



INSTITUT DE HAUTES
ÉTUDES INTERNATIONALES
ET DU DÉVELOPPEMENT
GRADUATE INSTITUTE
OF INTERNATIONAL AND
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Enhancing Special and Differential Treatment for Least Developed Countries

Final Report

ARP group n°45 - Jinhan, Yossra and Lou

Faculty Lead - Rémi Viné

Partner - Giovanni Valensisi from UNCTAD

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Acronyms and abbreviations

Antidumping Agreement = Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 (commonly called the Antidumping Agreement)

AoA = Agreement on Agriculture

CVA = Agreement on Customs Valuation (Agreement on Implementation of Article VII of GATT 1994)

DSU = Understanding on Rules and Procedures Governing the Settlement of Disputes (Dispute Settlement Understanding)

FISH1 = Agreement on Fisheries Subsidies (WTO Agreement on Fisheries Subsidies, 2022)

FISH2 = Ongoing negotiations for additional disciplines on fisheries subsidies (currently referred to as the second wave of the Agreement on Fisheries Subsidies)

GATS = General Agreement on Trade in Services

GATT = General Agreement on Tariffs and Trade

GDP = Gross Domestic Product

GNI = Gross National Income

ILP = Agreement on Import Licensing Procedures

LDC = Least Developed Country

ODA = Official Development Assistance

Safeguards Agreement = Agreement on Safeguards

SCM = Agreement on Subsidies and Countervailing Measures

SDT = Special and Differential Treatment

SPM = Agreement on the Application of Sanitary and Phytosanitary Measures (SPS Agreement)

TACB = Technical Assistance and Capacity Building

TBT = Agreement on Technical Barriers to Trade

TFA = Trade Facilitation Agreement

TFAF = Trade Facilitation Agreement Facility

TRIMS = Agreement on Trade-Related Investment Measures

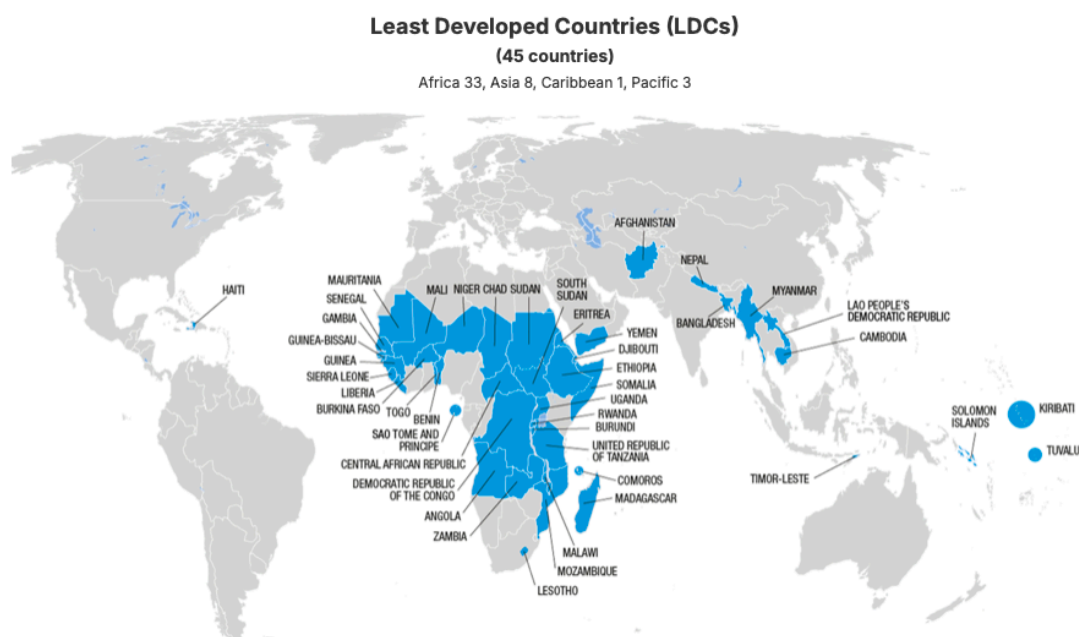
TRIPS = Agreement on Trade-Related Aspects of Intellectual Property Rights

Understanding BoP = Understanding on the Balance-of-Payments Provisions of the GATT 1994

Introduction

The category of Least-Developed Countries (LDCs) was established in recognition of the distinct and multifaceted development challenges confronting some of the world's most economically disadvantaged nations. These countries are featured by low per capita income, inadequate infrastructure, limited access to education and healthcare, political instability, dependence on agriculture and primary commodities and high vulnerability (United Nations Department of Economic and Social Affairs, 2025). While accounting for 13% of the global population and 40% of the world's poor, they contribute only 1.3% to global GDP (United Nations Capital Development Fund, 2025).

Approximately 63% of the LDC population resides in rural areas with limited access to modern infrastructure and economic opportunities. Their economic diversification is restricted, impeding full integration into the global economy. Given these challenges, the international community has been making concerted efforts to address institutional weaknesses, strengthen governance frameworks, invest in human capital development, and bolster resilience to external shocks such as climate change and global market fluctuations. These shocks present a unique and complex set of challenges for LDCs, necessitating tailored and comprehensive international interventions.



Source : UNCTAD (2024)

To help LDCs overcome trade barriers, the World Trade Organization (WTO) has embedded targeted mechanisms such as Special and Differential Treatment (SDT) provisions. The concept of SDT originated in 1971 with the introduction of the Generalized System of Preferences (GSP) under the General Agreement on Tariffs and Trade (GATT), allowing developed nations to offer preferential tariff reductions to

developing countries (UNCTAD, 2025). A more formal and expansive foundation for SDT was established in 1979 through the adoption of the Enabling Clause during the Tokyo Round negotiations of GATT (World Bank, 1980).

This clause created the legal underpinning for granting preferential treatment to developing countries, particularly LDCs, without requiring reciprocal commitments. The objective was to foster inclusivity in trade by acknowledging the structural disadvantages faced by some nations, such as limited export diversification, weaker trade infrastructures, and greater vulnerability to market fluctuations. The WTO's establishment in 1995 further refined the role of SDT, allowing developing countries longer implementation timelines, exemptions from certain obligations, and access to potential technical assistance. These provisions are now integral to multiple WTO agreements, helping LDCs integrate into global trade while balancing domestic economic priorities (Michalopoulos, 2000).

The WTO Trade Facilitation Agreement (TFA) is another important mechanism that ensures developing members receive the support needed to fulfill their commitments. Adopted in 2014, the TFA allows LDCs to self-determine the pace of implementation based on their domestic capacities and priorities. It provides flexibility in implementation timelines and offers technical and financial assistance to upgrade trade infrastructure and customs systems.

The TFA streamlines customs procedures, enhances transparency, and promotes cooperation between customs and other relevant authorities on trade facilitation and customs compliance (Moisé & Sorescu, 2013). Key provisions include reducing documentary requirements, implementing electronic payment systems, establishing single-window entry points for documentation, and facilitating border agency cooperation (Grainger, 2008). Empirical studies suggest that implementing TFA provisions could significantly increase trade volumes, particularly for countries with underdeveloped trade infrastructures (Piermartini & Teh, 2005).

However, LDCs face challenges such as inadequate infrastructure, limited technological access, and insufficient institutional capacity in fully benefiting from the TFA (Shepherd, 2017). The effectiveness of international support and capacity-building initiatives also varies, affecting the overall benefits for LDCs (McLinden et al., 2011).

Despite these efforts, a gap remains between the objectives of SDT provisions and their impact on development outcomes in LDCs. Current SDT provisions often fall short in effectively empowering LDCs to integrate into the global trade system. It highlights deficiencies in enforceability, coherence, and practical implementation (Page & Kleen, 2005). Emerging issues such as LDC graduation and climate change are inadequately addressed in existing SDT frameworks.

Moreover, the challenge is exacerbated by a shifting global context, with emerging issues such as LDC graduation and climate change remaining inadequately addressed in the

prevailing SDT frameworks. Against this backdrop, our report intends to critically examine the effectiveness of SDT provisions within this evolving framework. Specifically, it seeks to identify the structural barriers limiting their success, evaluate how these provisions can better serve LDCs in achieving developmental goals, and propose actionable strategies to enhance SDT's role in supporting equitable trade and sustainable development outcomes for these vulnerable economies.

Literature Review

1. Trade, Development, and the Case for Special and Differential Treatment

The World Trade Organization aims to reduce trade barriers based on the belief that free trade stimulates overall economic growth. While this view finds support in theoretical frameworks like Ricardo's comparative advantage theory and the Heckscher-Ohlin model –although this model already points to gain disparities within countries– empirical evidence remains mixed (Rodrik and Rodriguez, 2000). Krugman (1995, p.33) argued that the belief in free trade's dramatic acceleration of developing countries' growth is more faith than fact. More recent studies suggest a positive relationship between trade openness and growth, but with significant cross-country variations (Gries & Redlin, 2020; Irwin, 2024). These variations can be attributed to structural factors: for instance, developing countries face disproportionately high export costs (Waugh, 2010; Eum et al., 2017), and institutional quality plays a crucial role in realizing the benefits of trade (Acemoglu et al., 2005; Levchenko, 2007; Afonso et al., 2025). This underscores the importance of strengthening domestic institutions through capacity-building initiatives. At the same time, protectionist industrial policies also play a role in fostering economic growth and development (Chang, 2002; Chang & Zach, 2019).

Consequently, a one-size-fits-all approach to trade fails to account for both historical and current global trade asymmetries. It is inadequate for promoting sustained growth and welfare in developing countries and least developed countries, thereby reinforcing the need for Special and Differential Treatment.

While this paper emphasises the necessity of SDT to achieve a more development-focused trade regime for LDCs, it is important to note that SDT is not the only path forward and broader structural reforms may be required. Some authors call for a complete change of focal point of the international trade system from trade towards development (Rodrik, 2001; Steglitz, 2006; Unger, 2007) rather than trying to ask for exceptions within an inherently asymmetric system. Others go further, questioning the very concept of development itself and the assumptions underpinning it (Rist, 2002; Demaria et al. 2023).

2. Constraints to Special and Differential Treatment

Apart from the international trade structures, there are some internal constraints such as the limited effectiveness of SDT provisions for LDCs, which the literature review will be focused on. A critical yet often underexplored dimension is the nature of LDCs' economic structures. These countries face significant vulnerabilities due to their heavy dependence on the export of fuel, ores, and metals, which exposes them to global commodity price volatility. Additionally, limited industrialisation traps these economies in cycles of low-value production, while significant reliance on remittances further constraints their economic development. According to the 2023 UNCTAD report, only

12 out of 46 LDCs (45 LDCs in 2024 after Bhutan's graduation) are not commodity-dependent.

Boz et al. (2016) identify systemic biases in trade governance and reduced negotiating leverage as critical constraints for LDCs. They argue that international support mechanisms, such as those provided under the World Trade Organisation, must align with capacity-building efforts in LDCs during both the conceptualisation and implementation phases. Without this alignment, the impact of these mechanisms is likely to fall short of transformative expectations.

Complementing this analysis, Rodrik (2014) advocates for context-sensitive industrial policies to drive structural transformation rather than relying on one-size-fits-all solutions. While Rodrik establishes a strong theoretical connection between industrial policy and economic growth, his analysis gives limited attention to how global trade dynamics constrain policy space in LDCs or to the political economy challenges inherent in implementing industrial policies under weak governance conditions.

Bouët and Laborde (2018) add specificity by arguing that the complexity of rules of origin criteria often excludes LDCs from fully benefiting from SDTs due to limited industrial capacity to meet value-added requirements. However, their analysis falls short in addressing broader economic dimensions and the internal capacity-building needed for SDTs to have a meaningful impact.

Despite the valuable insights offered by these contributions, the literature's fragmented nature highlights the necessity for a more cohesive and integrative approach. For instance, Boz et al. (2016) offer a macro-level perspective highlighting power imbalances and systemic biases that undermine LDCs' negotiating leverage and access to affordable trade-related infrastructure financing. However, their focus on practical solutions for LDCs is limited. Similarly, Shepherd and Stone (2017) underscore the importance of public-private coordination in enhancing trade logistics and capacity-building initiatives. However, they underemphasise broader systemic issues, such as trade imbalances and reliance on primary exports, which continue to constrain LDCs' economic development.

These interconnected discussions reveal the limitations of current approaches and highlight the need for a more integrated perspective. Future research must prioritise nuanced, data-driven examinations of these interconnected constraints to optimise the effectiveness of SDTs for LDCs. The different obstacles (and solutions) found in the literature can be summarised as follows:

Table 1. Obstacles and possible solutions identified in the literature

Obstacles Nature & Manifestation		Possible solutions
Obstacles coming from the provision itself	Degree of obligation (vague formulation of SDT provisions weakens obligation and hinders enforceability)	Obligation of results and monitoring mechanism
	No tailoring to LDCs specific contexts	Self-designation through streamline criterias for LDC classification and eligibility.
Obstacles that are internal to LDC	Lack of institutional capacity	Integration of TACB in SDT
	Lack of awareness among LDCs about SDT provisions available for their benefit.	Information mechanism (information online, knowledge sharing platform...)
	Capacity building inefficiencies + Debt-stress	
	Other internal constraints (political instability, governance issues, lack of industrialization, economic structure)	Some structural issues can be addressed through strategic government policy-making; others (e.g. instability) would need specific action.
Obstacles coming from broader international architecture	Lack of multidimensional framework between trade and financial system (trade lacks the financial empowerment needed to develop and mobilize resources)	Better integration between trade measures and provision of finance for sustainable development
	Rules of origin and non-tariff barriers	Simplification, harmonization and technical assistance
	Asymmetry of power in trade and finance governance	More inclusive governance frameworks

To build on the literature findings, our research aims to address the research questions by leveraging the extensive body of available data and insights from previous studies. Additionally, we will place a strong emphasis on addressing the existing gaps by providing grounded, data-based answers to the less examined obstacles.

3. The Trade Facilitation Agreement: a New Approach to SDT?

The TFA is considered a turning point in special and differential treatment. The countries do so by categorising their obligations into three groups, which are specified in Article 14 of the TFA and can be summarised as follows:

This mechanism enables LDCs to adapt their commitments to their specific needs and capacities and also puts emphasis on the importance of TACB, as the implementation of Category C provisions is conditional upon receiving such assistance. Another innovative feature of the TFA is that it contains many provisions recognising and addressing LDC-specific challenges¹. Studies, such as those by De Melo et al. (2021) and Moisé & Sorescu (2013), project that full implementation of the TFA can lead to significant gains in market integration for LDCs.

However, several weaknesses have been identified. Firstly, donor countries are not legally bound to provide technical assistance and capacity building, leading to concerns about the feasibility of implementing Category C provisions (Peterson, 2020; Almorada, 2022; Finger, 2014). As Finger (2014) observes, this creates a situation where LDCs have “bound obligations to implement in exchange for unbound promises of assistance.” Secondly, the requirement for LDCs to notify the WTO of their chosen categories for each provision poses additional challenges. This process demands substantial institutional capacity and technical expertise that many LDCs lack (Peterson, 2020).

To address these challenges, Peterson (2020) notes the importance of mechanisms such as the Trade Agreement Facilitation Facility. This facility aims to facilitate “knowledge sharing, link developing countries to donors, and answer technical questions.” Such mechanisms need to be consolidated to reach full implementation of SDT. The abundant literature on the TFA is mostly enthusiastic about the possible gains from the TFA, although most studies note the necessity to reinforce TACB. However, these works rarely look at empirical data on actual implementation².

¹ 9 provisions mention LDCs’ specific needs.

² The studies mentioned above mostly look at the text of the agreement itself or in the case of De Melo et al. (2021) and Moisé & Sorescu (2013) they use data on trade facilitation before the TFA implementation.

Methodology

To assess the gaps between the objectives and impacts of special and differential treatment, we first focus on understanding better the content of SDT provisions. To do so, we first categorised the provisions mentioning SDT contained in all WTO commitments according to the criterias explained below. We then conducted a survey of trade officials to see what constraints they perceive to receiving SDT for their country.

1. Categorisation Methodology

1.1 Existing Categorisations of SDT Provisions

Special and differential treatment encompasses a wide range of measures designed to address the specific needs of developing countries and LDCs. These measures vary significantly in terms of objective (WTO, 2023; Lorenzo 2023), of the beneficiaries involved (all developing countries or a subgroup), and of their precision and legal effect (Rolland, 2012; Hedge and Wouters, 2021; Hedge, 2024). To better understand the broad spectrum of measures that SDT encompasses, various categorisation efforts have been made, by the WTO Secretariat and researchers.

The WTO Secretariat's widely used classification (2023) divides SDT into six categories: (1) provisions aimed at increasing trade opportunities for developing countries, (2) provisions requiring WTO members to safeguard the interests of developing countries, (3) flexibility in commitments, actions, and policy instruments, (4) transitional time periods, (5) technical assistance, and (6) provisions specifically addressing LDC members. This categorisation reveals that provisions specifically addressing LDC members are relatively rare, accounting for only 17% of all SDT provisions. This is despite the fact that LDCs make up over a quarter of all WTO members (WTO, 2023), about 40%³ of all developing country members, and are the countries most in need of special and differential treatment.

While the WTO secretariat classification can help understand the different “intended effects” (Hedge & Wouters, 2021) of SDT provisions, or in other words, what countries *want to achieve* when drafting SDT provisions, this typology does not permit to analyse the concrete outcomes of SDT provisions, i.e what the provisions *concretely achieve*. Yet, this is an important dimension of SDT because, there is often a gap between the design and the implementation of SDT provisions. For example, while Article 16 of the Trade Facilitation Agreement stipulates that developing members and LDCs should receive technical assistance to implement certain provisions, only 17 out of the 32 LDCs having

³ This number is an approximation as there is no fixed definition of developing members at the WTO, but according to the WTO “About two thirds of the WTO’s 166 members are developing countries.” (WTO, 2024)

notified needing technical assistance have been matched with donors to this date. This gap between the design and implementation of SDT has led many to question the effectiveness and utility of SDT, such as Finger (2014), who states that SDT in the WTO context is just a “form without substance“.

1.2 Towards a Systematic Categorisation of SDT Provisions

To navigate the complexity of WTO SDT provisions and understand what the provisions concretely achieve we build on the two typologies outlined above. To do so we analyse all the SDT provisions contained in WTO agreements⁴ and the legal commitments they contain⁵.

For each provision we ask 6 questions:

1. What provisions are LDC specific ?
2. What provisions mention technical assistance ?
3. Are there provisions that induce substantial and additional costs for the beneficiaries ?
4. Are there any support mechanisms directly stipulated in the WTO agreements?
5. What is the legal nature of the commitments contained in the provision ? and what commitments legally ensure that developing countries actually receive a special and differential treatment ? (Hedge 2024)
6. What are the conditions for receiving special and differential treatment for developing countries and LDCs ?

For the first two questions we used the WTO categorisation (WTO Secretariat, 2023), which contains specific categories for provisions relating to LDC members and for provisions relating to technical assistance.

For the third question, we examine whether SDT implementation would impose substantive additional costs on the beneficiary beyond routine administrative work. Our analysis does not count minor expenses related to notifications or requests, as these fall within the government's regular functions and don't require expanding existing capacity through specialized hiring. We find that no SDT provisions induce substantial additional costs on developing countries or LDCs. However, as will be shown later in our analysis

⁴ We use the the compilation of articles made by the WTO secretariat (2023) and added provisions from the Agreement on fisheries subsidies which has been adopted in 2022 and is still waiting to be ratified by enough member states to enter into force as well as the Additional Provisions on Fisheries Subsidies Draft Text which was presented to WTO members at the 13th ministerial conference (2024) and is still under negotiation. We count a total of 221 provisions coming from 16 WTO agreements. The detail of how we counted the provisions is explained in Appendix 5.

⁵ We count a total of 257 commitments. Some provisions contain several commitments “because they either (i) impose different kinds of legal relations in the same provision or (ii) impose legal relations between two different types of Members, i.e., between developed and developing Members or between developed and LDC Members” (Hedge 2024, p.46).

section, despite not requiring capacity expansion, beneficiaries still face significant administrative burdens that can effectively deter access to SDT benefits.

Question 4 looks at if there exists a special mechanism such as an information sharing platform or a body supposed to facilitate the access of developing countries to technical assistance and capacity building for each of the 16 agreements.

For the fifth question which is an analysis of the legal nature of the commitments included in SDT provisions, we based ourselves on the typology developed by Hedge (2024). Hedge first bases himself on Hohfeldian analysis⁶ to define the legal relationships contained in SDT provisions. Such relationships can either be mere political commitments, create privileges-no right relations or duty-right relations (see Table 2). Second, for each identified relationship he looks at the actors involved. These actors are either developed countries, developing countries⁷, least developed countries or WTO organs, for example the WTO secretariat or Committees that are agreement specific such as the Committee on Agriculture.

Once legal relations are identified, Hedge adds an analytical layer for commitments that constitute duties on developed countries: he evaluates whether they represent duties of means, requiring only best-effort attempts, or duties of result, guaranteeing actual SDT. For instance, under Article 6.2 of the Agreement on Agriculture, developing countries are exempted from domestic support reduction commitments applicable to other members. This exemption right ensures effective differential treatment. On the contrary, some legal duty-right relationships only require best-efforts attempts, as in Article 12.2 of the Agreement on Technical Barriers to Trade, which states that "Members [...] shall take into account the special [...] needs of developing country Members." This merely obligates developed countries to consider developing countries' needs without guaranteeing actual differential treatment. Hedge finds that "only 21.6% of the provisions in the universe of SDT oblige the developed Members to actually provide differential treatment to developing Members." (Hedge, 2024, p. 207).

⁶ Hohfeldian analysis, developed by legal theorist Wesley Hohfeld, is a framework for understanding legal provisions by examining the relationships they establish between the parties involved. Specifically, Hohfeld contends that any legal commitment can be understood as a relational structure. Such a structure may take the form of a duty-right relationship, wherein one party is obligated to act (or refrain from acting) in a certain way, and a second party holds a corresponding right to demand compliance with that duty. Alternatively, the relationship may be characterised as a privilege–no-right relationship, in which one party is permitted, but not required, to undertake a particular action, leaving the other party with no right to request or enforce the action. This analysis helps clarify the specific legal roles and interactions between actors. For more information see (Kramer, 2024).

⁷Unless otherwise specified, the term "developing countries" in our analysis encompasses Least-Developed Countries (LDCs), reflecting WTO terminology in all agreements except in the TFA. The Trade Facilitation Agreement represents an exception, treating these as separate categories and explicitly stating when provisions apply to both groups.

Table 2. Type of legal commitments contained in SDT provisions

Type of Commitment	Definition	Indicative Language	Example
Non-legal Commitment	Aspirations or political statements without legally binding consequences.	General, non-binding language (e.g., 'should', 'need for efforts')	GATT Art. XXXVI:3: "There is need for positive efforts designed to ensure that less-developed contracting parties secure a share in the growth in international trade [...]".
Privilege	Legal relationship in which a party may act but is not obligated to do so; the other party has no right to demand performance.	"may", "is enabled to", "agree to facilitate"	TFA Art. 21.1: "Donor [developed] Members agree to facilitate the provision of assistance and support for capacity building to developing country and least-developed country. [...]"
Duty–Right	Reciprocal legal relationship: one party has a duty to act, and the other has a corresponding right to claim that action.	"shall" (duty), "is entitled to" (right)	TBT Art. 10.5: "Developed country Members shall, [...], provide, in English, French or Spanish, translations of the documents covered by a specific notification."

Owned elaboration based on Hedge (2024).

While Hedge focuses on duties of developed countries to analyze if they are duties of means or duties of result, our analysis also includes privileges bestowed upon developing countries and LDCs.⁸ We thus have some legal commitments that guarantee outcomes (comprising duties of result imposed on developed countries and result-oriented privileges granted to developing countries and LDCs) and the rest of commitments that do not. Figure 1 represents the continuum of legal effect of SDT provisions ranging from no SDT to guaranteed SDT.

Finally, for the 6th question concerning conditionality, we look if there are conditions to the application of the different provisions. If a provision contains one or several conditions, it means that the SDT is not automatically applicable, thus adding to the

⁸ Consider a case where an LDC has a transitional period privilege allowing them to delay implementing certain provisions as stated in TFA Article 16.1a: "[...] the Member may delay implementation." Other WTO members cannot protest this decision, meaning such a privilege, if exercised, guarantees Special and Differential Treatment. However, some privileges only provide insurance of means, similar to duties of means. For example, TFA Article 16.1b offers a privilege to seek reduced commitments without ensuring the developing country will actually obtain the reduction: "[...] the Member may request that the Committee extend the period sufficient to notify its dates".

challenge of their implementation. We identified 4 distinct types of conditions⁹ which are explained in table 3. Some articles contain several conditions.¹⁰

Table 3. Types of conditions

Condition Type	Description	Examples
Activation Condition	The SDT is only activated after notification or request by the developing country.	Art 10.5 TBT: Developed countries shall provide translations "if requested" by developing countries.
Eligibility Condition	The SDT applies only: <ul style="list-style-type: none"> - To developing countries or LDCs fulfilling specific conditions - Or to some specific products or cases - Or if criterions of another article are met/not met. 	Art 12.2 AoA: The exemption applies only to certain developing countries, those which are not "net-food exporter of the specific foodstuff concerned."
Temporal Condition	The SDT only applies for a defined time-period.	Art 20.2 TFA: The duty on developed Members to refrain from litigation towards LDCs is limited to "a period of six years after entry into force of this Agreement"
Discretionary Condition	Vague conditions that grant SDT providers (typically developed countries or WTO bodies) significant discretionary power in determining whether and how to provide special and differential treatment. These conditions weaken the obligatory nature of SDT commitments by introducing subjective interpretation elements.	Art 16.3 TFA: The Committee shall take action "as appropriate" and "where necessary". Article XXXVIII 2. (a): Countries shall take action "where appropriate".

⁹ Hedge (2024) also examines provision conditions by categorising SDT intensity according to duration (permanent vs. time-limited) and exemption level (partial vs. full). While we also incorporate time-limited conditions in our analysis, our approach differs significantly from his: we examine conditions not to assess SDT intensity but rather to understand what material requirements developing countries or LDCs must satisfy to access the SDT.

¹⁰ For question 3 and 6, we then used AI for verification purposes. The prompts used are in Appendix 4.

Figure 1. Continuum of SDT effects¹¹



¹¹ This Figure only contains some examples of the different commitments, Appendix 7. summarises our classification of all commitments in each category.

2. Survey Methodology

The aims of the survey are :

- a) To assess whether LDC trade officials identify the same constraints and solutions as those found in the literature review and through our analysis of SDT provisions.
- b) To rank the various constraints and proposed solutions, identifying which constraints are viewed as more difficult to overcome by LDC trade officials and what solutions are seen as the most promising ones to address them.
- c) To explore potential new insights based on the diverse perceptions of trade officials.

2.1 Population Surveyed

We sent our survey to the representants of the National Trade Facilitation Committee of Least Developed Countries. This population has been chosen because of their expertise on trade of their respective countries and their accessibility: their email is available online on the website of National Trade Facilitation Committees. Some countries' contacts were not mentioned on this website. In this case, we sent the survey to the Permanent Mission to the UN office at Geneva of the specific country. In total we reached out to 43 countries - all LDCs except Tuvalu for which we could not find any contact.

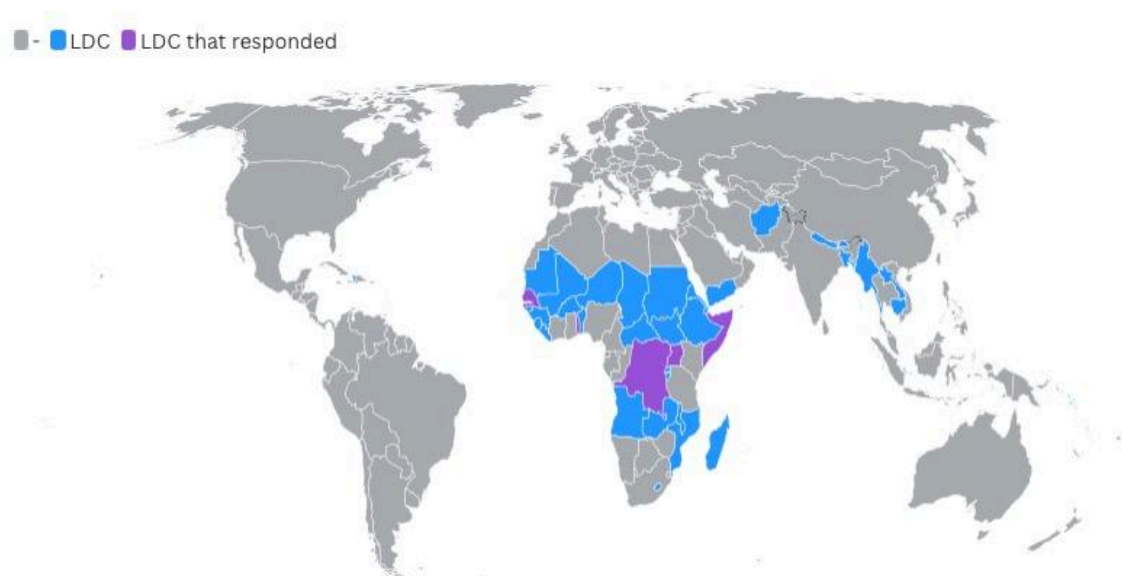
Before answering the survey, each survey participant received a message in which they were given a comprehensive overview of our research project to ensure their complete understanding and consent.

2.2 Potential Biases

Our questionnaire faced a high risk of non-response bias¹². To avoid this, we limited the number of questions to 18 to avoid survey fatigue. We also translated the survey into French and Arabic, as 12 LDCs list French and 8 list Arabic among their official languages respectively, and tailored the message sent to each specific country so that respondents would feel more involved in the survey. We received 7 responses from 6 countries : Senegal, Congo (2 responses), Comoros, Togo, Uganda and Somalia.

¹² A more detailed explanation of what non-response bias is and how to avoid it can be found in the Appendix 1.

Figure 2. Countries from the LDC group that responded to our survey.



Own elaboration

2.3 Questionnaire design

The survey was mostly composed of multiple choice questions and ranking questions. It was composed of closed questions (yes/no questions, multiple choice questions, and ranking questions) accompanied by open sections labeled “other : please explain” or “if else specify”. Braun et al. (2020) note that the use of closed questions followed by a “please explain” section allows for open questions that are still clear and short. Additionally, we ended the survey by a broad open question: “do you have any other comment” to ensure that LDC trade officials could bring new elements that we might not have anticipated. The survey was divided in four sections : Background information, General questions LDCs trade, TFA specific questions and questions on Preparedness and Training Needs. The closed questions served to address aims a) and b) of the survey, namely verifying and ranking the constraints and enablers to SDT implementations already identified, and the “please explain” sections as well as the final question will permit us to address aim c), i.e. explore potential new insights, considering the trade officials different perceptions.

Results

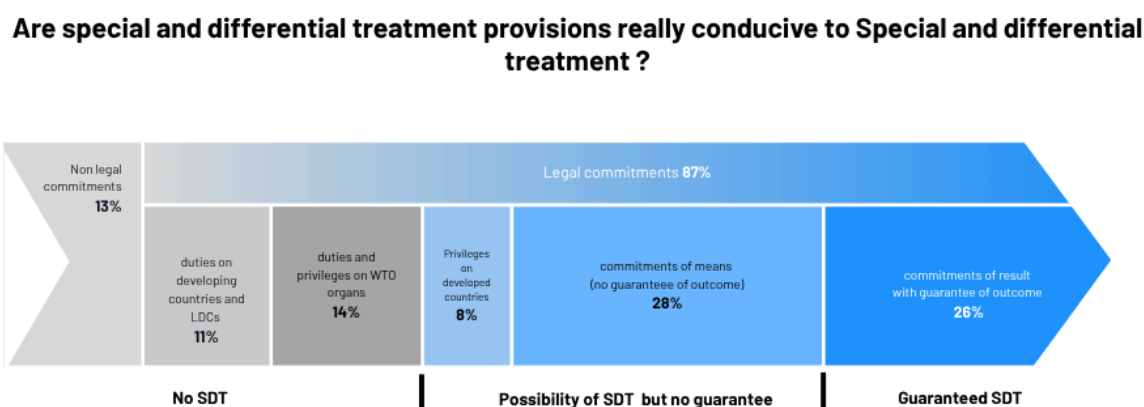
1. General Analysis

The categorisation of SDT provisions reveals structural shortcomings in their formulation and application. The key findings are as follows:

- Most SDT provisions do not guarantee developing countries or LDCs effective access to special and differential treatment, only 26% guarantee an actual outcome, and even these are often conditional.
- Technical assistance provisions are overwhelmingly non-binding and inadequately structured, leaving developing countries and LDCs with limited real access to assistance.
- SDT provisions impose substantial administrative burdens and costs on developing countries and LDCs, with conditionalities making SDT more difficult to access for the most vulnerable.

1.1 Most SDT Provisions Fail to Guarantee Actual Outcomes

Figure 3.



The dataset shows that the vast majority of SDT provisions do not guarantee an SDT outcome. This dominance of effort-based language weakens accountability and allows members to fulfil commitments in form, but not in substance. Without results-orientated obligations, SDT lacks the precision needed to serve as a reliable policy instrument. Strengthening its credibility and effectiveness will require shifting towards clearer, outcome-driven commitments. Despite the proliferation of SDT clauses across WTO agreements, the vast majority of these provisions do not ensure real special and differential treatment outcomes for developing countries and LDCs.

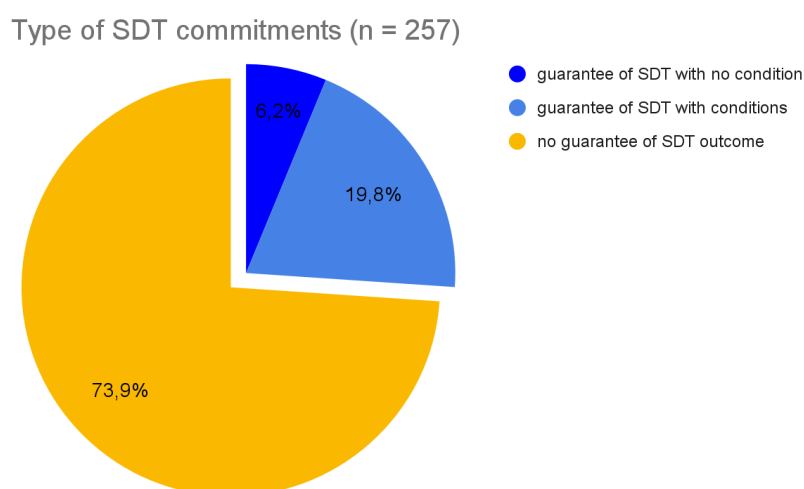
- According to our analysis, about 13% (33 out of 257) of all commitments contained in SDT provisions in WTO agreements are purely declarative and do not contain any legal obligations.

→ Only 26% of all the commitments contained in special and differential treatment provisions guarantee that developing countries and LDCs will receive special and differential treatment.'

Out of these commitments (representing 67 out of the 257 commitments we identified):

- 16 have no conditions to their implementation while
- 51 present conditions (mostly temporal conditions or eligibility conditions).

Figure 4.



The conditions on commitments that guarantee special and differential treatment are mostly temporal conditions and eligibility conditions. This means that the guaranteed special and differential treatment is usually limited in time (temporal condition) and often is granted to specific countries or to specific situations only (eligibility condition).

Only three of the SDT provisions that offer a guaranteed outcome are diluted by “discretionary” conditions. One example is Article XIX.2 of the GATS, which grants developing countries the right to undertake reduced commitments, allowing for more flexible liberalisation of services. However, the use of the vague term “appropriate flexibility” undermines the certainty of this provision: there is a guarantee of flexibility, but no precision of what level of flexibility.

To conclude, out of 257 commitments, only 67 have a guarantee of result. Out of these 67, 16 are unconditional, 48 have conditions that restrict their scope, and 3 have conditions that weaken their guarantee of result.

1.2 SDT Implementation Is Burdened by Conditionalities and Administrative Costs

Conditionality plays a crucial role in shaping the usability of SDT provisions. Captured in the dataset, many SDT commitments impose procedural and administrative burdens on the countries they are intended to support.

For many developing countries, especially LDCs, the cost of navigating these requirements can outweigh the value of the benefit itself. Implementation costs flagged in our analysis include:

- Drafting formal notifications and implementation plans.
- Submitting detailed justifications.
- Participating in committee reviews or consultations.
- Adopting new administrative systems or regulations.

Figure 5

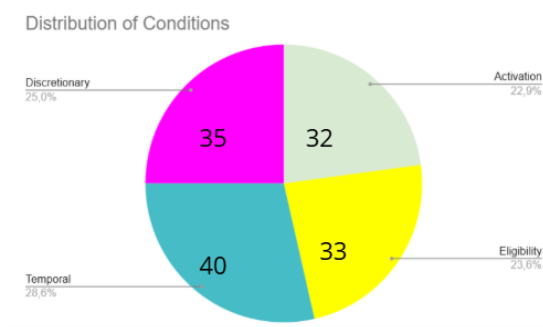
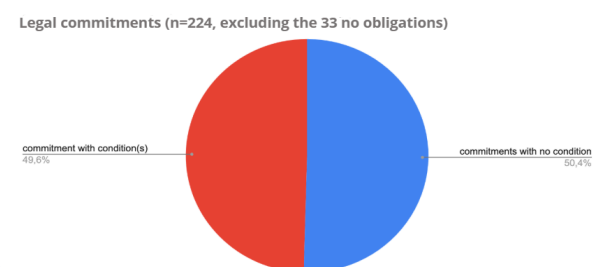


Figure 6



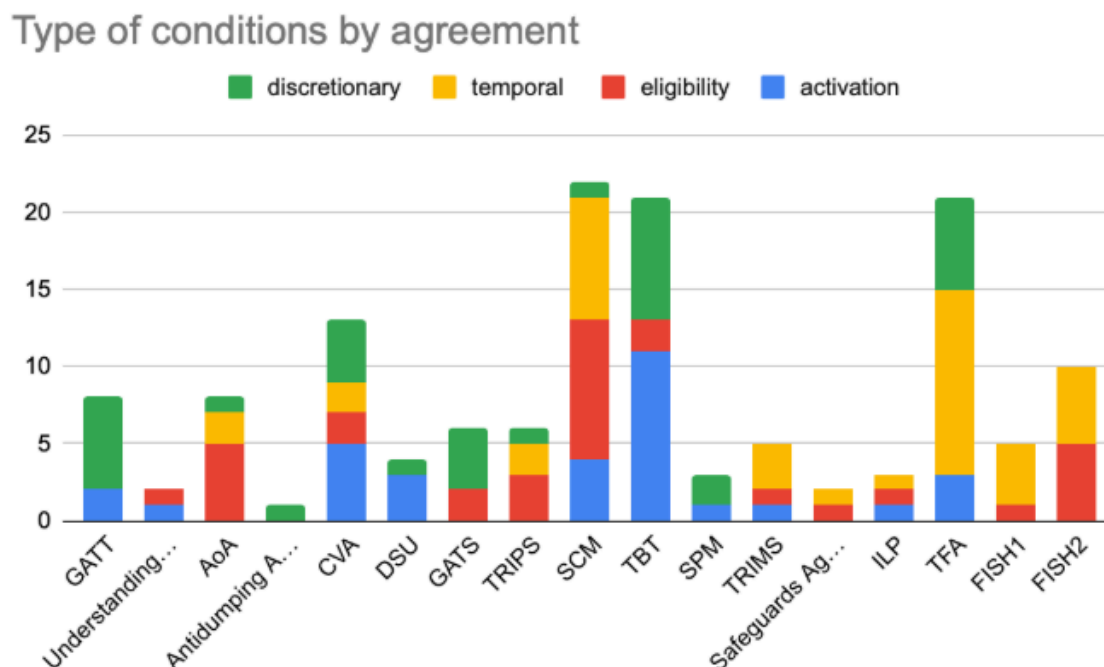
Nearly half of all legal commitments tied to SDT come with some form of condition, which significantly limits their accessibility. These conditions, ranging from temporal limits to eligibility and activation requirements, often translate into procedural hurdles that affect countries with limited administrative capacity. Simplifying these conditions and increasing transparency is essential to ensure SDTs serve their intended purpose: supporting countries that need them most.

→ Costs of Implementation for Technical Assistance:

Implementation costs flags whether a given SDT provision entails monetary costs that can be difficult to quantify and which often misrepresents the true burden of compliance. Even provisions labelled as “cost-free” may require significant legal, technical, or bureaucratic effort, especially those involving formal WTO processes like notifications, assessments, or reform obligations. In the absence of paired financial or technical support, such requirements become unfunded mandates, deterring participation and limiting the developmental impact of SDT. This is particularly acute for LDCs, which face the steepest barriers to compliance but don’t receive enough targeted assistance. In

practice, cost-bearing provisions may go unused simply because the institutional overhead is too high to justify the effort.

Figure 7.



13

This procedural complexity transforms SDT from a general entitlement into a contingent benefit, one accessible only to those able to meet often opaque or burdensome criteria.

1.3 Technical Assistance: Provisions Are Non-Binding and Inadequately Structured

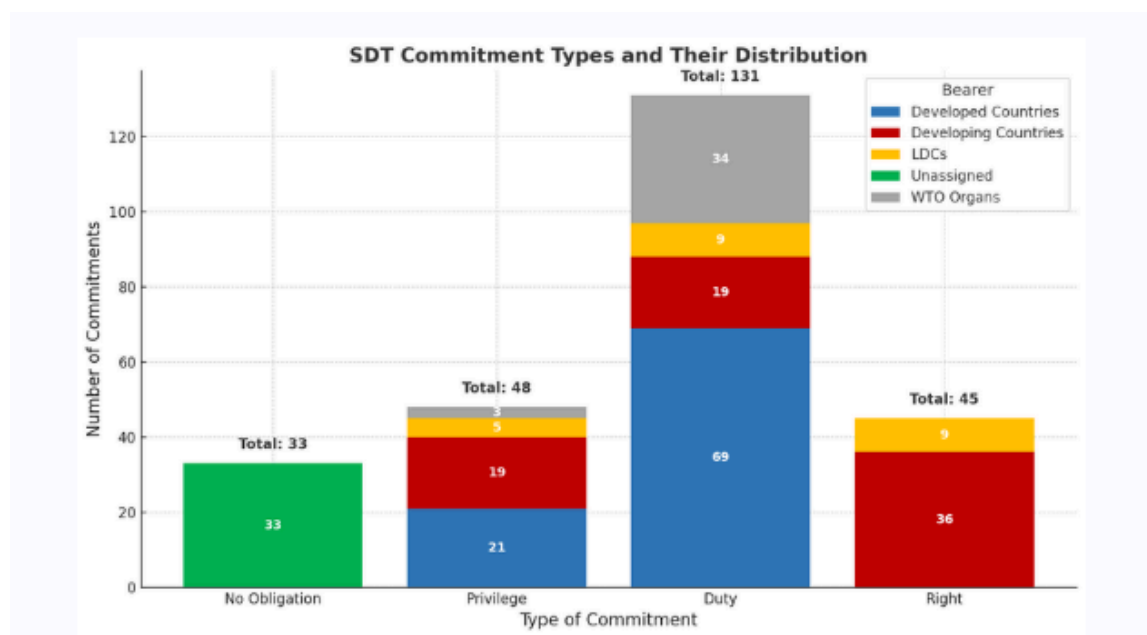
Technical Assistance and Capacity Building (TACB) are critical elements to support developing countries and LDCs in implementing WTO obligations. However, our analysis reveals that technical assistance provisions are rarely binding and often ineffective.

According to our analysis, there are 58 commitments that mention technical assistance. Out of these:

- 28 commitments fall under duties or privileges for developed countries.
- The rest are mostly duties on developing countries and LDCs (10 duties) and on WTO organs (10 duties), with 8 being no obligations.

¹³ The three names that are cut in the x-axis are : Understanding on dispute settlements, Antidumping agreement, Safeguards Agreement.

Figure 8.



Regarding commitments falling on developed countries:

- 8 are privileges (thus not guaranteeing technical assistance).
- 20 are duties. However, all these duties are obligations of means (no guarantee of results). For example, under Article 21.1 of the TFA, developed countries have a duty to "endeavour to provide technical assistance", meaning they must try but are not obliged to deliver results.

Thus, there is virtually no SDT provision that guarantees that developed countries will provide technical assistance and capacity building to developing countries and LDCs.

Additionally, only 5 of the 16 WTO agreements analysed have a specific mechanism dedicated to providing advice, technical assistance, or capacity building:

- Trade Facilitation Agreement Facility
- WTO Fish Funding Mechanism (Agreement on Fisheries Subsidies)
- Advisory Centre on WTO Law (Dispute Settlement Understanding)
- WIPO-WTO Technical Cooperation Agreement (TRIPS)
- Standards and Trade Development Facility (SPM Agreement)

For other agreements, developing countries and LDCs can access support through general WTO technical assistance programmes, but not through agreement-specific structures.

The lack of binding obligations for technical assistance and the few support mechanisms available reinforce the difficulty for developing countries and LDCs to benefit from meaningful technical assistance and capacity building.

2. LDC Specific Analysis

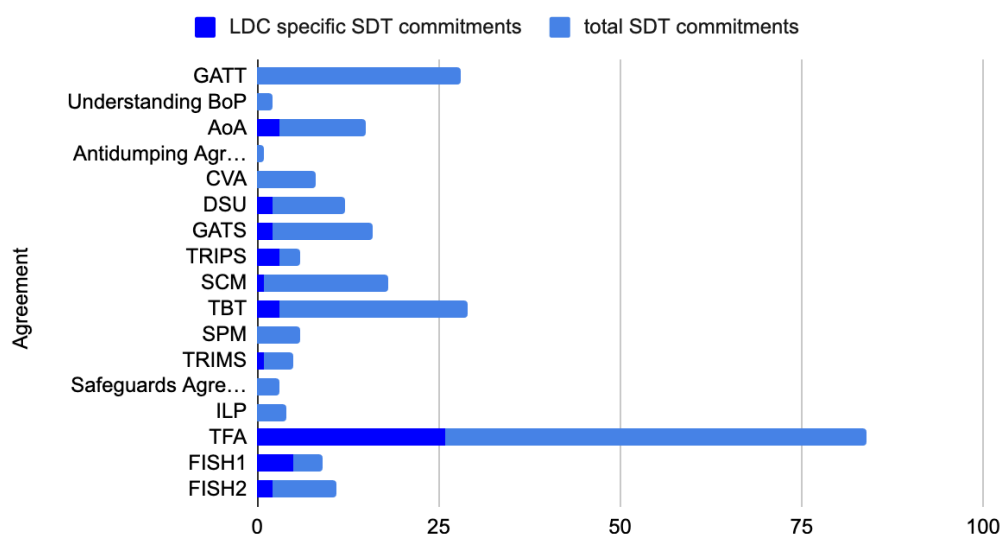
Despite widespread acknowledgment of LDCs' disproportionate structural constraints, most SDT provisions do not mention them directly.

This lack of specificity underscores a key structural weakness: SDT is built on overly broad classifications. By treating all “developing countries” as a homogenous group, WTO law overlooks significant differences in capacity, need, and vulnerability. As a result, middle-income countries can often access benefits designed for the structurally disadvantaged, while LDCs are left to compete for limited support. There is a clear and persistent need to move toward differentiated legal frameworks, assigning entitlements based on objective structural indicators such as income level, institutional capacity, or economic vulnerability. Without this, SDT risks reinforcing rather than redressing global inequalities.

Out of the 257 commitments, we count a total of 48 commitments that are LDC specific that is 18% of all commitments.

Figure 9.¹⁴

LDC specific commitment and total SDT commitments



There is generally a lack of differentiated approach in WTO agreements: few agreements have LDC specific provisions, but the most recent agreements (TFA and fisheries subsidies) have more, there seems to be a turn towards a differentiated approach to SDT.

In comparison to all the SDT commitments, for which only about a quarter (26%) guarantee that the beneficiary actually receives SDT, LDC specific commitments have a

¹⁴ The agreement naes that are cut on the y-axis are the Antidumping Agreement and Safeguards Agreement

higher proportion of guaranteed SDT outcome : A third (33.3%) of LDC specific commitments have a guaranteed SDT outcome (Figure 10 and 11).

Additionally, LDC specific provisions that guarantee special and differential treatment tend to have less conditions than general SDT provisions. According to our categorization, about 10% of the LDC specific provisions have no conditions against only 6% of all SDT provisions.

Figure 10.

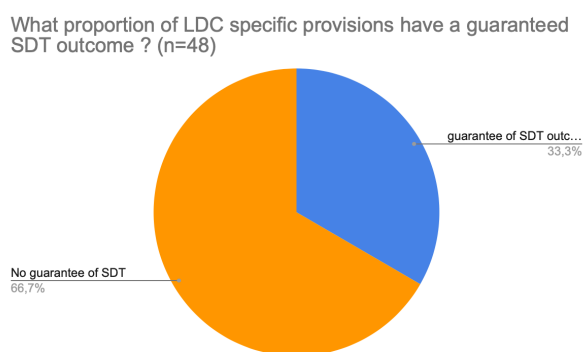
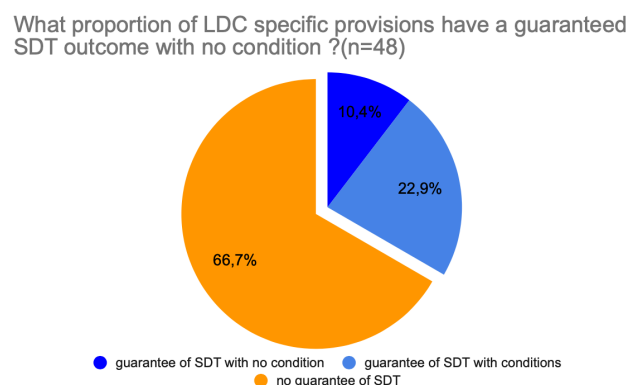


Figure 11.



Our analysis indicates that provisions specific to LDCs contain a higher proportion of guaranteed SDT outcomes, including a greater share of unbound guarantees (i.e. guarantees without conditions). This suggests that a differentiated approach to SDT, tailoring provisions to specific subsets of developing countries, is an effective means of enhancing the certainty of SDT outcomes for LDCs.

3. TFA Specific Analysis

The TFA is considered a turning point in special and differential treatment because it allows developing countries and LDCs to self-designate the level of flexibility they require to meet their obligations. The countries do so by categorizing their obligations into three categories as is shown in figure 12. Another innovative feature of the TFA is that it contains many provisions recognizing and addressing LDC-specific challenges. It is also one of the few WTO agreements that includes embedded support mechanisms, most prominently, the TFA Facility, which is designed to match implementation plans with technical and financial support, along with legal review and monitoring frameworks outlined in Articles 21 and 22.

The TFA includes 67 SDT provisions, amounting to 84 commitments¹⁵, 32.6% of all commitments across WTO agreements, making it the agreement with the most SDT commitments.

¹⁵ These 84 commitments include 13 privileges, 52 duties, 8 rights, and 11 no obligation clauses.

While the TFA offers greater flexibility to developing countries and LDCs, it also imposes significant responsibilities on them: as shown in figure 13, 23 duties fall on these countries, compared to 17 on developed countries. Most of these 23 duties concern notification requirements, with some relating to implementation. Consequently, access to many SDT benefits under the TFA, particularly within Categories B and C, depends on fulfilling procedural obligations, which create a substantial administrative burden, often limiting accessibility for the least-developed and most capacity-constrained members.

Figure 13.

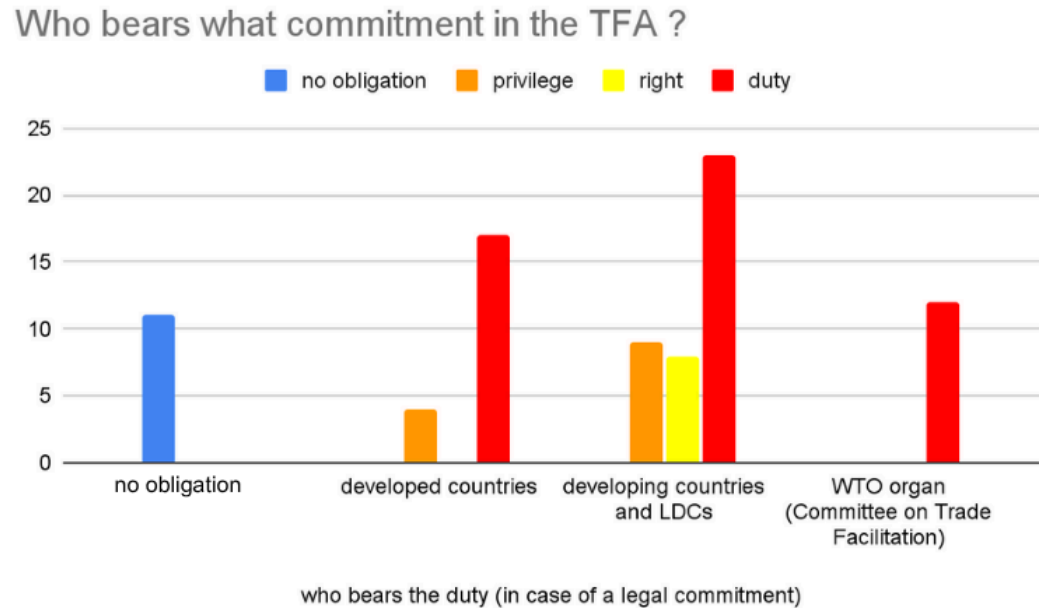
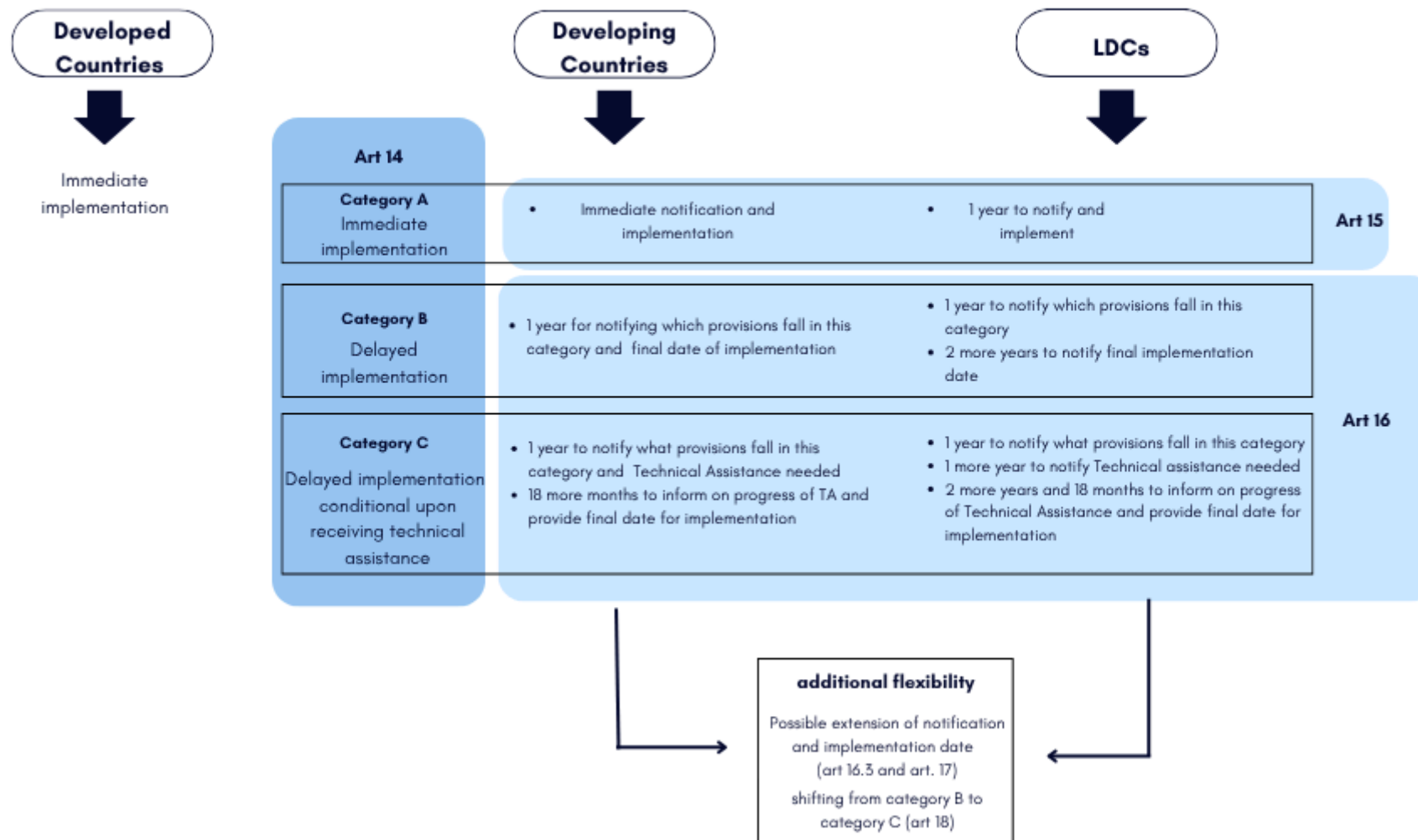


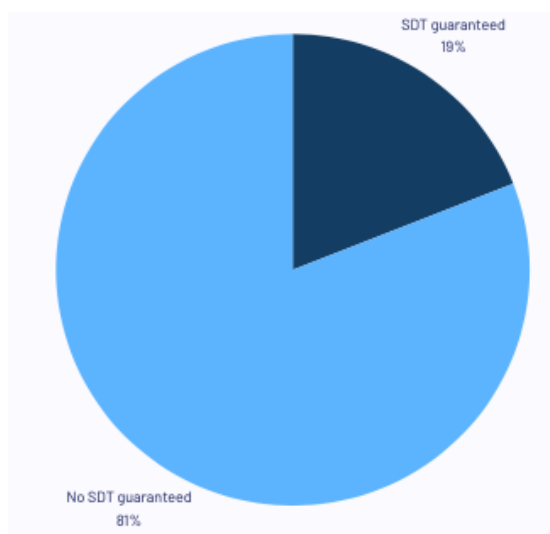
Figure 12. Trade Facilitation Agreement Implementation System



Own elaboration

Furthermore, according to our typology, only 16 out of the 84 TFA commitments guarantee an SDT outcome¹⁶ (figure 14), mostly providing possibility to delay implementation or shielding developing countries and LDCs from litigation¹⁷. Although the implementation of category C commitments requires receiving technical assistance (TACB), none of the 16 commitments that guarantee an SDT outcome are about ensuring access to TACB¹⁸. The TFA thus offers virtually no guarantee that developing countries and LDCs will receive the necessary technical assistance they need.

Figure 14. What proportion of SDT commitments in the TFA guarantee an SDT outcome?



The results of our analysis therefore align with Finger’s (2014) critique that the TFA ultimately creates a dynamic in which developing countries and LDCs face binding obligations to implement reforms in exchange for non-binding promises of assistance. The self-designation mechanism, while allowing developing countries to tailor SDT to their needs, imposes a significant administrative burden on them and its implementation is significantly hindered by the absence of guarantees of receiving technical assistance and capacity building.

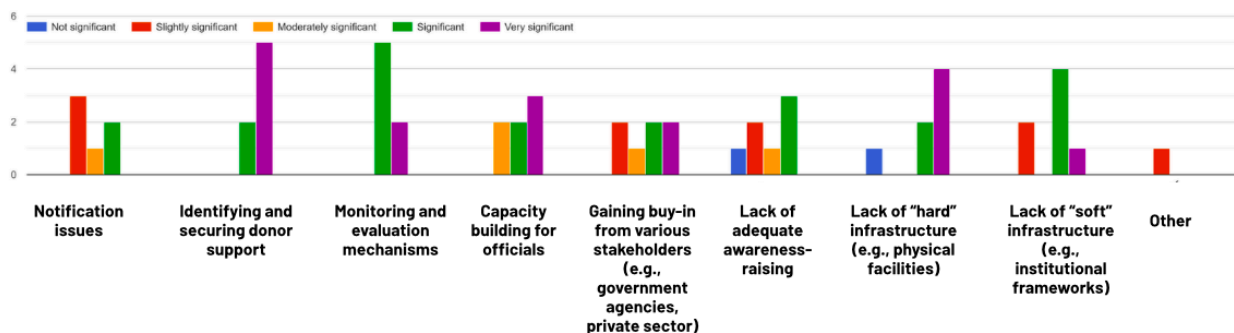
¹⁶ We consider that an SDT guarantees SDT outcome if it is an obligation of result on developed countries or if it is a privilege with a guarantee of result. See Methodology section and Appendix 7.

¹⁷ The 16 commitments guaranteeing an SDT outcome are : 1 right to exemption (art. 13.2) ; 1 right to reduced commitments (art 13.3) ; 5 rights to delay implementation (art 14.1a-c), art 17.2 (twice)) ; 3 privileges to delay implementation (art 16.1a), art 16.2a-b)) ; 6 duties for developed countries to refrain from litigation (art 18.5(twice), art 19.2c), art 20.1-3).

¹⁸ The commitments concerning TACB are either privileges on developed countries (for example art 16.3 : “Members agree to cooperate to assist...” or art. 21.1 :” Donor Members agree to facilitate the provision of assistance and support for capacity building...”) ; obligation of means (for example art. 21.3 : “development partners shall endeavour to provide assistance”) or no obligation clauses (for example art 21.3 which enumerates general principles relating to TACB. These do not oblige developed countries to provide TACB.

This is supported by the answers we received in the Survey: to the question “to what extent do the following factors constrain your country’s ability to implement category C provisions”, the answer “identifying and securing donor support” ranked first, showcasing the hindrance of not having guaranteed technical assistance (figure 15). The answer “lack of hard infrastructure” was also seen as a very significant constraint ranking second, just behind “identifying and securing donor support”.

Figure 15. Constraints to implementing category C commitments¹⁹



This limitation is also evident in the data from the Trade Facilitation Database, where provisions designated in Category C (e.g. measures requiring TACB for implementation) account for over one-third of all TFA measures on average among LDCs. Yet, only 38% of these measures have secured donor support.²⁰

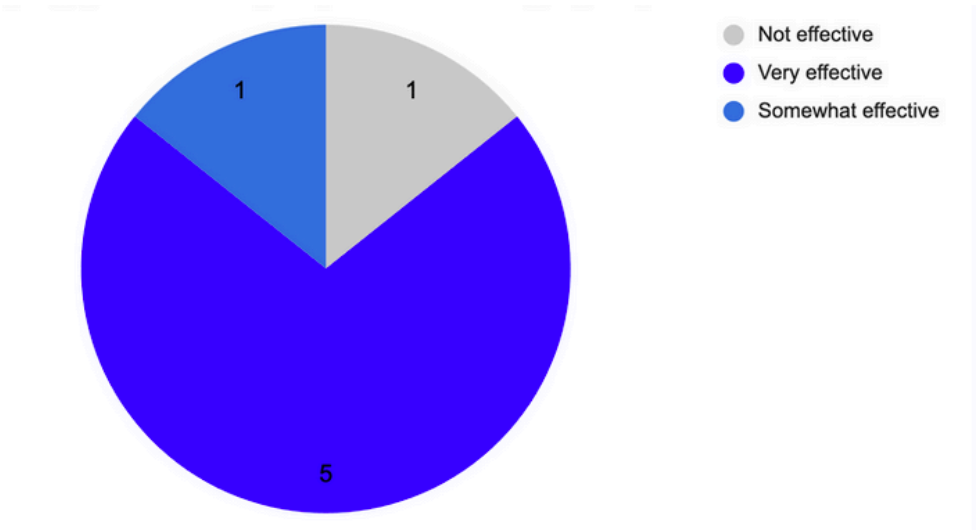
This constraint is also reflected in the data from the Trade Facilitation Database : Cat C commitments represent more than a third of all the measures in the TFA on average for LDCs. However, only 38% of these measures (173 in total) have been matched with a donor. (TFA Database 2024)

But the results from our survey also show that most (6 out of 7) respondents consider that the Trade Facilitation Agreement Facility, which has been developed to help them get in touch with donors and access information more easily, is effective in helping them implement category C commitments (see Figure 16). This suggests that strengthening such mechanisms which are directly embedded in the agreements is a way to improve access to special and differential treatment for LDCs.

¹⁹ One trade official rated 'Other' as moderately useful but did not specify the measure referred to.

²⁰ To date, 172 measures have secured a donor out of a total of 460 measures designated in Category C.

Figure 16. How effective is the Trade Facilitation Agreement Facility in helping your country implement Category C provisions



Key Takeaways and Forward-Looking Recommendations

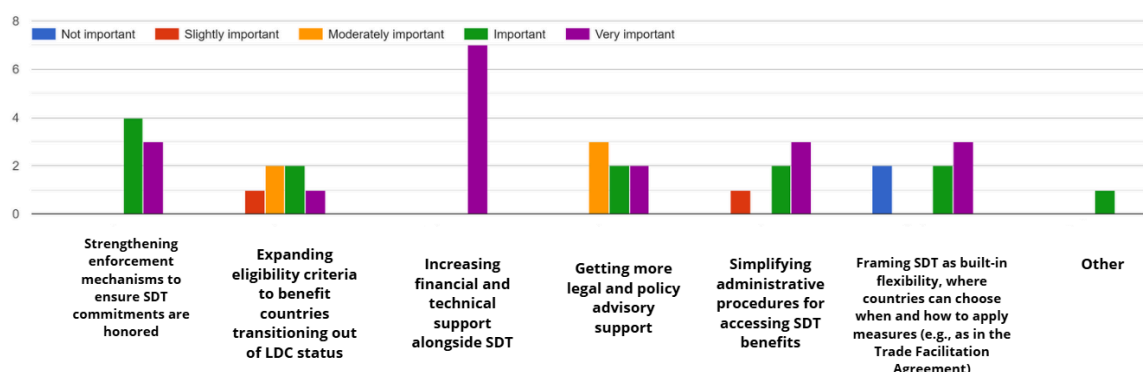
1. What Do the Survey Results and Categorisation Reveal?

One of the core issues with current SDT commitments is the weakness of their legal language. Many are framed as obligations of means rather than obligations of result, relying on vague phrasing like “shall endeavour” instead of enforceable terms such as “shall provide”. This lack of clarity undermines their effectiveness and limits accountability. Strengthening the language would help ensure these provisions deliver tangible outcomes. Additionally, linking SDTs more directly to concrete global goals, like labour rights, environmental standards, or other Sustainable Development Goals, would boost their relevance and practical value.

Out of the 67 SDT provisions that guarantee a result, most are limited by either time or eligibility conditions. While some level of conditionality is necessary, especially to ensure targeted and efficient use, it’s clear that current procedures are often overly complex and burdensome. Many countries face administrative costs or repeated demands to prove incapacity, which can discourage uptake. Rather than removing all conditions, the focus should be on optimising them: streamlining eligibility checks, reducing bureaucratic hurdles, and offering support instead of repeated reassessment. Moreover, only 18% of all SDTs are specifically tailored to least developed countries. Given the unique structural challenges these countries face, there’s a strong case for designing SDT provisions that are better adapted to their realities, rather than applying a one-size-fits-all model.

As the results of the survey have shown, the answers provided by responding trade officials clearly point to a shared set of priorities when it comes to reforming SDT provisions. The strongest message was the need for increased financial and technical support alongside SDT commitments, with the majority ranking this as “very important” (Figure 17). This highlights a demand for more than just policy space, countries need concrete support to actually implement what has been agreed. Simplifying administrative procedures was also widely seen as essential, with respondents emphasising how complex and costly processes often act as barriers to accessing benefits. Strengthening enforcement mechanisms and framing SDT as built-in flexibility, allowing countries to decide how and when to apply certain measures, also received solid support. While other areas like expanding eligibility criteria or boosting advisory services were seen as slightly less urgent, the overall trend is clear: trade officials are calling for reforms that not only widen access but also reduce procedural burdens and make SDTs more actionable and reliable.

Figure 17. Perceived Importance of Measures to Improve Special and Differential Treatment for LDCs.



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Another issue is the limited level of acquaintance that many officials have with existing SDT provisions and how to actually use them. While support programmes from institutions like UNCTAD and the WTO exist, the survey shows that understanding remains uneven. Although 57.1% of respondents said WTO support helped them gain strong, practical experience, a significant 42.9% reported having only a general understanding. This suggests that awareness and capacity to trigger SDT benefits remain major barriers, especially for officials in LDCs.

To address this, and based on the survey results, there are a few clear steps forward. First, creating a dedicated WTO LDC SDT Portal could make a big difference, offering one central platform to access information about rights, procedures, and support channels. Second, training formats should be better tailored to the needs of trade officials. In-person workshops and peer-learning opportunities, like experience-sharing programmes with other developing countries, were rated the most useful, followed by on-the-job training. These formats go beyond theory and help build real-world capacity. If SDTs are to be used effectively, the focus needs to be on clear, practical tools and targeted training that reduces the administrative burden and builds confidence in applying the provisions.

²¹ One trade official rated 'Other' as moderately useful but did not specify the measure referred to.

Figure 18. Perceived Usefulness of Capacity-Building Modalities for SDT Implementation



22

In addition to formal training, setting up regional roundtable discussions could be a powerful way to strengthen cooperation and share practical knowledge. These peer exchanges would allow trade officials to learn from each other's experiences, identify what has actually worked in the field, and adapt best practices to their own national contexts. Strengthening collaboration among LDCs in particular is essential, as they often face similar institutional and capacity challenges. Creating space for this kind of dialogue can help build trust, demystify SDT procedures, and promote homegrown solutions that are both realistic and effective.

Moreover, technical assistance remains a cornerstone of effective implementation of the Trade Facilitation Agreement, but its value depends heavily on how targeted and context-specific it is. The survey results clearly highlight where support is most urgently needed: transparency in regulations, simplification of procedures, and capacity building for officials were all marked as top priorities by 100% of respondents. These are not peripheral issues; they strike at the heart of implementation. Without clear rules, streamlined processes, and a trained public administration, trade reforms risk remaining on paper.

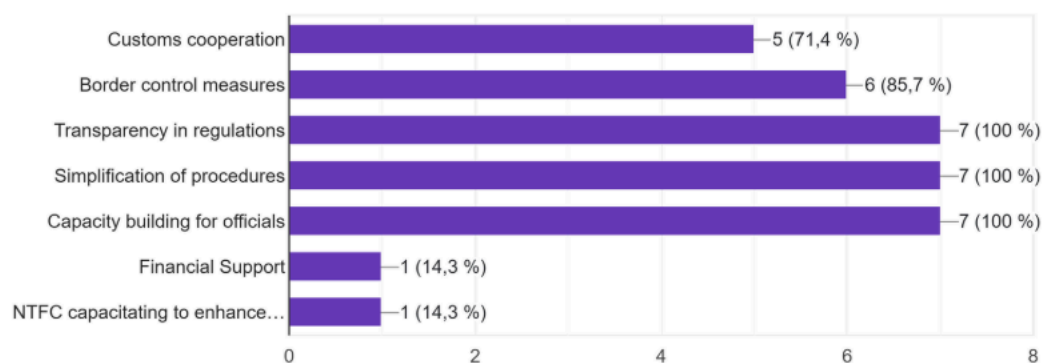
Interestingly, areas such as border control measures and customs cooperation, while still important, ranked slightly lower, suggesting that many countries have already made progress there or that the more pressing gaps are now internal and procedural. On the other hand, financial support and capacity-building received limited mentions. This doesn't necessarily mean they're unimportant, but it does suggest a shift in what kind of assistance is now most useful. Countries may have basic systems in place but lack the hands-on capacity to make them function smoothly in day-to-day operations.

Going forward, technical assistance should focus on building institutional memory, developing practical skills within agencies, and helping governments internalise good regulatory practices. Long-term, embedded support, rather than one-off training, could

²² One trade official rated 'Other' as moderately useful but did not specify the measure referred to.

have the greatest impact, especially when paired with regional peer exchanges and diagnostics tailored to real bottlenecks.

Figure 19. Areas Where Technical Assistance Is Most Needed for Implementing the TFA



Looking ahead, there is also strong potential for leveraging AI tools to enhance how technical assistance is delivered, particularly under the TFA. AI could help match donor support more efficiently with the specific needs of LDCs by analysing real-time data on implementation gaps, requests for assistance, and sectoral priorities. For instance, an AI-driven platform could identify where capacity-building for customs or regulatory simplification is most needed and connect those needs with available donor expertise and resources. This would not only streamline coordination but also ensure that support is both timely and better aligned with each country's operational context.

2. Integrating SDGs into SDT: Toward Inclusive, Context-Sensitive Trade Provisions

The remaining question is how to meaningfully integrate gender equity, environmental protection, and labour rights into SDT provisions in a way that is both sensitive to social, cultural, and religious norms and aligned with the institutional capacity of developing countries. Integrating the SDGs into SDT provisions is important because it helps ensure that trade policies do not operate in isolation from broader development objectives. By embedding goals such as gender equality, environmental sustainability, and decent work into SDT frameworks, provisions can support inclusive growth while maintaining sensitivity to local contexts.

This integration promotes coherence between trade and development agendas, allowing for a phased and adaptive approach that strengthens institutional capacity and aligns with the long-term priorities of developing countries. Implementation of such standards should be approached as a progressive process, rather than as an abrupt shift that risks overwhelming or alienating the very states these measures are intended to support.

For example, language implying conditional market access, such as “only if labour standards are respected”, can easily be perceived as a form of non-tariff barrier. Similarly, uniform obligations applied across all contexts may raise concerns about sovereignty or fail to account for legal and cultural diversity. In addition, vague references to “sustainability”, if left undefined, can place an unfair burden on countries with limited administrative or technical capacity. Therefore, when certain developmental outcomes are considered mandatory by developed nations, they must be accompanied by tailored support, both in terms of financial resources and technical assistance, to ensure that expectations are realistic, equitable, and genuinely achievable.

Therefore, a constructive way forward is to align SDT provisions more closely with the UN Sustainable Development Goals, while offering opt-in flexibility that accounts for each country's specific context and capacity. This approach allows for greater ownership, respects national diversity, and ensures that progress toward global development goals remains inclusive and realistically achievable.

These reforms should be:

- Respectful of social, economic, cultural, and religious diversity
- Legally sound within WTO rules
- Politically feasible, avoiding misinterpretation as protectionism or non-tariff barriers
- Supportive of the SDGs

When reviewing the various SDT provisions, it becomes evident that very few can be directly mapped to specific SDGs. The most commonly referenced goal is SDG 17, which emphasises global partnerships, an appropriate connection given that many SDT clauses focus on privileges granted by developed countries to developing ones. However, a majority of the provisions do not explicitly reference key terms such as “gender”, “labor”, or “environment”, keywords often used in broader SDG mapping exercises.

To address this gap, it is important to adopt a more interpretive and context-sensitive reading of SDT provisions. By going beyond a strictly literal understanding of the legal language, certain SDT commitments can indeed be meaningfully aligned with relevant SDGs. Below is a proposed mapping that draws on a more nuanced and expansive reading of the text.

Table 4: SDG Mapping of SDT-Related Thematic Areas

Thematic	Relevant SDGs
For social considerations	SDG 5: Gender Equality SDG 8: Decent Work and Economic Growth
For environmental Sustainability	SDG 13: Climate Action SDG 14: Life Below Water SDG 15: Life on Land
For technical and Capacity support	If the provision mentions “technical assistance,” “capacity building,” “support mechanisms,” or “notification” procedures meant to ease implementation, it can be assigned to SDG 17: Partnerships for the Goals, SDG 4.4: ICT skills for Work, SDG 17.18: Data Capacity for Sustainable Development
For the following agreements TFA, TBT, TRIPS, TRIMS, ILP	The provisions that include knowledge transfer or technical assistance, “technology,” “innovation,” or relates to trade facilitation measures, we can link it to SDG 9: Industry, Innovation and Infrastructure, SDG 17.18: Data Capacity for Sustainable Development
SDT provisions included in Agriculture or fisheries agreements	SDG 2 – Zero Hunger
For provisions including terms such as “preferential,” “special treatment,” or explicit mention of LDCs	SDG 10 – Reduced Inequalities
For fragile, conflict-affected or disaster-prone contexts	Add reference “exceptional circumstances,” “capacity constraints,” or “natural disasters”, link to SDG 16.a: Institutional Capacity-Building and SDG 11.5: Disaster Risk Reduction

Conclusion and Limitations

In this study, we examined the effectiveness of special and differential treatment provisions within the global trade framework by analysing their legal content, implementation mechanisms, and the perceptions of LDC trade officials. We find that most SDT provisions in WTO agreements fail to deliver meaningful benefits to LDCs, with only a small share guaranteeing enforceable outcomes. Additional constraints include complex conditions, administrative burden and lack of access to technical assistance. While the Trade Facilitation Agreement offers a more flexible model, its benefits are also hindered by non-binding support and high administrative burdens.

While this paper provides valuable insights into SDT provisions within WTO agreements, there is a need for further research to explore the broader spectrum of international trade frameworks. Future studies should expand the scope to include a wider range of trade instruments, such as plurilateral, regional or bilateral agreements that are likely to rise in response to the US' new foreign policies. For instance, the future research can cover the Comprehensive and Progressive Agreement for Trans-Pacific Partnership or the African Continental Free Trade Area, both of which have unique SDT mechanisms tailored to their member countries. Comparative analyses between bilateral, multilateral, and regional agreements could also offer valuable insights into the effectiveness of various SDT approaches.

Another limitation is the potential for non-response bias in the survey methodology. Despite efforts to mitigate this bias through multiple strategies such as prenotification, follow-up reminders, and tailoring messages to specific countries, the response rate remains relatively low. Only 7 responses were received from 6 countries out of 43 contacted LDCs. This low response rate raises concerns about the representativeness of the survey findings. The limited number of responses may not accurately reflect the diverse experiences and perceptions of trade officials from all LDCs, potentially skewing the results and limiting the generalisability of the findings.

For the future potential research, conducting in-depth interviews or focus groups with trade officials and stakeholders from a broader range of LDCs could provide richer, more nuanced insights of the challenges and opportunities associated with SDT provisions. This would ultimately contribute to more effective policy recommendations for enhancing trade and development outcomes for LDCs.

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Appendix

1. Non Response Bias

Non-response bias occurs when only part of the population answers the survey and the characteristics of survey respondents differ from those of the entire target population, potentially skewing results (Grove et al. 2009). It arises in two forms: *unit non-response*, where individuals fail to participate entirely, and *item non-response*, where specific questions are left unanswered. Unit non-response often stems from issues such as survey delivery failures, participant refusals, or their inability to provide the requested data. There are several strategies that can help us mitigate non-response (Groves et al. 2009). These include *prenotification*. In our case, the prenotification should include information about the survey's purpose and emphasize the importance of the survey in enhancing future claims and demand of the LDC group. Another strategy to improve engagement is *to tailor* the prenotification message to resonate with specific audiences.

Thus, including reference to each specific LDC context in the introduction could be a good approach. *Follow-up attempts*, such as sending reminders to non-responders, are also crucial but must be balanced to avoid overwhelming participants. This needs to be further discussed with our partner, but we could probably send the survey at least one more time to non-respondents. Additionally, Groves et al. (2009) mention that there tends to be a higher response rate for surveys from institutional actors than from academics or private actors. Using the *sponsorship* of UNCTAD might thus increase response rate.

A final factor for improving participation is *minimising the perceived burden* of the survey by using clear and concise questions and limiting the survey's length²³. This can be done, for instance, by ensuring that the duration for completing the survey is approximately no more than 10 minutes and signaling it to respondents. If low response rates persist, post-survey adjustments like weighting schemes could be used²⁴. Another option that was suggested by our partner in case of low response rate would be to shift to a case study design.

²³ This paragraph was edited for style using AI (ChatGPT, 21 nov, 2024)

²⁴ Although it might not be easy to define according to what criteria the weighting should be done (geographical groups or income groups)

2. Links to the Surveys

- English version: <https://forms.gle/TjWD1uh59pUHN7Cc6>
- French version: <https://forms.gle/kwPAb1axrkFH5fgt6>
- Arabic version: <https://forms.gle/TWVQKCMHQ2wX7TNg9>

3. Link to the Data Obtained Through the Categorisation on SDT Provisions

https://docs.google.com/spreadsheets/d/1XrS0MK5j9DYy9yn_f8wD8wxb4ZTT-7pzOX_YvIb3igVk/edit?usp=sharing

4. Prompts for AI

We used AI for verification purposes. We asked it to reproduce the categorization of SDT provisions and then compared the results (obtained from Kimi, Genspark and ChatGPT) with our owned categorization. Here are the prompts we used:

4.1 Prompt for Categorizing the Conditionality of the Provisions:

Based on the table provided, categorize each provision according to the type(s) of condition it contains, using the methodology outlined below.

For each provision, complete two columns:

- 1. Condition(s) and Type(s):** List all the conditions the provision contains, along with their type(s). A single provision may include more than one type of condition or no condition at all.
- 2. Explanation:** Briefly explain why each condition falls under the identified type(s), referring to the relevant part of the provision if needed.

Use the following classification of condition types:

1. Activation Condition

The commitment is triggered only after a request or notification by the developing country.

Examples: Art. 10.5 TBT: Developed countries provide translations “if requested” by developing countries. Art. 14.1 (a)(b)(c) TFA: The right to delayed implementation applies only after the developing country notifies the category classification (A, B, or C).

2. Eligibility Condition

The commitment applies only to developing countries or LDCs that meet specific criteria, or to certain products/cases, or when conditions from another article are met/not met. Don’t consider it an eligibility condition if it applies to developing countries or to LDCs in general, only if there is an additional eligibility condition as in the following examples.

Examples: Art. 12.2 AoA: Exemption applies only to developing countries that are not net food exporters of the relevant good. Art. 27.2(a) SCM: SDT is limited to LDCs and certain developing countries listed in Annex VII.

3. Temporal Condition

The special and differential treatment (SDT) applies only for a specified time period or expires after a certain date. The provision must explicitly refer to a precise date or time period (for example x years...)

Example: Art. 20.2 TFA: The litigation moratorium towards LDCs by developed countries lasts “for a period of six years after entry into force of this Agreement.”

4. Discretionary Condition

The commitment uses vague or non-binding language that gives discretion to the duty bearer (e.g. phrases like “where appropriate”, “where necessary”). These provisions usually contain a formal obligation (“shall”) but the condition gives the implementing party flexibility or a margin of discretion. Do not include analysis of verbs here (for example do not look if the verb is “shall”, “may” or “should”).

Examples: Art. 16.3 TFA: The Committee shall act “as appropriate” and “where necessary”. Art. XXXVIII.2(a): Countries are to take action “where appropriate”. Art. 11.2 TBT: Technical assistance must be granted “on mutually agreed terms”, implying no enforceable obligation.

4.2 Prompt for Categorizing “Significant Costs”:

You are given a list of special and differential treatment provisions. For each provision, evaluate whether its implementation would involve significant and additional costs for developing countries or Least Developed Countries (LDCs).

For each provision, output the following two fields:

1. Costly (Yes/No):
 - Output "Yes" if implementing the provision requires substantial action or additional investment by the developing country or LDC.
 - Output "No" if it can be implemented using existing administrative resources with minimal extra effort or cost.
2. Explanation (Text):
 - Briefly justify your answer.
 - If "Yes," describe the nature of the additional cost (e.g., hiring staff, developing infrastructure, training, policy analysis).
 - If "No," explain why the action does not require significant additional resources (e.g., existing ministries can handle it with current staff).

Definition of "Significant and Additional Costs": Only consider the costs significant and additional if the SDT provision requires the country to go beyond routine administrative work or existing capacity. Do not count minor costs, such as requesting an existing ministry to compile and submit data to the WTO, unless doing so would require extraordinary effort or external support.

*Figure 8 is AI generated based on our gathered data for the categorisation.

5. Count of SDT provisions in WTO Agreements

GATT: WTO counts 25 provisions, we have 28 provisions because we broke down Article XXXVII 1. (b) and (c) into 2 different provisions as they contain different commitments. Same for Article XXXVII 2.(a) and (b) and Article XXXVII 3. (a) and (b).

AoA: WTO counts 13 provisions, we have 14 provisions , as counted by Hedge and Wouters (2021): "the WTO Secretariat counts Annex 5 Section B of the AoA as one provision. However, there are two paragraphs 7 and 10 under Annex 5. Therefore, it is counted as two SDT provisions."

TFA: WTO counts 10 SDT provisions for TFA (from Art. 13-22, TFA). We broke down each article in sub provisions (for example art 13.1, 13.2, 13.3, 13.4 or 14.1a) , 14.1b...) because each subprovision contains a different action or obligation and also to maintain uniformity across all agreements (the other agreements are broken down in sub provisions). In total, there are 67 provisions under the TFA.

GATS: WTO secretariat counts 13 provisions, we count 15 provisions because as Hedge and Wouters (2021) explain ; "for GATS, the WTO Secretariat counts the recitals in the Preamble as one SDT provision. However, it counts different recitals of the TBT Agreement as different SDT provisions. In order to maintain uniformity, we have included all the recitals of GATS separately, bringing the total to 15, and not 13"

GPA: as done by Hedge and Wouters (2021) we discounted this agreement because it is not a multilateral agreement.

Agreement on fisheries (Fish1) : we added 5 provisions from the Agreement on fisheries subsidies which has been adopted in 2022 and is still waiting to be ratified by enough member states to enter into force.

Additional provisions on fisheries subsidies (Fish2) : we also added 8 provisions from the Additional Provisions on Fisheries Subsidies Draft Text which was presented to WTO members at the 13th ministerial conference (2024) and is still under negotiation.

Total: $157 + 3 \text{ GATT} + 1 \text{ AoA} + 57 \text{ TFA} + 2 \text{ GATS} - 12 \text{ GPA} + 5 \text{ fish1} + 8 \text{ fish2} = 221$

Hedge's thesis analysis 205 provisions containing a total of 236 commitments (Hedge 2024). We have more provisions as we divided art. 22.1 and 22.2 of the TFA in sub provisions (+5) and also art. XXXVII 2. and XXXVII 3. of the GATT (+3) for uniformity across all agreements. We also included the Additional provisions on Fisheries Subsidies (Fish2) in our analysis which contains 8 provisions containing a total of 11 commitments. Total number of commitments that we analysed : 257.

6. Cross-Horizontal Comparison of Trade Agreements: Divergences and Synergies

This section aims to examine how special and differential treatment provisions are framed across key WTO agreements, identifying commonalities, divergences, and potential synergies in their legal structure and practical implications.

A horizontal comparison across other WTO agreements reveals several recurring patterns. Most rely heavily on the language of “duties”, a binding form of commitment. However, they are subject to procedural or temporal conditions that dilute their enforceability. Although there are notable exceptions, such as the TFA and the Sanitary and Phytosanitary Measures Agreement, few provisions are specifically tailored to the needs of Least Developed Countries. The majority refer generically to “developing countries,” offering no automatic entitlements and placing only minimal legal obligations on developed countries to ensure implementation or compliance.

That said, some key distinctions can be observed. For instance, the Technical Barriers to Trade Agreement contains the largest number of SDT provisions after the TFA, with 29 provisions. The majority of these are classified as duties, most of which are assumed by developed countries. Importantly, exactly half of these privileges are not unconditional; they are linked mostly to discretionary and activation conditions, and sometimes to eligibility conditions as well.

Similarly, the General Agreement on Tariffs and Trade, despite being the cornerstone of the multilateral trading system, incorporates SDT provisions that vary significantly in legal weight. While a few are framed in aspirational terms, such as “*shall endeavor*” or “*recognize the need*”, most SDT-related provisions in GATT impose binding duties or confer enforceable rights on developing countries. These include concrete exceptions, flexibilities, and preferential treatment that are legally actionable under WTO rules, distinguishing GATT’s approach from purely symbolic acknowledgments.

In contrast, the Agreement on Subsidies and Countervailing Measures (SCM) presents a legal architecture that leans more heavily toward privileges: more than two-thirds of its 28 SDT-related provisions fall into this category and are mainly assumed by developing countries.

The fragmentation of SDT is also evident in agreements such as the Fish 1 Agreement and the Agreement on Trade-Related Aspects of Intellectual Property Rights. Fish 1 provides 9 SDT provisions in total, 4 of which are privileges and another 4 no obligations. TRIPS, on the other hand, includes 6 provisions, 2 of which only are duties. In both cases, SDT functions between a concrete legal tool for development and more as a symbolic gesture, offering rhetorical recognition without the needed institutional depth or enforceability necessary to deliver real reform.

The situation is even more constrained in the TRIMS (Trade-Related Investment Measures) Agreement, which contains only 5 SDT provisions. The few provisions that do exist within TRIMS lack substantive legal weight and fail to offer meaningful support, thereby effectively excluding low-capacity members from engaging with or shaping international standard-setting processes. In contrast to the TFA, TRIMS lacks institutional support, offering neither structured assistance pathways nor follow-up mechanisms. As a result, its SDT framework is dense in legal wording but largely devoid of practical or developmental substance.

This fragmentation is further exacerbated by the near-total absence of cross-agreement synergy/coordination. There are no formal mechanisms in place to align support, harmonise conditions, or create pathways that would allow SDT benefits accessed under one agreement, such as trade facilitation, to be extended or translated into flexibility in another domain, such as intellectual property or regulatory frameworks. Each agreement remains siloed, governed by its own legal structure, procedural requirements, and institutional expectations. This results in a cumulative compliance burden that disproportionately affects those countries least equipped to manage it, undermining the broader developmental objectives of the SDT regime.

7. Categorisation of the Legal Commitments Contained in WTO Agreements²⁵

No SDT

guaranteed SDT

Non legal commitments (n=33)	Other legal commitments (n= 65) (commitments that do not involve developed countries)	Legal commitments that do not guarantee anything (n=21)	Legal commitments that guarantee only best endeavour towards SDT but no guarantee of SDT outcome (n=71)	Legal commitments that guarantee SDT outcome (n = 67)
Provisions that: -Recognize the goals of SDT -Lay down general principles.	-Duties on WTO organs (n=34) that include : - duty to facilitate - to monitor -to notify - to consider - to allow for a delay in applying the obligations.	Privileges on developed countries (n=21) : -To Facilitate and assist developing and LDC Members -Consider the needs of developing Members -Consult developing Members -Allow for delayed application -Allow temporary derogation -Refrain from adopting certain measures against developing Members; -Prioritize the needs of LDCs -Exempt developing Members from strict reciprocity.	Obligations of means on developed countries (n = 60) : -Duty to consider - Duty to collaborate - Duty to consult -Duty to provide access to international trade and review its progress -Duty to take action in enforcing a ministerial decision - Duty to facilitate and assist developing Members -Duty of due diligence - Duty to refrain from introducing measures that affect developmental interests -Duty to inform developing Members	Obligation of result on developed countries (n = 54) : -Right to exemptions - Right to reduced commitments - Right of presumption (lack thereof) - Right of temporary derogation - Right of delayed application - Duty on developed Members to refrain from litigation
	Privileges on WTO organs (n=3): -to provide extended periods for implementation -to provide for a temporary derogation			
	Duties on developing countries and LDCs (n=28) -Inform or notify other Members - Comply with WTO obligations.		Privileges on developing countries and LDCs with no guarantee of outcome (n=11) : -Privilege to notify the WTO secretariat ; -Privilege to seek reduced commitments ; -Privilege to seek the assistance of the secretariat	Privileges on developing countries and LDCs with a guarantee of outcome (n= 13) : -Privilege to delay application ; -Privilege to promote industry

²⁵ Based on Hedge (2024), the only difference is that we incorporated the “privilege/no-right” commitments into the analysis of guarantee of outcome whereas Hedge focused on “duty/right” commitments. We leave the duties and privileges given to WTO organs out of the analysis because we consider that special and differential treatment is a matter between developed countries and developing countries.