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WORLD TRADE AND DEVELOPMENT REPORT 2026

Multilateralism Under Pressure



RIS

Research and Information System
for Developing Countries

विकासशील देशों की अनुसंधान एवं सूचना प्रणाली



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**Research and Information System
for Developing Countries**

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Message

प्रो. रमेश चन्द
सदस्य
Prof. Ramesh Chand
MEMBER



Key Message

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The global trading system is passing through a difficult period, marked by rising uncertainty, evolving policy priorities, and growing concerns over food security. For developing countries, agriculture remains central, not only as a source of livelihoods for millions, but also as a strong pillar of economic stability and social well-being.

In this context, the *World Trade and Development Report (WTDR) 2026*, the flagship publication of the *Research and Information System for Developing Countries (RIS)*, is both timely and relevant. The report brings into focus the complex relationship between agriculture, trade, and development, while also engaging with several long-standing and key emerging issues at the World Trade Organization (WTO).

As countries prepare for the Fourteenth WTO Ministerial Conference (MC14) in Yaoundé, there is a clear need to ensure that WTO agricultural trade rules support food security, safeguard farmer livelihoods, and provide adequate policy space for developing countries. The Report brings forward the state of play in WTO agricultural negotiations and the need for a Permanent Solution to Public Stockholding for food security. What strengthens this Report is its consultative and evidence-based approach. It is enriched by contributions from more than thirty eminent practitioners, former trade negotiators, and academics, bringing diverse and experienced perspectives to the analysis. This is further supported by an extensive series of brainstorming sessions, involving policymakers, researchers, and practitioners, ensuring that the Report reflects the key issues and complexities of negotiations at the WTO.

I commend RIS for this timely and important contribution. I am confident that this Report will serve as a valuable reference for the trade negotiators, policymakers, and researchers, and will contribute to shaping a more balanced, inclusive, and development-oriented trading system.

(Ramesh Chand)

Date: 17th March, 2026





Message

राजेश अग्रवाल
RAJESH AGRAWAL



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MESSAGE

The Fourteenth Ministerial Conference (MC14) of the World Trade Organization (WTO) scheduled to be held from 26-29 March 2026, carries with it the weight of expectations from developing and least-developed countries, who have been striving for a trading system that truly upholds their interest.

The Research and Information System for Developing Countries (RIS) Flagship World Trade and Development Report 2026 (WTDR 2026) is being published at a critical juncture. For those engaged in negotiations, it offers research-based and development-focused analysis.

As I have been informed, almost a dozen of brainstorming sessions brought together policymakers, economists, trade experts, former ambassadors, and practitioners to discuss each issue relevant to the upcoming ministerial engagements.

I congratulate RIS for this well-timed and substantive contribution. India's engagement with the multilateral trading system has consistently been guided by the conviction that trade must serve development. By combining empirical analysis, historical perspective and insights drawn from trade negotiations, this Report makes a meaningful contribution to the ongoing discourse on trade and development.

I am confident that the WTDR 2026 will serve as a useful reference for policymakers, practitioners and scholars as they engage with the emerging opportunities and pressing challenges facing the multilateral trading system.


(Rajesh Agrawal)

Place: New Delhi
Date: March 18, 2026

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Message

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Message



The 'World Trade and Development Report (WTDR) 2026', brought out by the Research and Information System for Developing Countries (RIS), is both timely and significant. The WTDR 2026 covers important subjects in the context of forthcoming WTO Ministerial Conference in Yaoundé. Grounded in rigorous analysis, the papers contributed by eminent trade policy experts and scholars provide valuable insights on important matters on the agenda of the WTO Ministerial Conference. I am confident that the Report will enrich policy discourse and will be a useful input in shaping a more balanced, credible, and development-oriented multilateral trading system.

(Sudhakar Dalela)

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Message

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Key Message



The 14th Ministerial Conference (MC14) of the World Trade Organization (WTO), to be held in Yaoundé from 26-29 March 2026, comes at an important moment for the multilateral trading system. Questions relating to equity, development, and the continued relevance of a rules-based trading order for developing countries are increasingly central to discussions on the future direction of the WTO.

In this context, the World Trade and Development Report (WTDR) 2026, the flagship publication of the Research and Information System for Developing Countries (RIS), makes a timely contribution to the ongoing discussions on global trade governance. Building on earlier editions, the WTDR 2026 continues RIS's effort to examine the evolving relationship between trade and development and to bring perspectives from the Global South into global policy discussions.

What gives this Report particular strength is the process that shaped it. Its analytical foundations draw upon a rigorous and inclusive consultative exercise through a series of Brainstorming Sessions, comprising twelve thematic sessions. More than thirty eminent academics, practitioners, and former trade negotiators contributed their insights and experience to this report, reflecting the diversity of views within the global trade community.

I hope that the analysis and perspectives presented in this Report will serve as a useful reference for policymakers, scholars, and stakeholders engaged in discussions on the future of the multilateral trading system, including in the lead-up to MC14.


(Dr. Senthil Pandian C.)

Geneva, 17 March 2026



Preface

World trade is passing through a turbulent time. Geopolitical conflicts and geoeconomic fragmentation on the one hand and the rise in industrial policy approaches and wayward use of tariffs on the other has mired the multilateral trading system in recent times. Even when more than 72 per cent of international trade is happening on MFN basis despite the disruptions, questions are being raised on such fundamental principles that laid the foundation of high global trade growth since the inception of the World Trade Organization (WTO). Its dispute settlement mechanism is dysfunctional, and its deliberative function is progressing at a pace several Members are frustrated with. The 14th Ministerial Conference (MC14) of the WTO in Yaoundé, Cameroon on 26-29 March 2026 is expected to offer an institutional response to these challenges.

Since 2003, the Research and Information System for Developing Countries (RIS) has been publishing its flagship publication, the *World Trade and Development Report*, ahead of important WTO Ministerial Conferences to provide analytical insights and policy perspectives for developing countries. The present edition of the *World Trade and Development Report (WTDR 2026)* has been prepared by the RIS to situate the key issues before MC14 from a development perspective.

Reinforcing a secure and predictable, inclusive, and rule-based multilateral trading system is essential for ensuring that global trade continues to contribute to shared prosperity and sustainable development. In this context, WTDR 2026 draws upon the outcomes of a rigorous and extensive consultative process through a *Brainstorming Series* comprising 12 thematic sessions that brought together more than 100 distinguished experts, policymakers, trade negotiators, diplomats, and scholars. The discussions were designed to bring together academic research and policy practice, ensuring that the Report is firmly grounded in negotiating realities and development priorities. It focuses on issues that lie at the heart of the developmental concerns of the Global South, contributing an informed analysis of how the multilateral trading system can better respond to contemporary challenges while advancing inclusive development outcomes.

I compliment the RIS faculty and the external experts who have put together a comprehensive analysis and policy recommendations on issues that are engaging the WTO Member countries at MC14 and beyond. As stakeholders head to Yaoundé, they will find in the Report insights that enable them to engage in informed participation in the negotiations inside the Conference premises and discussions outside in the Business Forum, the Civil Society Dialogue, the Trade + Sustainability Hub and other side events. RIS is committed to serve as an effective think-tank of the developing countries.

Sachin Kumar Sharma
Director General, RIS



Acknowledgements

The chapters of the *World Trade and Development Report 2026* (WTDR 2026) have been jointly prepared by the RIS research team led by Prof. Sachin Kumar Sharma, Director General along with external subject experts. The members of the RIS team include Mr. Rajeev Kher, Prof. Sachin Kumar Sharma, Prof. S K Mohanty, Dr. Prabir De, Dr. Atul Kaushik, Dr. Sabyasachi Saha, Dr. Priyadarshi Dash, Dr. Pankaj Vashisht, Dr. Amit Kumar, Dr. Sushil Kumar, Dr. Pankhuri Gaur, Dr. Anshuman Gupta, Dr. Renu Mann, Mr. Vaasu Aggarwal, Ms. Paavni Mathur, Ms. Lakshmi Swathi Ganti, Ms. Alisha Goswami, Mr. Pragyan Deep Aggarwal, Mr. Ayush Tiwari, Ms. Riddhi Lakhani, Ms. Tanya Malhotra, and Ms. Alaknanda Mishra. The external experts include Dr. Harsha Vardhana Singh, Dr. Pritam Banerjee, Mr. Abhijit Das, Prof. Mukesh Bhatnagar, Dr. Talha Akbar Kamal, Dr. Suvayan Neogi, Mr. G D Lohani, Mr. Anwar Hussain Shaik, Mr. Zaki Hussain, Ms. Shailja Singh, Ms. R V Anuradha, Ms. Teesta Lahiri, Mr. Amit Randev, Ms. Kanika Karwal, Ms. Yogeshwari Mahajan, Ms. Palkin Ratna, and Ms. Kamna Chaudhary. The Report has greatly benefited from anonymous reviewers.

In order to gather expert views on each subject addressed in the Report, RIS convened a brainstorming series with 12 sessions. We gratefully thank the chairpersons and moderators of these sessions for steering the discussions. They include Amb. (Dr.) Mohan Kumar, Professor & Dean (Strategic & International Initiatives), Jindal School of International Affairs and former Chairman, RIS; Mr. Rajeev Kher, Distinguished Fellow, RIS and former Commerce Secretary, Government of India; Amb. J. S. Deepak, former Telecom Secretary, Government of India and former Permanent Representative of India to the WTO, Geneva; Mr. Anup Wadhawan, former Commerce Secretary, Government of India; Mr. Amit Yadav, former Secretary, Government of India; Amb. (Dr.) V. S. Seshadri, former Vice Chairman, RIS; Amb. Jayant Dasgupta, Member, Governing Council of RIS; Dr. Harsha Vardhana Singh, former Deputy Director General, WTO and Chairman IKDHVAJ Advisers LLP; Prof. Nagesh Kumar, Director and Chief Executive, Institute for Studies in Industrial Development (ISID) and former DG, RIS; Prof. (Dr.) Sheela Rai, Dean, Research and Internationalization, National Law University Odisha; and Prof. Sachin Kumar Sharma, DG, RIS.

We also express our gratitude to the discussants during these sessions. They include Ms. Neetu Kumari Prasad, Joint Secretary, Department of Fisheries, Government of India; Mr. Aashish Chandorkar, Counsellor, Permanent Mission of India to the WTO, Geneva; Ms. Tanu Singh, First Secretary, Permanent Mission of India to the WTO, Geneva; Ms. Sangeeta Godbole, Former Principal Commissioner, Income Tax; Dr. Rajan Sudesh Ratna, former Deputy Head and Senior Economic Affairs Officer, United Nations ESCAP South and South West Asia Office; Prof. C. Veeramani, Director, Centre for Development Studies (CDS) Thiruvananthapuram; Prof. Dipankar Sen Gupta, Department of Economics, University of Jammu; Prof. Surender Kumar, Professor at the Delhi School of Economics; Dr. Surendar Singh, Associate Professor, Jindal School of Liberal Arts and Humanities; Mr. Anil Jauhri, Visiting Fellow, RIS & Former CEO of the NABCB; Dr. Arpita Mukherjee, Professor, ICRIER; Dr. Nitya Nanda, Professor, Council for Social Development (CSD); Ms. Vahini Naidu, Programme Coordinator, Trade for Development Programme (TDP) of the South Centre; Mr. Sebastian Mathew, Independent Advisor, Small-scale Fisheries; Ms. Shiny Pradeep, Assistant Professor, Centre for Trade and Investment Law (CTIL); and Ms. Pallavi Arora, Legal Consultant, Centre for WTO Studies (CWS).

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Views, opinions, and analysis provided in this Report are solely those of the author(s) and do not represent the official policy, position, or views of the Government of India or the Research and Information System for Developing Countries (RIS). Usual disclaimers apply.

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List of Abbreviations

AB	Appellate Body
AFS	Agreement on Fisheries Subsidies
AoA	Agreement on Agriculture
ASCM	Agreement on Subsidies and Countervailing Measures
CBAM	Carbon Border Adjustment Measure
CBDR	Common But Differentiated Responsibilities
CBDR-RC	Common But Differentiated Responsibilities and Respective Capabilities
CMF	Conciliation and Mediation Facility
CoA	Committee on Agriculture
CoA-SS	Committee on Agriculture in Special Session
CTCN	Climate Technology Centre and Network
CTD	Committee on Trade and Development
CTE	Committee on Trade and Environment
CTG	Council for Trade in Goods
CTS	Council for Trade in Services
DDA	Doha Development Agenda
DSB	Dispute Settlement Body
DSM	Dispute Settlement Mechanism
DSU	Dispute Settlement Understanding
DWF	Distant Water Fishing
EEZ	Exclusive Economic Zone
EST	Environmentally Sound Technologies
ET	Electronic Transmission
EUDR	European Union's Deforestation Regulation
FBTAMS	Final Bound Total Aggregate Measurement of Support
FDI	Foreign Direct Investment
FFSR	Fossil Fuel Subsidy Reform
FTAs	Free Trade Agreements
GATT	General Agreement on Tariffs and Trade
GC	General Council
GFSEC	Global Forum for Steel Excess Capacity
GN	Global North
GS	Global South

GTA	Global Trade Alert
GVC	Global Value Chains
GWP	Gross World Product
IFD	Investment Facilitation for Development
ISDS	Investor-State Dispute Settlement
ITA	Information Technology Agreement
IUU	Illegal, Unreported, and Unregulated
JSIs	Joint Statement Initiatives
LDCs	Least Developed Countries
MCs	WTO, Ministerial Conferences
MFN	Most Favoured Nation
MPIA	Multi-Party Interim Appeal Arbitration Arrangement
NAMA	Non-Agriculture Market Access
NIPO	New Industrial Policy Observatory
NPS	Non-Product Specific Support
PM-MKSSY	Pradhan Mantri Matsya Kisan Samridhi Sah-Yojana
PMMSY	Pradhan Mantri Matsya Sampada Yojana
PPP	Purchasing Power Parity
PSH	Public Stockholding
PSS	Product-Specific Support
S&DT	Special and Differential Treatment
SDR	Services Domestic Regulation
SPS	Phytosanitary Measures
SSM	Special Safeguard Mechanism
TBT	Technical Barriers to Trade
TESSD	Trade and Environmental Sustainability Structured Discussions
TIG	Trade in Goods
TIS	Trade in Services
TRIPS	Trade-Related Aspects of Intellectual Property Rights
TRQs	Tariff Rate Quotas
UNCTAD	United Nations Conference on Trade and Development.
UNFCCC	United Nations Framework Convention on Climate Change
WGTT	Working Group on Technology Transfer
WGTTT	Working Group on Trade and Transfer of Technology
WPEC	Work Programme on Electronic Commerce
WTO	World Trade Organisation



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The Fragmenting Trade Order: What is at Stake for the WTO?

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Alisha Goswami and Paavni Mathur*

1.1. Introduction

At the 2026 Annual Conference of the World Economic Forum in Davos, Canadian Prime Minister Mark Carney warned of *“a rupture in the world order - the end of a nice story and the beginning of a harsh reality where geopolitics among the great powers is not subject to any constraints.”* He emphasized how *“great powers have begun using economic integration as weapons. Tariffs as leverage. Financial infrastructure as coercion. Supply chains as vulnerabilities to be exploited”*. He further cautioned that *“the multilateral institutions - the WTO, the UN, the COP - the very architecture of collective problem solving, are under threat.”*¹ These remarks reflect wider concerns among countries over the weakening of the rules and institutions that have long governed international economic cooperation, especially at the World Trade Organisation (WTO). Many developing countries have been articulating the same for decades, but their concerns have not been adequately appreciated by the developed countries at the WTO. It is against this backdrop that the 14th Ministerial Conference (MC14) of the WTO is set to convene at a critical juncture for the multilateral trading system.

Established in 1995 to uphold a rules-based global trading order, the WTO is today grappling with mounting pressures arising from geopolitical tensions, the resurgence of industrial policy, and the increasing

use of trade measures linked to economic security and sustainability. These developments are unfolding alongside several structural challenges confronting the WTO. **First**, the paralysis of the WTO's Appellate Body since 2019 has weakened the dispute settlement system, long considered the “crown jewel” of the institution. **Second**, the WTO's negotiating function has faced persistent stalemate since the launch of the Doha Round, with limited progress on core issues such as agriculture, food security, and making Special and Differential Treatment (S&DT) provisions precise, operational and effective. Divergences in Member positions have increasingly made it difficult to achieve consensus. Moreover, negotiations have increasingly shifted toward issue-specific initiatives outside the multilateral framework, such as e-commerce and investment facilitation. **Third**, the resurgence of industrial policy and economic security concerns has led many economies to pursue prohibited subsidies, local content requirements, and strategic trade measures to support domestic industries, particularly in sectors such as green technologies. **Fourth**, the proliferation of unilateral trade measures, including tariffs, climate-related regulatory measures such as Carbon Border Adjustment Mechanisms (CBAM), as well as environmental regulatory measures such as deforestation-related regulations, has further complicated the multilateral trade governance. These

measures raise serious concerns regarding their compatibility with WTO rules and principles.

Collectively, these developments risk fragmenting the multilateral trading system, eroding confidence in multilateral trade rules, and tilting the institution further against the interests of a large number of developing countries. Against this backdrop of institutional strain, geopolitical tensions, and policy fragmentation, the MC14 assumes particular significance as a forum for Members to confront the widening gap between existing WTO rules and the evolving realities of global trade (see Box 1.1).

Ahead of the MC14, Members of the WTO met at the General Council in March 2026 to review the state of ongoing negotiations and prepare the agenda for the ministerial. The discussions focused on key negotiating areas, including agriculture, dispute settlement reform, and broader institutional reform of the WTO.² Members emphasized the need for political guidance from ministers on advancing negotiations and addressing systemic challenges facing the multilateral trading system. As a result, the Director-General of the WTO highlighted that “MC14 will be consequential for the organization” and a “turning point Ministerial”. At the same time, expectations for concrete outcomes remain limited, with the MC14 outcomes likely to be on the process and to clarify the contours of reform discussions, rather than deliver substantive agreements.

This chapter is structured in two parts. Part A examines the role of the WTO and some key systemic

challenges confronting the multilateral trading system. Part B provides an overview of the key negotiating areas and emerging issues in the lead-up to the MC14, analyses the positions and priorities of different WTO Members, and explores strategic pathways for developing countries and the Global South.

Part A

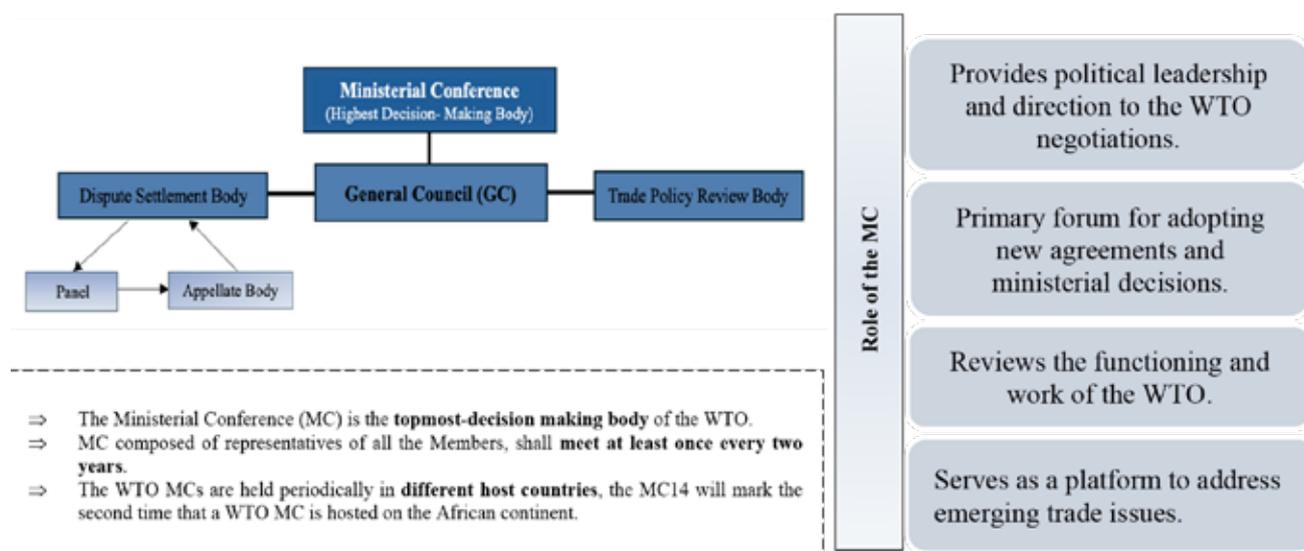
1.2. Multilateralism Under Pressure

The successor to the General Agreement on Tariffs and Trade (GATT), the WTO is the institution governing the multilateral rules of international trade, seeking to promote predictability, fairness, and transparency in the multilateral trading system. However, evolving geopolitical dynamics and emerging global challenges are placing increasing pressure on this system. In this context, Section 1.2.1 examines the role of the WTO, while Section 1.2.2 analyses the key systemic challenges confronting it.

1.2.1. Role of the WTO

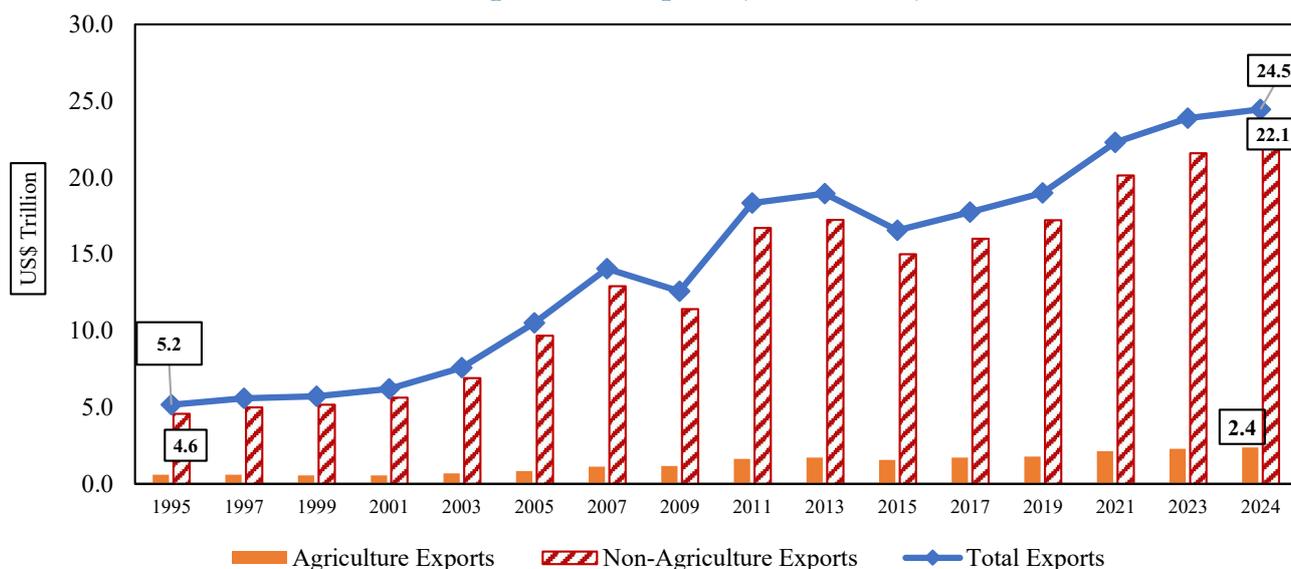
Over the past three decades, the WTO has played a central role in expanding global trade. Since its establishment in 1995, world merchandise exports have risen from roughly US\$ 5 trillion to around US\$ 24 trillion in 2024. During the same period, agricultural exports increased from about US\$ 590 billion to well over US\$ 2 trillion, while non-agricultural exports grew from roughly US\$ 4.6 trillion to more than US\$ 22 trillion (see Figure 1.1). Global exports of services have also

Box 1.1: Importance of the WTO Ministerial Conference (MC)



Source: Authors' compilation based on Article IV, Marrakesh Agreement Establishing the WTO and the WTO official website.

Figure 1.1: Trends in Global Merchandise, Agriculture and Non-Agriculture Exports (US\$ Trillion)



Source: Authors' compilation based on the WTO Stats Database.

shown a steady increase, reaching approximately US\$ 9 trillion in 2024, according to the International Trade Centre Trade Map database. Today, nearly 98 percent of global trade is accounted for by the WTO Members³, highlighting the organization's extensive reach and influence.

As a Member-driven organization, the WTO reflects wide membership, with 166 Members and a further 22 countries currently in the accession process (see Table 1.1). The membership as a whole makes all major decisions. This inclusive structure reinforces its central role in shaping the global trading system. Guided by the objectives set out in the Preamble to

the Marrakesh Agreement Establishing the WTO, the organization aims to ensure that international trade contributes to raising the standards of living, ensuring full employment, expanding production and trade in goods and services, and promoting sustainable development.⁴

The WTO operates on a set of core principles that underpin its legal framework and guide international trade among its Members (see Figure 1.2). Key principles include: *First, the principle of non-discrimination*. It requires that Members shall not discriminate between their trading partners; instead, they must accord equal treatment to all WTO

Table 1.1: Countries in the WTO Accession Process

Sr. No.	Country Name	Sr. No.	Country Name	Sr. No.	Country Name
1.	Algeria	9.	Equatorial Guinea	17.	Serbia
2.	Andorra	10.	Ethiopia	18.	South Sudan
3.	Azerbaijan	11.	Iran	19.	Sudan
4.	Bahamas	12.	Iraq	20.	Syrian Arab Republic
5.	Belarus	13.	Lebanese Republic	21.	Turkmenistan
6.	Bhutan	14.	Libya	22.	Uzbekistan
7.	Bosnia and Herzegovina	15.	Sao Tomé and Príncipe		
8.	Curaçao	16.	Somalia		

Source: Authors' compilation based on the WTO website.

Note: As on 15th March 2026.

Members. Thus, the principle of Most-Favoured Nation (MFN) requires that any advantage granted to one trading partner must be extended to all other WTO Members. Additionally, the National Treatment (NT) principle requires that imported goods, once they have entered a market, be treated no less favourably than domestically produced goods, i.e., there should be no discrimination between a country's own and foreign products. *Second, Freer Trade and Predictability*, encourages the progressive reduction of trade barriers, including customs duties (tariffs) and non-tariff barriers such as quotas. The Trade Policy Review Mechanism promotes transparency by reviewing Members' trade policies, and the Dispute Settlement Mechanism resolves trade disputes between Members. *Third, Promoting Fair Competition*, through a system of rules to address unfair trade practices such as dumping and subsidization. *Fourth, Special and Differential Treatment for Developing countries* by providing more flexibility and special privileges for developing countries, including Least Developed Countries (LDCs), given differences in socio-economic factors.⁵ More than three-quarters of WTO Members are developing countries and countries in transition to market economies.⁶

While the WTO has played a pivotal role in shaping the rules-based multilateral trading system, the evolving dynamics of global trade are increasingly testing the effectiveness of its institutional framework

and the future relevance of multilateralism. The next section, therefore, examines the key challenges confronting the WTO.

1.2.2 Challenges and Systemic Pressures Facing the WTO

The multilateral trading system is increasingly shaped by the growing intersection between trade policy and broader geopolitical tensions, economic security concerns, and sustainability objectives, developments that are challenging the effectiveness of existing WTO rules and principles. At the same time, the WTO faces internal institutional pressures, including the continued dysfunction of its dispute settlement system and a prolonged stalemate in its negotiating function. The following subsections examine these emerging challenges and systemic pressures and analyse their implications for the WTO's core principles and the effectiveness of the multilateral trading system.

1.2.2.1 The Appellate Body Crisis

The WTO Dispute Settlement Body (DSB), a two-tier mechanism comprising a Panel and an Appellate Body, has long been a central pillar of the rules-based multilateral trading system. Members could challenge trade measures adopted by other Members, thereby ensuring that international trade is governed by agreed rules. It provided a forum of a level playing field, where

Figure 1.2: Key Principles of the WTO



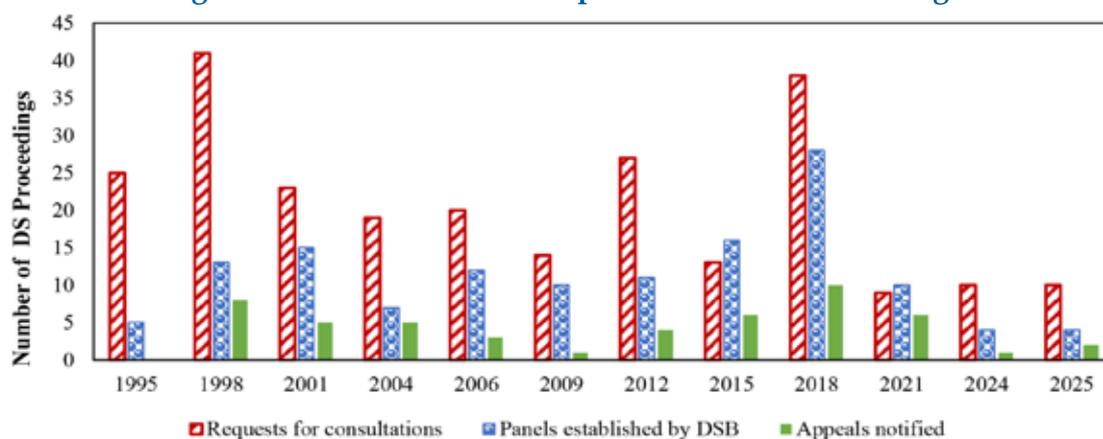
Source: Authors' compilation based on the WTO website.

even a developing country could bring disputes against a developed country. In several disputes, Members such as Brazil and Antigua and Barbuda successfully challenged measures adopted by the United States (US) and the European Union (EU).⁷ Thus, the DSB contributed to maintaining balance, accountability, and predictability in international trade relations. However, the WTO Appellate Body (AB), often described as the “crown jewel” of the multilateral trading system, is currently dysfunctional.

Beginning in 2017, the US began blocking all new appointments to the AB⁸, preventing the replacement of Members whose terms had expired. The US raised concerns about judicial overreach and AB’s interpretative practices. By December 2019,

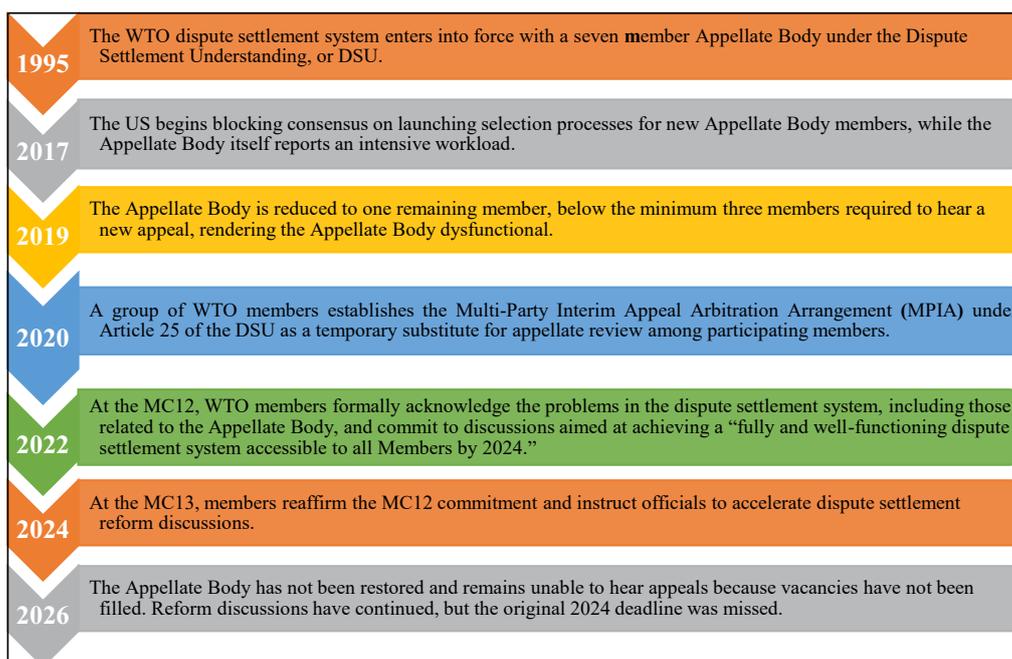
the number of AB members had fallen below the minimum of three required to hear appeals, effectively rendering the appellate mechanism inoperative. The consequences of this have been significant. In several disputes, parties have appealed panel reports to what is commonly referred to as the “appeal into the void,” whereby the filing of an appeal prevents the adoption of the panel report in the absence of a functioning AB to review it. As a result, the enforcement of WTO rulings has been weakened, and the credibility of the DSB has been called into question. Although Members continue to initiate disputes, as of 2026, more than thirty cases remain “in the void”, creating growing uncertainty regarding the enforceability of WTO rules (see Figure 1.3).

Figure 1.3: Trends in WTO Dispute Settlement Proceedings



Source: Authors’ compilation based on data retrieved from Dispute Settlement Activity, WTO.

Figure 1.4: WTO Appellate Body Crises Timeline



Source: Authors’ compilation based on information extracted from the WTO website.

WTO Members formally acknowledged the problems in the dispute settlement system, including the AB, at MC12, and affirmed their commitment to achieving a fully functional system by 2024 (see Figure 1.4). However, negotiations on dispute settlement reform are still ongoing, and there appears to be a stalemate.

1.2.2.2. Stalemate in Negotiating Function: Existing Asymmetries vs Emerging Issues

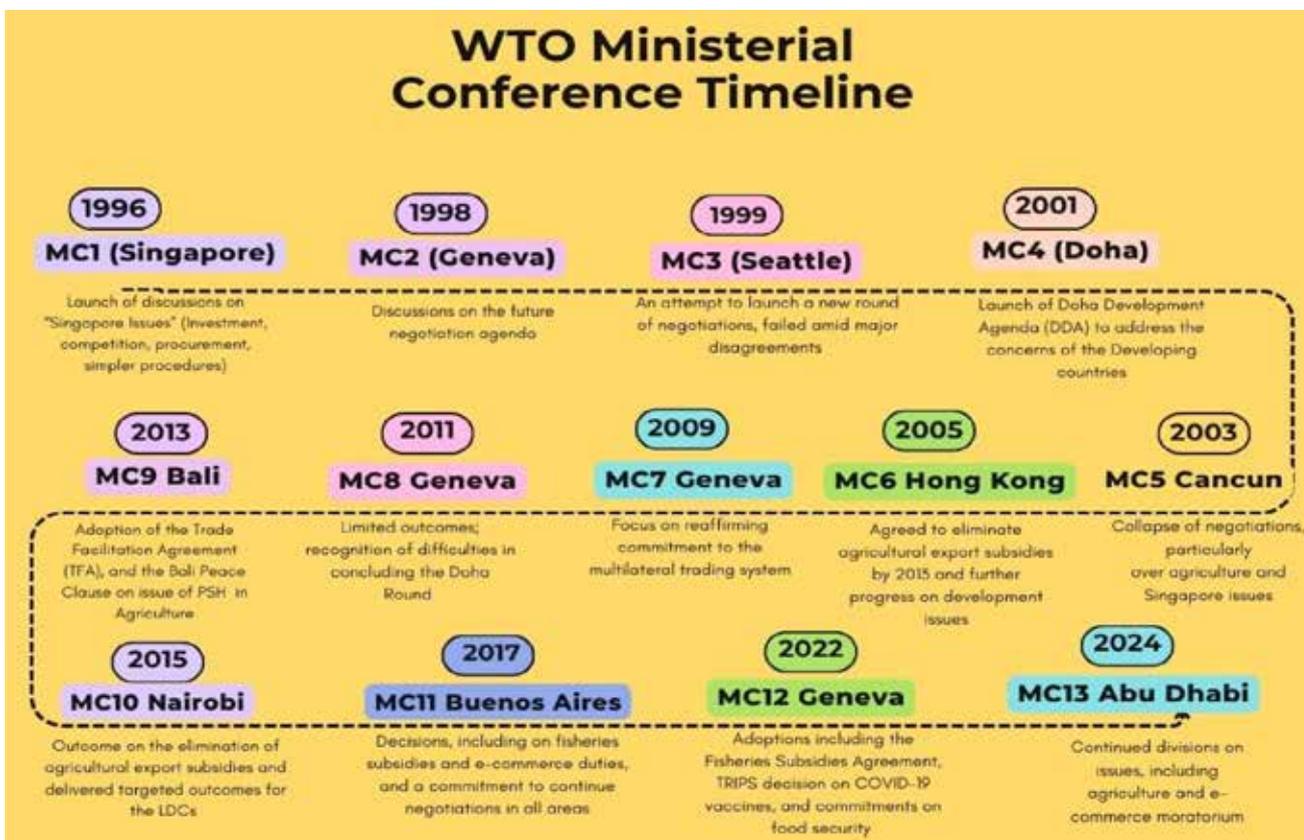
The WTO's negotiating function remains deeply constrained. The Doha Round, launched at the MC4 in 2001, was conceived as a "development round" aimed at addressing imbalances in earlier trade agreements and placing development concerns at the centre of the negotiations.⁹ However, progress on several core negotiating issues, particularly agriculture, food security, and S&DT, has remained limited. Persistent and significant divergences in Members' approaches in negotiations have further complicated consensus-building. While many developing Members continue to emphasise the need to deliver outcomes on longstanding mandated issues, several developed Members have prioritised new rule-making initiatives in areas including e-commerce, investment facilitation,

promulgating the complexity of negotiations. While these discussions are important, many developing countries argue that prioritising emerging issues before resolving longstanding asymmetries in provisions and sidelining the development mandate, would weaken inclusive multilateralism.

At the same time, S&DT provisions within the WTO Agreements, designed to provide policy flexibility and implementation support for developing countries, have become increasingly contested. In recent years, some Members have questioned the continued applicability of S&DT to larger developing economies. Calls for "differentiation" among developing countries have intensified, and several proposals tabled in the lead-up to MC14 have created uncertainty regarding future development flexibilities within the WTO.¹⁰

Although recent MCs have produced targeted outcomes, such as the Agreement on Fisheries Subsidies, progress on the broader development agenda has remained limited (see Box 1.2). This has reinforced concerns about the dilution of development priorities within the multilateral negotiating framework and highlights the persistence of stalemate in the WTO's negotiating function.

Box 1.2: Roadmap to MC14 at Yaoundé, Cameroon



Source: Authors' Compilation based on Ministerial Conferences Webpage, WTO.

1.2.2.3. Resurgence of Subsidies and Industrial Policies

The resurgence of industrial policy refers to the increasing use of government interventions such as import tariffs, subsidies, tax incentives, local-content requirements, and strategic investment programs to promote domestic industries considered vital for economic growth, technological leadership, and national security.¹¹ Major economies, including the US, the EU, and China, are adopting large-scale industrial strategies to support sectors such as semiconductors, clean energy, and critical technologies. For instance, the Made in China initiative, the US Inflation Reduction Act, and the EU Green Deal.¹²

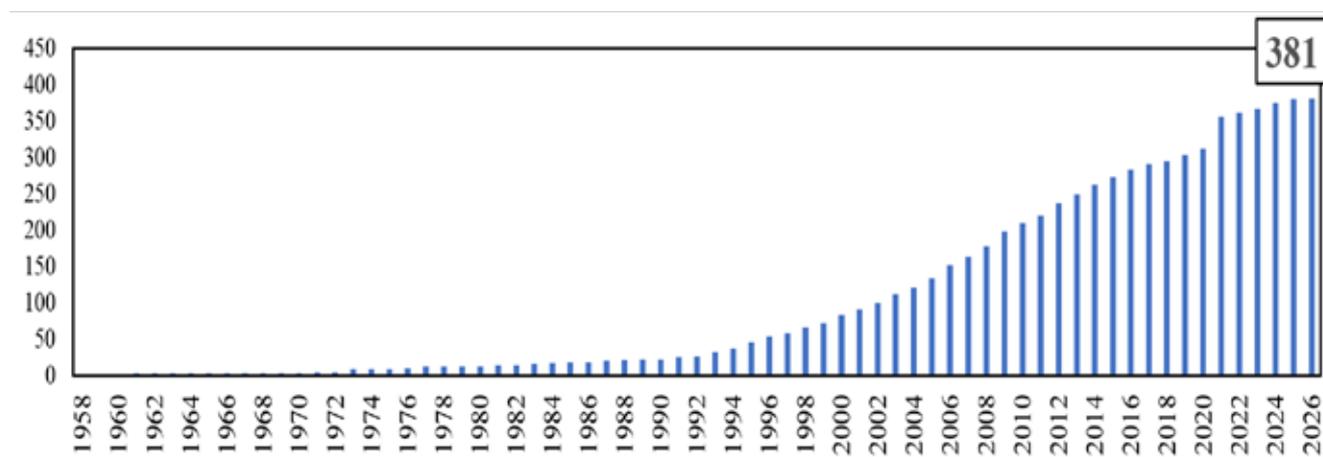
Extensive subsidies and preferential support for domestic industries can distort competition, disadvantage foreign firms, and encourage retaliatory measures by other countries. In parallel, countries are increasingly using tariffs and other unilateral trade measures. While these policies are often justified on grounds of economic resilience, national security, and climate transition, they pose significant challenges to the principles underpinning the WTO. They may raise concerns regarding their compatibility with WTO rules. As more countries adopt such strategies, the risk of subsidy races and policy fragmentation increases, potentially fragmenting global supply chains; thereby testing the ability to ensure a level playing field in international trade.

1.2.2.4. Trade Deals: Building Blocks or Stumbling Blocks

Given the slow progress in negotiations and emerging challenges, countries increasingly turn to regional and bilateral arrangements to secure preferential access and anchor supply chains within trusted partner networks, producing a surge in regional trade agreements (RTAs). This shift contributed to a marked expansion in RTAs: their cumulative number rose from 26 in 1992 to 134 in 2005 and 381 in 2026 (see Figure 1.5).

This proliferation has revived longstanding debates over whether RTAs act as “building blocks” or “stumbling blocks” to multilateralism. Under the WTO rules, RTAs are permitted as an exception to the MFN principle, provided that they meet certain conditions.¹³ Building on the WTO provisions, contemporary Free Trade Agreements (FTAs) go beyond existing multilateral disciplines (“WTO Plus”), addressing emerging areas such as sustainability, human rights, labour standards, and gender-related provisions. As some of these areas are not trade-related and many related provisions in FTAs could open the doors for countries to impose a plethora of non-tariff barriers. Furthermore, if countries increasingly pursue selective trade arrangements outside the WTO framework governing RTAs¹⁴, they risk fragmenting trade rules, weakening the universality and coherence of the multilateral trading system, hence resulting in “stumbling blocks” to multilateralism.

Figure 1.5: Trend in Cumulative Number of Regional Trade Agreements in Force (RTAs)



Source: Authors' compilation based on data from the WTO Regional Trade Agreement gateway.

1.2.2.5. Unilateral Tariff Measures

1.2.2.5.1 Geopolitical Context

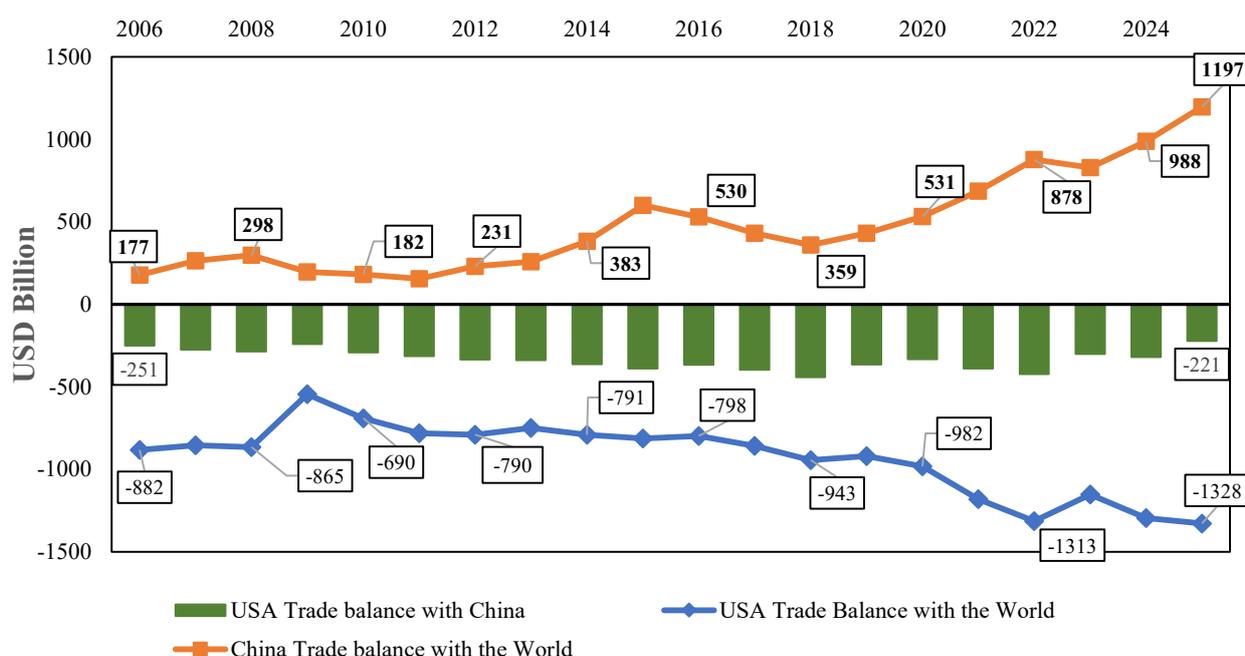
Rising geopolitical tensions and widening global trade imbalances have contributed to a renewed reliance on unilateral trade policy measures. Major economies, including the US and the EU, are increasingly using tariffs and regulatory instruments to pursue a range of economic and environmental objectives, respectively, further straining the multilateral trading system.

Within this evolving landscape, China has remained an important driver of global economic growth and trade. Its deepening integration into global supply chains and WTO accession in 2001 transformed China into the world's largest exporter and manufacturer, contributing significantly to global output growth.¹⁵ However, China's growth model produced a steadily expanding merchandise trade surplus that reached around US\$ 1 trillion in 2025 (see Figure 1.6), which drew increasing scrutiny from trading partners who argued that subsidized industries and market-access asymmetries had tilted the playing field.¹⁶

As China's surplus with the world widened, so too did the deficits of its major partners, making the imbalance a source of growing political and economic friction. The US represents the clearest case. The US bilateral merchandise deficit with China peaked at around US\$ 440 billion in 2018, becoming the central grievance behind a series of escalating trade actions. Since then, the US has responded by imposing higher tariffs on Chinese imports, prompting China to introduce retaliatory tariffs on US products.¹⁷

While the US-China bilateral deficit was the most politically charged expression of this imbalance, it was far from the only one. As depicted in Figure 1.6, the US trade deficit with the world has been increasing, where the merchandise trade deficit with the world at large exceeded US\$ 1.31 trillion in 2022. This widening global deficit reinforced the narrative in Washington that the US had been systematically disadvantaged by the existing trade architecture, not merely by China alone. However, this narrative completely ignores the substantial gains garnered by the US from other agreements at the WTO, especially the Trade-Related Aspects of Intellectual Property Rights (TRIPS) and Agreement and General Agreement on Trade in Services (GATS).

Figure 1.6: Trends in Trade Balance of USA and China with the World (2006-2025) (US\$ Billion)



Source: Authors' compilation based on trade data from ITC Trade Map.

1.2.2.5.2 Rise of Tariff Measures

Over the past decade, tariffs have re-emerged as a central instrument of US trade policy. Beginning in 2018 and more recently in 2025, tariffs have been deployed as instruments aiming to address persistent and widening goods trade deficits, perceived unfair trade practices, and national security concerns.¹⁸ This shift represents a departure from the earlier US commitment to tariff liberalisation under the multilateral trading system established by the WTO.¹⁹

Moreover, under the WTO rules, the US mainly relies on the national security exception under Article XXI of the GATT to justify the imposition of tariffs. Article XXI allows WTO Members to adopt trade restrictions they consider necessary for the protection of their essential security interests, particularly in situations related to war, emergency in international relations, or the protection of critical industries linked to national defence (see Box 1.4). In 2018, the US relied on Section 232 of the Trade Expansion Act to impose tariffs on steel and aluminium imports²⁰, arguing that excessive dependence on foreign suppliers threatened national security. These measures were notable because

they applied national security justifications to tariffs affecting multiple trading partners, which triggered several disputes at the WTO. Further, it raised concerns that such a broad interpretation of the WTO national security exception could increasingly be used to circumvent multilateral trade rules.

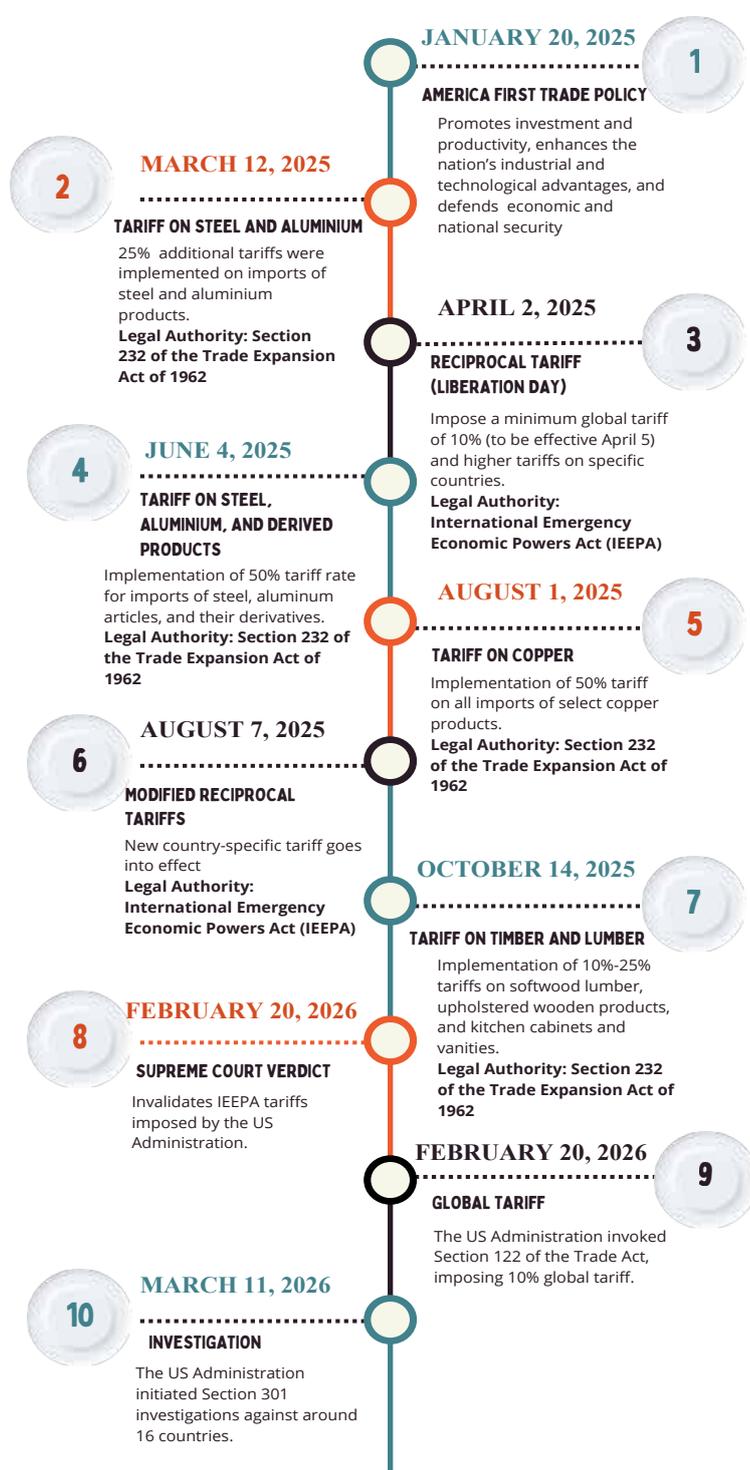
More recently, in 2025, the US administration invoked the International Emergency Economic Powers Act 1977 (IEEPA), declaring large and persistent US goods trade deficits an “unusual and extraordinary threat” to the US economy and national security. On this basis, a national emergency was declared, enabling the administration to impose tariffs aimed at addressing structural factors contributing to the deficit, including non-reciprocal tariffs and non-tariff barriers. The US administration first invoked IEEPA in February 2025 to tax goods from China, Mexico and Canada, citing fentanyl trafficking from those countries as an “emergency”.²¹ A few months later, on 2nd April 2025, infamously known as “Liberation Day”, the US administration announced sweeping reciprocal tariffs ranging from 10 per cent to 50 per cent on goods across virtually all US trading partners (see Table 1.2).²²

Table 1.2: US “Liberation Day” Reciprocal Tariffs

Countries	Tariff	Countries	Tariff	Countries	Tariff	Countries	Tariff
Algeria	30%	Fiji	32%	Malaysia	24%	South Korea	25%
Angola	32%	Guyana	38%	Mauritius	40%	Sri Lanka	44%
Bangladesh	37%	India	26%	Moldova	31%	Switzerland	31%
Bosnia and Herzegovina	35%	Indonesia	32%	Mozambique	16%	Syria	41%
Botswana	37%	Iraq	39%	Myanmar (Burma)	44%	Taiwan	32%
Brunei	24%	Israel	17%	Namibia	21%	Thailand	36%
Cambodia	49%	Japan	24%	Nauru	30%	Tunisia	28%
Cameroon	11%	Jordan	20%	Nicaragua	18%	Vanuatu	22%
Chad	13%	Kazakhstan	27%	Nigeria	14%	Venezuela	15%
China	34%	Laos	48%	North Macedonia	33%	Vietnam	46%
Côte d'Ivoire	21%	Lesotho	50%	Norway	15%	Zambia	17%
Democratic Republic of the Congo	11%	Libya	31%	Pakistan	29%	Zimbabwe	18%
Equatorial Guinea	13%	Liechtenstein	37%	Philippines	17%		
European Union	20%	Madagascar	47%	Serbia	37%		
Falkland Islands	41%	Malawi	17%	South Africa	30%		

Source: Authors' compilation based on Annex I, “Reciprocal Tariff Executive Order”, White House (2025).

US TARIFF TIMELINE



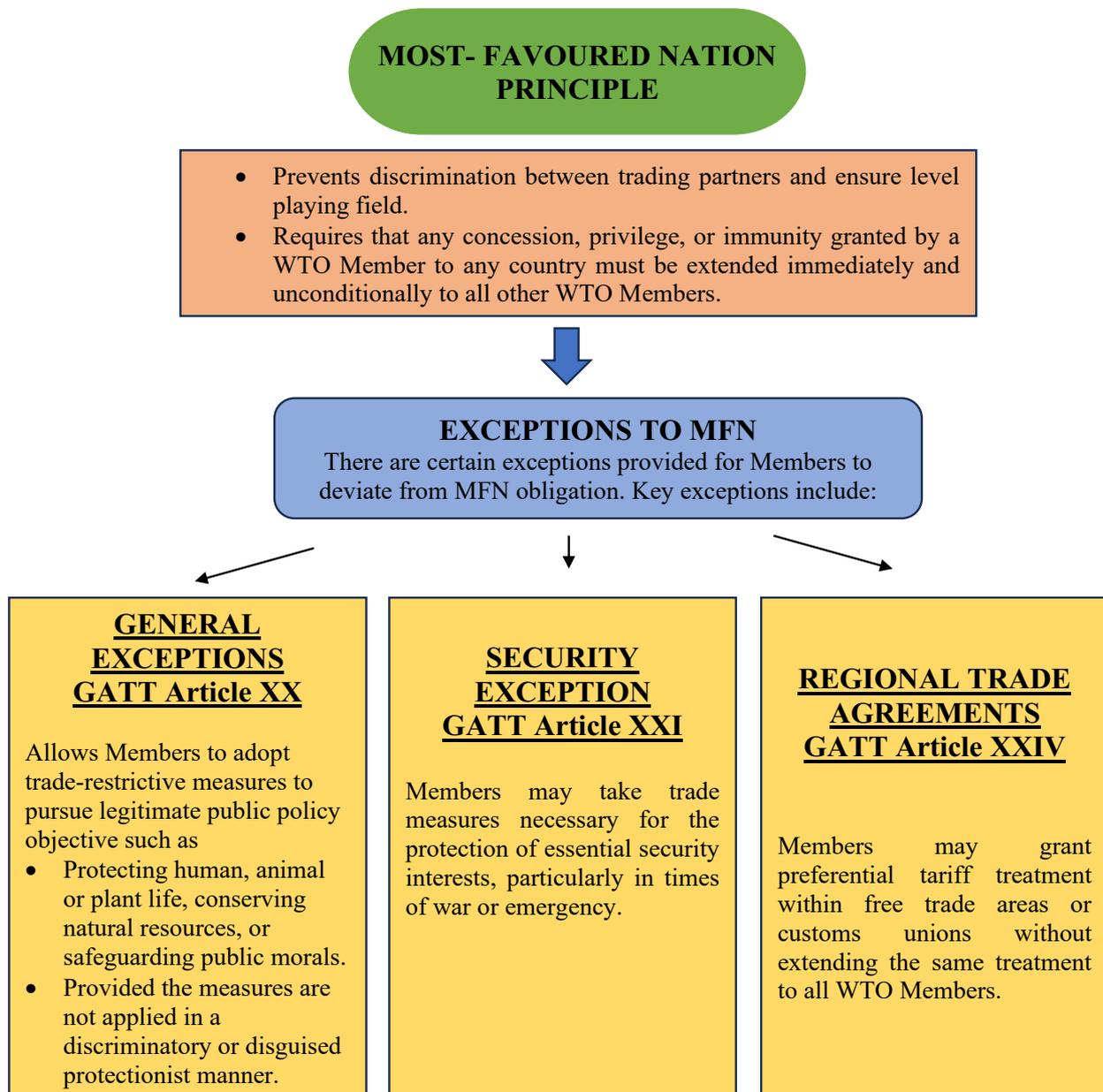
However, in February 2026, the US Supreme Court (SCOTUS) ruled that Tariffs imposed by the US President constitute a tax, and that IEEPA does not cover taxing imports.²³ The court said the US Congress, and not the president, has the power to create new taxes. Thereby, invalidating and rendering “reciprocal tariffs” imposed by the US Administration as “unconstitutional” (see Box 1.3).

In the period leading up to the judgment, a series of negotiated arrangements took place with countries including the UK, Japan, the EU, Malaysia and Indonesia. Moreover, immediately after the SCOTUS ruling the US Administration invoked Section 122 of the Trade Act 1947, imposing 10 per cent tariff on imports. More recently, in March 2026, the US Trade Representative launched investigations on around 16 trading partners, under Section 301 of the Trade Act of 1974, a provision designed to address unfair foreign practices affecting US commerce.²⁴

The SCOTUS ruling raises several questions regarding the implications for trading partners. The implications are two-fold. First, alongside Section 122, provisions in various domestic legal instruments, such as Sections 232²⁵ and 301, as well as trade remedy mechanisms such as anti-dumping and countervailing duties, provide multiple avenues through which tariffs can continue to be deployed. Second, the ruling introduces uncertainty surrounding tariff arrangements negotiated in response to the now-invalidated IEEPA tariffs. Several recent bilateral arrangements were premised on reductions or exemptions from the reciprocal tariffs imposed through IEEPA, hence their legal basis and durability may now require reassessment. These developments add to the uncertainty and unpredictability of international trade; countries are therefore likely to face continued uncertainty in the coming years within an increasingly complex US trade policy landscape.

Source: Authors' compilation based on White House Communications.

Box 1.4: GATT Most Favoured Nation and Key Exceptions



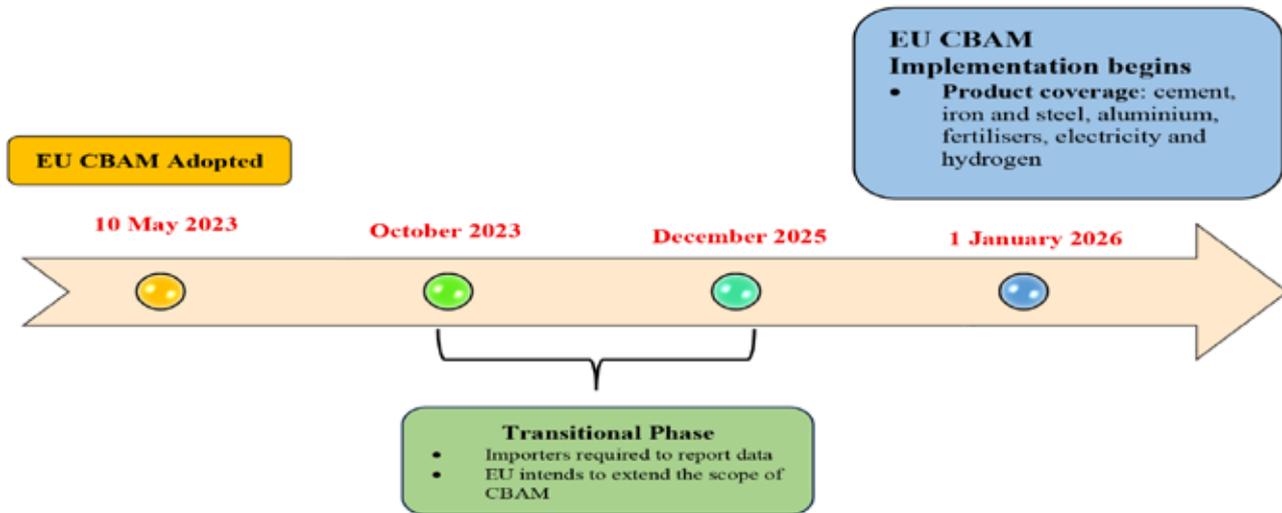
Source: Authors' compilation based on GATT, 1994

The US-China trade tensions were symptomatic of a broader and deeper shift in the global trade order, one that predated Liberation Day Tariffs and extended well beyond the bilateral relationship. Across major economies, governments have increasingly prioritised economic security, supply chain resilience, and technological sovereignty over the open-market principles that underpinned the WTO.²⁶

1.2.2.6. Unilateral Trade-Related Climate and Environment Measures

Major economies, particularly the EU, are increasingly using regulatory measures aimed at addressing climate change and environmental challenges. Under the EU Green Deal, the EU has adopted several measures aiming to achieve climate

Box 1.5: EU- CBAM Timeline



Source: Authors' compilation based on European Commission, CBAM legislation and guidance.

neutrality by 2050. A key example of a unilateral trade-related climate measure is the EU Carbon Border Adjustment Mechanism (EU- CBAM)²⁷. As of 1st January 2026, the regulation is in force (see Box 1.5). It is designed to ensure that imported products face a carbon price comparable to that imposed on EU producers under the EU Emissions Trading System. The regulation aims to prevent the relocation of carbon-intensive production to countries with weaker climate policies, i.e., carbon leakage.

Furthermore, an example of a unilateral trade-related environmental measure under the EU-Green Deal is the EU Deforestation Regulation (EUDR)²⁸. The measure adopted in 2023 is yet to be implemented. The regulation aims to curb global deforestation by preventing products linked to forest loss or degradation from being placed on the EU market. It introduces complex due diligence requirements to ensure that covered products, including palm oil, soy, cocoa, coffee, rubber, cattle, and timber, entering the EU market are not linked to deforestation or forest degradation. Moreover, the EU intends to expand the product coverage. While proponents argue that such measures are necessary to address global environmental externalities in the absence of coordinated multilateral action, critics contend that they may function as *de facto* trade barriers and impose disproportionate compliance burdens on developing countries.²⁹

As both measures are unilateral with extraterritorial implications, several concerns have been raised at

various WTO Committees, including the Committee on Trade and Environment that the measures disproportionately impose compliance burdens on developing countries and compatibility with the WTO rules.

While such measures seek to align trade with climate objectives, they also raise important legal and systemic questions regarding their compatibility with WTO principles, particularly the non-discrimination obligations under GATT, including Article I and III. At the same time, even if the measure is assessed under Article XX of the GATT, which allows exceptions for measures pursuing environmental objectives, questions remain as to whether the design and implementation of the EU-CBAM and EUDR would satisfy the requirements of the Article XX exceptions and the conditions of its chapeau (see Box 1.4).

Consequently, unilateral trade-related environmental and climate measures reflect a broader tension within the international trading system. Moreover, as other countries including the United Kingdom (UK), the US are considering adopting similar trade related environment and climate measures, there is a growing risk of a fragmented regulatory landscape, leading to a “spaghetti bowl” of overlapping carbon standards, deforestation, and sustainability requirements, further complicating international trade and potentially undermining the coherence of the multilateral trading system and creating pathways for the imposition of new non-tariff barriers.

These challenges significantly pose concerns for the core principles of the WTO. Nevertheless, it remains relevant, with 22 countries currently seeking accession, major economies such as the US continue to remain within it despite exiting other international organisations³⁰, and the core MFN tariff commitments cover nearly 74 percent of global merchandise trade.³¹

PART B

1.3. Outlook to WTO MC14 and Way Forward

Amidst the evolving dynamics of the global trading system, the MC14 comes at a pivotal moment. WTO Members face the challenge not only of delivering substantive negotiating outcomes but also of reaffirming the continued relevance of multilateral trade rules in an increasingly fragmented global economy.

Against this backdrop, Section 3 adopts a structured approach to examining the evolving WTO agenda by mapping key negotiating areas and emerging issues in the lead-up to MC14, as well as strategic pathways for the Global South in shaping multilateral cooperation. Section 4 concludes the chapter and provides the way forward.

1.3.1. The Changing Global Landscape of Trade and Investment³²

Trade continues to serve as the primary engine of global growth, while foreign direct investment (FDI) continues to supplement and sustain this dynamic. Merchandise trade has grown more rapidly than services trade, reflecting the deepening integration of global production networks and value chains. At the same time, the global trading system faces a complex policy environment marked by a slower post-pandemic recovery, rising trade tensions, renewed unilateral tariff measures, and growing concerns over industrial subsidies and supply-chain turbulence. These developments underscore the continued relevance of multilateral cooperation and the importance of strengthening the WTO through structured reforms within the WTO and safeguarding the development agenda.

The expanding role of the Global South in global trade has been driven by its deeper integration into global value chains, particularly through trade in

intermediate goods. The experience of East Asia illustrates how participation in production networks can enhance export capacity and stimulate South-South trade. Consolidating this position going forward will require expanding South-South trade opportunities, forging more flexible trade arrangements with dynamic partners in the Global North supported by capacity-building initiatives, leveraging technology-intensive trade, harnessing the growing potential of the services sectors, and fostering robust South-South FDI flows.

1.3.2. WTO Reform Agenda³³

With the increasingly changing dynamics of international trade, discussions on WTO reform have intensified, raising fundamental questions about what kind of multilateral trading system the WTO is meant to be. The reform debate is organised around a set of interconnected issues. While Members broadly agree on the need for reform, they diverge sharply on what requires recalibration and how it should be achieved.

In the lead-up to MC14, WTO reform discussions have been framed by several key proposals, notably from the US, the EU and the African Group, among others. Some developed Members namely the US, the EU, have advanced proposals seeking greater flexibility in rule-making, including through expanded use of plurilateral approaches and a reconsideration of foundational principles such as consensus-based decision-making, the Most Favoured Nation (MFN), and Special & Differential Treatment (S&DT).

In contrast, a significant number of developing Members have emphasised the systemic importance of preserving these foundational principles, which are critical for the survival of the WTO as a system, emphasising their importance in ensuring fairness, predictability, and equitable participation in the global trading system.

Further, concerns have also been raised that the dilution of these principles, particularly through the expansion of closed plurilateral agreements or the introduction of differentiated obligations without broad consensus, risks fragmentation, reduced transparency, and the erosion of the WTO's multilateral character. As a result, adjustments in one area inevitably affect others. They also argue that institutional dysfunction cannot be addressed in isolation from unresolved development concerns and structural asymmetries embedded in existing rules.

1.3.3. WTO Dispute Settlement Reform³⁴

The continued deadlock over appointments to the Appellate Body, driven by the US concerns about judicial overreach and interpretative practices, has effectively rendered the WTO's two-tier dispute settlement system inoperative since 2019. Many Members consider a functioning dispute settlement mechanism as indispensable to the credibility of the multilateral trading system, contending that broader institutional reforms of the WTO will have limited value without an effective mechanism for resolving trade disputes. While there is broad agreement among Members on the need to restore a fully operational, binding, and accessible dispute settlement mechanism, significant divergences persist over its design and scope.

Since 2022, interest-based discussions initiated outside the WTO have gradually evolved into structured deliberations within the organization, resulting in draft texts and proposals that outline possible reforms. Yet several key issues remain unresolved, including the design of an appeal or review mechanism, the accessibility of the system, and the incorporation of concrete and operational S&DT provisions for developing countries. A large majority of Members continue to emphasise that a reformed WTO is contingent upon the restoration of a binding dispute settlement system that ensures predictability, enforceability, and equal access for all. Given these divergences, MC14 is unlikely to deliver a negotiated outcome on this issue.

1.3.4. Special & Differential Treatment (S&DT)³⁵

Closely intertwined with the broader reform debate ahead of MC14 is the question of S&DT, the longstanding WTO principle that provides developing countries, including Least Developed Countries (LDCs), special rights, longer implementation timelines, and flexibility in meeting obligations. Historically, S&DT has been central to incorporating development considerations within the multilateral trading system. However, its relevance and scope have come under increasing scrutiny, with some developed countries questioning the broad self-designation of developing country status. For many developing countries, S&DT remains a foundational principle of the WTO, essential to ensuring that trade rules support development objectives and address structural asymmetries in the global trading system.

In the lead-up to MC14, divergent approaches to S&DT have emerged across a range of reform proposals, including submissions from the US, the EU, Paraguay, and China. The US has proposed limiting S&DT primarily to LDCs, while the EU has advocated for more targeted and time-bound differentiation, with a view to eventually moving all Members toward common disciplines. By contrast, many developing countries maintain that S&DT is treaty-embedded and integral to the negotiated balance of rights and obligations. They argue that each Member should determine its own needs based on national circumstances and retain the right to self-designate its developing country status.

Given these entrenched differences, substantive progress on S&DT at MC14 is unlikely. The challenge going forward will be to ensure that S&DT provisions are effectively operationalized, a prerequisite for preserving the development dimension of the multilateral trading system and safeguarding the policy space that developing countries need to address structural challenges.

1.3.5. Trade and Sustainability at the WTO³⁶

While the Marrakesh Agreement establishing the WTO acknowledges the social, economic, and environmental dimensions of sustainable development in its preamble, WTO agreements have traditionally addressed environmental concerns primarily through exceptions. Debates over how sustainability concerns should be reflected in trade rules, however, have remained contentious. For many developing countries, including India, such discussions raise longstanding concerns about introducing non-trade issues into the WTO framework.

In recent years, sustainability issues have resurfaced through joint ministerial statements and discussions on environmental sustainability, including the Trade and Environmental Sustainability Structured Discussions (TESSD), the dialogue on plastics pollution, and fossil fuel subsidy reform. Moreover, there has been a shift towards more direct integration of environmental concerns into trade, particularly through unilateral measures such as Carbon Border Adjustment Mechanisms (CBAM) and sustainability-linked regulatory standards that increasingly shape market access conditions. This tension is further amplified by the proliferation of sustainability provisions in bilateral trade agreements.

Several developing countries have expressed concerns about the rise of unilateral environment-related trade measures. India and the African Group have consistently advocated for enabling access to relevant and advanced technologies, including environmentally sound technologies, by addressing barriers such as high costs, restrictive intellectual property regimes, and capacity constraints. The evolving trade-sustainability nexus underlines the importance for India of strengthening coalitions with like-minded developing countries and reinvigorating discussions to shape the emerging agenda within multilateral WTO forums.

1.3.6. Plurilateral Agreements and Joint Statement Initiatives³⁷

The rise of Joint Statement Initiatives (JSIs), a mode of trade rule-making in which a subset of willing Members negotiate new disciplines among themselves without a prior mandate from the full membership, has emerged as one of the most significant and contested features of recent WTO reform discussions. Since 2017, several such initiatives have been launched in areas including e-commerce, investment facilitation, services domestic regulation, and trade and environment. Their significance extends beyond their subject matter: structurally, they represent a departure from the WTO's foundational principles of multilateralism, consensus-based decision-making, and the single undertaking. Consequently, the question of whether and how JSI outcomes can be formally integrated into the WTO's legal framework has become one of the most consequential issues on the institution's agenda.

The most pressing issue in the lead-up to MC14 concerns efforts to incorporate concluded JSI agreements, particularly on investment facilitation and e-commerce, into the WTO's binding legal framework. These attempts have repeatedly failed to secure the required unanimous consensus, despite support from a large majority of the membership. Several major Members have also submitted reform proposals addressing how the WTO should handle plurilateral initiatives going forward, with some favouring benefits limited to participants, others advocating MFN-based open agreements, and some others calling for procedural guardrails. Collectively, these proposals reflect the extent to which the governance of plurilaterals has moved to the centre of the WTO reform discussions.

Developed Members such as the EU, the US, Japan, and Australia have been among the most active proponents, though their preferred approaches diverge. Among developing countries, the picture is mixed. A significant number, including many LDCs, have chosen to participate in one or more JSIs. At the same time, a core group led by India has raised fundamental legal and systemic concerns, arguing that JSIs are incompatible with the Marrakesh Agreement and risk marginalising unresolved development priorities from the Doha Round. This complexity underscores the fact that the JSI debate is as much about the future governance of the WTO and its survival as a multilateral decision-making forum.

For the Global South, the JSI question calls for careful, case-by-case engagement. The central risk is that the proliferation of JSIs absorbs the WTO's limited institutional resources, pushing long-standing development priorities still further down the road. It is also likely to diminish the already weak bargaining position of developing countries in deciding the negotiating agenda and the negotiated outcomes. The most important strategic priority for the Global South in the current WTO context is preserving the right to shape the rules, not merely to accept or reject them.

1.3.7. Agriculture Negotiations³⁸

Agriculture remains one of the most sensitive and longstanding areas of WTO negotiations. The agriculture negotiations cover eight pillars: (i) Public Stockholding (PSH) for food security, (ii) Domestic Support, (iii) Special Safeguard Mechanism (SSM), (iv) Cotton, (v) Export Restrictions, (vi) Market Access, (vii) Export Competition, and (viii) Transparency. Of these, three pillars, a Permanent Solution on PSH, SSM, and Cotton carry explicit Ministerial mandates.

Since the 2015 Nairobi Ministerial Conference, negotiations on these issues have resulted in stalemate, reflecting divergent approaches of members on substantive outcomes and the overall approach to reform. The principal divide is between *the comprehensive approach*, endorsed by several developed Members and major agricultural exporters, which seeks simultaneous outcomes across all negotiating pillars, and *the sequential approach*, supported by a large group of developing and LDCs, which prioritizes delivering first on long-standing mandated issues. These differences are further compounded by structural asymmetries embedded in

existing rules, especially in domestic support, where historical entitlements continue to provide significant policy space to most developed Members, while constraining developing countries within tighter limits.

In the run-up to MC14, Members and negotiating groups have tabled several proposals on agriculture, including a call by the African Group for a permanent solution on public stockholding to address food security concerns, an LDC Group proposal to strengthen provisions for the least-developed countries, a C4+ proposal to reduce trade-distorting support in cotton, and a Brazilian draft decision advocating comprehensive reform across all pillars.

Taken together, the current state of play suggests that the prospects for a substantial outcome in agriculture negotiations at MC14 are limited. Notably, most of the proposals currently on the table appear to postpone meaningful movement on key issues to MC15. Thus, for developing countries and the Global South, the central strategic imperative remains coalition-based engagement around a clear sequential agenda: deliver first on mandated issues, preserve S&DT, and resist reform approaches that entrench existing asymmetries. More broadly, developing Members should resist attempts to make mandated outcomes contingent on progress in less mature pillars such as market access or expanded transparency obligations. The broader message is that the WTO's credibility now rests on the delivery of development-centred mandates.

1.3.8. Public Stockholding for Food Security³⁹

Achieving a permanent solution on Public Stockholding (PSH) for food security purposes remains a long-standing unresolved mandate in WTO agriculture negotiations. Food security is recognised within the WTO as a legitimate non-trade concern. For many developing countries, PSH programmes are critical for ensuring food access, stabilising prices, and protecting the livelihoods of smallholder farmers. At the 2013 Bali Ministerial Conference, WTO Members agreed on an interim solution, known as the Bali Peace Clause, which protects certain PSH programmes from legal challenge, while reaffirming the mandate to negotiate a permanent solution to PSH at the 2015 Nairobi Ministerial Conference.

A large group of developing Members, including the G-33, the African Group, and the ACP Group, has consistently underscored the centrality of PSH

programmes in ensuring food security, stabilising prices, and supporting vulnerable farmers. A 2022 joint proposal by these groups seeks a permanent solution to PSH by updating the External Reference Price (ERP) methodology, defining eligible production as the quantity actually procured, expanding coverage to all foodstuffs and programmes, ensuring legal certainty, and permitting exports from PSH stocks for government-to-government (G2G) purposes. In the lead-up to MC14, several submissions stress the need to advance on a permanent solution for PSH. Building on earlier proposal, the African Group has stressed the need to deliver a permanent solution to PSH; the LDC group has stressed its importance with particular emphasis on the food security needs of LDCs; Jamaica has addressed PSH within a broader framework of food security and agricultural reform; and Indonesia has proposed an intensified, process-oriented roadmap to advance negotiations toward MC15.

By contrast, several developed Members, including the US and Canada, along with major agricultural exporters in the Cairns Group (including Costa Rica and Paraguay), have expressed concern that expanded PSH flexibilities could distort trade and affect global markets. Some of these Members link PSH discussions to broader agriculture domestic support reforms, rather than addressing a permanent solution to PSH as a standalone outcome.

While there is broad recognition that food security is a pressing global concern, Members remain divided on how to reconcile development needs with existing trade disciplines. For many developing countries, including LDCs, securing adequate policy space for food security and development remains a central priority in WTO Agriculture negotiations.

1.3.9. Fisheries Subsidies⁴⁰

Regulating harmful fisheries subsidies remains a key issue under discussion at the WTO, particularly in light of concerns that certain subsidies contribute to overcapacity, overfishing, and the depletion of marine resources. At the MC12, Members adopted the WTO Agreement on Fisheries Subsidies, which established initial disciplines on subsidies related to illegal, unreported, and unregulated (IUU) fishing and fishing of overfished stocks. However, negotiations continue toward more comprehensive disciplines, particularly on subsidies that contribute to overcapacity and overfishing. These discussions are closely linked

to the global commitment under UN Sustainable Development Goal 14.6 to prohibit harmful fisheries subsidies while supporting the sustainable use of marine resources.

In the lead-up to MC14, negotiations have centred on a draft text circulated in November 2024, which has not yet secured consensus. While many Members support advancing discussions on this text, several developing countries, including India, have expressed concerns that the proposed sustainability-based approach could, in practice, dilute rather than strengthen the disciplines it purports to establish.

To address environmental concerns, a few developed Members often support more robust and comprehensive limits on subsidies. Others, however, do not support an outright prohibition and have instead advocated for an approach based on demonstrating the sustainability of fish stocks. The position of developing countries is diverse. China, as one of the largest marine capture producer and also a significant participant in Distant Water Fishing (DWF), occupies a unique position. Most developing countries, including India, support more stronger disciplines for traditional big subsidisers, particularly the developed countries. These developing countries have also demanded strong, appropriate and effective S&DT in order to protect small-scale fishermen and ensure their livelihood security, as well as enough policy space to develop their nascent fisheries sector.

The current negotiations encompass the approach to prohibition, S&DT for developing countries, enhanced transparency by notifications obligations, peer review by the Committee of Fisheries Subsidies of the claims of sustainability by the subsidising Members. As negotiations continue, many Members acknowledge that a comprehensive outcome at MC14 may be unlikely, with discussions potentially extending toward MC15.

1.3.10. Investment Facilitation for Development (IFD)⁴¹

The governance of international investment has remained one of the most debated issues in the global trading system. While trade in goods and services is governed by comprehensive rules under the WTO, international investment continues to be regulated primarily through domestic laws and a fragmented network of bilateral and regional investment agreements. Efforts to introduce investment-related

disciplines within the WTO have historically generated strong disagreements, particularly between developed and developing Members. Developing countries have, historically, resisted incorporating investment into the WTO framework due to concerns related to preserving regulatory autonomy, development policy space, and the institutional mandate of the organization. In recent years, these debates have resurfaced through the Investment Facilitation for Development (IFD) initiative, which aims to improve transparency, streamline administrative procedures, and enhance regulatory predictability for investors. The issue has gained renewed importance in the current WTO context, where stalled multilateral negotiations have led to an increasing reliance on plurilateral initiatives to advance new rule-making.

A key development in this regard is the conclusion of negotiations on the IFD Agreement in 2023 by a group of participating WTO Members. The main proposal currently under discussion is the incorporation of this agreement into the WTO framework as a plurilateral agreement under Annex 4 of the Marrakesh Agreement. This proposal is expected to feature prominently in discussions at the MC14. It has generated conflicting responses among WTO Members. Proponents of the IFD Agreement have argued that the agreement represents a pragmatic and development-oriented initiative that focuses on procedural improvements, such as transparency, digitalisation of investment-related procedures, and institutional coordination, while avoiding more contentious issues such as market access, investment protection, or investor-state dispute settlement.

A large group of developed and developing countries participating in the negotiations now support the agreement and its incorporation into the WTO framework, viewing it as a practical step toward improving investment governance. However, several developing members, including India, have raised both procedural and substantive concerns. These members argue that negotiations on investment lack an explicit multilateral mandate within the WTO and that incorporating the IFD Agreement through a plurilateral pathway could weaken the organization's consensus-based decision-making framework and expand its scope beyond trade-related issues.

Given these differences, the prospects for a negotiated outcome at MC14 remain uncertain. While a substantial majority of WTO Members now support the initiative, the requirement of consensus

for incorporating new agreements into the WTO's legal architecture presents a significant institutional challenge. For developing countries and the broader Global South, the debate raises important policy considerations related to safeguarding regulatory policy space, maintaining the integrity of multilateral mandates, and carefully evaluating the long-term implications of plurilateral rule-making within the WTO system. The discussions surrounding the IFD Agreement are therefore likely to play an important role in shaping both the future of investment facilitation and the evolving institutional trajectory of the multilateral trading system.

1.3.11. E-Commerce Moratorium⁴²

The moratorium on customs duties on electronic transmissions was first adopted by the WTO in 1998 as a temporary measure for a short duration. However, for nearly 28 years since then, the moratorium has been periodically extended at various Ministerial Conferences. Over the years, as digital trade saw exponential growth to trillions of dollars, certain developing countries, including the LDCs, have raised serious concerns on various counts such as potential impact of digital industrialization in these countries, its' implications to constrain their policy space, deepening digital divide, inequity in global digital trade, and potential revenue loss, more so as new technologies like 3D printing are expanding.

Concerns have also been raised relating to the scope of the moratorium. The Work Programme on Electronic Commerce (WPEC) has not made any tangible progress, including on the very basic elements, such as scope and coverage of the moratorium, further aggravating these concerns. On the other hand, certain Members argue for the moratorium to be continued (and be made permanent), to allow for certainty in rules that support the growth of global E-commerce. They also argue that E-commerce has helped developing countries in achieving development goals by reducing the cost of trade, benefiting customers, MSMEs and that customs duty implications are not significant (given that Members have alternative way of collecting revenue through non-discriminatory domestic taxes).

The discussions have been difficult, including at MC13, where Members, after a long discussion, finally agreed to extend the moratorium until March 31, 2026, or until the next Ministerial Conference, whichever is earlier. The decision at MC13 also

stated that the moratorium and the Work Programme will expire on that date. As we approach MC14, the issue of -whether to extend the moratorium temporarily, or make it permanent, or end it, would be a key area of negotiations for the WTO Members. There are divergent perspectives including those of developed countries which are advocating for permanence, and of developing countries like India, South Africa and Indonesia which are, calling for its end while emphasizing policy space and development asymmetries. These negotiations would be intense, entailing several complex issues, as the stakes continue to grow exponentially in e-commerce and growth remains uneven amongst Members.

1.3.12. Subsidies and Industrial Policies⁴³

Historically, many advanced economies used extensive industrial policy measures prior to the establishment of the WTO following the Uruguay Round. However, developing countries argue that WTO subsidy rules subsequently narrowed their policy space for industrialisation. In the current context marked by renewed industrial policy in areas such as clean energy, strategic manufacturing and supply chain resilience, it is important for developing countries to seek reforms that preserve policy space for structural transformation while addressing concerns about trade distortion. The issue concerns the evolving role of industrial policy and whether existing subsidy disciplines under the Agreement on Subsidies and Countervailing Measures (ASCM) adequately reflect current economic realities.

In the lead-up to MC14, reform discussions have focused primarily on strengthening subsidy disciplines under the ASCM. Key proposals include expanding the list of prohibited subsidies, shifting the burden of proof in certain subsidy disputes, strengthening notification and counter-notification mechanisms, and broadening the definition of "public body" to capture indirect state influence. In parallel, concerns over global excess capacity, particularly in sectors such as steel and emerging green technologies, have contributed to proposals aimed at addressing state-supported capacity expansion and market distortions.

Developed Members such as the US, the EU, and Japan support stronger subsidy disciplines to address what they describe as "non-market-oriented policies and practices," including state-backed industrial expansion and excess capacity. Their proposals focus on strengthening enforcement

mechanisms and improving transparency. Developing countries like the African Group, have raised concerns that these reforms could narrow the policy space needed for industrial development. The likelihood of major negotiated outcomes before or at MC14 appears limited. While there is broad agreement that subsidy disciplines require updating to reflect current economic realities, Members remain divided over the scope and direction of reforms.

For developing countries, the key priority is to ensure that WTO reform discussions adequately address development asymmetries in the global economy. This includes preserving policy space for industrial upgrading, technological capability building, and structural transformation. Developing Members may advocate development-sensitive approaches to subsidy disciplines, strengthening transparency and improving notification practices across all Members can help maintain the credibility of the multilateral trading system while addressing concerns about market distortions.

1.4. Way Forward

The multilateral trading system is approaching MC14 under conditions of genuine institutional stress. The debates that will define the conference are not just technical disagreements at the margins; they reflect deeper divergences over the purpose and architecture of the WTO itself. Developed countries, led by the US and the EU, have signalled a preference for a multilateral trading system, one that accommodates plurilateral rule-making, revisits the scope of S&DT, and moves away from the consensus-based model that has historically ensured that all Members have a voice in shaping the rules. Developing countries, by contrast, have consistently argued that the system's credibility depends on delivering decades of undelivered mandates on agriculture, food security, and development-centred rule-making. For the Global South, any reform agenda that bypasses these outstanding obligations is difficult to accept as a genuine improvement.

Against this backdrop, the MC14 will serve as a litmus test for the future of the WTO. The three issues that strike most directly at the WTO's institutional foundations, namely the reform of the organization's decision-making framework, the restoration of a functioning dispute settlement system, and the question of how JSIs are governed and integrated,

will together determine the direction the WTO takes in the years ahead. Whether the organization emerges from MC14 with its core architecture intact and its development mandate reinvigorated, or whether it moves toward a more fragmented model in which rule-making is increasingly selective and differentiated, remains an open question. The answer will depend not only on the positions Members bring to the table, but on whether the political will exists to bridge differences that have, until now, proven remarkably resistant to resolution.

Discussions at the WTO General Council ahead of the MC14 highlighted both the significance of the upcoming ministerial and the persistent divergences among Members on key negotiating issues.⁴⁴ While MC14 is widely seen as an important moment for the organization, outcomes are likely to focus primarily on advancing discussions and shaping the contours of reform rather than delivering substantive institutional changes.

Quoting Mark Carney again, *“if we are not at the table, we will be on the menu”*. India and many developing countries have historically played a significant role in negotiations at the WTO, and it is important now more than ever to chart the path forward. Effective negotiating strategies thus become central to influencing outcomes and safeguarding the interests of developing countries within the multilateral trading system.⁴⁵

At the G20 Trade and Investment Ministers' Meeting, Indian Prime Minister Narendra Modi emphasized that restoring confidence in international trade requires collective efforts to build “a more representative and inclusive” global trading system.⁴⁶ Further, PM Modi noted that “We seek a world order that ensures inclusive development for all, especially the Global South.”⁴⁷ In the context of MC14, Members must ensure that reform efforts strengthen rather than dilute the multilateral character of the organization, with the development agenda at the heart of negotiations and outcomes.

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- ³³ See Chapter 3: WTO Reform for an Inclusive Multilateral Trading System, WTDR.
- ³⁴ See Chapter 4: WTO Dispute Settlement Reform: A Difficult Issue for 14th Ministerial Conference, WTDR.
- ³⁵ See Chapter 5: Special and Differential Treatment Provisions: Evaluating Different Approaches, WTDR.
- ³⁶ See Chapter 6: Trade and Sustainability at the WTO: Strategic Imperatives for MC14, WTDR.
- ³⁷ See Chapter 7: Multilateralism Served a la Carte: The Rise of Joint Statement Initiatives at the WTO, Issues and Challenges, WTDR.
- ³⁸ See Chapter 8: The State of Play in WTO Agriculture Negotiations Ahead of MC14, WTDR.
- ³⁹ See Chapter 9: Public Stockholding for Food Security: The Unresolved Debate in WTO Agriculture Negotiations, WTDR.
- ⁴⁰ See Chapter 10: Fisheries Subsidies and the Development Imperative: Balancing Sustainability and Equity, WTDR.
- ⁴¹ See Chapter 11: Investment Facilitation in the Global Trading System, WTDR.
- ⁴² See Chapter 12 : E- Commerce Moratorium : Issues and Way Forward, WTDR.
- ⁴³ See Chapter 13: Industrial Policy, Subsidies and Inclusivity: Levelling the Global Playing Field, WTDR.
- ⁴⁴ WTO. (2026). Director-General updates members on final preparations for “turning point” ministerial. https://www.wto.org/english/news_e/news26_e/gc_10mar26_322_e.htm
- ⁴⁵ See Das, A. (2025). Strategies in GATT and WTO Negotiations (Oxford University Press). DOI:10.1093/9780198934431.001.0001.
- ⁴⁶ Press Information Bureau. Government of India. (2023). Text of PM’s address during G20 Trade and Investment Ministers’ Meeting <https://www.pib.gov.in/PressReleasePage.aspx?PRID=1951605®=3&lang=2>
- ⁴⁷ Press Information Bureau. Government of India. (2024). Prime Minister Shri Narendra Modi addresses Economic Times World Leaders Forum in New Delhi. <https://www.pib.gov.in/PressReleasePage.aspx?PRID=2050533®=3&lang=2>

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The Changing Global Landscape of Trade and Investment

S.K. Mohanty, Sabyasachi Saha and Pankhuri Gaur

2.1. Introduction

The commencement of MC14 coincides with a period in which the world economy is forecast to expand by 2.7 per cent in 2026, a rate lower than that recorded in 2025 and below the pre-pandemic average of 3.2 per cent (UNCTAD, 2026). The world economy is forecast to expand by only 2.9 per cent in 2027, a subdued pace that highlights the imperative for coordinated international measures to redress the prevailing imbalance. Resurgent domestic demand, coupled with prudent national policy measures, is invigorating economic activity in the United States and select Asian economies. In contrast, growth across Europe remains subdued, constrained by persistent conflict and restrictive monetary and fiscal conditions. For developing nations, limited access to affordable finance, mounting debt burdens, and weak global demand continue to erode export opportunities. Trade growth in 2026 is expected to remain sluggish, limited to around 2.6–2.7 per cent. Protectionism, geopolitical strains on supply chains, and unpredictable policy frameworks are among the key factors constraining global expansion. The deceleration of global economic growth has emerged as a major cause of the underperformance of international trade sectors. The tariff war initiated under the Trump administration triggered significant realignments in global trade relations and ushered in a new wave of regionalism,

manifested through the proliferation of free trade agreements (FTAs). In response, numerous countries adopted reciprocal measures to safeguard their domestic markets (McKibbin, Noland, & Shuetrim, 2025).

Macroeconomic imbalances have contributed to pronounced regional disparities in growth among developing economies, while signs of deceleration have also emerged within certain segments of industrialised economies. The asymmetry of global growth has complicated efforts by developing countries to honour their SDG commitments, undermining progress in recent years. Evidence indicates that global trade patterns are increasingly shifting toward regionalisation. The year 2025 marked a milestone for global commerce, as services trade reached to unprecedented levels, exceeding the growth trajectory of goods trade. In 2025, services exports recorded robust growth of approximately 9 per cent, driven by the expansion of cross-border digital trade and the adoption of artificial intelligence. This marks a sharp rise compared to the 3.7 per cent growth observed in 2004. Foreign direct investment (FDI) flows expanded by 14 per cent in 2025, reaching \$1.6 trillion. This growth was largely driven by developed economies, though performance remained weak across most other regions (UNCTAD, 2026). The outlook for FDI in 2026 suggests only modest gains, constrained

by persistent global uncertainty and weak project pipelines. This trajectory persists despite favorable prospects in high-technology sectors such as artificial intelligence, semiconductors, and green energy. The global economic slowdown in 2025, coupled with downgraded projections for growth, trade, and FDI flows, paints a bleak outlook for 2026. Addressing these pressing challenges at MC14 will be essential to catalyse a timely turnaround in the world economy.

Therefore, at MC14, the world economy faces pressing challenges such as strengthening growth prospects, boosting trade in goods, especially intermediate and technology-intensive sectors, introducing structured reforms in dynamic industries, and reinvigorating FDI flows. How these issues are handled will be critical in determining whether the global economy can achieve a swift and sustainable recovery. The WTO is grappling with significant challenges, including departures from MFN-based trade principles, shifts in technological composition and the rise of digital trade, evolving supply chain patterns, and the emergence of overcapacity in certain sectors. In reviewing current trends in global economic growth, the chapter underscores several critical dimensions, including trade in goods, trade in services, the expansion of foreign direct investment encompassing both inflows and outflows, and the broader performance of the world economy. Particular attention is devoted to the Global North (GN) and Global South (GS), as well as the technically determined sub-groups within each for our analysis, all of which hold significant implications for the deliberations at MC14. The issues highlighted in this discussion are expected to be taken up in distinct forums of the WTO negotiations, reflecting the multifaceted nature of the agenda.

The global economy continues to face challenges in regaining its pre-pandemic growth trajectory, underscoring the need for structured reforms within the WTO. This matter is scheduled for deliberation in the Plenary of the General Council. LDCs are well on their path of integration with the global economy. To support this process, discussions on preferential market access, capacity building, aid for trade, and the strengthening of South–South trade frameworks as safeguards against slowdown may be undertaken in the Committee on Trade and Development (CTD). Key issues, including the recent wave of tariff hikes, the need for stricter discipline in industrial subsidies, and efforts to strengthen resilience in global supply

chains, etc., have shaped the current state of the world economy. These matters are expected to be taken up for discussion in the Council for Trade in Goods (CTG). The Committee on Agriculture (CoA) is expected to deliberate on critical global issues, including disciplines on export restrictions, subsidy reforms, and measures to secure stable food supply chains, with a view to strengthening international agricultural trade. Among the pressing themes likely to arise in the Committee on Trade and Environment (CTE) are the dynamics of trade in clean energy technologies, the strategic importance of critical minerals as intermediate goods, and the advancement of the Blue Economy framework.

In order to unlock the vast potential of the services sector in shaping global trade, the Council for Trade in Services (CTS) will address certain key priorities, particularly on fostering sectoral expansion, advancing digital trade facilitation, and ensuring secure cross-border data flows. Together, these measures are expected to provide fresh impetus to a flourishing trade landscape. There have been various WTO submissions that would stimulate the WTO process to sustain fair and healthy trade and investment growth, including enhanced transparency in trade measures, strengthening trade and investment monitoring systems, advancing durable solutions for dispute settlement reforms, etc. A range of trade and investment issues will be addressed across specialised committees. To ensure informed negotiations, country groupings focusing on these areas should have access to insights into prevailing global trends. The latest assessment suggests that the Global South is evolving into a relatively homogeneous group of economies, marked by strong convergence in growth, trade, and foreign direct investment (FDI). In contrast, the Global North remains a heterogeneous grouping, with economic outcomes varying significantly across its members, leading to potentially divergent interests within the group.

The chapter begins by discussing the trends in Gross World Product (GWP) shaped by the combined forces of global trade and investment in Section 2. Section 3, it examines the patterns of resurgence in global trade in goods (TIG) and trade in services (TIS). Section 4 discusses convergence between the Global North (GN) and the Global South (GS) in TIG and TIS. Section 5 examines the degree of homogeneity across GS country groupings in different product categories, including end-use and technology-intensive goods.

Section 6 presents the changing dynamics of FDI, both inward and outward, between the GN and GS. Section 7 analyses narrow forms of convergence between the GN and GS, along with asymmetries within the GN in the TIS sector. The concluding section summarises the key findings.

2.2. Global Trends in Trade and Investment

Growth in the world economy slowed in 2025, which is expected to remain moderate in 2026 compared with 2010–19. Sustaining growth above 3 per cent is a major concern for the global economy. The deterioration in growth conditions in 2025 extended across both advanced economies and emerging economies (World Bank, 2025). Global experience suggests that trade and foreign direct investment (FDI) are key drivers of growth, and both can strengthen global growth prospects in 2026. Strong trade growth was observed during the global buoyancy period (2003–07) and again in the 2010s, which reinforced the central role of trade in supporting overall economic growth. A weak dollar supported global trade and reduced pressures associated with inflation through exchange-rate pass-through effects (IMF, 2025). Since the 1970s, trade and FDI have played an important role in supporting growth in developing countries, and the two are closely linked in their effects and transmission channels (Makki and

Somwaru, 2004). Similar evidence has been reported for low-income countries, where long-run relationships have been observed between economic growth, trade openness, and FDI, alongside other macroeconomic variables (Radmehr *et al.*, 2022).

Over the years, the Global South became more proactive in catching up with the Global North by narrowing the gap in their respective shares of world trade. Since the 1990s, the Global South has experienced trade dynamism, particularly through rapid expansion in South-South trade (Athukorala, 2011). This was driven by sharp increases in both trade and investment, which, in turn, deepened economic integration among southern economies (Dahi and Demir, 2008). With the acceleration of globalisation, trade became vital for expanding multiple economic activities, including FDI inflows, technology transfer, and knowledge spillover in developing economies (Ngundu and Matemane, 2023). In particular, rising South-South FDI inflows became important in stimulating trade flows within the South as well as between the South and the North. For example, Indonesian FDI in Africa and South Asia marked an important phase in South-South investment flows and increasingly competed with traditional investors such as the United States, the European Union, Japan, and multilateral institutions (Smolaga, 2022).

However, rising trade tensions since 2018, along with a series of global exogenous shocks, have

Figure 2.1: Comparative Trends in Global Trade, Investment, and GDP (Index 1970=100)



Source: Authors' calculation based on World Trade Indicators, World Bank, Washington DC

increased policy uncertainty worldwide (World Bank, 2025). This has also prompted a realignment of trading arrangements among countries, both developed and developing, to respond to emerging conditions. It is often argued that assistance is needed to manage the short-term adjustment costs of regional integration, particularly for developing countries (Razeq, 2022). Others contend that improving the management of domestic economic forces, such as structural change, the macroeconomic environment, and logistics quality, is more effective than relying primarily on regional trade agreements (RTAs) (Athukorala and Nasir, 2012). Nevertheless, restoring global growth to a pace above 3 per cent may be a key objective for MC14, supported by trade- and investment-enhancing agreements currently under negotiation.

The global economy is passing through a critical phase, with Gross World Product (GWP), trade, and FDI flows under stress; highlighted in Figure 2.1, demonstrate impressive resilience and growth. The onset of systemic turbulence in 2018, marked by the US-China trade war, initiated a sequence of global disruptions: Brexit-related uncertainties (2018), the Covid-19 pandemic (2020), semiconductor supply chain crises (2021), the Russia-Ukraine confrontation (2022), energy price surges (2022), and the Israel-Palestine conflict (2023). Moreover, the imposition of tariffs in 2025 by the Trump administration intensified these challenges, undermining the stability of global trade and investment. Concurrently, inflationary pressures, recurrent food insecurity linked to grain export disruptions, financial market volatility, sovereign debt distress in emerging economies, and climate-induced disasters have significantly weakened the world economic situation. Despite recurrent global shocks, the world economy demonstrated resilience in 2024, with GWP reaching \$109.9 trillion, total trade expanding to \$35 trillion, and Foreign Direct Investment (FDI) flows amounting to \$1.7 trillion. For a systematic evaluation of relative trends in global GDP, trade, and FDI over the period 1970–2024, index values have been generated, assigning 1970 as the base year with a value of 100. An examination of the relative growth profiles of world GDP, trade, and FDI from 1970 to 2024 reveals an exponential expansion of GDP, largely facilitated by the intensification of trade and investment linkages. From a modest 0.7 per cent in 1960 to 31.8 per cent in 2024, the trade-to-GDP ratio reflects the remarkable deepening of global economic integration. While the long-term trend of international trade reflects

a steady and relatively stable progression, the growth path of FDI has been marked by significant fluctuations and an uneven pattern.

The evolution of the global economy indicates that trade became a major stabilising factor beginning in the mid-1970s, while investment assumed comparable significance from the mid-1980s. From the late 1980s until the onset of the Asian Financial Crisis in 1996, trade and investment advanced in tandem, reflecting a period of synchronised growth. Following the Asian Financial Crisis, FDI trends became increasingly unstable, whereas global trade maintained a consistent growth trajectory until the disruption caused by the U.S. real estate housing market collapse in 2008. Between 1996 and 2016, global trade and investment registered strong growth, though marked by significant instability. The year 2016 marked a watershed moment, as FDI became subdued and subsequently displayed heightened volatility in the years that followed. Although FDI has historically been smaller in scale than trade, it remained a significant driver of global GDP growth until 2016. FDI functioned as a critical push factor for GWP during the period 1996–2016. Following 2016, its role diminished considerably, with trade supplanting investment as the dominant driver of global GDP. During the period 2016–2024, trade functioned as the principal driver of global GDP growth, while foreign direct investment remained relatively subdued and volatile. Over recent decades, trade has consistently served as the dominant pull factor for GWP, despite fluctuations in the strength of foreign direct investment. However, within trade, merchandise trade and services trade have been showing different trends.

2.3. Global Perspectives: The New Landscape of Trade and Services

In the aftermath of the pandemic, the world economy has been marked by subdued growth and flattening trade trends, reflecting persistent imbalances across global markets. Developing countries, which represent the largest share of the global economy, face mounting pressures from debt distress, capital outflows, weak investment inflows, and austerity policies, underscoring significant vulnerabilities in the current global landscape. The World Bank (2025) notes that debt crises affect more than half of low-income economies, each confronting the challenge at differing intensities. The global economy is witnessing a renewed wave of protectionism,

reflected in the reintroduction of industrial policies, the rise of multipolar trade dynamics, and accelerating progress in technological innovation (UNCTAD, 2024). Beginning in 2025, the Trump administration introduced sweeping protectionist policies that sent shockwaves through the global economy, marking a level of disruption unparalleled in the 21st century. This development has generated a complex array of trade barriers and significantly undermined the predictability of global trade policies. Growing trade barriers risk setting off ripple effects that destabilise supply chains across multiple parts of the world, posing significant challenges to economic resilience (OECD, 2025). At a time when low-income countries require greater financial support, development aid fell by 9 per cent in 2024, and projections suggest this decline will persist into 2025, thereby intensifying existing vulnerabilities (IMF, 2025).

At such critical junctures, the experience of the Global South in trade, marked by dynamic gains, technology diffusion, efficiency improvements, and scale advantages, provides a compelling foundation for enhancing the role and dependability of Southern economies. The literature provides substantial evidence that South–South collaboration in trade and technology has been instrumental in broadening technological access, primarily through capacitybuilding initiatives and institutional strengthening (Saha, Bontadini and Cowan, 2023). Behar and CireraiCrivillé (2013) demonstrate that

free trade agreements, irrespective of whether they involve developed or developing countries, can generate enhanced bilateral trade gains. Following the pandemic year, service trade growth weakened in key sectors, particularly travel services, which are directly linked to the performance of goods trade (World Bank, 2026). To place the world economy on a higher growth trajectory, both goods and services trade must be steered through comprehensive structural and institutional reforms (Razeq, 2022). Against this backdrop, the MC14 assumes critical importance in shaping the global economic order through targeted institutional interventions.

Trade has consistently served as a stronger driver of global economic growth than FDI, despite passing through several turbulent phases since the 1960s. In 2024, global trade in goods (TIG) stood at \$22.77 trillion, while trade in services (TIS) reached \$8.65 trillion. It is important to note that overall trade in nominal terms grew at annual rates of 15.41 per cent during 1960-69 and 16.74 per cent during 1970-89, providing a major impetus for rapid global economic expansion. Both TIG and TIS expanded at broadly similar growth rates during 1960-89. The 1990s, widely regarded as a lost decade in the aftermath of the Latin American debt crisis following the oil boom, witnessed a sharp decline in growth rates, with TIG falling to 6.61 per cent and TIS to 7.51 per cent during 1990-2000. The period from 2002 to 2007 marked a renewed surge in global trade as the world economy

Figure 2.2: Evolving Trends in World Trade and Growth Pathways (US\$ Trillion)



Source: Authors' calculation based on World Trade Indicators, World Bank, Washington DC

regained momentum. Overall, trade grew by 17.7 per cent, with TIG and TIS registering growth rates of 18.2 per cent and 16 per cent, respectively. However, with the onset of the global recession in 2008 and during the subsequent post-recession period, the rate of trade expansion slowed considerably.

To track the expansionary path of trade in goods and trade in services over time, a common base value has been used for both series, as represented in Figure 2.2. The year 1970 has been selected as the base year, with the base index fixed at 100. Trade trends show exponential growth for both sectors, although trade in goods has expanded more rapidly than trade in services. Trade played a central role in driving the rise of GWP by expanding exponentially between 1970 and 2024, although the growth trajectory of goods trade was more pronounced than that of services trade. The relative growth trajectories of trade in goods and trade in services continued to expand until recent years. Following the successive oil crises of 1973 and 1980, buoyancy returned to the world economy and persisted until around 1985.

The world economy experienced subdued growth after 1985 due to the weak economic performance of the U.S., only partial recovery in industrialised economies, severe debt crises in Africa and Latin America, and persistent current account deficits in many net-importing countries. Since 1985, both TIG and TIS remained below their long-term exponential growth path until 2006. During 2011-24, trade in goods recorded strong but unstable growth compared to trade in services, indicating that TIS was relatively more insulated from global shocks than TIG. The TIG curve grew steadily after 2011 and crossed its exponential growth path by 2022, thereby strengthening the role of trade in driving global GDP growth, although the gap between goods and services trade continued to widen without showing signs of convergence. Conversely, classifying trade in goods and services among the developed and developing countries represents a convergence in the share of both.

2.4. North-South Convergence in Goods and Services Trade

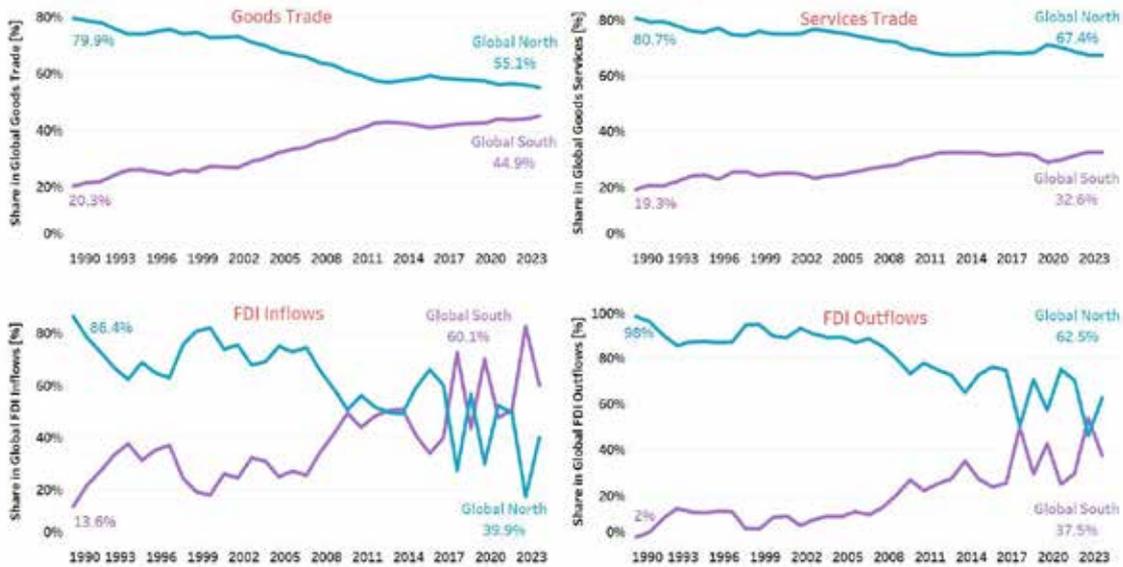
Over the past six decades, economic activity has exhibited increasing polarisation, while simultaneously experiencing an expansion and convergence across multiple domains, including trade in goods and trade in services. This convergence is not confined solely

to different categories of economic activity but also extends across regional and geographical groupings of countries. The integration of TIG and TIS has progressed between the Global North and the Global South in terms of their respective participation in the global economy, although notable differences persist in both the pace and scale of this convergence. The recent deceleration in global economic growth has affected both the Global North and the Global South, and high-income countries are expected to regain their per capita income levels by 2027 (World Bank, 2025). To overcome the current impasse, sustained and constructive dialogue is required to ease trade tensions and support the stable functioning of international markets (OECD, 2025). In this setting, countries of the Global South have strengthened trade linkages with other southern economies, particularly in capital-intensive and skill-intensive manufacturing sectors, compared to their trade with the Global North (Dahi & Demir, 2018).

The surge in global trade during 2010-19 was largely associated with the expansion of free trade agreements, and South-South agreements that were found to generate greater proportional increases in bilateral trade than North-South agreements, primarily through deeper regional integration mechanisms (Behar & Cirera-i-Griville, 2013). Nevertheless, North-South FTAs remain important, as they facilitate technology transfer and enhance productivity, thereby complementing South-South trade flows (Athukorala, 2011). In both North-South and South-South trade agreements, developing countries benefit from comparative advantage due to their lower production costs and favourable natural resource endowments (Razeq, 2022). Trade flows from the Global South to the Global North have played an increasingly important role in restructuring global trade patterns and redefining the international division of labour.

While exports from the South to the North have largely consisted of finished goods (48.4 per cent), trade within the South has been dominated by intermediate goods and components (49.1 per cent) in 2024, replacing earlier supply relationships from the North to the South in these sectors (Lee, 2016). The expansion of South-South trade is also closely linked to demand generated in the Global North for final manufactured goods (Athukorala & Nasir, 2012). Global trade is expected to decline gradually over the next five years (IMF, 2025). This growing pessimism in global trade reflects concerns over trade

Figure 2.3a: Assessing Divergences in Trade and Investment between GN and GS (per cent)



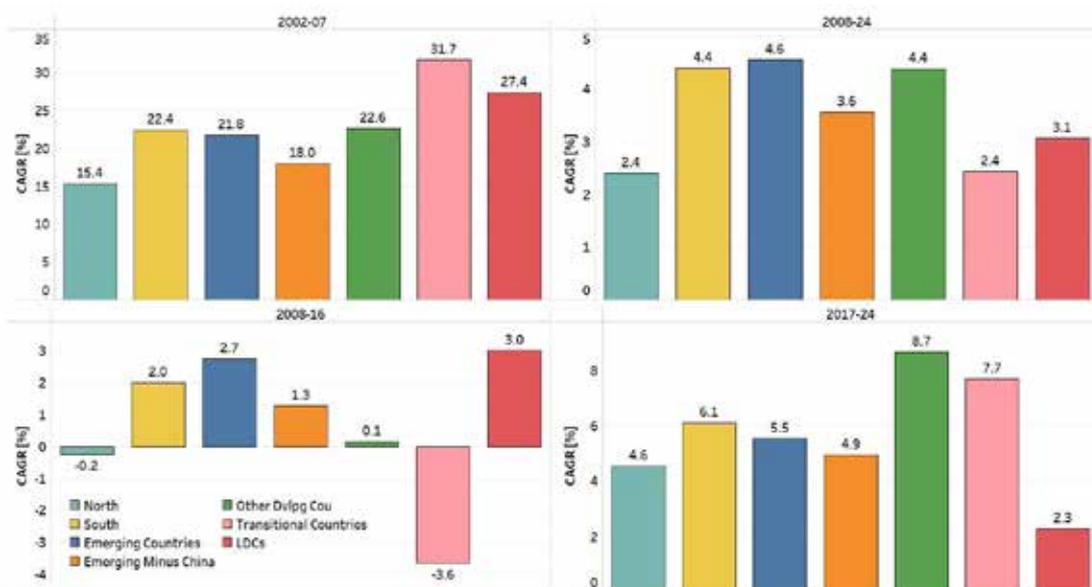
Source: Authors' calculation based on Comtrade, United Nations, Washington DC and World Investment Report, UNCTAD, Geneva.

diversion, inefficient resource allocation, technological fragmentation, geopolitical tensions, armed conflicts, protectionist policies, and climate-related disruptions. Consequently, the global economy is entering a phase in which previously converging economic forces are showing signs of reversal (World Bank, 2025).

The convergence hypothesis between the Global North (GN) and the Global South (GS) is well

established in the literature, but the intensity and speed of convergence have become especially important in an increasingly turbulent global economic environment. It is observed that the nature of convergence between the GN and GS varies across sectors such as trade in goods (TIG), trade in services (TIS), and Foreign Direct Investment (FDI), and even the convergence patterns between outward and inward FDI differ significantly.

Figure 2.3b: North Vs South and Converging TIG Growth Pathways within the Global South (Compound Annual Growth Rate (CAGR, %))



Source: Authors' calculation based on Comtrade, United Nations, Washington DC.

Nevertheless, convergence is occurring across all major economic dimensions, although certain segments are advancing at a faster rate than others, and the long-term sustainability of convergence depends critically on the pace at which it unfolds. Convergence in the goods sector has progressed much faster than in the services sector, as shown in Figure 2.3a. In the goods sector, there were persistent signs of inertia in trade convergence from the 1990s, which limited the reduction of the global share gap between the GN and GS, and this trend continued until the onset of global economic buoyancy in 2003. The share of the GS in global trade in services increased steadily from 28.9 per cent in 2003 to 42.9 per cent in 2013, reflecting a sustained and uninterrupted rise in its participation. The global recession of 2008 marked a critical turning point in narrowing the gap between the GN and GS in global trade in goods, and this convergence process continued with moderate growth until 2011. Since then, the gap between the two groups remained largely unchanged during the period 2012-15, with only marginal fluctuations, while convergence in trade in goods resumed during the period 2019-24.

The convergence trends in trade in services have not followed a pattern similar to that observed in trade in goods. The degree of convergence in trade in services has been significantly slower compared to the convergence observed during and after periods of global economic buoyancy. Indeed, the global recession played a decisive role in reducing the structural divide between the GN and GS. The global buoyancy period had only a limited effect on convergence, whereas a noticeable narrowing of the share gap between the GN and GS in global services trade occurred during the recession. The onset of another global slowdown during 2018 and 2019, driven by the U.S.-China trade conflict, temporarily widened the gap between the GS and GN before the convergence process resumed in recent years. Overall, convergence in trade in goods has been more pronounced than in trade in services, and the share of the GS in global services trade remained within the range of 31 per cent to 33 per cent during the period 2012-24. The resurgence of the GS cannot be attributed solely to the rise of emerging economies or the grouping without China, but rather reflects the broad-based growth of all country groupings within the GS, with only modest variations in their growth performance. The global trade share gap between

the GN and GS has narrowed significantly, and the disparities among different GS country groupings, including emerging economies, emerging economies excluding China, least developed countries (LDCs), transitional economies, and other developing countries, have also declined.

During the global buoyancy period (2002-07), GDP in the GN grew at a rate of 15.4 per cent, while the GS recorded a higher growth rate of 22.4 per cent, as shown in Figure 2.3b. Emerging economies excluding China grew at a rate of 18 per cent, while LDCs, transitional economies, and other developing countries recorded even higher growth rates of 27.4 per cent, 31.7 per cent, and 22.6 per cent, respectively. The global recession of 2008 resulted in a sharp slowdown in economic growth across most major country groupings. Despite this downturn, the GS continued to demonstrate stronger growth performance than the GN during the post-buoyancy period from 2008 to 2024. Furthermore, different country groupings within the GS consistently registered higher growth rates than the GN during this period. Although the recession severely affected all segments of the global economy, most GS country groupings performed better than their GN counterparts. During both post-buoyancy phases (2008-16 and 2017-24), the GS maintained improved growth performance relative to the GN, and there was a noticeable degree of convergence among GS country groupings. During the buoyancy phase, LDCs, transitional economies, and other developing countries displayed stronger growth performance than emerging economies and emerging economies excluding China. However, their growth performance moderated during the post-buoyancy period, although it remained broadly aligned with that of emerging economies excluding China.

2.5. How Divergent is the Global South?: End-Use and Technology Sectors

The trade in the Global South passed through a rapid transformation from rhetoric into reality, exhibiting mutual interdependence and shared interests (Smolaga, 2022). South-South trade has witnessed substantial growth across diverse sectors since the early 1990s, most notably within manufacturing (Athukorala & Nasir, 2012). The resilience of South-South trade is evident in its ability to remain dynamic, accommodate production fragmentation, and uphold the quality of trade logistics. In this process,

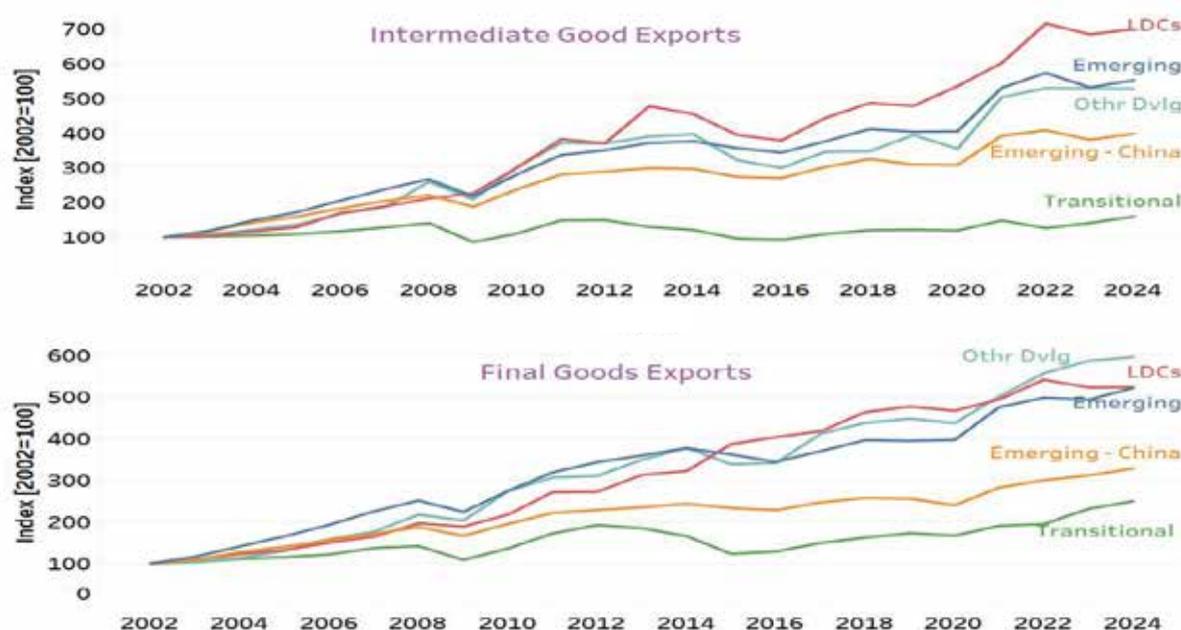
major economies such as China and India achieved significant trade milestones, while smaller economies sustained comparable dynamism (Ngundu & Matemane, 2023). During its 'catching up' phase with the Global North, the Global South progressively dismantled tariff barriers, attaining historically low levels through deliberate strategies. Unlocking the potential of South-South trade requires further liberalisation of trade and investment regimes, supported by strong infrastructure, efficient logistics, and a multilateral approach to market access (Athukorala, 2011).

The resurgence of the Global South in international trade stems from its growing participation in both intermediate and final goods markets (Horner & Nadvi, 2018). In global trade, intermediate goods constitute the dominant component of exports, comprising between 60 per cent and 80 per cent of total trade flows (World Bank, 2017; UNCTAD, 2013). The impact of trade is significantly stronger when production inputs are sourced from emerging or less-industrialised Global South economies (Ndubuisi, Owusu, & Kassa, 2026). East Asia's integration into global production networks has significantly strengthened the role of South-South trade within world trade (Horner, 2016). In the post-2012 period, intermediate goods sectors, including textiles and electronic components, have sustained robust global

growth (Lee, 2016). Through collaborative efforts in value addition across global value chains, Southern economies have bolstered their export capacities, with notable success in industries such as spices (Saha, Bontadini & Cowan, 2023). There are evidences to show that the rising global division of labour within the Global South has stimulated greater activity across both upstream and downstream segments of global value chains (Lee, 2016). The growing alignment of trade between the Global North and South has been propelled by the latter's active role in technology-intensive products. Within the South, least developed countries, transitional economies, and other developing nations have consistently posted stronger results than emerging economies, with or without China (Mohanty, Franssen and Saha, 2019).

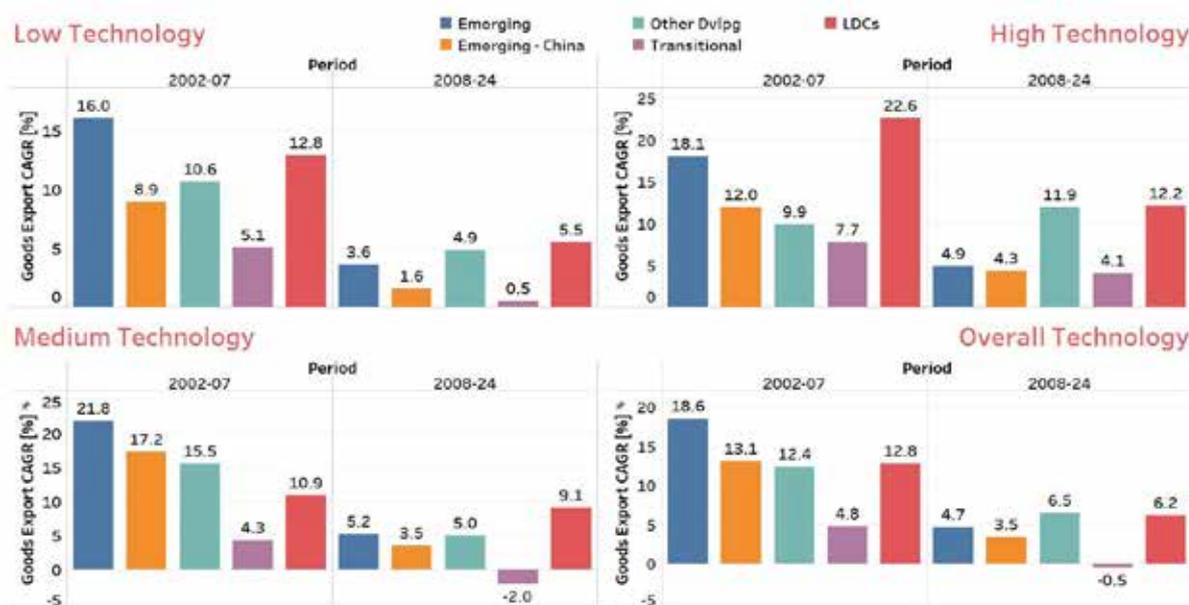
There is considerable debate in the literature regarding the Global South (GS) as a heterogeneous group of countries, with substantial developmental gaps persisting between emerging economies and other developing countries in trade and broader economic activities (Pavcnik, 2017; Majeed, 2016; Meschi & Vivarelli, 2009). These developmental gaps, particularly between emerging economies and other groups such as LDCs, transitional economies, and developing countries, were especially pronounced during the post-colonial period, although they have

Figure 2.4a: Convergence in Specialised Trade: Developing Countries Advancing Toward Emerging Economies (Index 2002=100)



Source: Authors' calculation based on Comtrade, United Nations, Washington DC.

Figure 2.4b: Assessing Growth Performance of Tech-Driven Trade Sectors within the GS (Compound Annual Growth Rate (CAGR), %)



Source: Authors' calculation based on Comtrade, United Nations, Washington DC.

gradually narrowed over time as these economies have accelerated their catching-up process. The widely held view that emerging economies excluding China have progressed significantly different from emerging economies including China is not fully supported by empirical evidence, as both groups have shown broadly similar growth trajectories despite China's strong growth performance. This trend reflects the growing dynamism of different country groupings within the GS in expanding their engagement with global trade and other economic activities. As a result, countries across the world may increasingly find limited distinction between different GS country groupings when engaging in trade.

Consequently, different country groupings within the GS are becoming more homogeneous in trade performance, although their performance in specialised sectors such as end-use and technology-intensive trade requires closer examination. Figure 2.4a and 2.4b illustrate the pace at which non-emerging country groupings have progressed in specialised trade sectors in their effort to catch up with emerging economies over the past two decades. Figure 2.4a presents trends in trade flows for the GS and its major country groupings, including emerging economies, emerging economies excluding China, LDCs, transitional economies, and other developing countries, particularly within end-use trade sectors.

Convergence occurs when country groupings at relatively lower levels of development, experience faster and sustained economic growth compared to more advanced country groupings over an extended period. In the end-use sectors, growth indices have been constructed for intermediate and final goods export sectors for different country groupings since 2002. To measure relative growth performance, export values have been converted into indices, with 2002 serving as the base year and index value set at 100.

In the intermediate goods export sector, LDCs recorded the fastest growth, followed by emerging economies and other developing countries from the onset of the global recession until 2024. The strong growth performance of LDCs indicates their gradual convergence toward the average growth trajectory of the GS. In contrast, emerging economies excluding China recorded moderate growth, while transitional economies experienced relatively weak performance in intermediate goods exports. In the final goods export sector, LDCs, emerging economies, and other developing countries exhibited broadly similar growth trends during 2002–24. Emerging economies excluding China showed moderate growth in final goods exports but performed better than transitional economies. Overall, LDCs and other developing countries have consistently narrowed the gap with emerging economies, with or without China, thereby

strengthening their share in global trade. However, the level of trade performance continues to vary across different country groupings and trade regimes.

In technology-intensive export sectors, performance during the global buoyancy phase indicates that LDCs, emerging economies excluding China, and other developing countries grew at broadly similar rates, although emerging economies overall maintained stronger positions. Figure 2.4b presents the growth performance of the GS and its sub-groupings in various technology-intensive export sectors in goods. During the buoyancy phase, LDCs and transitional economies emerged as the leading performers among GS country groupings, while other emerging economies ranked lower in the growth of technology-intensive exports. Furthermore, during the post-buoyancy period, LDCs and other developing countries demonstrated stronger growth performance compared with emerging economies, even excluding China. Transitional economies, however, continued to show relatively weak performance during the post-buoyancy period. Within the emerging economy group, China played a significant role in shaping overall performance, although growth in emerging economies excluding China remained relatively comparable.

Overall, the GS has moved toward greater homogeneity over time, as LDCs and other developing countries have grown faster than emerging economies and reduced long-standing developmental gaps. This process has enabled the GS to narrow its trade gap with the GN, particularly in goods exports. It has also strengthened both intra-regional trade within the GS and extra-regional trade linkages with the GN.

2.6. Shifting FDI Dynamics and the New Trade Landscape

The integration of FDI and trade is being increasingly witnessed in the new-age trade, where, on one hand, investment flows are following enhanced trade flows through expanded and deeper market access, and on the other hand, standalone chapters on investment are being included alongside tariff reduction in trade agreements. Countries have been negotiating provisions on investment protection, facilitation and dispute resolution mechanisms (Choudhary *et al.* 2025) in several bilateral, regional and mega-regional trade agreements. At the global platform, many countries, under the Investment Facilitation for Development Agreement, have been

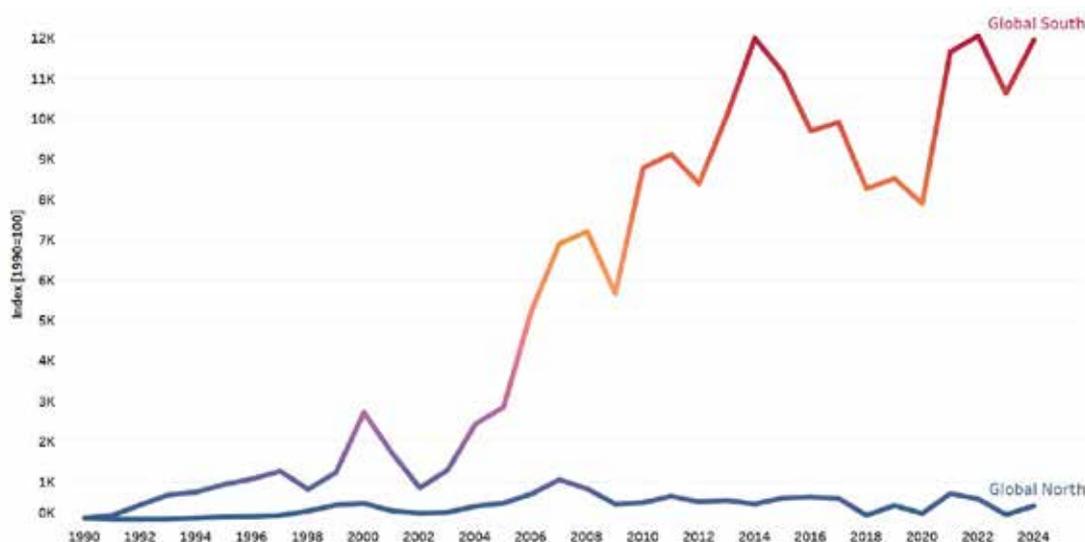
working towards a JSI-led plurilateral initiative to ensure transparency and predictability, streamline procedures and promote sustainable investment. As MC14 is nearing the corner, it becomes important to analyse the global FDI trends for evolving global trade governance and policy-making, given the intertwined nature of both trade and investment.

The current geopolitical landscape has been influencing global FDI trends, which are being characterised by a high degree of volatility, uneven recovery patterns, and sectoral shifts towards technology and digital services, green energy and sustainability projects, while simultaneously being away from concentrated global supply chains (UNCTAD, 2025; WTO, 2025). The convergence of inward and outward FDI between the Global North (GN) and the Global South (GS) has emerged as a defining feature of structural change in the world economy since the late 2010s (UNCTAD, 2010). In FDI inflows, the role of GS has increased threefold in the past two decades, from 22 per cent in 2007 to 58 per cent in 2024 (UNCTAD, 2025). Similarly, the share of GS in FDI outflows has also been increasing, with emerging countries playing a critical role (Liu *et al.* 2023). The pattern of convergence between the GN and the GS has differed substantially between inward FDI (IFDI) and outward FDI (OFDI), both in terms of intensity and timing.

For inward FDI flows, convergence began immediately after the global recession in 2008. In contrast, outward FDI convergence was delayed and only began to take shape around 2018. A notable characteristic of the GN and the GS has been the alternation between convergence and divergence over relatively short periods, which differs from trends observed in trade flows. The convergence observed in inward and outward FDI between the GN and GS may be characterised as unstable, as the GS reached the halfway mark in certain years but experienced renewed divergence in subsequent periods. The early convergence in FDI occurred largely because the GS expanded at a faster pace than the GN, as illustrated in Figure 2.5a, particularly during the aftermath of the global recession.

To analyse the expansion paths of the GN and GS in FDI, both were assigned an equal starting point in index form, despite their substantial differences in actual values in 1990. Accordingly, the index values for both the GS and GN were set at 100 in 1990, and the growth path shown in Figure 2.5a illustrates how

Figure 2.5a: Impressive FDI Performance of the Global South (Index 1990=100)



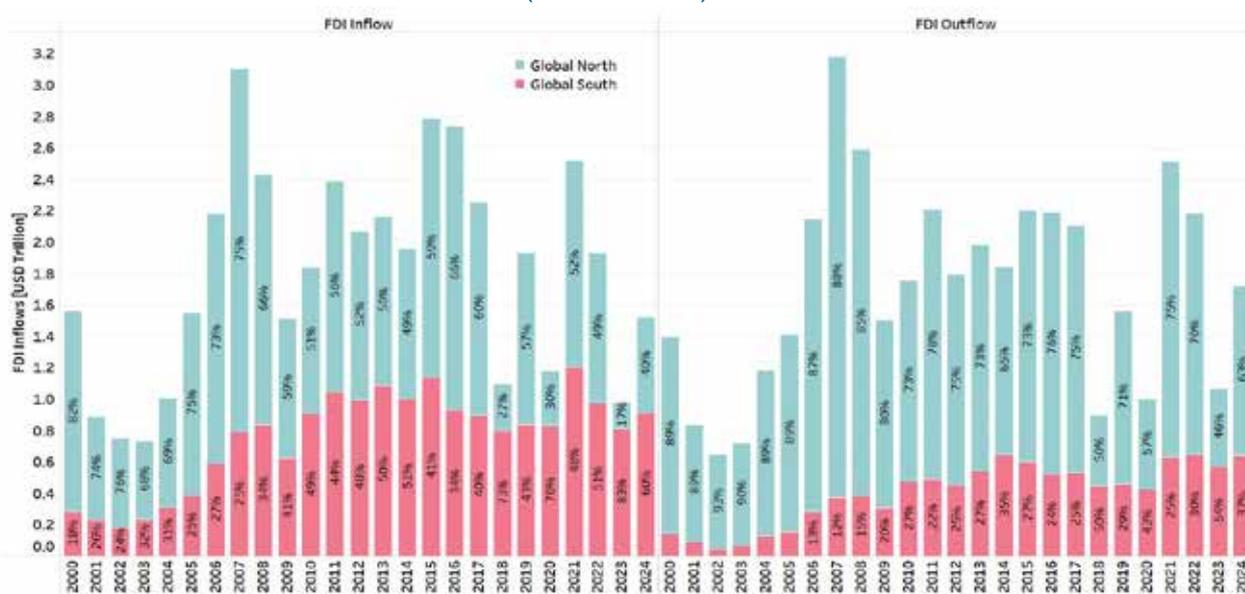
Source: Authors' calculation based on Comtrade, United Nations, Washington DC and World Investment Report, UNCTAD, Geneva.

the FDI indices of the GS and GN evolved over the subsequent three and a half decades. The indexed FDI of the GN remained largely flat over the decades in volume terms, although the absolute magnitude of FDI in the GN remained several times higher than that of the GS. In contrast, FDI flows from the GS expanded sharply during the post-Asian Financial Crisis. This upward trajectory of FDI from the GS continued steadily between 2002 and 2014, although temporary slowdowns occurred in 2008 and 2012. After peaking

in 2014, FDI from the GS declined until 2020, then recovered strongly in the post-pandemic period.

Beyond the trend analysis, the actual inward and outward FDI flows between the GN and GS reveal important structural insights, as presented in Figure 2.5b. A year-by-year comparison between the GS and GN during the period 2000-2024 shows rapid convergence in FDI, though this convergence remained unstable for both inward and outward FDI, unlike the more stable convergence observed in trade

Figure 2.5b: Convergence between Global North and Global South in FDI (US\$ Trillion)



Source: Authors' calculation based on Comtrade, United Nations, Washington DC and World Investment Report, UNCTAD, Geneva.

in goods. Of the total global inward FDI of \$1564.4 billion in 2000, the GS accounted for only 18 per cent, increasing to 34 per cent in 2008. Following the global recession of 2008, global inward FDI rose significantly to \$2791.1 billion in 2015, reaching an all-time high after the global recession. The GS accounted for half of global inward FDI for the first time in 2013, and its share reached a peak of 83 per cent in 2023. The share of the GS in inward FDI crossed the halfway mark seven times between 2000 and 2024, including the years 2013, 2014, 2018, 2020, 2022, 2023, and 2024.

Figure 2.5b also shows that the GS remained in a relatively weaker position than the GN in outward FDI, particularly relative to inward FDI performance. In 2000, the GS accounted for 11 per cent of global outward FDI, and this share declined further to 7 per cent in 2002. The global share of the GS in outward FDI increased to 12 per cent in 2007, coinciding with a peak in global investment flows of \$3182.7 billion in the same year. Outward FDI from the GS crossed the 50 per cent mark for the first time in 2018 and reached similar levels again in 2023. In 2024, global outward FDI stood at \$1,723.8 billion, which was only 54.2 per cent of the peak level of \$3,182.7 billion recorded in 2007, implying huge potential for GS in FDI outflows. In both inward and outward FDI flows, the GS exhibited relatively lower volatility compared with the GN, indicating that investment flows from the GS were more stable and predictable. Several studies, including Sah and Malik (2024), suggest that FDI in the GS contributes to trade expansion, and outward FDI from both the GN and the GS may stimulate global trade by encouraging complementary investment. Hence, it is important to have a holistic overview, encompassing trade and investment, while forming global trade policies.

2.7. Services Sector Dynamics: Uneven Trajectories in North-South Trade

Trade in services grew at a markedly faster pace in the post-pandemic period, registering a 9 per cent expansion, well above the growth of merchandise trade in 2025 (UNCTAD, 2026; Ilie, 2025). The sector accounted for 27 per cent of global trade and is projected to surpass the growth trajectory of the trade in goods sector in 2026. Trade in services has emerged as a defining feature of the contemporary economic landscape, exerting a critical influence on production, investment, and international trade in both advanced and developing economies (Parameswaran,

2004). Global demand is rising across multiple service trade sectors, including intellectual property, telecommunications, computer and information services, business services, and personal, cultural, and recreational activities, alongside emerging areas such as professional services, tourism, healthcare, and creative industries (Chaitoo, 2020). Digital service trade (DST) has developed into a prominent segment of international services trade, defined by unique characteristics in the way services are produced, delivered, and consumed across borders. Its traceability, linkage with global value chains, AI-related competitive advantages, and resilience during global disruptions underscore its growing importance (Jiang & Jia, 2022).

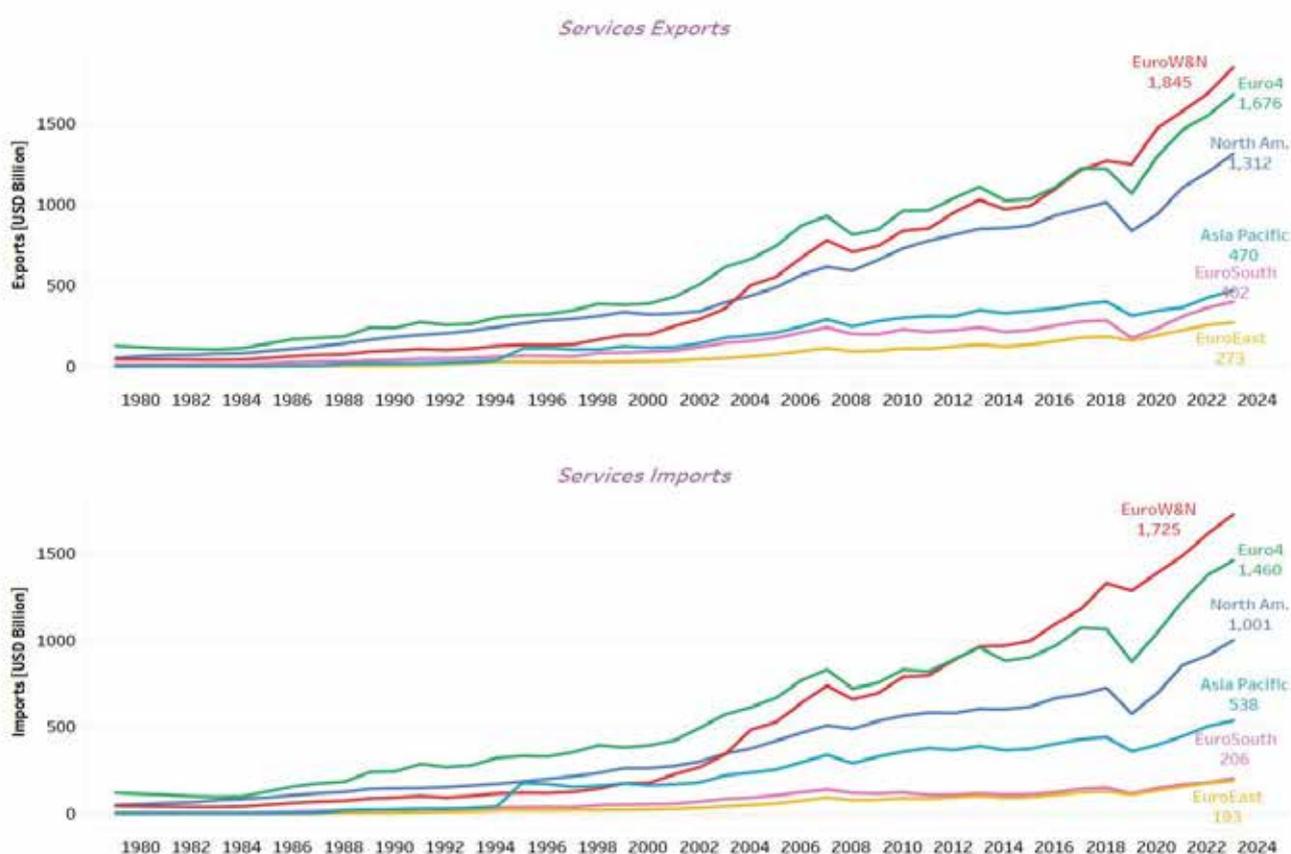
AI-driven transmission is pivotal to expanding cross-border services trade, enabling international delivery with speed and scalability (Trivedi & Gautam, 2025). The expansion of services trade is becoming closely tied to cross-border data flows, including cloud computing, fintech, and e-commerce. Artificial intelligence plays a critical role by managing vast databases, enabling efficient data transmission, and providing sophisticated analytical capabilities (Sun & Trefler, 2023). Evidence shows that services trade and cross-border data flows powered by AI have stimulated development, with demand for AI-driven transformation rising rapidly since 2015 in knowledge-intensive sectors (Nordas & Tang, 2022). Digital trade has expanded rapidly, contributing about 60 per cent to global services trade, and its share has doubled between 2005 and 2024. Developed countries maintain a competitive edge both in traditional services trade and in the digital domain. The services trade sector continues to encounter a wide range of non-tariff barriers across advanced and emerging economies. Addressing these challenges demands coordinated multilateral action within the framework of the WTO. Services Domestic Regulation (SDR) is expected to feature prominently as a Joint Statement Initiative (JSI) at MC14, advancing disciplines aimed at enhancing transparency and reducing regulatory barriers in global services trade. The services trade sector continues to encounter a wide array of non-tariff barriers, ranging from market access limitations and regulatory challenges to restrictions on the movement of natural persons, sector-specific restrictions, and emerging challenges in digital trade (Dincer & Tekin Koru, 2020). Among the key negotiating priorities in

digital trade are the continuation of the e-commerce moratorium, the regulation of cross-border data flows, and policies on data localisation. For trade in services to thrive in the coming years, comprehensive reforms may need to be pursued outside the Joint Statement Initiative framework (Fiorini & Hoekman, 2018).

In TIS, the rate of convergence between the GN and GS has remained slow compared with trade in goods and FDI, despite the rapid expansion of TIS involving the GS relative to the GN. Global TIS was estimated at \$8.7 trillion in 2024, representing an increase of approximately 12½ times during 1990–2024. During this period, GN exports increased by about 10½ times to reach \$5.98 trillion, while imports rose by nearly 9½ times to reach \$5.12 trillion in 2024. In contrast, GS exports expanded by 23 times to reach \$2.67 trillion in 2024 over the past three and a half decades, while imports increased by about 18¼ times to reach \$2.69 trillion during the same period. The convergence pattern between exports and imports of TIS also differs, with convergence

being more pronounced in imports than in exports. Across different phases of global trade regimes, the responses of the GN and GS have been substantial and clearly observable. With the onset of the global recession, the declining trend in the GN's share of world services trade is immediately reversed, resulting in a temporary increase, before gradually declining again in subsequent years. The GN's import share in the world declined from 26.4 per cent in 2001 to 25.8 per cent in 2002, while its export share declined from 24.2 per cent in 2002 to 21.5 per cent in 2003. A similar pattern re-emerged in 2020 during the global pandemic, when the GN's relative shares in both exports and imports increased compared to the preceding period. With the recovery of the global economy, the GS's share tends to increase again in both exports and imports within the world economy. The rising frequency of global uncertainties has generally favoured the GN, enabling it to recover lost shares in global services trade and thereby slowing the convergence process between GN and GS.

Fig 2.6a: Unequal Pathways: Services Trade within the Global North (US\$ Billion)



Source: Authors' calculation based on Balance of Payments, IMF.

Fig 2.6b: Sectoral Leadership in Services Trade: Driving Divergence within the Global North (US\$ Billion)



Source: Authors' calculation based on Balance of Payments, IMF.

However, the advantage enjoyed by the GN in the services sector has not been evenly distributed across its various regional groupings. The GN is divided into six regional groups—Euro-4, Euro-West & North, Euro-South, Euro-East, North America, and Asia-Pacific— and their performance in TIS exports and imports is illustrated in Figure 2.6a. In exports, two distinct clusters have emerged among the GN: (a) Euro-West & North, Euro-4, and North America; and (b) Euro-South, Euro-East, and Asia-Pacific, reflecting differences in trade performance. Among the stronger performing regions in TIS exports, Euro-West and North demonstrated remarkable performance, surpassing North America in 2004 and Euro-4 in 2017 to become the leading grouping globally. The relative advantage of North America began to weaken gradually after 2000 and declined more sharply after 2020. Among the remaining GN groupings, including Euro-South, Euro-East, and Asia-Pacific, the Asia-Pacific region exhibited exceptional performance, surpassing Euro-East and Euro-South in 1994, reaching Euro-West and North levels in 1995, and stabilising thereafter. Euro-South experienced a significant decline during the pandemic but recovered strongly by 2024. In the

import sector of TIS, the relative rankings of GN regional clusters remained largely unchanged, with performance gaps among the six regions remaining broadly similar in 2024. The outstanding performance of Euro-West & North and Asia-Pacific in imports closely mirrored their export performance.

Differences in trade performance among GN regional groupings can largely be attributed to their sectoral specialisation choices in TIS. Identifying leading TIS sectors is essential for understanding the drivers of services trade performance among specific countries and regional groupings. Accordingly, an empirical decomposition analysis of the global TIS sector was undertaken using 12 major sub-sectors to identify leading sectors during 2016–2024. The findings indicate that the leading sub-sectors globally include telecommunications, travel, other business services, transportation, intellectual property services, financial services, and maintenance services. The top four sub-sectors, including telecommunications, travel, other business services, and transportation, accounted for nearly three-fourths of total global services trade during 2016–24. Among the large sectors with strong growth potential are telecommunications, computer and information services, and travel services, while

smaller sectors such as maintenance and repair services, insurance, personal services, and intellectual property services are also emerging. At the same time, several traditionally large sectors, including other business services and transportation, have gradually declined in relative importance, along with smaller sectors such as manufacturing services and cultural and recreational services. Based on global experience, the factors contributing to the superior performance of certain GN regions are illustrated in Figure 2.6b. Better-performing GN regions have strategically focused on large and fast-growing service sectors. Several rapidly growing GN regions have concentrated on major high-growth services sectors, resulting in noticeable regional disparities. In recent years, GS regions have adopted a similar strategy to accelerate their participation in global services trade.

These evidence-based trends in trade and investment and their different sectors not only represent their growing role in providing stability in the world economy but also point out the growing convergence of the Global South and Global North with rising homogeneity among the Global South country groups and heterogeneity among the Global North country groupings. The increasing role of the Global South in international trade and finance has also raised the power of the developing countries to put forth their demand on the WTO negotiating table, either through Special and Differential Treatment (S&DT) provisions or opting for JSI-led initiatives in different sectors. Hence, it is important to mark the developments and challenges in the developed and developing countries in trade and FDI before the next WTO Ministerial Conference in March 2026.

2.8. Conclusions

The recent global economic turmoil has been driven by continued disruptions to supply chains, higher inflation and debt, geopolitical tensions, rising trade wars and protectionism, and uncertainty about government policies. This is characterised by slower growth in economic activity, which has put immense pressure on gross world product, with stagnation in international trade and a sharp decline in FDI to nearly half the 2008 level. Though trade in goods and services has grown exponentially, there is a huge difference in quantum between the two. However, it is important to note that the Global South has supported in a major way the stability in these economic trends. Interestingly, the share of the Global South in trade

and investment has increased over the year, implying a natural convergence in the gap between the Global South and Global North. The gap between the share of the Global South and Global North has been reducing, in both trade and investment, though showing different trends across distinct components. On the one hand, the magnitude of the difference in the share of Global South and Global North is smaller for trade in services in comparison to trade in goods. On the other hand, the share of the Global South in global FDI inflows has crossed the halfway mark seven times, relative to twice in global FDI outflows.

It is important to note that it is not a single country dominating the Global South trade, investment and GDP trends. There is vivid convergence among the different Global South country groupings, including emerging countries (excluding China), LDCs, transitional economies and other developing countries. This homogeneity has been increasing over the years, which has helped in reducing the divergence between the Global South and the Global North. However, in the case of services trade, the convergence of the Global South and the Global North, in terms of their share in the world, has not been to the extent visible in merchandise trade and FDI. Global North regions like Euro-West and North, Euro-4 and North America have been contributing the majority of services trade, with high-performing sectors like transport, travel, telecommunications, computer and information services, and other business services. These sectors are also observed to be contributing a higher share of the Global South services exports, which further require a push to bridge the gap between the Global North.

Given these changing structural and compositional dynamics, it becomes important to understand the state of play of trends in merchandise trade, services trade, and FDI to achieve transparent and resilient international trade with WTO at the core. WTO negotiations and plurilateral initiatives, like Investment Facilitation for Development, issues relating to Services Domestic Regulations, Moratorium on Custom Duties on Electronic Transmissions, etc., are quite critical for MC14, and the increasing role of developing countries in stabilising global trade and investment would provide the necessary push for S&DT provisions demanded by them to get market access. Given the heterogeneity in the Global North, it is important for the countries of the Global South to

firmly put their demands on the table based on their interests. An evidence-based approach on various WTO agreements would enable the Members to move towards establishing a roadmap for further negotiations, if not finalising the agreements in March 2026.

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Session II: The Changing Global Landscape of Trade and Investment

30 January 2026 | New Delhi

Moderator:

- **Professor Nagesh Kumar**, Director and Chief Executive, Institute for Studies in Industrial Development (ISID), New Delhi

Presentation:

- **Professor S. K. Mohanty**, Distinguished Fellow, RIS (Team: *Dr. Sabyasachi Saha*, Associate Professor, RIS and *Dr. Pankhuri Gaur*, Assistant Professor, RIS)

Discussants:

- **Professor C. Veeramani**, Professor and Director, Centre for Development Studies (CDS), Thiruvananthapuram
- **Dr. Rajan Sudesh Ratna**, Deputy Head and Senior Economic Affairs Officer, United Nations ESCAP South and South West Asia Office
- **Professor Dipankar Sen Gupta**, Department of Economics, University of Jammu
- **Dr. Nitya Nanda**, Professor, Council for Social Development, New Delhi



Strengthening developing countries engagement in global trade negotiations requires timely, evidence-based, and policy-oriented research that directly informs negotiation strategies rather than arriving post-facto. The evolving global trade landscape, marked by the slowdown after hyper-globalisation and rising protectionist tendencies among advanced economies, has made negotiations increasingly asymmetric for the Global South.

Professor Nagesh Kumar, *Director and Chief Executive, Institute for Studies in Industrial Development (ISID), New Delhi*



Global trade is not collapsing but reconfiguring, with growth increasingly driven by non-U.S. markets, merchandise trade and AI-related products, underscoring the need for India and the Global South to adapt trade and investment strategies to these evolving realities.

Professor C. Veeramani, *Professor and Director, Centre for Development Studies (CDS), Thiruvananthapuram*



The future of global trade integration will depend less on preferential access and more on strengthening domestic capabilities, reducing trade costs, upgrading skills, and embracing digital and services driven growth. As global rules and preferences evolve, developing economies may focus on competitiveness, diversification, and regional cooperation to sustain long term participation in global value chains.

Dr. Rajan Sudesh Ratna, *Deputy Head and Senior Economic Affairs Officer, United Nations ESCAP South and South West Asia (SSWA) Office*



Sustainable integration of the Global South into the world economy requires shifting focus from external preferences to internal strength through domestic demand, savings, capital formation, branding, trade facilitation, and digital public infrastructure. Large developing economies have a unique responsibility to lead this transformation.

Professor Dipankar Sen Gupta, *Professor, Department of Economics, University of Jammu*



Sustainable growth and trade expansion require focusing on real investment, productive capacity, and strategic partnerships rather than headline FDI figures or overly optimistic multilateral outcomes. India's path lies in strengthening goods trade, greenfield investment, and cautious engagement in global trade negotiations.

Dr. Nitya Nanda, *Professor, Council for Social Development, New Delhi*



Part I
Broader Issues at
MC 14



WTO Reform for An Inclusive System

Harsha Vardhana Singh, Atul Kaushik and Teesta Lahiri

3.1. Introduction

Recent global developments show a major disregard for inclusive and predictable rules-based systems. The most important changes are occurring in the areas of trade and investment, and access to critical minerals and other resources.

In this background, the global comity of nations has a valuable agreed multilateral trading system, the World Trade Organisation (WTO), which incorporates a number of important interlinked fundamental or foundational operational principles (see Table 3.1). The highlighted part of the text in the second column shows

the disciplines that lead to inclusion of members in the operations of the WTO system and its positive impact on efficiently and effectively conducting global trade transactions. Both the literature on WTO reform and discussions within the WTO show diverse views. The views in the literatures are summarised below, followed by a more detailed consideration of the discussions in the WTO are examined in more detail.

Views expressed in the literature: The literature on WTO reform has progressively evolved from early concerns about institutional legitimacy and judicial imbalance into a more complex and fragmented

Table 3.1: WTO's Operational Principles and Their Impact on the Trading System

WTO Operational Principles	Principles Operate Through, or Have an Impact On:
Non-discrimination	Most Favoured Nation Treatment (MFN), National Treatment, Security and Predictability
Fair	Development and Special and Differential Treatment (S&DT), Inclusion
Inclusive	MFN , National Treatment, Consensus
Consensus-based	Inclusion
Rules-based	Security and Predictability
Open	Creating Trade Opportunities
Transparency	Clarity of the Operational System and Predictability of the Operational Conditions
Predictability	Efficiency and Effectiveness of the System, Enabling Larger Business Opportunities
Dispute Settlement	Rule based security and predictability

Note: The text in bold in the second column shows some important principles that will be impacted by the WTO reform emphasized by some large WTO members.

debate encompassing consensus-based decision-making, plurilateral experimentation, industrial policy spillovers, domestic political backlash, and competing visions of multilateral fairness. Early critiques did not merely identify procedural inefficiencies but questioned whether the WTO's architecture had become normatively and institutionally misaligned with the changing political economy of globalisation.¹

Reform scholarship, therefore, emerged not as a technical conversation about procedural amendments but as a broader inquiry into whether the WTO's foundational structure, including its balance between law and politics, its reliance on consensus, and its commitment to non-discrimination, remained fit for purpose in a world marked by geopolitical rivalry and policy heterogeneity.²

A central tension persists between adaptability and systemic integrity.³ One strand argues that flexibility, differentiation, and political recalibration are necessary to preserve relevance. Another strand cautions that weakening foundational principles risks fragmenting the multilateral system and undermining predictability.⁴ This chapter intervenes precisely at this fault line. It does not deny institutional frustration or geopolitical strains. Rather, it evaluates reform proposals through their systemic implications for foundational operational principles, particularly MFN, consensus, inclusiveness, and predictability, to argue that any reform, to be inclusive, meaningful and effective, must preserve the foundational principles of the WTO, while accommodating disciplined adaptation to restore its functionality.

Discussions in the WTO: For some years now, WTO members have been discussing/ negotiating reform of the WTO system to improve its relevance and efficiency in a situation where changes in the conditions of trade may require modifications in the present scope and functioning of the WTO system.

The areas of concern include addressing:⁵

- The challenges WTO members face in initiating, negotiating and concluding trade agreements, both for outstanding issues as well as for new issues.
- The need to strengthen the work of WTO's regular Bodies and Committees and strengthen notification and transparency disciplines under existing agreements.
- The question of whether and to what extent the WTO's more advanced emerging economies

should take on greater obligations under the WTO agreements.

- Whether existing Special & Differential Treatment provisions for developing and least developed countries are sufficient or effective.
- Improvements in the functioning of the WTO's dispute settlement system and overcoming the impasse on the appointment of new Appellate Body members.

The Facilitator for WTO Reform in his report⁶ shows that WTO members have introduced some other topics as well in their focus on improving the WTO system. It is noteworthy that the Facilitator on WTO Reform is not focusing on dispute settlement.

It is obvious that the members would differ in terms of their views and assessment of what is relevant and how the system needs to be reformed to make it more relevant. This is illustrated for instance by the large range of views of WTO members on various issues (including several impacting WTO's foundational principles) specified by the Facilitator for WTO Reform in his report of 5th November 2025.⁷

Section 2 of the chapter discusses the WTO reform related issues raised by WTO members. This discussion provides the background information that would help with an analysis of the areas emphasised for reform, and likely changes required to achieve the objectives of WTO reform. Section 3 examines the implication of these changes for the WTO system. Section 4 examines the policy options and the implications of changes in certain areas that are a focus of the reform initiative.

3.2. Background: Areas Emphasised for WTO Reform

To properly evaluate the views of members on WTO Reform, a good starting point is to:

- (a) examine the systemic implications of any change in the major principles, i.e., change in the operational conditions specified in Table 3.1 above, and
- (b) a close look at the reasons why certain reforms are being proposed, and the implications of any change that is being sought by some major WTO Members or a majority of members.

It would be useful to consider the areas of WTO reform under the five categories given below. There is an overlap of the issues under these categories, but such categorisation will facilitate an analysis of WTO reform.

- (1) The areas where amendments to the WTO rules will fundamentally change the efficiency and effectiveness of the present multilateral trading system, including their impact on the operational principles of the WTO. These areas require the maximum effort to understand the issues involved and to make best efforts to maintain the positive features of the WTO system. These issues would be the most difficult for getting an agreement.
- (2) Issues for which there is greater likelihood of getting a basis for agreement.
- (3) Some specific issues covered in the submissions by WTO members. Three examples could be considered here, namely the submissions by the Africa Group, US and EU.
- (4) Issues discussed in report of the Facilitator for WTO reform.
- (5) Issues which are not in the report of the Facilitator for WTO reform but are important for WTO members.

(1) Areas where the “reform” sought would change major principles and impact the operational conditions of WTO

Table 3.2 provides a list of issues for which changes would have a major impact on the structure and operations of the WTO agreements. Any analysis of these issues requires an understanding also of the reasons why a change is sought for the issues covered here. Two features in Table 3.2 are noteworthy.

One is that the reasons for members wanting a change shows an overlap between the basis of change sought for consensus, MFN and plurilateral agreements (see the second column of Table 3.2). This overlap is relevant because it allows examination of different options when solutions to the concerns are considered in some detail. An example of the possible options with regard to changes in consensus and MFN is shown in Table 3.3).

Second, there is an area mentioned in Table 3.2 that is not shown in Table 3.1, i.e., “essential security”, which has been raised by the US in its communication on WTO Reform.⁸

Table 3.2. Areas for Which Changes Would Fundamentally Impact WTO System and Operations

Issue/ Principle	Reasons for Certain WTO Members Wanting a Change
Consensus	<ol style="list-style-type: none"> (1) Even a single Member <i>could exercise a veto and limit reform initiatives</i> required by a large majority of members. (2) Under the WTO Agreement, consensus is required to legally amend MFN. Certain members <i>want freedom to change MFN</i> through voting.
MFN	<ol style="list-style-type: none"> (1) <i>Several Members feel</i> that given the large number of WTO members, <i>new Agreements are likely only between a sub-set of the membership, i.e., through plurilaterals.</i> (2) Large economies, not members of plurilaterals, would get benefits through MFN without any obligation taken by them (<i>free riders</i>)⁹. (3) Some members feel that for <i>certain non-market economies, their policies that are (unfairly) giving rise to greater market access</i> are not covered under the present rules, and changing those rules is either not feasible or will take a very long time. (4) <i>US wants to change the system</i> so that its non-MFN treatment becomes part of the rules-based system.
Plurilateral Agreements	<ol style="list-style-type: none"> (1) A number of <i>members</i> want changes in the disciplines for plurilateral agreements because they <i>feel consensus is not feasible.</i> (2) <i>One proposal</i> (the US) is that plurilateral agreements should be allowed amongst those who want it, without any disciplines imposed on those who do not want to participate. Please note that the above proposal can work only if non-members are not “free riders”, i.e., they do not benefit from MFN.

Development and S&DT ¹⁰	The views of a number of members that want to change S&DT include: (1) Classification as a developing country needs to be determined based on some objective criteria and not self-selection. (2) S&DT should be primarily for only LDCs. (3) Members with S&DT should transition to using regular WTO rules. (4) Several developing countries and LDCs want greater policy space and support to effectively achieve their development objectives. Forexample, see Annex Table 3.1.
Essential Security	"... each country has the sovereign right to take action necessary to protect its essential security interests. ... The WTO Agreement reflects the understanding among trading partners that judgments on matters of essential security are to be left to governments and not adjudicators. ... Members need to adopt a shared understanding of the essential security exception that prevents second-guessing of a Member's critical essential security decisions." ¹¹

Note: The issue of dispute settlement is discussed in detail in another chapter of this Report.

With reference to plurilateral trade agreements, there are two overlapping issues. One is the definition of plurilateral trade agreements in the WTO, and the other is the conditions under which they could be considered to be a part of the WTO system.

Definition: Article II.3 of the Marrakesh Agreement Establishing the World Trade Organization (hereinafter "Marrakesh Agreement") states that: "*The agreements and associated legal instruments included in Annex 4 (hereinafter referred to as "Plurilateral Trade Agreements") are also part of this Agreement for those Members that have accepted them, and are binding on those Members. The Plurilateral Trade Agreements do not create either obligations or rights for Members that have not accepted them.*" (Emphasis added)

Thus, the term "Plurilateral Trade Agreement" (hereinafter "plurilaterals") is by definition an Agreement which is part of Annex 4 and does not provide MFN to the rest of the WTO membership. The membership of plurilaterals is by definition less than the membership of WTO, i.e., they are WTO agreements with "not full membership" (NFM). While in the Marrakesh Agreement the term plurilateral refers to the Annex 4 agreements, there are agreements which are less than full membership but not in Annex 4. The Information Technology Agreement (ITA) is an example. It provides MFN, was agreed by consensus and is part of the

WTO's Annex 1 Agreements. In Table 3.3, ITA would be covered under the last column.

The second is the presence of two draft plurilateral agreements resulting from Joint Statement initiatives (JSIs) for which the negotiations are over and those who negotiated the agreements are seeking acceptance of those JSIs from WTO members as part of the WTO, and that too as part of Annex 4 of the WTO. Under Article X of the Marrakesh Agreement, it is important to note that acceptance into Annex 4 requires a consensus among the WTO members.¹²

To the extent that there are examples of agreements with less than full membership (i.e., ITA) which are not under Annex 4, the alternative of such agreements which provide MFN and are based on consensus should be a preferred route for plurilateral rather than Annex 4 agreement. A proliferation of Annex 4 agreements would lead to a significant dilution of inclusiveness, fairness and predictability of the WTO system. Keeping this in mind, the term "plurilateral agreement" or "plurilaterals" will be used in this paper for agreement like ITA that are not part of Annex 4.

(2) Issues Which Have Greater Likelihood of Getting Agreement

Table 3.4 shows two areas where considerable effort would be required, but there would be a greater likelihood of getting an agreement on these issues.

Table 3.3. Different Types of Agreements under the WTO

Requirement of:	All WTO Members are signatories	All WTO Members are not signatories	
		Annex 4 Agreements	Others
MFN	Yes	No	Yes
Consensus	Yes	Consensus required to get into Annex 4	Yes

There are however points of concern, such as the proposal for “administrative measures” in the context of transparency and notification.¹³ Discussions would have to focus on some “landing zones” for moving towards a practical and acceptable set of conditions.

(3) Issues Mentioned in the Submissions of the WTO Members: Three Major Examples

Three examples which are considered here are the submissions by the African Group, the US and the EU. The paper examines the first two of these submissions first. They cover a large number of issues and together with the issues given in the next two sub-sections would provide a wide coverage of the concerns relating to WTO reform.

Two of the issues mentioned by the US are shown in Table 3.4. The other issues raised by the US are shown in Tables 3.6 and 3.7. A comparison of the proposals in Tables 3.5 to 3.7 shows some areas where the views are very divergent.

African Group: The African Group has submitted two proposals. The recent proposal (5th March 2026) covering organising the proposals under the three broad categories specified by the Facilitator.¹⁴ The previous proposal, dated 31st October 2025, specified over ten points of focus for WTO reform with a very prominent focus on development.¹⁵

Key points in the March 2026 proposal of the African Group with reference to the Facilitator’s categories are as follows:

- a. Decision-making:** Protect the value of consensus, build trust, improve the practice of convergence. Members must find practical ways to build convergence and prevent avoidable paralysis.¹⁶
- b. Development:** Strengthen S&DT and secure policy space for structural transformation. Development should be framed as capability expansion. On the application of S&DT, categories of eligibility such as OECD membership or

World Bank income measures do not reflect the trade-related development challenges faced by developing countries. Indicators should aim at informing rule design and flexibility, rather than establishing new thresholds or eligibility tests for S&DT. The African Group supports evidence-based discussion on industrial policy and trade effects.¹⁷

- c. Level playing field:** Fairness must be symmetrical, including in agriculture and in the use of exceptions. “Level playing field” cannot mean tightening disciplines primarily on those who already have limited fiscal and technological capabilities, while leaving intact the instruments and exceptions through which other members act with limited constraint. The reform should result in a permanent solution for public stockholding for food security purposes (PSH) and an effective special safeguard mechanism (SSM) to protect African markets from abrupt increases in subsidised imports. Further, the increasing use of national security provisions to justify protectionist measures must be strictly regulated by the multilateral system to prevent arbitrary decisions.¹⁸

The October 2025 submission of the African Group raised several issues relating to development aspirations, including industrialisation, food security, agriculture reform, poverty alleviation, S&DT, industrial development, inclusive and transparent WTO Bodies, preservation of consensus based decision-making, and dispute settlement reform.¹⁹ More detail is provided in Annex Table 3.1. The African Group proposal raises several issues including some which are part of the November 2025 report by the Facilitator on WTO Reform. However, in certain cases, the orientation of reform initiative sought are not the same. For instance, the focus on industrial development and flexible “policy space” mentioned in the African proposal seeks supportive conditions. The discussion

Table 3.4. Areas for Which Common View Could Emerge

Transparency and Notification: “... targeted delivery of notification-related technical assistance and capacity building. ... includes administrative measures to hold accountable those Members that chronically do not adhere to their notification obligations and have no need of technical assistance.”

Role of the Secretariat: “... the WTO Secretariat [role is] fundamentally administrative, not substantive.”

Note: The quoted text is from paragraphs 2.7 and 3.4 of US communication on WTO Reform, WTO Document WT/GC/W/984, 15 December 2025

on industrial policy in the Facilitator's report focuses inter alia on enhanced disciplines.

The views expressed on WTO's fundamental principles by the March 2026 African Group submission are reiterated also by the ACP group and the LDC group submissions.²⁰ The key thrust of these propositions can be summarised by the LDC group's statement in the section on decision-making: "The worth of including additional multilateral or plurilateral agreements should uphold the same fundamental rules and practice anchored in the Marrakesh Agreement dispute settlement mechanism for Members. Reform of the mechanism must be consensus based as well."²¹

In this background, the Facilitator's report states that: "*Others noted that the conversation on fair competition reflected diverse perspectives. Fairness meant different things to different Members. ... Therefore, focusing narrowly on one or two issues could exacerbate existing inequities. A broader, more inclusive dialogue was needed to address the full spectrum of fairness concerns.*"²²

US: The US communication on WTO Reform provides two broad segments. One specifies proposals for WTO reform (Table 3.6), and the other shows the US views that for certain issues, solutions cannot be achieved at the WTO (Table 3.6).

Table 3.5. US Communication on WTO Reform, 15 December 2025

<p>Plurilaterals: "Members that are willing to consent to a new obligation should be able to forge a new agreement among themselves. The path to plurilateral agreements is blocked, and ... Reaching consensus among 166 Members on new, substantive agreements of any significance is very unlikely ... Finding a path forward at the WTO for plurilateral agreements whose benefits and responsibilities are limited to the consenting parties must be a priority. ... [i.e.,] plurilateral agreements would allow those Members that are ready to take on new commitments to do so in a reciprocal manner, while allowing other Members to join and gain the benefits of those commitments in the future, when they are ready."</p>
<p>Special and Differential Treatment: "The position of the United States has not been that SDT should be eliminated altogether. For example, it may be appropriate for least-developed countries (LDCs) to benefit from certain flexibilities. However, SDT should be viewed as a tool to enable Members to achieve the capability to follow the same rules that all other Members must follow and in a timely manner. ... Reform in the area of "development" must focus on transitioning all Members to follow the same rules, regardless of their economic differences."</p>
<p>Most Favoured Nation (MFN) Principle: "The MFN principle ... was designed for an era of deepening convergence among trading partners. ... that era has passed. It has been replaced by an era of deepening divergence, rooted in some countries' unwillingness to pursue and uphold fair, market-oriented competition, some countries' insistence on maintaining economic systems that are fundamentally incompatible with WTO principles, and many countries' pursuit of chronic trade surpluses that have adverse economic and political consequences in deficit countries. To face these challenges, trading nations must be able to treat different trading partners differently. ... MFN impedes welfare-enhancing liberalization. It pushes Members to ... to develop a one-size-fits-all approach ... it prevents partners otherwise willing to enter into mutually beneficial agreements from doing so."</p>
<p>Essential Security: Please see last row of Table 3.2 above.</p>

Note: The quotations are from paragraphs 2.1, 2.2, 2.4, 2.5 and 3.1 of the US Communication on WTO Reform, 15 November 2025.

Table 3.6. US: Areas for Which WTO Solutions are not Possible

<p>Trade Imbalances: "chronic surplus countries would need to agree to rules that would deprive them of the advantages they currently enjoy"</p>
<p>Overcapacity and Overconcentration of Production: "any WTO negotiation would surely result in watered-down obligations and grey zones that could easily be exploited"</p>
<p>Economic Security: "The WTO is a forum to negotiate trade agreements and to administer and monitor compliance with those agreements. It has no competence on security matters, including economic security"²³</p>
<p>Supply Chain Resilience: "There are several reasons why the WTO will not be a productive forum for working on supply chain resilience."²⁴</p>

Note: The quotations are from paragraphs 4.2, 4.7, 4.8 and 4.9 of the US Communication on WTO Reform, op. cit.

It is noteworthy that the US proposals in Table 3.5 overlap with the issues in Table 3.2, i.e., issues for which changes would fundamentally impact WTO system and operations. To the extent any WTO member emphasizes retaining the present main features of the WTO system, these proposals would require deep assessment to consider options that reach satisfactory conclusions.

The US communication on WTO reform has a section which differs from usual proposals, in that it specifies areas where solutions are not possible to be achieved under the WTO system (Table 3.6). It is noteworthy that an area in Table 3.6 (overcapacity and overconcentration of production) is mentioned in the report of the Facilitator for WTO reform as an area to be addressed in the context of WTO reform.

EU: The EU's submission on WTO Reform was circulated as document WT/GC/W/986, dated 21st January 2025. The basic framework of the submission is captured in the view that:

"The key features of a reformed WTO need to address the root causes of the Organisation's crisis and the shortcomings of the system to make it fit for the realities of today.

1. **Predictability:** the reformed system should remain rules-based and underpinned by a fully functioning and effective dispute settlement to enforce the agreed rules. It also needs to address today's pressing trade policy challenges (e.g., industrial policy, digital trade, climate, biodiversity, resilience etc.).
2. **Fairness:** the reformed system needs to reflect the changed economic realities and address imbalances in the rights and commitments of Members and ensure level playing field.
3. **Flexibility:** a reformed system needs to offer a more flexible framework of rules, including variable geometry approaches underpinned by a revisited governance"

Many aspects of this submission overlap with the US proposal. It is noteworthy that unlike the EU, the US does not emphasize dispute settlement as a WTO reform issue. Further, on addressing industrial policy initiatives (e.g., of China), the US and EU have opposite views. The US states that the issues cannot be adequately addressed in the WTO, and the EU aims to address it within the WTO.

A novel feature of the EU submission is a Draft Ministerial Decision which specifies work programmes on "Fairness" and "Flexibility", covering the issues

of balance of rights and obligations, level playing field in industrial sectors, developments and S&DT, consensus and decision-making, institutional reforms, variable geometry and plurilateral agreements. More detailed information is in Annex Tables 3.2 and 3.3.

A recent submission by the UK²⁵ provides views that are broadly similar to those of the EU on some key issues such as MFN and S&DT. This communication covers a host of other issues including digital trade, services, climate change, environmental degradation, "exploring other tools to help reach consensus-based decisions, including opt-outs, silence procedures and more regularly escalating issues to Ministers"²⁶, and "need for an empowered and agile Secretariat that is efficient and more flexible, guided by an agenda agreed by Members".²⁷

Other WTO members have also made submissions on WTO reform covering the various issues discussed above, though with a number of perspectives different from those emphasised by the EU and the US. Examples include the submission by Jamaica (Document number JOB/AG/270 dated 5 December 2025), Indonesia (undated document titled "Promoting Food Security and Resilience in the Multilateral Trading System"), and Paraguay (Document number WT/GC/W/987 dated 3 February 2026).²⁸ The submissions by developing economy members in general emphasise the centrality of development including S&DT, agriculture, food security, and systemic integrity of the WTO system (inclusiveness, fairness and security).

(4) Issues Discussed in the Report of the Facilitator for WTO Reform

The report of the Facilitator for WTO reform has discussed various issues under three categories: Decision-Making, Development and Special and Differential Treatment (S&DT), and Fair Competition / Balance Trade.

The discussion on decision-making focuses on the issues of consensus and presents a wide range of views. Any consideration of "consensus" needs to keep in mind that consensus is one of the foundational principles of the WTO, deviation from consensus is allowed through voting in many contexts. However, in certain instances, no amendment or decision is allowed without consensus.²⁹

The crux of the Facilitator's views regarding consensus is captured as follows:

“While consensus itself was not challenged, others observed that it is increasingly used as a veto, impeding progress and disadvantaging others. They called for a more agile and responsive process aligned with current realities. They described this as an existential issue, warning that an organization unable to make decisions risks losing relevance. The WTO’s slow pace of delivery underscored the urgency of addressing this topic—not to reach conclusions by MC14 – but to prepare Ministers for a structured, forward-looking conversation. Without such engagement, the problem would persist. ...While recognizing the complexity and sensitivity of the issue, there was broad recognition that the discussion is unavoidable. It was also acknowledged that this issue could not be resolved by MC14. Nonetheless, Members having a structured, inclusive dialogue was essential to chart a realistic and sustainable path forward.”³⁰ (Emphasis added)

On Development and S&DT as well, the report provides a whole range of views. The discussion in the previous section based on proposals by the African Group, the EU and the US have already covered several of the diverse positions.

The issues covered by the third category, Fair Competition and Balanced Trade, cover different aspects, some not yet covered in the previous discussion. Table 3.7 shows several diverse issues which are specified under this category. It should be noted that some of them are considered by the US as initiatives for which satisfactory solutions cannot be reached in the WTO (compare Tables 3.6 and 3.7).

Table 3.7. Fair Competition and Balanced Trade: Issues Mentioned by the Facilitator on WTO Reform

Issues
Subsidy disciplines under the Agreement on Subsidies and Countervailing Measures
Agricultural trade and related policy space
Industrial policy, trade-related development needs, and market distortions
Transparency obligations and compliance mechanisms
Policy Space ³¹
Trade-distorting state interventions, including subsidies ³²
Development-oriented approach to fair competition ³³

Note: The first four issues are explicitly stated by the Facilitator. The other three have been specified taking account of the summary of discussions in the Facilitator’s report.

The issues in Table 3.7 cover a wide range of topics, including reform of the subsidies disciplines, industrial policy and concerns related to development. In this regard, the following statement in the Facilitator’s report is worth keeping in mind to note certain development-related concerns that would impact negotiating positions.

“While updating the ASCM was seen as important, some argued that fairness cannot be achieved solely through technical changes to the subsidy rules. True fairness was also realized when the WTO contributes to development and economic growth. In this regard, proposals for a development-oriented approach to fair competition were highlighted, particularly for LDCs. Suggestions included: A “Development Review Mechanism” to assess the impact of WTO rules on Members’ development goals; Strengthening Aid for Trade to focus on industrial competitiveness and infrastructure; Reviewing all WTO agreements to recast rules where necessary, providing more policy space for Members to achieve development objectives.” (Paragraph 4.13 of the Facilitator’s November 2025 Report)

(5) Issues Which are not in the Report of the Facilitator for WTO Reform But are Important for WTO Members

In his statement during the December 2025 meeting of the WTO General Council, the Facilitator has acknowledged that his three categories “do not encompass the full scope of matters members consider essential for WTO reform”³⁴ Thus, it is necessary to examine which issues have been left out by the Facilitator. One obvious candidate is the issue of public stockholding that has been emphasised by India and other developing countries for long. The process of discussions leading to common concerns and coalitions would be a process to identify additional such issues.

Table 3.8. Areas Which Are Not Discussed by the Facilitator on WTO reform

Issue	Reasons for Members Wanting a Change
Public Stockholding	Food security
Environment	Sustainable Development

3.3. Analysis of the Issues Emphasised in WTO Reform

The issues discussed in Section II could be considered under three categories:

- (a) Issues for which agreement may be relatively easier. This would require some adjustments in the proposals that make agreement difficult.
- (b) Issues for which agreement is unlikely to be feasible.
- (c) Other issues, which include:
 - i) Issues for which changes would result in major systemic impact on the WTO regime.
 - ii) Others for which a change may have a relatively small systemic change in the WTO regime.

Examples of the first two categories are shown in Tables 3.5 and 3.8. Of particular importance are the issues for which a change would have a major impact. Significantly, at the December 2015 meeting of the WTO General Council, the Facilitator stated that:

- On decision making, *while no member questions the existing practice of decisions by consensus, “shared frustrations remain” regarding the challenges in reaching decisions, including the handling of plurilateral initiatives* (Emphasis added);
- [Regarding S&DT], while no member challenges the principle, views diverged regarding its effectiveness and who should have access to it;³⁵
- *The goal in the lead-up to MC14 is not to resolve every issue, but to lay the foundation for ministers to be in a position to provide guidance at MC14 that will allow officials to begin examining approaches after MC14* (Emphasis added).

Since specific issue-oriented discussions would take place after MC14, it is necessary at present to get clarity on the most important issues that will have a systemic impact, i.e., the issue mentioned in Tables 3.1 and 3.2.

The most important underlying principles for WTO are those which enable inclusiveness, fairness and predictability of the system. Three fundamental principles of WTO that lead to inclusiveness are MFN, consensus and S&DT.

Both the EU and US proposals aim to amend these principles.

The EU provides a basis for its proposal by stating that it is not correct for “consensus” to be equated with “unanimity”, and that this is also

indicated by the flexibilities provided by Article IX of the Marrakesh Agreement.

Hence, two substantive points are relevant in the above context. One a consideration of whether “consensus is not unanimity” and second an assessment of the conditions under which MFN can be amended under the WTO provisions.

(a) The Definition of Consensus

The term “consensus” is defined in two important Agreements of the WTO. One is the Marrakesh Agreement and the other is the Understanding on Rules and Procedures Governing the Settlement of Disputes (henceforth: Dispute Settlement Understanding or DSU).

Article IX.1 of the Marrakesh Agreement states that: “*The WTO shall continue the practice of decision-making by consensus followed under GATT 1947*”. Footnote 1 to the Article clarifies this as follows: “*The body concerned shall be deemed to have decided by consensus on a matter submitted for its consideration, if no Member, present at the meeting when the decision is taken, formally objects to the proposed decision.*” (Emphasis added)

Further, Article 2.4 of the DSU states that: “Where the rules and procedures of this Understanding provide for the DSB to take a decision, it shall do so by consensus”. Footnote 1 of the DSU clarifies that: “The DSB shall be deemed to have decided by consensus on a matter submitted for its consideration, if no Member, present at the meeting of the DSB when the decision is taken, formally objects to the proposed decision”.³⁶

This shows that the term “consensus” is “unanimity” among the WTO members present at the meeting, in that consensus requires a situation when no member present at the meeting when the decision is taken, objects to the issue. Thus, based on the WTO text, it must be equated with this level of unanimity for members present at the meeting.

(b) MFN

With respect to amending MFN, Article IX.2 Marrakesh Agreement states that: “*Amendments to the provisions of this Article and to the provisions of the following Articles shall take effect only upon acceptance by all Members: Article IX of this Agreement; Articles I and II of GATT 1994; Article II:1 of GATS; Article 4 of the Agreement on TRIPS.*” (Emphasis added)

The provisions mentioned in Article IX.2 of the Marrakesh Agreement relate to MFN. *Thus, changing the MFN provision in WTO requires unanimity (i.e., agreement by all members).*

(c) MFN and Consensus: These Principles Enable Inclusiveness, Fairness and Predictability

WTO is envisaged as a multilateral trading system because it incorporates the principles of inclusiveness and fairness for members, and predictability of the system in terms of its operations and impact.

Changing MFN and consensus would reduce the inclusiveness and predictability of the WTO system. These are very important principles. Both consensus and MFN provide for inclusion, which is a foundational principle. The participation of each member in the system is shown not only by MFN and consensus, but also in the principle of “one member one vote” embedded in the WTO. Article IX.1 of the Marrakesh Agreement clearly states that: “*At meetings of the Ministerial Conference and the General Council, each Member of the WTO shall have one vote.*”

To the extent that members value these principles and attributes, the principles of MFN and consensus should also be of value. These principles are emphasized by many, as is shown for instance by proposal of the African group which emphasizes both consensus and inclusiveness.

Further, the EU proposal emphasizes predictability, which depend on stabilising principles of MFN and consensus. Moving away from these principles that ensure inclusiveness will adversely affect predictability of the WTO system (see also the discussion in section below on “Stability and Predictability of the Multilateral Trading System”).

However, there is an Important Concern. The Facilitator on WTO reform has noted that decisions based on consensus lead to situations where “shared frustrations remain regarding the challenges in reaching decisions”.³⁷ This issue is raised particularly in the context of the initiatives for new plurilateral agreements.

(d) New Plurilateral Agreements

Both US and EU have expressed the view that plurilateral agreements (“plurilaterals”) are the only way to revitalise the WTO system. Further, the current plurilateral initiatives have significantly large number of WTO members participating in it, showing the interest of many members in these initiatives.

Since consensus in terms of unanimity is the primary criterion for decisions at the WTO, those who seek new plurilaterals are focusing on diluting the criterion of consensus to enable plurilaterals to more easily become part of the WTO.

Furthermore, there is a demand also for dilution of the MFN criterion to address a “free rider” concern, i.e., if a member with significant trade share is not a signatory to a plurilateral agreement, that member gets the benefits without any disciplines imposed under the agreement.

Since both MFN and consensus result in desirable attributes of the WTO system (inclusiveness and security and predictability), they should ideally not be amended in any. However, since the achievement of another key objective requires considering some change, any step that is taken should keep the WTO system as close as possible to the present one.

(d.i) Possible options for addressing MFN concerns: The issue of “free rider” would involve a consideration of three different yet overlapping options.

One is to consider whether the free rider problem is likely to arise in practice. This would depend on the issue covered by the plurilateral agreement. Non-MFN as a solution to the free rider concern may be more valid, for example, when the plurilateral covers MFN tariffs such as in the case of the Information Technology Agreement (ITA) which did not have a non-MFN result. It may be less relevant for plurilaterals that cover regulatory policies.

The second is to consider the concept of “de minimis” under which a specified market share threshold could be considered relevant to determine whether or not non-membership of a member creates a “free rider” concern. Examples of de-minimis are in Articles 5.8 of the Agreement on Anti-Dumping and Article 27.10(b) of the Agreement on Subsidies and Countervailing Measures. Yet another example is the concern expressed at the product level in Articles 27.5 and 27.6 of the WTO Agreement on Subsidies and Countervailing Measures.

The third category would be a variant of the concept underlying the Reference Paper on Telecommunications (henceforth “Reference Paper”).³⁸ The Reference Paper specified certain regulatory principles, and WTO members were allowed to voluntarily choose any, all or none of these regulatory principles as their obligations. In certain cases, this could be a basis for finding solutions to the free rider concern as well.

(d.ii) Annex 4 plurilateral agreements are an important example of non-MFN agreements. Consensus is required for agreements to be accepted as part of Annex 4.

With regard to Annex 4 Agreements, i.e., those which have been accepted by the membership for Annex 4, one important issue still remains relevant. Once the Agreement is part of Annex 4, any subsequent change in the provisions of that Agreement should also be subject to the same criteria that applies for acceptance of the initial Agreement into Annex 4.

(d.iii) The issue of consensus: Similar to the options for addressing MFN, the solutions for the issue of consensus could also emerge from WTO textual provisions and practice. Consider for instance the conditions that enabled the first plurilateral agreement of the WTO, i.e., the Information Technology Agreement (ITA) whose membership is less than WTO's full membership. This plurilateral focused on keeping the conditions as close as possible to those of the general WTO system. ITA maintained MFN and consensus, and the agreement was implemented after critical mass of 90 per cent of world trade share in information technology products was achieved.³⁹

(d.iv) Plurilaterals: The example of the Information Technology Agreement, demonstrates that the results of a plurilateral agreement could be accepted on a consensus basis and those results could be applied on an MFN basis. Further, a minimum threshold of 90 percent of world trade in information technology products was considered as the satisfactory participation level. ITA shows the possibility of maintaining foundational principles even with a 90+ percent threshold level (the discussion on MFN below addresses the free-rider concern).

Annex 4 agreements (i.e., agreements with less than full WTO membership) are defined in Article II.3 of the Marrakesh Agreement as plurilateral trade agreements. Agreements such as the ITA also have membership that is less than full WTO membership. To the extent that future WTO agreements would tend to be less than full membership agreements, there is a need to consider a change in the definition of plurilateral trade agreements under the Marrakesh Agreement.⁴⁰ This is important because a proliferation of Annex 4 agreements would lead to major fragmentation of the WTO system, with a significant dilution of inclusiveness, fairness, and predictability. To avoid

such fragmentation, it is important that new plurilateral agreements include MFN and be based on consensus based decision-making.

(d.v) Preservation of existing WTO rights of non-members when a new plurilateral agreement is implemented: An important principle emphasized in the context of new provisions within the WTO is "without prejudice to rights and obligations under the WTO Agreement."⁴¹ Further, the documents of ITA were reviewed and approved on a consensus basis,⁴² and the results of the agreement were available on an MFN basis as the results were incorporated in the tariff schedules of the members of the plurilateral.⁴³

These principles should be an important part of a consideration of the impact of new plurilaterals on non-members. It is not certain which subject areas would be covered by plurilaterals, and it is possible that the existing WTO rights of non-members may be impacted by the plurilateral agreement. An example of this concern was raised by China in the initial phase of e-commerce negotiations that indicated a concern to clarify the relationship between its existing WTO rights and what was to be negotiated.⁴⁴

In this regard, together with achieving a critical mass another important necessary condition should be that the concern of any systemic impact of a new plurilateral agreement on any members should not be left unaddressed if that member submits its concern that its existing rights and obligations have been adversely impacted.

Furthermore, once an agreement is part of Annex 4, members of that agreement can make changes without reference to the rest of the WTO members (outside the Annex 4 agreement). Those changes could adversely affect the WTO rights of the non-members. Thus, the acceptance of any changes in an Annex 4 agreement should be subject to the same consensus criteria that is necessary for an agreement to be part of Annex 4.

These concerns and the critical mass criteria should both be equally important and required for acceptance of a plurilateral agreement.

A structure of disciplines which are focused on as small a movement from the current situation as possible, is very important particularly in the context of plurilaterals. Without discipline for plurilaterals, there would a major loss of security and predictability.

(e) Security and Predictability of the Multilateral Trading System

Security and predictability of a system depend on a combination of the rules and disciplines that exist and those which are developed under new agreements. Thus, for instance if closed plurilateral agreements (such as is suggested by the US)⁴⁵ are allowed among consenting members whatever their number or trade share, that would increase the systemic uncertainty and unpredictability due to several new plurilateral agreements coming up with small and large membership. It is well known that any trade agreement has an impact on non-members as well. If several such agreements occur within the WTO, then the spaghetti bowl effect will multiply. Table 3.9 indicates this with only two plurilateral agreements of the type proposed by the US and EU. The Table considers two options for each of the two plurilateral agreements, one where the members are parties to the Multi-Party Interim Appeal Arbitration Arrangement (MPIA)⁴⁶, and the other where they are not. Even with only two plurilateral agreements, there would be lack of predictability about the impact and implications of the plurilateral agreements because each would have a different membership. The adverse systemic effect would be much more with a larger number of closed plurilateral agreements. The adverse systemic effect would be much more with a larger number of plurilaterals.

Table 3.9. Different Tracks Within the WTO With Different Plurilateral Agreements

	Members of the Appeal Process	Those Not Member of the Appeal Process
Members of Plurilateral Agreement "Y"	Track 1	Track 2
Members of Plurilateral Agreement "Z"	Track 3	Track 4
Non-Members ⁴⁷ of Plurilateral "Y"	Track 5	Track 6
Non-Members of Plurilateral "Z"	Track 7	Track 8

Therefore, if predictability is valued, then predictability must be maintained also through the

disciplines of new plurilateral agreements in the multilateral trading system. Similar concerns arise with respect to inclusiveness and fairness of the WTO system.

(f) Development and S&DT

It is agreed that development-related issues include S&DT as well as other concerns. As shown in the proposal of the African Group (Annex Table 3.1), the issue of development covers several aspects including S&DT that need to be addressed.

With respect to S&DT, submissions of the US and the EU are particularly relevant. The US proposal could be broadly summarised in terms of three main points. One, the US is not against the provision of S&DT. Two, in general it would be more ready for LDCs to get S&DT. Three, Members would have to consider S&DT in terms of transition periods after which they are subject to the regular WTO disciplines same as developed economies.⁴⁸

Similar to the US, the EU wants S&DT to be time-bound. The EU wants objective and transparent criteria to differentiate between developing countries. It also proposes that lessons on S&DT be drawn from the Trade Facilitation Agreement, linking implementation with assistance.

Regarding differentiation among developing countries, it is noteworthy that the Chair's draft text on agriculture under the Doha Round specified varying levels of S&DT for different categories of developing countries.⁴⁹ These categories evolved during the negotiations and would likely do so again. Thus, there may not be a need to decide on differentiation in advance for developing economies.⁵⁰ This is particularly relevant because of the difficulty when such negotiations took place earlier on determining objective criteria for determining those qualifying for S&DT.

(g) Essential Security

The proposal on essential security would be subject to two dissimilar views. One is the position of the US that such issues should be left to the member concerned to decide. The other is an emphasis on additional disciplines in order to curb the abuse of national security exception and to curb unilateral measures inconsistent with WTO rules. More discussions would be needed to reach agreed conclusions on this issue.

(h) Transparency and Notification

All members want to focus on transparency. However, there are different views to ensure notification requirements being met members that combine technical support and penalties. In this regard, the following text from the Facilitator's report is worth keeping in mind:

“Others also pointed out that improving compliance with notification obligations was an area where progress could be made. Members should fulfil obligations while accounting for differing capacities. In this regard, they suggested:

- Ensuring notifications are complete and timely, without penalizing developing or LDC Members;
- Introducing graduated transparency measures, such as extended timelines, improved templates, and enhanced technical assistance;
- *Establishing guidelines to reflect all Members' interests in decision-making and meetings.”* (Paragraph 4.17 of the Facilitator's November 2025 Report; emphasis added)

The EU is focusing on support to industry, not to agriculture. EU's submission states: “The first step is to identify gaps and shortcomings that currently prevent Members from effectively addressing negative trade effects caused by State interventions in support of industrial sectors.”⁵¹

Since several years now, proposals have been made to rectify the inequity in WTO Rules on agriculture, particularly the large extent of AMS available to developed economies.⁵² Likewise, there is a body of research that shows that Green Box subsidies can also be trade distortive and need an assessment in the context of WTO reform.⁵³ These issues would also be relevant for examination and policy adjustment. In this context, Brazil's submission dated 5th December 2025 states inter alia that: “An assessment of the Green Box and its criteria, with a view to preventing potential distortive effects on production and trade, while taking into account the objectives of food security, rural livelihoods and environmental protection.”⁵⁴ In the context of food security, it is worth noting that the proposals on public stockholding are also not emphasised.

3.4. Conclusions

The WTO reform discussion and submissions from WTO members show that there are a range of views on each individual issue being discussed for WTO reform. An important point to note is that there is

an effort to amend some of the foundational principles, such as those embodied in MFN, consensus, development and S&DT. Further, certain principles, e.g., fairness or addressing development related issues, are not necessarily interpreted in the same way by different members. Therefore, there is a crucial need for members to engage in discussions to better understand the range of perspectives, especially on the major principles and disciplines to reach conclusions that maintain the key positive features of the WTO system.

MFN, consensus and S&DT result in inclusiveness,⁵⁵ a very important feature of the multilateral trading system. The importance of inclusiveness is also shown in the principle of “one member one vote” in Article IX.1 of the Marrakesh Agreement. These principles also contribute to predictability of the operation of the WTO system, which is crucial for creating larger trade opportunities and improving the efficiency and effectiveness of the WTO system.

Likewise, transparency and notification provide greater clarity about the prevailing policy regimes and increases predictability. Transparency also helps determine whether or not a member's policy is consistent with the WTO. In this regard, an important complimentary requirement is an effective dispute settlement mechanism so that loss of any opportunities due to WTO inconsistent policies could be addressed. Thus, changes in or dilution of MFN, consensus, development and S&DT, would adversely impact key foundational principles of the WTO.

However, there is a dilemma. A number of WTO members are of the view that consensus is used as a veto to block the efforts of several members that consider a need to develop new trade related disciplines to address emerging areas that are becoming important in trade. Further, there is another view that is also expressed in some submissions on WTO reform (e.g., US and the EU) that given the large number of members, it is extremely difficult to have agreements with the entire WTO membership.

Further, there is a view that non-members of the plurilateral agreement would be “free riders” if MFN is provided because they would not be subject to any obligation but would receive all the rights and benefits of the agreement. Therefore, a case is presented for diluting consensus for enabling the conclusion of a plurilateral agreement, and diluting MFN to avoid “free riders”.

In this context, the EU has argued that “consensus” is not “unanimity”. However, Section III. (a) above on “consensus” has shown that there has to be unanimity among the members present in the meeting to consider any particular matter under the WTO, and any amendment to the MFN principle can apply only upon acceptance by all WTO members.

Thus, both consensus and MFN are foundational principles of WTO, and the issue of dilution must be considered with great care to consider whether the objectives could be met without diluting these principles.

Plurilaterals: The example of the Information Technology Agreement shows that less than full membership agreements with 90+ trade coverage of members are possible on a consensus basis with the results applied on an MFN basis. The discussion on MFN related issues has suggested options for addressing the free-rider concerns (summarised below).

In addition, a very important principle to keep in mind is that a plurilateral agreement should not adversely impact the existing WTO rights and obligations of non-members. This may happen if the plurilateral has some systemic impacts. Therefore, the plurilateral should not be accepted until the systemic concerns of non-members are addressed.

Annex 4 agreements are plurilateral trade agreements i.e., less than full membership of WTO. Agreements such as the ITA also have membership that is less than full membership. To the extent that future agreements would tend to be less than full membership agreements, there is a need to consider a change in the definition of plurilateral trade agreements under the Marrakesh Agreement.⁵⁶ This is important because a proliferation of Annex 4 agreements would lead to major fragmentation of the WTO system, with a significant dilution of inclusiveness, fairness, and predictability.

Furthermore, once an agreement is part of Annex 4, members of that agreement can make changes without reference to the rest of the WTO members (outside the Annex 4 agreement). Those changes could adversely affect the WTO rights of the non-members. Thus, the acceptance of any changes in an Annex 4 agreement should be subject to the same consensus criteria of their acceptance in the WTO system.

Possible avenues for solutions for MFN concerns: To the extent that there is still a concern regarding MFN, the paper provides three different yet

overlapping options for addressing the “free rider” concerns. The first is to consider whether the free rider problem is likely to arise in practice. The second is to consider the concept of “de minimis” under which a specified market share threshold could be considered relevant to determine whether or not non-membership of a member creates a “free rider” concern. The third option is a variant of the concept underlying the Reference Paper on Telecommunications (henceforth “Reference Paper”).⁵⁷ The Reference Paper specified certain regulatory principles, and WTO members were allowed to voluntarily choose any, all or none of these regulatory principles as their obligations. In certain cases, this could be a basis for finding solutions to the free rider concern as well.

Important to Preserve the Foundational Principles for Security and Predictability of the Trading System: A structure of disciplines, which are focused on as small a movement from the current situation as possible, is very important particularly in the context of plurilaterals. Table 3.9 above shows that without such discipline for plurilaterals, there would be a major loss of security and predictability of the multilateral trading system.

Development and S&DT: It is agreed that Development-related issues include S&DT as well as other concerns. More specific focus of the proposals is on S&DT; the proposals of US and the EU require differentiation amongst developing countries. In this regard, EU has also said that lessons can be drawn from linking of implementation with assistance in the Trade Facilitation Agreement for drawing up objective and transparent criteria to differentiate between developing countries.

It is worth noting that the Chair’s draft text under the Doha Round specified varying levels of S&DT for different categories of developing countries. These categories evolved during the negotiations and would likely do so again. Thus, there may not be a need to decide on differentiation in advance for developing economies.⁵⁸ This is particularly relevant because the membership has experienced difficulties in a priori determining objective criteria for those qualifying for S&DT.

Furthermore, as shown in the proposal of the African Group (Annex Table 3.1), the issue of development covers several aspects including S&DT that need to be addressed

Notification and transparency: The suggestion by certain members reported in Paragraph 4.17

of the Facilitator's November 2025 Report is worth considering. It gives importance to:

- Ensuring notifications are complete and timely, without penalizing developing or LDC Members;
- Introducing graduated transparency measures, such as extended timelines, improved templates, and enhanced technical assistance;
- Establishing guidelines to reflect all Members' interests in decision-making and meetings." (Emphasis added).

This emphasis is important because the proposal on penalization has not got traction in earlier discussions.

Other issues discussed in this paper require further discussion of a number of relevant areas raised by WTO members for consideration. They include for instance:

- (a) The EU does not emphasise issues relevant for agriculture reform, such as those mentioned by Brazil in its proposal of 5th December 2025.
- (b) Some important proposals emphasised for long by WTO members (e.g., public stockholding) have not been considered by the Facilitator in his report.
- (c) Essential security - The relevant guardrails or disciplines in this context are not clear and need further clarification.

Endnotes

- ¹ Joost Pauwelyn (2005)
- ² Bernard Hoekman (2011)
- ³ Broadly, there are four broad strands in the literature: (1) Judicial Political Imbalances and implications for the WTO Principles – see e.g., Pauwelyn (2005 and 2026), Robert Howse and Joanna Langille (2023); (2) Realism versus Integrity in Reform Debates – see e.g., Bernard Hoekman, Xinquan Tu and Robert Wolfe (2023); (3) The debates on Consensus, MFN and Plurilaterals – see, e.g., Robert Wolfe and Peter Ungphakorn (2025), Bernard Hoekman (2025), Ana Peres (2024), Sait Akman and Others (2023), Narlikar (2022), Hamid Mamdouh (2021a and b), and Ming Du and Qingjiang Kong (2020); (4) Debates on Fairness – see e.g., Julieta Zelicovich (2022), T Renee Bowen and J Lawrence Broz (2022), and WTO Documents WT/GC/M/971, 984 and 986.
- ⁴ Bernard Hoekman and Petros C Mavroidis (2021)
- ⁵ From: https://www.wto.org/english/thewto_e/minist_e/mc12_e/briefing_notes_e/bfwtoreform_e.htm
- ⁶ See WTO document JOB/GC/469 dated 5th November 2025.

- ⁷ WTO document JOB/GC/469 of 5th November 2025.
- ⁸ WTO Document WT/GC/W/984 dated 15 December 2025.
- ⁹ Members are considered as "free riders" if they are not members of an agreement i.e., they do not have obligations under the agreement but have the benefits from the Agreement due to application of MFN.
- ¹⁰ "Development, several Members noted, extends beyond S&DT and should also be considered in terms of the equitable distribution of trade outcomes within the broader fairness track" From Paragraph 3.1 of the November 2025 report of the Facilitator on WTO Reform (WTO document JOB/GC/469 of 5th November 2025).
- ¹¹ From paragraphs 3.6 and 3.7 of the Communication to the WTO by the US on WTO Reform, Document WT/GC/W/984 dated 15 December 2025.
- ¹² Article X:9 of the Marrakesh Agreement Establish the World Trade Organization states that: "The Ministerial Conference, upon the request of the Members parties to a trade agreement, may decide exclusively by consensus to add that agreement to Annex 4." [Emphasis added]
- ¹³ This US submission was criticised for the proposed "administrative measures". For more detail, see <https://www.twn.my/title2/wto.info/2017/ti171116.htm>
- ¹⁴ <https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=Q:WT/GC/W992.pdf&Open=True>
- ¹⁵ <https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=Q:WT/GC/W971.pdf&Open=True>
- ¹⁶ Other points include, for example: The answer is not to dilute consensus through abstract qualifications. Several instruments for breaking deadlocks can be explored in a structured manner, for example, mediated processes, facilitated discussions to enable convergence-building among the affected parties, and where necessary escalation to capitals to resolve deadlocks. These processes must guarantee complete internal transparency to avoid small-group meetings that exclude African countries.
- ¹⁷ Other points include, for example: Reform debates should distinguish between distortions caused by excessive market-distorting subsidies and outcomes driven by productivity improvements, business model innovations and efficiencies. Particular attention must be given to intellectual property rights (TRIPS) to ensure they not constitute an obstacle to public health or climate adaptation.
- ¹⁸ Other points include, for example: Reform must address the imbalance between continued large-scale support use by developed countries and the narrower space available to developing countries to support vulnerable farmers and ensure domestic production resilience. Reform discussions should

confront the various realities directly, including through strengthened deliberation, transparency, and credible dispute settlement mechanism, rather than presuming that constraint should be concentrated on developing countries' policy tools.

¹⁹ WTO Reform, Communication from the African Group, Document WT/GC/W/971, 31 October 2025.

²⁰ WTO document WT/GC/W/975 dated 28 November 2025, WT/GC/W/991 dated 27 February 2026. An earlier submission of the LDC group is in WTO document WT/GC/W/979 dated 4 December 2025.

²¹ WTO document WT/GC/W/991, *op. cit.*, last paragraph on page 2.

²² From paragraph 4.10 of the report of the Facilitator for WTO reform, *op. cit.*

²³ "Economic security discussions involve sensitive information and assessments, which require trust, confidentiality, and shared interests among the governments involved. There is little value, and at times considerable risk, in holding discussions among partners with vastly different values and perceptions of economic security. Those considerations preclude pursuing work on economic security at the WTO", From paragraph 4.8 of the US Communication WTO Reform, *op. cit.*

²⁴ For details, see paragraphs 4.9 and 4.10 of the US Communication on WTO Reform, *op. cit.*

²⁵ WTO document WT/GC/W/993 dated 6 March 2026.

²⁶ *Ibid.* pages 4 and 5.

²⁷ *Ibid.* page 5.

²⁸ On 3rd March 2026, Paraguay has submitted an unofficial room document suggesting a draft Ministerial Decision with a work plan up to December 2027.

²⁹ For instance, Article X.2 and X.9 of the Marrakesh Agreement.

³⁰ Quotations are from paragraphs 2.2 and 2.12 of the November 2025 report of the Facilitator on WTO Reform.

³¹ See paragraph 4.11 of the Facilitator's November 2025 Report, *op. cit.*

³² See paragraphs 4.4 and 4.8 of the Facilitator's November 2025 Report, *op. cit.*

³³ See paragraph 4.10 of the Facilitator's November 2025 Report, *op. cit.*

³⁴ https://www.wto.org/english/news_e/news25_e/gc_16dec25_255_e.htm

³⁵ From the report available at https://www.wto.org/english/news_e/news25_e/gc_16dec25_255_e.htm

³⁶ Footnote c in IX.1 states that: "Decisions by the General Council when convened as the Dispute Settlement Body shall be taken only in accordance with the provisions of paragraph 4 of Article 2 of the Dispute Settlement Understanding."

³⁷ The statement of the Facilitator for WTO Reform as reported in https://www.wto.org/english/news_e/news25_e/gc_16dec25_255_e.htm

³⁸ See, https://www.wto.org/english/tratop_e/serv_e/telecom_e/tel23_e.htm

³⁹ The relevant text on critical mass was: "Participants will implement the actions foreseen in the Declaration provided that participants representing approximately 90 per cent of world trade in information technology products have by then notified their acceptance, and provided that the staging has been agreed to the participants' satisfaction." See paragraph 4 in the Annex of the document available at: https://www.wto.org/english/theWTO_e/minist_e/min96_e/16.pdf

⁴⁰ As pointed out by Hamid Mamdouh, a new Annex may also be required. See the implications of paragraph 37 in https://diplomacydialogue.org/images/files/20211016-Plurilateral_Negotiations_and_Outcomes_in_the_WTO.pdf

⁴¹ See *op. cit.* paragraphs 3 and 7.

⁴² "These documents will be reviewed and approved on a consensus basis". (Emphasis added) See paragraph 2 of the Annex in https://www.wto.org/english/theWTO_e/minist_e/min96_e/16.pdf

⁴³ "Each participant shall incorporate the measures described in paragraph 2 of the Declaration into its schedule to the General Agreement on Tariffs and Trade 1994, and, in addition, at either its own tariff line level or the Harmonized System (1996) ("HS") 6-digit level in either its official tariff or any other published versions of the tariff schedule, whichever is ordinarily used by importers and exporters". See paragraph 1 of the Annex in *op. cit.*

⁴⁴ China's submission to E-Commerce negotiations INF/ECOM/19 of 24th April 2019 states in paragraph 3.2 that: "Members should define the trade-related aspects of electronic commerce, electronic transmission, etc., and clarify the relationship between future electronic commerce rules and the existing WTO Agreements."

⁴⁵ EU's proposal on plurilateral agreements is more wide-ranging than that of the US, but it does potentially include what is being proposed by the US, i.e. non-MFN agreements.

⁴⁶ MPIA is an interim arrangement for settling disputes at the appeal stage now-a-days when the Appellate Body of the WTO is not functional. There are currently 57 WTO members who have agreed to access MPIA procedures for appeal arbitration, counting all European Union members as separate WTO members. Since the EU member states engage in trade disputes collectively, the effective number of WTO members agreeing to access MPIA is 30.

- ⁴⁷ This is an important principle emphasized, for instance, by both the African Group and the EU.
- ⁴⁸ The US also considers a transition for LDCs as well over time to transition to the same disciplines as all other WTO members.
- ⁴⁹ See for example the paper at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1032484 especially the Table on page 31.
- ⁵⁰ A similar differentiation among developing economies was also carried out in the Chairs draft text for NAMA.
- ⁵¹ First paragraph in the section on “The necessary review of the multilateral rulebook on level playing field and industrial policy”
- ⁵² See for example a proposal by China in document WT/GC/W/773, dated 13 May 2019.
- ⁵³ See for example, <https://www.wttlonline.com/stories/wto-green-box-subsidies-challenged,10883> and pages 65-66 of https://www.iisd.org/system/files/publications/tkn_greenbox_china.pdf
- ⁵⁴ Quoted from page 3 of WTO document JOB/AG/271, dated 5th December 2025
- ⁵⁵ These principles, in particular Development and S&DT, result in fairness, which is one of the foundational principles of the WTO.
- ⁵⁶ See also paragraph 37 of https://diplomacydialogue.org/images/files/20211016-Plurilateral_Negotiations_and_Outcomes_in_the_WTO.pdf
- ⁵⁷ See, https://www.wto.org/english/tratop_e/serv_e/telecom_e/tel23_e.htm
- ⁵⁸ A similar differentiation among developing economies was also carried out in the Chairs draft text for NAMA.
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Annexure

Annex Table 3.1. African Group Proposal: Key Areas and Expected Outcomes of WTO Reform

Reform Area	Expected Outcome
Development	WTO reform must produce tangible and concrete results, outcomes aligned with Africa's development aspirations under Agenda 2063, including industrialization, food security, and poverty alleviation.
Special and Differential Treatment (S&DT)	Flexibilities/ S&DT must be preserved, strengthened, made precise, effective, operational and efficient across all WTO agreements. Considering the developmental needs of developing and least-developed countries, with a view to enabling them to secure food security, policy space, develop industrial capabilities, and diversify their economies.
Agriculture Reform	WTO reform must discipline trade-distorting domestic support in developed countries and remove barriers that distort trade in agricultural products.
Industrial Development	WTO reform must contribute towards economic diversification, structural transformation in developing countries, and the sustainable strengthening of their integration into world trade.
Technology Transfer and Innovation	The WTO reform must promote access to innovation by operationalizing technology transfer provisions, particularly for digital and green technologies.
Inclusive and Transparent WTO Bodies	All processes in WTO Bodies and ministerial conferences should be inclusive and transparent. Positions of all Members must be fairly represented; negotiations should remain open and Member-driven.
Preservation of Consensus-Based Decision-Making	Consensus must be maintained as the foundation of WTO decision-making.
Dispute Settlement Reform	Restoration of a two-tier, independent, and impartial dispute settlement system is critical for the credibility and predictability of the WTO.
Balanced Treatment of Emerging Issues	New topics should be approached through a development lens, and they ought not to take precedence over unresolved development priorities of the majority of WTO Members, in particular those already covered by multilateral mandates.
Capacity Building and Implementation	Institutional support, including financing technical assistance and capacity building must remain a central priority to ensure Africa's full participation and integration into global trade.
Accession to the WTO	Reform should include faster and more transparent accession processes, increased fairness for developing and least-developed countries, to facilitate the integration of new members into the global trading system.

Source: Document WT/GC/W/971, dated 31 October 2025

Annex Table 3.2. EU: Objectives, Organization of Work and Tasks - Fairness

1. Balance of Rights and Obligations: General objective: Initiate a broad discussion on the appropriateness of the balance of rights and commitments agreed in 1995 in the current global context. Address identified shortcomings.

Key areas: Fundamental principles underpinning the GATT, tariffs, rules on tariff negotiations, trade in services commitments.

Task to Members: Discuss the fundamentals and address potential shortcomings of the current balance of rights and obligations, including: (a) reflections on the role of MFN and reciprocity; (b) Members' respective levels of openness in light of changes in share in global trade; (c) possible new links between commitments taken and the level of tariffs liberalisation.

2. Level Playing Field in Industrial Sectors: General objective: Identify gaps and address the shortcomings in: (1) transparency; (2) disciplines; and (3) remedies.

Key areas: Subsidies (ASCM), Safeguards, State interventions in support of industrial sectors not covered by the ASCM, trade effects of State-owned enterprises, competitive neutrality, development dimension and industrialisation.

Task to Members: (a) Identify gaps and shortcomings in the current rules, and on that basis develop improvements to existing rules and new disciplines, as appropriate; (b) Continue Member-driven informal deliberations on Trade and industrial policies; (c) Consider targeted adjustments for policy space for industrialisation and for addressing negative trade impacts of State interventions, while ensuring the effectiveness of the rules.

3. Development and S&DT: General objective: (1) strengthen the evidence base of identifying enablers (both rules and flexibilities) for integration of developing countries into global trade; (2) explore targeted and needs-based approaches to S&DT, including time-bound exemptions and links to commitments; and (3) explore objective and transparent differentiation criteria of developing countries.

Task to Members: (a) Assess the effectiveness and utilisation of S&DT provisions in existing agreements, including beneficiaries; (b) Shift from open-ended exemptions to more granular, time-bound and targeted S&DT based on demonstrated needs and with clear links to commitments and compliance with rules; (c) Explore examples of differentiation of developing countries from other international organizations and consider the applicability of those approaches to the WTO.

Annex Table 3.3. EU: Objectives, Organization of Work and Tasks - Flexibility

1. Consensus and Decision-making: General objective: Explore tools to facilitate bridge-building and effective decision-making.

Key areas: Fundamental principles underpinning the GATT, tariffs, rules on tariff negotiations, trade in services commitments.

Task to Members: (a) Explore operationalising responsible consensus and tools such as constructive abstention, opt-outs, reservations and accountability measures in the case of blocking; (b) Explore examples of differentiation in decision-making procedures by assessing practices and insights from other international organizations.

2. Institutional reforms: General objective: Revisit the institutional set-up of the system with a view to facilitate bridgebuilding and outcome-oriented procedures.

Task to Members: Develop options and possible parameters for a small body with steering function under the General Council balancing representativeness, geographical balance and efficiency considerations.

3. Variable geometry and plurilateral agreements: General objective: Cater for a more flexible framework of rules and acceptance of variable geometry where Members are not prevented from moving forward with interested parties.

Task to Members: Explore pathways to accommodate different types of plurilateral agreements.

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Session I: WTO Reform for an Inclusive System

5 January 2026 | New Delhi

Moderator:

- **Mr. Rajeev Kher**, Former Commerce Secretary and Distinguished Fellow, RIS

Presentation:

- **Dr. Harsha Vardhana Singh**, IKDHVAJ Advisers LLP
- **Dr. Atul Kaushik**, GDC Fellow, RIS

Discussants:

- **Mr. Jayant Dasgupta**, Former Ambassador of India to the WTO and Member, Governing Council, RIS (online)
- **Mr. Dammu Ravi**, Former Secretary (ER), Ministry of External Affairs
- **Dr. Pritam Banerjee**, Head, Centre for WTO Studies, IIFT



WTO reforms were being discussed at an ironic time, when the world appeared to be giving up on rules-based frameworks. Any discourse on the subject detached from political-economic realities would be unrealistic and unreliable.

Mr. Rajeev Kher, *Former Commerce Secretary and Distinguished Fellow, RIS.*



If the WTO Members were to agree to erosion of consensus, developing countries like India would be increasingly marginalised, and that plurilaterals would open a “Pandora’s box”. There is a need to build a very strong coalition on S&DT, grounded in per-capita indices and multidimensional poverty calculations.

Mr. Jayant Dasgupta, *Former Ambassador of India to the WTO and Member, Governing Council, RIS.*



Although ‘consensus’ is a fundamental principle of the multilateral trade rule book, it runs the risk of becoming an obstacle in the negotiations as big powers are increasingly turning protectionist. India’s approach should be guided by pragmatism, one that is able to subsume its national position in the common positions of developing countries and sensitise the developed world on the urgency of reviving WTO for the benefit of all.

Mr. Dammu Ravi, *Former Secretary (ER), Ministry of External Affairs.*



Plurilaterals can be an option to push rule-making in new areas of trade policy, but not at the expense of diluting the fundamental principles of consensus and MFN. India therefore has to take the lead in defining the guardrails that prevent such an outcome.

Dr. Pritam Banerjee, *Head, Centre for WTO Studies, IIFT.*





WTO Dispute Settlement Reform: A Difficult Issue for 14th Ministerial Conference

Atul Kaushik and Renu Mann

4.1. Introduction

In the Uruguay Round of trade negotiations, the United States (US) was one of the most prominent demanders of a dispute settlement mechanism (DSM) that is effective, timely, transparent, equitable and reasoned. The resulting mechanism captured these elements and established an automatic two-tiered binding dispute resolution mechanism with strong enforcement provisions. Later, however, the US criticised the Appellate Body (AB), the appeal stage of the mechanism, stating that it was practicing judicial overreach, including by insisting that panels follow its precedents, deciding issues not necessary to resolve the dispute, and interpreting municipal laws/action rather than treating them as factual matters.¹ Eventually, the US started blocking appointments to the AB from 2016, rendering it dysfunctional by December 2019.

Majority of the WTO membership made various efforts² to address US concerns, including a draft General Council decision suggested through an informal process by New Zealand Ambassador David Walker after discussing with Members, available on the WTO website as an Annex to JOB/GC/222 dated 15 October 2019. However, there was no consensus on it due to objections by the US. In the meanwhile, WTO Members have been requesting the Dispute Settlement Body (DSB) of the WTO to initiate the

selection process of AB members every month for six years now. However, the US has continued to block it. For the latest publicly available such request, see minutes of the December 2025 DSB meeting in document WT/DSB/M/507.

During the last two WTO Ministerial Conferences (MCs), trade ministers have instructed their officials to conduct discussions on Dispute Settlement (DS) reform with the view to having a fully functional dispute settlement system accessible to all Members. Although the discussion was to conclude by 2024, it did not happen. During the December 2025 meeting of the General Council (GC) of the WTO, the Facilitator for WTO reform informed that many Members believe that deeper institutional reforms of the WTO will have limited value without a functional dispute settlement system. The chairperson of GC also stated that he heard Members loud and clear that a reformed WTO is a WTO with a reformed dispute settlement mechanism. The chairperson of DSB stated that while there is broad recognition of the difficult context surrounding DS reform, many Members support the resumption of this work after MC14 when the time is right, and all Members are ready.³

This chapter discusses the background and current state-of-play on DS reform in the run up to MC14 and the way forward beyond it.

4.2. History

The Understanding on Rules and Procedures Governing the Settlement of Disputes (DSU) of the World Trade Organization (WTO) lays down principles and procedures⁴ for settlement of disputes, and includes an Appellate Body (AB) that hears appeals from panels, which are the first stage of adjudication. AB comprises of seven members appointed by the WTO membership, of which three sit in a division constituted for hearing a particular appeal.

The binding dispute settlement mechanism enshrined in the DSU was aptly referred to as the 'crown jewel' of the WTO. However, signatories were aware that the new system may need to be reviewed after seeing it in practice. Therefore, along with the results of the Uruguay Round, trade ministers also invited the Ministerial Conference to complete full review of the DSU within four years and decide whether to continue, modify or terminate it. That time came and went as Members could not agree to any recommendations by the MC3 at Seattle in 1999, which in any case failed to bring any results in any areas. In MC4 at Doha in 2001, the discussion was revived by establishing a negotiating agenda on improvement and clarification of DSU as part of the Doha Development Agenda (DDA) (Box 4.1). Based on the proposals received from Members, the negotiations were undertaken under twelve thematic areas.⁵

Even though the dispute settlement negotiations were outside the single undertaking, as the Doha Round stumbled, these negotiations also could not progress. The DSB in a Special Session continues to

exist as a forum, but it is not effectively functional. In the meanwhile, since the AB became dysfunctional, the membership has been focusing on the broader foundational principles of the WTO, with an effective dispute settlement mechanism, rather than focus only on improvement and clarification of the DSU. So, during these long DDA years, positions of Members did not change.

In April 2022, the US commenced an 'interest based' rather than 'position based' discussion on DS reform outside the WTO. These discussions have gradually been formalised in the WTO by facilitators reporting them in the DSB and the GC. Eventually the Ministers recognised them as part of the efforts towards having a fully functional DSM. These discussions have resulted in two set of texts (a) the Draft Consolidated Text (hereafter, the Text) available in WTO Document JOB/GC/385 that contains textual suggestions for a Ministerial Decision on DS reform on several issues but not accessibility and special and differential treatment (S&DT) for developing countries, and the appeal/review mechanism, and (b) Progress Report of Technical Work (hereafter, the Progress Report) contained in WTO Document JOB/GC/DSR/5 that has a collection of reform proposals and some textual suggestions on these remaining issues.

Thus, DS reform has been on the table in the WTO since its inception as a standalone issue; several useful improvements and clarifications have been suggested by Members, some of them having organisation-wide acceptance. However, the issue has also been embroiled in the broader effort to

Box 4.1: The 12 Thematic Issues Under DDA

1. (Improving the possibility of) mutually agreed solutions,
2. (Enhancing) third party rights,
3. (Addressing procedures regarding sharing of) strictly confidential information,
4. (Addressing a gap in procedures for compliance and retaliation by) sequencing,
5. (Ensuring compliance by) post-retaliation procedures,
6. (Opening up the WTO to the public by) transparency and amicus curiae briefs,
7. (Adjusting) timeframes,
8. (Exploring the possibility of) remand,
9. (Addressing concerns regarding) panel composition,
10. (As a member-driven organisation, improving) flexibility and member control,
11. (Ensuring) effective compliance, and
12. (Addressing) developing country interests, including special and differential treatment

rebalance issues in favour of developing countries, and to re-ignite the negotiating function of the WTO, with Members leveraging various reform issues and other demands for a balance they consider necessary for a way forward.

4.3. Current Draft Texts

4.3.1. The Process

The initial exercise by the US that began in April 2022 was largely bilateral, to elicit Members' expectations regarding the operation of the DSM, which gradually evolved into collective discussions on interests of Members. Although the discussions were not based on any mandate from the DSB, 232 specific interests expressed by Members were converted into 70 proposals. These discussions were later, from February 2023, steered by the Deputy Chief of Mission of Guatemala Ambassador Marco Molina as Facilitator, who on his own responsibility started preparing a text based on these proposals and discussions. Several Members (mostly developing countries, including the African Group, Bangladesh, Egypt, India, Indonesia, and South Africa) expressed discomfiture at the pace, participation, and inclusivity of these discussions and the summarisation of the sense of the house by the facilitator. They also expressed the view that their concerns and reservations (including on S&DT) had not been recorded in the text. Also, issues relating to appeal and accessibility were not addressed in the text except by keeping a placeholder.

Nevertheless, the seventh iteration of this Text was presented at the GC meeting held just before MC13. Post MC13, the process got formalised by the GC appointing Ambassador Usha Chandnee Dwarka-Canabady of Mauritius as Facilitator in April 2024. She focused the discussions on the two remaining issues: appeal and accessibility. The Progress Report annexed to the GC Chair's statement at the December 2024 meeting contains the results of these discussions in the form of tables containing reform ideas and observations on them. Not much has happened since then, except informal discussions organised by the DSB Chairperson.

4.3.2. Legal Form

The text is presented in the form of a Ministerial Decision. Those proposals in the text which can be characterised as an authoritative interpretation of existing DSU provisions by the Members can

be approved under Article IX:2 of the Marrakesh Agreement Establishing the WTO (WTO Agreement). However, several proposals in the text amount to amendments of DSU provisions. They would require a consensus⁶ decision in consonance with the amendment provisions in Article X of the WTO Agreement. Still other proposals in the text may not require either an authoritative interpretation or an amendment, and could be considered as procedural improvements that can be approved by the DSB. The procedural improvements in the appeal process that may graduate from the tables in the Progress Report to a treaty text may be decided by the GC/DSB or, as the case may be, by the Appellate Body in consultation with DSB Chair and DG, WTO.

So, legitimate tools are available to legalise any reforms that Members may agree to by consensus. These reforms do not require formal acceptance by Members and can start applying immediately upon approval by the Ministerial Conference.⁷

4.3.3. Implications of Text and Report by the Facilitators

A Title-wise examination of the Text and the Progress Report is at Annex. The Draft Consolidated Text is a long 37-page document that elaborates in detail what would constitute the procedures for dispute settlement, primarily focusing on alternative means of dispute settlement through good offices, conciliation and mediation; elaborating panel procedures in greater detail than in the current DSU and working procedures; and some elements of built-in review of reports of the panels and their consequences on the way trade is conducted. The Progress Report is a 52-page document that deals with two elements: accessibility and cost of funding, and appeal/review mechanism. It contains a set of reform ideas, their objectives and observations gleaned from the views expressed by Members. While there is no text suggested for accessibility except a text recognising the need for accessibility and considerations for it, on appeal/review four draft texts are appended, dealing with scope and standard of review, reducing incentives to appeal and expectations of members from adjudicators. The sense that one gets by reading through the two documents is that there is a movement towards:

- (a) elaborating procedures in greater detail;
- (b) increasing member-control including through multiple stages where parties can take control

- of the flow of procedures towards a mutually acceptable outcome; and
- (c) wide divergence of interests in relation to S&DT and reimbursement of litigation costs; and the need for and type of appeal mechanism required, including narrowing the scope of flexibility with the appeal adjudicators for use of principles of treaty interpretation.

4.3.4. A Brief Literature Review

The two documents are of recent origin; February and December 2024. Therefore, not much literature has emerged examining them in detail. However, in available literature, views vary from lack of much added value to existing provisions, procedures and practices on the one hand, to making procedures more cumbersome and making unimplementable suggestions on the other. One commentator has called the Text a mixed bag of good, ill-conceived, futile and unnecessary changes.⁸ While much space is devoted in the Text to alternate dispute settlement mechanisms, it is noteworthy that not much use has been made of even the existing provisions.⁹

On the issue of appeal, addressing the US concerns is key to find a way forward. Clearly, the Walker text does not pass muster, otherwise a solution could have been found back in 2019. Literature has examples of the dilemma faced by experts who examine the role of the AB. Although the AB has strictly adhered to the requirement of interpreting treaty terms in accordance with Articles 31-33 of the Vienna Convention on Law of Treaties, there are unanswered questions on its role emanating from the treaty terms themselves. For example, the extent to which an appeal adjudicator should weigh in on the 'objective assessment' principle enshrined in Article 11 DSU that was taken from the pre-WTO days when a single stage dispute settlement mechanism prevailed. Its applicability in a two-stage mechanism may, therefore, require review.

Similarly, there is a blurring of the issues of fact and law in arriving at a resolution of the matter, thus raising questions about the competence of appeal adjudicators to examine factual matters, particularly interpretation of municipal laws and action.¹⁰ Further, in a critique of the Sutherland Report, a view has been expressed that substantive gap-filling by adjudicators is a cause for concern. DSU Article 3.2 provides adjudicators the mandate to 'clarify' existing

provisions in the WTO agreements in accordance with customary rules of interpretation of public international law. The unanswered question is whether it gives them the authority to supplement WTO treaty provisions with other sources of international law.¹¹ Thus, while WTO members may wish to clarify treaty terms as per their understanding either through an authoritative interpretation or a broader DS reform, that responsibility may not be handed over to appeal adjudicators. Either way, they cannot, and should not, undermine the foundational principles on which the WTO is based.

Perhaps, it is in keeping with these thoughts that the proponents of MPIA offered a solution that retains all the foundational principles of the WTO while providing for a process to continue the appeal option in the absence of a functional AB.

4.4. MPIA

Initiated under the leadership of the EU when the AB became dysfunctional, the Multi-Party Interim Appeal Arbitration Arrangement (MPIA) was formally notified to the WTO in April 2020 by 47 WTO Members, counting the 27 EU Members individually, even though they contest disputes collectively. At present, it has 57 signatories. It is presented as an interim procedure for hearing appeals in the absence of a functional AB, closely following the provisions in DSU Article 25 that deals with arbitration. Its signatories agree not to pursue appeal procedures in DSU and instead to resort to MPIA arbitration. The arrangement closely follows DSU Article 17 and Rule 6 (2) of the Working Procedures for Appellate Review. The initial MPIA parties selected 10 adjudicators in 2020; three of whom have been replaced in 2025.

In a case, parties may decide to agree to invoke MPIA appeal procedures within 60 days of panel establishment by the DSB, or notify such agreement when the panel issues interim report to the parties. Before the final panel report issue date, parties write to the panel to suspend the issuance of the report and MPIA appeal process is invoked. Three adjudicators constitute a 'Division' to address an appeal, and the collegiality among all 10 adjudicators is to be practiced similar to the 7-member AB. The award of MPIA adjudicators is final and binding on parties, and enforcement procedures follow the DSU provisions *mutatis mutandis*.

Only two cases have been decided through the MPIA procedures among the MPIA parties so far; a

third was between a MPIA party and a non-party. In two ongoing disputes among MPIA parties, in one case, panel has been established but suspended, and in the other case, consultations commenced in 2021 but no Article 25 notification has been filed yet. MPIA notification were filed in eight other cases, but they got withdrawn, settled or lapsed, so ended without a MPIA appeal (Box 4.2).

While the MPIA is functional for its parties, it may also be noted that some of the parties like EU, Brazil and UK have erected domestic legislations/regulations to take corrective/retaliatory action against appeals into the void. EU has established an Enforcement Regulation¹², and Brazil, a law¹³. The United Kingdom (UK) has a similar option available in its existing law, as amended¹⁴. Japan has also recommended steps to concretize countermeasures in the event of an appeal into the void¹⁵. Another option chosen by some WTO Members has been to avoid such unilateral action by bilaterally deciding, during the pendency of a dispute, to agree not to appeal panel decisions.¹⁶

Since the MPIA is an interim arrangement, it is difficult to envisage it as a permanent solution replacing the AB. Thus, even in the event of restoration of AB being unlikely in the WTO in the near future, several WTO Members may not join the MPIA and give credence to a temporary arrangement and making restoration of the AB even more difficult. Also, they may decide on a case-by-case basis whether to resort to

Article 25 arbitration and use the MPIA procedures for an appeal, like Turkiye did in their dispute with the EU on the measures taken on pharmaceutical products. Turkiye used the Article 25 arbitration procedures and appointed two of the arbitrators from the MPIA pool (WT/DS583).

The literature analysing the pros and cons of MPIA is even more scarce than that for the outputs of the DS reform discussions in the WTO. The Geneva Trade Platform¹⁷ has a website providing the facts and procedures for MPIA appeal mechanism as well as links to some literature. The range of views on MPIA therein is instructive. On the one hand, Krzysztof Pelc,¹⁸ Lester B. Pearson Professor International Relations at Oxford University says that the ingenuity of MPIA consists in importing the authority of the existing agreement into an informal opt-in mechanism. On the other hand, Henry Gao of the Singapore Management University says that with its many constitutional and practical defects, MPIA would probably create more problems than it sought to remedy, with the main ones being the creation of a bad precedent of an extra-WTO appeal framework, as well as a false hope that deflates the political will among WTO Members to find a proper solution.¹⁹

MPIA is a result primarily of the US intransigence in restoring a functional AB. However, it stated that the MPIA incorporates and exacerbates some of the worst aspects of the Appellate Body's practices.²⁰ However,

Box 4.2: Key Facts about MPIA and Its Parties

1. It provides for abandonment of the MPIA procedures in the event that the AB is revived.
2. Withdrawal from MPIA is possible simply by a notification to the DSB.
3. Third parties can participate only if the parties agree.
4. Broader member control has a diminished role as DSB does not adopt MPIA awards.
5. It is unclear whether the non-appealed recommendations of the underlying panel will have any legal effect if they are not addressed in the award.
6. It is unclear whether and what precedential or persuasive value an MPIA award has.
7. Application of provisions relating to determination of reasonable period of time, level of nullification or impairment of rights by infringing measures and other compliance related procedures in Articles 21 and 22 of DSU has been seen to be invoked in the first dispute where an MPIA award has been notified to the DSB, even though not adopted, putting into question the legal certainty of these procedures.
8. Non-MPIA parties can enter into an MPIA like agreement at any time, and there is no clarity whether non-MPIA adjudicators can also be a part of the Division. In one case, a non-MPIA party accessed the procedures in a dispute, where only two of the adjudicators were from the MPIA list, and a third was chosen from outside. This brings flexibility of operation to the system.
9. If any WTO Member joins MPIA now, it does not appear to have any recourse to select MPIA adjudicators.

it is to be noted that the US was initially opposed to the use of WTO infrastructure or personnel for MPIA proceedings, but appears to have withdrawn that opposition. The MPIA arbitrators in their first ever award took a stand that appears to be deferential to the US position on the interpretation Article 17.6 (ii) of the Anti-Dumping Agreement of the WTO, but there has been criticism that it has been interpreted without either party invoking it or questioning the panel's ruling on the basis of the provision.

The MPIA arbitrators, in the second award they issued appear to have been even more innovative. The WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement) makes it clear that intellectual property rights (IPRs) have territorial application. This means that each WTO Member grants IPRs based on their national laws, which are mandated by the agreement to follow certain minimum thresholds. TRIPS Agreement Article 1.1 starts with 'Members shall give effect to the provisions of this Agreement', which earlier WTO panels have interpreted to mean that it does not imply that it imposes obligations vis-à-vis another Member's implementation of the agreement. The MPIA arbitrators have, however, interpreted it to mean that it seeks to establish "national systems" for the effective and adequate protection of intellectual property rights in "each and every Member".

Alan Yanovich, a former Counsellor at the AB Secretariat, among others has expressed the view that the MPIA has indulged in the same interpretative activism that the AB has been accused of by the US. Brian McGarry and Nasim Zargarinejad were prescient in concluding three years back that MPIA has carried along the alleged defects of the AB.²¹ In sum, adopting the MPIA appears to be, at best, a Hobson's Choice for the WTO Members.

4.5. Another Option before Developing Countries

Several variables inform not only the ability but also the inclination of WTO Members to use DSU procedures to settle disputes. Political culture may inform whether a Member would resort to litigation or conciliation. The mercantilist character of trade relations can change cultural inhibitions, like China changed from its cultural primacy of mediation over litigation in general to increased litigation within the WTO. The African countries have a similar hesitation to litigate, but they also have capacity constraints

as an added challenge when they wish to choose to litigate. However, even when capacity constraints are overcome through external assistance, as in the case of the Advisory Centre on WTO Law (ACWL)²², the magnitude of the economic interests in the society and business of a country may determine the choice of conciliation over litigation. Thus, even the larger African countries like Egypt, Ghana and Nigeria have not filed a complaint under the DSU procedures, while South Africa filed its first complaint only in 2024.

At the same time, it is clear that developing country Members wanting to avail themselves of the benefits of the dispute settlement system face considerable burdens. For example, developing countries, especially the smaller ones, often do not have a sufficient number of specialized human resources who are experts in the intricacies of the substance of WTO law or the dispute settlement procedure.²³ Although the formal dispute settlement mechanism of the WTO is an essential element of the multilateral rules-based international trading system, experience of both developed and developing countries shows that litigation is not an optimal solution for addressing most trade concerns. This is evident from the fact that only a few of the trade concerns raised by Members in the WTO Committee on Trade in Goods and specific trade concerns raised in other WTO committees do not result in formal disputes. Where such trade concerns are important from economic value or trade policy point of view or involve critical economic sectors, but may not justify investing resources in a formal trade dispute, Members may be advised to sort them out bilaterally or use alternate dispute settlement mechanisms in a non-adversarial manner without triggering the formal, adversarial and legalistic litigation process before the DSB.

This option is available in the current procedures by use of good offices, mediation and conciliation under DSU Article 5, but that has rarely been used. The reason is that as currently structured, the mechanism can be triggered only once mind is made up to launch a formal dispute.²⁴ The Text follows the same design, in so far as even though alternate dispute settlement procedures have been elaborated into meticulous procedures, they are expected to be invoked only after the formal request has been made to trigger the DSU procedures for litigation.

An interesting suggestion came from a group of experts at MC13 that characterised these alternate procedures as 'complementary', rather

than 'alternate'.²⁵ They suggest hosting a Conciliation and Mediation Facility (CMF) within the WTO like the Enhanced Integrated Framework and Standards and Trade Development Facility which can be approached by Members before they formalise the dispute through a request for consultation. They suggest a large roster of seasoned trade diplomats with experience in and knowledge of the region, or subject matter experts, or eminent persons to undertake conciliation/mediation through this facility. This is a proposition worth pursuing by the membership, particularly for addressing those concern relating to access of developing countries and LDCs to the dispute procedures, where the parties would resort to conciliation rather than litigation.

4.6. The Way Forward for DS Reform

The Text and the Progress Report are far from a stage where they could become a good basis for a negotiated outcome on DS Reforms. Nevertheless, developing countries including India must continue to engage in the ongoing work with the understanding that closely following the discussion and participating actively. It is necessary to protect their interests as the texts and reform proposals evolve into their next stages. This requires a collective voice of the Global South to call for an inclusive process for the discussions after MC14; recognition of the scarce resources in their Geneva based Missions as well as capitals and deciding meeting schedules accordingly, and giving the deserved credence to the developing country concerns in the evolving texts. Similarly, MPIA is not a permanent solution, and cannot replace a legally binding process of the kind the WTO Members have benefitted from during the last 30 years of its existence.

Endnotes

- 1 For a detailed account of the US concerns, see Robert E. Lighthizer (2020); Report on the Appellate Body of the WTO; available at <https://ustr.gov/issue-areas/enforcement/us-views-functioning-wto-dispute-settlement-system>, accessed 2 February 2026.
- 2 The DSU has a built-in review process through a Uruguay Round decision which would have enabled Members to address such concerns through negotiations, but the review was not concluded, including through a fresh mandate in the Doha Development Agenda. These efforts were also complicated by Members leveraging the review for the broader WTO reforms.

- 3 See the news on the subject on the WTO website at https://www.wto.org/english/news_e/news25_e/gc_16dec25_255_e.htm, accessed 10 February 2026.
- 4 The dispute procedures are a part of the DSU, contained in Annex 2 of the Marrakesh Agreement Establishing the World Trade Organization that came into effect in 1995, and are available at wto.org/english/docs_e/legal_e/dsu_e.htm, accessed 13 February 2026.
- 5 These issues are mentioned on the WTO website at https://www.wto.org/english/tratop_e/dispu_e/dispu_negs_e.htm, accessed 13 February 2026.
- 6 The Ministerial Conference can decide by two-thirds or three-fourths votes to amend several other agreements of the WTO, but not DSU
- 7 Amendments to agreements on trade in goods, TRIPS, and certain Parts of GATS can take effect only after respective Members accept them as they alter rights and obligations.
- 8 Peter Van den Bossche (2024); The Uncertain Future of WTO Dispute Settlement; WTI Working Paper No. 2/2024.
- 9 Peter Van den Bossche and Werner Zdouc (2021); The Law and Policy of the World Trade Organization: Text, Cases, and Materials; Cambridge University Press
- 10 For example, see Simon Lester (2012); The Development of Standards of Appellate Review for Factual, Legal and Law Application Questions in WTO Dispute Settlement; 4(1) Trade, Law and Development, Vol. IV, No.1. See also Holger Spamann (2004); Standard of Review for World Trade Organization Panels in Trade Remedy Cases: A Critical Analysis; Journal of World Trade, 38 (3)
- 11 Movsesian, Mark L., "The Sutherland Report and Dispute Settlement" (2005). Faculty Publications. 103. https://scholarship.law.stjohns.edu/faculty_publications/103
- 12 Regulation (EU) 2021/167 of the European Parliament and of the Council of 10 February 2021 amending Regulation (EU) No 654/2014 concerning the exercise of the Union's rights for the application and enforcement of international trade rules, https://ec.europa.eu/commission/presscorner/detail/en/IP_21_601, accessed 20 August 2025.
- 13 Law No. 14,353/2022, which allows for the suspension of concessions and other obligations for Members that have appealed panel reports in which Brazil is a complainant to an inoperative AB. See WT/TPR/G/432 19 October 2022 p19, wto.org/english/tratop_e/tpr_e/g432_e.pdf, accessed 20 August 2025.
- 14 UK amended the Taxation (Cross-Border Trade) Act 2018 s15 through Finance Act 2020, s 97, to allow

unilateral retaliation in case a party appeals into the void against the UK, as indicated in the report on the 39th Session of the UK Parliament <<https://publications.parliament.uk/pa/cm5801/cmselect/cmeuleg/229-xxxiv/22904.htm>> p 2.6.

- ¹⁵ Special Task Force of the Ministry of Economy, Trade and Industry on Policy Response to the Non-functioning of the WTO Appellate Body Interim Report, <meti.go.jp/english/report/pdf/0802_InterimReport.pdf> accessed 20 August 2025.
- ¹⁶ An early example was in a dispute between Indonesia and the Chinese Taipei. WTO Document WT/DS490/13 dated 15 April 2019
- ¹⁷ See https://wtoplurilaterals.info/plural_initiative/the-mpia/
- ¹⁸ See his blog of the European Journal of International law, available at <https://www.ejiltalk.org/author/kpelc/>
- ¹⁹ GAO, Henry (2021); A rule-based solution to the Appellate body crisis and why the MPIA would not work; Legal Issues of Economic Integration; Available at: https://ink.library.smu.edu.sg/sol_research/3279
- ²⁰ See letter dated 5 June 2020 by the US Ambassador to the WTO addressed to the WTO Director General.
- ²¹ Brian McGarry and Nasim Zargarinejad (2023); Tracing the Powers of WTO MIPA Arbitrators; McGill Journal of Dispute Resolution, Vol. 8, No. 2
- ²² It may be noted that the ACWL has advised developing countries 73 times in WTO disputes, but not a single case was from African countries; they are all from Latin American and Asian countries. See <https://www.acwl.ch/wto-disputes/>, accessed 19 February 2026.
- ²³ Training module for developing countries developed by the WTO Secretariat on dispute settlement, available at https://www.wto.org/english/tratop_e/dispu_e/disp_settlement_cbt_e/c11s1p1_e.htm#:~:text=At%20the%20same%20time%2C%20it,or%20the%20dispute%20settlement%20procedure., accessed 16 February 2026
- ²⁴ A formal dispute is triggered by a request for consultation (DSU Article 4), and DSU Article 5.4 provides that a complaining party in a request for consultation must allow a certain period (60 days) before triggering the next step, i.e., requesting the establishment of a panel. This shows by design these informal bilateral procedures are expected to be invoked only after a formal dispute has been initiated.
- ²⁵ See Document Accessible and Inclusive Dispute Resolution: Operationalising the Results of MC13 through a Complementary Conciliation and Mediation Facility within the WTO, available at [Resolution-1.pdf, accessed on 16 February 2026.](https://genevatradelaw.com/wp-content/uploads/2024/05/WTO-MC13-Toward-Inclusive-and-Accessible-WTO-Dispute-</p></div><div data-bbox=)

- ²⁶ Since placeholders have been kept in the Text for issues addressed in the Progress Report, the summary from the Progress Report has been added at those placeholders
- ²⁷ Peter Sutherland et al (2004); The Future of the WTO: Addressing Institutional Challenges in the New Millennium; WTO Publication

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Annexure

Annexure 4.1: Title-wise Examination of the Draft Consolidated Text and the Progress Report²⁶

Title	Title Name	Title Description
I	Alternate Dispute Resolution Procedures and Arbitration	<p>In respect of alternate dispute resolution mechanisms, the provisions relating to good offices, conciliation and mediation broadly follow the existing principles in Articles 5 of DSU and lay down elaborate procedures and timelines. However, unlike the understanding based on the sequencing of provision in the DSU, a consultation request need not precede their use.</p> <p>The roles of mediators and conciliators are reversed compared with what is the commonly understood role in common law practice, and while a conciliator may facilitate and assist dialogue between the parties, a mediator may also offer advice and propose solutions.</p> <p>It also suggests simplified arbitration proceedings pursuant to Article 25 of DSU, wherein the arbitrator shall conclude the process within 90 days, something not prescribed in the current DSU, and leaves open the question as to what happens if the deadline is missed. It also leaves open the option whether third parties shall or shall not be accepted in these proceedings.</p>
II	Panel Proceedings	<p>Several changes to the current rules, procedures and practices regarding the panel process have been suggested. Importantly,</p> <ul style="list-style-type: none"> (i) Members are being asked to commit not to object to panel establishment in the first instance. This is not beneficial to developing country respondents as they will get less time to prepare their legal case after realising that consultations have not resulted in a compromise. (ii) Persons nominated to the Indicative List must possess significant relevant experience, have ethical standards and be a good communicator. Parties may suggest up to 30 names for a case to the DG, who may select a panel based on overlaps. Geographical spread, legal systems, and levels of development represented by the nominees are not mentioned; a point made by developing countries against the proposal. (iii) Some of the procedural practices that streamline the panel process already are being codified, such as submitting all evidence in the First Written Submission, sequential rather than simultaneous Second Written Submission, a single oral hearing rather than current two, and codifying the practice of panels to ask written questions in advance of the meeting. <p>It is proposed to fix word- and time-limits for written and oral submissions keeping the complexity of the case in view, and similar time limits for panel report based on complexity, and admonition of erring panellists. Flexibility can be given to panels both on word and time limits and complexity, but that may take it out of the hands of the parties. Indicative thresholds may, therefore, work better. Admonition of panellists is not a good idea; it will deter honest experts from agreeing to become panellists.</p>

III	Appeal/ Review Mechanism	<p>This is completely missing in the Text, but contours of the various suggested solutions have become visible in the Progress Report. An elaborate Table with several issues relating to handling the appeal/review process, with or without a two-tier standing appeal mechanism like the AB, have been suggested with equally numerous observations on each of them suggesting a clear lack of any emerging consensus.</p> <p>Appended to the Table are four draft negotiating texts:</p> <ul style="list-style-type: none"> (a) scope of review (addressing only those claims that have a material impact on implementation), (b) a higher standard of review (only egregious errors in factual matters can be appealed), (c) enhancing the interim review at panel stage, and (d) adherence to timeframes. <p>Two things merit mention about this Title. Firstly, the differences of approaches to a resolution of the current impasse in appeal/review process are very wide and unlikely to be bridged easily. The US has made it clear even in the December 2024 DSB meeting that it was not working towards a restoration of the Appellate Body as it was (See paragraph 7.4 of WTO Document WT/DSB/M/495) – and that the calls for the restoration of the AB undermined Members’ collective efforts for reform. Even then, several Members support the DS reform discussions, including those who are co-sponsors of the proposal to restart AB selection process.</p>
IV	Compliance	<p>Determination of a Reasonable Period of Time (RPT) has been made subject to a political/diplomatic process by introducing consultation at Ministerial level in the absence of which the RPT will be restricted to 6 months. This is prone to pressures from stronger trading nations.</p>
V	Guidelines for Adjudicators	<p>This Title repeats several elements of the Walker Text, which found large acceptance among the WTO membership back in 2019 but was opposed by the US. The proposal now introduces two elements increasing member-control and restricting the ability of adjudicators to deliver complete justice:</p> <ul style="list-style-type: none"> (a) unnecessary emphasis on supplementary means of interpretation (which, as per VCLT, is to be resorted to only if the good faith interpretation leaves the meaning ambiguous or obscure, or leads to manifestly absurd or unreasonable results), and (b) ignoring the legitimate expectations of WTO members for a secure and predictable multilateral trading system. <p>These two elements may upset the fine balance in the extant rules between member-control and predictability of a legal system.</p>
VI	Procedures to Discuss Legal Interpretation	<p>Enabling discussion on a legal interpretation by adjudicators in the relevant Councils/Committees of the WTO, including DSB, is possible even now. This proposal adds two elements:</p> <ul style="list-style-type: none"> a) it formalises a procedure for discussing technical and policy implications of the provisions interpreted in an adopted panel/appeal report in the relevant subsidiary bodies of the WTO, but without going into the specific facts in the dispute in question or implementation of the recommendations in the report, and b) it establishes an Advisory Working Group under the aegis of the DSB, without any power to relitigate disputes, but with the possibility of recommending an authoritative interpretation of the provision by Members in accordance with Article IX:2 of the Marrakesh Agreement. <p>This new Title supports what the Report by the Consultative Board on The Future of the WTO²⁷ established by DG Supachai came up with to increase member-control.</p>

VII	Secretariat Support	<p>The Title elaborates that Secretariat staff must have domain expertise, which is understandable and something that is already the case, as it is they, who bring in the legal/domain expertise to support the work of panellists. However, an element is added that the staff must obtain written instructions from the adjudicators if they draft any part of the report. In any case, the conclusion of the report must be drafted by the adjudicators themselves; staff can only provide editorial support. An additional restriction on the staff is not to provide any 'issue papers' to the adjudicators before the parties' submissions are received.</p> <p>Further details add some restrictions on the adjudicators relying too much on the staff, and curiously, the staff shall be responsive parties' submissions (in addition to the requests of the adjudicators).</p>
VIII	Transparency	<p>Suggested transparency provisions include open access to panel/appeal timelines, parties' submissions and oral hearings through the Secretariat. These suggestions amount to an amendment to the existing DSU provisions and hence cannot be implemented through a Ministerial Decision. Also, they are contrary to the stated positions of most of the developing country Members.</p> <p>While suggestions regarding transparency where parties agree may be acceptable, the rest, particularly giving the right to the Secretariat to release statements and hearings could be called into question.</p>
IX	Accessibility with respect to Technical Assistance, Capacity Building and Legal Advice	<p>S&DT provisions suggested in the Text are limited to increasing training programmes and experts for legal advice. The language is also best endeavour and subject to further discussion, and has no mention of litigation costs, a key demand of developing countries.</p> <p>The Progress Report adds an Annex elaborating procedures for widening the training bases and better selection criteria for increasing participants, but does not address the basic issue of converting best endeavour language into concrete, meaning full language.</p> <p>On litigation costs, the Progress Report has two proposals: a percentage of WTO General Budget to be earmarked, and use the Fish Fund model.</p>
X	Accountability Mechanism	<p>The accountability mechanism suggested in the Text is a review process to discuss to what extent the suggested reforms have worked, and which further decisions by WTO Members may address any reforms that have not worked. However, experience from the DSU review in the Uruguay Round built-in-agenda suggests that these kinds of decisions get connected with the larger WTO reforms and Members seek to leverage them for a solution beneficial to them in totality. Ultimately, it may boil down to agreeing on a slate of wider WTO reforms through the single undertaking process.</p>

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Session II: Dispute Settlement Reforms

5 January 2026 | New Delhi

Moderator:

Professor (Dr.) Sheela Rai, Professor of Law, National Law University Odisha

Presentation:

- **Mr. Atul Kaushik**, GDC Fellow, RIS
- **Ms. Aparna Ray**, Joint Secretary (PP&R), Ministry of External Affairs

Discussants:

- **Mr. Anwarul Hoda**, Former Deputy Director General, WTO
- **Amb. V. S. Seshadri**, Former Vice Chairman, RIS (Online)
- **Professor Prabhash Ranjan**, Professor and Vice-Dean (Research), Jindal Global Law School



MPIA seeks to replicate the Appellate Body, but its arbitrators are chosen by a limited group rather than through broad geographical representation embedded in the WTO system, and it alters the existing balance by introducing binding arbitration outside the DSB framework.

Professor (Dr.) Sheela Rai, *Professor of Law, National Law University Odisha*



It is in doubt that MC14 is in a position to take any substantive decision on dispute settlement reform, given the limited progress achieved so far, and the systemic nature of dispute settlement provisions.

Mr. Anwarul Hoda, *Former Deputy Director General, WTO*



I consider that having a two-tier and binding dispute settlement system as before is desirable. This is something that gives stability and predictability to the system with also the parties to the dispute getting satisfaction that their submissions have received adequate hearing at two levels.

Ambassador V. S. Seshadri, *Former Vice Chairman, RIS.*



India should not compromise on preservation of a standing Appellate Body, stand for orthodox principles of treaty interpretation under the Vienna Convention on the Law of Treaties, and reject generalized deferential standards of review across disputes, such as extending Anti-Dumping Agreement Article 17.6 type deference to all areas of WTO law.

Professor Prabhash Ranjan, *Professor and Vice-Dean (Research), Jindal Global Law School*





Special and Differential Treatment Provisions: Evaluating Different Approaches

Abhijit Das, Paavni Mathur and Sushil Kumar

5.1. Introduction

One of the key issues being pushed by the developed countries for discussion and a possible decision at the forthcoming 14th Ministerial Conference (MC 14) of the World Trade Organization (WTO) is the approach of WTO Members to the principle of Special and Differential Treatment (S&DT). Discussions on this issue, especially self-determination of development status for the purpose of being eligible for S&DT provisions, has revealed considerable divergence in the positions of many Members. Many developing countries view the principle of S&DT as a “treaty-embedded and non-negotiable right for all developing Members” (WTO, 2022a), “which must not be undermined” (WTO, 2026). While most developing countries have emphasised the need for self-determination to be eligible for S&DT, the developed countries, supported by some developing countries, are seeking to dilute S&DT through negotiations on new approaches. By focusing attention on the differences in the level of development among developing countries, the proponents of ‘graduation’ ignore the vast differences between the developed and developing countries. In the context of the ongoing debate on S&DT, it is relevant to note that while some developing countries have made impressive gains in the economic arena, they continue to face daunting socio-economic challenges. These impose severe

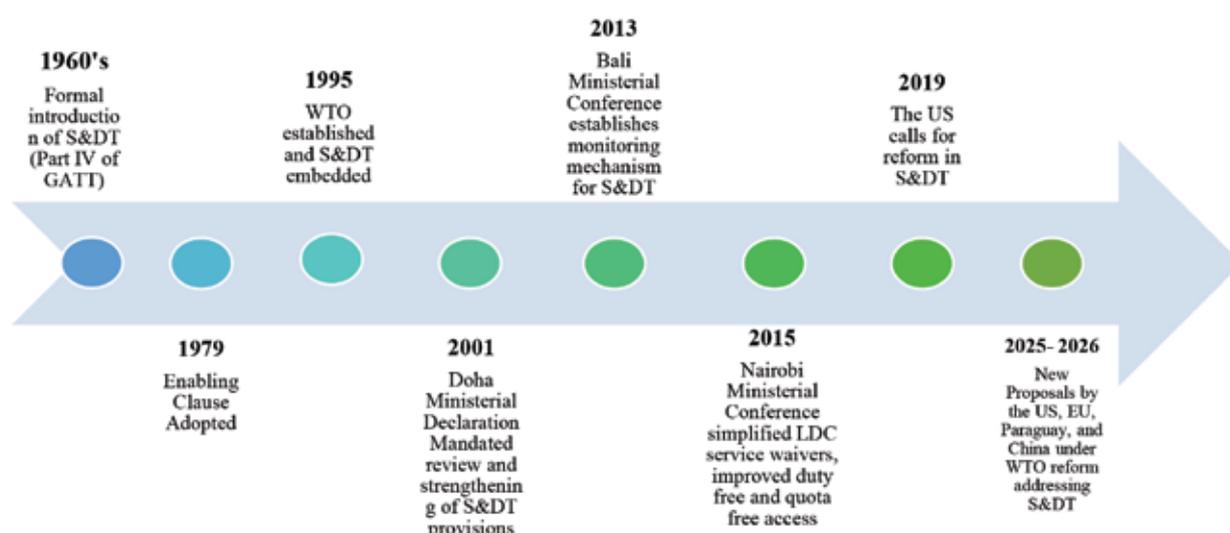
handicaps on them in their ability to benefit from the rules of the multilateral trading system. S&DT should, thus, be viewed as a means to compensate developing countries for these handicaps, enabling them to benefit from the system.¹

This chapter examines the following: historical background of inclusion of the S&DT principle under the GATT regime; categorisation and illustration of S&DT provisions; has the world really changed to justify dilution of S&DT?; different perspectives on S&DT in recent WTO discussions; evaluating the different approaches to S&DT; addressing certain perspectives regarding India’s approach to S&DT; reverse S&DT in some of the existing agreements at the WTO; and conclusions and recommendations for the way forward.

5.2. Historical Background of the Inclusion of the S&DT Principle under the GATT and WTO Regime

The original text of the GATT was based on reciprocity. It was in the mid-1960s that Part IV was included in this text, which specified that “the developed contracting parties do not expect reciprocity for commitments made by them in trade negotiations to reduce or remove tariffs and other barriers to the trade of less-developed contracting parties” (GATT, 1994). This provision on less than full reciprocity provides the

Figure 5.1: Evolution of Special and Differential Treatment



Source: Based on Ministerial Conference Documents and WTO “Special and Differential Treatment Provisions,” https://www.wto.org/english/tratop_e/devel_e/dev_special_differential_provisions_e.htm

legal foundation for S&DT provisions in various WTO agreements and in multilateral trade negotiations. It should be noted that WTO Members self-determine their development status for the purpose of being eligible for S&DT provisions – an issue of considerable contestation by the developed countries in recent years (see Figure 5.1).

5.3. Categorisation and Illustration of S&DT Provisions

The S&DT principle gets manifested in specific provisions of the WTO agreements in different ways. First, certain provisions are aimed at increasing the trade opportunities of developing country Members - the Enabling Clause being one of the most important S&DT in this category (Box 5.1). The Enabling Clause refers to the Decision of the GATT CONTRACTING PARTIES of 28 November 1979 (General Agreement on Tariffs and Trade, 1979). As an exception to the MFN obligation under Article I of GATT 1994, it permits Members to accord differential and more favourable treatment to developing countries without the need to accord such treatment to other Members.

Second, a few S&DT provisions allow developing countries to depart from the generally applicable disciplines under the relevant agreement without any time limitation, provided the measure complies with certain requirements. To illustrate, Article 6.2 of the Agreement on Agriculture allows developing countries to grant unlimited amount of input subsidies, provided

these are generally available to low-income or resource-poor producers (WTO, 1994a). This provision is not subject to any transition period.

Third, certain S&DT provisions are available as long as the developing country complies with the negotiated eligibility criterion. A relevant illustration of this category is contained in Article 27.2(a) of the Agreement on Subsidies and Countervailing Measures (ASCM), which allows developing countries to provide export subsidies that are otherwise prohibited under Article 3.1(a) of the ASCM (WTO, 1994b). However, a developing country can benefit from this provision as long as its per capita Gross National Product does not exceed \$1,000.

Fourth, some S&DT provisions are available for a fixed transition period. A relevant illustration of this category is contained in Article 27.2(b) of the Agreement on Subsidies and Countervailing Measures (ASCM), which allows other developing countries whose per capita Gross National Product exceeded \$1,000 to provide export subsidies for 8 years, which are otherwise prohibited under Article 3.1(a) of the ASCM (WTO, 1994b).

Fifth, certain S&DT provisions allow developing countries to choose the transition period after which the relevant obligation will become applicable to them. This is a recent category of S&DT, which is provided in Article 14.1 (b) of the Agreement on Trade Facilitation. This provision allows a developing country Member or a least-developed country (LDC) Member to designate

a date for the implementation of identified obligations after a transitional period following the entry into force of this Agreement (WTO, 2014).

Sixth, certain S&DT provisions allow developing countries to choose the transition period after which the relevant obligation will become applicable to them, and this would be conditional on their acquiring the capacity to implement through the provision of technical and financial assistance by developed country Members. This flexibility is contained in Article 14.1(c) of the Agreement on Trade Facilitation (WTO, 2014a).

Seventh, certain S&DT provisions require the developed country Members to provide, upon request, technical and financial cooperation for facilitating the implementation of the underlying agreement. Article 67 of the TRIPS Agreement is a good illustration of this category (WTO, 1994c).

Box 5.1: What is S&DT

Contain special provisions giving developing countries, including LDCs special rights and allowing other members to treat them more favorably. Designed to help these countries integrate into the global trading system while addressing their specific development needs and constraints.

- Few S&DT provisions allow developing countries to depart from generally applicable disciplines,
- Extended Timeframes: longer time periods for implementing WTO agreements and Commitments,
- Market Access: measures to increase trading opportunities for developing countries,
- Safeguard Measure: provisions requiring all WTO members to safeguard the trade interests of developing countries,
- Technical Support: support to build the capacity to carry out WTO work, handle disputes, and implement technical standards, and

Provisions related to LDC Members.

Source: World Trade Organization. Special and differential treatment provisions. Available at: https://www.wto.org/english/tratop_e/devel_e/dev_special_differential_provisions_e.htm

It is relevant to recall that in paragraph 44 of the Doha Ministerial Declaration, Ministers agreed “that all special and differential treatment provisions shall be reviewed with a view to strengthening them and making

them more precise, effective and operational”(WTO, 2001). At the foundation of this sentence were the concerns expressed regarding the operation of S&DT provisions in addressing specific constraints faced by developing countries, particularly LDCs. Further, many S&DT provisions in the existing WTO agreements do not imply clear and binding obligations on the developed countries. Two illustrations are given below to elaborate this point.

Example 1: The first sentence of Article 15 of the Anti-Dumping Agreement states the following: “It is recognized that special regard must be given by developed country Members to the special situation of developing country Members when considering the application of antidumping measures under this Agreement” (WTO, 1994d). While this provision might appear to be beneficial to the developing countries, it is of no practical utility. It does not bestow any specific obligation on the developed countries.

Example 2: Certain provisions are designed in favour of developing countries, but the text is so ambiguously worded that it remains unclear who bears the burden of implementing the obligation. Consider the following provisions contained in Article IV.1 (a) of the GATS (WTO, 1994e):

- “1. The increasing participation of developing country Members in world trade shall be facilitated through negotiated specific commitments, by different Members pursuant to Parts III and IV of this Agreement, relating to:
(a) the strengthening of their domestic services capacity and its efficiency and competitiveness, *inter alia*, through access to technology on a commercial basis;”

The above provisions appear to have been negotiated for promoting the interests of the developing countries. However, they suffer from two crucial shortcomings. First, it is not clear which set of countries – developed or developing or both – are required to take commitments, in order to increase the participation of developing countries in world trade. Second, while the mention of “access to technology” appears beneficial, it is undermined by the clause “on a commercial basis”. Even without this provision, technology would be available on a commercial basis. Thus, the provision confers almost no benefit to the developing countries.

Given the past experience of developing countries regarding the inadequacies in S&DT provisions, the importance of making these provisions

“more precise, effective and operational” cannot be over-emphasised. Despite the mandate provided for it in paragraph 44 of the Doha Ministerial Declaration (WTO, 2001), this crucial task remains unfinished.

5.4. Has the World Really Changed to Justify the Dilution of S&DT?

A narrative is sought to be created that, since most developing countries have made impressive strides in development, the WTO’s approach to S&DT must change.² No doubt the developing countries have made significant economic progress over the past few decades. But this narrative ignores that the standards of living in most of these Members fell far behind those in the developed Members. In overall terms, the development divide remains firmly entrenched and has widened over time (WTO, 2019b).

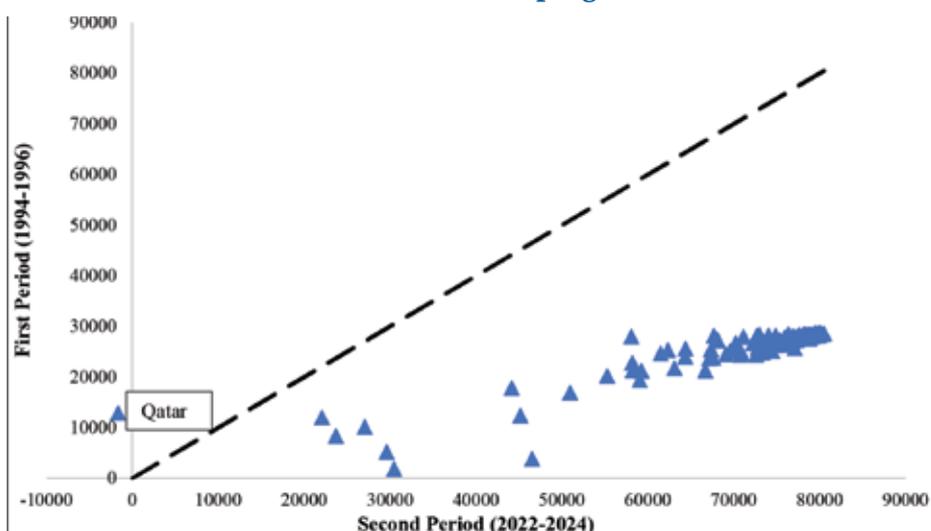
It is relevant to point out that in Article XXXVI: 1(c) of the GATT 1994, the Contracting Parties noted that “there is a *wide gap* between standards of living in less-developed countries and in other countries” (GATT, 1994). Based on a comparison of the gap between the per capita GDP in current US dollars of the US and 119 developing countries, the gap between 1994-96 and 2022-24 increased for 118 developing countries (see Figure 5.2). Thus, despite the impressive increase in GDP of many developing countries over the past 30 years, they have actually

fallen behind the US in terms of per capita GDP. This highlights the continuing relevance of S&DT for developing countries. Further, in 2022-24, the per capita GDP of 100 developing countries was not even 20 per cent of that of the US. It would, thus, not be fair and equitable if the same obligations were to apply to the US and the developing countries even after a transition period of a few years.

Even if a similar analysis is undertaken using Portugal as the comparator developed country, instead of the US, the pattern of widening gap in per capita GDP persists. While 106 developing countries experienced a widening per capita income gap with Portugal, the following 12 countries witnessed a reduction in that gap: Uruguay, United Arab Emirates, Saudi Arabia, Qatar, Macao China, Kuwait, Israel, Hong Kong China, Guyana, Grenada, Barbados, and Bahrain.

To complement the analysis based on GDP per capita in current US dollars, GDP per capita measured in purchasing power parity (PPP) terms was also examined. GDP per capita (PPP, international dollars) adjusts for price level differences across countries and reflects income levels in terms of comparable purchasing power. Unlike nominal measures expressed at market exchange rates, PPP-based estimates provide a clearer indication of countries’ well-being (World Bank, 2026). When benchmarked against the United States using PPP-adjusted GDP per capita, the

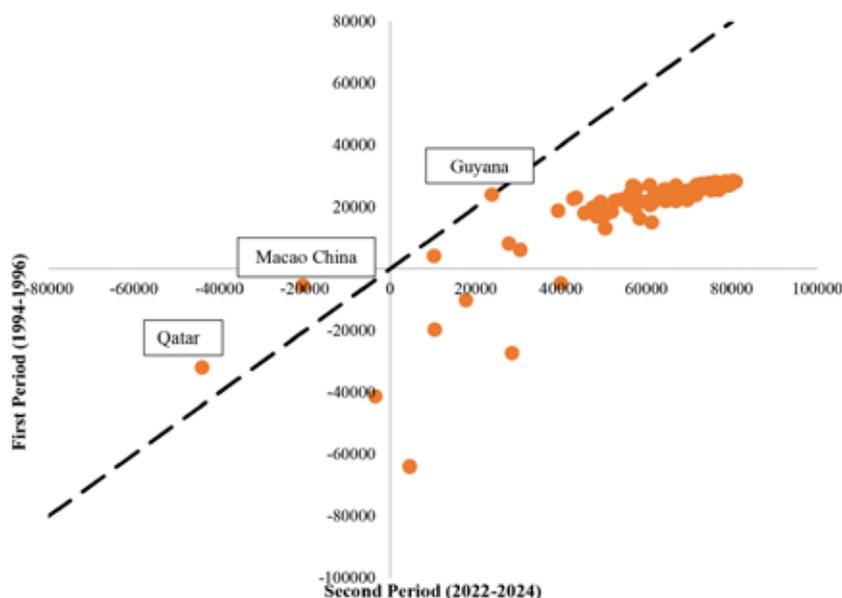
Figure 5.2: Changes in the Per Capita GDP Gap with the United States for Developing Countries*



Source: Authors’ calculation based on data collected from the World Bank World Development Indicators, per-capita GDP in current US Dollars.

Note: * As data were missing for Afghanistan, Cuba, and Yemen, these countries could not be included in the analysis.

Figure 5.3: Gap in Per Capita PPP compared with the US (Current International Dollar)



Source: Authors' calculation based on data collected from the World Bank World Development Indicators, the per capita GDP (PPP).

Note: If the 166 WTO Members, 122 are developing countries, including LDCs. As data were missing for Afghanistan, Cuba, the Bolivarian Republic of Venezuela, Djibouti, and Yemen, they have been removed from the list.

overall pattern of convergence between the US and the developing countries remains limited (Figure 5.3). Out of the 119 developing countries, 116 countries had a gap in per capita GDP (PPP) that widened with respect to the US over the two periods. The gap narrowed for the 3 countries falling above the dotted line – Guyana, Macao, China, and Qatar. Although developing Members have recorded increases in real income levels over the period examined, most of them have not achieved a substantial narrowing of the per capita income gap relative to the United States. The persistence of sizeable per capita income gaps in purchasing power terms indicates that the divergence observed in nominal measures is not solely due to currency movements. Rather, it reflects deeper structural differences in productivity and economic capacity.

5.5. S&DT: Different Perspectives in Recent WTO Discussions

In recent discussions at the WTO, there appears to be a recognition among most Members that S&DT remains an important tool for supporting the development objectives and trade integration of developing Members, including LDCs. Further, many Members are of the view that while countries have diverse development needs, S&DT is not a panacea for all development or integration challenges,

which ultimately depend on Members undertaking commitments and adhering to WTO rules. Finally, there appears to be convergence among WTO Members that LDCs and other more vulnerable Members require particular attention.

While there may be some common ground on a few aspects of S&DT, on many others there are sharp divergence in the positions of many WTO Members. Some developed countries have raised concerns that the broad application of S&DT and unrestricted self-designation hinder rulemaking and the legitimacy of existing disciplines (see Table 5.1). Going forward, the suggestions made by these countries include the following: S&DT provisions only for LDCs and that too merely transition periods; moving towards targeted, needs-based flexibilities; considering eligibility based on differentiation criteria and time-bound limitations; and introducing “trigger-ready” mechanisms or crisis-related waivers to enhance responsiveness. However, it is not clear whether these suggestions would be applicable only in respect of ongoing and future negotiations or would be implemented even for the existing agreements at the WTO.

Many developing countries are of the view that S&DT is treaty-embedded and central to the negotiated balance of rights and obligations. According to them, each Member should determine its own needs based on national circumstances, rather than be judged

Table 5.1: Submission on WTO Reform Examining S&DT

Sr. No	Submission Year	Document Number	Proposal details
1.	December 2025	WT/GC/W/984	The US submission on WTO reform (S&DT) <ul style="list-style-type: none"> ● S&DT may be appropriate for LDCs ● Reform in the area of “development” must focus on transitioning all Members to follow the same rules
2.	January 2026	WT/GC/W/986	The EU submission on WTO Reform (S&DT) <ul style="list-style-type: none"> ● S&DT to be targeted and time-bound, and aim at providing an appropriate path to all Members to be able to ultimately comply with same rules. ● Reform work should be based on factual analysis of the effectiveness of the S&DT provisions in WTO agreements.
3.	February 2026	WT/GC/W/987	Paraguay submission on WTO Reform (S&DT): <ul style="list-style-type: none"> ● Lack of objective and graduation criteria under the current self-classification system creates inequalities. ● Emphasized that S&DT should be needs-based, precise, effective, and operational addressing Members’ specific challenges while supporting the broader application of WTO rules.
4.	February 2026	WT/GC/W/989	China submission on WTO Reform (S&DT): <ul style="list-style-type: none"> ● Stressed the importance of S&DT for development and integration into global trade. ● Supported more precise and effective implementation while preserving flexibility for developing Members.

Source: Authors’ compilation based on WTO documents: WT/GC/W/984; WT/GC/W/986; WT/GC/W/987; and WT/GC/W/989.

externally – thereby retaining the present system of self-declaration of developing country status. They also seek to make S&DT provisions more precise, effective, and operational (see Table 5.1).

5.6. Evaluating the Different Approaches to S&DT

Certain concerns and questions arise in respect of a needs-based approach to S&DT. First, what would be the basis for determining whether a country has demonstrated that it needs the S&DT? Second, would the need for S&DT be required to be demonstrated during ongoing and future negotiations, or after an agreement starts getting implemented? Third, would smaller developing countries have the technical capacity to demonstrate their needs? Fourth, it is likely to create uncertainty and become a bargaining tool for extracting concessions in other areas. Fifth, it is likely to prevent collective negotiation for S&DT by coalitions of developing countries.

In respect of determining access to S&DT provisions based on certain criteria, it appears difficult to envisage the criteria that would not only be relevant for a particular agreement, but also appropriately and adequately capture the diversity in socio-economic realities of the vast majority of developing countries. It is also apprehended that a criteria-based approach would be used to divide the developing countries, thereby diminishing the possibility of these countries forming effective coalitions. This appears amply evident in the ongoing negotiations on fisheries subsidies that contribute to over-capacity and over-fishing.

Another approach suggested by some countries relates to graduating countries out from having access to S&DT in sectors where they are competitive. This approach is likely to have a significant adverse impact on countries whose economies are not diversified and are dependent on a handful of products.

The discussions on S&DT have elicited a seemingly useful suggestion - introducing “trigger-ready” mechanisms or crisis-related waivers to enhance responsiveness. However, two points are worth noting. First, this suggestion should not result in replacing the existing approach to S&DT. Crisis-related response mechanisms would be triggered in specific situations and cannot be a substitute for addressing persisting development gaps and capacity constraints faced by most developing countries during normal (non-crisis) periods. Second, when humanity faced one of its most severe health challenges – the Covid-19 pandemic – the response of the WTO Members in the form of the Ministerial Decision on TRIPS (WTO, 2022c), was too little and too late. This decision bore almost no resemblance to what a coalition of more than 60 countries had sought and came too late to be of much practical utility in combating the pandemic (Das, 2025). This sad experience, when global cooperation was most needed to address an unprecedented existential crisis, does not inspire confidence that crisis-related waivers will have sufficient substance to be effective. Overall, “trigger-ready” mechanisms or crisis-related waivers must not divert attention from the continued need of S&DT during normal situations.

In the context of the forthcoming MC 14, it is relevant to note the following perspective of the Facilitator for WTO reform: “Reform should ensure inclusive integration of developing Members and LDCs, balancing the need for effective flexibilities aimed at common rules applicable to and adherence to rules. Pragmatic, widely acceptable approaches are required to maintain legitimacy while advancing development objectives” (WTO, 2025a). This perspective does not appear to accurately reflect the importance of S&DT provisions on the basis of self-determination for many developing countries and could be used to provide the basis for new approaches in the post-MC 14 phase. This assessment must, therefore, be challenged by India and other developing countries.

5.7. Addressing Certain Perspectives Regarding India’s Approach to S&DT

Discussions on S&DT at the WTO have triggered some debate domestically in India. It is therefore relevant to examine some of the perspectives that have been voiced regarding the approach India should adopt on this issue.

As most S&DT provisions are not precise and effective, some believe that India should not expend diplomatic capital on continuing to push for them.

It is true that very few S&DT provisions are precise and effective. Nevertheless, it is relevant to recall at least three specific S&DT provisions that have substantially benefited India. First, the flexibility under Article 6.2 of the Agreement on Agriculture has allowed India to support its farmers through subsidised provision of fertilisers, irrigation and power. Compared to other developing countries, India provides the highest amount of support under this provision. Second, the Bali Peace Clause (WTO, 2013), read in conjunction with the General Council Decision of November 2014 (WTO, 2014b), allows India to continue with its Minimum Support Price (MSP) scheme for rice, despite the support under it exceeding the 10 per cent product-specific de minimis limit specified under the Agreement on Agriculture. In the absence of this S&DT provision, India would have been required to make substantial changes to its MSP scheme for rice. This would have compromised the country’s ability to address issues related to food security. Third, for more than 20 years, India benefited from the S&DT provision, which allowed it to provide the otherwise prohibited export subsidies. Overall, despite most of the S&DT provisions being in the nature of best endeavour and not precise, it would be in India’s interest to seek improvements to these provisions, instead of abandoning its efforts on them.

While deciding its approach on S&DT, India should look at the larger context. India’s strong stand on this issue could compel the developed countries to make the WTO irrelevant. As such a situation would not be in India’s interest, its approach to S&DT must be pragmatic and not doctrinal.

There is no doubt that it is in India’s overall interest to keep the WTO relevant. However, the question that needs to be answered is: what concessions should India be prepared to make to keep the WTO relevant? A scenario whereby, for the sake of upholding multilateralism at the WTO, India accepts new obligations and gives up its rights arising from the existing S&DT provisions that would not be a balanced outcome from its perspective. Further, the developed countries, including the US, continue to have a deep interest in the TRIPS Agreement. It is therefore unlikely that they would abandon the WTO, even if India adopts a hard negotiating line on the issue of S&DT. It is also important to appreciate that India’s

quest for S&DT provisions is motivated from practical considerations of preserving policy space for meeting some of its development needs.

- *As India will soon become a \$5 trillion economy, it should not seek S&DT in ongoing and future negotiations.*

The impressive growth in India's GDP must not make us oblivious to the multi-dimensional development challenges that it continues to confront. Further, India's per capita GDP is not even one-fifth of that of the US. It would thus not be fair and balanced if India were to be required to assume the same obligations as those of the US in ongoing and future negotiations. Such an outcome is likely to curtail the policy space available to the government for supporting domestic players in new and emerging sectors. Consequently, it would be in India's interest to preserve the possibility of seeking S&DT provisions in ongoing and future negotiations.

- *If China can give up access to S&DT in current and future negotiations, what is the problem in India adopting a similar approach?*

It is generally acknowledged that China is now in a position to leverage its economic heft to influence the negotiations in its favour and secure the rules which promote its interests. Consequently, it does not require S&DT to meet its requirements. This was evident in the last version of the text on negotiations on subsidies that contribute to over-capacity and over-fishing (WTO, 2024). In this text, China secured favourable terms for subsidies related to distant water fishing. At its present stage of development, it is unlikely that India has the heft to decisively influence the core rules in its favour. It will, therefore, have to continue to rely on S&DT provisions for preserving at least some meaningful policy space to address its development needs.

- *As WTO rules must be dynamic and adjust with changing circumstances, India should not oppose new approaches to S&DT.*

Assuming that WTO rules need to keep pace with changing circumstances, as demonstrated in the discussion on per capita GDP, over the past three decades, the standard of living in most of these developing country Members has fallen far behind that in the developed Members. This warrants strengthening of S&DT provisions,

instead of their dilution. India would thus be justified in not supporting new approaches that would result in eroding S&DT.

- *India must go back to the drawing board and assess what specific S&DT it will need in future negotiations, including transition periods.*

It is important to comprehend that future WTO negotiations in new and emerging areas will seek to impose constraints on countries which are not at the technology frontier in the relevant area. Given the lack of a comprehensive ecosystem for promoting innovation in India, it is realistic to expect that the government would need to implement catch-up policies to bridge the gap with those on the technology frontier. This would require the government to preserve some policy space through S&DT provisions in future negotiations in new and emerging areas. Any assessment of the specific S&DT, including appropriate transition periods, which India may require in future negotiations, would depend on the details of the provisions that might be negotiated. It would thus be a speculative exercise to make such an assessment at this stage without having information about the topics and contours of future negotiations.

5.8. Reverse S&DT in Some of the Existing Agreements at the WTO

The starting point of any discussion on S&DT provisions must address the issue of reverse S&DT provisions in favour of the developed countries – certain provisions in WTO agreements which are objective and neutral on the face, but actually benefit mainly the developed countries. To illustrate, it is mainly the OECD countries which can take advantage of the provision on export credits in the Agreement on Subsidies and Countervailing Measures and provide these subsidies, which would otherwise be prohibited (WTO, 1994b).³

The Agreement on Agriculture provides many examples of how the same provision confers substantial rights to the developed countries, while imposing constraints on many developing countries (Das, 2025). This is amply illustrated by the provision related to a category of subsidies called Amber Box subsidies (also referred to as Aggregate Measure of Support (AMS)) whose fundamental underpinning is that higher the level of subsidy provided in the base period of 1986-1988, higher became the entitlement

during the WTO era. As the developed countries provided high amounts of these subsidies in the base period, they acquired the right to continue to provide these subsidies in the future. On the other hand, most developing countries were fiscally prudent or had budgetary constraints and did not provide these subsidies beyond meagre amounts. These countries lost the right to provide Amber Box subsidies beyond a de minimis threshold in the future. In fact, out of the total entitlement for Amber Box subsidies, 95 per cent accrued to the developed countries (see Box 5.2). In addition, provisions on Special Safeguards and export subsidies for agricultural products are certain other illustrations of reverse S&DT provisions in favour of the developed countries (WTO, 1994a).

It has been the view of some developing countries that developed countries must give up their recourse to the reverse S&DT provisions in their favour, before there can be any discussion on S&DT provisions (WTO, 2019b). This approach continues to remain relevant in current discussions at the WTO.

5.9. Conclusions and Recommendations for the Way Forward

In the recent debate on S&DT, many developing countries have emphasized that this principle “remains a cornerstone of the WTO’s development mandate and should remain operational and responsive to development needs” (WTO, 2025b). The approach of developing countries to S&DT provisions in current and future negotiations must be informed by an important reality of WTO negotiations – much of the negotiations at the erstwhile GATT, and now the WTO, have

been about curtailing the flexibility of governments to implement policies to catch-up with those at the technology frontier. As most developing countries, including India, are unlikely to be at the technology frontier in new and emerging areas of economic activities for some more time they would need policy space to implement catch-up policies. If ongoing and future negotiations in some of these areas, such as digital trade, do not provide developing countries with policy flexibility through S&DT provisions to boost their domestic players, they would be unable to create economic gains from emerging areas commensurate with their needs. This underscores the need for developing countries to continue to strive for effective S&DT provisions in ongoing and future negotiations.

Diluting S&DT provisions will have another important consequence for developing countries. It will reduce their negotiating leverage to counter or balance rules that are negotiated, which are substantially tilted in favour of the developed countries. This crucial aspect relating to negotiation dynamics needs to be factored in by developing countries when deciding their approach to S&DT.

Overall, at the 14th WTO Ministerial Conference and in subsequent discussions, India should adopt a multi-pronged approach to the issue of S&DT. First, it must insist that the flexibilities under existing S&DT provisions must be preserved and improved to make them more precise and effective. Second, access to S&DT provisions in the ongoing and future negotiations must continue to be on the basis of self-determination. There must not be an *a priori* exclusion of developing countries from access to S&DT provisions through new

Box 5.2: Reverse Special and Differential Treatment in Agreement on Agriculture

Countries with AMS entitlements can provide large amounts of farm subsidies without being limited by the strict agriculture rules under the Amber box.

- Permitted to concentrate their subsidies on specific products or on multiple products.
- Most of the AMS entitlement is held by developed countries.
- The European Union, Japan, and the United States together account for a large share.

Source: Authors’ compilation based on Sharma *et al.* (2025).

Share of AMS Entitlement Between Developed and Developing Members (%)



approaches, including a needs-based approach and a criteria-based approach. Such approaches are likely to be divisive, inadequate to meet the development needs and fraught with considerable uncertainty for developing countries. Third, in the ongoing and future negotiations, access to specific S&DT provisions should be determined by the negotiating dynamics, architecture and contents of the generally applicable provisions under negotiations, as is the existing practice. Fourth, confining S&DT provisions to merely transition periods may be inadequate to meet the requirements of a large number of developing countries. Transition periods should be linked to negotiated economic indicators, rather than focusing on a fixed duration. This approach would enhance predictability, transparency, and certainty for developing countries and is in line with existing WTO practice in certain instances, such as those under the Agreement on Subsidies and Countervailing Measures. Fifth, the preferred approach to S&DT should be that, depending on their individual circumstances, developing countries may voluntarily give up their access to S&DT in ongoing and future negotiations, as has been done by China (WTO, 2025c). Any other approach risks creating more hurdles in negotiations at the WTO and further fracturing the organization. Finally, India must insist that any discussion on S&DT should be undertaken only after the developed countries give up their recourse to reverse S&DT provisions.

Endnotes

- ¹ See, for example, (Das, 2003); (Third World Network, n.d); (WTO, 2022b).
- ² See, for example, Submission by the US titled An undifferentiated WTO: Self-declared development status risks institutional irrelevance.
- ³ Item k of Annex I of the Agreement on Subsidies and Countervailing Measures.

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Session I: Special and Differential Treatment Provisions

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Chaired:

- **Amb. V.S. Seshadri**, Former Ambassador

Presentation:

- **Mr. Abhijit Das**, International Trade Policy and WTO Expert.

Discussants:

- **Mr. Dammu Ravi**, Former Secretary (ER), Ministry of External Affairs, GoI
- **Mr. Shashank Priya**, Former Special Secretary Department for Promotion of Industry and Internal Trade, GoI
- **Mr. Sudhanshu Pandey**, Former Additional Secretary, Department of Commerce
- **Ms. Ranja Sengupta**, Senior Researcher, Third World Network India
- **Dr. Murali Kallummal**, Professor & Head Administration (CRIT), Centre for WTO Studies



“Whatever we do, we need to be pragmatic rather than doctrinal, to see where we can go forward with some degree of open-mindedness, but at the same time not giving up the core requirements that we feel are important for India and for the multilateral trading system.”

Mr. Shashank Priya *Former Special Secretary, GoI*



“Progress has happened in absolute terms, but in relative terms the gap between developed and developing countries has not been bridged.”

Mr. Sudhanshu Pandey *Former Additional Secretary, Department of Commerce, GoI.*



“S&DT is a foundational principle of WTO to be respected by all its members. However, the multilateral trade rules should be dynamic in sync with the changing realities. As a large growing economy it’s about time India re-calibrated its position on S&DT in its best national interest”

Mr. Dammu Ravi, *Former Secretary (ER), Ministry of External Affairs, GoI*



“We need to retain the policy space because these are hard fought rights.”

Ms. Ranja Sengupta, *Senior Researcher, Third World Network India*



“LDCs to get preference, but also caution that any reform of S&DT should address concerns stemming from data gaps emerging from the transformation (Physical to Digital) in Global Trade flows, creating new forms of inequalities.”

Dr. Murali Kallummal, *Professor & Head Administration (CRIT), Centre for WTO Studies*





Trade and Sustainability at the WTO: Strategic Priorities for MC14

R V Anuradha, Rajeev Kher, Anshuman Gupta and Lakshmi Swathi Ganti

6.1. Background

The 1994 Marrakesh Agreement establishing the World Trade Organization (WTO), references sustainable development in its Preamble. It identifies the three dimensions of sustainable development: the economic, social and environmental, and notes that the ability of each WTO member to address each of these dimensions needs to be enhanced “consistent with their respective needs and concerns at different levels of economic development”.¹ Of these, WTO Agreements are primarily focused on the economic dimension. Environmental and labour related agreements have emerged under other specialized bodies of the United Nations, which are institutionally better equipped to deal with these issues.

Increasingly, however, both the environmental and labour dimensions are being addressed either in standalone chapters, or under a common chapter on “sustainable development” under bilateral or plurilateral free trade agreements (FTAs). While primarily driven by developed countries, the use of such provisions has proliferated over the years across FTAs. While India traditionally rejected environment and labour as non-trade issues, its recent FTAs with the United Kingdom (UK) and the European Union (EU) have provisions on environment, labour, gender and sustainable development, though these are excluded

from the formal dispute settlement mechanism of the trade agreement.

With climate change and environmental sustainability becoming intrinsically linked to economic competitiveness, it is no longer realistic to maintain that environment is a ‘non-trade’ issue. The absence of a globally agreed carbon price, for example, has led to increasing use of carbon border measures. The EU has started implementing its carbon border adjustment measure (CBAM) that subjects imports to pay the price difference in embedded carbon, as a condition for market access. The UK’s CBAM is expected to be implemented from next year. Carbon taxes, reporting and traceability related measures are also gradually increasing across developed countries.

Meanwhile, the stand that India continues to take at the WTO is that there cannot be substantive discussion on environment and labour, which are predominantly non-trade issues. India has however, sought to push forward the discussion on how obligations relating to trade in transfer of technology, including on climate friendly technologies, should be advanced in discussions under the WTO’s Committee on Trade and Environment (CTE) and the Working Group on Technology Transfer (WGTT).

With the 14th WTO Ministerial Conference (MC14) fast approaching, this paper outlines the key developments that are taking place at the WTO, and

the opportunities and challenges for the issues that India has sought to advance in this regard.

6.2. Understanding the Concept of “Sustainable Development”

“Sustainable development”, a term which resonates almost intuitively with everyone, does not have a legal definition under any international instrument. The essence of this term is perhaps most eloquently captured in a 1987 report of the United Nations (UN) titled “Our Common Future” which noted that “Humanity has the ability to make development sustainable to ensure that it meets the needs of the present without compromising the ability of future generations to meet their own needs.”²

Since then, practically every major instrument of international law, has emphasized on the need for sustainable development. The UN Conference Earth Summit at Rio in 1992 and its ambitious plan of action outlined in Agenda 21, acknowledged the delicate balance between environmental and developmental concerns, as well as the need for international law to evolve to address the same. It also eloquently laid out the various aspects for consideration, including steps for financial and technological collaboration to achieve sustainable development.³

Close on its heels, the 1994 Marrakesh Agreement establishing the WTO, referenced the three dimensions of sustainable development, as explained in the introductory paragraph of this paper. The preamble of the Marrakesh Agreement acknowledged the delicate balancing of the three dimensions (Box 6.1).

Box 6.1: Marrakesh Agreement Establishing the WTO

Preamble, Para 1:

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, and **expanding the production of and trade in goods and services, while allowing for the optimal use of the world’s resources in accordance with the objective of sustainable development seeking both to protect and preserve the environment and to enhance the means for doing so in a manner consistent with their respective needs and concerns at different levels of economic development**

The text in Box 6.1 reflected the clear understanding of the WTO members that there cannot be a *one-size fits all* approach to environmental obligations, and that a key objective of the trade pillar should be to “*enhance the means*” for protection and preservation of the environment, consistent with the differential needs and concerns of countries at different levels of economic development.

The evolution of environmental agreements under the aegis of the United Nations also reflects the growing complexity of obligations of countries. Box 6.2 tracks the key developments in international environmental law:

Box 6.2: Sustainable Development under Multilateral Environmental Agreements

1972	<ul style="list-style-type: none"> ● United Nations Conference on the Environment. ● <i>Stockholm Declaration and Action Plan for the Human Environment</i>; UNEP established.
1973	<ul style="list-style-type: none"> ● CITES (the Convention on International Trade in Endangered Species of Wild Fauna and Flora). ● 183 parties.
1982	<ul style="list-style-type: none"> ● United Nations Conference on Law of the Sea. ● 167 parties.
1987	<ul style="list-style-type: none"> ● Montreal Protocol on Substances that Deplete the Ozone Layer ● To date the only UN treaty ever that has been ratified by all 198 UN Member States.
1992	<ul style="list-style-type: none"> ● UN Earth Summit. ● Convention on Biological Diversity; AND United Nations Framework Convention on Climate Change (UNFCCC).
1997	<ul style="list-style-type: none"> ● Kyoto Protocol to the UNFCCC.
2015	<ul style="list-style-type: none"> ● Paris Agreement.

The discussions over the years culminated in the UN 2030 Agenda for Sustainable Development, laying down seventeen sustainable development goals (SDGs).⁴ The UN SDG goals recognize that these are integrated and indivisible goals that seek to balance the three dimensions of sustainable development:

the economic, social and environmental. The agenda specifically urges states “to refrain from promulgating and applying any unilateral economic, financial or trade measures not in accordance with international law and the Charter of the UN that impede the full achievement of economic and social development, particularly in developing countries.”⁵

In the arena of labour relations, the International Labour Organization (ILO) has adopted around over 190 Conventions since 1919, addressing hours of work, wages, non-discriminatory practices, and progressively covering most areas of labour regulation. The ILO is the only UN agency with a tripartite structure, with its standards, policies and programmes discussed and approved by representatives of governments, employers and workers. State parties are required to provide periodic reports relating to adherence to its principles, and the ILO provides technical assistance to assist in implementation. To put this in perspective, it is interesting to note that of ILO’s fundamental labour conventions, the U.S. has ratified only two,⁶ whereas India has ratified six of these.⁷

The fact that, whether in the arena of environment or labour, instruments of international law are endorsed and adopted by majority of the countries in the world, is itself a testament to the fact that “sustainable development” is universally accepted as a given. And yet, the concept of “trade and sustainable development” is fraught with significant differences in approaches, quite starkly between developed and developing countries. Clearly, the reason is not the lack of commitment to “sustainable development”; rather, the differences stem from differing perspectives as regards the right and just manner in which sustainability can be truly achieved.

6.3. Trade and Sustainability in the WTO Agreements and FTAs

6.3.1. WTO Framework

6.3.1.1. Environment at the WTO

Under the WTO Agreements, environment has traditionally been available as an “exception” to justify inconsistency of a trade measure with WTO obligations, subject to safeguards that aim to ensure that such inconsistent measures are not fronts for protectionist measures, or disguised restrictions on international trade.⁸ Similarly, the WTO Agreement on Technical Barriers (TBT) to Trade and Agreement on Sanitary

and Phytosanitary Measures (SPS), provide right of members to take measures for specific environmental reasons, and again subject to obligations such as clear criteria and reasons for such actions.

This broad and generic reference to environment, in the context of sustainable development, also recognizes that while the preservation and protection of the environment is an important objective, it will be done *in a manner consistent with their respective needs and concerns at different levels of economic development*. There is a clear recognition, therefore, that protection of the environment as an ideal in itself, is not the WTO’s objective, rather its focus is on the overall principle of sustainable development.

The TBT agreement seeks to ensure that product specifications, whether mandatory or voluntary (known as technical regulations and standards), as well as procedures to assess compliance with those specifications (known as conformity assessment procedures), do not create unnecessary obstacles to trade. In its preamble, the TBT agreement recognizes countries’ rights to adopt such measures to the extent they consider appropriate — for example, to protect human, animal or plant life or health, or the environment.⁹

The SPS agreement deals with food safety, and human, animal and plant health and safety regulations. It recognizes members’ rights to adopt SPS measures but stipulates that they must be based on a risk assessment, should not create unnecessary obstacles to trade (should be applied only to the extent necessary to protect human, animal or plant life or health), and should not arbitrarily or unjustifiably discriminate between members where similar conditions prevail.¹⁰

There have been several prominent disputes at the WTO dealing with the trade and environment interface.¹¹ The jurisprudence that has evolved clearly recognizes that:

- WTO law does not exist in clinical isolation of international law and developments, including environmental concerns. However, environmental measures to restrict trade can be adopted only under certain strict conditions.
- Multilateral solutions to environmental issues are the preference; a WTO Member should therefore make *serious efforts to negotiate* such solutions. If despite such efforts, an agreement cannot be concluded, then unilateral measures for protection of environment may be taken, even outside that country’s jurisdiction.

- Adequate scientific evidence and risk assessment lie at the core of any action under the WTO's SPS Agreement which allows for measures to protect human, animal and plant life and health.
- Tests of *necessity* and availability of *less trade restrictive measures* need to be applied prior to application of any trade restriction on environmental grounds.

6.3.1.2. Labour at the WTO

There has been strong opposition to the linkage of labour standards to trade at the WTO. The Singapore Ministerial Declaration in 1996, unequivocally rejected the use of labour standards for protectionist purposes.¹² Specifically, the Singapore Ministerial Declaration stated that: "economic growth and development fostered by increased trade and further trade liberalization contribute to the promotion of these standards. We reject the use of labour standards for protectionist purposes, and agree that the comparative advantage of countries, particularly low-wage developing countries, must in no way be put into question." It is with this in view that the WTO and ILO Secretariats were asked to continue their existing collaboration.

6.3.2. Trade and Sustainability Linkages: Difference in WTO and FTAs

Trade as a vehicle of economic productivity and growth, relies on the principle of comparative advantage, which is essentially that countries should specialize in production of those goods which they can produce efficiently and economically. Economic efficiency is linked to the cost of production, which in turn is impacted by factors of production such as labor, land and capital, as well as cost of raw materials, consumables and technology. A WTO Secretariat paper from 1997 acknowledged that trade instruments are not the first best policy for addressing environmental problems.¹³ With regard to labour, the WTO Singapore Ministerial Declaration of 1996 noted that the comparative advantage of countries, particularly low-wage developing countries, must in no way be put into question under the WTO agreements.

The trend in FTAs is the shift from "environment as an exception" to "environment as an obligation". Early FTAs entered into by the United States (US), beginning with the North American Free Trade Agreement

(NAFTA) in 1994, started addressing "environment" and "labour" as side agreements. This has continued to grow in complexity and detailing, and incorporation into the main agreement, including trade sanctions for non-compliance.

Labour chapters are increasingly finding reflection in trade agreements. A study done for the ILO notes an increasing trend in use of labour provisions in FTAs since the global financial crisis of 2008.¹⁴ The scope and approach adopted by FTAs varies widely, ranging from referencing specific ILO Conventions to the general ILO Declaration on Fundamental Principles and Rights at Work and its Follow-up (ILO 1998 Declaration), to a general commitment by parties to enforce labour standards under their own national labour law.

Environment and labour provisions in US FTAs can be enforced through the dispute settlement provisions of the FTA itself; including through provisions on trade sanctions in the event any inconsistency is found. In other words, to ensure compliance with a country's own labour or environmental law, US as a FTA partner has the right to suspend trade obligations or impose higher tariff costs.

The approach in EU's FTAs was initially confined to recommendations of an expert panel which needed to be considered in good faith by a FTA party. However, EU has now aligned its approach with that of US FTAs which emphasize on use of trade sanctions for enforcement of environment, labour and sustainable development obligations in a FTA.¹⁵

India has recently agreed to environment, labour and sustainable development obligations in its FTAs with the UK and the EU. While these exclude formal dispute settlement and trade sanctions, they emphasize a consultative process to resolve any potential concerns. Neither of the FTAs directly contest the unilateral environmental measures such as CBAM. The India-UK FTA reportedly has a diplomatic note verbale under which India has ascertained the right to rebalance if the UK CBAM undermines FTA concessions. The FTA with EU appears to acquiesce to EU's CBAM, with the only leeway present being that for accounting for carbon price paid in India, which to begin with is significantly lower than that of EU.

Table 6.1 summarises the nature of provisions on environment and labour that India's FTAs with the UK and EU have incorporated.

Table 6.1: Nature of Provisions on Environment and Labour

India- UK FTA ¹⁶	India- EU FTA ¹⁷
It has separate dedicated chapters on Environment, Labour and Gender	Dedicated Trade and Sustainable Development Chapter discusses issues on environment, labour and Gender
<p>Chapter 21: Environment</p> <ul style="list-style-type: none"> ● Commit to high levels of environmental protection and not lowering standards to attract trade or investment. ● Reaffirm commitments to global environmental frameworks (e.g., Paris Agreement) while retaining the right to regulate domestic environmental policies. ● Promote cooperation on climate change, clean energy, and trade in environmental goods and services to support sustainable development. 	<ul style="list-style-type: none"> ● Trade, environment and climate – supporting global governance and the green transition ● Commit to implementing key global environmental agreements (Paris Agreement, biodiversity, wildlife protection). ● Cooperate on climate action, renewable energy, and sustainable management of forests, biodiversity, and marine resources. ● Promote green transition by easing trade in low-carbon goods, services, and technologies and supporting a circular economy.
<p>Chapter 20: Labour</p> <p>Commitment to ILO standards. Must not weaken labor protections to encourage trade or investment</p>	<p>Trade and workers' rights</p> <ul style="list-style-type: none"> ● Upholds core ILO principles: freedom of association, collective bargaining, and elimination of forced and child labour, along with non-discrimination.
<p>Chapter 23: Trade and gender equality</p> <ul style="list-style-type: none"> ● Promotes gender equality by ensuring women can access and benefit from trade and economic opportunities under the agreement. ● Aims to identify and address barriers faced by women in trade, integrating gender considerations into trade policies and initiatives. 	<p>Gender equality and women's empowerment</p> <ul style="list-style-type: none"> ● Provisions regarding relevant UN and ILO conventions on advancing women's economic empowerment and gender equality, including promoting cooperation in international fora to advance these objectives.

Source: Based on UK- India FTA text and European Commission, EU-India FTA Chapter wise Summary.

The reason why India's approach in FTAs, and the gradual acceptance of trade and sustainability in FTAs generally, is important for any discussion in the WTO context, is because they provide valuable insights into where the trade and sustainability linkages can mature into the WTO. India's stand in FTAs will also have a bearing on its stand at the WTO, since it will be difficult to defend a dual approach- of negating trade-environmental linkage at the WTO, while agreeing to this under FTAs.

6.4. India's Approach at the WTO CTE

India has been one of the staunchest opponents to the linkages of trade with environment and labour related issues at the WTO. It has instead taken a focused approach at the WTO on emphasizing the role of trade as a vehicle for transfer of much needed technology to achieve green development.

With particular reference to environment and sustainability issues, WTO Members agreed at the

Doha Ministerial Conference to (i) negotiations on a limited set of trade-and-environment topics (paragraph 31) and (ii) instructed the CTE, within its existing terms of reference, to give particular attention to issues like the market-access effects of environmental measures—especially for developing countries (paragraph 32).¹⁸

India has sought to advance the role of the CTE through several notable submissions in this regard. These include the following: (a) India's proposal before the WGTTT in 2005¹⁹, (b) a Room Document, co-sponsored by India before the WGTTT in 2008 entitled "Facilitating Access to Information on Appropriate Technology Sourcing-A step to increase flows of technology to developing countries"²⁰, (c) a joint proposal co-sponsored by India before the CTE in 2011,²¹ and (d) communication on "Concerns on emerging trends of using environmental measures as protectionist non-tariff measures", discussed in the CTE in March 2023.²²

In its March 2023 submission, India argued that unilateral climate-related trade measures undermine multilateral outcomes under MEAs and upset the negotiated balance of rights and obligations and should not be normalized through WTO workstreams. Subsequently, at the 13th WTO Ministerial Conference (MC13, Abu Dhabi, 2024), a group of 72 members, including Bangladesh, Indonesia, South Africa, Argentina, and the African Group, circulated a communication calling for curbs on unilateral trade-related environmental measures imposed by developed countries and for discussions to be brought back into WTO forums instead of through unilateral action.²³

The African Group has also called attention to the importance of technology transfer to developing countries to address environmental challenges. One of these, titled “Role of Transfer of Technology in Resilience Building: Climate Change Mitigation and Adaptation”²⁴ has highlighted the following critical issues to be discussed with a view to making recommendations for adoption at MC13, namely: (a) assessment of the TRIPS agreement to enhance technology transfer for diffusion of climate change technologies including compulsory licensing; (b) transfer of Environmentally Sound Technologies (EST) and financial commitments to ensure access to such technology; and (c) creation of a Trade and Environment Fund with the objective of facilitation transfer of EST at reasonable prices.

6.4.1. Submission on EST by India

Building on the above, India made a submission in October 2023, highlighting that effective climate action requires reinvigorated WTO work on trade-related transfer of ESTs to developing countries, including by creating finance and information mechanisms, and operationalizing long-standing but largely unimplemented technology transfer commitments under UN climate and sustainable development instruments. It also highlights the need for consolidation from various repositories of ESTs and related IP information, and for WTO to play a more proactive role as a facilitator of transfer of much needed technology.

A key message it makes is that simple steps such as tracking significant technological developments and trends can play an important role in avoiding duplicative research and development, and enable technological leapfrogging and other forms of

cumulative development. For this, it also draws on the 2008 room document before the WGTTT referenced above,²⁵ which proposed the establishment of a WTO web portal on technology transfer that could serve as a conduit for technology-related information. The paper explained how this could be leveraged to ensure adequate synergies for such a portal with other existing platforms, such as the technology implementation arm of the UNFCCC – the Climate Technology Centre and Network (CTCN) and WIPO Green – an online platform for technology exchange that supports global efforts to address climate change by connecting providers and seekers of environmentally friendly technologies.

India's submission also refers to a Trade and Environment Fund to: finance incremental costs of accessing proprietary and non-proprietary ESTs, provide grants for importing and retrofitting ESTs, support collaborative R&D and demonstrations, and finance technical assistance and capacity building. Annex 1 to India's submission set out a detailed “post-MC13” roadmap structured around: (a) WTO discussions in CTE, TRIPS Council and WGTTT; (b) Finance; (c) Information platforms and databases; (d) Voluntary licensing and regulatory environment; and (e) Use of TRIPS flexibilities including compulsory licensing.

6.4.2. Proposed Ministerial Declaration for MC14 by India

In December 2025, India proposed a “Draft Ministerial Declaration on enabling the transfer of relevant and advanced technologies for trade”.²⁶ It highlights the need to facilitate improved trade flows from developing and least developed countries (LDCs) by addressing structural barriers to technology access, including high costs, restrictive intellectual property regimes, export controls, and domestic capacity constraints. It urges developed Members to act without undue delay to facilitate transfer of technology and report progress. Further, it instructs the WGTTT make recommendations to the next Ministerial Conference on measures that can facilitate transfer of technology and to deliver a timebound roadmap for realization of such measures. It aims to institutionalize the work of the WGTTT under this declaration as a standing item on the General Council agenda.

India's draft ministerial declaration seeks to embed technology transfer and equity at the heart of the WTO's trade and environment discussions. At

the same time, its approach of requiring technology transfer may be difficult to monitor and implement for two simple reasons: (a) Most technology, particularly proprietary ones, vest with private entities; and (b) Governments cannot promise to compel their private sector actors to transfer technologies.

In that regard, a more practical approach would possibly be creating repositories of technologies, their IP status, their costs, and whether public funding could defray the costs. This was the essence of the 2023 submission that India had made.

In any event, whatever approach is considered, it would be useful to see if India is able to obtain the support of other members, particularly African group and LDCs, to co-sponsor any effort. This would be crucial for expecting any realistic outcome to emerge from the forthcoming ministerial.

6.5. Joint Ministerial Statements and Discussions on Environmental Issues at the WTO

In December 2021, groups of WTO members issued ministerial statements outlining signatories' plans of action respectively on trade and environmental sustainability, plastics pollution, and fossil fuel subsidies reform. These have resulted in the *Trade and Environmental Sustainability Structured Discussions (TESSD)*, and dialogues on Plastics Pollution and Environmentally Sustainable Plastics Trade and on Fossil Fuel Subsidies Reform. With the growing number of participants and proponents in these initiatives, it is important to be cognizant of the nature of discussions.

6.5.1. Trade and Environmental Sustainability Structured Discussions (TESSD)

The Trade and Environmental Sustainability Structured Discussions (TESSD), launched in November 2020 by an initial group of 23 WTO Members, represent a significant shift in how sustainability issues are being addressed within the WTO framework. It is open to all WTO members. Co-convened by Canada and Costa Rica, the initiative has expanded considerably and, as of 2025, includes 79 co-sponsors spanning developed, developing, and least-developed countries.

Substantively, TESSD is structured through four thematic working groups focusing on i) trade-related climate measures, ii) environmental goods and services, iii) circular economy, and iv) trade impact

of relevant subsidies, including agricultural subsidies. These discussions cover issues such as carbon measurement methodologies, clean energy transitions, sector-specific facilitation of environmental goods, lifecycle approaches to circularity, and transparency in subsidy design. While not yet producing binding outcomes, TESSD is working toward shaping a shared understanding of trade and sustainability linkages and identifying areas for future cooperation and possible legal disciplines.

6.5.2. Dialogue on Plastics Pollution

The Dialogue on Plastics Pollution and Environmentally Sustainable Plastics Trade, is aimed at exploring how the WTO could contribute to efforts to reduce plastics pollution and promote the transition to more environmentally sustainable trade in plastics. Like TESSD, it operates in an open and voluntary format. The initiative is co-coordinated by Australia, Barbados, China, Ecuador, Fiji, and Morocco. As of February 2025, it includes participation from 83 WTO Members across developed, developing, and least-developed countries.

Substantively, the dialogue focuses on practical, trade-related actions, including improving transparency in global plastics trade flows, reducing environmentally harmful and unnecessary single-use plastics, and promoting alternatives such as non-plastic substitutes and sustainable technologies. It also places emphasis on capacity-building and technical assistance for developing countries, recognizing asymmetries in regulatory and technological capabilities.

At MC13, coordinators of this group advanced a draft statement²⁷ outlining key principles and a set of actionable priorities aimed at positioning trade as part of the solution to plastic pollution. Building on this, discussions are ongoing toward possible outcomes at MC14, including a draft Ministerial Statement circulated by the co-coordinators.

6.5.3. Fossil Fuel Subsidy Reform

The Dialogue on Fossil Fuel Subsidy Reform (FFSR), launched at the WTO in 2021, represents another initiative aimed at addressing the environmental and trade distortions associated with fossil fuel subsidies. Coordinated by New Zealand and open to all WTO Members, the initiative currently has 48 co-sponsors, reflecting a coalition of developed and developing countries interested in advancing reform in this area. FFSR seeks to promote the

rationalization, phasing out, or elimination of harmful fossil fuel subsidies through a combination of existing WTO mechanisms and the exploration of new reform pathways.

In terms of substantive work, FFSR has focused on enhancing transparency and improving the understanding of the scale and impact of fossil fuel subsidies, particularly in light of their implications for climate objectives and trade distortions. At MC13, co-sponsors issued an updated Ministerial Statement²⁸ accompanied by a detailed Work Plan for 2024-2025, which sets out a structured approach to advancing discussions. This includes the development of a non-exhaustive set of questions on fossil fuel subsidies for incorporation into WTO Trade Policy Reviews (TPRs), as well as work across three key pillars: i) enhanced transparency, ii) crisis-related support measures, and iii) the identification and reform of harmful fossil fuel subsidies.

6.6. Conclusion

India has been a strong votary of preserving the WTO's integrity of discussing multilateral agreements, within its institutional framework. It has resisted the fragmentation of the WTO into a series of plurilateral and other joint discussion verticals.

India has also argued against use of unilateral climate-related trade measures, and stressed that WTO work on trade and environment must respect the United Nations Framework Convention on Climate Change (UNFCCC) and Paris Agreement principles of equity and common but differentiated responsibilities and respective capabilities (CBDR-RC), and that the WTO is not the right forum to discuss this.

While taking a consistent stand against any substantive trade and environment linkage, India has sought to advance specific work items of the CTE by highlighting the importance of trade in technology transfer. While the underlying thematic elements of India's submissions resonate with those of other developing countries, there appears to be some weakness in India's ability to build coalitions with like-minded members, and reinvigorate the CTE discussions. Its October 2023 paper which laid a clear roadmap for discussions at the CTE, continues to be a "restricted" WTO document.

That paper drew valuable interlinkages between sustainable development and the role that trade can play in this regard, consistent with other multilateral agreements, including multilateral environmental

agreements. It presented a nuanced position that highlights the positive and proactive relationship between trade and environment, whereby transfer of environmental technology can advance trade, and contribute to sustainable development. For this, the paper highlights several pathways, including the need to address the financing gaps, the technology gaps, and IPR issues.

To take the discussion forward on the post MC-13 roadmap that it had outlined, India needs co-sponsors to its submission. There clearly exist synergies with the submissions of other members, particularly the African group. It is in India's interests to revive the discussions at the CTE and WGTT discussions. Only a concerted effort can make these bodies the fulcrum of the negotiations.

A key development which India cannot afford to ignore is TESSD. This is being shaped by proponents, such as the EU, to discuss climate-linked trade measures. India has emphasized the need for trade-environment work at the WTO to focus on issues "emanating from WTO agreements" and within the multilateral framework (CTE, TBT, SPS, etc.), rather than shifting sensitive climate-trade rule-making into informal platforms such as TESSD.

India is right to be sceptical of the negotiations in format such as the TESSD, and those relating to plastics pollution and fossil fuel subsidies. But to ensure that trade related sustainability discussions do not get fragmented, a more consistent and clear approach is needed that can deliver outcomes at the multilateral forums such as CTE and WGTT. Strengthening engagement in these multilateral forums could help foster inclusive outcomes and ensure greater consistency in advancing these issues.

6.7. Way Forward

For ensuring an effective counterfoil to the TESSD discussions, a clear path for reinvigorating discussions at the CTE is crucial. India has a powerful message to deliver on the concept of trade and sustainable development, and it has already set the stage for this with its submissions at the WTO. It needs to drive this forward ahead of MC14. Instead of simply dismissing "environment" as a non-trade issue which cannot be discussed at the WTO, it needs to lean in and take control of its narrative and its powerful message- which includes that: (a) the CTE is the body where trade and environmental issues need to be discussed head on; (b) the use of unilateral trade measures in the name of

climate change makes a mockery of both trade rules and MEA rules; (c) there exists a way in which trade can play a complimentary role for achieving the goal of climate change, and this is by unleashing and enabling the transfer of environmentally friendly technologies, at affordable prices. India's oral and written submissions have brought in these themes; but this needs to be done with greater focus and with collaboration with other like-minded countries.

The core question is no longer whether trade and sustainability should be linked, but where, how, and under whose rules. MC14 presents India with an opportunity to reaffirm the WTO's centrality by advocating multilateral principles governing trade-related environmental measures, principles grounded in equity, proportionality, capacity constraints, and policy diversity. India could push for open and inclusive frameworks that discipline unilateralism while enhancing predictability for developing-country exporters.

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Discussants:

- **Mr. Aashish Chandorkar**, Counsellor, Permanent Mission of India, Geneva
- **Mr. Anil Jauhari**, Visiting Fellow, RIS and Former CEO of the NABCB
- **Ms. Sangeeta Godbole**, Former Senior Officer, Indian Revenue Service
- **Dr. Arpita Mukherjee**, Professor, ICRIER
- **Ms. Shiny Pradeep**, Assistant Professor, Centre for Trade and Investment Law



“We should be extra careful what kind of commitments we take in the Paris Accords and the ILO conventions....because they may come up in bilateral agreements”. “you may think you’re taking commitments in context of a particular forum where there is no dispute settlement and so on. But those things matter”.

Ambassador Mohan Kumar, *Professor & Dean (Strategic & International Initiatives), Jindal School of International Affairs*



“India has been active in shaping the narrative, even if not always inside every negotiating room.”
“At this stage, political signalling matters more than technical detail, mandates can come later.”

Mr. Aashish Chandorkar, *Counsellor, Permanent Mission of India, Geneva*



“Sustainability is already embedded in trade through private standards and regulations; industry is dealing with it whether policy debates acknowledge it or not.”

“The real challenge is not positions in Geneva, but building domestic capacity to meet evolving regulations and standards.”

Mr. Anil Jauhri, *Visiting Fellow, RIS & Former CEO of the NABCB*



“We are fairly aligned with all the international agreements that the EU is talking about...We are much better than some EU member states in many cases.”

“The real objective should be reducing compliance costs for Indian industry through recognition of domestic systems and standards.”

Dr. Arpita Mukherjee, *Professor, ICRIER*



“I hope that under the CBAM discussions, we can get the EU to accept our CCTS as the standard and not go again all over through EU verification mechanisms...”

“The defensive agenda could be to guard our carbon budget... while the offensive agenda is to push CBDR and hold polluters accountable.”

Ms. Sangeeta Godbole, *Former Senior Officer, Indian Revenue Service*



“Current sustainability discussions at the WTO are evolving through non-binding guidelines that build incrementally on existing commitments.”

“Under TESSD there is an emphasis on... cooperation on the principles of international law relevant to trade climate measures... they have listed one of the fundamental principles of ‘no harm’... but there is some minor reference to the principle of CBDR which seems to be going at the back burner...”

Ms. Shiny Pradeep, *Assistant Professor, CTIL*





Multilateralism Served *à la Carte*: The Rise of Joint Statement Initiatives at the WTO Issues and Challenges

Shailja Singh, Priyadarshi Dash and Pragyana Agarwal

7.1. Background

The emergence of plurilateral initiatives such as the Joint Statement Initiatives (JSIs) and Joint Initiatives (JIs) marks a significant shift in the trajectory of rule-making efforts at the World Trade Organization (WTO). These initiatives do not have any multilateral mandate for negotiations and are structured as plurilateral negotiations involving a subset of WTO Members collaborating to discuss and/or new disciplines within the WTO.

As the WTO and its Members prepare for the upcoming 14th Ministerial Conference, moves are underway to institutionalise, legitimise, and potentially mainstream these plurilateral processes and outcomes within the WTO framework, raising important questions and challenges for developing countries, such as India.

The JSIs emerged on the margins of the 11th Ministerial Conference of the WTO held in Buenos Aires, Argentina in 2017. At that time, a coalition of like-minded WTO Members delivered joint statements advancing discussions on E-Commerce,¹ Services Domestic Regulation,² framework on Investment Facilitation for Development (IFD),³ and establishing a working group on micro, small and medium-sized enterprises (MSMEs).⁴

Over time, this list has expanded to include three trade and environment specific Joint Initiatives (JIs),

namely, the trade and environmental sustainability structured discussions (TESSD),⁵ the informal dialogue on plastic pollution and environmentally sustainable plastics trade,⁶ and fossil fuel subsidy reform.^{7,8} These initiatives arose against the historical backdrop of prolonged impasse in the Doha Development Agenda and increasing frustration among certain Members regarding the constraints of consensus-based rule-making at the WTO. They reflect a shift toward issue-specific coalitions operating within the WTO framework but without a prior negotiating mandate adopted by multilaterally by consensus.

The precise legal character of many of these JSIs and JIs remain uncertain. Broadly, two approaches appear to be under consideration, depending on whether participating Members extend Most-Favoured-Nation (MFN) treatment to non-participants. Under a “closed plurilateral” model, the negotiated benefits would be confined to participating Members. By contrast, an “open plurilateral” model would extend benefits on an MFN basis to all WTO Members. Regardless of the model ultimately adopted, the JSIs and JIs raise fundamental questions concerning their compatibility with the WTO’s foundational principles of multilateralism and consensus-based decision-making.

7.2. An Overview of the Plurilateral Agreements Including Joint Statement Initiatives and Joint Initiatives at the WTO

Since 2017, seven plurilateral agreements including four JSIs and three JIs have been launched at the WTO. Textual negotiations on three of them have been concluded, with the outcome of the JSI on Services Domestic Regulations already incorporated as additional commitments in the GATS schedule

by several participants. The negotiations in respect of the JSI on E-Commerce and IFD have also been concluded, with several requests made to the General Council for their incorporation as an Annex 4 (Plurilateral Trade Agreement) at the WTO, without any success till date.

A brief description of the JSIs and JIs is provided in the Annex 7.1. A snapshot of the various JSIs and JIs, along with their salient features and the current state of play is provided in Table 7.1.

Table 7.1: Snapshot of Joint Statement Initiatives and Joint Initiatives and Their Current Status

Initiatives	Status	No. of Participants	Key Participants	Key Non-Participants ⁹
Joint Statement Initiatives				
<i>Electronic Commerce</i>	Textual negotiations concluded (proponents have sought inclusion of E-Commerce Agreement as an Annex 4 Agreement (WT/GC/W/963/Rev.1)	72	EU, Australia, Japan, Singapore, Canada, China	India, South Africa, Indonesia, USA
<i>Investment Facilitation for Development</i>	Textual negotiations concluded (proponents have sought inclusion of IFD Agreement as an Annex 4 Agreement) (WT/GC/W/927/Rev.4)	128	China, EU, Japan, Australia	India, Türkiye, South Africa, USA
<i>Micro, Small, and Medium enterprises (MSMEs)</i>	Work ongoing. Published MSME Package of 6 Recommendations in 2021 (INF/MSME/4/Rev.2); Databases; Websites	104	Australia, EU, Japan, UK, China, USA	India, South Africa
<i>Services Domestic Regulation</i>	Textual negotiations concluded. Declaration with Reference Paper on Services Domestic Regulation published in 2021 (WT/L/1129). Conclusion of Certification procedures for GATS Schedule concluded for 55 WTO Members	72	USA, EU, Australia, Japan, Singapore, Canada, China	India, South Africa, Indonesia
Joint Initiatives				
<i>Dialogue on Plastics Pollution</i>	Work ongoing; Released Draft MC14 Statement (INF/TE/IDP/W/20/Rev.1)	83	EU, China, New Zealand, Singapore, Switzerland, USA	India, South Africa
<i>Trade and Environmental Sustainability Structured Discussions (TESSD)</i>	Work ongoing; Released the TESSD Document for MC14 (INF/TE/SSD/W/40/Rev.2); Factual Report of the Trade-Related Plastics Measures (TrPMs) Survey (INF/TE/IDP/W/11)	79	USA, Australia, Canada, Costa Rica, EU, China, Japan, Mexico	India, South Africa
<i>Fossil Fuel Subsidy Reform</i>	Work ongoing	48	New Zealand, EU, UK	India, USA, China, UAE, Qatar

Source: WTO.

7.3. Different Perspectives on the Legal and Systemic Issues Concerning JSIs

Deep divergences exist within the WTO membership regarding both the legal basis of the JSIs and the systemic ramifications they entail. It is noteworthy that the Marrakesh Agreement establishing the WTO (Marrakesh Agreement) provides for two broad categories of agreements involving the members (Table 7.2). Annexes 1–3 contain Multilateral Trade Agreements binding on all Members, while Annex 4 contains Plurilateral Trade Agreements (PTAs) binding only on Members that accept them. Further, Annex 4 contains limited number of agreements, underscoring the exceptional nature of plurilateral instruments within the WTO structure. In fact, out of the four PTAs that were brought into force at the time of creation of the WTO on account of historical reasons, only two continue to be in force; both existed before the creation of the WTO – indicating the extraordinary nature of these instruments.¹⁰

7.4. Position in Support of JSIs

JSI participants view plurilateral initiatives as a legitimate path towards making advancements in functioning of the WTO. This reading draws support from paragraph 19 of the 2015 Nairobi Ministerial Declaration, which, while recognizing the centrality and

primacy of the multilateral trading system expressly affirmed that WTO Members ‘have also successfully worked and reached agreements in plurilateral formats’, thereby lending ministerial recognition to the legitimacy of such approaches.¹¹

The participants further contend that the Marrakesh Agreement imposes no requirement of consensus to initiate negotiations in a plurilateral format. Neither Article III:2 nor Article X:9 requires a prior multilateral mandate before a group of Members begins negotiating. They argue that consensus is required only at the time when Members seek to add the resulting agreement to Annex 4 of the WTO Agreement. A requirement for multilateral pre-approval of plurilateral negotiations could have been prescribed in the WTO Agreement, but was not.¹²

A second strand of the proponents’ argument focuses on the structural architecture of the Marrakesh Agreement itself. Article II:3 explicitly provides that agreements included in Annex 4 are part of the WTO Agreement but binding only on those Members that have accepted them. This two-tier design wherein Annexes 1–3 are binding universally, Annex 4 binding only on accepting parties demonstrates that the Marrakesh Agreement was deliberately constructed to accommodate instruments of variable binding mandate. Proponents argue that denying the possibility

Table 7.2: Relevant Extracts from the Marrakesh Agreement

Preamble:

Resolved, therefore, to develop an integrated, more viable and durable multilateral trading system....

Article II.1:

The WTO shall provide the common institutional framework for the conduct of trade relations among its Members in matters related to the agreements and associated legal instruments included in the Annexes to this Agreement.

Article III.1:

The WTO shall facilitate the implementation, administration and operation, and further the objectives, of this Agreement and of the Multilateral Trade Agreements, and shall also provide the framework for the implementation, administration and operation of the Plurilateral Trade Agreements.

Article III.2:

The WTO shall provide the forum for negotiations among its Members concerning their multilateral trade relations in matters dealt with under the agreements in the Annexes to this Agreement. The WTO may also provide a forum for further negotiations among its Members concerning their multilateral trade relations,...

Article X.9:

The Ministerial Conference, upon the request of the Members parties to a trade agreement, may decide exclusively by consensus to add that agreement to Annex 4. The Ministerial Conference, upon the request of the Members parties to a Plurilateral Trade Agreement, may decide to delete that Agreement from Annex 4.

of any new Annex 4 agreement would deprive Article X:9 of its purpose and render it a dead letter (EU Statement at the General Council, 16–17 December 2025).¹³ Proponents of the JSIs are clear that Article X:9 does not bypass the consensus requirement since incorporating a plurilateral agreement into Annex 4 still requires a unanimous decision of the Ministerial Conference. Their objection is that consensus being used as a tool to permanently block any such decision from ever being taken, rather than as the final approval step it was designed to be.

A third argument draws on the systemic consequences of the WTO's negotiating paralysis. The single undertaking approach has demonstrably failed to modernise the WTO rulebook on critical twenty-first-century issues including digital trade, services domestic regulation, and investment facilitation. JSIs represent the most effective available mechanism for keeping rule-making anchored within the WTO rather than migrating it to the proliferating patchwork of bilateral and regional agreements. The EU's Trade Policy Review warned that if no formula is found to integrate plurilateral agreements in the WTO, there would be no alternative but to develop such rules outside the WTO framework. This would directly contradict the preamble's objective of an 'integrated' multilateral trading system.¹⁴ Incorporating open plurilaterals under the WTO umbrella, subject to the Article X:9 consensus gateway, keeps agreements open to all Members and subject to WTO scrutiny and transparency norms. Some of the downsides of the rules developed outside the WTO are that rules would not be subject to the WTO's notification and transparency requirements, would not be open to accession by all Members on equal terms, and would fall outside the jurisdiction of the WTO dispute settlement system. Keeping such agreements within the WTO framework therefore preserves the coherence and integrity of the multilateral trading system, even where not all Members choose to participate.¹⁵

Further, according to the proponents, participation in JSIs has been broad and voluntary across the range of initiatives. Each JSI incorporates special and differential treatment provisions, implementation flexibilities, and extended transition periods. Proponents argue that blocking incorporation on systemic grounds denies the development aspirations of a major part of the membership that has affirmatively chosen to participate, and amounts to a misuse of the consensus norm under Article IX:1. This amounts to,

the proponents of JSI argue, misuse of the consensus requirement under Article IX:1 by allowing a small number of members to indefinitely block an outcome that the major part of the membership actively supports (EU Statement at the General Council, 16–17 December).¹⁶

In the specific case of the IFD Agreement, proponents have also addressed the subject-matter objection that 'investment' falls outside the WTO's mandate to govern 'trade relations'. They argue that investment is not foreign to the WTO since the TRIMs Agreement governs investment measures related to trade in goods. They also argue that the GATS defines 'trade in services' to encompass commercial presence, which in most cases involves foreign direct investment. Additionally, the ASCM agreement disciplines subsidies that affect investment decisions. In the language of the proponent, the IFD Agreement is not a traditional investment agreement rather it is narrowly tailored to administrative facilitation, transparency, and procedural streamlining, expressly excluding market access, investment protection, and investor-state dispute settlement. Proponents further contend that the 2004 General Council Decision, which is invoked by opponents as a negative mandate, pertained only to multilateral negotiations on the broad 'relationship between trade and investment' within the Doha Work Programme. This, they argue, cannot be read as a prohibition extending to a narrowly scoped plurilateral initiative pursued on a separate legal pathway.¹⁷

7.5. Position against JSIs

A number of WTO Members, most prominently India, Namibia and South Africa, have mounted a comprehensive legal and systemic challenge to JSIs. Their objections, set out formally in The Legal Status of 'Joint Statement Initiatives' and their Negotiated Outcomes (WT/GC/W/819/Rev.)¹⁸ proceed on the premise that the WTO was established as an institution premised on multilateralism, consensus-based decision-making, and the single undertaking, and that JSIs are irreconcilable with each of these foundational pillars.

They argue that the legal challenge to JSIs is constitutional in character, not merely procedural. Opponents read Articles II:1 and III:2 of the Marrakesh Agreement conjunctively as confining the WTO's institutional mandate to governing 'multilateral trade relations' within the covered agreements. Article

III:2 grants the WTO a forum function for ‘further negotiations’, but only on matters of ‘multilateral trade relations’ and only ‘as may be decided by the Ministerial Conference’. This, they argue, means that any new negotiating agenda requires a prior consensus-based mandate. JSIs, launched without any such mandate, fall outside the WTO’s institutional authority on this ground.

A second objection is grounded in the historical design of the WTO. Opponents emphasise that the transition from the GATT to the WTO in 1995 was a deliberate repudiation of the GATT à la carte model of the Tokyo Round, under which optional codes produced fragmented rules binding only subsets of contracting parties. The negotiators of the Uruguay Round consciously opted for a single undertaking and universal membership, with the Appellate Body in Brazil – Desiccated Coconut later confirming that the WTO’s architects intended to end that fragmentation. Opponents read the Preamble’s resolve to build an ‘integrated, more viable and durable multilateral trading system’ as a binding interpretive commitment foreclosing a return to variable-geometry rule-making. Opponents have also examined the two examples that JSI proponents most frequently point to as precedents — the Telecommunications Reference Paper and the Information Technology Agreement (ITA). In both cases, they argue, the comparison does not hold good. The telecommunications negotiation was not an independent initiative by a group of like-minded Members rather it was part of the Uruguay Round outcome, formally authorised by a decision of the full WTO membership that set out the negotiating mandate, the scope of the talks, and how the results would be recorded. Similarly, the ITA was adopted as a Ministerial Decision at MC1, with all Members agreeing to it. In both instances, the wider membership had given its approval before negotiations were initiated; which did not happen with the current JSIs indicating serious breach of an established practice within the WTO scheme of negotiations.¹⁹

Further, the proponents argue that the letter and spirit of consensus-based decision making are enshrined and reiterated at several places in the Marrakesh Agreement and have never been deviated from by WTO Members. For instance, Article IX.1 on Decision Making clearly states that the “The WTO shall continue the practice of decision-making by consensus...”. A similar approach can also be seen in Articles IX.3(a), X:1, X.8, and X.9 in different contexts.

The commitment to this approach underscores the importance of collective agreement and cooperation in the functioning of the WTO, ensuring that all Member voices are heard and respected in the decision-making process.

In fact, the detractor of the JSIs argue that every concluded plurilateral initiative at the WTO till date had received a consensus-based ‘blessing’ from the Members for their initiation.²⁰ This is hardly surprising given that the WTO’s built-in objective of having an “integrated” and non-fragmented trading system, necessitates any deviation to take place only with the consensus of the Membership.

Another objection concerns the bypassing of WTO’s amendment procedures. Opponents draw a clear distinction between amendments to WTO rules which is governed by Article X of the Marrakesh Agreement, requiring consensus or voting followed by formal acceptance and modifications to Schedules of Concessions under GATT Article XXVIII or GATS Article XXI, which proceed through less onerous procedures. JSI participants have inscribed the outcome of the Services Domestic Regulation disciplines as additional commitments under GATS Article XVIII, bypassing established multilateral procedures. Opponents reject this, contending that JSIs are substantive rule-making exercises that add new disciplines and alter existing rights and obligations which has to pass the requirements of Article X.²¹ In the case of JSIs such as e-commerce and IFD, inscribing outcomes into GATS schedules is in any event not viable, since their disciplines range across GATT, GATS, TRIPS, and TRIMs and cannot be appended to any single schedule.²²

Further, certain procedural sequencing concerns have also been raised. Opponents argue that the incorporation of a plurilateral agreement under Article X:9 of the Marrakesh Agreement can only take place where the agreement has already been concluded, since the provision refers to the term “parties”. In support of this view, reference is often made to the Vienna Convention on the Law of Treaties (VCLT). Article 2(g) of the VCLT defines a “party” as “a State which has consented to be bound by the treaty and for which the treaty is in force”. Read together with Article X:9 of the Marrakesh Agreement, this interpretation would suggest that a request to add a plurilateral agreement to Annex 4 may only be made after the participating Members have completed their domestic procedures for signature and ratification, and once the

plurilateral agreement has entered into force among them.²³

Lastly, specific to IFD, India has also contended that when WTO Members discussed investment in the context of the Working Group established during the 1996 Ministerial Conference in Singapore, the focus was on the 'relationship between trade and investment', which clearly shows the separation that WTO Members apply between the two concepts. IFD is not a 'trade' agreement, and hence, it does not meet the conditions of Article X.9, and the foundational principle of the WTO governing multilateral "trade relations", putting it outside the scope of the WTO's mandate.²⁴ In fact, as per India, there exists a 'negative mandate' to discuss investment at the WTO.

Beyond the legal objections, opponents have raised serious systemic and developmental concerns. The JSI model risks creating a two-tier WTO where the negotiating agenda is set by the willing few rather than by the membership as a whole. Long-standing development priorities in the Doha Development Agenda including agriculture, development finance, and LDC flexibilities have been progressively marginalised as institutional resources flow into JSI processes. Opponents note that JSIs can also displace existing multilateral mandates: the JSI on Services Domestic Regulation conducted negotiations in parallel to the WTO's Working Party on Domestic Regulation, which held a consensually established mandate under GATS Article VI:4 that was never formally discontinued.²⁵

Similarly, by negotiating rules on e-commerce outside the multilateral framework, JSI proponents have effectively subverted the non-negotiating multilateral mandate of the 1998 Work Programme on E-Commerce, regularly reaffirmed by all WTO Members. Opponents also contend that the claim that JSI outcomes extended on an MFN basis require no multilateral consensus conflates two distinct categories: schedule modification, where MFN extension without consensus has a recognised legal basis, and rule-making, which requires compliance with Article X.²⁶

India has sought to translate these concerns into a constructive institutional proposal. Rather than an outright rejection of plurilateral engagement, India's position contemplates a structured, consensus-based framework governing each stage of plurilateral initiatives, from pre-initiation subject-matter assessment and mandate verification, through

consensus approval by the Ministerial Conference for formal launch, to transparency obligations and non-participant engagement during negotiations, and finally to incorporation in compliance with Article IX or the relevant covered agreement procedures.²⁷ Taken together, opponents of the JSI model do not advocate for a static WTO incapable of rule modernisation; rather, they insist that any such modernisation must occur through the Member-driven multilateral processes that give the WTO its legal authority and legitimacy.

7.6. Proposals on Plurilaterals as Part of the WTO Reforms Agenda (2025-26)

In recent discussions at the WTO, plurilaterals have featured prominently in some of the WTO reforms related proposals. For instance, in a proposal made by the United States, it unequivocally states that if the WTO is to have a future as a negotiating forum, it is likely to be for plurilateral negotiations, where benefits and responsibilities would be limited to the signatory Members, i.e. akin to a 'closed plurilateral'.²⁸ Notably, the United States appears to treat plurilateral initiatives not as a complement to multilateral negotiations, but as a substitute for them, effectively advocating a 'plurilateral-only' future for the WTO.

The European Union also submits that the future of the WTO will be more-multilayered with different types of JSIs, indicating a return to variable geometry of the GATT era.²⁹ It supports accommodating different types of plurilateral approaches, emphasizing the need to not allowing plurilaterals to be blocked by a small set of countries, particularly where the outcomes are to be based on MFN, i.e., in the case of open plurilaterals.

Along similar lines, China also proposes to reform WTO governance and decision making, inter alia, through enabling flexible plurilateral initiatives with balanced and inclusive guardrails, without getting into their specifics.³⁰ Paraguay proposes to have modalities governing plurilateral initiatives so that they do not undermine multilateral negotiations, including deciding upon the minimum number of Members needed to launch such an initiative.³¹ The key elements of these proposals are illustrated in Table 7.3.

Taken together, these proposals reveal an emerging divergence in Members' approaches to the role of plurilateral initiatives in the WTO. While some Members, such as the United States and the European Union, appear to favour greater flexibility and a more

Table 7.3: Recent WTO Reform Proposals on Plurilaterals

Country	Document Number	Position on JSIs / Plurilaterals	Key Elements Proposed
United States	WT/GC/W/984 15 December 2025	Strongly supports plurilateral agreements as the future of WTO negotiations	<ul style="list-style-type: none"> - Argues that consensus among 166 Members is unrealistic for new rules. - Calls for a path forward for plurilaterals whose benefits and responsibilities are limited to consenting parties. - States that if WTO cannot accommodate plurilaterals, it risks irrelevance. - Suggests that trade negotiations will move outside WTO if flexibility not allowed.
European Union	WT/GC/W/986 21 January 2026	Advocates flexibility and supports different plurilateral approaches within WTO reform	<ul style="list-style-type: none"> - Proposes closer economic cooperation through plurilaterals. - Proposes that plurilaterals cannot be blocked by a single or small group of non-participating members, in particular when they are MFN-based. - Supports accommodating different types of plurilateral approaches
Paraguay	WT/GC/W/987 3 February 2026	Seeks guardrails to ensure plurilaterals do not undermine multilateralism	<ul style="list-style-type: none"> - Calls for clearer definition of plurilateral initiatives - Proposes exploring minimum number of Members required to launch a plurilateral - Emphasizes that plurilaterals must not detract from multilateral negotiations
China	WT/GC/W/989 18 February 2026	Supports flexible plurilateral initiatives with inclusive guardrails	<ul style="list-style-type: none"> - Advocates enabling flexible plurilateral initiatives while respecting consensus - Suggests for balanced and inclusive guardrails

Source: WTO.

central role for plurilateral negotiations in advancing rule-making, others emphasize the need for clearer modalities and institutional guardrails to ensure that such initiatives remain anchored within, and do not undermine, the multilateral framework of the WTO. The proposals thus reflect an ongoing debate on how to reconcile the perceived need for negotiating flexibility with the preservation of the WTO's multilateral character.

7.7. Conclusions and Recommendations

In conclusion, although Joint Statement Initiatives (JSIs) have increasingly emerged as a negotiating pathway for a number of WTO Members, they raise important systemic concerns for the WTO as an institution founded on multilateralism, inclusivity and consensus-based decision-making. At present,

there remains no shared understanding among the Members regarding the modalities governing the launch and conduct of such initiatives, with divergent interpretations advanced on the relevant provisions of the Marrakesh Agreement. In these circumstances, any shift in the WTO's rule-making architecture warrants careful and considered deliberations by the full membership. Short-term negotiating expediency should not come at the cost of the long-term predictability and stability of the multilateral trading system. Pending greater clarity in the ongoing discussions on WTO reform, India's continued caution and its principled position on the matter remain both justified and consistent with the preservation of the multilateral trading system.

Nevertheless, should the WTO Membership decide to explore guardrails for existing and future

plurilateral initiatives, certain institutional and procedural safeguards may merit consideration. In this regard, a structured, consensus-based approach to plurilateral initiatives could be developed -one that preserves Member-control over the rule-making process and safeguards the multilateral character of the organization, as proposed below.

7.7.1. Possible Safeguards for the Pre-Initiation Stage of Plurilateral Negotiations

Before launching any plurilateral initiative, interested Members may be required to first assess whether the subject matter is already covered under existing multilateral mandates and attempt to pursue or revive discussions in the appropriate WTO body. Only if such efforts fail, and with the consensus of the entire Membership, may a plurilateral initiative be launched. Such a requirement would help prevent situations where plurilateral initiatives are pursued in parallel with, or in place of, ongoing multilateral discussions, as occurred in the case of initiatives on services domestic regulation and electronic commerce.

Another threshold requirement could be that the proposed subject matter qualifies as a “trade” matter within the meaning of Article X:9 of the Marrakesh Agreement, which permits only a “trade agreement” to be incorporated into Annex 4 as a Plurilateral Trade Agreement. Such a requirement would help avoid situations like those observed in the context of the JSI on Investment Facilitation for Development (IFD), where questions regarding whether the subject falls within the WTO’s trade mandate continues to remain contested among the wider Membership, after years of negotiations.

Safeguards may also be necessary to address the possibility of competing plurilateral initiatives on the same or closely related subject matter. In the absence of clear disciplines, parallel negotiations involving different groups of Members could lead to fragmentation of rules, duplication of institutional resources, and the emergence of overlapping or inconsistent regulatory frameworks within the WTO. Establishing mechanisms for transparency, coordination, and prior consultation and consensus among Members could therefore help ensure coherence in rule-making and prevent the proliferation of competing plurilaterals addressing substantially similar issues.

7.7.2. Possible Safeguards for the Initiation Stage of Plurilateral Negotiations

In light of the letter and spirit of the Marrakesh Agreement, the formal initiation of plurilateral negotiations could require consensus approval by the Ministerial Conference or the General Council, consistent with Articles III, IX, X and X:9. Such an approach would help preserve institutional legitimacy and facilitate the possible incorporation of any negotiated outcome into the WTO framework. This proposal builds upon earlier submissions made by India. Even for Members that may hold a different view on the need for consensus at this stage, greater clarity on this issue could still prove useful, as it would help avoid potential difficulties at the stage of adoption after Members have invested significant time, resources and negotiating effort.

A minimum threshold of Members could also be specified for the initiation of plurilateral negotiations, ensuring that WTO institutional resources are directed toward initiatives that command a reasonable degree of support and are likely to benefit a broader segment of the membership. Such a threshold could also take into account representation across different levels of development, and could be set higher in the case of closed plurilateral agreements. This proposal builds upon the suggestion put forward by Paraguay.

7.7.3. Possible Safeguards for the Negotiations Stage of Plurilateral Negotiations

Throughout negotiations, transparency and inclusivity must be ensured by allowing non-participating Members to attend meetings and articulate concerns, which participating Members should seek to address.

The WTO Secretariat should undertake technical work relating to plurilateral initiatives only with the consensus of WTO Members. Such authorization could form part of the consensus decision taken at the stage of initiating the plurilateral negotiations.

In view of the additional resources that may be required to support plurilateral initiatives, WTO Members may consider requiring supplementary financial contributions from participating Members to the WTO budget. The methodology for determining these additional contributions should be agreed upon by the Membership.

While the incorporation of any negotiated outcome arising from the plurilateral initiatives into the

WTO shall adhere to the existing rules outlined in the Marrakesh Agreement, other covered agreements, and any relevant Decisions of the Members, certain post incorporation safeguards may also be considered, as elaborated below.

7.7.4. Safeguards for the Post-Incorporation Stage

The requirement of Member-control and consensus may also be extended to any subsequent modification of a PTA after its incorporation into Annex 4 of the Marrakesh Agreement, in order to prevent material alterations to its essential structure and nature post-incorporation. Since amendments to a PTA are undertaken in accordance with the procedures set out in the agreement itself, there may otherwise be no oversight by the broader WTO Membership once a PTA becomes part of Annex 4. In such circumstances, it is hypothetically possible for the signatories to introduce future changes that could substantially alter the character of the agreement, not in line with the WTO's mandate.

Notwithstanding the above safeguards, even if modalities relating to plurilaterals may eventually be clarified upon by the WTO Members, it is critical to appreciate the systemic risks posed by a WTO witnessing a proliferation of plurilateral initiatives, particularly in light of the growing number of Joint Statement Initiatives (JSIs). The current approach of JSIs, of picking and choosing from among a host of trade and non-trade issues, creates a risk of select WTO Members cherry-picking areas of their interest, without any meaningful gains for all Members, specifically the developing and the least developed ones. Demands of developing countries, particularly those raised under the Doha Development Agenda, have increasingly been relegated to the sidelines, resulting in a gradual erosion of their bargaining power within the multilateral negotiating framework. The JSIs have also led to a diversion of the negotiating capital of the participating Members and WTO's limited institutional resources to areas that may not be a priority for the entire pertaining to plurilaterals so that their interests get adequately reflected in the negotiations.

Overall, WTO Members should approach this matter with considerable caution, mindful of its potential implications for the coherence, inclusiveness, and long-term credibility of the multilateral trading system.

Endnotes

- ¹ WT/MIN(17)/60, Joint Statement on Electronic Commerce, 13 December 2017, <https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=q:/WT/MIN17/60.pdf&Open=True>.
- ² WT/MIN(17)/61, Joint Ministerial Statement on Services Domestic Regulation, 13 December 2017, <https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=q:/WT/MIN17/61.pdf&Open=True>.
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- ⁹ It may be noted that not all WTO Members that are non-participants in one or more JSIs are, as a matter of principle, opposed to JSI negotiations or to the possibility of their eventual incorporation into the WTO framework.
- ¹⁰ The Plurilateral Trade Agreements currently in force at the WTO are the Government Procurement Agreement and Agreement on Trade in Civil Aircraft. The other two PTAs - the International Dairy Agreement and International Bovine Meat Agreement were scrapped at the end of 1997.
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Annexure 7.1

A Brief Description of the JSIs

Investment Facilitation for Development (IFD)

Textual negotiations on the Investment Facilitation for Development (IFD) Agreement have been concluded. The participating Members have formally requested its incorporation into Annex 4 of the Marrakesh Agreement pursuant to Article X:9, through document WT/GC/W/927/Rev.4. The draft General Council decision proposes that the IFD Agreement be added to Annex 4 upon its entry into force. The Agreement currently has the support of over 120 WTO Members, including the European Union, the United States, China, Japan, Australia, Brazil, Indonesia, and a large number of developing countries. India and Türkiye, however, are not parties to the Agreement. The United States, while not a party, has no objection to its adoption.

Annex Table 7.1: Overview of the IFD Agreement

Key Commitments in IFD Agreement
The IFD Agreement covers:
<ul style="list-style-type: none">- Transparency of investment measures (publication, notification, single information portals, advance publication);- Streamlining and time-bound processing of authorization procedures;- Use of electronic applications and online payments;- Regulatory coherence and focal points;- Special and Differential Treatment through categorised implementation schedules;- Responsible business conduct and anti-corruption measures;- Dispute settlement under the WTO DSU.

The Agreement expressly excludes market access commitments and investor–state dispute settlement. Nevertheless, its obligations are enforceable among parties under WTO dispute settlement.

Agreement on Electronic Commerce

Negotiations under the Joint Statement Initiative on Electronic Commerce have similarly concluded. The participating Members have requested incorporation

into Annex 4 through document WT/GC/W/963/Rev.1, invoking Article X:9 of the Marrakesh Agreement. The draft Agreement is subscribed by around 72 WTO Members, including the EU, Australia, China and Canada.

Annex Table 7.2: Overview of the Agreement on Electronic Commerce

Key Commitments in the Agreement on Electronic Commerce
The Agreement on Electronic Commerce contains disciplines concerning:
<ul style="list-style-type: none">- Legal frameworks for electronic transactions and authentication;- Electronic contracts, invoicing and paperless trading;- Single-window interoperability and electronic payments;- Customs duties on electronic transmissions;- Access to and use of the internet;- Consumer protection, unsolicited communications, personal data protection and cybersecurity;- Development provisions including technical assistance;- General and security exceptions.

Participants include the European Union, Australia, Japan, China, Singapore, Canada, the United Kingdom and others. India and several developing countries are not parties. Like the IFD Agreement, its incorporation remains pending a decision by the WTO membership.

Services Domestic Regulation (SDR)

The Joint Initiative on Services Domestic Regulation concluded in 2021 through the Declaration contained in WT/L/1129. Rather than pursuing Annex 4 incorporation, participants agreed to inscribe the disciplines as “additional commitments” under Article XVIII of the GATS.

Participants include several developed and developing Members; India is not a participant. This approach created a hybrid model whereby plurilateral disciplines acquire legal force through scheduled commitments rather than formal Annex 4 status.

Annex Table 7.3: Overview of the SDR Reference Paper

Key Commitments in the SDR Reference Paper

The Reference Paper elaborates disciplines relating to:

- Licensing and qualification requirements;
- Technical standards;
- Transparency of procedures;
- Timeframes for processing applications;
- Electronic submissions and review mechanisms.

MSMEs

The Informal Working Group on MSMEs aims to promote the fuller integration of micro, small and medium-sized enterprises into global trade. The Group committed to identifying solutions to help companies, particularly MSMEs, enhance their participation in international trade, while also taking into account the specific needs and challenges of developing countries. The Informal Working Group has also, inter alia, adopted non-binding recommendations in addressing data collection, regulatory inclusion, trade facilitation and access to finance (INF/MSME/4/Rev.2).

Environmental Initiatives

There are three environmental initiatives at the WTO. The Fossil Fuel Subsidy Reform (FFSR) initiative aims to promote the rationalization, gradual phase-out, or elimination of harmful fossil fuel subsidies by making use of existing mechanisms or by exploring new avenues for reform. It also encourages WTO Members to exchange information and share experiences in order to support and advance discussions on the issue within the WTO.

The Dialogue on Plastics Pollution and Environmentally Sustainable Plastics Trade (DPP) was established to explore how the WTO could contribute to efforts to reduce plastics pollution and promote the transition to more environmentally sustainable trade in plastics.

The Trade and Environmental Sustainability Structured Discussions (TESSD) were launched in November 2020 with the objective of advancing dialogue on the relationship between trade and environmental sustainability. The co-sponsors acknowledge that international trade and trade policy can play an important role in advancing environmental and climate objectives. They also agreed to explore concrete actions that participating Members could undertake, individually or collectively, to expand opportunities for environmentally sustainable trade.

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Session I: The Rise of Joint Statement Initiatives

22 January 2026 | New Delhi

Chaired:

- **Mr. Amit Yadav**, Former Secretary to the Government of India

Presentation:

- **Ms. Shailja Singh**, Associate Professor, Centre for Trade and Investment Law

Discussants:

- **Amb. Ujal Singh Bhatia**, Former Ambassador of India to the WTO
- **Dr. Harsha Vardhana Singh**, Chairman, IKDHAVJ Advisors
- **Mr. Abhijit Das**, International Trade Policy and WTO Expert
- **Ms. Kinda Mohamadieh**, Senior Researcher and Legal Advisor, Third World Network (Online)



The current WTO reform agenda is largely driven by developed countries and their allies, though the African Group has also put forward proposals. India should articulate and submit its own development-oriented reform proposals and work to build coalitions around them.

Amb. Ujal Singh Bhatia, *Former Ambassador of India to the WTO*



India should adopt a case-by-case, criteria-based strategy, which will allow India to oppose, conditionally accept, or engage with plurilaterals depending on their impact. India should maintain strategic flexibility at MC14, keeping core principles intact while leaving room for future bargaining.

Dr. Harsha Vardhana Singh, *Chairman, IKDHAVJ Advisors*



Allowing the WTO to evolve primarily around plurilaterals risks marginalising developing countries from agenda-setting and undermining their ability to advance issues of strategic interest. I reiterate concerns about the systemic risks posed by the unchecked proliferation of plurilateral agreements.

Mr. Abhijit Das, *International Trade Policy and WTO Expert*



Plurilaterals should be approached by developing countries as a systemic issue, not only as sector-specific matters such as investment facilitation or e-commerce. The discussion on “guardrails” is complicated by different interpretations of existing WTO provisions governing plurilaterals, making this primarily an institutional and systemic issue. It is very important to apply safeguards to both existing and future plurilateral initiatives, covering the initiation, negotiation, and incorporation of agreements

Ms. Kinda Mohamadieh, *Senior Researcher and Legal Advisor, Third World Network*



Part II
Specific Issues at
MC 14



State of Play in WTO Agriculture Negotiations Ahead of MC14

*Sachin Kumar Sharma, Talha Akbar Kamal, Alisha Goswami,
Yogeshwari Mahajan and Kamna Chaudhary*

8.1. Introduction

The multilateral trading system is undergoing a period of significant transition. Three decades after the establishment of the World Trade Organization (WTO), the institutional promise of a rules-based trade order is increasingly being tested by fragmentation in global economic governance and by a widening divergence between formal multilateral commitments and actual trade policy practice. This divergence is reflected not only in the growing use of unilateral trade measures (UN, 2026), but also in the limited capacity of the WTO to secure negotiated outcomes on issues of longstanding concern to developing Members. The result is a gradual weakening of confidence in the Organization's ability to translate negotiated mandates into effective and development responsive outcomes.

These structural strains are especially evident in the agriculture negotiations. Agriculture occupies a distinctive place within the WTO framework because it lies at the intersection of trade regulation, food security, rural livelihoods, and other development concerns. While this has long made agricultural reform particularly complex, the present impasse cannot be attributed to sectoral sensitivity alone. Although Members continue to acknowledge the importance of food security, the current state of negotiations reveals persistent differences over both substantive priorities and the appropriate framework for advancing reform.

Divergent views on sequencing and process of the outcomes of the negotiating pillars, have slowed progress and limited the scope for convergence. As a result, the broader reform agenda has repeatedly been deferred, even as global food systems remain exposed to volatility, supply disruptions, and recurrent shocks.

A major reason for this continued deadlock is the failure to resolve long pending mandated issues. Over the course of successive Ministerial Conferences, Members have repeatedly identified certain agricultural concerns as deserving priority outcomes because of their direct relationship to food security and livelihood protection. Since the mid 2010s, the agriculture negotiations have yielded little by way of meaningful negotiated progress proportionate to the significance of the issues under discussion. Instead, Ministerial instructions have often been reaffirmed in general terms without being accompanied by the level of textual convergence necessary for resolution. This pattern has carried into the fourteenth Ministerial Conference (MC14), scheduled to take place from 26 to 29 March 2026 in Yaoundé, Cameroon (WTO, 2025d), at a time when broader questions concerning the effectiveness and credibility of the WTO remain pressing.

Despite numerous proposals and sustained discussions in the Committee on Agriculture in Special Session (CoA-SS), Members have not yet moved toward a consolidated negotiating text. In the absence

of this convergence, there is a substantial risk that MC14 may reproduce the familiar pattern of procedural continuity without substantive outcome.

MC14 should therefore be understood as more than an ordinary Ministerial meeting. It represents an important test of the WTO's capacity to function as a member driven institution capable of delivering results on matters central to development. It will indicate whether Members are prepared to move beyond repeated reaffirmations and toward concrete outcomes that reflect the objectives of the agricultural negotiating mandates. It will also serve as an indicator of whether the multilateral trading system can continue to support wider global objectives, including progress toward Sustainable Development Goal 2 on zero hunger (UN, 2026), in a context where food insecurity remains persistent concerns across many regions.

Against this background, this chapter examines the contemporary landscape of the WTO agriculture negotiations and explains the reasons for their continued impasse. It analyses the principal areas of divergence across the core negotiating pillars, and differing approaches to reform process. It further considers the strategic implications of proposals and the continuing absence of a consolidated text in the lead up to MC14. On this basis, the chapter identifies a possible pathway toward more credible and development responsive outcomes.

8.2. Agricultural Issues: Main Pillars

At the WTO, agriculture negotiations take place in the CoA-SS, pursuant to Article 20 of the Agreement on Agriculture (AoA). Article 20 sets out the long-term objective of achieving substantial progressive reductions in support and protection, while taking into account non-trade concerns such as food security and the need for Special and Differential Treatment (S&DT) for developing Members.

The negotiations on the long-term reform process were initiated in early 2000, at the Doha Ministerial Conference, where, Ministers committed to comprehensive negotiations aimed at: substantial improvements in market access; reductions of, with a view to phasing out, all forms of export subsidies; and substantial reductions in trade-distorting domestic support. At the same time, due consideration was given to the development priorities of developing Members comprising non-trade concerns particularly food security and rural development along with S&DT. Consequently, issues such as food security, cotton,

and the SSM gained prominence in the negotiations (Das, 2025).

Over time, the negotiating agenda in agriculture has gradually evolved. At present, discussions broadly encompass the following key pillars: public stockholding for food security purposes (PSH), domestic support, SSM, cotton, export restrictions, market access, export competition and transparency.

While the reform process includes negotiations on all issues, Ministerial Decisions over time have created a clear distinction between mandated and non-mandated issues.

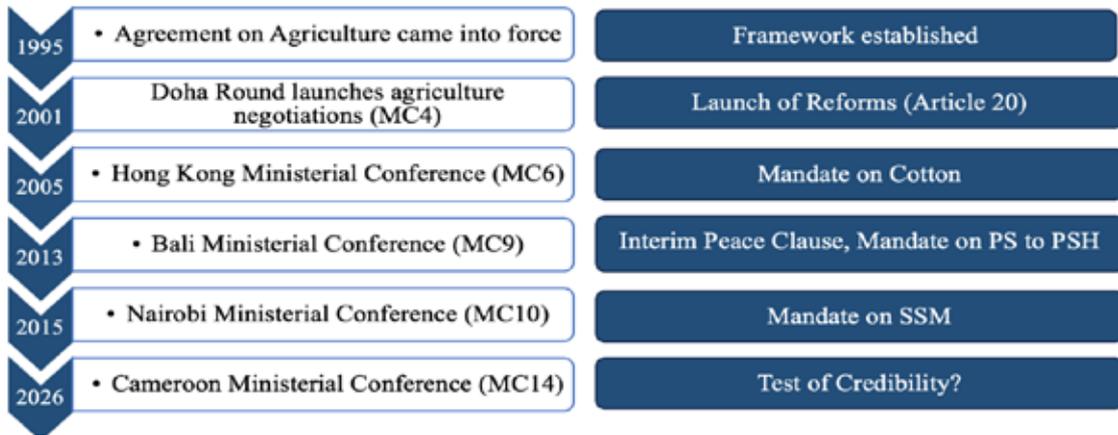
8.3. Mandated Issues v/s Non-Mandated Issues

Mandated issues are those on which Ministers in the past Ministerial Conferences have explicitly accorded importance through ministerial decisions which guided Members to negotiate, distinct from other pillars. While non-mandated issues include all other pillars which are a part of the long-term reform process (Figure 8.1).

Under the Doha Work Programme, the General Council (GC) decision adopted on 1 August 2004 recognized the importance of cotton to developing countries, particularly least developed countries (LDCs). Given its vital role it was decided that the issue of cotton would be addressed “ambitiously, expeditiously, and specifically,” within the agriculture negotiations. This decision also states that “*The Special Session of the Committee on Agriculture shall ensure appropriate prioritization of the cotton issue independently from other sectoral initiatives.*” (WTO, 2004). The Hong Kong Ministerial declaration of 2005 (WTO, 2005b) reaffirmed this GC decision, and thus the issue of cotton became a mandated issue that was accorded priority. Subsequently, Bali and Nairobi Ministerial decisions reiterated this mandate.

Food security was reaffirmed as a major non-trade concern under the Doha Development Agenda (DDA). In this context, developing countries expressed concerns over shrinking policy space for ensuring domestic food security particularly with respect to implementing price support-based public stockholding (PSH) programmes for food security purposes. Recognising the importance of this issue, Ministers at the Bali Ministerial Conference (MC9) committed to negotiate a permanent solution to PSH by MC11 at the Buenos Aires. This commitment was strengthened through the November 2014 Decision of the WTO

Figure 8.1: Three Decades of WTO Agriculture Negotiations: Mandates vs Outcomes



Source: Authors' compilation based on WTO Ministerial Conferences

General Council (WTO, 2014). which recognised PSH as critical for food security and decided that negotiations on this issue shall be pursued on priority, in dedicated sessions and in an accelerated time-frame, distinct from the agriculture negotiations under the DDA. This mandate was reaffirmed at the 10th MC at the Nairobi, thereby consolidating a clear mandate for advancing a permanent solution on PSH.

Similarly, the Hong Kong Ministerial Declaration (2005), stated that Developing country Members will also have the right to have recourse to a Special Safeguard Mechanism. Further, the Nairobi Ministerial decision reaffirmed the right of developing country Members to a SSM and agreed “*To pursue negotiations on an SSM for developing country Members in dedicated sessions of the Committee on Agriculture in Special Session (“CoA-SS”).*” (WTO, 2015a).

The rationale behind granting these mandates arose from the need and sensitivity of these three issues. They carry direct implications for development needs of developing countries, including LDCs. Members recognized that waiting for comprehensive reforms across all pillars under Article 20 could significantly delay the outcomes on these issues.

Therefore, dedicated sessions were established to negotiations of these mandated issues in order to have focused attention and facilitating timely resolution of these priority concerns.

8.3.1. What is the Real Problem in the Reform Process?

The current stalemate in WTO agriculture negotiations arises from two closely linked challenges: differing approaches to the reform process and

divergent positions across key pillars. These differences impede consensus-building, as Members differ not only on the substance of outcomes but also on the sequencing and process of securing these outcomes.

8.4. Approaches for Reform in Agriculture Negotiations: Comprehensive vs. Sequential

The first major issue of contention revolves around the process or sequencing to achieve outcomes on specific issues under agriculture negotiations at the WTO. At present, Members are broadly divided based on supporting two different approaches. The reason behind development of these two approaches is rooted in negotiating priorities of the Members.

8.4.1. The Comprehensive Approach: Reform Everything Together

Members supporting a comprehensive outcome argue that it reflects the spirit of the reform process under Article 20 of the AoA and is necessary to ensure balance across all pillars. In this approach, all issues are treated on equal footing, with progress in one area linked to outcomes in others. Accordingly, several Members, including certain Members of the Cairns Group, the United States and the European Union, advocate advancing negotiations across all pillars simultaneously.

Ahead of MC14, Brazil submitted a proposal on 5 December 2025 (WTO, 2025c), urging Members to work towards a comprehensive agricultural framework and to develop balanced modalities that reflect Members' interests and priorities.

Proponents anchor this approach in Article 20 of the AoA, which provides the legal basis for continuing the reform process with the long-term objective of achieving substantial progressive reductions in support and protection. Accordingly, negotiations are understood to focus on: (i) reductions in domestic support and export subsidies under the domestic support and export competition pillars; and (ii) improved market access through reductions in protection. Non-trade concerns, special and differential treatment, and broader developmental objectives are to be considered within this framework.

8.4.2. The Sequential Approach: Deliver on Long Pending Mandated Issues First

According to the sequential approach, the issues which have received mandate from the past ministerial decisions should be accorded priority in delivering an outcome given the urgency, and importance of the issues. The developing and LDC members seek priority outcomes on long-pending mandated issues including PS to PSH, SSM and Cotton (Figure 8.2).

Proponents of this approach argue that if mandated issues are treated at par with other negotiating issues, it would mean a retraction of promises made by the Ministers, questioning the very nature and structural importance of a Ministerial Conference as the highest decision-making arena of the WTO. In effect, it would mean jeopardizing WTO's basic functional structure.

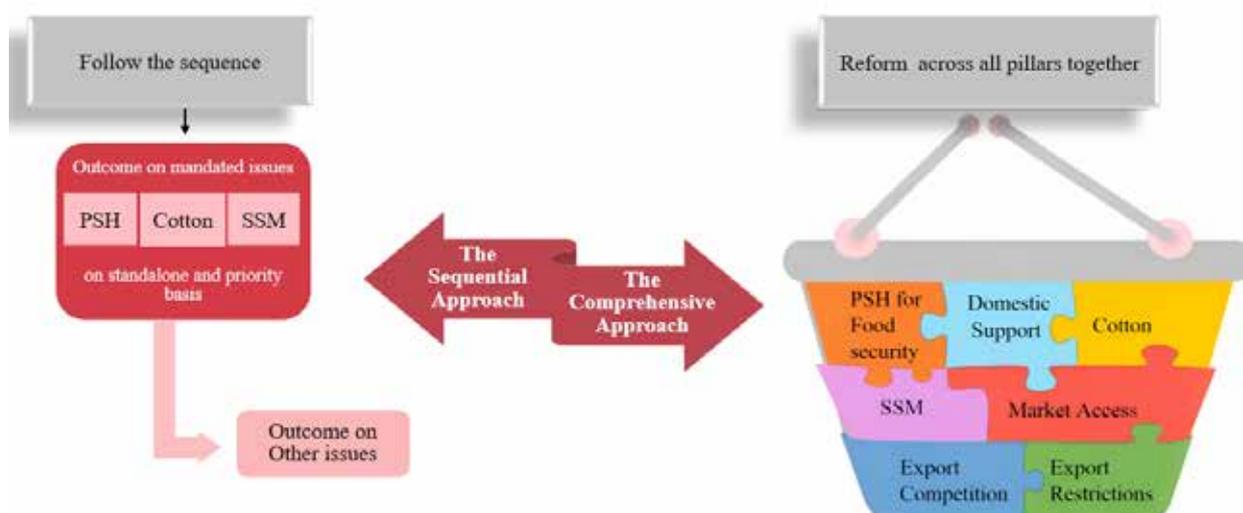
8.5. Divergent Position Within Key Pillars

8.5.1. Domestic Support

Disciplining agricultural domestic support remains among the most contested aspects of the negotiations. While Members broadly agree on the need to address trade-distorting support, there is no consensus on how such support should be defined, nor on the modalities through which reforms should be implemented.

Domestic support under the AoA is generally grouped into four categories: the Green Box, Blue Box, Development Box, and Amber Box (Table 8.1). The Green Box (Annex 2, AoA) covers measures deemed to have no, or at most minimal, trade-distorting effects. The Blue Box (Article 6.5, AoA) permits certain direct payments linked to production-limiting programmes. The Development Box (Article 6.2, AoA) reflects Special and Differential Treatment (S&DT) for developing country Members, allowing specified investment subsidies and input subsidies for low-income or resource-poor producers. These three categories are not subject to monetary caps under the AoA. In contrast, the Amber Box measures cover the most trade-distorting forms of domestic support and thus subject to financial cap up to a certain limit called the *de minimis* limit. It is broadly divided into product-specific support (PSS) and non-product specific support (NPS). PSS refers to the measures

Figure 8.2: Pillars Covered under the Comprehensive and Sequential Approach



Source: Based on WTO Proposals and Members stance in CoA-SS negotiations

Table 8.1: Classification of Domestic Support under AoA

Box	Type of support	Comments
Green Box (Annex 2)	No or minimal trade-distorting support	No financial limit and is available to all Members
Blue Box (Article 6.5)	Direct payments under production-limiting programmes	
Development Box (Article 6.2)	Investment subsidies Input subsidies to low-income or resource-poor producers, Support to diversify from illicit narcotic crops	No financial limit and is available only to developing Members including LDCs except China and Kazakhstan.
Amber Box (Article 6.3 & 6.4)	Product and non-product specific trade-distorting measures	All Members are subject to strict financial limits

Source: Authors' compilation based on the WTO Agreement on Agriculture

that are targeted towards specific products such as rice, wheat, milk etc. in the form of price support, deficiency payments, and budgetary support. Any general trade-distorting support such as input subsidies falls under NPS as these are not targeted to producers of a specific product. A developed Member can provide at least 5 percent of the value of production (VoP) of a concerned product as PSS, and 5 percent of the VoP of total agriculture as NPS during a relevant year, whereas for the developing Members this *de minimis* limit is 10 percent of the VoP (Sharma et.al., 2024a). In addition, 33 Members, predominantly developed Members, have Final Bound Total Aggregate Measurement of Support (FBTAMS) entitlements (Brink & Orden, 2023). These entitlements reflect support notified above *de minimis* in the 1986-1988 base period or through accession commitments, providing additional policy space to provide support beyond *de minimis* limits (Sharma, et. al, 2021).

Currently, more than 95 percent of global FBTAMS entitlements are concentrated among developed Members, notably the European Union, United States, Japan, and the United Kingdom.

In recent years, some members of the Cairns Group have proposed to reform the domestic support by advocating for a 'proportionate reduction' approach (Sharma et al., 2022 and 2023). Their concern is that global TTDS entitlements have increased significantly and could reach nearly US\$ 2 trillion by 2030 (WTO, 2019). These members are apprehensive of this upward trend in trade-distorting subsidy as they can cause heavy distortions in the agriculture market, and moreover undermine sustainability and climate goals (Figure 8.3). Notably, few members such as Australia, Canada, Costa Rica, and New Zealand assert that the upward trend in TTDS flexibility is mainly on account of the combined *de minimis* limits under the Amber Box. This argument is based on the reasoning that developing and developed country members are entitled to 20 and 10 percent of the VoP respectively under the combined *de minimis* limit, which comprises aggregated product-specific, and non-product-specific *de minimis* support. Therefore, to address the issue of rising trade distorting subsidies, certain Carins group members have put forward a

Figure 8.3: Covered Support under Cairns Group Proportionate Methodology for Disciplining Trade Distorting Support



Source: Based on Carins group Proposal "Building a Comprehensive Approach to Negotiations on Domestic Support. (JOB/AG/243/Rev.2), 2024

Table 8.2: Members Position on Domestic Support Reform

Group	Position	Key Demand
Cairns Group*	Supports Comprehensive approach	Proportionate TTDS cuts
United States	Supports Comprehensive approach	Reform domestic support + market access
Europe Union	Supports Comprehensive approach	No cap on Green Box payments
African Group	Supports Sequential approach	Eliminate FBTAMS entitlement + Cap Green Box direct payments
India along with certain G33 members and other developing Members	Supports Sequential approach	Eliminate FBTAMS, preserve S&DT

Source: Members position based on stance in Committee on Agriculture Special Session

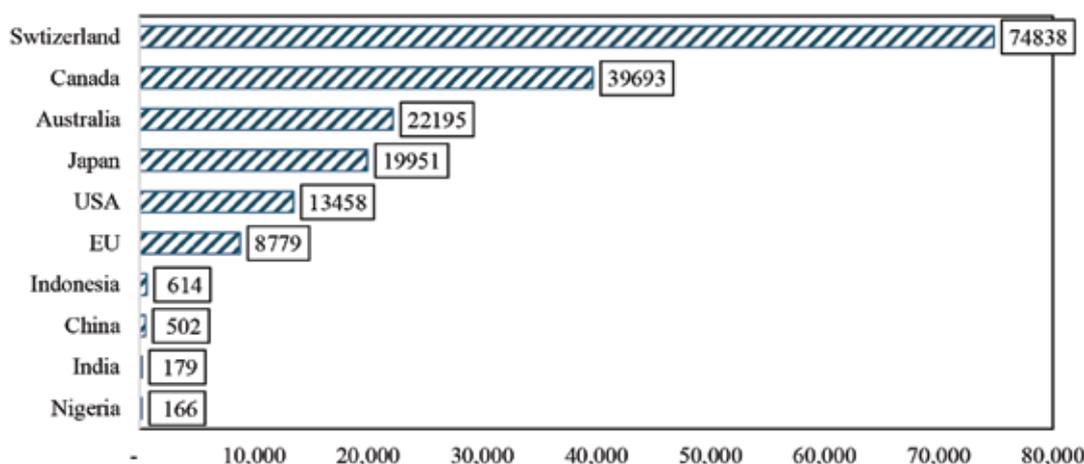
Note*: Argentina, Australia, Brazil, Canada, Chile, Colombia, Costa Rica, Malaysia, New Zealand, Paraguay, Peru, Thailand, Uruguay and Viet Nam.

proposal that seeks proportionate methodology for disciplining trade distorting support (WTO 2023b, 2024).

- First, the global base TTDS is to be determined by summing up the trade-distorting domestic support provided by all members in a fixed base year.
- Second, this base global TTDS needs to be reduced by 50 percent by 2034.
- Third, this target is to be achieved by reducing members' individual TTDS entitlements, and the reduction should be proportional to the size of the member's TTDS entitlement in the base year (Figure 8.4).
- Fourth, the reduced TTDS entitlement will serve as the upper limit for the members to provide support under the Amber box including the *de minimis* limit, Blue box, and Development box.

Several developed Members, particularly the United States and the European Union, broadly support comprehensive approach particularly Cairns Group proportionate methodology to discipline trade-distorting domestic support (Table 8.2). However, differences remain on the scope of reforms. The African Group has proposed capping direct payments under the Green Box for developed Members, arguing that such support can still distort trade (WTO, 2023c). The EU opposes this proposal, maintaining that Green Box measures are minimally trade-distorting and should not be subject to additional disciplines. The United States also supports disciplining domestic support but argues that reforms should be part of a broader agriculture package that includes significant tariff reductions under the market access pillar (WTO, 2023a, 2023g), an area where the EU remains highly sensitive.

Figure 8.4: Per Farmer Support based on Proposed TTDS Limit for Selected Countries (US\$), 2040



Source: Authors' calculation based on FAOSTAT Value of Production data and employment data from ILOSTAT

Meanwhile, the G-10 Members, including Japan, South Korea, Norway, and Switzerland, have expressed strong reservations about steep reductions in their domestic support flexibility. Several Members, such as the EU, Norway, Japan, Iceland, and China, have also used Blue Box support and seek to retain this policy instrument. On the other hand, several developing Members, including India, Indonesia, and China, oppose the proportionate reduction approach, arguing that it would shrink their already limited policy space and weaken Special and Differential Treatment (S&DT). Instead, they advocate addressing structural imbalances in the AoA by first eliminating FBTAMS entitlements (WTO, 2017, 2023f). In this regard, India and China have tabled joint proposal seeking elimination of AMS entitlements and argue that any future reductions in domestic support should be assessed on a per-farmer or per-capita basis while preserving S&DT provisions.

Therefore, eliminating the historically asymmetric FBTAMS entitlements is the essential precondition to ensure that all Members, developed and developing, are ultimately subject to comparable limits of support. Proponents argue that broader and further disciplines on domestic support can only be credibly negotiated once this fundamental imbalance is addressed.

8.5.2. Permanent Solution to Public Stockholding for Food Security Purposes

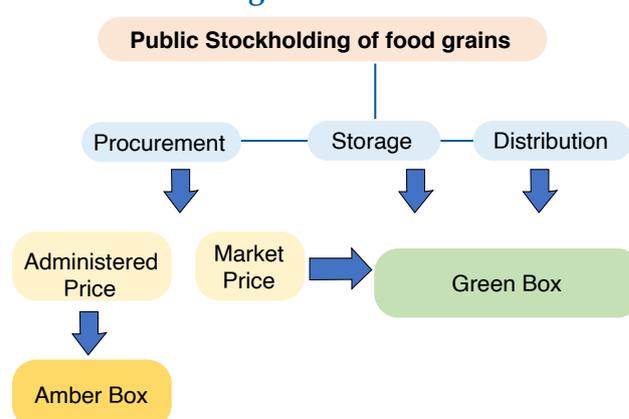
Global hunger remains a defining challenge of our time. FAO estimates indicate that between 638 and 720 million people faced hunger in 2024, placing the world far off track from achieving SDG 2 of Zero Hunger. Against this backdrop, the question of how multilateral trade rules accommodate government efforts to feed their populations has assumed enormous significance, and nowhere is this tension more visible than in the ongoing negotiations over public stockholding (PSH) for food security purposes at the WTO (Figure 8.5).

PSH programmes involve the procurement, storage, and release of food stocks by governments to maintain food security and provide livelihood support to vulnerable producers (Figure 8.6). Across many developing countries, these programmes serve a dual purpose: guaranteeing farmers a remunerative price and ensuring that food grains reach the poor at affordable prices (FAO, 2021a) For instance, in India, the Food Corporation of India, procures foodgrains at minimum support prices and distributes them to

over 810 million people under the National Food Security Act of 2013. Similar mechanisms operate through China's SINOGRAIN and Indonesia's BULOG, reflecting the widespread reliance on price support backed stockholding as an instrument of ensuring domestic food security and safeguarding farmers livelihood (FAO, 2021b).

A legal problem, however, arises from the way the AoA classifies and calculates such support (Figure 8.5). Expenditures on storage, distribution and procurement at current market prices are generally accommodated under the Green Box. The difficulty emerges when governments procure at administered prices rather than at prevailing market prices. In such cases, the resulting support is treated as market price support and categorized under Amber Box disciplines. The methodology for calculating the market price support is particularly problematic as it compares the applied administered price with an external reference price based on average prices from 1986 to 1988. $MPS = (AAP - ERP) * Q$; where AAP is the Applied Administered Price.

Figure 8.5: Categorisation of Support Provided for PSH Programme under the AoA

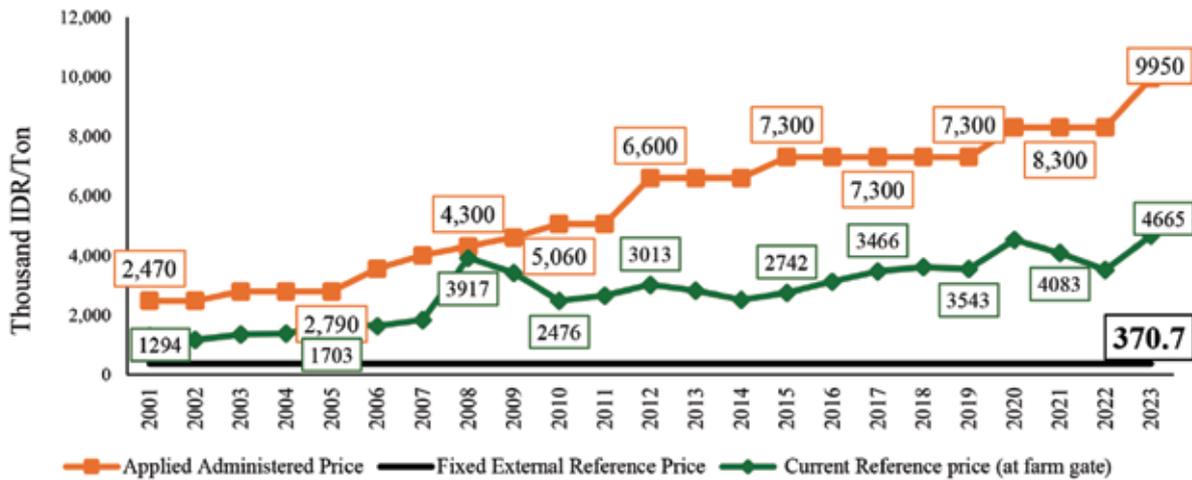


Source: Authors' compilation based on AoA, WTO

ERP stands for Fixed External Reference Price based on export or import price prevailing during the base period (1986-88) while Q is the eligible production.

This produces a deeply distorted result: current administered prices are measured against a fixed and outdated benchmark, inflating the level of support. For most developing Members, the 10 percent *de minimis* limit, coupled with an outdated external reference price, has significantly curtailed the policy space available to sustain price support-based PSH programmes for

Figure 8.6: Comparison of Dynamic Reference Price and AAP of Indonesian Rice with ERP



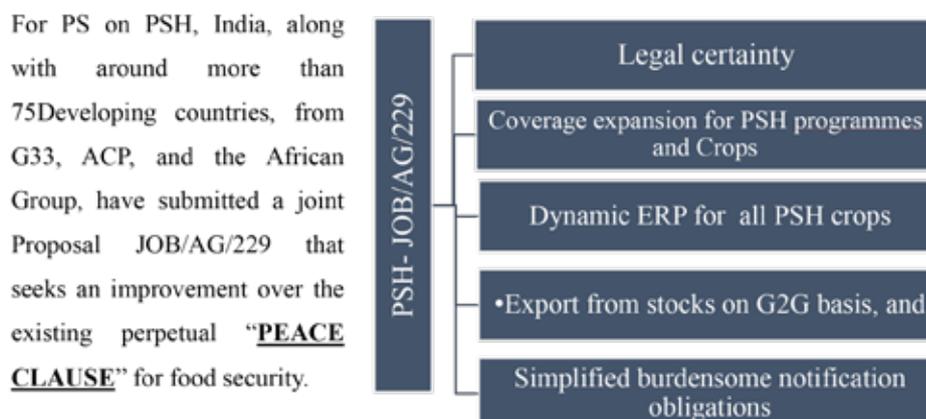
Source: Fixed ERP and MSP are based on (1) Indonesia’s domestic support notification; (2) Current External Reference Price extracted from OECD database.

ensuring domestic food security. Developing countries began raising concerns about these constraints in the early 2000s and submitted various proposals for seeking flexibility to ensure domestic food security. This culminated in an interim arrangement commonly known as the Bali Peace Clause at the ninth Ministerial Conference (WTO, 2013). Under this arrangement, the PSH programmes for food security purposes of developing country members are shielded from legal challenge if they provide support beyond their domestic support commitments. The General Council extended this protection to perpetuity in November 2014, and the Tenth Ministerial Conference at Nairobi

in 2015 reaffirmed the mandate, directing that dedicated negotiating sessions in the CoA-SS proceed on an accelerated basis, separate from the broader agriculture negotiations (WTO, 2015c).

Despite successive ministerial mandates, a permanent solution has remained elusive. The Eleventh and Twelfth Ministerial Conferences both failed to deliver an outcome. It is against this background that a coalition of more than 75 Members, including the G33, the ACP Group, and the African Group, tabled a joint proposal, JOB/AG/229 (WTO, 2022a), seeking several core improvements over the Bali Peace Clause. These proposals seek to enhance legal certainty, expand

Figure 8.7: Proponents Demand for a Permanent Solution to PSH



Source: Based on WTO Proposal “Public Stockholding for Food Security Purposes. (JOB/AG/229), 2022

programme and product coverage, and revise the external reference price for measuring the market price support for foodstuffs actually procured at applied administered prices.

Opposition, led by the United States, the European Union, the United Kingdom, and several Cairns Group members, centres on the concern that a permanent solution along the lines of the joint proposal would create open ended flexibility for developing members to subsidise procurement at administered prices in ways that could distort international markets. These members resist a standalone outcome and instead seek to embed the issue within a broader negotiating framework covering domestic support and market access, while also proposing conditions tied to export or import performance. Proponents of the joint proposal strongly reject any such linkage, insisting that the permanent solution is a standalone mandated issue that must not be made contingent on progress in other areas.

As the Fourteenth Ministerial Conference approaches, the negotiating landscape shows little sign of convergence. The African Group's January 2026 submission anchors its position firmly in past mandates and the joint proposal. Jamaica's proposal pivots toward trade and food security to advance agriculture negotiations on all pillars without directly addressing the outstanding mandate.

Brazil's comprehensive approach effectively places the permanent solution at par with every other pillar of the agricultural negotiations, while the LDC Group, led by Gambia, advocates for a permanent solution specifically for least developed countries within the broader reform process envisaged under Article 20 of the AoA.

In this sense, the PSH debate reveals a deeper contradiction within the multilateral trading system. Food security is widely recognised as a legitimate and urgent concern, yet the principal instrument relied upon by many developing countries to pursue it remains trapped in a provisional legal arrangement. The longer this persists, the more the temporary assumes the character of the permanent. For developing Members, this is not merely a procedural delay; it is the continued deferral of legal certainty on an issue that directly affects hunger, livelihoods, and the capacity of states to respond to food insecurity. A durable outcome on PSH therefore remains essential not only for the credibility of the agriculture

negotiations, but for the legitimacy of a rules-based system that claims to accommodate development and food security concerns (Figure 8.7).

8.6. Cotton

In 2002, the Oxfam report "*Cultivating Poverty*" highlighted the adverse impact of substantial cotton subsidies, particularly in the United States, on African producers especially Benin, Burkina Faso, Chad and Mali (referred as the 'C4' countries) (Sharma *et al*, 2020). The publication of this report attracted the global attention and the issue of cotton became development priority in the agriculture negotiations at the WTO. The C4 countries have pursued a sustained negotiating effort to secure meaningful reductions in cotton-specific trade-distorting support. Their position reflects the broader objective of ensuring that multilateral trade rules do not undermine the development prospects and export competitiveness of LDCs (Table 8.3).

They have consistently called for substantial reductions in trade-distorting domestic support for cotton, especially under the Amber and Blue Boxes, and have advocated limiting such support to de minimis levels. They underscore that cotton subsidies in major producing Members depress world prices and adversely affect the incomes and livelihoods of smallholder cotton farmers in Africa, where cotton exports are a critical source of rural employment and poverty alleviation (WTO, 2003).

At the Hong Kong Ministerial Conference (2005), Members agreed to address cotton "ambitiously, expeditiously and specifically," and to treat it distinctly within the agriculture negotiations in relation to all trade-distorting policies affecting the sector in all three pillars of market access, domestic support and export competition (WTO, 2005b). Subsequent Ministerial decisions in Bali and Nairobi reaffirmed the mandate (WTO, 2013, 2015b). Moreover, in Nairobi Ministerial Conference, 2015 Members agreed that developed countries and developing countries declaring themselves in a position to do so, would provide duty-free and quota-free (DFQF) market access for cotton exports from LDCs from 1 January 2016; eliminate export subsidies for cotton; and strengthen development assistance for cotton-producing LDCs (WTO, 2015b).

Despite clear mandates, progress on the trade-distorting domestic support dimension has remained

Table 8.3: Global Scenario of the Cotton Trade in 2025

Region	Production	Domestic consumption	Exports	Imports	Share of export in production	Share of import in production
United States	3,030	348	2,613	1	86.24	0.03
Brazil	4,082	740	3,157	1	77.34	0.02
India	5,116	5,443	305	697	5.96	13.62
China	7,620	8,491	16	1,219	0.21	16.00
Pakistan	1,089	2,351	11	1,241	1.01	113.96
C4+ countries						
Benin	250	5	250	0	100.00	0.00
Burkina Faso	138	3	131	0	94.93	0.00
Mali	179	5	196	0	109.50*	0.00
Chad	30	2	33	0	110.00*	0.00
Cote d'Ivoire	122	2	120	0	98.36	0.00

Source Authors' compilation based on the estimates by the US\$A-PSD for the year 2025 ([https://apps.fas.US\\$A.gov/psdonline/app/index.html#/app/advQuery](https://apps.fas.US$A.gov/psdonline/app/index.html#/app/advQuery))

Note: *It is higher than 100% as the last year stocks also exported.

limited. Developed Members, notably the United States, have resisted treating cotton as a stand-alone issue separate from broader domestic support reforms in agriculture, arguing instead for a comprehensive approach. This position has contributed to a prolonged deadlock. While the European Union has expressed support for reducing domestic support beyond de minimis levels in line with the C4's concerns, it has been less receptive to demands relating to expanded market access. Divergences also persist among Members regarding whether outcomes on cotton domestic support should be linked to broader long term reform process under Article 20 of AoA.

Ahead of MC14, the C4+ countries i.e. Benin, Burkina Faso, Chad, Mali and Côte d'Ivoire submitted a proposal on 4 December 2025 reiterating their long-standing demands and calling for a concrete outcome on cotton in line with past Ministerial mandates (WTO, 2025a). However, given entrenched positions particularly the reluctance of the USA to undertake cotton-specific reductions, the prospects for a substantive outcome at MC14 appear uncertain.

For the C4+ and other cotton-exporting LDCs, the issue is not merely commercial but developmental. Depressed global cotton prices directly affect rural incomes, employment, and poverty reduction efforts.

From their perspective, fulfilling the cotton mandate would demonstrate the credibility of the development dimension and the responsiveness of the multilateral trading system to the concerns of its most vulnerable Members.

8.6.1. Special Safeguard Mechanism (SSM)

The Special Safeguard Mechanism (SSM) remains a long-pending mandated issue in the agriculture negotiations at the WTO and has been a central dimension of the WTO's development agenda. For several years, many developing members have sought the SSM as a special policy instrument that would give them the right to raise agricultural tariffs on products beyond the set bound levels in cases of import surges and price declines.

The rationale for this demand lies deeply embedded in the structural vulnerabilities of the agricultural sector in developing countries. In these countries production is predominantly undertaken by smallholder, low-income, or resource-poor farmers who, often cultivate less than two hectares of land. More importantly, across the global south, agriculture is not merely a commercial activity, but the predominant driver of food security, livelihood sustainability, and rural development. Additionally, developing members are particularly vulnerable to sudden import surges

and steep price declines, further exacerbating their vulnerability. Exposure to volatile global markets, and high subsidies provided by developed Members, poses serious adjustment challenges, including displacement of local production and depressed farm-gate prices. Given limited financial resilience, smallholder farmers are often the first to bear the brunt of the impact. These micro-level shocks often have much broader macroeconomic implications, severely affecting rural incomes, employment, and long-term development outcomes. In this context, several members of the G-33 coalition and the African group have been justifying their demand, highlighting the urgent need for a trade-policy instrument that gives these members the policy space to cope with market shocks caused by import surges and price declines. (Das, et al., 2020).

It may be noted that, under the WTO rulebook, all members have access to multiple trade-remedy instruments, namely the anti-dumping, countervailing, and ordinary safeguard measures, across all agricultural and non-agricultural products, to cope with various situations of increasing imports. However, in order to invoke any of these instruments, members are required to provide a detailed demonstration of 'injury' to their 'domestic industry' supported by comprehensive and timely data. In developing economies, where the agriculture sector remains informal and non-organized, with millions of small and dispersed producers, collecting such data in a timely and administratively feasible manner is often impractical. As a result, developing members can

rarely operationalize these instruments in responding to sudden agricultural shocks.

Interestingly, under the Agreement on Agriculture (AoA), 39 WTO Members already have a right to invoke a similar policy-instrument, under the Special Safeguards (SSG) provision (Art.5). (Sharma. et al., 2024d). This permits these members to raise tariffs beyond the set bound levels in response to import surges or price depressions without proving any 'injury'. However, only a handful of developing members are entitled to the use of SSGs, while most developed members have recourse to the instrument. This is because, during the Uruguay round, only members who had adopted the specific process of tariffication to bind their agricultural tariffs had been given access to the policy instrument (Das, et al., 2020). Consequently, in practice, while most developed members have an additional shield in the form of the SSG entitlements to protect their domestic producers against increasing imports, developing members can only respond to import pressures only by raising applied tariffs up to their bound levels. For products where the tariff overhang (i.e. the difference between the bound and applied tariff rates) is low or minimal, developing members are often left with no recourse but to leave their domestic producers exposed to significant inflows of subsidized imports. Thus, when the developing members seek access to the SSM as an SSG-like policy instrument, their ask is also deeply rooted in their overarching demand to remove the existing asymmetries in the AoA and level the playing field (Table 8.4).

Table 8.4: Members Entitled to SSGs

Australia (10)	Indonesia (13)	Poland (144)
Barbados (37)	Israel (41)	Romania (175)
Botswana (161)	Japan (121)	Slovak Republic (114)
Bulgaria (21)	Korea (111)	South Africa (166)
Canada (150)	Malaysia (72)	Swaziland (166)
Colombia (56)	Mexico (293)	Switzerland-Liechtenstein (961)
Costa Rica (87)	Morocco (374)	Chinese Taipei (84)
Czech Republic (236)	Namibia (166)	Thailand (52)
Ecuador (7)	New Zealand (4)	Tunisia (32)
El Salvador (84)	Nicaragua (21)	United States (189)
EU (539)	Norway (581)	Uruguay (2)
Guatemala (107)	Panama (6)	Venezuela (76)
Hungary (117)	Philippines (118)	
Iceland (462)		

Source: WTO Secretariat background paper "Special Agricultural Safeguard" (G/AG/NG/S/9/Rev.1), 2002

Taking into account the aforementioned issues, the SSM was recognised as an integral part of the development dimension of the Doha Round. The 2005 Hong Kong Ministerial Declaration acknowledged the need to establish an SSM for developing Members, and the Nairobi Ministerial Decision (2015) reaffirmed this mandate, directing negotiations in dedicated sessions of the Committee on Agriculture in Special Session (CoA-SS) (Sharma. et al., 2024c). Over the years, Members have engaged in extensive discussions on technical modalities, including product coverage, trigger thresholds, and remedies. Several proposals and draft texts have been tabled; however, consensus on the specific modalities of the instrument has not been achieved.

In the ongoing negotiations, demandeurs of the SSM continue to seek an SSM that is simple, with accessible triggers, operable conditions, and effective remedies (WTO, 2023d). In their view, the SSM is a calibrated and temporary mechanism intended to address exceptional circumstances of import surges or price declines, thereby safeguarding food and livelihood security. It is not conceived as a protectionist tool, but as a development-oriented flexibility consistent with Special and Differential Treatment (WTO, 2020). Thus, they often oppose linking SSM negotiations to other agricultural issues, including discussions on tariff reduction modalities.

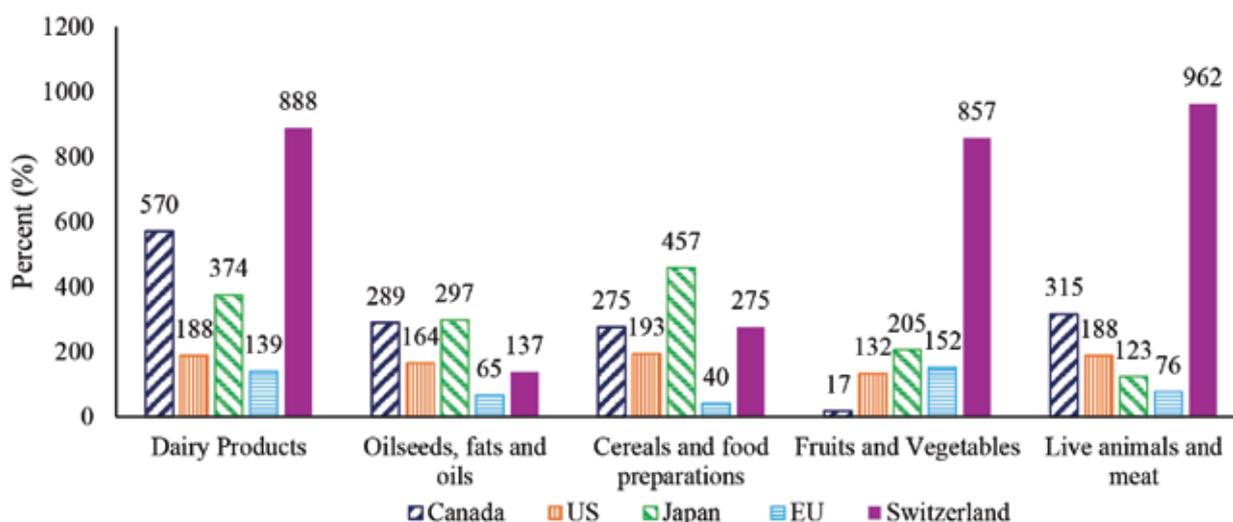
8.6.2. Market Access

While several long-standing mandated issues in the agriculture negotiations remain unresolved,

some Members including the United States, Brazil, Uruguay, Argentina, and Paraguay have placed greater emphasis on Market Access (MA) reforms. They argue these reforms are necessary to maintain overall balance in the agriculture negotiations since it directly shapes the level and form of protection through tariffs, tariff rate quotas (TRQs), and complex tariff structures, with clear implications for food security and export opportunities. Accordingly, they submitted proposal (WTO, 2023h) later revised on 5 December 2025 (WTO, 2025b), seeking reforms along the following lines:

1. **Tariff Simplification:** Conversion of non-ad valorem tariffs into ad valorem tariffs to improve transparency and comparability.
2. **Tariff Escalation:** Addressing situations where processed products are taxed at higher rates than the raw materials from which they are derived.
3. **High Tariffs and Tariff Peaks:** Imposing an absolute cap of 100 per cent on tariffs.
4. **Cotton:** Granting duty-free and quota-free (DFQF) access for cotton and related products originating from least-developed countries (LDCs).
5. **Tariff Reduction Formula:** Agreement on a clear formula to guide future tariff reductions, with modalities to be finalized by MC15.
6. **Special Safeguard Mechanism (SSM):** Preserving the right of developing countries to invoke SSM in response to import surges or price depressions.

Figure 8.8: Applied MFN Duties by Selected Members (2023)



Source: Sharma S.K. et al., Navigating Cross-Cutting Issues and Emerging Challenges in Agricultural Trade: Perspectives from the Global South (2025) RIS Discussion Paper No. 310.

Box 8.1: Non-Advalorem Tariffs

Non-ad valorem tariffs are customs duties not based on a percentage of the product's value, but rather on physical units like weight, volume, or quantity. Common in agriculture, these include **“specific”, “compound”, “mixed” or some other form**. These other forms can be determined by complex technical factors; for example, the duty can be based on the percentage content of the agricultural component (sugar, milk, alcohol content, etc.) or its strength (e.g. the degree of sweetness).

Example:

- i) Specific tariff is a fixed monetary value per unit of the dutiable item. For example, 303.4 EUR/100 kgs.
- ii) Compound tariff is a combination of ad valorem and specific tariffs. For example, 12.8 % + 176.8 EUR/100 kg.
- iii) Mixed tariffs involve a choice between ad valorem and/or specific tariffs depending on the condition attached. For example, 12.8 % max/min 176.8 EUR/100 kg.
- iv) Technical tariff is a rate dependent on the input content such as sugar or alcohol. For example, 8.3% + agricultural component MAX 18.7% + reduced additional duty on sugar.

Proponents argue that these reforms would strengthen the four pillars of food security - availability, economic access, utilization, and stability. Yet this claim sits uneasily with prevailing realities. Several developed Members that consistently advocate tariff reduction and caution against protectionism continue to maintain exceptionally high levels of agricultural protection at home. For instance, Japan imposes tariffs of up to 457 per cent on rice, effectively preventing import competition. The European Union maintains tariffs exceeding 135 per cent on various dairy products and fruits (Figure 8.8). Canada protects its dairy sector with tariffs reaching 570 per cent. The United States applies tariffs of over 188 per cent on certain cereals and dairy products, with peanuts facing tariffs of around 164 per cent. Most strikingly, Switzerland homeland of the WTO enforces tariffs as high as 962 per cent on meats, 888 per cent on dairy, 857 per cent on fruits, and 275 per cent on cereals (Sharma et al., 2025).

These figures stand in sharp contrast to the liberalization rhetoric often directed at developing countries. The barriers to market access stem not only from the height of tariffs but also from the structural complexity of tariff regimes. Many advanced economies rely extensively on non-ad valorem duties specific, compound, mixed, or technically determined tariffs which can be opaque and difficult to navigate.

For producers in developing countries, the lack of transparency and predictability inherent in such structures can be as restrictive as high tariff rates

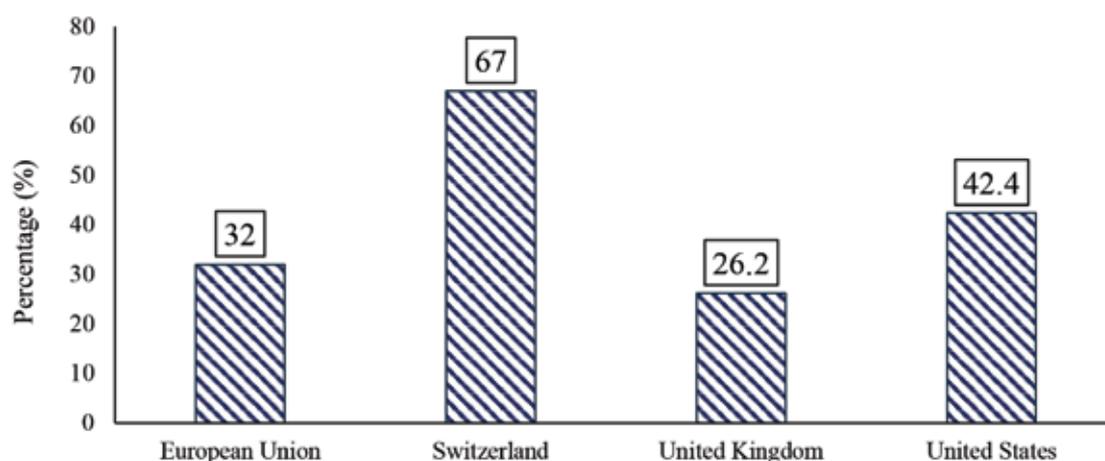
themselves. The scale of this complexity is notable (Figure 8.9): non-ad valorem tariffs account for approximately 42 per cent of agricultural tariff lines in the United States, 32 per cent in the European Union, 67 per cent in Switzerland, and 26 per cent in the United Kingdom (Box 8.1) (Sharma et al., 2025).

Although these issues significantly affect developing-country exporters, negotiations under the market access pillar have yet to reach meaningful convergence. Many developing Members therefore contend that market access discussions are not sufficiently mature to warrant prioritization at this stage. Instead, they argue that MC14 outcomes should first address long-standing mandated issues and areas where consensus is more attainable, warning that premature advancement of ambitious market access reforms could further entrench existing negotiating imbalances.

8.6.3. Export Restrictions

During periods of food crisis global markets often experience supply shortages and sharp price spikes, prompting governments adopt a range of policy responses to stabilize domestic markets and protect vulnerable populations. These measures may include reductions in import tariffs to augment supply, as well as export restrictions to prevent excessive outflows of essential foodstuffs. A number of Members, irrespective of their level of development have resorted to export restrictions during crises, including India, the European Union, Thailand, Malaysia, Egypt, Ghana, Argentina, Ukraine, Russia, Türkiye, and Viet Nam. (Sharma et al., 2024b).

Figure 8.9: Non-Advalorem for Agriculture Products in Some Countries (2023)



Source: Sharma S.K. et al, Navigating Cross-Cutting Issues and Emerging Challenges in Agricultural Trade: Perspectives from the Global South (2025) RIS Discussion Paper No. 310.

Export restrictions may take various forms (Table 8.5), including export bans, quotas, duties, licensing requirements, or other regulatory controls. While such measures are often criticised for potentially inflating international prices, disrupting global supply chains, and affecting the food security of importing countries, exporting Members consider them an important instrument to ensure domestic availability and price stability in times of crisis.

The WTO framework governing these measures is set out in Article XI of the GATT 1994 and Article 12 of the Agreement on Agriculture. These provisions permit Members to apply temporary, targeted and transparent export prohibitions or restrictions to prevent or relieve critical shortages of foodstuffs or other essential products. Members imposing such measures are required to notify the Committee on Agriculture and give due consideration to the food security concerns

Table 8.5: Export Prohibition Imposed by WTO Members on Agricultural Products* since 2021

Member	Products
European Union	Cereals (wheat, rye, barley, oat, corn, soy beans and sunflower seeds)
Georgia	Wheat, Barley
India	Wheat
	Sugar
	Onion
	Non-basmati white rice (Semi-milled or wholly milled rice, whether or not polished or glazed: other)
	Broken Rice
Kazakhstan	Hay, silage, seed and other oats, seed and other rye
	Potatoes and carrots
	Sunflower seeds; sunflower oil
	Potatoes
	Wheat and meslin, Wheat or meslin flour
Thailand	Sugar, raw and refined
Ukraine	Buckwheat; buckwheat grain (uncoated)
	Sugar

Source: Authors compilation based on Export Restriction Notifications, AGIMS, WTO

Note: * Live Animal and Animal based products are not included.

of importing Members. The rules therefore seek to balance the policy space of exporting Members with the interests of food-importing countries.

So far, at the WTO progress on this pillar has been limited. At the MC12, WTO Members agreed to exempt food purchases by the World Food Programme (WFP) for humanitarian purposes from export restrictions. Importantly, this exemption is accompanied by a safeguard clause clarifying that it does not prevent a Member from adopting measures necessary to ensure its domestic food security in accordance with relevant WTO provisions. (WTO, 2022b). Notwithstanding this outcome, post MC12 certain Members have tabled proposals seeking additional disciplines on export restrictions.

As MC14 approaches, the issue of export restrictions (ERs) has start gaining traction prominently in the Special Sessions of the Committee on Agriculture, with some of the G10 Members and the United Kingdom seeking an outcome on this issue as part of comprehensive approach. Some Members including United Kingdom and Japan have argued that existing disciplines are insufficient to address the disruptive impact of export restrictions on global supply chains and international prices (WTO, 2021). Their proposals include clarifying terms such as “critical shortages,” introducing more stringent advance notification requirements (including a proposed 30-day prior notification), modifying notification formats. They contend that enhanced transparency and predictability are necessary to protect food-importing Members from sudden disruptions. Moreover, LDCs also proposed exemptions for them and Net Food-Importing Developing Countries (NFIDCs) from ER imposed by Net food-exporting Members. (WTO, 2023e)

While, developing Members maintain that export restrictions are legitimate and essential policy tools to maintain domestic food security and price stability. They argue that the current WTO provisions already reflect a carefully negotiated balance between exporters and importers. From this perspective, additional disciplines like stringent advance notification requirements and other could undermine the effectiveness of export restrictions, which are often adopted in response to sudden and unforeseen domestic shortages. (Sharma et al., 2024b).

Divergent views on this issue contributed to the absence of consensus at MC13 in 2024, and the situation for MC14 does not appear to be different. Reaching consensus on any outcome on this issue

seems highly challenging. The ongoing debate therefore continues on how to maintain a balanced approach that ensures transparency and predictability in international markets while safeguarding Members’ sovereign right to respond promptly to domestic food security challenges.

8.6.4. Export Competition and Transparency

The negotiating weight has not been evenly distributed across pillars. Pillars such as Market access and Export Restriction have seen little traction in recent years because the talks have not matured to the point where Members are prepared to engage on concrete modalities. Export competition has seen even less engagement since the Nairobi Ministerial Decision on Export Competition eliminated export subsidies there by leaving limited scope for further negotiation on this pillar.

Beyond the issues discussed above, transparency cuts across all pillars of the agriculture negotiations. While some Members favour stronger transparency and monitoring disciplines, including by streamlining existing notification requirements, others have cautioned against creating overly burdensome obligations. In particular, the African Group, India, Cuba, and Oman have stressed that any discipline on transparency must remain mindful of the institutional, technical, and resource constraints faced by developing countries LDCs, and should not impose disproportionate compliance burdens.

8.7. Way Forward

The way forward must begin with political realism. Even the WTO’s own leadership has acknowledged that expectations for a major breakthrough at MC14 are low and that negotiations have seen limited movement since MC13. In that context, developing country Members cannot afford to disperse negotiating energy across every track and every rebranded package. The strategic task is to align positions, tighten coordination across coalitions, and insist that any outcomes, even if incremental, deliver first on long standing mandated issues. Priority should remain on a permanent solution for public stockholding for food security purposes, the Special Safeguard Mechanism, and cotton, rather than allowing negotiating bandwidth to be diverted toward non-mandated tracks that are not yet ripe for deliverables.

A familiar pattern has come to define the agriculture negotiations. Mandated issues are routinely acknowledged as important for food security, rural livelihoods, and development, then absorbed into broader conversations about balance across pillars, and ultimately deferred on the ground that progress elsewhere is insufficient. The result is not balanced; it is postponement by design. The experience of public stockholding is instructive. Members agreed at Bali on an interim peace clause to shield certain programmes from legal challenge, but that arrangement has endured precisely because the permanent solution was repeatedly deferred. The peace clause has effectively become the resting place of the issue rather than the bridge to a settlement. Developing Members should not allow MC14 to reproduce this template across other mandated areas, where interim understandings slowly harden into permanent standstills.

Coalition building is therefore the core strategic imperative. Developing Members should treat MC14 as a moment to lock in a development-first landing zone through structured cross-coalition alignment across the G33, the African Group, the ACP Group, and the LDC Group. The objective is to protect negotiating coherence and prevent fragmentation. When developing Members present their priorities in a unified voice, the burden shifts. The question stops being whether they are asking for too much and becomes whether the institution can deliver what it has already promised. A disciplined coalition strategy also guards against divide-and-rule dynamics, where competing proposals are selectively endorsed and then used to dilute the core demand for mandated outcomes. In practical terms, coalition alignment should translate into a single shared narrative, a tight list of deliverables, and common red lines on linkage strategies that seek to convert priority mandates into conditional outcomes subject to progress elsewhere.

At the systemic level, this strategy must be paired with a firm defence of Special and Differential Treatment as part of the WTO's legal architecture rather than a negotiable concession. The WTO agreements explicitly contain Special and Differential Treatment provisions that grant developing countries specific rights and flexibilities. These exist because the multilateral trading system recognises unequal starting points and the need for positive efforts to ensure that developing countries, particularly the least developed among them, secure a share in the growth of international trade commensurate with their

development needs, as reflected in the Marrakesh Agreement. Special and Differential Treatment is not charity. It is the product of hard-won negotiations and a foundational element of the rules-based framework that members have collectively agreed to uphold.

Yet the current push for institutional reform, advanced by several developed Members, increasingly seeks to narrow or reframe these flexibilities, even as those same Members continue to benefit from asymmetries embedded in the existing rulebook and from decades of accumulated policy space secured under earlier negotiating rounds. Any reform conversation that seeks to condition or curtail Special and Differential Treatment while leaving historical asymmetries untouched risks converting reform into reallocation, tightening disciplines where policy space is already scarce while preserving it where it remains abundant. That is not a neutral adjustment. Where reforms are discussed, sequence matters. Structural imbalances must be addressed first, not deferred until after developing Members have been asked to accept new constraints. Developing Members must remain ready to engage constructively and contribute to a credible reform pathway, but they must ensure that development priorities remain central to any negotiation, not a residual consideration addressed after others have been satisfied.

This is not only about what developing countries need. It is about what the WTO must do to remain credible as a member-driven organisation where ministerial mandates carry meaning. Credibility is not rebuilt through reaffirmations. It is rebuilt through delivery. If MC14 again yields no outcomes on the mandated agenda, it will reinforce the most damaging perception of the institution: that the WTO can still police its rules but struggles to deliver for those whose food security and livelihoods were meant to lie at the heart of the reform mandate.

The way forward is therefore both practical and principled. Practical, because it recognises the limited political bandwidth for ambitious bargains at MC14 and concentrates effort on achievable, mandate-anchored deliverables. Principled, because it insists that the WTO's legitimacy rests on honouring its own decisions and the development rationale embedded in its founding framework. Developing Members should approach MC14 not as a stage for new declarations, but as a test of whether the institution can finally translate long-standing mandates into concrete outcomes.

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Session I: State of Play in WTO Agriculture Negotiations

9 January 2026 | New Delhi

Chaired:

- **Professor Ramesh Chand**, Member, NITI Aayog

Presentation:

- **Dr. Edwini Kessie**, Director, Agriculture and Commodities Division, WTO

Discussants:

- **Mr. J. S. Deepak**, Former Ambassador to the WTO
- **Mr. Abhijit Das**, International Trade Policy and WTO Expert
- **Ms. Ranja Sengupta**, Senior Researcher, Third World Network
- **Ms. R.V. Anuradha**, Partner, Clarus Law Associates (CLA)



MC14 should address two types of challenges. One is the set of challenges that are inherent from the Uruguay Round in the AoA. Second, with experience, issues have emerged regarding the kinds of difficulties countries face in domestic and trade policy when they liberalise trade regimes.

Prof. Ramesh Chand, *Member Niti Aayog*



Agriculture and the issue of food security is very important for most WTO Member countries, particularly developing Members. At MC14, Members should affirm relevant Ministerial Decision, Article 20 and after MC 14 work towards bridging the gap between the divergent positions.

Dr. Edwini Kessie, *Director of the Agriculture and Commodities Division (WTO)*



With MC14 approaching, developing countries must build strategic alliances, and press collectively for credible outcomes on food security and other mandated agricultural issues, ensuring that development priorities remain at the centre of the multilateral agenda.

Amb. J. S. Deepak, *Former Ambassador to the WTO*



Developing countries need to build strong coalitions to secure outcomes on the mandated issues - Permanent Solution on Public Stockholding, Special Safeguard Mechanism, and Cotton- remain firmly on the WTO negotiating agenda. Any agriculture outcome must prioritise delivering results on these issues before taking up market access or domestic support.

Mr. Abhijit Das, *International Trade Policy and WTO Expert*



At MC 14, it is important and urgent need for a Permanent Solution on the issue of food security given its importance for all developing countries.

Ms. R.V. Anuradha, *Partner, Clarus Law Associates (CLA)*



There is need to preserve Special and Differential Treatment (S&DT) while strengthening coalitions among developing countries to secure meaningful outcomes on mandated issues.

Ms. Ranja Sengupta, *Senior Researcher, Third World Network*





Public Stockholding for Food Security: The Unresolved Debate in WTO Agriculture Negotiations

Sachin Kumar Sharma, Suvayan Neogi, Paavni Mathur and Palkin Ratna

9.1. Introduction

Global food security remains one of the most pressing development challenges confronting the international community, particularly for developing countries, including Least Developed Countries (LDCs).

Despite significant improvements in agricultural technologies, productivity, and the expansion of global food supplies over recent decades, persistent hunger, widespread vulnerability, and growing uncertainty in food systems continue to undermine human welfare and economic stability (WTO, 2025a). The persistence of food insecurity indicates that hunger is not merely the result of insufficient food production but rather stems from complex and interrelated structural, economic, social, and institutional constraints. These include unequal access to resources, weak governance structures, market failures, and limited social protection mechanisms, all of which restrict the ability of the vulnerable population to secure adequate food.

The Food and Agriculture Organization of the United Nations (FAO) estimates that 673 million people worldwide continued to experience chronic

undernourishment in 2024. Regionally, an estimated 307 million people in Africa, 323 million in Asia, and 34 million in Latin America and the Caribbean were affected, representing 20.2 percent, 6.7 percent, and 5.1 percent of their respective populations. Although

“One cannot tread the path of trade on an empty stomach”

**Shri Piyush Goyal,
Commerce Minister,
Government of India
(12th WTO Ministerial
Meeting 2022)¹**

global projections indicate a gradual decline in the overall number of undernourished people, progress remains uneven and insufficient. By 2030, approximately 512 million people are still expected to face hunger, with nearly 60 percent of them residing in Africa (FAO, 2025). These projections highlight both the slow pace of progress in achieving global hunger eradication targets and, in certain regions, a reversal of earlier developmental gains. The continued concentration of hunger in developing countries,

including LDCs, reflects persistent structural disadvantages, including pervasive poverty, limited institutional capacity, inadequate physical and market infrastructure, weak health and education systems, and heavy dependence on climate-sensitive agricultural livelihoods. In such contexts, access to sufficient, nutritious, and affordable food remains highly precarious, particularly for rural households,

women, children, and marginalized, vulnerable communities.

The persistence of global hunger cannot be explained solely by inadequate food availability at the aggregate level. Although global food production has generally been sufficient to meet overall consumption needs, food insecurity is increasingly driven by structural and systemic factors that constrain access, affordability, and utilization. A major source of instability is price volatility in domestic and international markets, particularly for net food-importing countries (NFIDCs) and low-income consumers. Recurring climate-related shocks, including droughts, floods, heatwaves, and extreme weather events, have intensified in both frequency and severity, disrupting agricultural production and livelihoods. At the same time, frequent disruptions to global and regional supply chains, stemming from transportation bottlenecks, energy price fluctuations, and logistical constraints, have further weakened food systems.

Alongside these structural pressures, recent global crises have exacerbated existing vulnerabilities. The COVID-19 pandemic, geopolitical conflicts, and rising political tensions have disrupted trade flows, reduced employment opportunities, and strained public finances. The increased use of trade-restrictive measures, export bans, and stockpiling practices during periods of uncertainty has further distorted food markets and amplified price instability. These shocks disproportionately affect low-income households, which typically allocate a large share of their income to food consumption and possess limited savings or coping mechanisms. Consequently, even moderate increases in food prices can push vulnerable populations into food insecurity and malnutrition.

Similarly, in predominantly agrarian economies, food price and production volatility have additional adverse consequences. Uncertain market conditions reduce farm incomes, discourage private investment in agriculture, and limit farmers' ability to adopt improved technologies and sustainable practices. This weakens productivity growth and undermines the long-term resilience of food systems. Furthermore, inadequate access to credit, insurance, extension services, and risk management instruments constrains farmers' capacity to cope with shocks. As a result, food insecurity becomes entrenched, reinforcing cycles of poverty, low productivity, and vulnerability.

Taken together, these dynamics demonstrate that food security is a multidimensional and systemic

challenge that requires coordinated policy responses at national, regional, and global levels. Addressing hunger effectively demands not only increasing food production but also strengthening market institutions, enhancing social protection systems, improving infrastructure, promoting climate-resilient agriculture, and ensuring inclusive economic growth. Without sustained political commitment and comprehensive policy interventions, global efforts to achieve food security and the Sustainable Development Goals are likely to remain incomplete.

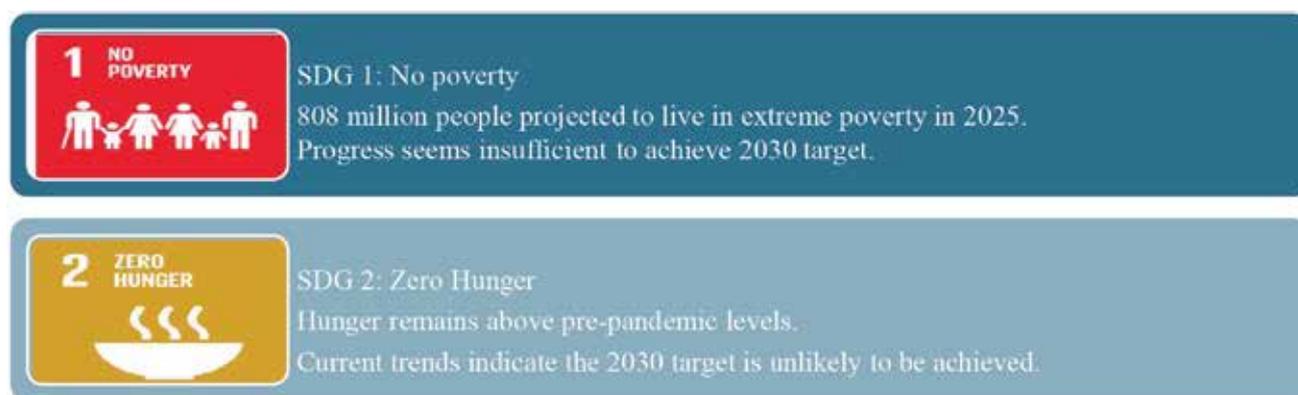
This chapter is structured as follows. Section 2 examines the significance of Public Stockholding (PSH) as a policy instrument for food security. Section 3 delves into the WTO agreement and PSH treatment. Section 4 traces the evolution of discussions on food security and PSH within the WTO. Section 5 analyses the proposal tabled by more than 75 WTO Members. Section 6 reviews the current state of negotiations on PSH at the WTO. The final section provides the way forward.

9.2. The Significance of Public Stockholding for Food Security

Food security remains a central component of the global development agenda, as demonstrated by its inclusion in the United Nations Sustainable Development Goals (SDGs). SDG 2 (Zero Hunger) seeks to end hunger, achieve food security, improve nutrition, and promote sustainable agriculture by 2030. Progress toward SDG 2 is closely linked to SDG 1 (No Poverty), as hunger and poverty are mutually reinforcing (UN, 2015). Persistent food insecurity impedes progress across multiple SDGs, highlighting the fundamental importance of food security for achieving inclusive and sustainable development (see Figure 9.1).

In response to these challenges, many developing countries have adopted Public Stockholding (PSH) programmes as a core component of their food security strategies (see Table 9.1) (Thow *et al*, 2019). Public stockholding typically involves government procurement of foodgrains at administered prices, maintenance of buffer stocks, and the distribution of subsidized food to vulnerable populations. These programmes fulfil a dual function: they support farmer livelihoods by ensuring stable prices and demand, and they stabilize domestic food markets while enhancing food access for low-income households. In countries with large agrarian populations and

Figure 9.1: Progress on Sustainable Development Goal



Source: Authors' compilation based on *The Sustainable Development Goals Report 2025*.

Table 9.1 : Illustrative List of PSH Programmes and Coverage

Country Name	Product Coverage (mainly)	Country Name	Product Coverage (mainly)
Bangladesh	Rice and Wheat	Kenya	Millet, Sorghum, Maize
Bolivia (Plurinational State of)	Rice, Wheat, and Maize	Mali	Rice, Millet, Sorghum, Maize
China	Rice and Wheat	Philippines	Rice
Ecuador	Rice, Wheat, and Maize	United Republic of Tanzania	Maize and Rice
Egypt	Wheat	Tunisia	Rice and Wheat
India	Coarse Grains, Pulses, Rice, and Wheat.	Zambia	Maize
Indonesia	Rice	Zimbabwe	Maize
Jordan	Wheat		

Source: Authors' compilation based on FAO. (2021), Public food stockholding-A review of policies and practices.

widespread poverty, PSH programmes serve as both social protection mechanisms and instruments for agricultural and rural development.

Despite their strong developmental rationale, PSH programmes have become a significant point of contention within the global trade regime. The central conflict lies between domestic food security objectives and the constraints imposed by international rules on agricultural subsidies. Governments view public stockholding as essential to ensuring the right to food and protecting rural livelihoods, particularly in the context of price volatility, supply shocks, and persistent food insecurity (see Box 9.1). However, as developing countries have expanded procurement and distribution efforts in response to rising food

insecurity and market instability, discussions have arisen in the WTO regarding these programmes.

Box 9.1: India's PSH Programme during the COVID-19 Pandemic

During the pandemic millions of people globally faced livelihood and food insecurity issues. India's PSH programme enabled over 800 million vulnerable people to access essential commodities at a time when many countries were restricting exports to safeguard domestic food stocks.

Source: Sharma, S.K, & Dobhal, A. (2020). Amidst the Covid-19 pandemic, India's food security at WTO. Agri Business, Business Line.

9.3. Public Stockholding at the WTO

There exists an inherent asymmetry in the WTO Agreement on Agriculture (AoA) with respect to policy instruments for addressing food security concerns. The AoA permits members to provide unlimited direct food assistance to vulnerable sections of the population, under the Green Box, as illustrated by the United States' food stamp programme. However, most developing countries face severe fiscal and administrative constraints that limit their ability to rely on such mechanisms. Consequently, many of them adopt PSH programmes involving the procurement and storage of foodgrains at administered prices, followed by distribution to targeted populations at subsidised rates. Under the AoA, subsidies arising from such procurement are subject to strict ceilings. When a country approaches these limits, it is compelled either to reduce procurement prices or to curtail purchase volumes to remain compliant. Both responses undermine the food security of small and marginal farmers and weaken the effectiveness of public distribution systems (Das, 2025). This structural imbalance has been a central driver of sustained demands by developing countries for greater policy space within the multilateral trading system.

A central issue in this debate is the classification of PSH programmes under the AoA (see Figure 9.2). Programmes that involve procurement at administered prices as trade-distorting domestic support, subject to Aggregate Measurement of Support (AMS) limits under the Amber Box. Support levels are determined using the Market Price Support (MPS) methodology, which compares administered prices to fixed External Reference Prices (ERP) from the 1986-88 period.

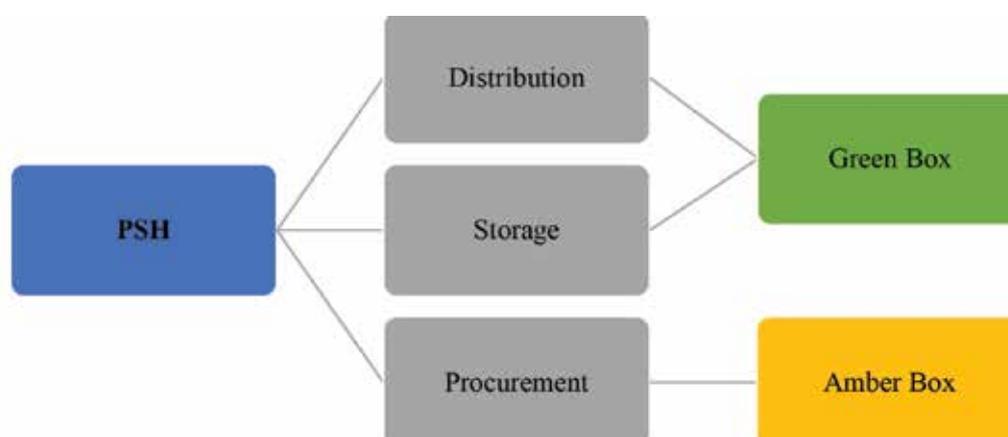
Such methodology has placed several developing countries at risk of exceeding their permitted subsidy limits, even when public stockholding programmes are specifically designed to address domestic food security and have minimal impact on international trade. Consequently, governments face growing legal uncertainty regarding the continuation of essential food security measures. What originated as a technical issue of subsidy calculation has thus evolved into a central political and developmental concern in WTO agricultural negotiations.

9.3.1. Pitfalls of External Reference Price

In many developing countries, administered price procurement forms a central component of food security policy. In India, for instance, foodgrains are procured at administered prices by the Food Corporation of India (FCI) and distributed to consumers at subsidised rates through the Public Distribution System (PDS). The procurement of foodgrains at administered prices is classified as trade-distorting under the WTO. It is subject to strict financial limits under the Amber box, which comprises two components: product-specific and non-product-specific support. The AoA permits most developing members to provide a minimum level of support through a *de minimis* limit, set at 10 percent of the value of production (VoP) for a specific product and 10 percent of the value of total production for non-product-specific support in a given year (Sharma & Shajahan, 2024).

As per Annex 3 para 8 of the AoA, market price support (MPS) is calculated by multiplying the eligible production for procurement ("Q") by the difference

Figure 9.2: Treatment of Price-Support backed PSH Programmes in AoA



Source: Authors' compilation based on the WTO (1994) Agreement on Agriculture (AoA).

between the applied administered price (AAP) and the fixed reference price (ERP) during a relevant year (WTO, 1994).

$$MPS = (AAP - ERP) * Q$$

The ERP is defined as the export or import price of that product during the base period, which remains fixed for the calculation. As the administered price increases over the years, the difference between the administered price and the fixed ERP also increases, resulting in exaggerated calculations of support (Galtier, 2013; Berthelot, 2016; Sharma, 2016; Brink & Orden, 2023; Hopewell & Margulis, 2023; Sharma & Shajahan, 2024), which is shrinking policy space for many developing country members to implement price support-backed PSH. Annex 3.9 of the AoA states that the determination of fixed ERP shall be based on the years 1986 to 1988 and shall generally be the average FOB (Free On Board) unit value for the basic agricultural product concerned in a net exporting country and the average CIF (Cost, Insurance and Freight) unit value for the basic agricultural product concerned in a net importing country in the base period. Therefore, to calculate product-specific support, the administered price is compared to the ERP based on 1986-88 prices (Sharma, 2018). The ERP for rice in Indonesia is IDR 371/kg, whereas the AAP was IDR 7300/kg in 2018, which is 1868 percent of the ERP (Sharma & Shajahan, 2024). This clearly shows that this methodology for calculating support is about 40 years old and outdated, as product-specific support increases over time if inflation is not taken into account.

Inflation and Article 18.4

Article 18.4 of the AoA (see Box 9.2) provides that, during the review process, Members shall give due consideration to the influence of excessive rates of inflation on a Member's ability to comply with domestic support commitments (WTO, 1994). However, the provision does not define what constitutes "excessive"

**Box 9.2: Article 18
Review of the Implementation of
Commitments**

4. In the review process Members shall give due consideration to the influence of excessive rates of inflation on the ability of any Member to abide by its domestic support commitments.

Source: Based on the WTO (1994) Agreement on Agriculture

inflation, nor does it establish a mechanism for adjusting the ERP used in the calculation of market price support. Although some WTO members have used inflation adjustment to calculate their support, Jordan's use of Article 18.4 has been questioned in the Committee on Agriculture (CoA) (Sharma & Shajahan, 2024).

The gap between the administered price (MSP) and the fixed External Reference Price (ERP) has been widening. According to notifications submitted by India to the WTO, the product-specific support for rice in 2016-17 was 6.67 per cent, which remained below the *de minimis* limit of 10 percent applicable to developing countries. However, India has provided price support to rice beyond its applicable limit for implementing the PSH programme since the marketing year 2018-19 (see Table 9.2) (Sharma *et al*, 2024). This increase depends on factors such as rising AAP or Minimum Support Prices (MSPs), exchange rate movements, procurement levels, and the value of production. Given the continuous increase in MSPs and procurement levels as it is also not clearly defined in the AoA, India is likely to face further constraints in continuing price support for rice under the existing rules of the AoA, as India does not have a bound Aggregate Measurement of Support (AMS) entitlement and can only provide support up to the *de minimis* limit allowed for developing countries.

The distortions created by this methodology become further clearer when viewed through practical illustrations. The administered price of wheat in Egypt stood at merely US\$ 4.5 per 1,000 kilograms in 2022. Today, if Egypt pays its wheat farmers a dime more than that, it is called a trade-distorting subsidy. This raises a fundamental question: what does US\$ 4.5 represent in today's economic reality? In Geneva, where WTO rules are negotiated, one cannot purchase even a single burger for that amount. In fact, the cost of one burger today is approximately equivalent to 1,642 kilograms of Egyptian wheat under the existing WTO methodology. Similarly, the price of a serving of French fries in Geneva would require an Indonesian farmer to sell nearly 172 kilograms of rice to earn an equivalent amount (Sharma, 2023). Per capita consumption data indicate that 172 kilograms of rice can feed one Indonesian for almost two years. Even after accounting for the limited policy space available under the *de minimis* provision, farmers would still need to sell around 155 kilograms of rice to match roughly US\$ 4.30. Such comparisons underscore how

Table 9.2: India's Product Specific Support (PSS) on Rice

Year	Applied Administered Price	ERP	Eligible Production	Total market price support	PSS as a percentage of VoP
	US\$/Tonne	US\$/Tonne	Million Tonne	US\$ Million	Percent (%)
2018-19	375.41	262.51	44.33	5004.97	11.46
2019-20	384.00	262.51	52.00	6317.52	13.71
2020-21	377.50	262.51	60.08	6908.60	15.16
2021-22	390.58	262.51	58.94	7549.17	15.22
2022-23	380.77	262.51	54.04	6390.88	12.10
2023-24	395.52	262.51	51.22	6812.25	11.98

Source: Authors' compilation based on India's Domestic Support (DS:1) Notifications to WTO.

the continued reliance on outdated reference prices produces deeply disproportionate outcomes, raising serious concerns about fairness and sensitivity toward farmers in developing countries (Sharma, 2023).

Therefore, updating the External Reference Price (ERP) remains a key systemic priority for developing countries, including LDCs, as the continued use of an outdated ERP undermines the effective exercise of policy space guaranteed under the Agreement on Agriculture and exposes PSH programmes to persistent compliance risks.

9.4. Evolution of WTO Negotiations on Food Security and Public Stockholding

It is important to trace the evolution of negotiations on food security within the WTO framework. For over two decades, developing countries have expressed concerns regarding limited policy space for food security within the WTO framework. Prior to the Doha Round, India introduced a "Food Security Box" in 2001 (WTO, 2001a), proposing that product-specific support provided to low-income or resource-poor farmers be excluded from AMS limit calculations (see Figure 9.3) (Sharma & Shajahan, 2024). The Doha Ministerial Conference subsequently affirmed that special and differential treatment (S&DT) for developing countries,

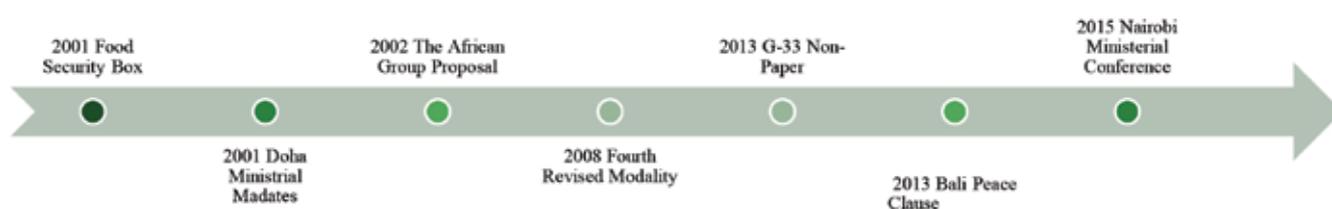
together with non-trade concerns such as food security and rural development, should remain central to agricultural negotiations (WTO, 2001b). In 2002, the African Group advanced these efforts by calling for the removal of footnote 5 of the AoA, thereby de-linking support from the Amber box for the PSH programmes (WTO, 2002; Sharma & Shajahan, 2024). The fourth revised modality in 2008 recognized that food stocks acquired by developing countries to support low-income or resource-poor producers should not be included in the Amber Box (WTO, 2008). Despite these developments, no binding outcome was established.

9.4.1. The Bali Ministerial Decision on Public Stockholding

Before the Bali Ministerial Conference (MC 9) in 2013, several developing Members with public stockholding (PSH) programmes were concerned about the risk of breaching or had already breached their domestic support commitments. In this context, the G-33 proposed three interim options: adjusting reference prices for inflation, adopting a moving reference price, or instituting a peace clause to protect PSH programmes from legal challenges (WTO, 2013a).

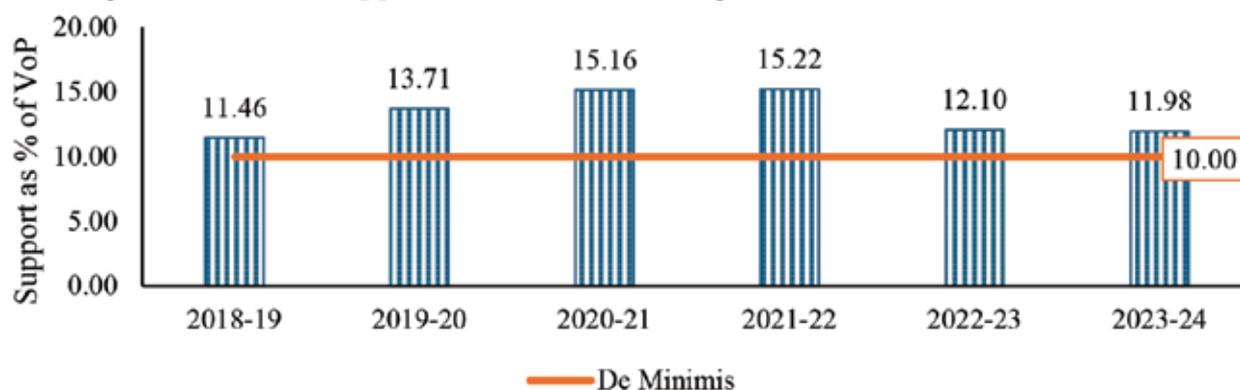
Under MC 9, WTO Members agreed to adopt the Peace Clause as an interim solution (WTO, 2013b).

Figure 9.3: Timeline of Food Security Negotiations



Source: Authors' compilation based on WTO proposals and past Ministerial Conference decisions

Figure 9.4: India's Support to Rice as a Percentage of Value of Production (VoP)



Source: Authors' compilation based on India's Domestic Support notification of the selected years.

This arrangement required Members to refrain from challenging the PSH programmes of developing countries, including LDCs, through the Dispute Settlement Mechanism, even when these programmes breached obligations under the Current total AMS (Article 6.3) and *de minimis* Level (Article 7.2(b)) of the AoA (Sharma & Shajahan, 2024). However, this protection was subject to strict conditions, such as requirements for notification, transparency, anti-circumvention measures, and safeguards.

Given the interim and conditional nature of this provision, the Bali decision explicitly required that negotiations for a permanent solution be concluded by the 11th Ministerial Conference in 2017. In 2014, the General Council extended the peace clause indefinitely until a permanent solution is reached, a commitment reaffirmed at the Nairobi Ministerial Conference in 2015 (WTO, 2014; 2015).

India is the only member to have invoked this safeguard to protect its food security policy, as rice support exceeded the 10 percent *de minimis* limit (see Figure 9.4) (Sharma *et al*, 2025). This reflects the persistent pressure faced by India in complying with domestic support disciplines under the WTO, particularly in the context of rising Applied Administered Price (AAP) (i.e., Minimum Support Price), and outdated external reference prices. As shown in the figure, India's market price support (MPS) for rice consistently remained above the permitted threshold between 2018-19 and 2023-24, peaking at over 15 percent in 2020-21 and 2021-22. Consequently, India relied on the peace clause to shield its public stockholding programme from legal challenges, underscoring both the structural limitations of existing rules and the continuing relevance of a permanent solution for food security purposes.

9.5. Permanent Solution to Public Stockholding: The Proposal

Building on earlier proposals, the G-33, the African Group, and the ACP Group jointly submitted a proposal JOB/AG/229 in 2022, seeking a permanent solution to public stockholding for food security purposes. The proposal aims to move beyond the interim solution and provide legal certainty for developing Members. It calls for updating the methodology for calculating market price support, including updating ERP, clarifying eligible production as the quantity actually procured at the administered price, expanding product and programme coverage, granting an exemption for export from G2G stocks on a humanitarian basis, and simplifying notification requirements (WTO, 2022).

As previously noted, India remains the only Member to invoke the Bali Peace Clause to shield its PSH for rice. For many developing countries, the Bali Ministerial Decision on Peace Clause provides only an interim solution, as its product and programme coverage is limited. In contrast, the Joint Proposal seeks broader coverage, legal permanence through amendment of the Agreement on Agriculture (AoA), and streamlined transparency obligations (see Table 9.3). Consequently, a significant group of Members continues to advocate for a permanent solution that provides predictable policy space for food security programmes.

9.5.1. Obstacles to a Permanent Solution

Although the Bali Ministerial Decision envisaged a pathway toward a comprehensive, balanced, and development-oriented permanent solution on public stockholding, aimed at preserving the integrity of

Table 9.3: Comparison between the Bali Peace Clause and the Joint Proposal for Permanent Solution

Basis	Bali Peace Clause	Joint Proposal
Nature and Scope	<ul style="list-style-type: none"> • Interim solution • Traditional staple food crops. • Covers programs existing as of December 2013. 	<ul style="list-style-type: none"> • Permanent in nature. • Seeks amendment to the AoA. • Covers all 'foodstuff' • No limitation on program coverage.
Calculation of Market Price Support	<ul style="list-style-type: none"> • Fixed External Reference Price (1986-88) • Eligible Production: production eligible for administered price 	<ul style="list-style-type: none"> • External Reference Price: <ul style="list-style-type: none"> ○ three-year average price based on <i>Olympic average</i>, ○ <i>ERP adjusted for excessive inflation</i>. • Eligible Production: Actual quantity of foodstuffs acquired at administered price.
Transparency (Notification Requirements) and Anti circumvention	<ul style="list-style-type: none"> • DS notification (G/AG/2), additional Annex for each PSH program that is maintained for food security purposes. • Statistical Appendix with relevant statistical information for the additional annex. • Safeguard against trade distortion 	<ul style="list-style-type: none"> • Standard domestic support notification (G/AG/2) without additional burdens. • Safeguard against trade distortion, only export for non-commercial humanitarian purposes

Source: Authors' compilation based on Bali Ministerial Decision (WT/MIN (13)/38 or WT/L/913) and proposal on Public Stockholding for Food Security Purposes (JOB/AG/229).

the multilateral trading system. The Peace Clause applies exclusively to traditional staple food crops and excludes PSH programmes introduced after 7 December 2013 (WTO, 2013b). It also imposes anti-circumvention conditions requiring that such programmes do not distort trade or adversely affect the food security of other Members. The absence of clear definitions of these terms has generated uncertainty, discouraging broader utilisation of the mechanism (Sharma & Shajahan, 2024).

In this context, more than 75 WTO Members from the G-33, ACP, and African Group have called for a permanent solution that would provide additional flexibilities beyond those available under the existing Peace Clause (WTO, 2024a). Proponents argue that a durable outcome is necessary to provide predictable legal protection for food security programmes, including clarity on coverage, duration, and calculation methodologies. They maintain that the Permanent Solution constitutes an independent, long-standing mandate and should not be subordinated to broader discussion on agricultural reform.

However, significant resistance persists. Some Members contend that expanding PSH flexibilities could create scope for trade distortion and weaken existing agricultural disciplines. They argue that any Permanent Solution must incorporate safeguards to prevent potential trade spillovers and ensure consistency with the broader domestic support framework. In particular, certain Members have sought to link the PSH negotiations with wider Domestic Support reform. For instance, prior to 2025, the Cairns Group addressed PSH within a broader domestic support pillar framework, proposing product-specific flexibilities tied to a country's net trade position and its share in global markets (WTO, 2024b).

Thus, negotiations centre not on whether reform is required, but rather on the scope, safeguards, and legal architecture of a future framework. Divergences reflect fundamentally different approaches: one that treats PSH as an integral part of comprehensive domestic support reform, and another that views it as a targeted development instrument requiring dedicated legal protection. Prolonged stalemate

carries broader institutional implications. For many developing Members, representing a substantial share of the global population, the absence of progress on this long-standing mandated issue raises concerns regarding the WTO's responsiveness to food security priorities.

9.6. Overview of Recent WTO Submission on Food Security and PSH

Public stockholding (PSH) for food security purposes remains a central and unresolved issue in the agriculture negotiations. Since the adoption of the Bali Ministerial Decision (2013), Members have been mandated to negotiate a permanent solution. The 2014 General Council Decision clarified that the Peace Clause would remain in effect until such a solution is adopted, and the Nairobi Ministerial Conference reaffirmed this commitment. Nevertheless, substantive progress toward a permanent outcome has remained limited (Das, 2025).

Public stockholding (PSH) for food security purposes remained unresolved at the Thirteenth Ministerial Conference (MC13) in Abu Dhabi. Although references to PSH appeared in draft texts, Ministers were unable to reach an agreement on advancing the permanent solution mandate. The absence of a substantive outcome at MC13 underscored the continuing divergence among Members and left the long-standing mandate effectively stalled (WTO, 2024a).

Against this backdrop, the Chair of the Committee on Agriculture in Special Session (CoA-SS) encouraged Members to re-engage constructively and circulate new written submissions with a view to identifying possible landing zones ahead of the Fourteenth Ministerial Conference (MC14). In response to this call, several Members and groups tabled new proposals from December 2025 onwards, seeking either to advance the permanent solution track directly or to situate PSH within a broader agricultural reform framework.

Several submissions have been introduced ahead of MC14, reflecting different approaches to advancing food security and PSH within the agriculture negotiations (see Table 9.4). Brazil is advocating for comprehensive reform and revitalisation of agriculture negotiations (WTO, 2025b). The African Group's formal submission represents one of the most detailed engagements with the permanent solution track. It reaffirms the Bali, General Council,

and Nairobi mandates and builds substantively on proposal JOB/AG/229, calling for strengthened legal certainty, expanded foodstuff coverage, inclusion of programmes implemented after the Peace Clause, reform of the External Reference Price methodology to reflect inflation and evolving market conditions, and appropriate safeguards within existing WTO rules (WTO, 2025c).

The LDC Group proposal, tabled by The Gambia, advances a more targeted approach centred on the vulnerabilities of LDCs and NFDCs. It calls for continued negotiations toward a permanent solution on PSH, particularly covering programmes implemented by LDCs, and instructs a review of the fixed ERP methodology. Its emphasis lies in strengthening resilience and policy space for the most vulnerable Members (WTO, 2025d).

Jamaica's submission adopts a horizontal and declaratory format. While recognizing food security as a central objective and reaffirming prior ministerial commitments, it does not elaborate on the elements of advancing a permanent solution (WTO, 2025e). Instead, it situates PSH within a broader ministerial declaration on trade and global food security, emphasizing balanced progress across negotiating pillars.

Indonesia's draft Ministerial Decision takes a process-oriented approach. Rather than proposing detailed technical reforms, Indonesia outlines a structured post-MC14 road map, aimed at consolidating submissions, identifying convergence, and advancing negotiations toward 15th WTO Ministerial Conference (MC15) (WTO, 2026a).

In addition, the African Group circulated a Room Document (RD/AG/149) that seeks to consolidate elements from various submissions into a draft MC14 Ministerial Decision on Agriculture. Unlike a standalone proposal, this document attempts to identify areas of convergence across Members and frame a possible negotiating landing zone. With respect to PSH, it recalls the permanent solution mandate, instructs continued negotiations in the dedicated Session, and explicitly calls for a review of the 1986-1988 fixed External Reference Price, taking into account inflation and current market realities (WTO, 2026b).

Taken together, these submissions demonstrate renewed engagement following the lack of a substantive outcome at MC13. However, they also reveal continuing divergence in negotiating strategy. While some Members prioritize advancing the long-

Table 9.4: Member Submissions on PSH and Food Security ahead of MC14

Sr. No.	Submission	Key PSH and Food Security Elements
1	African Group	<ul style="list-style-type: none"> Reaffirms mandate for a permanent solution on PSH; calls for strengthened legal certainty, expanded foodstuff coverage, inclusion of post-Peace Clause programmes, and methodology reform reflecting inflation and updated reference prices. Proposes crisis-based de minimis flexibility (up to 20 percent VoP) for developing countries.
2	Brazil	Calls for comprehensive reform and revitalisation of agriculture negotiations.
3	Gambia	Calls for continuation of negotiations on permanent solution covering all PSH programmes, particularly those implemented by LDCs; instructs review of fixed ERP; emphasizes resilience of LDCs and NFIDCs in food crises.
4	Jamaica	Advocates for advancing agriculture negotiations on all pillars.
5	Indonesia	Draft Ministerial Decision on food security and resilience; reaffirms commitment to interim mechanism and permanent solution on PSH; places PSH within food security instruments ; proposes structured 2026-2028 road map toward MC15 rather than immediate technical reform.
6	African Group (Room Document)	Draft MC14 Ministerial Decision recalling permanent solution mandate; instructs negotiation of PSH solution; supports inclusion of programmes after Peace Clause; calls for review of 1986-88 ERP considering inflation and market conditions

Source: Authors' compilation based on WTO proposals: TN/AG/W/12, WT/GC/W/980/Rev.1, JOB/AG/270, JOB/AG/271, TN/AG/W14, and RD/AG/149.

standing permanent solution mandate for PSH, others embed the issue within a comprehensive reform of agricultural disciplines or focus on process and sequencing toward MC15. As MC14 approaches, the central question remains whether Members can reconcile these approaches and deliver meaningful progress on the mandated permanent solution track.

9.7. Conclusion and Way Forward

Agriculture constitutes one of the most critical and politically sensitive areas of negotiation within the World Trade Organization (WTO), owing to its profound implications for the livelihoods of millions of smallholder farmers, rural livelihoods, and food-insecure populations worldwide. In many developing countries and Least Developed Countries (LDCs), agriculture remains the primary source of employment and income, while also serving as the backbone of domestic food security. Consequently, agricultural trade rules directly influence governments' capacity to support vulnerable producers and consumers. Recognizing the centrality of food security to sustainable development, WTO members have

engaged in prolonged and intensive negotiations to establish a permanent solution for public stockholding (PSH) programmes for food security purposes. Despite repeated ministerial mandates and ongoing discussions, consensus on this issue remains elusive, reflecting deep-seated divergences in members' economic structures, policy priorities, and development objectives.

Amid rising undernourishment, increasing climate-related disruptions, and recurrent global and regional food crises, food security remains a paramount concern for developing countries, including LDCs. Price-support-backed PSH programmes have historically played a vital role in stabilizing domestic food markets, procuring foodgrains from farmers at assured prices, and distributing subsidized food to vulnerable populations through public distribution systems. These programmes not only enhance access to affordable and nutritious food but also contribute to income stability for small and marginal farmers. However, under the current WTO Agreement on Agriculture (AoA), developing countries' ability to implement and expand PSH programmes is severely

constrained. The limited policy space available under the Amber Box, combined with the continued use of a fixed external reference price (ERP) based on 1986–88 world market prices, artificially inflates the calculated level of market price support. As a result, many developing countries risk breaching their de minimis limits, even when providing relatively modest support in real terms, thereby discouraging necessary food security policies.

In response to these constraints, a permanent solution based on the Bali Ministerial Decision on PSH, commonly referred to as the “peace clause,” has emerged as a central proposal in the negotiations. This mechanism temporarily shields developing countries from legal challenges when their PSH support exceeds prescribed limits, provided certain conditions are met. Critics, particularly from certain developed countries, argue that making the peace clause permanent could give developing countries excessive policy flexibility. They assert that this flexibility may facilitate the accumulation of substantial subsidized stocks, which could later be released onto international markets, resulting in depressed global prices and trade distortions. Additionally, these members raise concerns about transparency, accountability, and the possible circumvention of existing subsidy regulations.

Conversely, many developing country members emphasize that the current framework contains significant structural deficiencies that undermine its effectiveness. Key limitations include restricted product coverage, the exclusion of PSH programmes introduced after the Bali Ministerial Decision, and broad anti-circumvention provisions that impose heavy compliance burdens. Furthermore, the peace clause provides only temporary legal protection and does not address the underlying methodological distortions associated with outdated reference prices. As such, it provides limited certainty for long-term food security planning and investment. Developing countries argue that these shortcomings disproportionately affect countries with large food-insecure populations and weak fiscal capacities, which rely heavily on PSH mechanisms as core components of their social protection systems.

Proponents of reform further contend that the proliferation of conditions attached to proposals for a permanent solution has progressively eroded their developmental value. These conditions include differentiation among developing countries based on market size or export status, restrictions on exports

from PSH stocks, enhanced and frequent notification requirements, and attempts to link PSH negotiations to broader reforms of domestic support. While such measures are often justified on grounds of market stability and transparency, developing countries argue that they significantly increase administrative complexity and compliance costs. More importantly, they risk excluding the most vulnerable countries from benefiting fully from the solution. The cumulative effect of these conditions is to transform a development-oriented safeguard into a highly constrained and uncertain policy instrument.

Recent global shocks, including the COVID-19 pandemic, geopolitical conflicts, supply chain disruptions, and climate-induced production losses, have further underscored the urgency of resolving the PSH issue. During periods of crisis, PSH programmes have proven indispensable in ensuring emergency food distribution, stabilizing prices, and preventing large-scale humanitarian distress. At the same time, these crises have exposed the fragility of global food markets and the risks associated with excessive dependence on international trade. Nevertheless, persistent disagreements among WTO members continue to impede meaningful progress, reflecting broader challenges in restoring trust and cooperation within the multilateral trading system.

In this context, constructive engagement is required to bridge negotiating divides and advance a balanced outcome. A simple, transparent, and operationally feasible permanent solution, including a dynamic external reference price that reflects current market conditions, should be actively pursued at MC 14. A better approach would be to continue the Bali Peace Clause and supplement it with a dynamic ERP. This approach must balance trade disciplines with the fundamental goal of safeguarding food security and livelihoods for millions. Such an approach would preserve the integrity of trade disciplines while restoring legitimate policy space for food security interventions in developing countries, including Least Developed Countries.

The upcoming MC14 represents a critical opportunity to deliver a credible and durable permanent solution on PSH and to fulfil the long-standing mandates issued at successive ministerial conferences. Failure to achieve a meaningful outcome would perpetuate regulatory uncertainty and constrain the ability of developing countries and LDCs to protect vulnerable populations. In the

absence of adequate policy space and predictable safeguards, low-income and resource-poor farmers, along with food-insecure households, will remain exposed to market volatility and external shocks. Ultimately, prolonged inaction risks undermining the developmental legitimacy of the WTO and weakening its capacity to contribute effectively to global food security and inclusive growth.

Endnote

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Session II: Public Stockholding: Food Security and Fair-Trade Rules

9 January 2026 | New Delhi

Chaired:

- **Amb. Jayant Dasgupta**, Former Ambassador to the WTO

Presentation:

- **Professor Sachin Kumar Sharma**, Director General, RIS

Discussants:

- **Dr. Edwini Kessie**, Director, Agriculture and Commodities Division, WTO
- **Mr. Anwarul Hoda**, Former Deputy Director General to the WTO
- **Ms. Nidhi Srivastava**, Counsellor to Permanent Mission of India, WTO
- **Ms. Vahini Naidu**, Programme Coordinator, Trade for Development Programme (TDP) of the South Centre



“What the MC 14 intends to do, is to have the Ministers discuss key issues which are being faced by Member countries of the WTO and chart a way forward so that negotiations can then take place and solutions could be found so that to be harvested by the next Ministerial Conference (MC 15).”

Amb. Jayant Dasgupta, *Former Ambassador to the WTO*



“Public stockholding issue is concerned, it should be such a simple issues for others to agree to that we can [at least] try to make it the minimum to find a permanent solution. There are some issues against which the public stockholding can be negotiated, [where] we give [up] something and we [gain something in return].”

Mr. Anwarul Hoda, *Former Deputy Director General, WTO*



“If we are to design or have a permanent solution, we need to address the critical elements both sides have raised.”

Dr. Edwini Kessie, *Director, Agriculture and Commodities Division, WTO*



“Rebuilding trust in WTO is essential and credibility of the organization is closely linked to its ability to deliver meaningful outcome in agriculture.”

Ms. Nidhi Srivastava, *Counsellor to Permanent Mission of India, WTO*



“Public stockholding really sits at the intersection of food security, rural livelihoods, domestic price stabilization, but also the broader macroeconomic stability for grain-dependent economies.”

Ms. Vahini Naidu, *Programme Coordinator, Trade for Development Programme (TDP) of the South Centre*





WTO Agreement on Fisheries Subsidies: Need to Balance Equity and Sustainability in MC14

Mukesh Bhatnagar, Pankhuri Gaur and Ayush Tiwari

10.1. Introduction

For more than two decades, fisheries subsidies have remained a central topic on the multilateral trade agenda, due to growing concerns regarding their environmental effects and developmental consequences. At the 1999 Seattle Ministerial Conference (MC3) of the WTO, nations such as Australia, New Zealand, Iceland, and the United States proposed a work program to address the detrimental effects of fisheries subsidies on ecological sustainability. The 2001 Doha Ministerial Declaration mandated WTO members to begin negotiations on clearer and more effective disciplines regarding fisheries subsidies, emphasising the sector's vital role for developing countries. The 2005 Hong Kong Ministerial Declaration reinforced this mandate by calling for disciplines to prohibit certain subsidies that contribute to overcapacity and overfishing. It also specified that appropriate and effective special and differential treatment (S&DT) for developing and least-developed Members should be integral to the fisheries subsidies negotiations, considering the sector's importance to development priorities, poverty reduction, and livelihood and food security concerns.

Although a draft text was produced by the Chair of the Negotiating Group on Rules (NGR) in November 2007, this did not find convergence among the members due to wide differences in the approach to be followed for prohibiting certain forms of fisheries subsidies and the extent of S&DT

to be provided to developing countries. Doha Round negotiations got stalled in 2008 with a stalemate in other important areas like Agriculture, Non-Agriculture Market Access (NAMA), and Services. By 2011, the NGR Chair observed that the negotiations on fisheries subsidies were not moving forward. Renewed global focus on sustainability and the Sustainable Development Goals (SDGs), particularly SDG 14.6, reignited the negotiations in the WTO. Following ongoing negotiations since 2016, the Agreement on Fisheries Subsidies (AFS) was adopted at the 12th WTO Ministerial Conference in 2022.

AFS marked a historic step in the WTO history, as it became the first multilateral trade deal with environmental sustainability objectives for prohibiting subsidies that support illegal, unreported, and unregulated (IUU) fishing and overfished stocks. This came into force in September 2025 after ratification by more than two-thirds of the WTO Members. However, the more contentious pillar of prohibiting subsidies that drive overcapacity and overfishing was left unresolved and is now being negotiated under the Additional Provisions as Fish 2.0 provisions. These negotiations remain fraught, with draft texts allowing harmful subsidies under sustainability claims, diluted disciplines on distant water fishing (DWF), and unresolved S&DT provisions, leaving many developing countries concerned about imbalances in obligations and policy space. Groups such as the Africa, Caribbean and Pacific (ACP) and Least

Developed Countries (LDCs), supported by India and Indonesia, have pushed for stronger prohibitions and effective S&DT. However, as negotiations progressed, coalition-building among developing countries has been fractured by differing criteria in S&DT. India has strongly opposed obligations based on aggregate subsidy, instead advocating for measures based on subsidy intensity per fisherman, and has highlighted the need to address non-specific fuel subsidies as equally harmful.

With the 14th Ministerial Conference of the WTO (MC14) in March 2026 approaching, members face the challenge of bridging differences to conclude Fish 2.0. A sustainable approach is needed not only for establishing a balance between developed and developing countries but also for achieving the Sustainable Development Goal (SDG) of eliminating adverse fishery subsidies. Considering the significance of reducing fisheries subsidies while maintaining developmental opportunities for underdeveloped nations, this chapter discusses, in detail, the provisions being negotiated on fisheries subsidies under the WTO. In this context, the chapter highlights the need for fisheries subsidies in Section 2, focusing on economic, social and environmental dimensions. The current status of global fisheries subsidies and how they are distributed between developed and developing countries, small-scale and large-scale fishers and different types of subsidies is discussed in Section 3. Section 4 deliberates on the AFS, followed by discussions on the current provisions being negotiated under Fish 2.0 in Section 5. While highlighting the sticking points in the additional provisions of fisheries subsidies for MC14, the section also highlights the specific proposals of developing countries. In continuation, Section 6 discusses India's position and proposal to the WTO on fisheries subsidies provisions. Section 7, while concluding, highlights the way forward for MC14.

10.2. Need for Fisheries Subsidies

The global discourse on fisheries subsidies spans three key dimensions—economic, social, and environmental. Economically, subsidies are often justified as mechanisms to alleviate the financial pressures faced by fishers by lowering costs, providing affordable raw materials and equipment, and fostering technological progress and capacity building. Globally, around 120 million people are engaged in the fisheries sector, directly or indirectly,

and depend on it for livelihoods (FAO, 2020). Direct employment in the sector accounts for 63.2 million people in the primary sector in 2022, of which 25.4 per cent was contributed by marine fisheries (FAO, 2025a). Small-scale fisheries (SSF) dominate the sector, contributing 40 per cent of global catch while supporting 90 per cent of the capture fisheries workforce (Arthur *et al.*, 2022; FAO, Duke University and WorldFish, 2024). Fisheries subsidies also enhance trade competitiveness, as exporters from subsidising countries gain a comparative advantage through reduced production costs and lower market prices. The importance of subsidies for developing countries is much greater, as they account for nearly 90 per cent of the global fisher workforce (FAO, 2024). Beyond sustaining small-scale fishers' livelihoods, fisheries are essential for ensuring food and nutrition security.

The global aquatic animal food consumption has increased from 9.1 kg per capita in 1961 to 20.7 kg per capita in 2022, which is further estimated to increase by 10 per cent by 2032 (FAO, 2024). Being more affordable than other sources of protein, aquatic animal food constituted 6 per cent of all protein and 15 per cent of animal protein in 2021. While providing vitamins A, D, and B, as well as key minerals such as calcium, phosphorus, zinc, iron, and iodine, fisheries play a significant role in nutrition security. However, the specific nutrient profile is influenced by biological factors such as species and habitat, as well as post-harvest practices, including processing and preparation methods (Bennett *et al.*, 2018). Including fish in diets facilitates the absorption of nutrients from vegetable-based foods, thereby improving overall dietary quality (Belton and Thilsted, 2014). This is particularly relevant for Small Island Developing States (SIDS) and highly-populated, low-income countries where fish is the primary animal-source food and serves as a cornerstone of nutritional well-being (Lem *et al.*, 2023).

Fish has been viewed as one of the largest traded commodities (FAO, 2021; Elahi *et al.*, 2024), accounting for US\$ 180.8 billion of global exports in 2023 (FAO, 2025b). This contributes to more than 10 per cent of global agricultural exports (UNCTAD, 2017; FAO, 2021). The relevance of the fish trade is higher for SIDS and LDCs, where the fish exports are reflected prominently in offsetting trade deficits and debt challenges through foreign exchange earnings. According to UNCTAD estimates, fish exports account

for nearly 3 per cent of GDP in SIDS, and they are highly dependent on fisheries given their limited access to other industries. The fish trade has emerged as a vital pillar of economic growth and sustainability for many developing nations. The developing countries have been contributing to 54 per cent of fish exports and 32 per cent of fish imports in 2019 (FAO, 2021). However, Aquaculture is now increasingly contributing to the overall fish catch. As per SOFIA (FAO, 2024), Aquaculture contributed more than 57 per cent of the total aquatic animal production used for direct human consumption. Nonetheless, there is a need for fisheries subsidies, especially for developing countries, including SIDS and LDCs, aimed at supporting low-income, resource-poor fishermen engaged in capture fishing for livelihood support, as well as to provide flexibility to all developing countries to develop their fisheries sector.

Nevertheless, rising global demand, unsustainable fishing practices and unregulated subsidies have led to excessive production, consumption and trade of fish, which affects marine biodiversity by depleting fish stocks. This further disrupts the marine ecosystem, threatens food security, and accelerates climate-related vulnerabilities, raising socio-economic concerns, especially for the coastal communities. Though there are no reliable estimates for IUU fishing at the global level, global estimates for overfished stocks are available. Food and Agriculture Organization (FAO, 2024) estimates that the share of fisheries stock within the biologically sustainable levels has declined from 90 per cent in 1974 to 62.3 per cent in 2021, simultaneously raising the share of unsustainable fisheries stock to 37.7 per cent in 2021. The increase in the unsustainable fisheries stock leads to disruption in food chains, a rise in endangered and threatened species, while destroying the marine habitat with an imbalanced marine ecosystem. Moreover, species-based estimate highlights that within the threatened species category, 13 per cent are critically endangered, 18 per cent are endangered, and the rest are vulnerable in 2015 (Mohanty and Gaur, 2017). This necessitates the regulation of fisheries subsidies that contribute to overfishing and the conservation of marine biodiversity. Thus, it is essential for the World Trade Organization (WTO) Agreement on Fisheries Subsidies to strike a balance between the developmental needs of fishermen, especially SSF, and fisheries conservation.

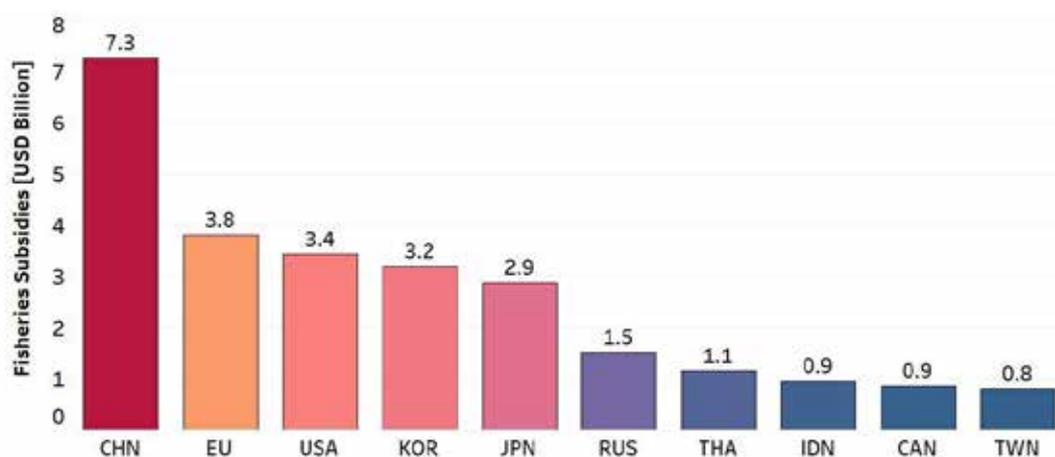
10.3. Status of Fisheries Subsidies

The magnitude of global fisheries subsidies reported in the literature varies widely, primarily due to divergent conceptual definitions of subsidies and differences in methodological approaches across countries and studies (RIS, 2021). An early estimate put global fisheries subsidies at around US\$ 54 billion (FAO, 1992). In contrast, the Friends of Fish group within the WTO estimated annual subsidies to fall within the range of US\$ 14–20.5 billion. Cisneros-Montemayor *et al.*, (2016) reported the figure to be US\$ 38 billion in 2014, which was later revised to approximately US\$ 35 billion in 2020 (Cisneros-Montemayor *et al.*, 2020). Sumaila *et al.* (2019) also estimated global fisheries subsidies at US\$ 35.4 billion in 2018. Out of the total subsidies, 63 per cent are characterised as capacity-enhancing, and nearly 30 per cent are beneficial subsidies. This composition has been similar to that of 2009 (Sumaila *et al.*, 2013, Cisneros-Montemayor *et al.*, 2016). While quantifying fisheries subsidies, it has been found that 22 per cent of the total estimated fisheries subsidies are fuel subsidies, the largest subsidy type (Sumaila *et al.*, 2019).

The distribution of fisheries subsidies among nations, however, is quite interesting. Figure 10.1 highlights the top 10 subsidising nations in 2018. China leads the board with US\$ 7 billion of fisheries subsidies, accounting for 20.9 per cent, followed by the European Union (11 per cent), the United States (9.4 per cent), South Korea (9 per cent) and Japan (8 per cent). These five countries together constitute 58.4 per cent of total fisheries subsidies in 2018. Schuhbauer *et al.* (2017) estimate that 65 per cent of global fisheries subsidies are provided by countries such as China, the EU and Japan. The remaining five countries, including Russia, Thailand, Indonesia, Canada and Taiwan, collectively account for 14.6 per cent, and together the top 10 countries constitute 73 per cent of total fisheries subsidies in 2018. The majority of subsidies are provided by developed countries, amounting to 35 per cent, while the shares for emerging countries excluding China are 29.7 per cent, other developing countries 10.2 per cent and LDCs 3.9 per cent (RIS, 2021). The proportion of subsidies provided by developed nations has been dominant since 2003 and 2009.

However, it has been highlighted that the reduction in fisheries subsidies from the developed world was greater for beneficial subsidies than for capacity-enhancing subsidies (RIS, 2021). However,

Figure 10.1: Top 10 Subsidising Nations in 2018



Source: Authors' based on Sumaila *et al.*, (2019).

according to the same report, for emerging countries, excluding China, the growth in beneficial subsidies has been greater than that in capacity-enhancing subsidies. Other estimates at the regional level show that the Asia-Pacific Economic Cooperation (APEC) member economies have reported a collective fisheries subsidy of US\$ 12.6 billion (Cox and Schmidt, 2002; Coopers, 2000). In contrast, fisheries subsidies for these 41 countries accounted for nearly US\$ 10 million in 2021 (OECD, 2025). Recognising their heavy reliance on fisheries and their relatively low levels of development, marked by limited technology, weak sectoral management and a lack of vessel capacity (Kumar *et al.*, 2020) compared with developed nations, many developing countries, including India, are seeking adequate waivers that advocate the principle of Common But Differentiated Responsibilities (CBDR) under the disciplines for OCOF in Fish 2.0 negotiations.

Small-scale fisheries, including artisanal and subsistence fisheries, though poorly funded and marginalised (Smith, 1979; Kura *et al.*, 2004; World Bank, 2004), play a critical role in national and coastal economies in both developed and developing countries (Allison and Ellis, 2001; Berkes *et al.*, 2001; Mills *et al.*, 2011). SSF accounts for 90 per cent of capture fishers and 40 per cent of global capture fisheries (FAO, Duke University and WorldFish, 2024). Yet their contribution to national fisheries has been underestimated (Teh and Pauly, 2008). Moreover, only 15.6 per cent of global fisheries subsidies in 2009 were directed toward SSF (Schuhbauer *et al.*, 2017), which rose to US\$ 6.6 billion, amounting to 19 per cent, by 2018 (Schuhbauer and Sumaila, 2016; Schuhbauer *et al.*, 2020). Critics (Pauly, 1997; Chuenpagdee, 2011) argue that most subsidies disproportionately benefit

large-scale fishing enterprises. It has been estimated that, globally, large-scale fishers receive four times as much subsidy benefit per active fisher as small-scale fishers (Schuhbauer *et al.*, 2020). Within the fuel subsidies, only 7 per cent is provided to SSF and the rest is directed towards large fishing fleets. This intensifies pressure on fish stocks and undermines the support that SSF requires to sustain livelihoods and economic stability. Facts like these have raised the need to regulate fisheries subsidies provisions at the global platform, keeping in view the development priorities of developing countries, including SIDS and LDCs.

10.4. The Agreement on Fisheries Subsidies (AFS)

The Agreement on Fisheries Subsidies (AFS) marks an important milestone in WTO law, being the first agreement since 1995 to establish binding disciplines on subsidies (Becerra Sanchez, 2022). The AFS focuses on two key pillars: first, relating subsidies provided to Illegal, Unreported, and Unregulated (IUU) fishing, and the second focusing on subsidies provided to fish stocks found to be overfished. Negotiations on the third pillar of Overcapacity and Overfishing (OCOF) are still ongoing under the Fish 2.0 Agreement. Phase 1 Agreement (AFS), covering the first two pillars, was adopted at the WTO Ministerial Conference in 2022 (WTO, 2022). Following ratification by more than 2/3rd of WTO members, the AFS comes into force on September 15, 2025. As of now, 116 members have submitted their instruments of acceptance, including major fishing and trading nations such as the European Union, the United States, China,

Korea and Japan. Several developing countries, including India and Indonesia, are still in the process of completing their ratification process. Overall, the AFS aims to limit harmful subsidies while maintaining a balance between promoting sustainable fishing practices and developmental priorities.

As discussed in the previous sections, IUU fishing poses a significant threat to marine ecosystems, weakening conservation measures adopted by coastal states and Regional Fisheries Management Organizations or Arrangements (RFMOs/As). While adopting the definition of IUU fishing from FAO's International Plan of Action to Prevent, Deter and Eliminate IUU Fishing (IPOA-IUU), the AFS addresses it by prohibiting subsidies to the vessels and operators that are involved in IUU fishing (Lennan and Switzer, 2023). Under Article 8.1, Members are required to notify detailed information on fisheries subsidies as part of their regular notifications under the Agreement on Subsidies and Countervailing Measures (SCM Agreement), including information on fishing activities to the extent possible, stock status, fleet capacity, vessels receiving subsidies, and catch data by species. Article 8.2 mandates annual notification of vessels and operators identified as engaging in IUU fishing, while Article 8.3 and 8.4 require Members to inform the WTO Committee of measures taken to implement the Agreement and to describe their national fisheries regimes. These provisions aim to enhance transparency and compliance.

The second pillar of the AFS addresses subsidies granted to fishing activities involving overfished stocks. Such subsidies promote stock depletion and affect long-term sustainability. Under the Agreement, members are restricted from providing subsidies for fishing or fishing-related activities meant for overfished stocks. However, it may be exempted if the countries demonstrate measures to rebuild the stock to a biologically sustainable level. The overfished stock discipline complements the IUU provisions by focusing on the situations where fishing activities are legally permitted but cause ecological harm. However, mainly due to inadequate scientific data, limited stock assessment capacity, and insufficient monitoring systems, implementing these measures poses significant challenges for developing countries (Orofino *et al.*, 2023; Seminara *et al.*, 2024). In response to this, the AFS includes S&DT provisions, granting developing members additional time to strengthen their

fisheries management systems. The effectiveness of this component ultimately depends on members' capacity to generate reliable stock assessments and systematically integrate sustainability objectives into subsidy policies. Tropical countries like India, where there is predominance of multiple species, are faced with challenges of fish stock assessment species-wise and consequently to regulate subsidies.

S&DT constitutes a core element of the AFS, addressing the capacity and livelihood challenges those developing countries and LDCs face in implementing fisheries regulations. Under the AFS, participating nations are provided with a two-year transition period from the date the agreement enters into force. During the transition period, the subsidies allocated within and up to the Exclusive Economic Zones (EEZs) of nations are exempted from Article 3.1 (IUU fishing), Article 4.1 (Overfished stocks), and Article 10 (Dispute Settlement) (WTO, 2022). Interestingly, this is applicable to both developing countries and LDCs, without any differentiation. However, under the provision mentioned in Article 6, Members should exercise "due restraint" in raising matters involving LDCs and provide country-specific solutions based on their needs (WTO, 2022; Hoekman *et al.*, 2023). This transition, continuing until September 15, 2027, aims to help developing nations by strengthening institutional capacity, improving fisheries management systems, and revising domestic policies, while ensuring the interests of small-scale and artisanal fishers.

To enhance accountability and support peer review among WTO Members, transparency through comprehensive notification obligations is a fundamental feature of the AFS. Article 8 establishes specific obligations for reporting on subsidy programs, fishing activities and, to the extent possible, stock assessments, fleet capacity, and vessel-specific data (Lennan and Switzer, 2023). Also, the members are required to notify the lists of vessels and operators involved in IUU fishing, provide details of national legal and administrative structures, and share information regarding RFMO/As to which they are parties. Hence, these notification obligations are designed to ensure the efficient enforcement of subsidy bans and foster collaborative efforts among the members. But compliance with these obligations comes with certain challenges, mainly for developing countries that have limited administrative and technological capacity. Therefore, the success of AFS will not only

depend on legal disciplines but also on members' ability to fulfil these transparency obligations. And to make this Agreement genuinely meaningful, it is important to enhance data collection methodologies, refine reporting systems, and promote institutional coordination among the members. AFS also provides, in Article 7, targeted technical assistance and capacity building assistance to developing country Members, including LDC Members, for the purpose of implementation of the disciplines under the Agreement. A voluntary WTO Fish Fund, as envisaged, has also been established. 17 members have contributed to the Fish Fund around US\$ 18 million.

10.5. Current Negotiations: Fish 2.0

The WTO fisheries subsidies negotiations have yet to cross the finish line, as the conclusion of the third pillar of subsidies contributing to Overcapacity and Overfishing (OCOF) has not found a consensus.

The text issued by the Chair of the Negotiating Group in November 2024 (WTO, 2024) proposes a 'Hybrid' approach for the prohibition of subsidies contributing to OCOF. A list of presumed prohibited subsidies encompasses subsidies for the construction and modernisation of vessels; subsidies for the acquisition of machinery and equipment for vessels; subsidies for fuel, personnel, social charges, or insurance costs; income support (except for subsistence purposes during seasonal closures); price support; subsidies for at-sea assistance; and subsidies that cover operating losses of vessels. Nonetheless, this restriction may be irrelevant if the subsidising member can demonstrate the implementation of steps to sustain the fish stocks in the relevant fishery at a biologically sustainable level.

To demonstrate the sustainability, the Members can be covered under two tiers under Article A.1.1 (a) or (b). Tier 1 will generally cover all developed country members and China, with an obligation to demonstrate the sustainability of fish stocks along with an explanation of how their measures ensure sustainability of fish stocks at a biologically sustainable level, with an additional obligation to notify any new subsidy programme for fisheries within six months. Tier 2 will include all developing countries, if they are not among the top 10 subsidising members or are not engaged in far-off distant water fishing. Such developing country members will be required to demonstrate the sustainability of their fish stocks through their regular subsidy notification. This

obligation to demonstrate sustainability will not apply to developing countries until the time they are covered by the S&DT exceptions.

In the draft text W/285 of November 2024 (WTO, 2024), there are four elements of S&DT. The first one is the S&DT for LDCs till these countries remain LDC. The second S&DT is applicable to those developing countries that contribute less than 0.8 per cent of global marine capture, in volume, based on the latest FAO data. Close to 40 developing countries, largely from Africa, the Caribbean and Pacific (ACP) will benefit from this S&DT exception. The third S&DT is that developing countries will get flexibility to grant subsidies for the artisanal and small-scale fishing that are primarily low income, resource poor or livelihood in nature, and such flexibility will not have a geographic limitation. This is a significant flexibility as most of India's fishing is conducted in the EEZ by fishing vessels of less than 24 meters in length that can be considered as artisanal and small-scale. Most Indian states give fuel tax exemptions as subsidies for diesel or other fuel used in fishing vessels. Such subsidies will continue to be permissible for small-scale and artisanal fishing.

The fourth S&DT element of significant interest to India and other developing countries is for development priorities. Those developing countries that have a share of more than 0.8 per cent in global marine catch will require policy space to develop their fisheries sector and infrastructure. Besides India, this set of countries will include Indonesia, Peru, Vietnam, Chile, Philippines, Mexico, Morocco, Malaysia, Thailand, Oman, Myanmar, Ecuador, Mauritania, and Argentina. The text provides a transition period to give flexibility to continue to grant otherwise prohibited subsidies. This transition period will be decided in the conclusion of negotiations and may range between 10 and 25 years, depending upon the extent to which other members accede to India and other developing countries' demands. At some point of the negotiations, members were willing to agree to 10 years transition period as S&DT. This S&DT flexibility should give India sufficient time to embark on the development of its fisheries sector, including infusing more allocation in the Pradhan Mantri Matsya Sampada Yojana (PMMSY) scheme to develop our distant water fishing capabilities, advanced fishing vessels with improved refrigeration equipment. The real challenge is how many resources we can allocate to the fisheries sector in the coming years.

Coalition-building has been a hallmark of every successful WTO negotiation. Developing countries have sought to build a coalition in the fisheries subsidies negotiations. Throughout these negotiations, the ACP group, the LDCs group, and the Africa group have put forth proposals to develop disciplines on the prohibition of subsidies, as well as on the demand for appropriate and effective S&DT. The ACP group was at the forefront in demanding the prohibition of subsidies for large-scale industrial fishing. India had joined forces with the ACP group for a long duration of the negotiations. While seeking Common but Differentiated Responsibilities (CBDR) in the negotiations, India was in the forefront and was supported by the ACP group. India had proposed an outright prohibition of subsidies for 25 years for countries engaged in Distant Water Fishing (DWF) (WTO, 2021).

While many developing countries supported India's approach of CBDR, the manner in which such prohibition should apply did not garner much support from many developing countries. On the issue of S&DT, while all developing countries were united in demanding effective S&DT, in the endgame, developing countries got divided over various elements of S&DT that were of interest to them. For example, a large chunk of developing countries fell under the De Minimis, i.e., below 0.8 per cent share in global marine catch. Thus, these countries were lukewarm to the demand of other developing countries, above the De Minimis, for a longer transition period. Thus, keeping the coalition of developing countries has posed several challenges in these negotiations.

A big question before the negotiators was to protect the sovereignty of a coastal state over its EEZ as enshrined under the United Nations Convention on the Law of the Sea (UNCLOS) 1982. India had raised this issue consistently during the first phase of negotiations when the Agreement on Fisheries Subsidies (AFS) was concluded in June 2022. To a great extent, the AFS preserves the sovereign right of a Coastal state, and the new fisheries subsidies agreement will not prejudice the rights and obligations of a coastal state within its Exclusive Economic Zone (EEZ). Very recently, Indonesia submitted a proposal before the NGR (WTO, 2025a), highlighting the incompatibility of the WTO fisheries subsidies vis-à-vis "The Constitution of the Ocean" or the UNCLOS 1982. The submission highlights various UNCLOS provisions, calling on sovereign rights of coastal states to explore, exploit and manage the marine resources within their EEZ.

10.6. India's Position

India's fisheries sector supports nearly 3 crore people, with about 50 lakhs engaged in marine fishing (Government of India, 2022). Despite the vast EEZ of 2.02 million sq. km and a vast coastline of over 11,000 km, the sector remains predominantly small-scale and unorganised, with 95 per cent of fishers operating at subsistence levels (Government of India, 2025). Of nearly 2 lakh fishing vessels, more than 60,000 are mechanised, while most boats remain motorised (Sathianandan, 2012) and confined to nearshore waters within 30–40 nautical miles. Government support has focused on infrastructure such as harbours, cold storage, and value chains rather than direct subsidies, alongside sustainability measures like the annual 61-day fishing ban and stock assessments showing over 91 per cent of fish populations remain healthy. While comparing subsidies provided by India and the top subsidisers, it has been noted that subsidies provided by India are merely US\$ 35 per fisher (with catch volumes 480 kg), including support during fishing bans, as compared to US\$ 76,000 per fisher (with catch volumes 237,130 kg) in a year for some of the developed countries (WTO, 2024). Moreover, under its PMMSY and Pradhan Mantri Matsya Kisan Samridhi Sah-Yojana (PM-MKSSY), India aims at developing deep-sea fishing, fisheries infrastructure and value chains through fleet upgradation, vessel modernisation, etc., for which it requires the necessary policy space to continue.

Given the country statistics, India has always emphasised that the global rules must balance sustainability with equity and recognise historical responsibility while protecting artisanal fishers from rigid definitions that could misclassify them as industrial fishers. India, with Indonesia, opposed the 'Hybrid' approach of List plus Sustainability, which did find support from a large number of WTO members, at the Abu Dhabi Ministerial held in 2024. India, thereafter, did not agree to conclude the negotiations in the December 2024 General Council meeting due to imbalances in the draft text produced by the Chair of the NGR. These imbalances were due to weak sustainability-based disciplines being projected as a compromise 'hybrid' approach, whereas India was seeking a stronger discipline for those countries that were the traditional big subsidisers and were responsible for the overexploitation of marine resources. The sustainability-based flexibility has been opposed

by Members like India, as this will continue ‘business as usual’ for the traditional big subsidisers who will be able to demonstrate sustainability with their advanced fisheries conservation and management measures.

On the issue of obligation arising based on the aggregate of subsidies, India had expressed strong reservations and had submitted a paper (WTO, 2024) highlighting the inconsistency of the aggregate level of subsidies. India has proposed that the intensity of fisheries subsidies per fisherman will be a more appropriate basis for determining the obligation to demonstrate the sustainability of fishery resources. Many countries with large fishing populations, especially developing countries, LDCs and SIDS, provide subsidies to support their artisanal and subsistence fishers, which are crucial for maintaining social and economic stability. An aggregate approach might obscure the importance of these subsidies in promoting local sustainability, as these economies are not characterised by the large-scale commercial operations seen in wealthier nations.

Additionally, managing long coastlines and large EEZs requires robust conservation and management frameworks to preserve marine habitats and promote sustainable practices. Subsidies to resource-poor traditional fishing communities play a crucial role in offsetting the expenses associated with these management activities and contribute significantly towards the sustainability objective. In its submission, India also stated that:

“The global commitment to achieving the Sustainable Development Goals (SDGs), particularly Goal 14 (Life Below Water), calls for the reduction of harmful fisheries subsidies while ensuring that subsidies provided to promote sustainable fishing practices and the livelihoods of vulnerable fishers are not undermined. SDG 14.9 (Support Small Scale Fishers) calls for providing access for small scale artisanal fishers to marine resources and markets. Adopting a per capita approach to subsidy obligations would better align with the UN SDGs by supporting countries in their efforts to balance environmental sustainability along with the social and economic development of small-scale fishers. In line with SDG 14, the principle of Common But Differentiated Responsibilities-Respective Capabilities (CBDR-RC) recognizes that in order to sustainably manage the resources, historical polluters having higher resource consumption should take the lead in reducing pollution.”

In the Fisheries Subsidies discipline, India, over time, has been raising the issue of non-specific fuel subsidies. Based on India's proposal, non-specific fuel subsidies were proposed to be part of disciplines under Article 1.2 of the Scope in previous negotiating texts. Under the provisions of the WTO Subsidies Agreement (ASCM), a subsidy is considered specific when it is targeted towards certain industries, enterprises or regions. Non-specific subsidies are not actionable under the ASCM. During negotiations, most members held the view that only specific subsidies should be covered by the new fisheries subsidies discipline. However, India had highlighted that a different approach will be required to deal with Fuel subsidies, as these are among the most harmful subsidies. In the case of distant water fishing or industrial fishing, the fishing operations are not viable unless supported by large doses of subsidies.

Global fisheries subsidies were estimated at around UD\$35 Billion. However, based on 2019 notifications, the subsidies notified to the WTO were around US\$4.2 billion (Centre for WTO Studies, 2019). Out of these, the Fuel subsidies notified to the WTO were only US\$122 million. This implies that many fuel subsidies are not being reported to the WTO. This can be most likely due to these fuel subsidies being non-specific by their design or the manner in which various Governments operate such horizontal fuel tax exemption schemes, which also benefit the fisheries sector. India has reiterated that non-specific fuel subsidies harm fish resources as much as any specific fuel subsidy. For this agreement, which is aimed at ensuring fisheries resources, there should be no distinction between specific and non-specific fuel subsidies.

In addition, the S&DT elements in the negotiating text are of significance to India, as has been its consistent stand that S&DT must be appropriate and effective, keeping in view the livelihood and food security interests of our fishermen. India's position calls for a development-oriented outcome that safeguards livelihoods, strengthens domestic capacity, and ensures that subsidy disciplines reflect diverse national contexts while advancing sustainability goals.

10.7. What for MC14?

Many member countries, including India, are of the view that the present negotiating text of Fish 2.0 is moving away from the Doha Mandate with weak sustainability-based principles like the “Hybrid

Approach". India also opposed the dilution of the strong disciplines on subsidies for distant water fishing, as it was modified to 'to the extent possible' to accommodate the interests of a few countries. Irschlinger (2025) also notes that current Text fails to maintain a balance for small-scale and large-scale fisheries; sustainable management and economic development of the fish sector. Moreover, given the United States latest proposal (WTO, 2025c) to tighten the S&DT provisions, there is a high probability that the developing countries and LDCs would have to fight for greater development space under the S&DT provisions in Fish 2.0.

A recent joint submission, by countries including Australia, Fiji, Iceland, New Zealand, Norway, Papua New Guinea, Samoa, Seychelles, Solomon Islands, Tonga, and Vanuatu, has proposed a Draft Ministerial Decision on Fisheries Subsidies (WTO, 2025b). The joint submission states that:

"Building on the progress made since the Twelfth and Thirteenth WTO Ministerial Conferences, and having regard to Article 12 of the Agreement on Fisheries Subsidies, the Negotiating Group on Rules shall continue negotiations on additional disciplines to prohibit certain forms of fisheries subsidies that contribute to overcapacity and overfishing, recognizing that appropriate and effective special and differential treatment for developing country Members and LDC Members should be an integral part of these negotiations. Members agree to continue to engage constructively in the negotiations, with a view to making recommendations to the Fifteenth WTO Ministerial Conference for effective disciplines that would achieve the comprehensive agreement on fisheries subsidies referred to in Article 12 of the Agreement on Fisheries Subsidies."

Therefore, according to these countries, given the diverse views of the WTO Members, it seems hard to conclude the negotiations on the Additional provisions on Fisheries Subsidies by March 2026 (MC14). It is also advised to move ahead with the negotiations, aiming for the 15th WTO Ministerial Conference for its conclusion. However, to retain the sustainability component of fisheries while not losing on equity, India needs to stick to its principles and may submit its instrument of ratification for AFS at the MC14 as a step towards sustainable fisheries.

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Session I: Agreement on Fisheries Subsidies

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Chaired:

- **Amb J. S. Deepak**, Former Representative of India to the WTO, Geneva

Presentation:

- **Professor Mukesh Bhatnagar**, Former Professor, Centre for WTO Studies

Discussants:

- **Ms. Neetu Kumari Prasad**, Joint Secretary, Department of Fisheries
- **Ms. Tanu Singh**, First Secretary, Permanent Mission of India, Geneva (Online)
- **Ms. Vahini Naidu**, Programme Coordinator, Trade for Development Programme (TDP) of the South Centre (Online)
- **Mr. Sebastian Mathew**, Independent Advisor, Small-scale Fisheries
- **Ms. Pallavi Arora**, Legal Consultant, Centre for WTO Studies



Fisheries negotiations must balance sustainability with development. India needs policy space before accepting strict subsidy disciplines. S&DT, longer transition periods, and protection for SSF are essential, and developing countries must build coalitions to ensure equity in future WTO outcomes.

Amb. J. S. Deepak, *Former Representative of India to the WTO, Geneva*



Historical overfishing by industrial fleets must be acknowledged, and sustainability rules should not impose disproportionate burdens on developing countries. Institutional capacity-building are necessary to protect livelihoods while strengthening governance and conservation.

Prof. Mukesh Bhatnagar, *Former Professor, Centre for WTO Studies*



India's fisheries sector is livelihood-driven, with millions dependent on small-scale operations and limited offshore capacity. Subsidy narratives must reflect reality by restricting subsidies for distant water fishing. We need a full EEZ carve-out, longer transition periods, and flexibility to define SSF while continuing sustainability efforts.

Ms. Neetu Kumari Prasad, *Joint Secretary, Department of Fisheries*



India has resisted imbalanced negotiating texts and pushed for stronger S&DT and EEZ protections. Disciplines must target DWF subsidies, not small developing economies. Coalition-building with other developing members remains crucial to reshape the narrative and ensure fair, development-oriented outcomes.

Ms. Tanu Singh, *First Secretary, Permanent Mission of India, WTO*



Sustainability goals must align with equity and institutional capacity in developing countries. One-size-fits-all disciplines will not work. We need technical support, credible data systems, and policy flexibility so conservation objectives do not undermine food security, livelihoods, and national development priorities

Ms. Vahini Naidu, *Programme Coordinator, Trade for Development Programme, South Centre*



We need to move from a defensive to proactive strategy-strengthen governance, conservation, and value chains rather than harmful subsidies. Sustainability risks exist even in SSF, so India must invest in monitoring, legal preparedness, and management systems while using WTO transition time to build long-term resilience.

Mr. Sebastian Mathew, *Independent Advisor, Small-scale Fisheries*



Evolving text creates stricter demonstration, notification, and peer-review requirements that may strain India's institutional capacity and policy autonomy. Sustainability carve-outs, transition periods, and S&DT need careful legal scrutiny to ensure development realities are reflected and domestic policy space remains protected.

Ms. Pallavi Arora, *Legal Consultant, Centre for WTO Studies*





WTO Mandate and Investment Facilitation for Development: India's Dilemma and Strategic Pathways at MC14

Anwar Hussain Shaik, Pankaj Vashisht and Vaasu Aggarwal

11.1. Introduction

International trade and investment are two important drivers of economic growth and structural transformation. Trade expands market access, enables better resource allocation and supports productivity growth while investment facilitates capital formation, technology up-gradation and integration in Global Value Chains (GVC). The combined influence of trade and investment determines how countries industrialise, diversify production structures, and build resilience within an increasingly interdependent economic system. Nevertheless, despite being equally vital to development, the governance architecture of trade and investment has evolved along markedly different trajectories. On one hand, trade has been progressively multilateralised under the aegis of World Trade Organization (WTO), resulting in a comprehensive, rules-based multilateral framework covering goods, services and Intellectual Property Rights (IPR). Investment, on the other hand, has not acquired a comparable universal multilateral framework. Instead it has continued to be governed by domestic legal frameworks and an intricate web of bilateral and regional International Investment Agreements (IIAs). This divergence is not accidental; rather, it reflects enduring political and developmental sensitivities surrounding the regulations of foreign investment. Trade transactions are typically completed

at the border, after which the relationship between the product and its country, largely cease. In contrast, investment establishes a long-term relationship between home and host countries through ownership, control, and profit flows, directly engaging domestic regulatory systems. Consequently, rules governing investment carry far deeper implications for policy autonomy and development strategies. These sensitivities have historically made countries wary of binding multilateral disciplines.

There has been several efforts to multilateralise investment within the WTO framework. The first notable attempt was made at the 1996 Singapore Ministerial Conference, where investment was introduced as one of the "Singapore Issues" (Khor, 2007). Developing countries strongly resisted its inclusion, citing concerns over erosion of policy space, constraints on regulatory sovereignty, and asymmetrical bargaining power. This resistance ultimately led to the removal of investment from the WTO's multilateral negotiating agenda under the 2004 July Package, reaffirming that any expansion of the WTO mandate requires explicit consensus of the entire WTO membership.

Notwithstanding this exclusion, investment-related disciplines have resurfaced within the WTO framework through plurilateral initiatives. The Investment Facilitation for Development (IFD) Agreement, finalised in late 2023, represents the most

recent attempt to anchor investment within the WTO framework. Proponents of IFD have characterised it as a pragmatic and development-oriented initiative that deliberately avoids contentious issues such as market access, investment protection standards, and Investor-State Dispute Settlement (ISDS) (WTO, 2023). Instead, they argue that it focuses on transparency, streamlining administrative procedures, improving regulatory predictability, and promoting the use of digital governance tools across the investment life cycle. As per the supporters these procedural disciplines would enhance the investment climate without constraining sovereign choices regarding entry conditions or substantive protection commitments. The proponents of IFD have formally proposed its incorporation into the WTO treaty framework under Annex 4 of the Marrakesh Agreement, which governs Plurilateral Trade Agreements (WTO, 2024).

However, several developing countries, including India, have opposed the agreement on both procedural and substantive grounds, arguing that procedural disciplines could be as consequential as substantive obligations because they convert domestic administrative practices into binding international commitments. India's opposition, particularly, is rooted in the experience of the 1996 Singapore Ministerial Conference, where investment was explicitly sidelined from the multilateral agenda due to a lack of consensus. From India's perspective, the IFD initiative reintroduces investment through a procedural backdoor, raising concerns about circumvention of established mandate and the erosion of consensus-based decision-making within the WTO. India along with South Africa, has questioned the procedural basis for incorporating the agreement into the WTO treaty structure, particularly under Annex 4 of the Marrakesh Agreement, which houses Plurilateral Trade Agreements. Under Article X:9 of Marrakesh Agreement, the addition of any new agreement to Annex 4 requires the explicit consensus of the entire membership, a provision India invoked effectively to block its incorporation in last Ministerial Conference (MC 13) at Abu Dhabi. India has further maintained that the IFD does not qualify as a trade agreement, as it regulates domestic administrative conduct rather than cross-border trade in goods or services. By resisting its formal inclusion, India, thus far, has asserted that the coalition of willing members cannot override the negative mandate on multilateral investment negotiations, established under the 2004 July Package.

As the WTO approaches its Fourteenth Ministerial Conference (MC14) in March 2026, the legal and institutional status of the IFD Agreement is set to resurface as a contentious issue. For India, the challenge at MC14 extends beyond the technical merits of investment facilitation. It raises broader questions regarding the preservation of development policy space, the integrity of multilateral mandates, and the balance between multilateralism and plurilateralism within the WTO system. While a significant proportion of the WTO membership now supports the IFD, India so far has continued to prioritise unresolved Doha Development Agenda issues, including public stockholding for food security and agricultural subsidies, over initiatives that lack an agreed mandate. The strategic dilemma confronting India is whether to maintain a principled holdout to safeguard institutional norms and policy space, or to recalibrate its position to avoid isolation in an increasingly fragmented and plurilateral global trade order.

Against this backdrop, this chapter situates the IFD within the broader debate on plurilateralism at the WTO, traces its evolution, and assesses its implications for development and for India's strategic interests. It argues that while investment facilitation appears technical and benign, its disciplines internationalise domestic regulatory practices, generate investor expectations, and alter the institutional balance within the WTO. For India, the issue is not simply whether to join or remain outside the IFD, but how to safeguard development policy space, uphold multilateral principles, and navigate emerging shifts in global trade governance. The paper contends that India's strategic interest at MC14 lies in continuing to oppose the incorporation of the IFD Agreement under Annex 4.

The remainder of the chapter is structured as follows: Section 2 outlines the technical contours of investment governance and clarifies the distinction between trade and investment disciplines; Section 3 traces the evolution of investment facilitation discussions within the WTO, from the Singapore Issues to the Joint Statement Initiative; Section 4 examines the textual architecture of the IFD Agreement and its core obligations; Section 5 evaluates the claimed developmental benefits advanced by its proponents; and Section 6 presents a detailed critique of the agreement from mandate, legal, and systemic perspectives, before outlining India's strategic options at MC14.

11.2. Contours of Investment: Promotion, Protection and Facilitation

Understanding the IFD Agreement requires conceptual clarity regarding the broader contours of investment governance. Investment regulation may be analytically divided into three interrelated but distinct pillars: promotion, protection, and facilitation. Promotion refers to measures designed to attract foreign investment through marketing strategies, fiscal incentives, sector-specific targeting, and location branding. These measures are competitive and country-specific in nature, often embedded within national industrial policy frameworks and tailored to domestic developmental objectives. Protection, on the other hand, covers the sovereign assurances extended to investors, usually through bilateral or regional investment treaties. These commitments typically include guarantees against direct and indirect expropriation, standards of fair and equitable treatment, most-favoured-nation (MFN) clauses, national treatment provisions, and, in many cases, ISDS mechanisms. Protection disciplines are legally binding and enforceable under international law, and they directly constrain the regulatory autonomy of host states by subjecting state conduct to treaty-based adjudication.

Facilitation occupies a distinct but increasingly significant space within this governance architecture. It relates to the administrative and procedural framework that governs how investors establish, operate, expand, and exit investments. Unlike protection, facilitation does not traditionally address substantive standards of treatment; instead, it focuses on procedural transparency and administrative efficiency. Though, there is no universally accepted definition of investment facilitation, United Nations Conference of Trade and Development (UNCTAD) defines it as policies and actions aimed at making it easier for investors to establish and expand their investments through transparent and predictable rules, efficient administrative procedures, effective dispute prevention and resolution mechanisms, and constructive stakeholder engagement. In operational terms, facilitation encompasses licensing and authorisation procedures, single-window systems, information portals, statutory timelines, publication requirements, digital processes, fee structures, regulatory coherence, and inter-agency coordination.

Although facilitation appears technical and administratively neutral, it has direct implications

for domestic regulatory authority. Authorisation procedures, review mechanisms, timelines, and publication obligations determine how governments screen, sequence, and condition foreign investment in sensitive sectors. When such procedures are embedded within an international agreement, they cease to be purely domestic administrative choices and instead become treaty obligations enforceable through state-to-state dispute settlement. In this sense, facilitation disciplines can shape regulatory behaviour and investor expectations in ways that approximate protection disciplines, even in the absence of explicit market access commitments or ISDS provisions.

11.3. Investment Facilitation in the WTO: A Brief History

The origin of investment discussions within the WTO can be traced to the Singapore Ministerial Conference of 1996, where members introduced the four so-called Singapore Issues: (i) trade and investment, (ii) trade and competition policy, (iii) transparency in government procurement, and (iv) trade facilitation. Members agreed to establish working groups to examine the relationship between trade and these issues, without granting formal negotiating mandate. The discussions were exploratory in nature and limited to clarifying conceptual linkages rather than developing binding disciplines. During the discussion, while developed countries asserted that investment is a trade issue, India, along with a coalition of developing countries, consistently maintained that investment governance extends beyond trade policy and implicates sovereign regulatory authority, domestic industrial strategy, and development planning. From this perspective, investment was viewed not merely as a trade-related matter but as a core sovereign function involving entry conditions, sectoral screening, ownership caps, performance requirements, and national security considerations.

These differences became more pronounced during the Doha Development Round. While some members sought to advance negotiations on investment, consensus remained elusive. Consequently, investment was dropped from WTO negotiating agenda. The July 2004 Package marked a decisive moment of institutional clarity, as members agreed to launch negotiations on 'Trade Facilitation' multilaterally under the Doha Work Programme, while explicitly excluding investment. The text stated that investment would not form part of the work programme and that no work towards

negotiations on investment would take place during the Doha Round. This represented a clear multilateral decision to keep investment outside the scope of WTO negotiations. The Nairobi Ministerial Decision of 2015 reaffirmed this position by emphasising that any decision to launch multilateral negotiations on new issues would require the agreement of all WTO members, thereby reinforcing consensus as the cornerstone of WTO rule-making. Consequently, while trade facilitation advanced multilaterally, investment remained set aside (WTO, 2015).

However, the issue of investment resurfaced at WTO in 2017. At the May 2017 General Council, a proposal was tabled to include investment facilitation as an agenda item. India objected to its inclusion in the absence of mandate clarity, leading to procedural tensions and a brief adjournment until proponents clarified that the discussion would remain informational rather than a step toward formal negotiations. Following this, a group of members formed the “Friends of Investment Facilitation for Development” (FIFD) and initiated structured discussions outside a formal multilateral mandate. At MC11 in Buenos Aires later that year, 70 members co-sponsored a Joint Ministerial Statement calling for such discussions. These discussions gradually evolved into formal negotiations in September 2020, culminating in the conclusion of negotiations in July 2023 and the finalisation of the IFD Agreement’s legal text in November 2023.

With negotiations being concluded, attention shifted from substance to institutional placement. In the WTO, decisions are made at the biannual Ministerial Conferences through the consensus of the full membership. The General Council, as a delegated body, also makes decision by consensus. When new multilateral agreements are finalised, they are attached to the WTO legal architecture as Annex 1 agreements. WTO also recognises certain plurilateral agreements and has placed them in Annex 4. These plurilateral agreements were at advanced stages of discussion among a few countries in the GATT era, and when the WTO was formed, they were formally recognised, subject to the condition that they apply only to their participants and do not create any obligation for the rest of the membership. Incorporation of any agreement into Annexes 1 and 4 require full membership consensus.

In this background of decision making, there are three possible pathways for incorporating the IFD text into the WTO’s legal architecture. The first

option is to seek its addition as an Annex 1 multilateral agreement, similar to the Trade Facilitation Agreement (TFA). However, this route requires a multilateral negotiating mandate and full membership support, two conditions which IFD clearly lacks. The second option involved creating a stand-alone agreement that establishes a new Annex in the WTO legal architecture, called “Annex 5”. This approach also requires full membership consensus and risks setting a new institutional precedent without clear legal grounding (King and Spalding, 2021). The third pathway is to seek incorporation of the IFD Agreement as an Annex 4 Plurilateral Trade Agreement under Article X:9 of the Marrakesh Agreement. Article X:9 provides that the Ministerial Conference may, by consensus, decide to add agreements to Annex 4. The proponents of IFD have opted for the third pathway. During MC13 in Abu Dhabi, the IFD participants issued a Joint Ministerial Declaration and formally requested the incorporation of the IFD Agreement as a Plurilateral Agreement into Annex 4 of the Marrakesh Agreement. India, along with South Africa, blocked consensus, arguing that there was no multilateral mandate to negotiate investment and that incorporating a plurilateral investment agreement without consensus would undermine the WTO’s institutional framework. Ministers subsequently referred the matter to the General Council for further deliberation, where discussions shifted from the substance of the IFD Agreement to its legal and institutional placement within the WTO framework. The unresolved question is therefore likely to return at MC14, with the core debate centered on mandate discipline, the scope of Article X:9, and the systemic implications of embedding plurilateral agreements within a consensus-based institution.

11.4. Textual Architecture of the IFD

The IFD Agreement (hereinafter also referred as the ‘Agreement’) is organised into seven sections covering: (i) scope and general principles, (ii) transparency of investment measures, (iii) streamlining and speeding up administrative procedures, (iv) focal points, regulatory coherence & cross border cooperation, (v) special and differential treatment (S&DT), (vi) sustainable investment and responsible business conduct, and (vii) institutional arrangements, including dispute settlement among Parties. While its architecture resembles the TFA in its procedural orientation, however, IFD contains several design features that merit closer examination in order to

understand both the developmental claims associated with the Agreement and the broader systemic questions it raises.

The stated objectives of IFD emphasise improving transparency, streamlining administrative procedures, adopting facilitation measures and promoting cooperation to facilitate Foreign Direct Investment (FDI) flows, particularly to developing and least developed country Parties. The Agreement applies to measures relating to investment activities of investors in another country, covering establishment, acquisition, expansion, operation and disposal. A notable omission, however, is that the Agreement does not define the term 'investment'. This creates interpretive latitude regarding its scope and could potentially extend beyond FDI to other forms of investment, including portfolio investment, which remains a sensitive matter for several developing countries due to concerns relating to capital flow volatility and financial stability.

A central textual feature of IFD is the explicit attempt to construct a firewall between facilitation and traditional investment disciplines. Article 2 of IFD clarifies that the Agreement does not create or modify commitments on market access, investment protection or ISDS, and does not confer a right of establishment. Parties retain sovereign authority to regulate entry and screen investments in accordance with their domestic law. Article 4 reinforces this by stating that international investment agreements shall not be used to interpret the IFD, and that the IFD shall not serve as a basis for ISDS claims. These provisions are intended to underscore the procedural character of the Agreement. Nevertheless, question remains regarding whether facilitation commitments could indirectly shape investor expectations in other legal contexts, even if the Agreement itself excludes protection standards.

Article 5 of IFD introduces MFN treatment in the application of IFD provisions. While a footnote limits enforceable rights of non-parties, the MFN formulation embeds non-discrimination in administrative treatment. This creates a structural tension: facilitation reforms, once implemented domestically, tend to operate in an MFN manner in practice, yet enforceability under WTO dispute settlement would remain confined to participating Parties, reflecting the Agreement's Annex 4 plurilateral design.

Sections II and III of IFD constitute the operational core of the Agreement. They require publication

and accessibility of investment-related measures, establishment of single information portals, advance publication where practicable, opportunities to comment, and notification to the WTO. It states that authorisation procedures must be reasonable, objective and impartial, processed within indicative timelines, supported by acceptance of copies, accompanied by written explanations for rejection and subject to review or appeal mechanisms. Fees must be reasonable and transparent, and electronic submission and e-government tools are encouraged. Collectively, these provisions aim to reduce information asymmetries, transaction costs and administrative discretion. At the same time, they internationalise elements of domestic regulatory practice, licensing, timelines, documentation and review procedures, transforming them from policy choices into treaty disciplines among Parties.

Section IV establishes focal points and promotes domestic regulatory coherence and inter-agency coordination, including supplier databases and cross-border cooperation mechanisms. Section V introduces S&DT modelled on the TFA, allowing developing and LDC Parties to self-designate commitments under implementation categories linked to capacity and technical assistance. However, given that the Agreement spans the entire investment lifecycle and multiple domestic regulatory domains, implementation demands may be institutionally more intensive than the TFA experience suggests. Section VI urges parties to encourage investors and enterprises to adopt responsible business practices, standards and principles which are internationally recognised and further ensure that measures are taken to prevent and fight corruption and money laundering through the development of anti-corruption policies. The last Section (VII) on institutional arrangements focuses on the establishment of a WTO Committee on Investment Facilitation which shall review the operation and implementation of the agreement. The section further includes general exceptions, amendment procedures, and dispute settlement among Parties under the Agreement.

11.5. Perceived Benefits of the IFD Agreement

While debates on the IFD Agreement are often shaped by concerns over mandate and policy space, its proponents emphasise several potential benefits, particularly for developing and least developed

countries. These benefits are not merely conceptual but are embedded in specific provisions aimed at improving transparency, administrative efficiency, and institutional coordination in investment governance.

The Agreement seeks to reduce information asymmetries faced by investors through its transparency disciplines. Article 6.5 on publication and availability of investment measures requires members to make laws, regulations, procedures and administrative rulings publicly accessible, preferably through electronic means. The obligation to establish or maintain a single information portal for investment-related measures further lowers search costs and improves predictability (Article 8) among potential investors. Advance publication and the opportunity to comment on proposed measures, where practicable, are intended to enhance regulatory quality by allowing stakeholders to understand and respond to changes before they take effect (Article 10).

Additionally, IFD promotes the streamlining and speeding up of administrative procedures through provisions that require applications relating to investment be processed in a reasonable, objective and impartial manner (Article 14), and within indicative timeframes (Article 15). Furthermore, Article 15 requires written explanations for rejections of applications and the availability of review or appeal mechanisms. Proponents argue that the Agreement also encourages the use of digital governance tools with Article 18. For developing countries, such provisions can complement ongoing domestic reforms on digital public infrastructure and single-window clearance systems, producing spillovers beyond foreign investment alone. The Agreement is also positioned to strengthen institutional coordination through provisions on focal points and regulatory coherence, encouraging coordination between relevant authorities and establishing a supplier database. Articles 22, 23 and 24 of the Agreement intend to link foreign investors with domestic enterprises, including MSMEs, thereby enhancing local participation in investment value chains.

IFD integrates development flexibility through its S&DT framework. Articles modeled on the TFA allow developing and least-developed countries to self-designate commitments (Article 28.2) under different implementation categories linked to capacity and technical assistance. Obligations relating to technical assistance and capacity building seek to ensure that implementation is sequenced and supported,

rather than imposed uniformly (Articles 35 & 36). This architecture recognises heterogeneity in institutional readiness and aims to avoid front-loading compliance burdens. The Agreement also embeds principles of sustainable and responsible investment. Articles on responsible business conduct (Article 37), and anti-corruption (Article 38) promote standards that go beyond mere facilitation and attempt to align investment with development objectives. Finally, proponents argue that facilitation complements domestic reform agendas. Many countries already pursue ease-of-doing-business reforms; embedding some of these practices in an international framework can enhance credibility, attract longer-term investment and promote responsible business conduct.

11.6. Critics of IFD

While the IFD is framed as a technical and development-friendly reform agenda, it raises deeper concerns that go beyond administrative efficiency. IFD's disciplines implicate legal mandate, institutional design, systemic coherence of WTO, strategic balance of power, and long-term development policy space. The critique of IFD therefore lies not only in what the Agreement contains, but also in how it is negotiated, incorporated, and potentially expanded within the multilateral trading system.

a) Legal and Institutional Implications

The IFD raises a cluster of interrelated legal and institutional questions that go beyond the technical design of facilitation disciplines. These concerns relate to the legal basis of its incorporation into the WTO framework, its compatibility with existing treaty structures, and the implications of its procedural commitments for dispute settlement and regulatory autonomy.

The most prominent legal question is related to the incorporation of IFD into the WTO under Article X:9 of the Marrakesh Agreement. Article X:9 allows the Ministerial Conference to add a trade agreement to Annex 4, through consensus. Proponents argue that IFD can be incorporated as a plurilateral agreement similar to the Government Procurement Agreement. However, two fundamental concerns arise. First, IFD is not a trade agreement in the conventional WTO sense. Core WTO agreements primarily regulate tariffs, market access for goods and services and trade rules. In contrast, the IFD disciplines domestic administrative procedures relating to investment governance rather

than trade liberalisation. Extending Article X:9 to cover investment, therefore, clearly stretches the legal architecture of the WTO beyond its scope.

Second, the WTO operates as a treaty-based system governed by principles of public international law. Under the Vienna Convention on the Law of Treaties (VCLT)¹, a “party” is a state that has consented to be bound and for which the treaty is in force. Questions, therefore, arise regarding ratification thresholds, entry into force, and the legal status of the IFD prior to Annex 4 incorporation. Unlike the original Annex 4 agreements, negotiated at Marrakesh, no new agreement has been added to Annex 4 since the WTO’s establishment. This creates legal uncertainty regarding sequencing, whether incorporation should precede ratification or vice, versa, and the institutional consequences of either approach.

The structure of MFN treatment under the IFD also has legal ramifications. Article 5 of IFD extends MFN treatment in the application of facilitation measures, but a related footnote clarifies that non-participating WTO Members do not have recourse to dispute settlement under the Agreement. Without an enforcement mechanism, the MFN benefits are effectively void for those who do not join, transforming the IFD into an exclusive ‘trade club’ rather than a multilateral instrument. This sets a dangerous precedent for ‘unfettered plurilaterals’ that divert WTO resources from their intended multilateral mandates.

Additionally, the agreement’s supposed ‘firewall’ against international investment agreements (IIAs) is a one-way valve. While the IFD excludes ISDS claims, it cannot preclude arbitral tribunals under existing IIAs from referencing facilitation commitments as part of the broader regulatory context when interpreting standards such as fair and equitable treatment or legitimate expectations. In this sense, procedural commitments under IFD may indirectly inform investment arbitration without being directly enforceable.

The implementation burden of the IFD is also significantly higher than previous agreements like the TFA. While the TFA focused narrowly on customs and border measures, the IFD covers the entire investment life cycle, from establishment to disposal, which places an onerous reform burden on developing nations and LDCs as they would have to adjust domestic institutions, train officials, and re-engineer administrative processes involving fiscal, political, and regulatory costs. Provisions like Article 10.3, which

require informing foreign investors of policy changes in advance, further complicate domestic governance by making consultative processes binding under an international treaty.

The absence of a definition of “investment” further introduces interpretive flexibility regarding the scope of covered measures. This leaves it to natural interpretation, which would be very open and broad and include every kind of asset, a precursor to a deluge of disputes. In addition, Article 45 of IFD allows amendments by a two-thirds majority of participating Members, suggesting that the content of obligations may evolve over time without requiring unanimity among all WTO Members.

b) Systemic Implications for the WTO

Beyond its legal architecture, the IFD raises broader systemic questions about the future direction of the WTO. Articles III, IX and X of the Marrakesh Agreement collectively anchor the WTO in multilateralism and consensus-based rule-making. Article III situates the WTO as a forum for negotiations concerning multilateral trade relations; Article IX affirms decision-making by consensus and Article X establishes structured amendment procedures. The incorporation of IFD through a plurilateral pathway, particularly in the absence of a prior multilateral negotiating mandate, therefore, raises concerns about whether this foundational balance is threatened.

The systemic implications stem less from the subject matter of investment facilitation itself and more from the institutional precedent it could establish. If incorporated under Annex 4, IFD would set a precedent for unfettered plurilateralism. It will effectively allow Members to negotiate new rules on areas outside multilateral mandates and later seek Annex 4 incorporation. Consequently, the distinction between multilateral and club-based governance will vanish. This may fragment the WTO into multiple regulatory clubs operating under the same institutional roof. Second, it will reinforce asymmetrical bargaining power. Smaller developing and LDC members will face political and capacity pressures to join initiatives shaped by major powers. Third, it will divert institutional resources like secretariat time, committee structures and technical assistance towards plurilateral priorities at the expense of unresolved multilateral development issues. Fourth, it will constrain policy space as administrative

procedures will become treaty obligations. What today are flexible domestic governance choices will become subject to international scrutiny and dispute settlement.

c) Strategic and Developmental Dimensions

The IFD must also be examined through a strategic lens. While investment facilitation is presented as a technical governance reform, its geopolitical and geo-economic implications cannot be overlooked. Earlier investment discussions within the WTO were primarily led by developed economies. In contrast, the current IFD initiative reflects strong participation by emerging powers, particularly China (Table 11.1). A significant feature of the IFD coalition is its overlap with Chinese connectivity and infrastructure initiatives. Of the 128 IFD participants, 98 are also members of China’s Belt and Road Initiative (BRI). Though correlation does not imply formal linkage, this convergence highlights how multilateral facilitation disciplines may complement geo-economic strategies. By standardising regulatory procedures across participating economies, the IFD could indirectly strengthen the operational environment for large-scale cross-border infrastructure and investment networks.

For India, this regional and geopolitical context is particularly relevant. The centre of gravity in the IFD discussions has shifted from earlier EU-Japan leadership to a configuration in which China plays a prominent convening role. From India’s perspective, incorporating investment facilitation disciplines into the WTO architecture may reinforce strategic investment corridors in its neighbourhood. Projects such as the

China-Pakistan Economic Corridor (CPEC), which traverse Pakistan-occupied Kashmir, raise sovereignty concerns for India. Although the IFD does not directly legitimise specific projects, embedding facilitation norms multilaterally could enhance regulatory certainty for capital-exporting states operating in politically sensitive regions.

11.7. India’s Positions on IFD

India did not join the JSI on investment facilitation and has consistently opposed the incorporation of the Investment Facilitation for Development (IFD) Agreement into the WTO framework. India did not reject investment facilitation per se and its opposition to IFD is mainly based on concerns regarding mandate, legality, institutional integrity, and development policy space at WTO. It has not contest facilitation reforms in principle; rather, it has questioned their placement within the WTO absent explicit multilateral authorisation. Roots of India’s position could be traced back to the 1996 Singapore Ministerial Conference, which authorised only exploratory discussions on the “relationship between trade and investment,” without conferring a negotiating mandate. This understanding was firmly reinforced by the July 2004 General Council Decision, which explicitly excluded investment from the Doha Work Programme and stated that no work towards negotiations on investment would take place during the Doha Round. From India’s perspective, this amounted to a clear multilateral determination establishing a negative mandate against investment negotiations within the WTO framework.

India has consistently argued that no subsequent Ministerial decision has reversed or modified this

Table 11.1: Countries which are Part of IFD and/or BRI

Member Status	No. of Countries
Both BRI and IFD	98
BRI Only	52 (150)
IFD Only	30 (128)

Source: Authors’ calculations based on data retrieved from WTO and Nedopil, Christoph (2025): “Countries of the Belt and Road Initiative”

mandate. In the absence of such authorisation, incorporating investment disciplines into the WTO architecture, whether multilaterally or plurilaterally, raises questions about institutional consistency and procedural legitimacy. India has argued that WTO is designed to govern multilateral trade relations under Articles II:1 and III:2 of the Marrakesh Agreement, whereas IFD, as an investment facilitation initiative, is not covered by existing WTO agreements and therefore requires an explicit Ministerial mandate to negotiate and implement the same.

Further, Article X:9 permits the addition of agreements to Annex 4 only through consensus, functioning as a structural safeguard against systemic fragmentation. India has relied on this consensus requirement to prevent what it views as the creeping institutionalisation of plurilateralism. It also defends the consensus principle under Article IX:1, warning that advancing IFD through majoritarian methods risks replacing multilateral rule-making with club-based governance.

India is exercising caution that Joint Statement Initiatives (JSIs) like IFD will divert negotiating capital and Secretariat resources from mandated priorities and may constrain developing countries' ability to sequence reforms and align investment governance with national development strategies. In a nutshell, India's stance is framed not as opposition to facilitation reforms, but as a defence of mandate discipline and the integrity of the multilateral rule-making process.

11.8. Way Forward and Policy Considerations

In the current international trade environment, trade in goods is witnessing heightened uncertainty, particularly in light of unilateral tariff measures and growing strategic competition between major economies. India is facing the structural challenge of navigating between what may be described as the 'elephant of supply' (China) and the 'elephant of demand' (the United States). In such a context, passivity in trade policy carries the risk of marginalisation. However, this logic does not automatically extend to investment governance, even though trade and investment are closely interconnected.

In trade agreements, market access is the principal driver of negotiations. Countries with manufacturing capacity seek assured access to foreign markets, and such certainty is secured through multilateral commitments at the WTO and through

preferential trade agreements. The offensive interests in trade negotiations typically lie with exporting nations seeking predictable access for their goods and services. In contrast, in the sphere of international investment, the primary beneficiaries of inward investment are host countries themselves. Investment-seeking countries design regulatory and facilitative frameworks to attract capital, technology, and employment. Such policy choices do not inherently require binding international treaty commitments, except where sovereign assurances relating to investment protection are extended through a distinct legal discipline.

For India, the IFD issue at the forthcoming MC14 in March 2026 presents two distinct questions: first, whether India should join the IFD Agreement; and second, if it does not join, whether it should continue to oppose the incorporation of the IFD Agreement into Annex 4 of the Marrakesh Agreement framework. The first question is largely settled. India was not a participant in the Joint Statement Initiative negotiations that produced the IFD text, and accession at this stage would imply acceptance of obligations negotiated without its participation. Moreover, the likelihood of reopening substantive provisions to accommodate non-participating members appears limited, given the sensitivity and negotiated balance embedded in the text. From a policy standpoint, India does not stand to gain materially from treaty-based facilitation commitments. India's foreign direct investment regime is already among the more liberal frameworks globally, with most sectors open to 100 per cent FDI under the automatic route, subject to limited sectoral restrictions. Any remaining gaps in procedural facilitation, such as enhanced transparency mechanisms or single-window coordination, can be addressed through domestic reforms, including alignment with elements identified in the UNCTAD Global Action Menu for Investment Facilitation, without assuming binding multilateral obligations.

The second question, whether India should relent on the incorporation of the IFD under Annex 4, must be assessed from both legal and consequential perspectives. The WTO is a rules-based institution grounded in consensus-based decision-making. Investment remains the only subject area on which Ministers have effectively established a negative negotiating mandate through the 2004 July Package. Efforts since 2017 to introduce investment facilitation through plurilateral mechanisms raise concerns

regarding the interpretation of mandate and institutional procedure. Permitting incorporation without explicit consensus could establish a precedent whereby Joint Statement Initiatives progressively expand the WTO's scope beyond agreed multilateral mandates, thereby weakening the consensus principle that underpins the organisation's legitimacy.

Beyond institutional considerations, strategic implications also arise, particularly through China's expanding overseas investment footprint under BRI, which intersects significantly with over 75 per cent of IFD-participating countries, including several in India's neighbourhood. Incorporation of the IFD within the WTO framework could enhance regulatory coordination among participating members and potentially amplify China's economic influence in regions of strategic interest to India. While the IFD is not formally linked to any particular geopolitical initiative, its institutionalisation within the WTO architecture could alter the strategic landscape in ways that warrant careful consideration.

In a nut shell, both legal principle and strategic calculus point toward the same conclusion. It is in India's interest to continue opposing the incorporation of the IFD Agreement under Annex 4 of the Marrakesh framework.

Endnote

¹ Vienna Convention on the Law of Treaties, 1155 UNTS 331, Adopted on 23 May 1969, Entered into force on 27 January 1980, Article 31.

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Session II: Investment Facilitation for Development: Mandate, Systemic Implications, and Strategic Considerations

22 January 2026 | New Delhi

Chaired:

- **Mr. Anup Wadhawan**, Former Commerce Secretary of India

Presentation:

- **Mr. Anwar H. Shaik**, Former Chairperson, WTO-TBT Committee

Discussants:

- **Mr. G.D. Lohani**, Former Minister(Customs), India's PMI to the WTO
- **Dr. Prabhash Ranjan**, Professor and Vice Dean (Research), Jindal Global Law School
- **Dr. Pritam Banerjee**, Head, Centre for WTO Studies
- **Mr. Vaibhav Rundwal**, Director, Minister of Housing and Urban Affairs



China's leadership in the whole process and its ability to mobilise a large number of developing countries along with the potential synergies of IFD with its Belt and Road Initiative (BRI) has geopolitical and geostrategic implications which India needs to keep in mind while taking its stance at the upcoming ministerial meeting.

Mr. Anup Wadhawan, *Former Commerce Secretary of India*



Introducing IFD through a plurilateral pathway without a multilateral mandate erodes consensus decision-making and sets a precedent for “unfettered plurilaterals”. For India, the challenge ahead of MC14 is not only whether to join IFD, but how to defend multilateralism, consensus, development policy space and institutional integrity while managing the costs of staying outside and the risks of allowing IFDA to reshape WTO architecture

Mr. Anwar H. Shaik, *Former Chairperson, WTO-TBT Committee*



If pressure continues and other Members gradually cave in, India risks standing alone under a consensus-based system that is increasingly becoming politicised. While one option is to continue objecting robustly to protect multilateral principles, another is to engage tactically by proposing guardrails.

Mr. G. D. Lohani, *Former Minister (Customs), India's PMI to the WTO*



Debates on IFD must be grounded in the legal architecture of the Marrakesh Agreement and the Vienna Convention on the Law of Treaties (VCLT), rather than relying solely on ministerial declarations or political understandings.

Professor Prabhash Ranjan, *Professor and Vice-Dean (Research), Jindal Global Law School*



The consensus requirement for an Annex 4 agreement is only at the time of its entry and post that any further change in its structure only requires the members of that agreement to have a consensus, which means the IFD agreement that we see today might not be the one it ends up becoming in the future.

Dr. Pritam Banerjee, *Head, Centre for WTO Studies*



India's stance on IFDA should be anchored not merely in the text of the agreement, but in a strategic assessment of India's development trajectory, the desired role of the WTO in investment governance, and the extent of openness and protection India wishes to offer to investors in the future.

Mr. Vaibhav Rundwal, *Director, Ministry of Housing and Urban Affairs*





WTO- Customs Duty Moratorium on Electronic Transmissions

G D Lohani, Amit Kumar and Alaknanda Mishra

12.1. Introduction

The Declaration on Global Economic Commerce, which established a temporary moratorium on customs taxes on electronic communications, was endorsed by member nations at the WTO's Second Ministerial Conference in Geneva in May 1998. WTO members would "continue their current practice of not imposing customs duties on electronic transmission", according to the statement. This was a short-term solution meant to give members a forum to debate any trade-related matters pertaining to international electronic commerce that that policymakers were grappling regarding this nascent sector that had every potential to transform international commerce¹. At that point e-commerce was in its infancy; online retail was experimental, streaming services did not exist, and the notion that software, films, music, and books could be routinely delivered electronically seemed more promise than reality. The moratorium was conceived against this backdrop with the intention of avoiding potential trade disruptions to a fast-emerging sector while members decided to work on addressing issues such as scope, definition, and classification challenges (whether electronic communications should be classified as services under GATS or as products under GATT). Members had determined that General Council would revisit this declaration on global e-commerce when reporting to the third session (MC 3). The decision to extend it would be made by

agreement, taking into consideration the advancement of the work program that was to be institutionalised.²

The conditions that originally justified the moratorium have changed dramatically, as digital trade grew from less than US\$ 1 trillion in 1998 to over US\$ 16 trillion by 2025 with digitally delivered services alone representing 56 per cent of global services exports. Physical products like CDs, books, and software have shifted to digital delivery,³ a transformation rapidly accelerated by COVID-19, which added 1.5 billion new internet users between 2018 and 2022, including a record surge in the pandemic's first year.⁴

E-commerce has expanded exponentially over the years. However, this growth has not been evenly distributed. Developed countries, with advanced digital infrastructure and established big technology firms, dominate global e-commerce. Developed nations now hold more than 75 per cent of these exports⁵ while developing countries are facing serious constraints in digital infra, technology, skill set and finance. This asymmetry lies at the heart of contemporary debates. While the moratorium has been renewed at subsequent WTO Ministerial Conference in 2001, 2005, 2009, 2011, 2013, 2015, 2017, 2019, 2022, 2024 (and with the exception of the period 1999-2001, and 2023-2005) each renewal has become progressively more contentious. Opposition from developing countries, particularly in recent

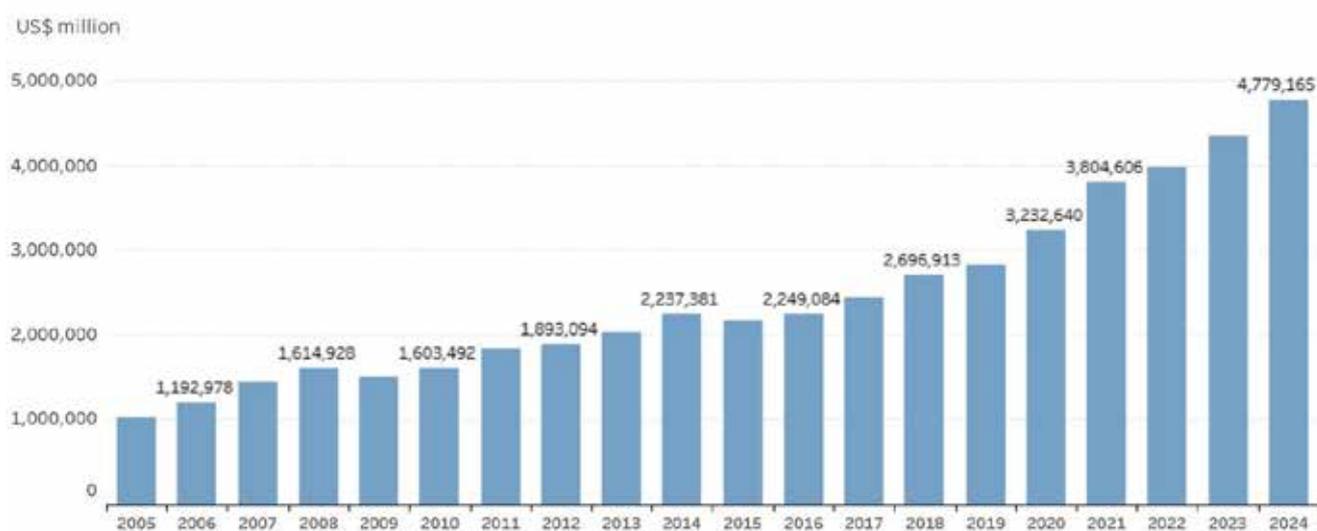
years, has intensified around three core concerns: the lack of clarity regarding what scope of application of moratorium, that is whether it applies to act of transmission or to content of transmission too; if it applies to content whether it applies to digitized goods alone or to digitally delivered service too; the potential foregone tariff revenue, and most critically, the erosion of policy space as customs duties constitute an important tool for providing a level playing field for nascent and growing young domestic industry in this sector in the developing countries.

The most recent renewal of the moratorium was approved during the Thirteenth Ministerial Conference (MC13) held in Abu Dhabi in March 2024. Ministers could reach a consensus on renewal of moratorium only after protracted negotiations that extended into the final hours of the conference. It was agreed to extend the moratorium only until the Fourteenth Ministerial Conference on March 31, 2026, or whichever is earlier. The moratorium will expire on that date⁶. Thus, moratorium was explicitly tied to a sunset clause, creating unprecedented urgency about its future. The declaration also required more discussions and analysis of additional empirical data regarding the definition, extent, and potential effects on the development of moratorium on customs duties on electronic transmissions, as well as how to level the playing field for developing and least-developed countries to advance their digital industrialisation.⁷

The reasons for and against an e-commerce embargo are well-defined. The majority of wealthy nations who support the moratorium, consisting of the United States, the European Union, and Japan, have argued that the moratorium has created a stable, predictable environment essential for digital trade to flourish, benefiting small and medium-sized enterprises (SMEs) through low-cost global market access and preventing the imposition of duties that would increase the costs of consumers. They cite studies suggesting that any revenue foregone from the moratorium is minimal (below 0.33 per cent of overall government revenue on average) and would be offset by economic losses if customs duties were imposed.⁸

Opposing this view, India, Indonesia and South Africa, joined by an expanding coalition of developing countries, contest that the moratorium fundamentally disadvantages nations lacking advanced digital industries. They emphasise that the definitional ambiguity around “electronic transmissions”(ET) has led to scope creep without explicit negotiation, potentially encompassing not just the carrier medium but also digitised content, which in themselves difficult to categorized either goods or services. Regarding the income implications, they cite the research from the United Nations Conference on Trade and Development (UNCTAD), which estimates that poor nations may lose out on billions of dollars in tariff revenue each year.⁹

Figure 12.1 Digitally Delivered Services Exports (World, 2005-2024)



Source: WTO trade dataset.

The debate transcends revenue calculations. India and South Africa emphasised in their joint submissions to the WTO, “*this is not just a revenue issue but a policy space issue*”¹⁰. Most developing countries argue likewise.

As digitalization continues to reshape the architecture of global trade, the latest WTO Secretariat estimates reveal not only the accelerating expansion of digitally delivered services but also their growing structural significance within the world economy.

The data demonstrate a sustained and steep upward trajectory in digitally delivered services exports from 2005 to 2024, with global values rising from just over US\$ 1 trillion to nearly US\$ 4.8 trillion (Figure 12.1). From a digital trade perspective, this trend reflects the deepening integration of data-driven services into the global economy and underscores the increasing centrality of cross-border digital transactions in shaping contemporary trade flows¹¹. As digital trade expands, the issues of scope and classification of ET, in the context of moratorium, are getting vexed with ever increasing stakes that add to the concerns of developing countries.

12.2. Background and Evolution of the E-Commerce Moratorium

12.2.1 Origins of the Moratorium (1998) - MC2

The Declaration on Global Economic Commerce, which was adopted by WTO members in May 1998, acknowledged the swift expansion of electronic commerce and agreed to maintain the current practice of not imposing customs duties on electronic transmissions while assigning the General Council the task of developing a thorough Work Programme on its trade-related aspects.¹² The WTO General Council then established the Work Programme on Electronic Commerce (WPEC) in September 1998 to direct WTO bodies in investigating a broad range of issues, from customs duties and services to development implications linked to electronic commerce, and to report back on progress.¹³

The WPEC mandated various WTO bodies to explore how existing agreements apply to e-commerce while recognizing the evolving and uncertain nature of digital trade. The following WTO bodies (Box 12.1,

12.2, 12.3 and 12.4) were specifically mandated under the Work Programme to undertake this examination:

Box 12.1: Council for Trade in Services¹⁴

The Council for Trade in Services shall examine and report on the treatment of electronics commerce in the GATS legal framework. The issues to be examined shall include:

- scope (including modes of supply) (Article I);
- MFN (Article II);
- transparency (Article III);
- increasing participation of developing countries (Article IV);
- domestic regulation, standards, and recognition (Articles VI and VII);
- competition (Articles VIII and IX);
- protection of privacy and public morals and the prevention of fraud (Article XIV);
- market-access commitments on electronic supply of services (including commitments on basic and value-added telecommunications services and on distribution services) (Article XVI);-
- national treatment (Article XVII);
- access to and use of public telecommunications transport networks and services (Annex on Telecommunications);
- customs duties;
- classification issues.

Box 12.2: Council for Trade in Goods¹⁵

The Council for Trade in Goods shall examine and report on aspects of electronic commerce relevant to the provisions of GATT 1994, the multilateral trade agreements covered under Annex 1A of the WTO Agreement, and the approved work programme. The issues to be examined shall include:

- market access for and access to products related to electronic commerce.
- valuation issues arising from the application of the Agreement on Implementation of Article VII of the GATT 1994.
- issues arising from the application of the Agreement on Import Licensing Procedures; - customs duties and other duties and charges as defined under Article II of GATT 1994.
- standards in relation to electronic commerce.
- rules of origin issues.
- classification issues.

Box 12.3: Council for TRIPs ¹⁶

4.1 The Council for TRIPs shall examine and report on the intellectual property issues arising in connection with electronic commerce. The issues to be examined shall include:

- protection and enforcement of copyright and related rights;
- protection and enforcement of trademarks;
- new technologies and access to technology.

Box 12.4: Committee for Trade and Development ¹⁷

5.1 The Committee on Trade and Development shall examine and report on the development implications of electronic commerce, taking into account the economic, financial and development needs of developing countries. The issues to be examined shall include:

- effects of electronic commerce on the trade and economic prospects of developing countries, notably of their small- and medium-sized enterprises (SMEs), and means of maximizing possible benefits accruing to them;
- challenges to and ways of enhancing the participation of developing countries in electronic commerce, in particular as exporters of electronically delivered products: role of improved access to infrastructure and transfer of technology, and of movement of natural persons;
- use of information technology in the integration of developing countries in the multilateral trading system;
- implications for developing countries of the possible impact of electronic commerce on the traditional means of distribution of physical goods;
- financial implications of electronic commerce for developing countries.

The WPEC was not intended as a negotiating mandate, but rather as an exploratory and informative framework. Its main goal was to improve members' comprehension of the trade-related aspects of electronic commerce, especially in view of conceptual ambiguities and the then-rising stage of digital trade. The development was

not anticipated by the work of new binding rules but instead sought to facilitate discussions over concerned WTO bodies while allowing members to assess economic, legal, and development implications as digital trade evolved.

12.2.2 Evolution Through Subsequent Ministerial Conferences (MCs)

While WTO Members had agreed in 1998 (MC 2), to temporarily continue their then practice of "not imposing customs duties on electronic transmissions" (Moratorium or NICDET, it has been extended periodically by consensus at all subsequent WTO Ministerial Meetings (Since 1998), except the meetings at Seattle (1999-MC3) and Cancun (2003-MC5) where there were no outcomes. Thus, moratorium has survived for almost three decades now, through periodic extension, with brief periods of pause.

In the interim, during the Eleventh Ministerial Conference in Buenos Aires, on its side lines, 71 WTO members launched a Joint Statement Initiative (JSI) on e-commerce. The original plan was to investigate trade-related issues of e-commerce in tandem with the International Work Program. Nevertheless, the JSI subsequently proceeded with the discussions to create e-commerce regulations, including on the moratorium. While proponents saw the JSI as a practical solution to multilateral impasses, concerns persist about inclusiveness and its alignment with existing WTO mandates¹⁸. It has also been argued that creation of this parallel track in plurilateral format has diluted the interest of members in multilateral discussions and primary and only interest of some members may only be in securing renewals of moratorium.

At the Twelfth Ministerial Conference (MC 12), held in Geneva in 2022, members had agreed to better understand the moratorium's implications for developing countries' revenues and policy. However, leading up to the Thirteenth Ministerial Conference, members continued with differing views on renewal: proponents highlighted benefits for digital trade, while opponents raised concerns over its ambiguity, loss of policy space, moratorium not serving the intended purpose, and potential revenue losses. Discussions also covered the digital divide, consumer protection, and regulatory frameworks to shape future decisions¹⁹.

Though opinions remained divided, members worked towards strengthened their discussions

on the moratorium in the lead-up to the Thirteenth Ministerial Conference. Many members argued that the moratorium should be extended to maintain a stable environment for digital trade, while others expressed reservations about its definition, extent, and income. Ministers received conflicting ideas pertaining to the Work Programme and moratorium reflecting different point of view.

Eventually another temporary extension was agreed to in MC 13, albeit some serious challenge and with a specific sunset date that is now approaching as WTO moves closer to MC 14.

12.2.3 Towards MC 14 in Yaoundé

As MC 14 approaches, the United States along with a few other members have brought in a fresh proposal²⁰ for making the moratorium permanent through a broad declaration.

On the other hand, ACP group, in its latest submission²¹, has demanded a comprehensive discussion, under the WPEC, including on development related aspects involved in E-Commerce, bridging digital divide, financing the digital infrastructure, taxation etc. while proposing a temporary extension of the moratorium till the next MC.

Based on the discussions at the WTO, the following three options are available to WTO Members: first, allow the moratorium to lapse as per the decision in MC 13; second, extend the Moratorium and make it permanent; third, extend the moratorium till next the next session of the Ministerial conference or for two years. An informed choice of option requires comprehensive analysis of issues and implications. Clarity about the definition of electronic transmissions, agreement on the moratorium's parameters, and a thorough comprehension of its effects are all essential.

12.3. Key Issues and Debates

12.3.1: Conceptual ambiguity-scope and classification issues

Despite existing for almost three decades, the e-commerce moratorium remains ambiguous in scope and legal effect, making it difficult to evaluate its economic, legal, and development consequences.

(a) Scope of electronic transmission (ET)

The precise extent and application of the WTO e-commerce embargo are unclear due to the lack of a specific definition for electronic

transmission. The 1998 WTO ruling and its further extensions just state that customs taxes should not be imposed on 'electronic transmissions' without specifying what that encompasses, leaving open questions such as whether it only covers the carrier, or the content sent too (like software or digital media), and if digitally delivered services fall within the scope moratorium. In the first place it is difficult to categories ET as good or services. They may have attributes that may be akin to good in certain cases (for example downloadable e-books), and services in other cases. Accordingly, the issues as to on which kind of ETs customs duty could be imposed in absence of the moratorium also becomes equally relevant. This lack of an agreed definition means the concept could extend to a broad and evolving set of digital transactions, from online delivery of digitised products and services to potentially other data flows as technologies like 3D printing and other innovations emerge, which is precisely why many developing countries insist on a clearer, negotiated definition rather than repeatedly renewing a broadly phased moratorium²². The issue was to be examined under the WPEC which specifically mandated various WTO bodies to assess how e-commerce fits within existing agreements. In particular, classification question being central to determining applicable disciplines under GATT or GATS remained contested. The lack of clarity around moratorium continues to complicate efforts to clarify members' rights and obligations in the context of digital trade.

(b) If applies to content: whether it covers goods only or covers both goods and services

As the moratorium prescribes for non-imposition of customs duty on ET, understanding the scope of applicability of customs duty may be a relevant factor in this debate. As per the definition in the World Customs Organization (WCO) framework "*customs duties*" means the duties laid down in the customs tariff to which goods are liable on entering or leaving the customs territory. Also, it could be argued that in terms of its commonly understood ambit, included under the WTO Agreements, customs duties evidently apply exclusively to goods. The term "customs duties" is mentioned in Article II of GATT 1994, its application is on "products". The GATT is an Agreement mentioned in Annexure 1A of the Marrakesh Agreement, and it is a "Multilateral Agreements on Trade in Goods". The

term customs duty has not been used in the context of services and not mentioned in GATS. Logically, this understanding limits the applicability of moratorium to digitised products that has attributes of goods and are capable of being classified under HS nomenclature even if it is argued that moratorium applies to content besides the carrier. These ambiguities have prompted a call by developing countries for a clearer definition and scope of the moratorium.

12.3.2 Policy Space Concerns by Developing Countries

The developing countries have also expressed concerns relating to conceding the policy space that constraints development of capacity for digital trade and providing level playing field to their infant industry in this sector. Developing countries have argued that digital divide is widening, digital trade capacities are getting more and more concentrated, and ever-expanding digital trade and growth in technology such as 3D printing is making them vulnerable as developing countries face the increasing challenge of lack of access to technology, technical know-how, infrastructure, finance, skill set gap and other resources.

Developing nations will need to expand their digital skills and infrastructure in order to be competitive in the digital age. Developing nations are still having difficulty building their information and communications technology (ICT) infrastructure and increasing their internet accessibility, while developed nations are investing enormous sums of money in digital technologies like robotics, artificial intelligence, big data analytics, and 3D printing. Manufacturing output is one area where this widening digital gap is evident. In wealthy nations, the usage of digital technology and digital content in terms of value contributed by the digital services is increasing far more quickly than in poor countries (UNCTAD, 2017).

Developing nations contend that customs duties are a crucial tool in the toolbox that should be used in accordance with each nation's strategic goals in the pursuit of industrialisation, especially those that wish to advance digital industrialisation by giving their nascent and emerging digital industries fair competition.²³

India (along with South Africa) has emphasised the need to re-examine the 1998 moratorium on customs duties on ET, arguing it no longer aligns with

the current digital trade landscape. This stance is a result of developing nations' worries that preventing duty-free treatment will restrict policy options for digital industries.²⁴ Tariffs are among the best policy instruments for accomplishing these goals, as demonstrated by the development experiences of almost every nation on the planet. It is argued that the tariffs are a tried and tested policy tool for supporting infant and even mature industries. All successful economies have arrived at higher levels of development because they started off first giving domestic industries the protection through tariffs to grow and gain competitiveness. Developed nations have used customs taxes to defend their industries and make them more competitive globally. Giving the developing world a comparable opportunity is simply fair. As a result, maintaining the authority to apply customs taxes becomes a crucial goal in and of itself. Additionally, they contend that the lift lifting of the moratorium does not imply that Members would implement universal customs duties. In the age of industry, policy space is crucial, and it must be used properly for domestic digital industrialisation and the creation of local jobs.²⁵ Moratorium impedes their ability to employ customs taxes as a fiscal and regulatory weapon, which¹⁶ causes resistance in their policy space.²⁶

Policy space argument need to be seen from the perspective of the growth of E-Commerce Sector which has expanded exponentially over the years and continue to expand at a rapid pace. This is best explained with the facts and figures relating to the US economy. As per a very recent study by the Harvard Business School (sponsored by Amazon, Google, and Meta), the share of digital economy in the US GDP has grown from 11 per cent in 2020 to 18 per cent in 2024. During this period the value of digital economy doubled to almost US\$ 5 trillion. Employment in this sector in the US grew 12X faster than the overall US economy. Creator economy grew by 7.5 times since 2020 to US\$ 500 billion. Media ad spending has grown 10 times. E-Commerce grew by more than 7.5 per cent compounded rate while in general retail sale grew by 2.5 per cent. New areas of growth have emerged rapidly in digital economy.²⁷

As per WTO According to WTO study, digitally delivered services that is, services rendered over computer networks, such as remote consulting services and streaming games are an emerging source of development, making up 12 per cent of

all global trade in commodities and services and 54 per cent of worldwide services exports in 2022.²⁸

With rapid growth of e-commerce, and digital trade, and emerging newer areas of growth that are capital, skill and technology intensive, the policy space issue assumes significantly higher importance.

12.3.3 Developing Countries' Concerns Relating to Revenue Loss

Discussions around the WTO moratorium are part of broader debates, such as studies by UNCTAD. The arguments there have centered on the claim that the prohibition The main point of contention there has been that poor nations have suffered significant losses in tariff income as a result of the ban on customs taxes on electronic communications. As per an UNCTAD study Developing nations may have lost an estimated US\$ 8 billion in potential tariff revenue in 2017 on account of E-commerce moratorium. The UNCTAD study arrived at this figure based on the estimated global volume of trade in goods that shifted to digitised form in 49 HS heading. Developing countries like Thailand, India Mexico and Nigeria have been identified as suffering significant tariff losses. Yet another study estimates According to yet another research, the moratorium cost developing nations and LDCs US\$56 billion in tariff income between 2017 and 2020, of which US\$48 billion went to the former and US\$8 billion to the latter.²⁹ These studies have also highlighted that advent and expansion of 3D manufacturing technologies the revenue loss would substantially increase.

These studies extend support to this argument that the moratorium leads to tariff revenue losses for developing countries and interferes with their right to use customs duties as a regulatory and fiscal tool, thus creating resistance in their policy space. Luxury digital imports like films, music, and video games are major highlights of this category. The voices supporting these arguments say that this position becomes difficult, especially during times of fiscal stress, as seen during the COVID-19 pandemic, when governments were burdened with additional domestic revenue sources. Hence, the position of these countries is that the continuation of the moratorium deprives developing and least developed countries of vital public income³¹. This loss of tariff revenue can be seen in the form of economic cost as well as a constraint on fiscal space,

specifically in the case of developing countries. This fiscal impact has contributed to the growing call, especially among developing members, to reconsider or end the moratorium in order to preserve sovereign taxing rights over digital imports³¹. This concern is especially pronounced for developing countries, which generally maintain higher bound tariff rates. Furthermore, the moratorium may continue to grant industrialised nations duty-free access to emerging and LDC markets. Economic growth, jobs, and sustainable development would all suffer as a result (South Africa & India)³² and (Indonesia)³³.

Proponents of the WTO e-commerce moratorium, however, argue that customs duties on ET would yield minimal and uncertain revenue while causing significant economic harm. They claim that since services are the primary component of digital trade, customs charges on electronic communications are ineffective and unfeasible. Trade stability, predictability, and innovation-friendly circumstances are promoted by upholding the moratorium, trade stability, predictability, and innovation-friendly conditions are fostered, allowing countries, especially developing ones, to reap long-term benefits in productivity and investment instead of depending on uncertain border tariffs. They emphasize that the moratorium indirectly increasing public revenue through economic growth rather than border duties. Proponents also argue that reduced trade costs and increased participation in global value chains offer more significant economic advantages to developing countries than potential tariff revenues, particularly in light of enforcement difficulties and that the moratorium benefits MSMEs by lowering trade costs and promoting global integration, expanding domestic tax bases. According to this view, any marginal tariff revenue would be outweighed by losses in productivity, investment, and consumer welfare.

In this context, OECD contributions, while questioning the analysis by UNCTAD on potential revenue loss, argue that the benefits of the Moratorium outweigh the costs and that UNCTAD may have overestimated the revenue loss.³⁴ The proponents have argued that revenue concerns of developing countries could be addressed by through imposition of non-discriminatory domestic taxes like GST/VAT. However, that internal taxes have a different function and are not a substitute for customs charges.

12.3.4 Uneven gains of E-commerce Growth

Developing countries (India, South Africa, and others) have, however, argued that benefit of e-commerce moratorium have been uneven³⁵. Developing countries have gained little as digital divide widens, e-commerce capacity gets concentrated, the MSMEs in developing not able to face competition from global e-commerce giants, brick and mortar stores getting shut down, and other emerging challenges.

Additionally, it is claimed that when evaluating the overall electronic transmission trade, proponents only take into account digitizable commodities with characteristics that fall within the moratorium's purview and get to the conclusion that trade in these things is still minimal. However, while calculating the impact of the moratorium on exports, particularly those of SMEs, the proponents' contradictory take into account the embargo's expanded reach, which includes services and data flow in order to magnify the breadth. As a result, they doubt the veracity of supporters' claims.³⁶

12.3.5 Lack of Tangible Progress in WPEC - Contentious Issues Remaining Unresolved; and Advent of JSI on E-Commerce

The WPEC required that WTO bodies explore the relationship between e-commerce and other WTO agreements, with the General Council playing a key role in reviewing the programme and assessing the temporary moratorium on customs duties for electronic transmissions. The two instruments are interconnected, with both being renewed at each ministerial conference. As per the MC13 decision the moratorium and the WPEC will expire simultaneously, either at MC14 or by March 31, 2026, whichever comes first.

Even though there have been some discussions in WTO under WPEC, in a facilitator led process, the assigned regular Committees and Councils have not made much progress on the specific issues before them in terms of the WPEC. As these critical issues thus remain unresolved, the basis of renewal of e-commerce moratorium rests in the proponent's argument that the moratorium promotes legal certainty and trade predictability, enabling digital market growth and customs duties on electronic transmissions would be complex to of the Marrakesh Agreement, the consensus eludese³⁷.

In challenging India's opposition of moratorium, India is often cited as one of the biggest exporters of IT/software services to impress upon the potential adverse implication to India if moratorium is lifted, even while the issues around the scope of moratorium, whether it covers transmission, goods or services, and whether moratorium has increased commitment only for developing countries (though initial argument was that it was not altering any commitment or obligation of members) are yet to be resolved, including under the WPEC discussions, despite repeated reiteration by countries like India, South Africa, and Indonesia. It is seriously arguable if moratorium cover the services in the first place, considering that the prohibition is on imposition of customs duty (supra). Because of this, WTO service obligations under the General Agreement on Trade in Services (GATS) are intrinsically asymmetric and designed to permit varying degrees of commitment depending on a nation's capabilities, degree of development, and particular economic interests. Keeping these critical issues unresolved is adding to the concerns of the developing countries. This may, however, be tactical on part of the proponents of the moratorium.

While lack of progress in the discussion in WPEC has thus remained a cause of concern for most developing countries. In the interim, a parallel track plurilateral discussion, in E-commerce JSI, amongst its 91 members has added another layer to the existing complexities. JSI negotiations have highlighted uncertainty about how any final e-commerce agreement would be incorporated into the WTO's legal structure. While many JSI participants support integrating the outcome formally into the WTO system, possibly as a plurilateral agreement under Annex 4, which would require consensus of all members in accordance with Article X.9 of the Marrakesh Agreement, the consensus eludes³⁸. The stabilized text of the Joint Statement Initiative (JSI) on e-commerce does more than simply acknowledge the existing WTO moratorium; it effectively reinforces and embeds it within the new agreement. Notably, the JSI text provides an explicit and all-encompassing definition of "electronic transmission" for the purposes of commitment for non- imposition of customs duty that includes the content being transmitted, an issue that remains unresolved since 1998 in the multilateral setting in the context of E-Commerce moratorium on ETs.

12.4. WTO Members' Recent Position on Moratorium

As stated earlier in the paper, the US along with certain other members (Costa Rica, Ecuador, Guatemala, Paraguay) have in recent submission made a pitch for making the moratorium permanent. Making E-Commerce moratorium permanent finds strong support in Developed countries members. The US, the EU, UK, Japan, Canada, Australia, New Zealand have been strongly advocating in favour of permanent moratorium making a pitch on the grounds as stated earlier in the paper. Certain developing countries like China, Chile, Singapore, Korea, Malaysia, Saudi Arabia and UAE also support for a permanent moratorium.

The US has in particular has also pushed aggressively for the moratorium in its policy statements³⁹. and bilateral reciprocal trade deals, particularly with the developing countries like Indonesia⁴⁰ and Malaysia⁴¹.

On the other hand, the ACP Group has made a submission for renewed discussion on key issues and in the interim temporary extension of moratorium till the next Ministerial Conference. A large number of LDC countries are part of ACP and therefore LDC as a group would align with ACP.

Developing countries like Brazil, Nigeria, Türkiye and certain others have been expressing concern on E-Commerce moratorium and remain cautious towards any proposal to make the moratorium. The position of India, South Africa and Indonesia is as stated earlier in this paper. However, Indonesia has entered into reciprocal trade agreement recently under which it may be under an obligation to support moratorium.

72 out of 91 members of JSI on E-Commerce supported the text⁴² for its inclusion in Annex 4 of the Marrakesh Agreement. As these members have committed themselves to Permanent moratorium in JSI, they would also support the permanent moratorium in multilateral forum. Some of the remaining 19 members of JSI precisely have concerns over the moratorium, e.g., Brazil, Nigeria, Indonesia. This makes it evident that consensus would elude on any proposal for a permanent moratorium.

12.5. Moratorium at MC 14, Likely State of Play and India's Options

Given the current scenario, theoretically there are three possible outcomes. One, the moratorium lapses as per the decision in MC 13 (*supra*); two, moratorium

is made permanent; three, moratorium is extended temporarily again till next MC as has been proposed by the ACP group.

Practically, the second outcome is unlikely. A number of members would be highly hesitant to make moratorium permanent. This is also evident from the fact that even a number of JSI members do not support a permanent moratorium on ET. Members discussions in the WPEC in last two years have not brought out anything concrete or favourable in support of making the moratorium permanent. With its scope remaining unclear, commitment remaining vague, enforceability remaining questionable in absence of comprehensive rules, and global trading environment remaining uncertain, it is highly unlikely that Member could have consensus, more so as the concerns over moratorium have been increasing with exponential growth of E-commerce.

In case of no decision, first outcome is automatic as expiration date for moratorium has already been set in MC 13 decision that was taken by consensus.

Going by the state of play, the continued interest in developing countries for discussing the issues involved and WPEC, it is likely that the third possible outcome gets highest traction. However, it would require a consensus for reaching to this decision. In MC 13, consensus for a temporary extension had proved very difficult and extension could only be secured with hectic effort at the fag end of the conference.

Though moratorium has been extended routinely in past, its renewal has come with difficulties recent MCs. In MC 14, Members may strive for a decision that compels better discussions on issues of specific concerns, particularly to developing countries. If members opt for third possible outcome, developing countries may insist for certain conditions and asks for a temporary extension rather than a routine decision. In this context it would also be interesting as to how members deal with the proposal on JSI on E-Commerce. India has argued in recent discussions that WPEC is the forum for deliberation of E-Commerce issues. These discussions in the WPEC should lay the ground for rulemaking in multilateral forum, rather than creating parallel non-multilateral track.

Another possibility, which is not unforeseeable, is that the way WTO reform discussions are unfolding, including as regards the negotiating function, decision making in WTO and the prioritisation of issues, all issues before the ministers in MC 14 get subsumed in

the WTO reform discussions (member may seek clarity in these fundamental issues before taking decision on any specific agenda).

Multilateral negotiations are all about give and take after all.

12.6. Way Forward

Given the prevailing complexity and varied stances, a pragmatic way forward for India may lie in careful consideration of the following points concerning the E-Commerce moratorium:

Developing a clear internal understanding, upon careful analysis, as to what are the overall implication for India if moratorium lapses. This may require assessing the policy space requirement as e-commerce grows, including the need for providing level playing field to our upcoming industry, the future scenarios in E-commerce and digital trade, and securing our interest in global trade. These discussions may not be possible at the time available till MC unless we have already made some progress. However, some quick and meaningful analysis may help in shaping up and leading the discussions in WTO. The extensive discussion may be pushed to post MC14, the ground for which has to be laid in MC14 upon taking specific directions/guidance from Ministers during the conference.

In case the traction is towards temporary extension, on what terms would the developing countries like to negotiate it, including institutionalizing concrete discussions in the multilateral forum? What could be the tradeoff here?

What direction/guidance could be taken from Ministers (MC) for effective, concrete and meaningful discussions under WPEC if it survives?

Impact and interplay with discussions on JSI on E-Commerce: Has JSI on E-Commerce adversely impacted the prospects of multilateral discussions on the sensitive issues concerning E-Commerce? More so, considering the clear understanding that WPEC was to discuss fundamental issues, before any attempt towards rule making. If yes, how could this issue be effectively raised?

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Session 1: E-Commerce Moratorium: Issues and Way Forward

30 January 2026 | New Delhi

Chair:

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Presentation:

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- **Mr. Abhijit Das**, Former Head, Centre for WTO Studies, IIFT
- **Dr. Pritam Banerjee**, Head & Professor, Centre for WTO Studies, IIFT
- **Mr. Deepak Maheshwari**, Senior Policy Advisor, Centre for Social and Economic Progress (CSEP)
- **Mr. Ashish Chandorkar**, Counsellor, Permanent Mission of India to the WTO, Geneva (Online)



“The WTO e-commerce moratorium, originally conceived as a temporary measure, has continued for decades amid unresolved issues regarding the nature and regulation of digital trade. While digital trade is expanding rapidly, its benefits remain largely concentrated among a few countries and few global platforms. There is an imperative for inclusive participation by developing economies”

Amb. J. S. Deepak, *Former Representative of India to the WTO, Geneva*



“The e-commerce moratorium should be approached strategically and legally, not just technically. There is a need of preserving policy space, linking discussions to relevant WTO provisions, and understanding the scope of customs duties on digital transmissions. A balanced and pragmatic negotiating approach is essential to safeguard national interests while engaging in global digital trade discussions.”

Mr. Abhijit Das, *Former Head, Centre for WTO Studies, IIFT*



“Since MC12, WTO discussions on the e-commerce moratorium have progressed through a dedicated work programme addressing issues like consumer protection, competition and the digital divide. Ahead of MC14, members remain divided between no moratorium, permanent and temporary extensions, with multiple proposals under consideration. With no converging text yet, the coming weeks of negotiations will be critical in shaping the future of the moratorium and digital trade discussions.”

Mr. Aashish Chandorkar, *Counsellor, Permanent Mission of India to the WTO, Geneva*



“Although India’s share in global e-commerce remains modest; domestic innovation and competition are growing steadily. The taxation of digital services can affect costs for businesses and consumers, and e-commerce will play a key role in future growth and entrepreneurship. There is a need for aligning decisions with the realities and priorities of India’s economy.”

Mr. Dammu Ravi, *Former Secretary (ER), MEA*



“The digital trade moratorium debate is less about revenue and more about its definition and scope. Given the rapid evolution of digital services, maintaining a temporary moratorium and clarifying the rules would be a pragmatic approach.”

Prof. Pritam Banerjee, *Head & Professor, Centre for WTO Studies, IIFT*



“Digitalisation has transformed goods and services into tradable digital flows, driving rapid growth in global digital trade. There is a need for more detailed data and evidence on digital exports, imports and value creation to inform policy decisions. A granular, forward-looking approach, considering carriage, content and conduct, is essential for guiding decisions on the future of the e-commerce moratorium.”

Mr. Deepak Maheshwari, *Senior Policy Advisor, CSEP*





Industrial Policy Space and WTO Reform: An Indian Perspective within the Developing Country Framework

Pritam Banerjee, Zaki Hussain, Amit Randev, Kanika Karwal and Riddhi Lakhiani

13.1. Introduction

The debate on industrial policy and WTO reform has intensified amid growing geoeconomic competition, technological shifts, and the renewed centrality of state intervention in strategic sectors. As industrial policy instruments increasingly shape trade outcomes, questions regarding the scope of permissible state support and the adequacy of existing WTO disciplines have moved to the forefront of the reform agenda. For developing countries, this debate is intrinsically linked to the preservation of policy space flexibility necessary for structural transformation.

Two distinct perspectives frame the current discourse on industrial policy and global trade imbalances. The first, largely articulated by developed countries, interprets persistent imbalances primarily as the result of unfair trade practices and market distortions. It emphasizes the role of state subsidies and non-market interventions in undermining competitive neutrality, generating surplus production, and disadvantaging firms operating under market-based conditions. This approach supports stronger subsidy disciplines, enhanced transparency, and stricter enforcement within the WTO framework.

The second perspective, rooted in developing country experience, views global imbalances through the lens of structural inequities in the international

economic system. Persistent disparities in capital, technology, productive capacity, and integration into global value chains constrain meaningful participation in higher value-added activities. From this standpoint, industrial policy is not a distortion but a legitimate and necessary instrument for economic diversification, technological upgrading, and development catch-up.

This divergence of views on the causes of global imbalances and the associated policy prescription, i.e., prioritizing the correction of market distortions versus addressing structural inequities, lies at the heart of the contemporary debate on WTO reform. In order to find a balanced way forward acceptable to all parties, any initiative that attempts recalibration of rules governing subsidies and state intervention to address market distortions must therefore, also account for differentiated development realities and avoid constraining the policy tools required for structural transformation.

Historical and structural examination of global production patterns is essential to understand the persistence of contemporary imbalances. Enduring asymmetries in economies of scale, technological capability, and early industrial specialization have enabled certain countries to secure more favourable terms of trade, while others remain concentrated in lower value-added segments of production, resulting in structural trade deficits. These disparities reflect

cumulative processes of capability formation and differentiated integration into global production networks. Consistent with Raymond Vernon's Product Life Cycle (PLC) theory¹, early innovators consolidated durable competitive advantages during critical stages of industrial expansion, frequently supported by strategic policy intervention. For present-day developing countries, this underscores the importance of timely industrial upgrading and sufficient policy space to avoid structural lock-in at lower tiers of production.

During the 1980s and 1990s, prior to the conclusion of the Uruguay Round, most advanced economies and early industrializers in East Asia deployed active industrial policy instruments, including subsidies, local content requirements, and coordinated state support, to build industrial scale and technological depth. These strategies facilitated their consolidation in high-value “alpha” industries². With the establishment of the WTO and the adoption of the Agreement on Subsidies and Countervailing Measures (ASCM), however, stricter subsidy disciplines were introduced. Export and import-substitution subsidies were prohibited, and special and differential treatment (S&DT) flexibilities were progressively narrowed. By the time, several developing economies were positioned to expand their manufacturing base, the available policy space had significantly contracted.

Since the 1990s, China has implemented extensive state support measures to strengthen manufacturing capacity, with an increasingly intensified focus on advanced sectors. The firm-specific and often non-transparent character of these interventions has complicated multilateral scrutiny, while enabling the development of substantial scale economies across a wide range of manufacturing sectors³.

The unique nature of the Chinese governmental system allows for a range of firm specific interventions that are difficult to identify. In many cases, the intervention maybe through informal arrangements or guidance to banks, state-owned enterprises, private firms where public banks hold sizable stake, or local administrations, and therefore, completely invisible. This opacity makes holding Chinese policies accountable to WTO rules prohibitively complicated, if not impossible.

At the same time, although tariffs have declined in many advanced economies, increasingly complex non-tariff measures have affected effective market access. In certain systems, administrative influence

over key sectors has further reinforced domestic preference structures.

Against this historical and structural backdrop, a systematic examination of industrial policy space within the WTO framework becomes essential from a developing country perspective. Persistent disparities in productive capacity, technology, and value-chain integration necessitate adequate policy flexibility to enable structural transformation and industrial upgrading. This chapter, therefore, situates the debate within the contemporary re-emergence of industrial policy and evolving global challenges, analyses the developed countries' interpretation of global imbalances and their policy responses, and articulates the developing country perspective. It further examines the development gap and structural constraints confronting late industrializers, underscoring the need for calibrated policy space, and concludes with considerations for a balanced and development-oriented approach to WTO reform.

13.2. Re-emergence of Industrial Policy and Emerging Global Challenges

Industrial policy has re-emerged as a central instrument of economic strategy, particularly among large advanced economies, in response to digital transformation, climate transition, and heightened geopolitical contestation. The renewed and aggressive deployment of subsidies, state financial support, investment controls, and regulatory instruments has intensified state intervention in strategic sectors. This resurgence has generated significant trade distortions and contributed to the emergence of overcapacity in capital-intensive industries such as steel, aluminium, shipbuilding, and renewable energy equipment. Systemic subsidies have enabled production levels that are frequently unsustainable under standard competitive market conditions, thereby, amplifying global trade imbalances. Even where manufacturing activities are geographically dispersed, advanced economies continue to retain control over intellectual property, standards, technology, and post-production services, ensuring that the bulk of value addition accrues to them.

A key concern in recent years has been the expanding wave of protection-oriented industrial policies in advanced economies and their implications for global trade governance. Industrial policy has evolved from traditional infant-industry rationales to address contemporary challenges linked to

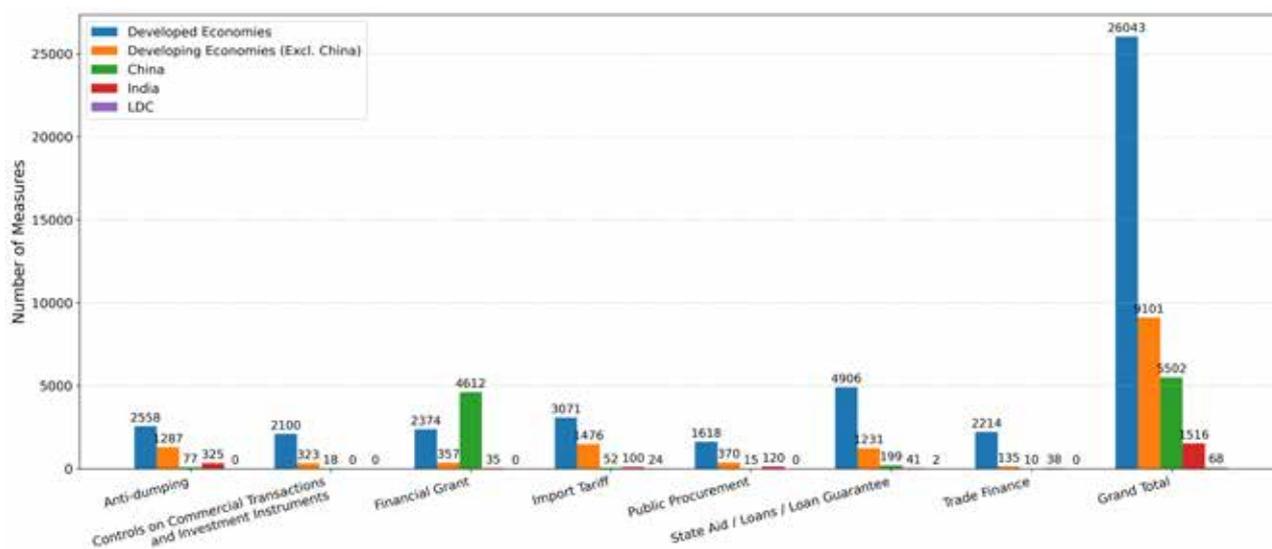
geopolitical rivalry, climate change, and technological disruption.⁴ The pandemic, global supply chain disruptions, and rising economic insecurity have further reinforced the case for proactive state intervention. Governments are increasingly compelled to secure critical industries, enhance economic resilience, and address perceived market failures. Ilyina et al. (2024)⁵ report that more than 2,500 industrial policy measures were implemented in 2022 alone, nearly two-thirds of which were trade-distorting and detrimental to foreign firms. Developed economies, including the United States and the European Union, accounted for almost half of these measures, frequently relying on subsidies and protectionist instruments that have raised concerns regarding WTO consistency (WTO, 2024)⁶. Trade-related instruments such as Section 301 of the U.S. Trade Act of 1974, the European Union’s Carbon Border Adjustment Mechanism (CBAM) and Deforestation Regulation (EUDR), as well as retaliatory tariff actions in 2025, illustrate the expanding interface between industrial and trade policy. A recent (2026) study by Global Trade Alert⁷ highlights that the state support interventions now benefit from a refined taxonomy⁸ that distinguishes direct government subsidies from those channelled through financial intermediaries. This differentiation improves analytical precision by clarifying not just the volume of support, but the institutional mechanisms through which it is delivered. The analysis shows that annual subsidy activity has quadrupled since 2020 and that approximately 68 per cent of all recorded subsidy

programmes since 2009 were implemented from 2020 onwards, indicating a pronounced resurgence of state capitalism among major economies.

This shift marks a significant transformation in the global industrial policy discourse. Rather than developing economies seeking policy flexibility for catch-up, advanced economies are now at the forefront of expansive industrial intervention. It is observed that developed countries not only implement a greater number of industrial measures but also commit substantially larger financial resources⁹. Chang (2002)¹⁰ underscores the historical paradox whereby developed countries advocate market liberalization for developing economies despite having relied extensively on protectionist and interventionist policies during their own industrialization. This asymmetry persists in contemporary trade governance.

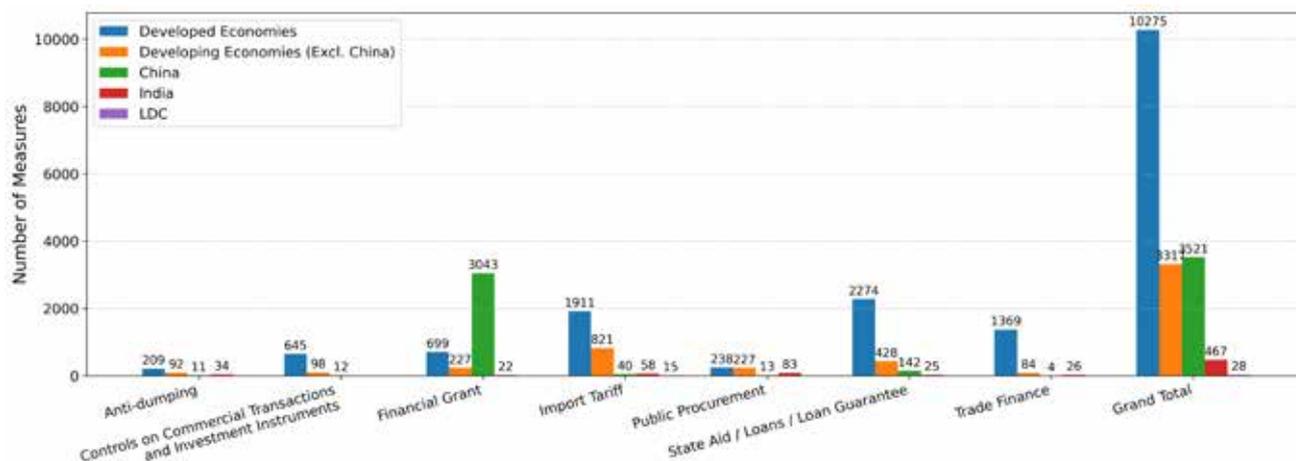
Based on the NIPO–GTA Database (2008–2025), the scale and distribution of distortive industrial policy tools are reflected in Figure 13.1 and Figure 13.2. Figure 13.1, covering all products, indicates a substantial gap between developed economies and developing economies (excluding China) in the deployment of major industrial policy instruments. The disparity is particularly pronounced in financial grants, state aid, and related support measures. India’s use of such instruments remains modest in comparison. Figure 13.2, which focuses specifically on advanced technology or “alpha” industries, reveals an even more marked divergence. In these frontier sectors, developed economies exhibit overwhelming

Figure 13.1: Major Distortive Industrial Policy Tools: Developed vs. Developing Economies (All Products)



Source: Authors’ Compilation based on NIPO (New Industrial Policy Observatory) –GTA (Global Trade Alert) Database (2008 – 2025)

Figure 13.2: Major Distortive Industrial Policy Tools: Developed vs. Developing Economies (Advanced Technology Products: Alpha Industry)



Source: Authors' Compilation based on NIPO (New Industrial Policy Observatory)–GTA (Global Trade Alert) Database (2008 – 2025)

dominance in the use of financial grants and state-backed instruments. Notably, China's aggregate interventions—and especially its financial grants—exceed those of the developing country group as a whole, underscoring the concentration of state-driven support in strategic industries.

China has emerged as a central actor in shaping global trade dynamics. Since its accession to the WTO, China has combined participation in global markets with a distinctive state-led development model. Its political and institutional structure permits degrees of financial direction and coordination that are unparalleled in most democratic jurisdictions. Mark Wu (2016)¹¹ underlines that the Chinese state also controls nine of the next 10 largest banks. It is just not large banks – the state controls even the smaller, regional banks. He points out, this again is done through layers. An investment bank or fund controlled by a provincial or municipal government might be one of the shareholders of such regional banks, and several such government investment funds in combination would control the majority stake of almost all commercial banks in China.

China's industrial strategy—characterized by state-owned enterprises, targeted subsidies, and managed capital flows—has reshaped global manufacturing and competitive conditions. Rotunno and Ruta (2023)¹² document the export-enhancing effects of Chinese subsidies in downstream industries, with adverse implications for manufacturing growth in developing economies. The ITIF Hamilton Index further demonstrates China's leadership in seven of ten high-

technology sectors, representing over US\$ 10 trillion in global production¹³. Empirical evidence also indicates the pervasive nature of state support: direct subsidies to Chinese listed firms rose significantly between 2010 and 2015¹⁴, while some¹⁵ estimate that over 99 per cent of listed firms received direct government subsidies in 2022. Broader assessments suggest that China's industrial policy expenditures amounted to at least 1.7 per cent of GDP in 2019, rising to approximately 5 per cent when government procurement is included¹⁶. Countervailing duty investigations in the United States have identified subsidy rates ranging widely, with substantial average levels (United States–China Economic and Security Review Commission, 2008). At the same time, China is transitioning from labour-intensive manufacturing toward higher-value innovation-driven sectors (Branstetter & Li, 2022)¹⁷.

Taken together, the expansive industrial policies of developed economies and the scale of China's state-led model constitute a dual structural challenge for developing countries. Restrictive trade and regulatory measures limit market access, while the dominance of advanced and large economies across both high-technology and traditional manufacturing sectors constrains competitive space. Reshoring and friend-shoring strategies further redirect investment and supply chains toward a narrower group of economies. Absent meaningful adjustments in global trade rules and governance structures, developing countries risk continued marginalization within the evolving industrial order.

13.3. Developed Countries' Perspective and Response to Global Imbalance

From the standpoint of major OECD economies—particularly the Organisation for Economic Co-operation and Development members led by the United States and the European Union—China's rapid ascent in high-technology and capital-intensive sectors since the early 2010s is viewed as inconsistent with market-driven competition and significantly enabled by state intervention. Advanced economies contend that China sustains structurally low production costs through a combination of subsidized finance, concessional lending, debt restructuring or write-offs, preferential access to land and energy, and policy-directed allocation of key inputs. Persistent access to state-supported credit is seen as generating chronic overcapacity, which in turn facilitates the sustained export of surplus output at depressed prices in international markets.

Developed countries further argue that such practices permit Chinese firms to attain scale economies and close technological gaps at a pace that would not be feasible under conventional competitive conditions. Concerns are also raised regarding weak intellectual property enforcement and opaque legal-administrative processes, which are alleged to undermine the effective operation of global trade norms. In this framing, the combination of industrial subsidies and technology-related practices is considered to circumvent obligations under the World Trade Organization agreements, particularly the Agreement on Subsidies and Countervailing Measures (ASCM) and the Trade-Related Aspects of Intellectual Property Rights (TRIPS).

In recent communications on WTO reform, the United States has asserted that existing multilateral institutions have failed to discipline “non-market” economic systems adequately and has expressed diminished confidence in the ability of the current framework to ensure accountability. As trade relations become increasingly shaped by geopolitical rivalry, the United States anticipates more frequent deviations from established rules and has called for a fundamental overhaul of the WTO rule-book and its enforcement architecture.

The developed country response to perceived global imbalance, thus, comprises a combination of multilateral reform proposals, plurilateral coordination, and unilateral trade instruments. Central to this effort

has been the Trilateral Initiative on Industrial Policy and Subsidies, launched in December 2017 by the United States, the European Union, and Japan. This initiative has focused on addressing “non-market-oriented policies and practices that lead to severe overcapacity,” and has articulated a substantive reform agenda targeting the ASCM framework.

Key proposals advanced under the trilateral process include: (i) expanding the list of prohibited subsidies to encompass unlimited state guarantees, support to ailing firms lacking credible restructuring plans, and financing directed toward sectors characterized as suffering from overcapacity; (ii) reversing the burden of proof for certain categories of actionable subsidies, including excessively large grants or support to uncompetitive firms; (iii) deeming unnotified subsidies prohibited by default where counter-notified by affected Members, thereby, strengthening transparency obligations; (iv) permitting the rejection of domestic prices in favour of constructed benchmarks in calculating countervailing duties against non-market economies; and (v) broadening the definition of “public body” to capture informal or indirect state influence, alongside stronger disciplines on forced technology transfer.

While these proposals seek to close perceived regulatory gaps and facilitate enforcement against trade-distorting subsidies, their implications extend beyond the immediate target of Chinese industrial policy. Several conceptual and legal ambiguities render the reform agenda potentially consequential for developing countries more broadly. First, there is no universally accepted definition of a “non-market economy”¹⁸ within WTO law; the existing multilateral framework provides only limited and context-specific references. Divergent domestic interpretations—particularly in United States and European Union trade law—create scope for expansive application of the designation. Second, the concept of “overcapacity” lacks a precise and universally agreed definition, raising the possibility that legitimate industrial expansion in developing countries could be characterized as distortionary. Third, terms such as “uncompetitive firm,” “excessively large grant,” and the delineation between grants, equity infusions, and concessional loans remain contested and susceptible to broad interpretation. Fourth, an expanded definition of “public body” could implicate state-owned enterprises, public sector banks, and

other developmental institutions that play a central role in financing infrastructure, utilities, and strategic sectors in many developing economies.

The strategic intent underlying the trilateral reform proposals, thus, presents a complex landscape for large developing countries, including India. On the one hand, enhanced disciplines, particularly those reversing the burden of proof or strengthening transparency, may contribute to addressing trade distortions that adversely affect developing country industries. But the conceptual and legal ambiguities around definition of a 'non-market economy' or 'public body', or what constitutes 'overcapacity' or an 'uncompetitive firm' remain matters of serious concern.

While the trilateral framework was an attempt at developing an institutional reform response to their view of global imbalance, a more direct sector-specific intervention emerged in the form of the Global Forum for Steel Excess Capacity (GFSEC). GFSEC was established in 2016 following G20 consensus to address concerns over subsidy-driven expansion and structural excess in the steel sector. It defines "excess capacity" as production exceeding demand due to government support, which is a very broad interpretation that remains contested, particularly by developing economies with infrastructure-led growth strategies. The Forum's Berlin Principles identify market-distorting interventions, including financial support for non-viable plants, unlimited state guarantees, operating subsidies, and assistance without credible restructuring plans. These concepts have subsequently informed proposals by the United States, the European Union, and Japan to strengthen subsidy disciplines within the World Trade Organization framework. Over time, key non-OECD participants in GFSEC such as China, India, and Saudi Arabia withdrew, reflecting divergent developmental priorities and limiting the Forum's universality. Recent ministerial outcomes indicate a shift from transparency and dialogue toward coordinated trade defence actions among participating members, positioning the GFSEC as a sector-specific plurilateral template capable of shaping trade rules and collective responses outside fully multilateral processes. Such plurilateral initiatives assume importance given the recent posturing in the WTO by the US, supported by the EU, prioritizing plurilateral as opposed to multilateral solutions to global trade issues. We discuss this emerging context in the section.

13.3.1. Comparison of EU and US Positions: WTO Reforms and Implications for India

The Communication on WTO Reforms clearly underlines the common agenda of the developed wealthy nations¹⁹. While on the face of it, the EU and US proposals seem to be differentiated, they fundamentally argue for very similar solutions. Let us look at Table 1 to understand the very cosmetic difference between the US and EU position (in their respective communications).

The reform trajectory advanced by the United States and the European Union poses significant structural implications for India as a large developing economy. The increasing reliance on plurilateral arrangements risks enabling coalitions of the willing to generate de facto global rules in priority areas, such as digital trade, green transition, and advanced technologies, thereby diluting consensus-based multilateralism and reducing India's capacity to influence norm-setting within the World Trade Organization. It needs to be noted that issues of green transition and digital and advanced technologies are intrinsically related to the future of industrialization and GVCs.

Both actors broadly converge on limiting Special and Differential Treatment for economically significant developing countries pre-emptively undermining their call for increased flexibilities to address developmental concerns. On the other hand, they propose to expand their own policy space through MFN exceptions that selectively limit market access, including through coordinated plurilateral sectoral initiatives.

Their proposals also seek strengthening of ASCM disciplines on state support and subsidies to address perceived unfair trade and overcapacity. Although these initiatives appear to be framed in relation to managing the so-called 'China shock'²⁰, their design may extend to other large developing economies, including India, and constrain legitimate industrial and developmental strategies.

While the European Union adopts a comparatively more calibrated tone, including conditional openness to criteria-based differentiation, the overall reform direction suggested by the US and EU positions risks compressing policy space of large developing countries like India. Developed countries seek to legitimize the weaponization of their market power and demand dependency of developing countries on their markets while subjecting the industrial policies and

Table 13.1: US–EU Convergence on WTO Reform: A Comparative Assessment

Issue	US ²¹	EU ²²	Remarks
WTO and its role	Views the WTO as ineffective in addressing current trade challenges. Argues that consensus among diverse members prevents meaningful reform. Seeks overhaul of core principles—MFN, Consensus, and S&DT—and systemic reform of key agreements.	Acknowledges the WTO’s value in providing baseline rules and predictability. However, agrees that the system must be overhauled, including reforms to MFN, Consensus, S&DT, and market access disciplines to ensure “fairness.”	Despite softer language, EU and US positions largely converge; differences are mostly rhetorical.
MFN	Outright rejection of MFN, citing (i) completely changed circumstances in the global economy (ii) sovereign right to impose differential tariffs [national security, supply chain resilience etc.]	Advocates a “conditional MFN” linked to reciprocity and levels of openness. Suggests tariff renegotiations and raises concerns about supply chains and overcapacity.	EU avoids overt national security language but relies on similar reasoning to justify MFN exceptions.
Consensus	Argues consensus among 166 members blocks progress. Promotes plurilateral agreements as the only viable path forward.	Claims consensus has been misused to create paralysis. Supports flexible approaches such as variable geometry and coalitions of the willing.	Substantively aligned with the US, though expressed in more diplomatic terms.
Plurilateral	Strongly supports closed plurilateral (Annex 4–type), limited to participating members, rejecting open MFN-based approaches.	Supports both open and closed plurilateral but endorses club-based approaches where benefits are limited to participants on a reciprocal basis.	EU’s acceptance of open plurilateral appears selective; both ultimately legitimize closed formats.
Fairness	Frames reform around correcting “imbalances” caused by S&DT and the rise of large developing economies, especially China. Links S&DT, industrial policy, ASCM reform, and market access to restoring balance.	Presents a softer articulation of the US fairness narrative, emphasizing rule effectiveness and balance.	Positions are substantively similar, with minimal real divergence.
ASCM Reforms	Sceptical of multilateral reform within the WTO. Prefers sectoral clubs, unilateral tools, or plurilateral agreements outside the WTO framework.	More optimistic about WTO-based ASCM reform and seeks compromise, particularly involving China and other large developing economies.	US favors action outside the WTO; EU prefers reform within the WTO, though convergence remains possible.
S&DT	Seeks to limit S&DT for large developing countries based on absolute economic size (e.g., G20 status), downplaying relative development indicators and historical precedent.	Similar objective but more open to criteria-based approaches. Will seek policy space for green industrialization while limiting broad flexibilities.	EU may engage on broader formulations; US stance is more rigid.

Overcapacity	Argues that certain economic systems (implicitly China) distort markets through predatory industrial policies and subsidies, resulting in structural overcapacity. References OECD and the Global Forum on Steel Excess Capacity (GFSEC) definition to frame overcapacity as a systemic, not cyclical, problem. Likely to replicate the GFSEC model—forming sectoral “coalitions of the willing” to impose coordinated trade measures (e.g., tariffs or import restrictions) against targeted countries. Such clubs would effectively set and enforce norms outside multilateral disciplines. India and some others have distanced themselves from this approach.	Shares similar objectives and is an active supporter of the GFSEC framework. Supports sectoral coalitions to address overcapacity and would prefer to legitimize such arrangements within the WTO framework as Annex 4 plurilateral. May seek to build “critical mass” by bringing in smaller economies, though achieving consensus for Annex 4 inclusion remains difficult.	Substantively aligned. The key difference is that the EU seeks WTO-based legitimacy (Annex 4), while the US is comfortable proceeding through external or informal coalitions if consensus is blocked.
Industrial Policy	Uses tariffs as proxy industrial policy, expanding national security exceptions. Opposes policy-space flexibilities for large developing countries.	Distinguishes between “legitimate” (e.g., green) and trade-distortive industrial policy. Open to calibrated policy space based on objective criteria.	Clearer divergence: EU more open to conditional flexibility; US largely resistant.
Market Access	Pursues unilateral reciprocal tariffs and closed plurilateral agreements (sector/product-based), potentially outside the WTO.	Supports plurilateral approaches but also favours reviving reciprocity-based NAMA-style negotiations.	Clear difference: US leans unilateral/club-based; EU retains some multilateral orientation.

Source: Authors' Compilation

subsidies of large emerging economies such as India to rigorous scrutiny under revised trade disciplines.

13.4. Developing Countries' Perspective on Global Trade Imbalances

From the standpoint of developing economies, global trade imbalances must be understood within the context of persistent structural asymmetries in income, productive capacity, and technological capabilities. Despite their aggregate economic weight, major developing countries, including India, continue to lag advanced economies in per capita incomes, manufacturing depth, and participation in higher value-added segments of global value chains. The principal concern is, therefore, the enduring development gap and the limited capacity to translate growth into sustained structural transformation.

Developing countries consequently emphasize the need for greater policy flexibility and certainty within the multilateral trading system to pursue legitimate industrialization and structural transformation objectives, as reflected in submissions such as those of the Africa Group to the WTO²³. This includes the ability to deploy measures such as local content requirements, targeted subsidies for research and development, regional development initiatives, and support for environmental transition. Such instruments are regarded as integral to late industrialization strategies and to correcting structural disadvantages.

While developing economies have been affected by distortions associated with large-scale subsidization and export expansion by major economies, they bear asymmetric adjustment costs due to their higher external dependence and limited fiscal space. Although existing WTO disciplines, particularly under

the Agreement on Subsidies and Countervailing Measures, provide mechanisms to address unfair trade practices, enforcement limitations persist. Certain transparency-related reform proposals, such as treating unreported subsidies as prohibited when counter-notified, may be of relevance. However, prevailing reform approaches do not adequately confront the deeper structural imbalances and development asymmetries that shape the position of developing countries in the global trading system.

13.5. The Development Gap and Structural Divergence: Constraints on Middle-Class Transition

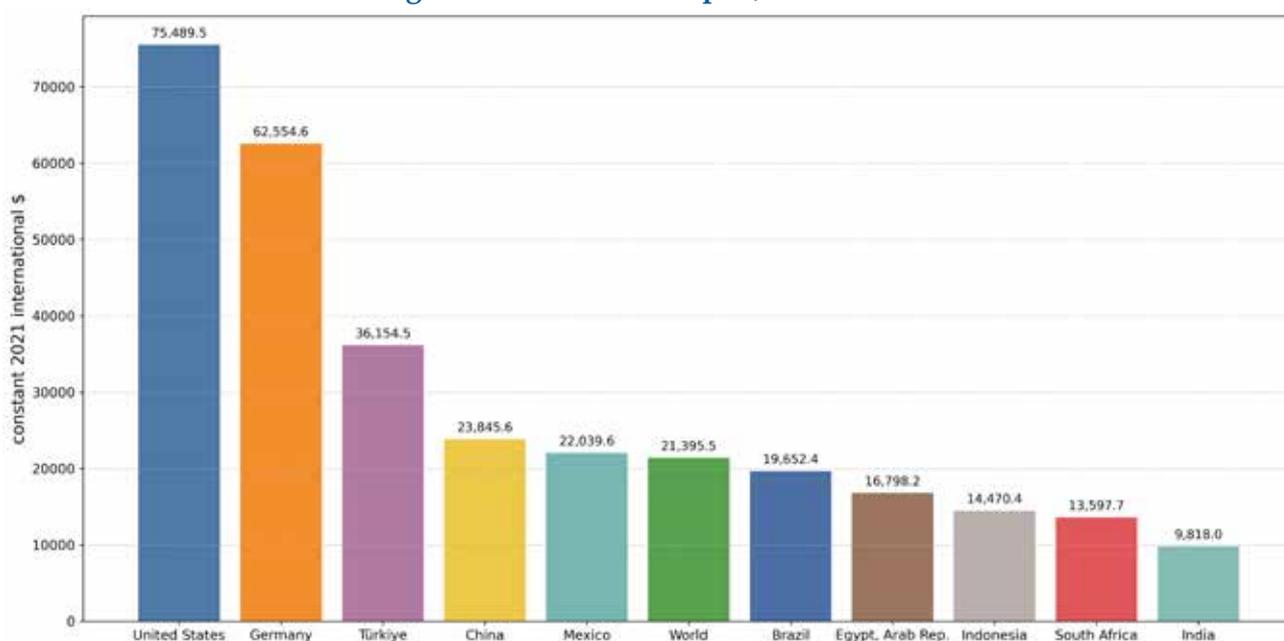
The contemporary global economy continues to be characterised by deep and persistent development divides that shape patterns of production, trade, income distribution, and institutional power. Not withstanding successive rounds of multilateral trade liberalisation under the WTO framework, convergence between developed and developing countries has remained uneven and incomplete. While certain emerging economies have achieved significant integration into global markets, a substantial number of developing countries and least-developed countries (LDCs) continue to face structural constraints that limit their ability to derive sustained gains from global trade. These asymmetries are central to understanding the fragility of middle-class formation in large developing economies.

As illustrated in Figure 13.3, per capita income in PPP terms in developing economies remain significantly below those of advanced economies, reflecting incomplete structural transformation and persistent productivity gaps. The COVID-19 pandemic further exacerbated these disparities, reversing decades of poverty reduction and pushing an additional 70 million people into extreme poverty.¹ the income gap between high-income and developing economies remains substantial. World Bank estimates indicate that GDP per capita (constant 2015 US\$) in high-income countries is approximately eight times higher than in low- and middle-income countries.

Poverty indicators further reveal the fragility of middle-class transition. In 2021, only 0.3 per cent of the population in high-income countries lived below the international extreme poverty line of US\$ 2.15 per day, compared to 12.9 per cent in India (Figure 13.4). At the higher threshold of US\$ 6.85 per day, more than half of the population in low- and middle-income countries—and over 80 per cent in India—had yet to attain lower middle-income living standards (Figure 13.5). These figures suggest that the gains from globalisation have been concentrated primarily in advanced economies and China, while much of the developing world remains structurally vulnerable.

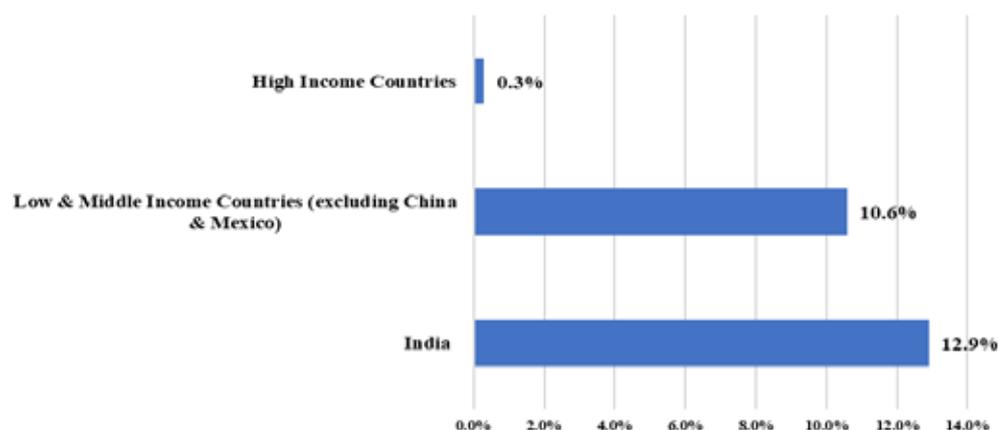
Urbanisation patterns further reflect uneven structural transformation. High-income countries exhibit urbanisation rates of approximately 82 per cent, compared to 48 per cent in low- and middle-

Figure 13.3: GDP Per Capita, PPP in 2024



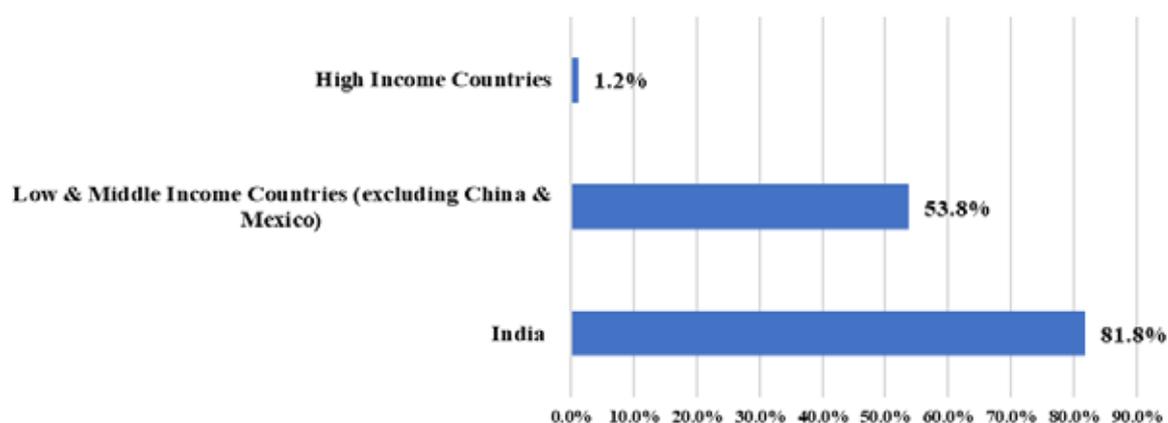
Source: Authors' Compilation based on WDI World Bank.

Figure 13.4: Proportion of People Living on Less than US\$ 2.15 a Day (2021)



Source: Authors' Compilation based on WDI World Bank.

Figure 13.5: Proportion of People Living on Less than US\$ 6.85 a Day (2021)



Source: Authors' Compilation based on WDI World Bank.

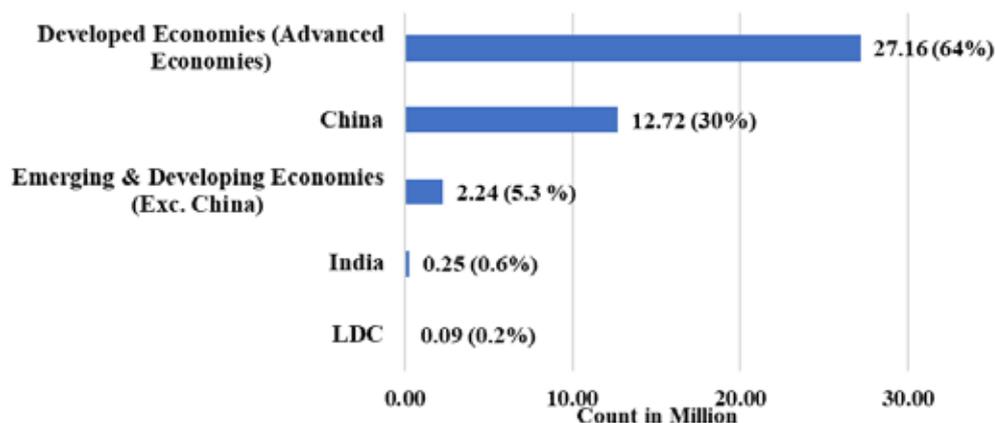
income countries (excluding China and Mexico) and 36 per cent in India²⁴. As Todaro and Smith (2020)²⁵ argue, urbanisation contributes to development only when supported by sustained industrial growth and productive employment expansion. While advanced economies and China have leveraged urban-industrial transitions effectively, many developing countries lack the industrial depth and policy flexibility necessary to translate urbanisation into durable middle-class expansion.

Technological capability and innovation present additional dimensions of divergence. Patent data (Figure 13.6) indicate that developed economies account for approximately 64 per cent of resident patent applications between 1980 and 2024, while China accounts for 30 per cent. In contrast, India and other emerging and developing economies remain at the lower end of global patenting activity, reflecting limited innovation ecosystems and weaker capacity for technological commercialisation. A similar pattern

is observed in intellectual property (IP) receipts (Figure 13.7), where advanced economies dominate global revenue flows from innovation, with China emerging as a significant, though secondary, beneficiary. These trends highlight the concentration of technological rents within a narrow group of countries.

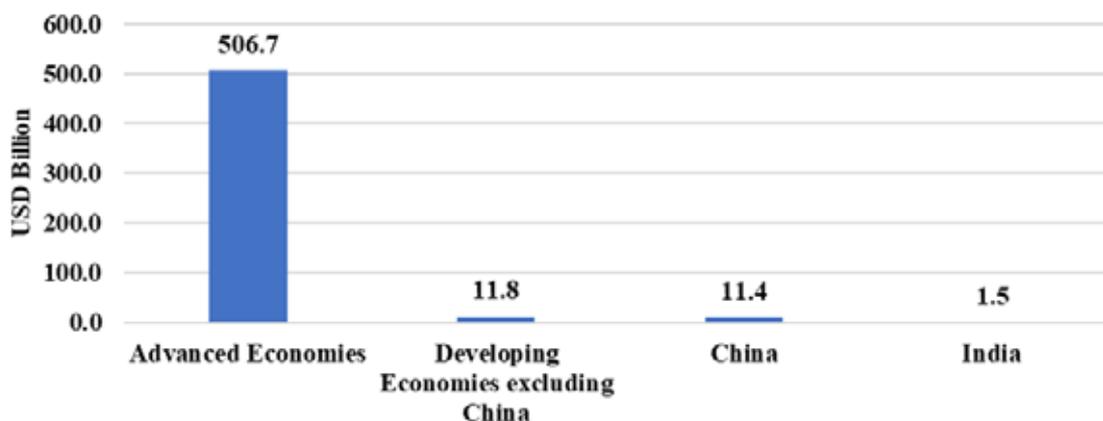
In technology-intensive sectors—including pharmaceuticals (HS 30) and engineering and electronics products (HS 84–90)—advanced economies continue to dominate global exports (Figure 13.8). Although their collective share declined by 18.58 percentage points between 2000 and 2024, the principal beneficiary has been China, whose share increased by 14.26 percentage points over the same period. By contrast, emerging and developing economies (excluding China and Mexico) registered only modest gains of 3.20 percentage points, with India's share increasing by merely 1.07 percentage points. The reallocation of global manufacturing exports has reinforced concentration

Figure 13.6: Patent Applications by Residents: Advanced vs Developing Economies (1980–2024)



Source: Authors' Compilation based on WDI World Bank.

Figure 13.7: Intellectual Property Receipts (Average 2022-24)



Source: Authors' Compilation based on WDI World Bank.

rather than broad-based convergence. China has been the primary beneficiary across both high- and low-technology segments, significantly expanding its global share, while advanced economies have experienced relative declines. In contrast, India and most other developing countries have recorded only limited gains²⁶.

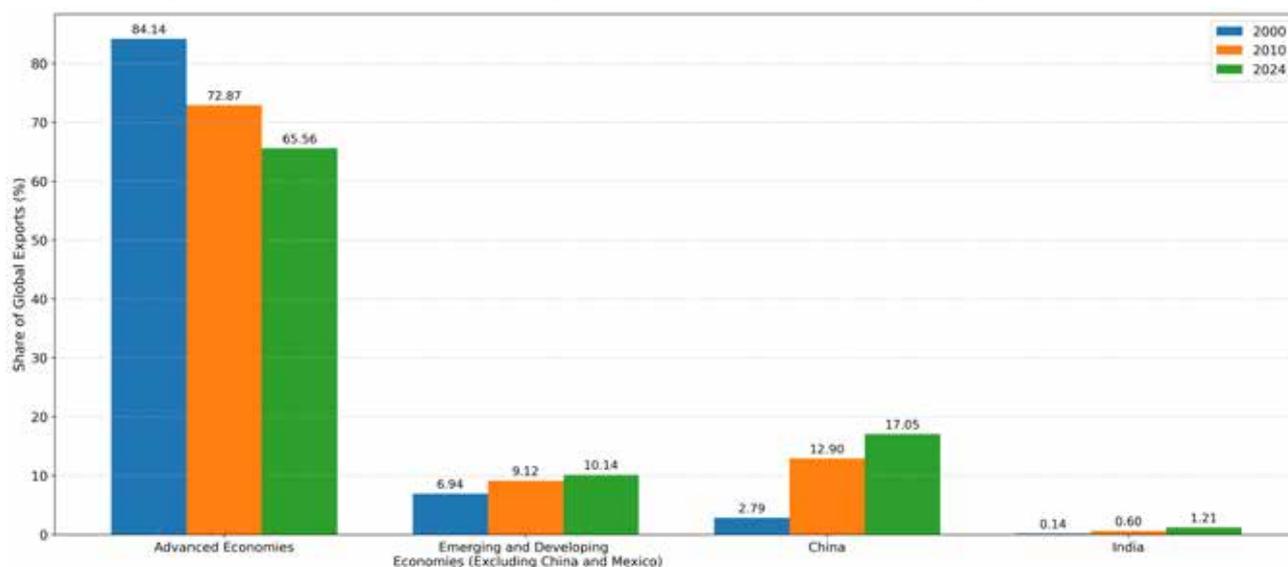
The divergence also seeps into the global value chains (GVCs), modern GVCs are highly specialised and span multiple countries. Baldwin & Lopez-Gonzalez (2015)²⁷ note that semiconductors are often produced in hubs like Taiwan and South Korea before assembly in China. The automotive industry relies on cross-border supply chains, with Germany, Japan, and Mexico playing key roles (Sturgeon et al., 2008; Sturgeon, Van Biesebroeck, Gereffi, 2008²⁸). In textiles, raw materials come from India and Bangladesh, while design and marketing remain concentrated in developed economies (Gereffi & Frederick, 2010).

Services, R&D, logistics, and distribution increasingly capture more value. For example, pharmaceutical GVCs produce APIs in China, India, or Ireland, while R&D is concentrated in the US, France, the UK, Germany, and Switzerland (Gereffi, 2008; Quality Matters, 2023).²⁹

World Bank (2020)³⁰ highlights that high-income countries dominate GVCs due to advanced infrastructure, technological capabilities, and strong institutions, while developing countries face challenges like inadequate infrastructure and weaker institutions. Cusolito et al. (2016)³¹ note that high-income countries' superior access to capital, technology, and skilled labour allows deeper GVC integration, whereas developing countries often participate at lower value-added stages like raw material extraction and basic manufacturing.

The development divide is rooted in structural asymmetries in research and development intensity, access to finance, technological capability, and

Figure 13.8: Share in Global Exports of Selected Manufacturing Products (%)



Source: Authors' Compilation based on WITS Database.

the strength of industrial ecosystems. The UNIDO Industrial Development Report (2020)³² and the World Development Report (2019)³³ emphasize that sustained R&D investment and well-functioning financial markets underpin advanced manufacturing competitiveness and continuous industrial upgrading in high-income economies. In contrast, most developing countries operate with limited R&D expenditure, constrained financial systems, and marginal participation in advanced industrial sectors. These disparities translate into persistent differences in productivity, economic resilience, and living standards, while reinforcing structural constraints in healthcare access, educational attainment, and the generation of stable formal employment, thereby weakening the prospects for durable middle-class transition.

13.6. Conclusion and Policy Recommendations

While existing WTO rules provides a robust framework to check unfair trade practices that are one of the causes of unbalanced trade. In reality some WTO member states, especially regimes having greater command and control over their economy and factors of production like China, have not been effectively held accountable for their unfair trade practices³⁴. Over time, this has led to enormous concentration of production in a few geographies and imbalances in global trade. To that end, there is an urgent need to review WTO agreements related to subsidies (ASCM) and dumping (Anti-Dumping Agreement).

The focus of such a review has to be strengthening these agreements in a manner that requires much

greater scrutiny and accountability from all member states, especially those member states that hold dominant shares of global manufacturing and exports in specific sectors. Some elements in the proposals of the trilateral group (EU, US, Japan) are relevant in this context. But there is also a need to address imbalances in global trade arising out of structural developmental issues. From a developing country perspective, the only way to address these challenges are to consider flexibilities in global rules allowing policy space for industrial development that help laggard economies close the gap with the industrial leaders.

One way forward is to consider a combination of factors that take into account overall developmental status, as well as sectoral dominance that will be the basis of special and differential treatment for both flexibilities and defensive measures. The following discussion outlines three such flexibilities.

13.7. Proposed Flexibilities

a) Flexibility Allowing for the use of Subsidies that are 'actionable' as per ASCM for Genuinely Developmental Purposes in Order to Address Structural Imbalances in the Global Economic System

Countries that are below a certain threshold in terms of per-capita income, overall global share of manufacturing, merchandise exports and share of export in that industrial specialization (considered at the HS6 level of classification) will be allowed the following flexibilities till the time they qualify (See Table 13.2).

Table 13.2: Proposed Development-Sensitive Criteria for Industrial Policy Flexibilities

Criterion	Indicative Threshold (Generalized)	Underlying Rationale
Level of Development	Classified as a low-income or lower-middle-income country in nominal per capita terms according to an internationally recognized classification system (e.g., World Bank).	Indicates that the country remains in a phase of developmental transition and requires policy flexibility to advance structural transformation.
Overall Merchandise Export Share	Global merchandise export share disproportionate to GDP share (Not applicable to Small Economies)	Ensures that the country does not possess a disproportionate export presence relative to its economic size and is therefore unlikely to be a systemic source of merchandise trade imbalance.
Product-Level Export Concentration (HS6)	The country's share of global exports in the relevant product category (at the HS6 level) remains below <i>X</i> percent.	Demonstrates the absence of overwhelming dominance in the specific product market and reduces the likelihood of sector-specific imbalance or excess capacity.
Sectoral Manufacturing Share (ISIC)	The country's share of global manufacturing output in the corresponding industrial sector (as classified under ISIC) remains below <i>X</i> percent.	Indicates limited systemic influence within the broader manufacturing ecosystem associated with the product, thereby reducing the risk of structural distortion or persistent overcapacity.

Source: Authors' Compilation

These criteria are designed to ensure that only countries still undergoing a developmental transition characterized by relatively low per capita income would qualify for such policy space. In addition, the framework ensures that flexibilities are available only to countries that have not yet achieved substantive scale or competitiveness in their overall manufacturing ecosystem, as reflected in their modest share of global manufacturing output and merchandise exports. Finally, a limited share in global exports of the specific industrial product indicates that the country does not yet possess the economies of scale necessary to become a distortive force in global markets.

Fulfilment of all four cumulative criteria would therefore indicate that a country's policy interventions are directed toward legitimate developmental objectives, including early-stage industrial expansion and the attainment of minimum efficient scale necessary for effective participation in global markets, rather than the pursuit of sustained sectoral dominance.

Accordingly, countries satisfying all four conditions may be granted limited policy flexibility in the use of certain subsidy instruments currently classified as "actionable" under the ASCM, where

such measures are demonstrably directed toward developmental objectives such as early stage industrialization, capability creation and structural transformation. These countries may also be permitted to employ targeted measures incentivizing the use of domestic inputs, such as local content requirements currently proscribed under the ASCM and the TRIMS Agreement, when linked to clearly defined industrial development goals. However, no exemption would extend to other forms of subsidies categorized as prohibited under the ASCM except those directly associated with local content incentives contemplated within this development oriented framework.

This flexibility should be understood as an exceptional and conditional policy space that would arise only under special circumstances and strictly upon the fulfilment of all four cumulative criteria set out in this framework. It should not be interpreted as a default departure from existing WTO disciplines. Rather, it represents a narrowly tailored and development sensitive adjustment to the current framework for qualifying economies.

For countries that do not meet the four criteria, the proposal does not alter existing WTO disciplines.

The current ASCM framework would continue to apply in its entirety, and subsidies would remain subject to the existing classifications, obligations and remedies provided under WTO rules. The proposal therefore does not seek to reclassify actionable subsidies as prohibited for non-qualifying members nor does it modify their existing rights and obligations under the ASCM. Instead, the proposed flexibility is intended solely for qualifying developing countries undergoing structural industrial transition whose limited scale suggests minimal risk of systemic trade distortion.

b) Flexibility in the Application of Material Retardation and Threat of Material Injury in Investigations Involving Dominant Suppliers

The injury disciplines under the WTO Anti-Dumping Agreement and the Agreement on Subsidies and Countervailing Measures recognize three forms of injury: material injury, threat of material injury, and material retardation of the establishment of a domestic industry.³⁵ Although material retardation was designed to protect infant or nascent industries,³⁶ its practical significance has diminished due to the convergence of evidentiary standards with those governing material injury. Consequently, the provision is rarely invoked in circumstances where domestic production has not yet achieved commercial viability.

This constraint is particularly evident in cases involving structurally dominant suppliers. In several industrial sectors, global production and export capacity are concentrated in a limited number of jurisdictions characterized by large-scale manufacturing ecosystems and significant state involvement.³⁷ The pricing strategies, capacity expansions, and subsidization practices of such suppliers may exert pressures that exceed normal competitive forces. For low- and lower-middle-income Members, these pressures can deter investment and prevent industries from reaching minimum efficient scale.

Defining Structural Dominance: The absence of a definition of “dominant supplier” within WTO law has generated uncertainty in addressing structural asymmetries. For analytical clarity, dominance may be defined through objective and cumulative criteria reflecting both trade performance and production capacity. A Member could be considered dominant in a given HS6 product where it accounts for at least 10 per cent of global exports of that product and at

least 5 per cent of global manufacturing output in the relevant ISIC sector.

The dual thresholds ensure that dominance reflects systemic industrial weight rather than temporary export success, thereby distinguishing entrenched structural power from episodic competitiveness.

Recalibrating the Evidentiary Framework: Where imports originate from a supplier meeting these criteria, investigating authorities should be permitted to apply a rebuttable presumption of material retardation or threat thereof. Structural dominance would constitute prima facie evidence of the capacity to impede industrial establishment. Provisional measures, including anti-dumping or countervailing duties, could be imposed for a limited period of up to one year on the basis of a documented prima facie assessment. The evidentiary burden would then shift to the respondent to rebut the presumption, with a full investigation proceeding where necessary.

This approach preserves procedural safeguards while recalibrating evidentiary burdens in situations marked by demonstrable structural asymmetry.

Normative and Doctrinal Justification: Material retardation is conceptually distinct from material injury. While the latter concerns harm to an established industry, the former addresses the prevention or delay of industrial emergence.³⁸ Imposing identical evidentiary standards in both contexts risks depriving material retardation of independent meaning. In the presence of concentrated export share and production capacity, structural dominance itself provides probative evidence of the potential for entry foreclosure, particularly where the domestic industry remains nascent.

The proposed recalibration rests on three considerations. First, objective indicators of market concentration justify a prima facie inference of capacity to impede industrial development. Second, proportionality is maintained through temporary and reviewable measures. Third, industrial foreclosure may be irreversible: once investment is deterred or capacity abandoned, subsequent remedies may be ineffective.

A dominance-sensitive interpretation of material retardation would therefore restore functional relevance to the provision and better align trade remedy practice with contemporary production realities. By grounding the presumption in objective thresholds, the proposal maintains rule-based discipline while acknowledging structural asymmetries

that are especially consequential for developing and transitioning Members.

c) Counter-Notification of Unreported Subsidy Programmes by Dominant Economies and Their Presumptive Classification as Prohibited Subsidies

The Agreement on Subsidies and Countervailing Measures establishes a notification regime intended to secure transparency and preserve competitive neutrality.³⁹ Regular notification under Article 25 constitutes a central pillar of this framework.⁴⁰ However, the Agreement does not attach meaningful substantive consequences to persistent or deliberate non-compliance. In practice, several Members have repeatedly failed to notify new or expanded subsidy programmes, particularly in capital-intensive sectors characterized by concentrated production structures. The absence of systemic consequences enables opacity to function as a strategic advantage, while affected Members must bear the full evidentiary burden of investigation without access to essential information.

This structural deficiency assumes greater significance when examined in light of Article 27.6 of the ASCM.⁴¹ That provision provides for the graduation of developing country Members from certain special and differential treatment once they achieve a defined level of export competitiveness. The normative premise underlying Article 27.6 is that Members with sustained and significant export capacity possess the ability to influence global markets and therefore warrant differentiated legal treatment.⁴² Implicit in this provision is the recognition that manufacturing scale and export performance confer structural power. Yet the existing transparency framework does not calibrate notification obligations or consequences to such structural realities.

Integrating a Manufacturing-Based Dominance Standard: To address this asymmetry, the transparency obligations under Article 25 should be operationally linked to objective indicators of structural dominance, incorporating both export share and manufacturing capacity. A Member that satisfies defined thresholds of global export share in a given HS6 product and a minimum share of global manufacturing output in the relevant ISIC sector should be presumed capable of generating systemic market distortions.

Where such a member fails to notify a subsidy programme, a rebuttable presumption should arise

that the unreported measure is specific and capable of causing serious prejudice, and may therefore be provisionally treated as prohibited for remedial purposes. Affected Members would be entitled to adopt proportionate corrective measures without bearing the full evidentiary burden that ordinarily applies where relevant information has been deliberately withheld. Such measures would remain temporary and subject to immediate suspension upon full and transparent notification, at which point the standard procedural disciplines of the ASCM would resume.

By linking notification compliance to demonstrable manufacturing strength, this approach aligns the transparency regime with the logic embedded in Article 27.6 and reflects contemporary patterns of industrial concentration.

Addressing Circumvention, Rerouting, and Rules of Origin Manipulation: The need for recalibration is reinforced by the growing prevalence of circumvention practices. In sectors marked by concentrated production, subsidized output may be rerouted through third countries, subjected to minimal processing, or strategically reclassified under rules of origin to obscure its true source.⁴³ The current framework, which relies heavily on formal origin determinations and product-specific investigations,⁴⁴ often proves inadequate to address such practices in a systemic and timely manner.

Dominant producers frequently operate integrated cross-border production networks, enabling them to reconfigure supply chains in response to trade remedies. Where subsidy programmes remain unnotified, investigating authorities face significant informational asymmetries in tracing value chains, assessing pass-through effects, and determining whether nominal transformation operations amount to circumvention.⁴⁵ The absence of transparency thus weakens enforcement not only substantively but also institutionally, allowing distortions to persist through technical compliance with origin rules while undermining the economic objective of the Agreement.

Integrating a manufacturing-based dominance criterion strengthens the capacity of the system to respond to such practices by shifting the evidentiary burden in situations characterized by demonstrable structural power and opacity.

Economic, Legal, and Equity Justifications: The proposed recalibration is supported by interrelated economic, legal, and equity considerations.

Economically, Members with concentrated export share and substantial manufacturing output exert disproportionate influence over global prices, capacity allocation, and investment decisions. Undisclosed subsidies granted by such actors can generate structural overcapacity and distort competitive conditions across multiple jurisdictions simultaneously.

Legally, transparency is constitutive of a rules-based system. Article 27.6 embodies the principle that structural economic strength justifies differentiated legal consequences.⁴⁶ Extending this logic to persistent non-notification by structurally dominant Members promotes coherence within the ASCM and enhances its enforceability. Allowing intentional opacity to persist without consequence undermines reciprocity and predictability.

From an equity perspective, no Member should derive advantage from its own non-compliance. Formal procedural equality applied to actors with unequal market power may yield substantively inequitable outcomes. Conditioning full procedural protections on good-faith transparency restores balance and mitigates distortions arising from structural dominance, including those manifested through circumvention and supply chain rerouting.

In sum, integrating a manufacturing-based dominance standard into notification and counter-notification disciplines would strengthen the effectiveness of the ASCM. By linking enhanced transparency obligations and presumptive consequences to objective indicators of structural capacity, the proposal aligns subsidy disciplines with contemporary production realities while reinforcing systemic credibility and fairness.

However, notwithstanding the analytical discussion presented in this paper, the proposed flexibilities should be understood solely as exploratory and conceptual contributions intended to stimulate discussion on possible approaches for addressing structural development asymmetries within the multilateral trading system. The frameworks and criteria outlined above are illustrative in nature and are not intended to constitute negotiating proposals or formal policy positions.

The analysis seeks to examine how objective indicators such as levels of development, export concentration, and manufacturing capacity might inform discussions on development-sensitive approaches within existing trade disciplines. In this context, the paper highlights that approaches such as integrating

a manufacturing-based dominance standard into notification and counter-notification disciplines could, in principle, strengthen the effectiveness of the ASCM by linking enhanced transparency obligations and presumptive consequences to objective indicators of structural capacity. Such conceptual approaches are discussed to illustrate how subsidy disciplines might better reflect contemporary production realities while reinforcing systemic credibility and fairness.

The discussion should be viewed as a contribution to the broader policy debate on development-oriented trade governance. Any consideration of such approaches in a multilateral context would necessarily require further examination, wider engagement among WTO Members, and consistency with the established rules and principles of the multilateral trading system.⁴⁷

Endnotes

- 1 Vernon, R. (1992). International investment and international trade in the product cycle. In *International economic policies and their theoretical foundations* (pp. 415-435). Academic Press.
- 2 Alpha industries refer to technologically complex sectors that command a dominant share of value in global manufacturing and trade. These include advanced engineering, complex chemicals, specialized materials, electronics, precision equipment, pharmaceuticals, automobiles, shipbuilding, and aviation.
- 3 For a summary of the literature on this topic please refer to "Centre for WTO Studies. Navigating the development divide: The case for policy space in India's industrial policy strategy amid rising global protectionism (Working Paper No. 85). https://wtocentre.iift.ac.in/workingpaper/CWS_WorkingPaper_85.pdf The paper includes a detailed discussion on concerns associated with unfair trade practices of the Chinese state.
- 4 Naudé, W. (2010). Industrial policy: Old and new issues (No. 2010/106). WIDER Working Paper.
- 5 Ilyina, A., Pazarbasioglu, C., & Ruta, M. (2024). Industrial Policy is Back but the Bar to Get it Right Is High. IMF Blog.
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- 8 The refined taxonomy developed by the Global Trade Alert expands the classification of state

support by introducing five additional intervention categories to better reflect the evolving structure and modalities of government assistance. These include Corporate Control Orders, Debt Purchases, Equity Stakes, Intermediated Financial Investment Support, and Intermediated Lending Support. The revised framework enhances analytical clarity by distinguishing between direct state interventions and those channelled through financial intermediaries, thereby capturing the increasing institutional complexity of contemporary state capitalism.

- ⁹ Ilyina, A., Pazarbasioglu, C., & Ruta, M. (2024). *Supra* note 5
- ¹⁰ Chang, H.-J. (2002). *Kicking away the ladder: Development strategy in historical perspective*. Anthem Press.
- ¹¹ Wu, Mark (2016) *The “China, Inc.” Challenge to Global Trade Governance*, Harvard International Law Journal, Vol. 5, No.2
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- ¹³ Atkinson, R. D., & Tufts, I. (2023). *The Hamilton index, 2023: China is running away with strategic industries*. ITIF, December.
- ¹⁴ Lardy, N. R. (2019). *The state strikes back: The end of economic reform in China?*. Peterson Institute for International Economics.
- ¹⁵ Bickenbach, F., Dohse, D., Langhammer, R. J., & Liu, W. H. (2024A). *Foul play? On the scale and scope of industrial subsidies in China* (No. 173). Kiel Policy Brief.
- ¹⁶ As per Stanford Centre on China’s Economy and Institutions (SCCEI) and the Asia Society Policy Institute’s Centre for China Analysis (CCA)
- ¹⁷ Branstetter, L. G., & Li, G. (2022). *Does “Made in China 2025” Work for China? Evidence from Chinese Listed Firms* (No. w30676). National Bureau of Economic Research.
- ¹⁸ The term “non-market economy” is not a part of the original GATT or WTO agreements. The closest thing is the Second Ad Note to Article VI:1, which describes a non-market economy as “A country which has a complete or substantially complete monopoly of its trade and where all domestic prices are fixed by the State.” This definition is extremely narrow, that was intended to apply to Soviet-style command economies. Most economies today, including China and Vietnam, do not fit this description because these countries allow private property and have some market-determined prices.
- ¹⁹ G7+ non-G7 EU member states
- ²⁰ “China shock” refers to the severe, rapid economic disruption caused by the surge of Chinese imports into the US and Europe following China’s 2001 WTO entry. Proponents of the China shock that include prominent economists like David Autor, Gordon Hanson, and David Dorn, as well as former USTR Robert Lighthizer, argue that this led to significant manufacturing job losses, declining wages, and stagnation in western industrial regions. It is further argued that a more aggressive “China Shock 2.0” is now occurring, driven by Chinese overcapacity in high-tech sectors (i.e., alpha industries) like EVs, solar and industrial robots, leading to concentration of manufacturing in China and displacement of industries elsewhere.
- ²¹ US Communication on WTO Reform (WT/GC/W/984), 15th December, 2025
- ²² EU Communication on WTO Reform (WT/GC/W/986), 21st January, 2026
- ²³ Policy Space for Industrial Development - A Case for Rebalancing Trade Rules to Promote Industrialization and to Address Emerging Challenges such as Climate Change, Concentration of Production and Digital Industrialization, WT/GC/W/868, G/C/W/825, WT/COMTD/W/270, IP/C/W/695, WT/WGTTT/W/33, March 1, 2023
- ²⁴ Centre for WTO, (Working Paper No. 85), *Supra* Note 3
- ²⁵ Todaro, M. P., & Smith, S. C. (2020). *Economic development* (13th ed.) TRADE, OECD. (2023). *GOVERNMENT SUPPORT IN INDUSTRIAL SECTORS. POLICY*, (270).
- ²⁶ Centre for WTO, (Working Paper No. 85), *Supra* Note 3
- ²⁷ Baldwin, R., & Lopez-Gonzalez, J. (2015). *Supply-chain trade: A portrait of global patterns and several testable hypotheses*. *The World Economy*, 38(11), 1682-1721.
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- ³² UNIDO. (2019). Industrial development report 2020: Industrializing in the digital age. UN.
- ³³ World Bank. (2019). World development report 2020: Trading for development in the age of global value chains. World Bank Group.
- ³⁴ “2024 Report to Congress On China’s WTO Compliance”, United States Trade Representative (January 2025) [Pg. 2].
- ³⁵ Article 3, footnote 9, GATT.
- ³⁶ Article 15, footnote 45, GATT
- ³⁷ “Government policies to promote innovation in the digital age”, World Trade Report 2020, World Trade Organisation (2020) [pg. 28].
- ³⁸ Article 15.1, SCM and “United States — Countervailing Measures Concerning Certain Products from the European Communities”, WTO (2005). https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds212_e.htm
- ³⁹ Article 25, SCM Agreement, 1995.
- ⁴⁰ *ibid.*
- ⁴¹ Article 27.6, SCM Agreement, 1995.
- ⁴² *ibid.*
- ⁴³ “Trade circumvention in free trade areas”, Jianpeng Deng, Jialin Li, Joeseeph Mai, et. al., *Journal of International Money and Finance*, Vol 150, 103232, Science Direct (February 25, 2025), “Exports in Disguise? Trade Rerouting During the US–China Trade War” Ebehi Iyoha, Edmund Malesky, Jaya Wen, Sung-Ju Wu, Harvard Business School, Working Paper 24-072.
- ⁴⁴ Article 11.1, SCM Agreement and Article 5.1 Anti-Dumping agreement.
- ⁴⁵ *ibid.* (n. 12) [pg. 6].
- ⁴⁶ Article 27.6, SCM Agreement, 1995.
- ⁴⁷ This paper reflects solely the views of the authors. The arguments and proposals presented herein have neither been discussed at any official level within the Government of India nor do they represent any formal position or proposal of the Government of India.

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Session I: Industrial Policy at a Crossroad: WTO Rules and Developmental Constraints

11 February 2026 | New Delhi

Chaired:

- **Prof. Nagesh Kumar**, Director and Chief Executive, Institute for Studies in Industrial Development (ISID)

Presentation:

- **Dr. Pritam Banerjee**, Head & Professor, Centre for WTO Studies (CWS), IIFT. *(Team: Dr. Zaki Hussain, Senior Research Fellow, CWS; Ms. Kanika Karwal, Young Professional, CWS; and Riddhi Lakhiani, Research Assistant, RIS)*

Discussants:

- **Professor Surender Kumar**, Professor, Delhi School of Economics
- **Dr. Harsha Vardhana Singh**, Former Deputy Director General, WTO
- **Dr. Rajan Sudesh Ratna**, Deputy Head, South and South-West Asia office of United Nations ESCAP
- **Dr. Nitya Nanda**, Professor, Council for Social Development
- **Dr. Surender Singh**, Associate Professor, Jindal School of Liberal Arts and Humanities



The issue today is not whether industrial policy is needed, but what kind of industrial policy countries are going to pursue. Generally we are consistent in complying with WTO provisions and rules. Yet countries that themselves extensively use measures such as local content requirements are bringing complaints against India, as seen earlier in the case of our solar panel programme, where the United States had raised concerns regarding local content requirements and now in challenges related to the PLI schemes raised by China. Our subsidies are a very small fraction of our GDP, and a country which is spending nearly 5 per cent of its GDP bringing a complaint against us is very interesting. This reflects the double standards that have been the norm in the world trading system. We therefore need to build coalitions and raise this agenda in collaboration with other countries, especially since additional disciplines on subsidies could compromise the principle of special and differential treatment.

Prof. Nagesh Kumar, *Director and Chief Executive, Institute for Studies in Industrial Development (ISID)*



The trade imbalance narrative advanced by the EU and US ignores the inherent structural asymmetries of global industrialization. By enforcing rigid WTO disciplines on industrial policy, early industrializers are effectively denying developing nations like India the same policy toolkits they themselves leveraged for growth during the 20th century

Dr. Pritam Banerjee, *Head & Professor, Centre for WTO Studies (CWS), IIFT*



The WTO disciplines at present provide us with considerable flexibility, the real question is how we design our industrial policy within that space.

Dr. Harsha Vardhana Singh, *Former Deputy Director General, WTO*



Before seeking external concessions, we must address domestic competitiveness issues such as high input costs, land constraints, capital costs, and regulatory burdens.

Prof. Surender Kumar, *Professor, Delhi School of Economics*



Not every manufacturing sector can be declared sensitive. We must identify a limited number of sectors that we want to take to the global level and design targeted industrial policies to support them.

Dr. Rajan Sudesh Ratna, *Deputy Head, South and South-West Asia office of United Nations ESCAP*





If you ask any Indian what are the two manufacturing industries where India has made some success, these are automobile and pharmaceuticals. And in both these industries, industrial policy played a very important role. Legitimate development aspirational efforts that countries like India will make must be protected.

Dr. Nitya Nanda, *Professor, Council for Social Development*



Developing countries operate under weak technological capabilities, limited access to finance, and dependence on imported technology. Without flexibility in local content and performance requirements, moving up the value chain becomes extremely difficult. Our PLI scheme can be challenged in the WTO as the overall design of the scheme does not make a clear demarcation between domestic production support and export- linked subsidies.

Dr. Surendar Singh, *Associate Professor, Jindal School of Liberal Arts and Humanities*



World Trade and Development Report 2026

Multilateralism Under Pressure

The *World Trade and Development Report (WTDR 2026)* is structured in an introductory analysis and two parts. The introduction gives an overview of the current geoeconomics situation, and summarises the key messages from the chapter contributors. It then explores the global trade and investment trends from the lens of an economist, bringing forth the already significant and rapidly expanding stake of the Global South in international trade and rules under which it is conducted.

Part 1 of the WTDR 2026 takes up the broader issues on which negotiations are aimed to bring clarity at the WTO. These include the issues relating to WTO reform and reform of its dysfunctional dispute settlement mechanism, development issues including special and differential treatment for developing countries, the trade-sustainability interface and WTO's role in it, and the Joint Statement Initiatives that started during the 11th Ministerial Conference (MC11) at Buenos Aires in 2017 and continue to look for a place in the WTO acquis.

Part 2 of the WTDR 2026 addresses some specific issues which are sector specific or inform the broader debate. These include agriculture negotiations and public stockholding for food security, equity and sustainability related issues in fisheries subsidies, investment facilitation as situated in the trading system, electronic transmissions and duties on them, and industrial policy including subsidies and the need to level the playing field.

Each chapter analyses the subject at length and bring forth useful recommendations on what can be done at the forthcoming 14th Ministerial Conference of the WTO (MC14) and beyond.

It will be an invaluable resource to practitioners, scholars and researchers as well as policy-makers, private sector professionals and non-governmental organisations in the field.



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