



POLICY
BRIEF

9

Formulating New Approaches to Strengthen Multilateral Trading System

NISHA TANEJA
PRATEEK KUKREJA
KISHIKA MAHAJAN

November 2021

Table of Content

Abstract.....	i
1. Introduction.....	1
2. Existential Crisis of the Multilateral Trading System: Key Issues	2
2.1 <i>A Shift towards Plurilateral forms of Negotiation.....</i>	2
2.2 <i>The Appellate Body Crisis</i>	4
2.3 <i>Conflict between WTO Rules and Governance of Global Commons</i>	5
2.4 <i>Special and Differential Treatment (S&DT) and Self-defining status.....</i>	7
2.5 <i>Industrial Subsidies and State-Owned Enterprises (SOEs).....</i>	7
3. Policy Options for WTO Reform.....	9
References	12

Abstract

Over the last 75 years, we have benefited from a rules-based multilateral trading system which has contributed to peace, security, and stability in the post-war world. The World Trade Organization (WTO) replaced the GATT as the global trading body in 1995 and since then, it has become the cornerstone of this multilateral rules-based global trading system. However, as of today, the WTO's ability to deliver on its key functions and the expectations that come with its fundamental principles have been questioned. Many factors and developments over the past decade plus have led to this crisis which raise questions about the relevance and effectiveness of the WTO. The range of challenges that the WTO faces currently is very vast, and in this brief, we limit ourselves to only some of the major issues and challenges - the Plurilateralism debate, the Appellate Body crisis, the conflict between WTO rules and the global commons, Special and Differential Treatment (S&DT) and self-defining status and Industrial Subsidies and State-Owned Enterprises (SOEs). We highlight some of the possible options that would help reform the WTO, for instance, ensuring WTO-consistent plurilateral agreements as a future course of action, encouraging adoption of measures like "graduation" or "self-determination" to resolve the S&DT debate, and finally the importance of the political will of its member nations to and view these issues at a global level rather than being country specific.

Authors' email: *NTaneja@icrier.res.in; pkukreja@icrier.res.in;
kishikamahajan01@gmail.com*

Disclaimer: *Opinions and recommendations in the report are exclusively of the author(s) and not of any other individual or institution, including ICRIER and KAS. This report has been prepared in good faith on the basis of information available at the date of publication. All interactions and transactions with industry sponsors and their representatives have been transparent and conducted in an open, honest and independent manner as enshrined in ICRIER Memorandum of Association. ICRIER does not accept any corporate funding that comes with a mandated research area which is not in line with ICRIER's research agenda. The corporate funding of an ICRIER activity does not, in any way, imply ICRIER's endorsement of the views of the sponsoring organization or its products or policies. ICRIER does not conduct research that is focused on any specific product or service provided by the corporate sponsor.*

Formulating New Approaches to Strengthen Multilateral Trading System

Nisha Taneja, Prateek Kukreja and Kishika Mahajan¹

1. Introduction

The WTO replaced the GATT as the global trading body in 1995, and the current set of rules originates from the Uruguay Round of GATT negotiations between 1986 and 1994. The objective of the WTO is to ensure smooth and efficient flow of trade globally. This involves removing obstacles to free trade and ensuring that the individuals, companies and governments are familiar with the trade rules. Over the last 25 years, WTO has undoubtedly transformed global economic relations. The rule-based trading system has facilitated impressive growth in cross-border business activity. Furthermore, there are provisions in the WTO agreements that take into account the interests of the developing countries, including longer periods to implement agreements and commitments, measures to increase their trading opportunities and support to help them build the infrastructure for WTO work, handle disputes, and implement technical standards.²

However, the WTO has fallen short of the expectations on two counts- firstly, the key objectives with which the WTO was set-up have not been adequately met as two of its main functions- negotiations and dispute settlement have been challenged and secondly, the global trade as well as the geopolitical landscape has changed.

As far as the negotiating function of the WTO is concerned, it has failed to enable new rules and market access openings and also to substantially lower or equalise tariff treatment among major economies. The very process of negotiations acts as a barrier to trade promotion for the developing countries. The developing countries are provoked to accept 'new concessions in return for remedial actions' on earlier decisions in successive rounds of WTO negotiations. Such issues and challenges get intensified by the 'single undertaking', a negotiating tool which lays down that all participants must comply with the decisions made, leading to sustained power asymmetries between developed and developing countries. The failure of the Doha Round has led countries to engage more effectively through bilateral, regional, and mega regional trade agreements. Another major outcome of the failing negotiating function has been a shift towards plurilateral negotiations which involve subsets of WTO members and often focus on a particular sector.³

¹ The authors would like to thank the panellists who participated in the ICRIER-KAS Experts Webinar on "Formulating New Approaches to Strengthen Multilateral Trading System" on September 6, 2021 for their valuable inputs. This brief is written in partnership with Konrad Adenauer Stiftung (KAS)-India Office.

² https://www.wto.org/english/thewto_e/whatis_e/tif0e/tif0e06_e.htm

³ Marianne Schneider-Petsinger, Chatham House, September 11, 2020. "Reforming the World Trade Organization - Prospects for Transatlantic Cooperation and the Global Trade System". <https://www.chathamhouse.org/2020/09/reforming-world-trade-organization/05-revitalizing-wtos-negotiation-function>

By formulating new rules without building consensus and inappropriately applying the rules to non-market economies, the WTO has failed in addressing and adjudicating certain disputes. As a result, the dispute settlement pillar of the WTO has drifted from its original design. The debate over the mechanism and the appellate body has risen as the members have failed to clarify the rules. As a result, the number of cases under dispute settlement mechanism have increased and judgements were delivered under ambiguity of the extant rules. In fact, a fully functioning WTO dispute settlement with a reformed Appellate Body, is the most urgent of all the WTO reforms. The independence of the Appellate Body and the central role of dispute settlement is crucial in providing security and predictability to the multilateral trading system.

The world order has evolved significantly since the creation of the WTO. New technologies have proliferated, there has been a rise of internet, new centres of economic growth have emerged, communication has been revolutionised. The world trade itself has seen huge changes. Production chains have expanded and have become global, offering new opportunities and challenges to nations willing to participate in trade. While the overall trade in goods has increased manifold on one hand, WTO members' import tariffs have declined significantly on the other. With these transformational changes, the WTO is expected to become more responsive to external imperatives in governing trade issues like digital trade, investment facilitation, regulatory cooperation, climate-trade linkage etc. (Hahn, 2019). More recently with COVID-19 induced restrictions imposed by countries regarding essential supplies, additional uncertainties have emerged, making WTO's role even more significant. During the pandemic, WTO has played a crucial part by helping countries coordinate their policy responses. However, a lot more is expected.

While the range of challenges that the WTO faces currently is very vast, we propose to discuss in this paper, some of the major issues and challenges, and highlight some of the proposed possible options that would help reform the WTO.

2. Existential Crisis of the Multilateral Trading System: Key Issues

This paper focuses on five major issues that require attention – the plurilateralism debate, the Appellate Body crisis, the conflict between WTO rules and governance of the global commons, special and differential treatment and the issue of industrial subsidies and state-owned enterprises.

2.1 A Shift towards Plurilateral forms of Negotiation

One of the key features of WTO, as a result of multilateralism, has been a fair and equal voice for each member nation in regards to each issue that is raised at the Organisation. However, this also implies a need for consensus for every decision that must be made. The failure of the Doha Round is testimony to the fact that Members have time and again failed to reach a consensus- thereby being one of the key reasons behind the failure of multilateralism.

As a response, many nations have started moving away from this practice and towards bilateral and regional trade agreements. An important avenue that has come to light is plurilateral agreements. Unlike multilateral agreements, these agreements are made between few like-minded nations that, amongst themselves, negotiate over a particular issue which also implies that this is a faster way. The disadvantage of consensus requirement that is a necessity in multilateral agreements does not apply here. However, issues like conflicting positions⁴ for nations and exclusion of member nations⁵ that are not a part of the agreements prove to be significant disadvantages.

The main challenge this shift to plurilateralism imposes is that there exists a possibility of the WTO losing its relevance completely and nations completely moving away from the multilateral regime. This is because plurilateral agreements in the very basic foundation, provide for a conflict against the WTO's Most Favoured Nation (MFN) principle by excluding the non-parties to the agreement.

Plurilateral agreements can majorly be of two types, either in a form of a "club" enforcing exclusivity and benefitting only the signatories which creates fragmentation or "open" agreements whereby countries can join in at a later stage and thereby ensuring the interests of the "outsiders" stay put.⁶

A developing country perspective in this debate is that the developing nations have struggled overtime to negotiate certain special and differential provisions in various agreements. These provisions have effectively, at least tried to, create a somewhat level playing field for these member nations. The fear in this regard is that these plurilateral agreements might weaken and diminish the importance of these provisions⁷.

Further, it is also important to examine the scope of setting incentives to prevent free riding by the other nations.⁸ This becomes a key feature if plurilaterals are to be considered as a feasible way forward as every nation that is not abiding by the rules of the agreement continues to reap the benefits and free-rides, the nations adhering to the terms of the agreement bear no advantage whatsoever.

⁴ ibid

⁵ Robert Basedow, London School of Economics and Political Science, December 8, 2017. The WTO and plurilateralism: What lessons can we draw from the EU's experience with 'differentiated integration'? <https://blogs.lse.ac.uk/europpblog/2017/12/08/the-wto-and-plurilateralism-what-lessons-can-we-draw-from-the-eus-experience-with-differentiated-integration/>

⁶ Marianne Schneider-Petsinger, Chatham House, September 11, 2020. "Reforming the World Trade Organization - Prospects for Transatlantic Cooperation and the Global Trade System". <https://www.chathamhouse.org/2020/09/reforming-world-trade-organization/05-revitalizing-wtos-negotiation-function>

⁷ Frederick Agah, Ambassador and Permanent Representative of Nigeria to the WTO, and Stuart Harbinson, Former Permanent Representative of Hong Kong, China to the WTO with Keith Rockwell, WTO spokesperson, March 15, 2013. "WTO Debate: Plurilateralism and multilateralism". https://www.youtube.com/watch?v=0w_iKTElfvU

⁸ M. Sait Akman, Axel Berger, Fabrizio Botti, Peter Draper, Andreas Freytag, Pier Carlo Padoa, Claudia Schmucker, G20 Insights, December 10, 2020. "The need for WTO reform: Where to start in governing world trade?". https://www.g20-insights.org/policy_briefs/the-need-for-wto-reform-where-to-start-in-governing-world-trade/

A new and emerging area within the plurilateralism debate is the issue of Joint Statement Initiatives (JSIs). JSIs are plurilateral tools that are initiated by a few WTO members to negotiate and discuss certain issues without being bound by the binding rules of consensus decision making. The main aim is to discuss and establish agreements on areas wherein the WTO is still lagging like that of e-commerce, investment, MSMEs etc. Like the types of plurilateral agreements that have been discussed above, JSIs can also be formed in a number of ways. The benefits can accrue only to the signatories or to all WTO members. For instance, the discussions around the e-commerce JSI prove to be restrictive in the sense that they end up only benefitting the signatories.

In this regard, even if we consider the option wherein the JSIs are in accordance with the WTO's MFN principle and the benefits are extended to all WTO members, another obstacle from the developing country perspective is the possible alienation of these nations and such agreements benefitting and growing only among the developed nations. Further, the developing nations also raise the issue that these JSIs fail to focus on concerns of the Doha round and instead focus on issues that aren't seen as too important by the developing nations⁹

2.2 The Appellate Body Crisis

Appellate Body (AB) falls under the Dispute Settlement pillar of the WTO. This pillar used to be the best performing arm of the WTO and the AB was said to be the crown jewel of WTO. By establishing the prevalent two-step adjudication system and making the process binding and automatic as a result of the adoption of the reverse/negative consensus principle, the dispute settlement system has seen a complete transformation from the GATT regime.¹⁰ As per WTO's data, as of 31st December 2020, a total of 598 disputes have been taken up by the members to the Dispute Settlement Body.¹¹ There is no debate that a mutually agreed solution between the members is the preferred outcome but in case of a disagreement, the complainant party can request for a panel to examine the conflict in greater detail and both parties can further appeal against the rulings of the panel. As and when a member appeals against the panel report, the role of the Appellate Body comes into the play. The main aim behind establishing an Appellate Body in the first place was to ensure that a process like that of dispute resolution was to be depoliticized.¹² The crisis first began when the US blocked the reappointment of a member in 2016. Despite this and more situations like this coming up over the years, the body never was in a state of complete dysfunction as the minimum number of members required for the body to continue to operate was always there. However,

⁹ Fiama Angeles, Riya Roy, and Yulia Yarina. "Are Joint Statement Initiatives the World Trade Organization's Future?".

<https://www.tradeexperettes.org/blog/articles/are-joint-statement-initiatives-the-world-trade-organizations-future>

¹⁰ Anwarul Hoda, "WTO Appellate Body in Crisis: The Way Forward", Indian Council for Research on International Economic Relations (ICRIER), January, 2021.

http://icrier.org/pdf/Working_Paper_403.pdf

¹¹ World Trade Organisation, Dispute settlement activity — some figures.

https://www.wto.org/english/tratop_e/dispu_e/dispustats_e.htm

¹² Bernard M Hoekman and Petros C Mavroidis, Journal of International Economic Law, Volume 23, Issue 3, Pages 1–20, September 3, 2020. "To AB or Not to AB? Dispute Settlement in WTO Reform"

<https://academic.oup.com/jiel/article/23/3/1/5900453>

post December 2019, the body didn't have the minimum members to be functional. With only one member in position, the body went into abeyance and the same situation prevails till date. Furthermore, WTO's dispute settlement can continue to function if the panel report is not appealed against. As a result, the case ends up getting nullified and goes into a void since the Appellate Body can't function and hence, a decision cannot be made. This has made it rather convenient for members to not take any action regarding an issue that has been raised by another member nation. Consequently, we see a drift away from the fair multilateralism that the WTO was set out for, instead this essentially marks a return to the GATT way of negotiations¹³.

A fully functioning WTO dispute settlement with a reformed Appellate Body, is the most urgent of all the WTO reforms. The independence of the Appellate Body and the central role of dispute settlement is crucial in providing security and predictability to the multilateral trading system. Unfortunately, through the entire trajectory of the US blocking appointments and effectively putting the Appellate Body into a dysfunctional state, no solutions or recommendations have been provided so far to address its concerns. An implication of this is a gradual transition of the dispute settlement system from being a multilateral one into a bilateral one, where such decisions can be influenced by comparative political and economic dominance.¹⁴

2.3 Conflict between WTO Rules and Governance of Global Commons

The WTO, in its framework, has recognised the importance of environmental concerns regarding global trade.¹⁵ The WTO's Committee on Trade and Environment (CTE) seeks to understand and identify the link between trade and environment to effectively promote sustainable development.¹⁶ Among many other issues that have been discussed by the committee, an important one is the relationship between the WTO rules and the Multilateral Environmental Agreements (MEAs).¹⁷

MEAs are agreements between a few nations signed with the aim of achieving environmental goals. As of today, there are about three hundred MEAs in existence and thirty of these include trade measures. Trade measures in these agreements can include trade bans, notification requirements, licences, among others. The aim of these measures, however, is to prevent continuous trade that can destroy the environment in significant ways. It becomes pertinent to analyse the relationship between WTO rules and MEAs. Some trade provisions in MEAs might discriminate beyond parties and non-parties which is not compatible with the

¹³ Anwarul Hoda, "WTO Appellate Body in Crisis: The Way Forward", Indian Council for Research on International Economic Relations (ICRIER), January, 2021.
http://icrier.org/pdf/Working_Paper_403.pdf

¹⁴ ibid

¹⁵ Marrakesh Agreement emphasizes the need to optimally use resources while keeping in mind the objective of sustainability https://www.wto.org/english/docs_e/legal_e/04-wto_e.htm

¹⁶ Richard Baron, Justine Garrett, OECD, 28th - 29th June, 2017. "Trade and Environment Interactions: Governance Issues" <https://www.oecd.org/sd-roundtable/papersandpublications/Trade%20and%20Environment%20Interactions%20FINAL.pdf>

¹⁷ World Trade Organisation - The Doha mandate on multilateral environmental agreements (MEAs) https://www.wto.org/english/tratop_e/envir_e/envir_neg_me_a_e.htm

WTO's MFN principle.¹⁸ This can arise if the MEA authorizes the trade between two parties in a product, but bans the trade in the same product for the non-parties.¹⁹ Therefore, there is a possibility of a conflict, although the WTO rules do allow members to deviate from certain obligations and adopt measures that are in the interest of the environment.²⁰ Furthermore, owing to the lack of a formal dispute involving trade provisions in an MEA being brought up to the WTO, the compatibility of the relationship continues to be questioned.

It is also important to note that the 2001 Doha Declaration instructs the member nations to reduce and wherever possible, eliminate any tariff or non-tariff barriers prevalent in the trade of environmental goods and services which can include air filters, consultancy services etc. This is aimed to assist the developing nations in obtaining necessary, high-quality environmental equipment to cater to the objective of global sustainable trade.²¹

Undoubtedly, with time, the issue of sustainability and by extension, global commons is increasing in importance. Institutions, globally, have expressed the dire need to align policies and function in a way that ensures greater attention to the global commons. It becomes pertinent to acknowledge that the WTO is a part of a larger ecosystem that needs to evolve to retain its relevance in the international community. Despite the availability of the basic structure in the WTO to supplement a mutually supportive relationship between trade and environmental policies, the truth remains that there is a lack of definitive rules and policies that can keep in check or even prioritise the issue of threats to the global commons.²²

Public health can also be considered as a global common which got adversely impacted because of the current pandemic. The mere asymmetry of vaccine distribution amongst nations wherein one nation is on its way to providing booster shots, whereas the other is still struggling to provide second doses to its citizens brings to fore the huge diversity between nations in terms of accessibility of such basic resources. It becomes important to acknowledge that there is a need to negotiate such issues on a multilateral basis involving all member nations, so that, irrespective of their international standing, all nations stand on a level playing field.²³

¹⁸ Aparna Sawhney, Indian Council for Research on International Economic Relations (ICRIER), May 2004. "WTO related matters in Trade and Environment: Relationship between WTO rules and MEAs". <https://icrier.org/pdf/wp133.pdf>

¹⁹ World Trade Organisation - The Doha mandate on multilateral environmental agreements (MEAs) https://www.wto.org/english/tratop_e/envir_e/envir_neg_meas_e.htm

²⁰ Richard Baron, Justine Garrett OECD, 28th - 29th June, 2017. "Trade and Environment Interactions: Governance Issues" <https://www.oecd.org/sd-roundtable/papersandpublications/Trade%20and%20Environment%20Interactions%20FINAL.pdf>

²¹ World Trade Organisation - Eliminating trade barriers on environmental goods and services https://www.wto.org/english/tratop_e/envir_e/envir_neg_serv_e.htm

²² Rupa Chanda, Ujal Singh Bhatia, Harsha Vardhana Singh, Peter Draper, R.V. Anuradha and Ignacio Garcia Bercero, September 6, 2021. "ICRIER-KAS Webinar on Formulating New Approaches to Strengthen Multilateral Trade".

<https://www.youtube.com/watch?v=W2K1Gpr881E&t=4509s>

²³ *ibid*

2.4 Special and Differential Treatment (S&DT) and Self-defining status

The developing country status is another area that requires serious reform in the WTO. The key issue here is that the countries have the liberty to “self-declare” themselves as developing nations, which gives an advantage to these nations in terms of flexibility offered. This allows countries like China to expand their economic dominance in global trade, by continuing to classify themselves as a developing nation and thereby obtain special treatment. This has been a point of criticism by the developed nations.

While countries like, Brazil and South Korea decided to drop the special and differential treatment in 2019,²⁴ about two-thirds of the member nations in the WTO still classify themselves as developing. This becomes a major concern as some of these nations, despite being able to survive on their own, are subject to such flexibilities. This simply sets an unfair precedent that does not ensure a level playing field at all.

To address this issue at its core, it becomes pertinent to visit the main purpose behind S&DT. The idea should be to identify areas in which nations need some time before they can compete. This should be kept in mind when we think of S&DT in terms of the upcoming issues of e-commerce, investment facilitation etc.²⁵ Hence, it becomes important to come up with a criteria or a way to concretely decide which nations should actually be allowed to claim this special status and for how long.

2.5 Industrial Subsidies and State-Owned Enterprises (SOEs)

Subsidies and State-Owned Enterprises (SOEs) is another area that has attracted a lot of attention in recent times. Due to the trade and competition distorting effects, there is a need to come up with reform measures to tackle these issues. While SOEs and Industrial subsidies have played a major role in many countries’ development, especially of China, there have been concerns raised by some member nations. The Trilateral Cooperation, that comprises the US, the EU and Japan have targeted China on the grounds that SOEs distort the principle of level-playing field.²⁶ Also, critics argue that subsidies to SOEs affect the Global Value Chains as countries use subsidies to upgrade in the GVCs. There is enough data to reconcile the fact that the presence of SOEs in the GVCs has also been increasing overtime.²⁷

²⁴ Marianne Schneider-Petsinger, Chatham House, September 11, 2020. “Reforming the World Trade Organization - Prospects for Transatlantic Cooperation and the Global Trade System”.
<https://www.chathamhouse.org/2020/09/reforming-world-trade-organization/06-institutional-issues-and-reform>

²⁵ Ignacio Garcia Bercero, September 6, 2021. “ICRIER-KAS Webinar on Formulating New Approaches to Strengthen Multilateral Trade”.
<https://www.youtube.com/watch?v=W2K1Gpr881E&t=4509s>

²⁶ Naoise McDonagh and Peter Draper, “Industrial Subsidies, State-Owned Enterprises and WTO Reforms: Prospects for Cooperation?”, University of Adelaide, July, 2020.
https://iit.adelaide.edu.au/ua/media/783/mcdonagh-draper-2020-industrial-subsidies-soes-and-wto-reform_0.pdf

²⁷ Dessie Tarko Ambaw, Peter Draper, Andreas Freytag, Naoise McDonagh and Keith Wilson, December, 2019. “Industrial Subsidies, Market Competition, Global Trade and Investment: Towards a Research Agenda”

Subsidies may be given in many forms making it difficult to measure their distortive effects accurately. It is even more difficult when subsidies are indirect or implicit. Thus even though databases on subsidies are available (e.g the Global Trade Alert database), the measurement problem makes it difficult to estimate the effects of subsidies on trade. There is a need for credible and more accurate databases that would enable comparison across countries and sectors.

A principal concern relates to subsidies provided to and through state-owned enterprises by the Chinese government. The focus has to be broadened to include other kinds of subsidies, besides only industrial subsidies. There is a need to classify subsidies as trade promoting or trade distorting. Trade promoting subsidies are the ones that generate positive cross-border spill-overs, for instance, R&D, environmental subsidies, among others; whereas the ones that distort trade are the ones that hamper competition and thereby disrupt the GVCs. The objective of such subsidies is mainly to achieve specific geopolitical goals.²⁸ These are the subsidies which are more concerning and call for significant reform.

While the Agreement on Subsidies and Countervailing Measures (ASCM) already provides a defined architecture in the terms of providing a clear definition of “subsidy”, laying down defined standards in regards to countervailing duty actions and providing a workable discipline overlooking prohibited subsidies, there is still a need for refinement and tightening. The agreement as of now is only formulated for the trade of goods and cannot be considered an appropriate framework when it comes to services. This is another major challenge that needs to be addressed simply because services trade comprises a major proportion of world trade. It becomes even more important because several SOEs are involved in the provision of services which complicates this issue even further.

SOEs are majorly governed by domestic laws and hence another major source of problems that arises with SOEs is of duplicity of rules. The duplicity here is in regards to different rules by the WTO and the domestic laws for one particular thing which may result in a conflicting position. For there to be basic consistency, these domestic laws should comply with WTO rules. For instance, some kind of a rule that might be allowed as per the domestic laws to an SOE might be anti-competition and hence against WTO principles. The principle of competitive neutrality which talks about any advantage a government entity might hold over a private firm simply because of its ownership and control status should not be allowed.²⁹

https://www.researchgate.net/publication/338053866_Industrial_Subsidies_Market_Competition_Global_Trade_and_Investment_Towards_a_Research_Agenda#pfc

²⁸ Peter Draper, September 6, 2021. “ICRIER-KAS Webinar on Formulating New Approaches to Strengthen Multilateral Trading System”.

<https://www.youtube.com/watch?v=W2K1Gpr881E&t=4509s>

²⁹ Wenxiao Wang, Peter Draper, Dessie Ambaw, Andreas Freytag, Naoise McDonagh and Keith Wilson, University of Adelaide, April, 2020. “Industrial Subsidies, Market Competition, Global Trade and Investment: Towards a Research Agenda”.

<https://iit.adelaide.edu.au/ua/media/594/Industrial%20subsidies%2C%20market%20competition%2C%20global%20trade%20and%20investment%20towards%20a%20research%20agenda.pdf>

3. Policy Options for WTO Reform

Several recommendations have been made on WTO reforms. In this paper we put forward suggestions by several authors on the five key issues that this paper has focused upon.

With multilateralism losing its importance over time, there is no doubt that plurilateral arrangements are going to be the future road to further trade progress. While there are risks associated with fragmentation caused by such agreements, such risks can be mitigated to a large extent if these agreements are made as WTO-consistent as possible. Therefore, while plurilateral agreements seem to be the probable solution, these must be kept “open” and “inclusive” and must allow the non-participating member nations to benefit from the agreements. To ensure the multilateral paradigm, such agreements should be integrated inside of the WTO framework while keeping in mind necessary incentives to prevent free-riding. The Environmental Goods Agreement (EGA) as an appropriate example.³⁰ The EGA is among forty-six WTO members and if concluded, will effectively eliminate tariffs on environmental goods. The EGA is an open plurilateral agreement wherein it will offer tariff concessions to all member nations and not just to those who are part of the agreement.

Plurilateral agreements could be more beneficial if “net benefit”³¹ accrues from such agreements. Net benefit can be achieved from these agreements if such trade is “created additionally” and not diverted from another country.

In regards to solving the Appellate Body crisis, some interim arrangements have been put forward:³² In April, 2020, the EU along with 18 other nations established the European Multiparty Interim Appeal Arbitration Arrangement (MPIA) which will remain operational only till a permanent solution to the Appellate Body crisis can be agreed to by all the member nations. This is a plurilateral agreement and applies only to the signatories of the agreement. The main objective of the establishment of the MPIA is to ensure that the basic principles of the WTO dispute settlement continue to prevail. Due to the threat of unilateral measures by the US upon signing the arrangement, many nations like India, Japan, among others have decided to not be a part of the same. The MPIA does not and holds no intentions of involving the US and hence cannot be a permanent solution.

Ambassador David Walker set forth specific principles to address the US concerns regarding the AB. The principles require the Appellate Body to make its decisions in ninety days and for Appellate Body members to leave promptly at the end of a second term of office, to treat facts as facts (not subject to appeal), to respect the more deferential standard of review for antidumping investigations, to address only issues raised by parties and only to the extent

³⁰ Richard Baron, Justine Garrett, OECD, 28th - 29th June, 2017. “Trade and Environment Interactions: Governance Issues” <https://www.oecd.org/sd-roundtable/papersandpublications/Trade%20and%20Environment%20Interactions%20FINAL.pdf>

³¹ William Alan Reinsch, Center for Strategic and International Studies (CSIS), July 20, 2020. “Plurilateral or Multilateral”. <https://www.csis.org/analysis/plurilateral-or-multilateral>

³² Anwarul Hoda, “WTO Appellate Body in Crisis: The Way Forward”, Indian Council for Research on International Economic Relations (ICRIER), January, 2021. http://icrier.org/pdf/Working_Paper_403.pdf

necessary for resolving the dispute at hand so that its opinions are not advisory, to take previous Appellate Body or panel reports into account only to the extent they are relevant and not as precedent, and to ensure that its rulings do not add to the obligations or take away any rights of the parties as contained in the WTO rules. Collectively, the Walker principles are designed to make the Appellate Body more efficient.³³

Additionally, a completely radical approach being suggested is to question the very existence of the Appellate Body, i.e., does the reform necessarily require an Appellate Body at all or is there an alternative way that we can resort to which can lead to better results. The alternative way here is to boost the panel stage of the system to increase the objectivity and the efficiency of the panels wherein the reasons and decisions given are of higher quality. For this, a full - time standing body of panelists is to be established. If this can be done effectively, there will not be a need for the second stage of the system.

Another suggestion to address the Appellate Body crisis is that the developing nations should try and make the US agree to nominate and appoint members and get the dispute settlement system back on track. Among other nations, the dispute settlement system is of prime importance for developing nations who are emerging as significantly important economically over time. The system is essential to protect their interests, be it to ensure a fair market or to make sure no kind of influence is held by the powerful nations and these countries are not forced into doing anything that doesn't align with their best interests. There is sufficient data to show that the developing nations actually make good use of the dispute settlement system.

Establishing a roster of panels in fields like WTO laws, economics or related disciplines, can help reduce the time frame for such proceedings. Further, the Appellate Body's independence must not imply lack of accountability. It is also suggested that the panel and the AB can bring in the complainant's retaliation rights which will automatically increase compliance. However, this must be reserved for extreme cases only. Clearly, any reform measure of the AB will require consensus to be implemented. It is important that the US' concerns are taken into consideration as they do present a legitimate front for some reform areas with the Appellate Body. However, this will only be possible if the US lays down steps or policy recommendations to revive the Appellate Body.³⁴

On the issue of S&DT, what is really lacking in the WTO is a proper definition of a developing nation. This is important as once such a definition is established, only those nations that accurately fall under the purview would be allowed to claim the special and differential status. It is suggested to adopt a procedure somewhat like the Paris Agreement³⁵

³³ Jennifer Hillman, Council on Foreign Relations, January 14, 2020. "A Reset of the World Trade Organization's Appellate Body" <https://www.cfr.org/report/reset-world-trade-organizations-appellate-body>

³⁴ Ignacio Garcia Bercero, June 2, 2020. "What Do We Need a World Trade Organization For? The Crisis of the Rule-Based Trading System and WTO Reform" https://www.bertelsmann-stiftung.de/fileadmin/files/user_upload/MT_WTO_Reform_2020_ENG.pdf

³⁵ Marianne Schneider-Petsinger, Chatham House, September 11, 2020. "Reforming the World Trade Organization - Prospects for Transatlantic Cooperation and the Global Trade System". <https://www.chathamhouse.org/2020/09/reforming-world-trade-organization/06-institutional-issues-and-reform>

wherein each nation, keeping its respective national interests in mind, could make significant withdrawal strategies from the special treatment and ultimately from the developing nation category.

Another suggestion that can be considered for the S&DT issue is that of “graduation”³⁶ which essentially means that as and when member nations meet certain objective criteria, they won’t be subject to the developing country status.

There is also a need to look at the purpose of special and differential treatment and to assess the qualification criteria, looking at it sector-wise. For example, there may be countries that do qualify for the special and differential treatment, but in certain sectors they are much more specialised than the others and therefore do not require special and differential treatment.

What is most important is a strong intent among the powerful economies of the world to move from their initial positions. This requires a platform wherein the secretariat, chairs of various bodies etc. will play an important role. Hence, the WTO is capable of coming to a solution if countries will-fully reposition themselves to effectively negotiate for the greater good. There is no need for special architecture or provisions to deal with the problems the WTO faces today. Existing committees are equipped with dealing with these issues and addressing these challenges.

What is needed is political will. Countries need to come together and look at these issues at a global level rather than being country specific. With this approach, the likelihood of consensus among nations will be much stronger. However, unfortunately, this seems unlikely in the current scenario and therefore it is important to come up with a process that promotes discussions among these parties, on all options that are available.

³⁶ Ambassador Chiedu Osakwe, November 16, 2018. “The Development Aspect of World Trade: Is it necessary to differentiate among countries and how should it be done?”. https://icrier-my.sharepoint.com/personal/nisha_icrier_res_in/_layouts/15/onedrive.aspx?originalPath=aHR0cHM6Ly9pY3JpZXltbXkuc2hhcmVwb2ludC5jb20vOmY6L2cvcGVyc29uYWwvbmIzaGFfaWNyaWVyX3Jlc19pbj9FZ2tqek5mWHFubFBsS19OYlV5NTJoVUJidVZieFNxeXdvSDA2MGtSMXpJRC1RP3J0aW1lPXJlVpDZVIxMlVn&id=%2Fpersonal%2Fnisha%5Ficrier%5Fres%5Ffin%2FDocuments%2FWTO%2FCHIEDU%2DPAPER%2DVERSION%2DPARIS%2D16%2DNOVEMBER%2Epdf&parent=%2Fpersonal%2Fnisha%5Ficrier%5Fres%5Ffin%2FDocuments%2FWTO

References

- Agah, F. and Harbinson, S. with Rockwell, K. (2013).** WTO Debate: Plurilateralism and multilateralism.
- Akman, M.S., Berger, A., Botti, F. Draper, P., Freytag, A. Padoa, P.C. and Schmucker, C. (2020).** The need for WTO reform: Where to start in governing world trade?. G20 Insights.
- Ambaw, D.T., Draper, P., Freytag, A., McDonagh, N. and Wilson, K. (2019).** Industrial Subsidies, Market Competition, Global Trade and Investment: Towards a Research Agenda.
- Angeles, F., Roy, R. and Yarina, Y.** Are Joint Statement Initiatives the World Trade Organization's Future?.
- Baron, R. and Garrett, J. (2017).** Trade and Environment Interactions: Governance Issues. OECD.
- Basedow, R. (2017).** The WTO and plurilateralism: What lessons can we draw from the EU's experience with 'differentiated integration'?. London School of Economics and Political Science.
- Bercero, I.G. (2020).** What Do We Need a World Trade Organization For? The Crisis of the Rule-Based Trading System and WTO Reform.
- Chanda, R., Bhatia, U.S., Singh, H.S., Draper, P., Anuradha, R.V. and Bercero, I.G. (2021).** ICRIER-KAS Webinar on Formulating New Approaches to Strengthen Multilateral Trade.
- González, A. and Jung, E. (2020).** Developing countries can help restore the WTO's dispute settlement system.
- Hillman, J. (2020).** A Reset of the World Trade Organization's Appellate Body.
- Hoda, A. (2021).** WTO Appellate Body in Crisis: The Way Forward. Indian Council for Research on International Economic Relations (ICRIER).
- Hoekman, B. and Mavroidis, P.C. (2020).** To AB or Not to AB? Dispute Settlement in WTO Reform. *Journal of International Economic Law*, Volume 23, Issue 3, Pages 1–20.
- McDonagh, N. and Draper, P. (2020).** Industrial Subsidies, State-Owned Enterprises and WTO Reforms: Prospects for Cooperation?. University of Adelaide.
- McDonagh, N. (2021).** Is plurilateralism making the WTO an institutional zombie?. East Asia Forum (EAF).

Osakwe, C. (2018). The Development Aspect of World Trade: Is it necessary to differentiate among countries and how should it be done?

Reinsch, W.A. (2020). Plurilateral or Multilateral. Center for Strategic and International Studies (CSIS).

Sawhney, A. (2004). WTO related matters in Trade and Environment: Relationship between WTO rules and MEAs. Indian Council for Research on International Economic Relations (ICRIER).

Schneider-Petsinger, M. (2020). “Reforming the World Trade Organization - Prospects for Transatlantic Cooperation and the Global Trade System”. Chatham House.

Thorn, S. and Whittaker, J. (2020). How stronger trade rules can help us meet climate goals. World Economic Forum.

Tirkey, A. (2020). The WTO’s appellate body crisis: Implication for trade rules and multilateralism. Observer Research Foundation (ORF).

Wang, W., Draper, P., Ambaw, D., Freytag, A., McDonagh, N. and Wilson, K. (2020). Industrial Subsidies, Market Competition, Global Trade and Investment: Towards a Research Agenda. University of Adelaide.

World Trade Organisation, Dispute settlement activity — some figures.

World Trade Organisation, Eliminating trade barriers on environmental goods and services.

World Trade Organisation, Factsheet: Negotiations on fisheries subsidies.

World Trade Organisation, Marrakesh Agreement Establishing the World Trade Organization.

World Trade Organisation, The Doha mandate on multilateral environmental agreements (MEAs).

World Trade Organisation, Trade and Environmental Sustainability Structured Discussion (TESSD).

World Trade Organisation, The WTO can... help countries develop



Indian Council for Research on International Economic Relations (ICRIER)

Our Offices:

4th Floor, Core 6A, India Habitat Centre, Lodhi Road, New Delhi-110003

Plot No. 16-17, Pushp Vihar, Institutional Area, Sector 6, New Delhi-110017

O: +91 11 43112400 / 24645218

F: +91 11 24620180 | **W:** www.icrier.org | **E:** info@icrier.res.in