

27 February 2023

Towards a WTO Anchored in SDGs

By Mohan Kumar

The WTO faces an existential crisis, despite a reasonable outcome at the Twelfth Ministerial Conference. The one way by which the WTO can resuscitate itself is to make sure that the negotiating agenda is anchored in the SDGs rather than in the narrow interests of its most powerful Members. The changing role of the State must also be factored in by the WTO.

L'OMC est confrontée à une crise existentielle, malgré un résultat raisonnable lors de la douzième conférence ministérielle. Le seul moyen pour l'OMC de se ressusciter est de s'assurer que l'agenda des négociations est ancré dans les ODD plutôt que dans les intérêts étroits de ses membres les plus puissants. L'OMC doit également tenir compte de l'évolution du rôle de l'État.

La OMC se enfrenta a una crisis existencial, a pesar de un resultado razonable en la Duodécima Conferencia Ministerial. La única forma en que la OMC puede resucitar es asegurándose de que la agenda de negociación esté anclada en los ODS y no en los estrechos intereses de sus miembros más poderosos. La OMC también debe tener en cuenta el papel cambiante del Estado.

Introduction

There is little doubt that the venerable institution that is the World Trade Organization (WTO) needs deep-seated reform. It may sound strange now, but barely three years after the WTO came into existence, a failed Ministerial Conference in Seattle set off wide-ranging discussions on the issue of transparency of the functioning of the WTO. The outcome of that exercise is given below:[1]

- It was felt that there was no need for any major institutional reform which could alter the basic character of the WTO as a member-driven organization.
- Decision-making in the WTO to continue on the basis of consensus.
- Recognition that interactive open-ended informal consultations play an important role in facilitating consensus in negotiations.
- As a complement (but not as a replacement) to the above, consultations to also take place with individual or small groups of WTO Members subject to the membership being advised of such consultations; Members with an interest in the issue to be given an opportunity to make their views known, and the outcome of such consultations are reported back to the full membership.

The above conclusions were anything but dramatic; but they needed reiteration in light of the spectacular failure of the WTO Ministerial at Seattle in 1999. The fact that the WTO membership had to state the obvious, namely, that the WTO is a member-driven organization, was an indirect indictment of the WTO Secretariat which was proactively looking to launch a new “Round”, despite the reservations of some WTO Members. The need to emphasize consensus decision-making was to assuage the feelings of many countries which felt their voice was not being heard. And finally, the idea of open-ended consultations was to ensure the participation of least developed countries which were seldom invited to the so-called small group, “Green Room” meetings.

Despite the above, when attempts were made to launch a new “Round” at Doha, there was an imperative need to

christen it as a “Development Round”. In fact, the Doha Ministerial Declaration stated explicitly that:

“The majority of WTO Members are developing countries. We seek to place their needs and interests at the heart of the Work Programme adopted in this Declaration. ...”[2]

By effectively walking away from the Doha Round, the powerful developed Members of the WTO broke a promise that they had made to the less powerful, developing and least developed WTO membership. It is the breaking of this understanding that led to a long period of distrust and angst among some developing and least developed countries. This was also the primary reason why the WTO went through a long period during which it was impossible to arrive at a consensus on any multilateral agreement. Effectively, the negotiating arm of the WTO was paralysed. As if this was not enough, the dispute settlement arm of the WTO (known previously as the jewel in the crown of the WTO) ran into a huge roadblock set up mainly by the most powerful Member of the WTO, the United States of America. The last function of the WTO, the trade monitoring function, was already in disuse because some Members followed opaque trade policy regimes and were simply failing to inform the WTO of the various measures they were taking. Thus, all three functions of the WTO, namely, the negotiating function, the dispute settlement function and the trade monitoring function are in total disarray. This then is the existential crisis against which the Twelfth Ministerial Conference of the WTO took place in Geneva in June 2022.

Twelfth WTO Ministerial Conference

The Twelfth Ministerial Conference (MC12) of the WTO took place from 12 to 17 June 2022 in Geneva. The outcome of the Ministerial Conference was mixed and many crucial issues were kicked down the road by the membership.[3] This is no mean achievement, given the tremendous investment made in time, money and energy by the powerful Members of the WTO. That

[1] Mohan Kumar, *Negotiation Dynamics of the WTO: An Insider's Account* (Singapore, Palgrave Macmillan, 2018), p. 106.

[2] World Trade Organization (WTO), *The Doha Round Texts and related documents* (Geneva, 2009), “The Doha Ministerial Declaration”, paragraph 2.

[3] Mohan Kumar, “India's trade policy faces a fork in the road”, *Hindustan Times*, 8 July 2022.

said, some vital issues confront the WTO membership in the next few weeks and months ahead:

- It is hard to believe a WTO Conference ending without anything on Agriculture, with the exception of a Declaration on Food Insecurity and a Decision on the World Food Program. In the run-up to the MC12, the thorny issue of public stockholding for food security purposes was still pending. Yet the MC12 failed singularly in addressing the issue. Worse, there was no agreed mandate to further negotiate it in order to find a permanent solution.
- The only multilateral agreement being negotiated in the WTO these days i.e. Agreement on Fisheries Subsidies was adopted at the MC12 but even here, truth be told, there are still some negotiations left to be concluded. Be that as it may, it does mark a step forward towards ocean sustainability by prohibiting harmful fisheries subsidies which are a key factor in the widespread depletion of global fish stocks. The WTO Secretariat believes this to be a historical achievement for the membership as the first Sustainable Development Goal (SDG) target to be fully met through a multilateral agreement, the first WTO Agreement to focus on the environment and only the second agreement reached at the WTO since its inception. But it is important to remember that it is a partial agreement and negotiations remain on outstanding issues.
- The dispute settlement is a vital function of the WTO. The Appellate Body needs to be restored as soon as possible. The MC12 merely says that discussions will be held with a view to concluding them in 2024! The question of what to do until then is left unanswered.
- Perhaps most important of all is how the WTO deals with the so-called Joint Statement Initiatives or plurilateral negotiations. Obviously, these negotiations do not enjoy the consensus of all WTO Members. So, how will WTO deal with it in the future? There is no clarity on this matter in the MC12 Outcome Document.

What ails the WTO

In order to understand what ails the WTO today, it is important to know the fundamental underpinnings of first the General Agreement on Tariffs and Trade (GATT) and then the WTO. These are noted below.

- The preamble of the GATT (1947) stated quite unambiguously: "Recognizing that their relations in the field of trade and economic endeavour should be conducted with a view to raising standards of living, ensuring full employment and a large and steadily growing volume of real income and effective demand, developing the full use of resources of the world and expanding the production and exchange of goods." This was pure and simple, the philosophy of free trade.
- The GATT was also based on the philosophy that "a rising tide" lifts all boats. The idea was that free trade was a win-win scenario for all people and for all countries.
- The GATT also implicitly believed in removing all barriers to foreign direct investment to achieve economic growth.
- The GATT philosophy also provided that the State must withdraw from most economic activities and concentrate only on providing health, education, etc.

This philosophy (largely conforming to what is known as the 'Washington Consensus') was carried over in the WTO as well, although it must be noted that the preamble of the Marrakesh Agreement Establishing the WTO did use terms such as "optimal use of the world's resources in accordance with the objective of sustainable development". This was however in the preamble and not in the operational part of any Agreement as such. It thus remained on paper.

The Great Financial Crisis in 2008 and the recession which followed put paid to the above underpinnings of the multilateral trading system. The first indication that things were not working was the fact that economic growth was extremely uneven and was not inclusive. Even in countries where there was reasonable economic growth, inequalities began to widen

alarmingly. Instead of the rising tide lifting all boats, globalisation created winners and losers. Worse, more losers than winners emerged from globalisation. In this atmosphere, it was easy to blame “free trade” for everything, which politicians and others did.

As a result, one of the big problems now confronting the WTO and the multilateral trading system is that the developed countries which swore by the principles of free trade earlier, are now seeking “fair trade”. From the perspective of developing and least developed countries, the timing could not have been worse. They were just beginning to play catch up. Indeed, up to that point, inequalities both between countries and within countries were shrinking. It must also be acknowledged that China to a great extent, and India to a much lesser extent, had made use of free trade and globalisation to lift millions out of poverty.

The first indication that things were awry in the WTO was when the more powerful Members decided to “bury” the Doha Development Agenda at Nairobi in 2016. This marked a serious breach of solemn undertaking made in 2001 at Doha that the needs and interests of developing countries will be at the heart of the Doha Work Programme.

Fair trade, for the powerful WTO Members meant that environment had to be mainstreamed in the WTO. With this, the fundamental underpinning of the GATT came to be questioned. For instance, the role of the State was expected to be minimal in the context of free trade. But in the new paradigm, the State was to play a role either in enforcing WTO law (as is the case in the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement)) or in terms of crafting a regulatory framework for sustainable development or for key services under the General Agreement on Trade in Services (GATS).

The reason for the elusive consensus in the WTO insofar as negotiations are concerned is mainly

because for developed countries the paradigm had changed from free trade to fair trade, and for the developing and least developed countries the development agenda of the Doha Round was abandoned by some WTO Members.

Two other key issues came to the fore. One, despite the lack of consensus some Members introduced a range of new negotiating areas such as E-Commerce, Investment Facilitation, and Micro, Small and Medium-sized Enterprises (MSMEs). So, decision-making in the WTO by consensus has come under the scanner; however, Members never formally discussed this issue in the last several years. Second, Special & Differential Treatment (S&DT) notably for advanced developing countries such as China and India is being questioned, even though the two countries are dissimilar on any trade metric.

The question therefore is: where does the WTO go from here?

A WTO anchored in the SDGs

A basic problem that needs to be settled is how to agree on negotiating areas in the future. There is a strong feeling among some developing and least developed countries that issues of importance to them, like agriculture, tend to fall by the wayside while issues like Investment Facilitation, E-Commerce and now issues under the trade and environment umbrella take priority. No one is arguing that these issues are unimportant, but it cannot be the case that trade policy tools like public stockholding for food security purposes are put on the backburner. One way out would be to decide the negotiating areas on whether they help in the achievement of SDGs. After all, SDGs have been unanimously agreed upon. What is more, one SDG, namely, “Life below Water”, has already been chosen and the multilateral agreement on fisheries subsidies is meant to achieve that. So, why stop with one SDG. Why not a public stockholding agreement for food security purposes to achieve the SDG number 2, which is “Zero Hunger”. Similarly when we talk of E-Commerce, it is

hard not to talk about SDG 9 which in one of the targets mentions universal access to Information and Communication Technology. By linking the negotiating mandates to achieving the SDGs, the WTO may actually be doing the multilateral trading system a favour, since it increases its legitimacy and acceptability. Importantly, SDG 17.10 is to promote a universal, rules-based, open, non-discriminatory and equitable multilateral trading system under the WTO including through the conclusion of negotiations within its Doha Development Agenda.

The question about what to do with plurilateral negotiations (Joint Statement Initiatives) is a thorny one. It is obvious that they do not meet the approval of every single WTO Member and no way out is in sight as many Members stick to the consensus rule. It is hard to see how one can move away from consensus decision-making in a forum like WTO where there are both rights and obligations which are rigorously enforceable. As noted, S&DT has come under the scanner, somewhat needlessly. One criterion could be the per capita income in dollars, but this indicator should not be used arbitrarily to decide which developing country would be entitled to S&DT. Poverty across the developing world has been increasing, not reducing. In particular, two

regions of the world where millions live in poverty, namely, South Asia and Sub-Saharan Africa must in its entirety qualify for S&DT.

Finally, the WTO membership must expeditiously find a way out of the dispute settlement imbroglio. The US must be engaged by the entire membership and persuaded that it is in the long term interest of all Members if the two-tier dispute settlement system is up and running again. Several proposals have been made by the US and others, and it is not beyond the ingenuity of the WTO membership to find a solution to this vexed issue.

The WTO is too important an organization to be allowed to wither away; equally it has to represent the stakes of all Members, not just a few, if it is to be sustainable in the long run.

Author: Ambassador Dr. Mohan Kumar is Dean/Professor, OP Jindal Global University; former Indian trade negotiator, Indian Ambassador to France and former Chairperson of the Research and Information System for Developing Countries (RIS), a policy think-tank based in Delhi, India. Views are personal.

Copyright © 2023 South Centre, All rights reserved.

SOUTHVIEWS is a service of the South Centre providing opinions and analysis of topical issues from a South perspective.

The views contained in this article are attributable to the author(s) and do not represent the institutional views of the South Centre or its Member States.

**For more information, please contact Anna Bernardo of the South Centre:
Email abernardo@southcentre.int, or telephone +41 22 791 8050.**

Front cover photo credit: Tom Fisk from Pexels