



Task Force 7
Towards Reformed Multilateralism: Transforming
Global Institutions and Frameworks



ESTABLISHING A CONSENSUS ON DEVELOPMENT: ON G20-LED WTO REFORMS

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Abstract



The preamble to the agreement establishing the World Trade Organization (WTO) recognises the need for developing countries to ensure they can “secure a share in international trade commensurate with the needs of their economic development.” The WTO’s built-in agenda was designed against this backdrop; however, its partial and unsatisfactory fulfilment has led to increasing frustration among developing countries.


There is a crucial need to undertake a comprehensive review of the systemic issues plaguing the WTO’s rulemaking,

implementation, and dispute-settlement functions to identify the issues that are stiling prospects of trade and development in developing countries. This will offer evidence-based and pragmatic compromises to reinvigorate and possibly institutionalise a development-oriented approach in the WTO’s functioning.

India’s G20 presidency offers an opportunity to drive reformatory interventions for a development-friendly WTO and enable further tangible benefits from the special and differential treatment provisions to which developing countries are entitled.



The Challenge



1



Failure of multilateral trading system to deliver on its development promises

The WTO's predecessor, the General Agreement on Tariffs and Trade (GATT), was catalysed by the need to restore international order through increased economic interdependence, and consequently, its objectives were espoused in primarily economic terms.^a However, unlike the GATT, the preamble of the agreement establishing the WTO (Marrakesh Agreement) goes beyond the attainment of economic gains to their actual distribution. As the backdrop for the WTO's built-in agenda, it recognises the need for developing countries to ensure they can "secure a share in international trade commensurate with the needs of their economic development."¹

However, the unsatisfactory fulfilment of its built-in agenda and the gulf between the WTO's objectives and their achievement has led to frustration among many in the developing world.² Furthermore, even as developing countries struggle with the capacity required to implement obligations under various WTO agreements and realise gains from trade, the inequity of various rules is being worsened by the failure to update them per the demands of this century.³

For instance, the lack of multilateral guidance on digital trade has contributed to extensive fragmentation of digital governance, worsening the digital divide and the prospects of countries 'catching up' and adopting and benefiting from emerging technologies.⁴

^a The preamble of the GATT 1947 states: "Recognizing that their relations in the field of trade and economic endeavour should be conducted with a view to raising standards of living, ensuring full employment and a large and steadily growing volume of real income and effective demand, developing the full use of the resources of the world and expanding the production and exchange of goods, Being desirous of contributing to these objectives by entering into reciprocal and mutually advantageous arrangements directed to the substantial reduction of tariffs and other barriers to trade and to the elimination of discriminatory treatment in international commerce..."



Complications in achieving trade-led development due to “deglobalisation” and geopolitical fragmentation

The slowdown in WTO-led trade liberalisation—of a multilateral and non-discriminatory nature—and the increasing predominance of political and geopolitical considerations in trade policy have been mutually reinforcing. This vicious cycle has brought trade geopolitics to the front and centre and impeded multilateral consensus-building. The China-US trade war and the creation of arguably antagonistic trade blocs or groupings, such as the Regional Comprehensive Economic Partnership and the Indo-Pacific Economic Framework, are some examples.⁵ Further, greater economic uncertainty reflected by unilateral policy

measures in response to the COVID-19 pandemic, the Ukraine conflict, and the climate crisis increases risk aversion, in turn leading to more protectionism and fragmentation in international commerce.

Consider this: the difference in perception of the appropriateness of existing multilateral rules for governing disparate economic systems of state-led and liberal capitalism has led to various WTO members crying foul. In response to legitimate concerns over the anti-competitive effects of high levels of state support and protection to state-owned enterprises in various sectors, some members are formulating sharper rules outside the WTO on disciplines such as subsidies to level the playing field.^b


^b For example, the EU, the US, and Japan agree on new ways to strengthen global rules on industrial subsidies. However, the EU and the US have been criticised for relying on similar policy instruments and discriminatory strategies such as industrial subsidies and friend-shoring to increase competitiveness. For instance, the US Inflation Reduction Act and the EU Green Deal Industrial Plan have set apart massive green incentives, subsidies, and grants for businesses.



The G20's Role



2



The G20 must become the platform to facilitate a consensus on reforming the WTO to better achieve global developmental objectives. With the major economies (with extensive geographic, economic, and social diversity) as its members, the G20 needs to be at the forefront of debates on trade and development. Consequently, the member countries can also influence their respective negotiating coalitions at the WTO.

It is proposed that the agenda of relevant WTO committees and working groups be complemented within the G20, preferably in an institutionalised manner. The work of the WTO's committees and working groups, especially those on trade, debt and finance, and trade and transfer of technology, could be of relevance in guiding the agenda of the G20 groups. The G20 working groups could also help provide technical

assistance to WTO members, allowing them to engage more effectively in the WTO committees, including those on trade and development. This could cover inputs for negotiation, institutional reform, and dispute settlement, with development as the cross-cutting agenda.

Further, increasing awareness and engagement with diverse stakeholders is important for enhancing support and legitimacy for WTO reforms, especially among domestic constituencies that may be sceptical of trade liberalisation. The G20 engagement groups (such as Think20, Business20, and Civil20) could devise programmes for capacity building in the private sector, civil society organisations, and other non-governmental stakeholders, and also seek their inputs to identify and address challenges that may not be immediately apparent to policymakers.



Recommendations to the G20



3



The WTO's role as the key monitor and arbiter of global trade rules remains crucial. Thus, to take forward the momentum generated by the 12th WTO Ministerial Conference,⁶ and its reinforcement by the G20 Bali Declaration, members must find consensus on various systemic issues that are limiting the organisation's functioning.

Inspired by a so-called 'traffic-light' approach, the recommended interventions touch upon some of the foundational principles of the WTO, or 'red-light' issues, that must be revisited for the sake of institutional functionality—the *sine qua non* for taking the conversation forward on other reforms, and which will impact all members, especially developing nations. Consequently, various recommendations are made on 'amber-' and 'green-light' issues to make special and differential treatment (S&DT) provisions "precise, effective, and operational."⁷


Reappraising institutional norms on consensus and S&DT

- **Reconsider the rules on consensus for more efficient decision-making**

As per the Marrakesh Agreement, members shall continue the practice of decision-making by consensus that was followed under the GATT. Accordingly, a decision is made by consensus if no member present at the meeting formally objects to the proposed decision.

This rule on consensus confers several advantages. Crucially, it increases the legitimacy and therefore the executability of decisions. It also grants considerable power—in the form of a veto—in the hands of all members. It is not surprisingly that the chances of forging consensus with a large membership, complex rules, and an easily exercisable veto are quite low.

Nevertheless, the costs associated with the lack of consensus are quite high and




progressively increasing. For instance, the value of trade locked in WTO disputes because of a defunct dispute settlement mechanism, the opportunity cost associated with the non-conclusion of the Doha Development Agenda, and the welfare cost of pursuing suboptimal bilateral or regional arrangements in matters such as subsidies, where spill overs can be optimally managed through multilateral norms.⁸ Resolving these issues demands a reassessment of the consensus rule.

Against this backdrop, members must reconsider utilising the thus-far dormant option of voting as provided in Art IX of the Marrakesh Agreement. Members have until now remained averse to creating a precedent that could destroy the current practice of using consensus as the only mode of decision-making. However, for matters that have a bearing on the very sanctity of the WTO's three pillars of negotiations, dispute settlement, and monitoring, members must explore principles to guide the dissociation of such decisions from the purview of the "consensus rule." A situation-based and time-bound trigger to the voting requirement will ensure that no member alone, individually, is able to block the adoption of a position, a situation that precipitated the Appellate Body crisis.

At the very least, it is crucial that any objection by a member should spell out the legal and factual grounds on which it is based. This will prevent the abuse of the consensus requirement while increasing transparency and predictability at the WTO.

It is worth noting that the GATT years saw eight rounds of negotiations between 1947 and 1994. This frequent update of the rulebook was done despite the consensus requirement. It was partially possible because even as developing countries benefited from the extension of various commitments on a most-favoured nation basis, there was no compulsion on them to make similar concessions. This balance between a fixed common purpose — freer trade with greater legal certainty — and flexibility created enough momentum for the establishment and initial success of the WTO.⁹ Thus, even though the Doha Development Agenda seeks to deliver on the promise of the WTO's built-in agenda, the fact that it surpasses the unprecedented Uruguay Round in terms of ambitions necessitates a willingness to make compromises to overcome impasses.

Currently, WTO members are trying to strike a similar balance by undertaking



plurilateral negotiations—an approach in which less than the full membership is involved. Numerous such initiatives have been started to cover issues of sustainability, e-commerce, investment facilitation, and even dispute settlement (the Multi-Party Interim Appeal Arbitration Arrangement).

While some members see these Joint Statement Initiatives as means to unclog the system, others see them as an illegal deviation from the multilateral underpinnings of the WTO. However, a distinction should be drawn between the process and the outcome.¹⁰ Consensus is not a prerequisite for initiating the process to formulate new rules. It is only the outcome that can be accepted or opposed by a member. This distinction must be maintained to ensure that a WTO member does not block progress desired by others, even as it cannot be bound by new obligations against its will.

Consequently, for the outcomes, should the membership decide, they can smoothen the way for the multilateralisation of plurilateral agreements by making both the process and its outcome more inclusive, and

thereby legitimate in the eyes of all. A set of principles or a code of conduct could be designed to that extent.¹¹ Among other things, the code should require that plurilateral agreements be supported by members with significant interest in the matter and that they remain open to all members wishing to join at a later stage.

- **Reformulate rules on recognising the beneficiaries of S&DT**

Developed countries and regions like the US, Canada, and the EU have advanced proposals to reform the practice of self-designation by developing countries to avail S&DT and replace it with objective criteria, as applied to least developed countries (LDCs).¹² In response, many developing nations oppose such stratification regarding eligibility by reiterating that S&DT constitutes an unconditional and treaty-embedded right that is crucial for integrating meaningfully into the global trading system. A recent communication by developing countries¹³ on the continued relevance of S&DT to promote development and ensure inclusiveness highlighted significant and increasing

disparities in terms of various quantitative and qualitative indicators.⁶

Yet, when considering the impact of S&DT on integrating developing countries and promoting economic development, it is important to keep in mind the wide range of diversity among these countries, from those with very low per capita incomes like Surinam to those with much higher incomes like Singapore. All these countries technically have the same right to access S&D provisions, but their economic performance, needs, and capabilities are vastly different. By protesting against *any* reformulation of S&DT eligibility, developing countries are also foregoing opportunities to introduce nuance and objectivity into the debate.

At one level, the WTO already recognises this and provides special consideration to LDCs. Now, similar logic must be extended to the large pool of diversely situated developing nations to find alternatives to the existing one-size-fits-all approach.

Another display of flexibility at the WTO is worth scrutinising. The WTO Trade Facilitation Agreement allows developing countries and LDCs to determine their commitments and implementation schedule. Such an approach could serve as the basis for future agreements.¹⁴ Insofar as plurilaterals can also incorporate such flexibility, the legitimate complaint about such agreements being inconsistent with varying levels of economic development could be addressed.

Overall, an agreement-to-agreement-based criteria—and when needed, even provision-to-provision-based criteria—should be utilised to best cater to different needs and capabilities. For instance, those developing countries complaining that transitional periods are inadequate for their particular development needs, it is possible to consider tiered timelines for implementation or extensions based on objective assessments of domestic capacity and regulatory divergence.

⁶ For instance, GDP per capita, poverty levels, levels of under-nourishment, production and employment in the agriculture sector, trade in services, receipts from IPR, share of trade in value-added under GVCs, energy use per capita, financial infrastructure, R&D capacity, company profits, and a range of institutional and capacity constraints.



Making S&DT provisions precise, effective, and operational

The WTO members in paragraph 44 of the Doha Declaration reaffirm their commitment to strengthen and make effective and operational the S&DT provisions in WTO agreements. The issues with S&DT provisions within the WTO rulebook include their “best endeavour” nature as well as their inadequate scope and depth where the provisions *are* enforceable. In certain cases, “reversed S&DT”¹⁵ or blatant unfairness ensues when developed countries receive better treatment overall, for instance, in the WTO Agreement on Agriculture, which limits the trade-distorting subsidies based on historical use, thereby denying developing nations the policy space enjoyed by their developed counterparts. Accordingly, the following are some recommendations to make S&DT provisions precise, effective, and operational.

- **Increase the flexibility of commitments**

The flexibility of commitments in the WTO rulebook is important because it

accommodates the diversity in capacity and priority among its members. For instance, the flexibility provided by General Agreement on Trade in Services (GATS) allows developing countries to adapt their commitments to their specific developmental needs. This includes opening fewer sectors to foreign competition, liberalising fewer types of transactions, and gradually increasing market access. This flexibility also permits developing countries to impose conditions on foreign service suppliers that align with their developmental objectives outlined in Article IV of GATS.

For mitigating geopolitical tensions that are creating fault lines within the WTO, a pragmatic option is to increase the utilisation of flexibilities when assessing domestic policies aimed at achieving developmental goals. Specifically, China’s WTO membership has presented challenges to the market-oriented economic model on which the WTO’s rules are based. In this respect, the non-violation clause (a provision that allows a member country to take action to prevent another member state from gaining an unfair advantage owing to its alleged non-compliance with its commitments) could provide a solution to this impasse.¹⁶ It facilitates a compromise where members do not explicitly have

to prescribe to WTO-compliant trade policies and can still get a redressal from China's alleged systemic violations. Meanwhile, China will continue to have the autonomy to determine the best way it can guarantee the promised level of access to its markets.¹⁷

- **Optimise trading opportunities available to developing countries**


Given that the relationship between market access and economic growth is assumed to be a synergistic one, it often leads to the conflation of means (trade liberalisation) with its ends (development).¹⁸ Therefore, it is important to reaffirm the goals of the multilateral trading system and the WTO as the utilisation of trade liberalisation and ensuing export-led growth as a *means* to reach developmental goals.

This, therefore, includes that consideration of tariffs and industrial tools by developed nations, which will promote manufacturing and export in developing countries. For instance,

for developing countries to gain out of trade, they should be rewarded for value addition by a reverse-tariff escalation process.^d

Further, the tools most associated with S&DT—the Generalised System of Preferences (GSP) and Aid for Trade (AfT)—must be assessed, and the best practices associated with their formulation and implementation be shared for adoption by the G20 countries to increase their effectiveness. For instance, as inferred from the experience of beneficiaries of the Japanese GSP scheme, such programmes are most effective when they offer simplicity and stability in coverage through transparent exclusions and a guarantee against being withdrawn or modified unilaterally.¹⁹ Accordingly, adequate notice about changes in regulations, making the procedures more accessible by reducing the burden of compliance, simplifying the rules of origin, and conducting evidence-backed monitoring exercises, such as regulatory impact assessments, can be implemented.

^d The phenomenon wherein the applicable tariff on final products is lower than those on intermediary goods, thus incentivising the exporting nation to invest more in processing and exporting finished goods.



Regarding Aft, good regulatory practices^e that ensure effective coordination among stakeholders and build local ownership and trust—for instance, by engaging with non-market institutions such as civil society and faith-based organisations where possible—must be advocated.²⁰

Crucially, by expanding Aft’s ambit to also cover investment and anchoring such investments to an evidence-based framework for decision-making,²¹ the G20 countries can promote the goals of sustained, inclusive, and sustainable economic growth, full and productive employment, and decent work for all.

Attribution: Pradeep S. Mehta et al., “Establishing a Consensus on Development: On G20-Led WTO Reforms,” *T20 Policy Brief*, May 2023.

^e Good regulatory practices are tools, processes, and strategic approaches that can help governments identify and evaluate the trade impacts of their regulatory action. For more, see: Robert Basedow and Céline Kauffmann, *International Trade and Good Regulatory Practices: Assessing the Trade Impacts of Regulation* (Organisation for Economic Cooperation and Development [OECD], 2016).

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