owing to the prohibition of domestic support for producers in developing country members to encourage diversification from planting narcotic crops. Domestic support that meets the criteria of this paragraph is not required to

be included in the current calculations of the total AMS.

Sixth, provisions allow developing countries to provide export subsidies. During the implementation period, developing country members are not allowed to commit in relation to export subsidies. They are not applied in order to avoid reduction of commitments: subsidies to reduce export costs of marketing agricultural products, including handling, upgrades and other processing costs, international transport and goods, and internal transportation costs on shipping terms of export that are more profitable than costs of domestic shipments.

Seventh, the provisions require developed countries to take the necessary action if there is a negative impact on the implementation of reform programs developed for developing (in Net Food-Importing for Developing Countries) and underdeveloped member countries.

Eighth, the provisions require the program of food security in the country of each developing country. It is specifically regulated in Public Stockholding for Food Security Purposes (annex 2).

Ninth, as set out in the Decisions on Measures Concerning the Possible Negative Effects of the Reform Program on Least-Developed and Net-Food-Importing Developing Countries (NFIDC), there are developing countries incorporated in the NFIDC food aid, food program guidelines, and technical assistance.

Tenth, provisions affirm rural development priorities, as affirmed in the *preamble* section of the 2013 Bali Package.

These arrangements were done in order to promote rural development and poverty alleviation, which is specifically addressed to programs such as (a) land rehabilitation, (b) soil conservation and resource management, (c) drought management and flood control, (d) rural work programs, (e) issuing of certificate on land, and (f) farmer resettlement program. The high expectation of developing countries with the existence of a multilateral trading system under the WTO takes sides with the interests of developing countries resulted in the existence of regulation on the principle of special and differential treatment in Agreement on Agriculture. This agreement along with all specific arrangements becomes very important in supporting the economic progress and welfare of society through agriculture. Furthermore, in practice, this arrangement is overseen by the Agriculture Committee to constantly monitor and evaluate the impacts. Thus, continuous efforts will be made in order to fight for the agricultural interests of developing countries.

6. Conclusion

The existence of the World Trade Organization (WTO) is expected to be instrumental in promoting economic development of countries in the world, particularly the developing country members. Various kinds of arrangements, principles and rules have been agreed among the members in order to harmonize all the existing rules applicable for international trade. This is expected to create a multilateral trading system acceptable to all parties. One important principle in the WTO Agreement is the principle of special and differential treatment, i.e. different treatment for developing countries in their obligations to apply the WTO Agreement. Hopefully, the existence of this principle is not contrary to the multilateral trading system that should be always free and fair. Nevertheless, the usefulness of this principle depends on how each of developing and underdeveloped countries capable of utilizing it in order to facilitate the economic development of their country.

This study revealed that there have been a number of special and differential treatment arrangements under Agreement on Agriculture set out in a number of articles, particularly contained in chapters 15-16 entitled "special and differential treatment". The existence of arrangements concerning special and differential treatment in Agreement on Agriculture (AoA) is expected to provide benefits to developing and underdeveloped countries. The benefit, among other, are to provide the similarities of treatment between all participating countries. The special and differential treatments become an integral part of each negotiation. This provision provides the obligation for developed countries to pay full attention to the special needs and different conditions of developing countries and recognition of the existing differentiation among WTO members and better treatment for all developing member countries. Such provisions affirm that the developing countries have the flexibility to implement a tariff reduction commitment of up to 10 years as well as provisions

concerning domestic support. This provision allowed developing countries to provide export subsidies. On other side, developed countries are required to take the necessary action if there is a negative impact on the implementation of the reform program developed for developing member countries. It also requires the existence of food security programs of each developing country. Provisions on the level of food aid, food program guidelines and technical assistance as set out in the Decisions on Measures Concerning the Possible Negative Effects of the Reform Program on Least Developed and Net-Food-Importing Developing Countries affirm the importance of agricultural sector for the economic growth of developing countries and the recognition of rural development priorities as a main basis for agriculture in WTO rules.

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