

India and World Trade Organization

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ABSTRACT: The World Trade Organization (WTO) is an intergovernmental organization that regulates and facilitates international trade. With effective cooperation in the United Nations System, governments use the organization to establish, revise, and enforce the rules that govern international trade. It officially commenced operations on 1 January 1995, pursuant to the 1994 Marrakesh Agreement, thus replacing the General Agreement on Tariffs and Trade (GATT) that had been established in 1948. The WTO is the world's largest international economic organization, with 164 member states representing over 98% of global trade and global GDP. The WTO facilitates trade in goods, services and intellectual property among participating countries by providing a framework for negotiating trade agreements, which usually aim to reduce or eliminate tariffs, quotas, and other restrictions; these agreements are signed by representatives of member governments, followed by ratification by their legislatures. The WTO also administers independent dispute resolution for enforcing participants' adherence to trade agreements and resolving trade-related disputes. The organization prohibits discrimination between trading partners, but provides exceptions for environmental protection, national security, and other important goals. The WTO is headquartered in Geneva, Switzerland. Its top decision-making body is the Ministerial Conference, which is composed of all member states and usually convenes biennially; consensus is emphasized in all decisions. Day-to-day functions are handled by the General Council, made up of representatives from all members. A Secretariat of over 600 personnel, led by the Director-General and four deputies, provides administrative, professional, and technical services. The WTO's annual budget is roughly 220 million USD, which is contributed by members based on their proportion of international trade. Studies show the WTO has boosted trade and reduced trade barriers. Goal 10 of the United Nations Sustainable Development Goals also referenced WTO agreements as instruments of reducing inequality. However, critics contend that the benefits of WTO-facilitated free trade are not shared equally, citing the outcomes of negotiations and data showing a continually widening gap between rich and poor nations.

KEYWORDS: WTO, India, cooperation, disputes, conference, budget, international, nations, agreements

I. INTRODUCTION

India and her role in various international organisations is an important topic for the civil services exam. The World Trade Organisation (WTO) is a very important intergovernmental organisation that deals with international trade and commerce. India has been a member of the WTO since January 1995 and also had been a member of the WTO's forerunner General Agreement on Tariffs and Trade (GATT) since July 1948.[1,2] As a developing country, India has played a significant role in the proceedings of the WTO, especially in voicing its own concerns and also of the entire developing world. In the Doha WTO conference that took place in 2001, India emerged as the most outspoken of advocates for the developing bloc. The meeting was declared a success since the delegates of 142 countries agreed to a new round of trade talks, including topics such as environment, competition and investment. There are many implications for the Indian economy as a result of the many agreements signed as part of the WTO. The agreement proposes an overall reduction of tariffs on manufactured products and the phasing out of the quantitative restrictions over a period of time. The important implication is that the firms that have a competitive advantage would be able to survive in the long run. This agreement forbids the host country to discriminate against investments from abroad vis-à-vis domestic investment i.e. [3,4] agreement requires investment to be freely allowed by nations. Intellectual property rights seek to protect and provide legal recognition to the creator of the intangible intellectual use of his creation. It includes patents, copyrights, geographical indications, trademarks, industrial circuits, designs and trade secrets. Since the law governing these aspects vary vastly across countries, the agreement stipulates a basic homogeneity of the law so that no infringement of rights occurred. This required some changes in the domestic laws of countries including India. As a result, India amended the Copyright Act, the Patents Act, and the Trade and Merchandise Act. The pharmaceutical and biotechnology industries are expected to be hit the hardest. Another impact on India is expected to be in the transfer of technology from abroad.[5,6]

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Agreement on Agriculture (AOA)

This agreement deals with giving market access, reducing export subsidies and government subsidies on agricultural products. Read about the Agreement on Agriculture in detail in the link.

Agreement on Sanitary and Phyto-sanitary measures (SPM)

This deals with restricting exports of any country that do not comply with the international standards of germs/bacteria, etc. This is particularly related to industries such as marine food, food processing and other packed food.

Multi-Fibre Agreement (MFA)

This agreement is no longer applied. It was valid until 2004 only. It had essentially placed quotas on the amount of textile and clothing exports from developing to developed countries. The developed countries, including the USA and the EU, had this in place to protect their own domestic producers. As a result of this agreement being dismantled, a huge opportunity has opened up for developing nations such as India. To take advantage of this opportunity, India should have preparedness in terms of standardisation, modernisation, customisation and cost-efficiency to satisfy the demands of foreign customers.[7,8]

India and the World Trade Organization – Latest Developments

There are 4 important recent developments related to India and the World Trade Organisation (WTO). These 4 are listed below

1. Ban of Chinese Mobile Apps
2. Issues related to the Peace Clause
3. Information and Communication Technology (ICT) Tariff Case
4. Fisheries Subsidies

Ban on Chinese Mobile Apps – China Claims Violation of WTO Rules

After India banned 59 mobile apps of China, they have claimed that India has violated World Trade Organization (WTO) rules. Even if China complains, WTO may most likely favour Indian decision due to the following reasons.

- There is no bilateral agreement between India and China related to Smartphone apps.
- As per the rules of the World Trade Organisation (WTO), a country can take action against companies if it is a threat to the national security and sovereignty of the nation.
- China has blocked many global giants from entering its market on various pretexts.

Background and Issues related to the Peace Clause

Recently there was an issue concerned with the invoking of the Peace Clause by India at the World Trade Organisation (WTO). The below-given questions and answers will give a comprehensive understanding of the issue faced by India at the World Trade Organization (WTO).[9,10]

High subsidies are seen to be distorting global trade. The peace clause protects a developing country's food procurement programmes against action from WTO members in case subsidy ceilings are breached.

Which Countries questioned India on invoking the World Trade Organisation (WTO) Peace Clause

European Union (E.U.), United States of America (USA), Japan, Canada, Brazil and Paraguay have questioned India for invoking the World Trade Organization (WTO) peace clause for exceeding the ceiling on the support it can offer its farmers for rice. The European Union E.U has asked India for all the information on the products covered by the public stockholding programme to assure that only rice support exceeded the limits.

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- Rice stocks sold in the domestic market were not allowed for exports thus preventing the risk of distorting the global market.
- An adequate buffer stock of food grains helps deal with fluctuations in production and meet unforeseen exigencies and natural calamities.

India has to hold consultations with other WTO members in line with the Bali ministerial decision of 2013 on public stockholding for food security purposes.

Information and Communication Technology (ICT) Tariff Case[11,12]

- The World Trade Organisation (WTO) has decided to set up a dispute panel against India.
- The panel is being set up on the request of Japan and Taiwan.
- The dispute panels of the World Trade Organisation (WTO) would determine whether India's customs duties on imports of certain information and communications technology (ICT) products infringe WTO norms or not.
- Japan and Taiwan filed a case against India in WTO over the import duties imposed on certain electronic goods, parts of telephone sets, telephones for cellular networks; conversion and transmission or regeneration of voice, machines for the reception, images or other data.
- India has stated that these ICT products are part of WTO's Information Technology Products (ITA-2) agreement. India is a part of ITA-1, signed in 1997.

Dispute Resolution for Harmful Fisheries Subsidies

- India has sought a clear dispute settlement mechanism in the global agreement to end harmful fisheries subsidies
- WTO members are negotiating to finalise disciplines to eliminate subsidies for illegal, unreported and unregulated (IUU) fishing, and to prohibit certain forms of fisheries subsidies that contribute to overcapacity and overfishing.
- India wants to avoid undue haste and conclude the negotiations by next ministerial conference

There are other issues also like the Agreement on Countervailing Duties, Anti-dumping Duties, etc. which affect India.[13,14]

II. DISCUSSION

India has had a chequered relationship with the World Trade Organisation (WTO). To understand its full nature, one needs to go to the very beginning — the launch of the Uruguay Round of trade negotiations at Punta del Este, Uruguay, in 1986. Vast in scope and far-reaching in its implications, the talks took nearly eight years to conclude. On its conclusion, the WTO entered into force in 1995 with a binding dispute settlement mechanism and with agreements going well beyond goods, to include services and intellectual property rights (IPRs). While there were some gains for developing countries such as India in the field of textiles and clothing, the outcome was unfair to these countries and far more favourable to the US, EU and other developed countries. This much was abundantly clear from the negotiating implications of the Uruguay Round. In India's case, this led to "negotiation resentment," which persisted far beyond the Uruguay Round.

Yet, India enthusiastically joined the WTO in 1995. India had taken on onerous obligations, evident from the fact that it had to change its domestic law completely to bring itself in line with the Trade-Related Aspects of Intellectual Property Rights (TRIPS) Agreement. The developed countries, however, wanted to push home their advantage, and at the Ministerial Conference in Seattle in 1999, there was talk of launching a new Millennium Round. By this time though, the WTO fell afoul of all shades of non-governmental organisations (NGOs), be they development ones (like OXFAM), environmental focused (like Friends of the Earth), labour related (like Teamsters) or 'third world' NGOs (like Third World Network). All of them congregated at Seattle and played a role in sinking the Ministerial Conference. Of course, there were other substantive reasons why the Seattle dialogue failed.[15,16]

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Development round

The spectacular failure at Seattle caused a lot of hand-wringing and introspection among all WTO members. The developed countries, led by the US and EU, nevertheless persisted with attempts to launch a fresh round of negotiations. Given the degree of opposition from the developing and least-developed countries to a new round, there was recognition that the only way it would be accepted by all is if it were sold as a 'development round.' And so the idea of the Doha Development Agenda was born. The Doha Ministerial Declaration makes clear that the majority of WTO members are developing countries and that their needs and interests will be placed at the heart of the work programme adopted in the declaration. Developing and least-developed countries genuinely believed this was an unconditional commitment. The geopolitical driving force for the successful launch of the Doha Round was the 9/11 terror attacks in the US, which cast a pall of gloom over the Ministerial Conference at Doha in November 2001. The argument offered by many was this — if the ministerial conference failed to launch a new round of trade negotiations, then the terrorists will have won.

Given the degree of opposition from the developing and least-developed countries to a new round, there was recognition that the only way it would be accepted by all is if it were sold as a 'development round.' [17,18] There were also other substantive reasons. First, there was the declaration on the TRIPS agreement and public health, in which the ministers affirmed that the TRIPS Agreement can and should be interpreted and implemented in a manner supportive of WTO members' right to protect health. Second, there was a ministerial decision on implementation-related issues and concerns, which some developing countries led by India had been pushing for a few years. Third, in the crucial area of agriculture, the ministers committed themselves to comprehensive negotiations aimed at substantial improvements in market access, reduction of all forms of export subsidies and substantial reductions in trade-distorting domestic support. In addition, the ministers agreed that special and differential treatment (S&DT) for developing countries will be an integral part of all elements of negotiations and will be embodied in the schedules of concessions and commitments and in the rules and disciplines, to be negotiated to be operationally effective and to enable developing countries to effectively take account of their development needs, including food security and rural development. Fourth, the ministers reaffirmed that provisions for S&DT are an integral part of the WTO agreements and determined that these provisions be reviewed with a view to strengthening them and making them more precise, effective and operationa. Lastly, thanks primarily to India's efforts, negotiations were not launched in areas such as investment, competition policy, government procurement and trade facilitation (also known as Singapore Issues), being put off for a future date. The developed countries indeed made efforts to consider developing countries' sensitivities, which played a major role in consensus being reached at Doha for the launch of a new development round.

The Doha Round of trade negotiations was launched in 2001. But nearly two decades on, there is now little hope that it will succeed. If the WTO is to be revived and rejuvenated, it is important to understand why the Doha Round has failed so far. The first warning signs appeared at the WTO ministerial conference held in Cancun in 2003, with an important realignment taking place in the WTO just prior to the meet — the formation of the G20, a coalition of developing countries pressing for ambitious agriculture reforms in developed countries and sufficient flexibility for developing countries. This G20 group was a far cry from the group of 24 countries that had opposed the inclusion of IPRs and services in the run-up to the Punta del Este meeting of the General Agreement on Tariffs and Trade (GATT) in 1986. The G20 had Brazil, India, South Africa, Thailand, Nigeria and China — accounting for 60 percent of the global population, 70 percent of all farmers and 26 percent of the world's agricultural exports— giving the grouping enormous heft in negotiations. When the US and EU sought to push for a deal with enormously weak outcomes in agriculture but launched negotiations on the Singapore Issues, the G20 put its foot down and the conference simply failed. While it is facile to blame the G20 for blocking a positive outcome, such an assessment would be wrong because the Doha mandate clearly called for positive outcomes in agriculture, which the developed countries failed to deliver. The first warning signs appeared at the WTO ministerial conference held in Cancun in 2003, with an important realignment taking place in the WTO just prior to the meet — the formation of the G20.

Agriculture has always been the bugbear in WTO negotiations, even as WTO members tried to conclude the Doha round in July 2008. In his blow-by-blow account of the marathon efforts undertaken by then WTO Director General Pascal Lamy, trade journalist Paul Blustein busts the commonly held theory that it was a lack of agreement on one technical matter, the Special Safeguard Mechanism (SSM), that torpedoed the deal. Blustein argues that the meeting

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fell far short of consensus. And even on the issue of SSM in agriculture, Blustein says that powerful US farm and industrial groups and leading members of the US Congress were profoundly dissatisfied with the deal on offer. Crucially, he argues, the Americans were the ones to have walked away from the deal. Lamy first tried to achieve consensus with a group of seven leading WTO members — the US, EU, Brazil, India, China, Japan and Australia — before bringing in the wider WTO membership. Although not a bad move, it did create problems for countries in Africa who said they were totally unrepresented in this group.[19,20]

The WTO ministerial conference in Bali (2013) was perhaps the last opportunity to save the Doha Round. It was becoming increasingly difficult to justify that not a single multilateral agreement had been agreed on 18 years after the WTO's establishment. In other words, the legislative, rule-making wing of the WTO was completely dysfunctional. In Bali, the fact that members were able to agree to a multilateral agreement on trade facilitation was greeted with enthusiasm and relief. The Trade Facilitation Agreement is remarkable. Not only does it fulfil the fundamental objective of cutting down red tape and diminishing the costs of trading, it also reflects in full the S&DT applicable for developing and least-developed countries. There are landmark provisions in the agreement allowing for flexibility in the scheduling and sequencing of implementation and, more importantly, linking commitments to acquired capacity, resulting from technical assistance. But agriculture continued to be a sticking point in Bali as well. India had drawn attention to its unique problem with regard to public stockholding, which in the Uruguay Round was fixed at subsidies (difference between administered price and market price) being no more than 10 percent of the value of production of the commodity. Worse, the fixed external reference price was based on 1986-88 rates and there was no provision for inflation. India, supported by the G33 coalition of countries, wanted public stockholding to be moved to the 'green box' (subsidies that are permissible). The developed countries led by the US opposed this. In the end, the compromise was that there would be a peace clause — India and others who avail of public stockholding will not be dragged to dispute settlement until a permanent solution is found.

If the impasse over the Doha Round was not debilitating enough for the WTO, the appellate body started facing flak from the most powerful player in the WTO — the US.

III. RESULTS

In all negotiations from 2008 the developed countries were in violation of the spirit of the Doha mandate on agriculture. The S&DT was given the short shrift by the US and EU, even though they could be legitimately accused of massive agriculture subsidies in the past. The Doha Development Round became just another mercantilist round of concessions being exchanged between the developed and developing countries. In addition, the power shift from the global north to the south, and the difficulty of reaching a consensus among 164 countries, were the primary reasons for the failure of the Doha Round. If the impasse over the Doha Round was not debilitating enough for the WTO, the appellate body started facing flak from the most powerful player in the WTO — the US. The US felt that the appellate body had indulged in judicial overreach and had ruled adversely on issues dear to the US, for instance, the question of 'zeroing' in the calculation of anti-dumping duties. The US should have engaged in negotiations with other WTO members. Instead, in a remarkable display of unilateralism, the US systematically blocked consensus on the appointment of fresh appellate body judges, rendering it dysfunctional.

Revival plan for WTO

The Trump administration took a wrecking ball to most multilateral institutions, including the WTO. The advent of the Biden administration is an opportunity for the WTO to negotiate itself out of trouble. For countries like India, the multilateral trading system embodied by the WTO provides security and predictability. The WTO can be revived in the following ways.

Appellate body reform

The appellate body is the lynchpin of the dispute settlement mechanism, which is the 'jewel' in the WTO's crown. There is no alternative but to return to the status quo ante on this issue. Several proposals for reform and improved functioning of the appellate body are already on the table. While the Trump administration did not engage with other members over these proposals, the Biden administration should initiate swift negotiations with a view to reinstating

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the appellate body in full. That said, there was some merit in the US's criticism of the appellate body and these must be addressed expeditiously. The draft decision document on the appellate body's functioning, put together by the General Council Chair Ambassador David Walker after detailed consultations with members across the board, is a good starting point. The document lists the US's main grievances against the body and makes sensible suggestions for redressing these. To the complaint that appellate body members who have finished their term should not sit in judgment of cases, the proposal states that the selection process to replace appellate body members begin six months before the expiry of the term. On the criticism that the body takes too long to issue reports, the draft decision states that 90 days should be the norm (in exceptional cases, and with the consent of the parties, the time frame can be extended). On other important aspects of the functioning of the appellate body, the draft decision takes a sensible approach — matters of appeal must be confined to issues of law, and not a de novo review of facts, addressing only issues raised by parties and no precedent established by dispute settlement proceedings. The most substantive criticism levelled against the appellate body by the US was one of 'judicial overreach.' [21] On this, the body will be reminded that it cannot add or diminish the rights and obligations of WTO members under the covered agreements. Lastly, the draft decision makes it clear that there will be a mechanism for regular dialogue between the appellate body and the WTO members where the latter can express views on the functioning of the body. This catalogue of issues and suggested way forward should be an excellent basis for the new United States Trade Representative to engage with the WTO and fully reinstate the appellate body.

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Special and differential treatment

Special and differential treatment is part of WTO's 'legal acquis.' Its origin can be traced back to Part IV of GATT and then the 'Enabling Clause' introduced in 1979. This entitlement to the S&DT is a hard fought one for developing countries and therefore they view with anger and angst the attempts by developed countries to dismantle it. The main contention by the US is that developing country status cannot be based on 'self-election.' There is a grain of truth to this, but to say that if a country belongs to the G20 grouping it loses its developing country status is absurd. Similarly, to say, as the US does, that a mere 0.5 percent share of global merchandise trade prevents you from being a developing country is also untenable. A two-tier approach can be taken to resolve the issue of the S&DT definition. The first tier comprises regions that house millions of people who live in extreme poverty. Since 2010, there has been a collaborative effort between the United Nations Development Programme and the Oxford Poverty & Human Development Initiative to record people in multidimensional poverty. Two regions stand out — South Asia and sub-Saharan Africa. By this logic, all countries belonging to these two regions should be entitled to S&DT without any question. This will be the first tier of countries to qualify for S&DT. The least-developed countries will also belong to this first tier. The idea that India is somehow a member of G20 and therefore not entitled to S&DT is ludicrous: the Oxford Multidimensional Poverty Index demonstrates that close to 30 percent of India's population (if not more) live in extreme poverty. This fact alone entitles it to S&DT.

The main contention by the US is that developing country status cannot be based on 'self-election.' The second tier will comprise a bunch of countries for which various criteria (including those suggested by the US) can be applied. Among these, China and many other countries need to be evaluated on a case-by-case basis. It is also possible that for some sectors China may be entitled to S&DT and for many others it may not. [22]

There are already some conversations of plurilateral initiatives. There are two types of plurilateral agreements: 'exclusive' and an 'open variant.' The 'exclusive' plurilateral agreements risk sidelining the developing countries and may legally fragment the WTO. On the other hand, an 'open variant' plurilateral agreement can be launched by members to be housed in the WTO, provided it strictly conforms to the following conditions:

- Open to all WTO members
- No penalty for those WTO members who join later
- Negotiating outcome implemented on a most favoured nation basis to all WTO members, including those who did not participate in the negotiations

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- Dispute settlement mechanism of the WTO to be available

The Joint Statement Initiative— launched at the WTO ministerial conference in Buenos Aires in areas such as electronic commerce, investment facilitation and micro, small and medium enterprises — are essentially plurilateral in nature. The problem is, it is far from clear whether it is an ‘open variant’ or ‘exclusive.’ From the proposals for WTO reform made by various proponents, it seems that the EU favours ‘open’ plurilateral agreements while the US and Australia favour the ‘closed or exclusive’ type of plurilateral agreements. The latter have no place in the WTO. The key issue for reform that has been highlighted by various members is the continued use of ‘consensus’ in the WTO. The Marrakesh Agreement establishing the WTO is clear that the “WTO shall continue the practice of decision-making by consensus followed under GATT 1947” Consensus may be painstakingly difficult to achieve, but as the Peter Sutherland Commission on the Future of the WTO put it: “voting structure in the WTO can be manifestly unfair” Given this, a serious attempt needs to be made to achieve consensus for the launch of another round of trade negotiations. Since the Doha Round has effectively been torpedoed by some developed countries, the launch of a new ‘SDG round of trade negotiations’. Such a round would achieve multiple objectives for the WTO. First, it is hard to disagree with the Sustainable Development Goals (SDGs), agreed to by all countries. Second, it will provide the much-needed endorsement for free trade and will be successful in co-opting the developing countries and least-developed countries, who appear disillusioned with the abandonment of the Doha Development Agenda. Third, with anti-globalisation forces on the rise, it is important to demonstrate a direct link between trade and development that will help WTO members in achieving the SDGs that are so vital for global peace and prosperity.

The key issue for reform that has been highlighted by various members is the continued use of ‘consensus’ in the WTO. Consider agriculture, arguably the most difficult negotiating subject at the WTO. If it is included as part of the proposed ‘SDG Round,’ then SDG 2 provides sufficient guidance for these negotiations — end hunger, achieve food security and promote sustainable agriculture. Any negotiated outcome in agriculture must contribute to these objectives. The US and EU have long subsidised their agriculture. What developing countries and least-developed countries are asking for is the right to feed themselves and secure some market access for their exports. The credibility of the WTO depends on these demands being met.[23]

IV. CONCLUSIONS

India has stayed out of the plurilateral initiatives on investment facilitation, e-commerce and services (Trade in Services Agreement). TISA is a negotiation between a handful of countries and India is perhaps justified in staying out. However, the other two negotiations relating to investment facilitation and e-commerce deserve reconsideration by India. As many as 98 WTO members have joined the investment plurilateral initiative and there is no plausible reason for India to stay out. On the other hand, e-commerce is a difficult area for India, particularly because of the free flow of data and data localisation. But India must join the negotiations to influence it from within. This is even more important given India’s recent decision to walk out of the Regional Comprehensive Economic Perspective. It is crucial for future trade talks to be anchored in the SDGs. This alone will help the WTO achieve the objectives laid down in the Marrakesh Agreement establishing the organisations — raising standards of living, ensuring full employment, the optimal use of resources in accordance with the objective of sustainable development and finally, to ensure that this happens for all countries at different levels of economic development. A new ‘SDG Round’ of trade negotiations that promises to do this has the potential to not only attract the full consensus of all WTO members but could also help resuscitate a moribund WTO.[23]

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